

**INDEMNIFICATION**

- ☐ 67 PA Code, Section 459.3(b)(2)(i)(A), relating to facility owner not in the business
- ☐ 67 PA Code, Section 459.12(b)(1), relating to modification of conditions

THIS INDEMNIFICATION is by \_\_\_\_\_

(the "Permittee") for the DEPARTMENT OF TRANSPORTATION, COMMONWEALTH OF PENNSYLVANIA (the "Commonwealth").

WHEREAS, the Permittee has applied to the Commonwealth for a permit (the "Permit") to occupy the Commonwealth's legal right-of-way with a utility facility at the location and for the purposes more fully described in Highway Occupancy Permit Application Number \_\_\_\_\_.

NOW, intending to be legally bound, as an express condition to issuance of the Permit hereunder, the Permittee enters into the following indemnification, which is to be binding upon the Permittee, its heirs, successors and assigns:

**SECTION 1 - LIABILITY, LOSS OR DAMAGE**

The Permittee hereby undertakes to indemnify fully the Commonwealth, its officers, agents and employees, of and from damages or injury to persons or property in a claim or suit seeking to impose liability on the Commonwealth, its officers, agents or employees, arising out of any and all claims, demands, costs, or judgments of any type and any act or omission of the Permittee or the Permittee's contractor, agent, servant, employee or other person engaged or employed in conjunction with the construction, design or use of the structure or facility that is the subject of the Permit, or other actions taken by them pursuant to or in violation of the permit, with or without the approval or consent of the Permittee, including, but not limited to, a failure of the Permittee or other person to comply with the Permit or any and all pertinent statutes, ordinances, regulations or other requirements of any governmental authority in connection with the Permit or the subject hereof, it being the intent of this provision to absolve and protect the Commonwealth, its officers, agents, and employees from any and all loss by reason of this permit.

**SECTION 2 - EXPRESS CONDITION PRECEDENT**

Full performance of all conditions and covenants of this Indemnification upon terms satisfactory to the Commonwealth is an express condition precedent to the issuance of the Permit. It is hereby acknowledged that the Commonwealth will not accept substantial compliance with the terms and conditions of this Indemnification by the Permittee. Inaction or lapse of time shall not constitute a bar to the pursuit of any legal or equitable remedy available to the Commonwealth in any court of competent jurisdiction.

**SECTION 3 - DURATION**

The obligations of the Permittee under this Indemnification to the Commonwealth shall commence upon the date of execution hereof and shall continue in full force until the subject for which the permit has been issued has been removed, closed, or otherwise extinguished in accordance with the then existing regulations of the Commonwealth.

**SECTION 4 - INSURANCE**

Unless excused by the District Executive in writing, the Permittee shall have the Commonwealth added as an additional insured to its and its contractor's policy in a form and amount satisfactory to the Commonwealth, to cover any loss that may be incurred for or on account of any matter, cause or thing arising out of the permitted activity, construction or design and for property damage, personal injury and public liability under this Indemnification. The amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence. Certificates of Insurance shall be provided to the District Permit Office in person or by registered mail, return receipt requested, prior to the issuance of the Permit. The policy(s) shall be of a duration satisfactory to the Commonwealth. The certificate(s) of insurance shall contain the special policy endorsement attached hereto as Exhibit "A" and made part hereof.

## **SECTION 5 - REQUIREMENT OF NOTICE TO COMMONWEALTH**

The Permittee agrees to notify in writing, within ten days, by registered mail, return receipt requested, both the District Office Permit Manager and the Permit Section, Office of Chief Counsel, Pennsylvania Department of Transportation, P.O. Box 8212, Harrisburg, PA 17105-8212 of any and all claims made against the Permittee which pertain to the subject of the Permit.

## **SECTION 6 - OBLIGATION OF PERMITTEE TO DEFEND CLAIMS**

The Permittee, upon request of the Commonwealth, agrees to defend, or pay and provide for the reasonable cost of such defense, including attorneys fees, the Commonwealth, its officers, agents and employees, against any and all claims brought or actions filed against the Commonwealth, either as an original or an additional defendant, with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed. The Permittee hereby waives any and all rights to join the Commonwealth as an additional defendant in any actions arising as a result of the grant of the Permit or as a result of any construction, design or subsequent use that is the subject of the Permit.

Notwithstanding the foregoing provisions, the Permittee agrees that the Commonwealth may employ or provide attorneys of its own selection to appear and defend any claims or actions on behalf of the Commonwealth, at the Permittee's sole cost and expense.

## **SECTION 7 - REIMBURSEMENT FOR EXPENSES AND ENFORCEMENT OF INDEMNIFICATION**

The Permittee agrees to reimburse the Commonwealth for any necessary expenses, attorneys' fees or costs incurred in the enforcement of any part of this Indemnification within ninety (90) days after receiving written notice that the Commonwealth has incurred them.

## **SECTION 8 - DEFICIENCY AND WARRANT OF ATTORNEY TO CONFESS JUDGMENT**

In the event that the insurance coverage called for in Section 4 above is not sufficient to satisfy all claims, judgments or settlements that are the subject of this Indemnification, the Permittee, individually, jointly, jointly and severally, and as a principal or in any representative capacity of a corporation, partnership, unincorporated association or similar entity, hereby appoint the Office of the Chief Counsel of the Commonwealth of Pennsylvania, Department of Transportation or its designee as their attorney to confess judgment against the Permittee to satisfy any deficiency. This warrant of attorney to confess judgment on behalf of the Permittee extends to all property, real or personal, of any nature and sort of which the Permittee possesses either a legal or beneficial interest. The exercise of any rights granted the Commonwealth under this indemnity are cumulative and the exercise of any remedy granted the Commonwealth hereunder shall not be deemed to be a bar to the exercise of any other remedy granted hereunder to recover any deficiency.

## **SECTION 9 - SEVERABILITY**

If any section of this Indemnification is found to be invalid by any court of competent jurisdiction, such finding shall not render the rest of this Indemnification invalid.

## **SECTION 10 - COVENANT RUNNING WITH THE LAND**

Unless excused by the Office of Chief Counsel in writing, the Permittee shall cause a covenant to be executed concerning the property which is the subject of this Indemnification, reciting that this Indemnification has been executed and that all subsequent purchasers, heirs, assigns or transferees of any legal or beneficial interest in the property take it subject to the obligations imposed herein as covenants running with the land. The covenant shall be recorded in the Office of the Recorder of Deeds of the appropriate county or counties. A copy of the executed covenant, Form M-950 IC, shall be presented to the District Permit Manager prior to the granting of the Permit, together with evidence that the covenant has been submitted to the Office of the Recorder of Deeds for recording in the Grantor/Grantee Index.

## **SECTION 11 - INDEMNIFICATION DOES NOT CREATE RIGHTS IN THIRD PARTIES**

Nothing contained in this Indemnification shall confer a third party beneficiary right of action upon any person whatsoever and nothing set forth in this entire Indemnification shall be construed so as to confer upon any person or entity other than the Commonwealth, its officers, agents and employees, any right of action either under this Indemnification or in any manner whatsoever.

## **SECTION 12 - CORPORATE OFFICER INDIVIDUAL GUARANTY**

If any corporate officer shall execute this indemnification on behalf of a corporation or other entity, such execution shall constitute an individual guaranty of all obligations herein, unless excused in writing by the Commonwealth's Office of Chief Counsel.

IN WITNESS WHEREOF, the undersigned have set their hands this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_.

FOR THE PERMITTEE:

\_\_\_\_\_  
*Individual, Corporation, Partnership, etc.*

WITNESS, ATTEST:

\_\_\_\_\_  
*Secretary* BY: \_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Notary Public* BY: \_\_\_\_\_  
*Title*

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**Applicant: do not write below this line -- for Department of Transportation use only**

- ☐ Covenant Form M-950 IC received (unless excused by Office of Chief Counsel).
- ☐ Documentation received verifying covenant (Form M-950 IC) will be recorded in appropriate County Courthouse Grantor/Grantee Index.
- ☐ Documentation received verifying Exhibit "A" Insurance Policy Rider endorsement has been added to required Insurance Policies (unless excused by District Executive).

**EXHIBIT "A"**

**INSURANCE POLICY RIDER**

The following special endorsement is to be added to all insurance policies required as a condition precedent to the issuance of a Highway Occupancy Permit:

It is hereby agreed and understood that the Commonwealth of Pennsylvania, Department of Transportation, is added to this policy as an additional insured for public liability insurance (including personal injury liability) for at least \$250,000.00 per individual and at least \$1,000,000.00 per occurrence. The Commonwealth of Pennsylvania, Department of Transportation, is added to this policy as an additional insured specifically for all claims, suits and damages arising out of the design, construction or use of the driveway or other structure that is the subject of Application No. \_\_\_\_\_, submitted to the Department for issuance of a Highway Occupancy Permit.

This policy is conditioned such that the insurance company issuing this policy shall give notice to the Commonwealth of Pennsylvania, Department of Transportation, at least 30 days prior to any change in the amount of insurance or in the designation of the insured(s) under this policy, or upon the lapsing or canceling of coverage on behalf of the Commonwealth for any reason whatsoever. Such notice shall be in writing by registered mail, return receipt requested, to both the District Office Permit Manager and the Permit Section of the Office of Chief Counsel, Pennsylvania Department of Transportation, P.O. Box 8212, Harrisburg, PA 17105-8212, and shall state the nature of any such change or lapse in coverage.