

## INDEMNIFICATION

67 PA CODE, SECTION 441.3(H), RELATING TO FLOW OF WATER ONTO ANOTHER PROPERTY

THIS INDEMNIFICATION is by \_\_\_\_\_ ,  
with an address of \_\_\_\_\_  
(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 driveway or structure at the location and for the purposes more fully described in Highway Occupancy Permit Application Number \_\_\_\_\_, and associated highway occupancy permit condition statement and supplements.

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 indemnifies the Commonwealth from all suits, claims and demands which owners of the properties identified on Exhibit "A" attached hereto and incorporated by reference may assert against the Commonwealth based in whole or in part an increase in the flow of water onto the identified properties, including any action brought pursuant to the provisions of the Eminent Domain Code, 26 PA.C.S Section 101 et seq. This indemnification is in addition to that provided for under 67 Pa. Code Section 441.6(13).

### **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 and effect until the expiration of six years from the date of final inspection and acknowledgement of completion by the Commonwealth of all work authorized by the Permit.

### **SECTION 4 - INSURANCE**

The Permittee shall obtain insurance for public liability and property damage to cover any loss that may be incurred for or on account of any matter, cause or thing arising out of the permitted construction. The policy shall be occurrence based and the amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence. The Commonwealth shall be added as an additional insured on the policy. The obligation of the Permittee to maintain insurance with the Commonwealth as an additional insured shall remain in effect for so long as this Indemnification is in effect. A certificate of insurance for the Permittee shall be presented to the District Permit Manager prior to issuance of the permit.

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

The Permittee shall 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, shall 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 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 AGREEMENT**

The Permittee shall 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 - 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 9 - COVENANT RUNNING WITH THE LAND**

Unless excused in writing by the applicable Commonwealth District Executive or their designee, 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 will be submitted to the Office of the Recorder of Deeds for recording in the Grantor/Grantee Index. If excused, memorandum of District Executive attached as Exhibit "B."

**SECTION 10 - 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.

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

PERMITTEE:

BY: \_\_\_\_\_

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

- Certificate of insurance from Permittee supplied.
- Covenant Form M-950 IC received (unless excused by Commonwealth).
- Recording Copy Form M-945 RC verifying covenant (Form M-950 IC) will be recorded in appropriate County Courthouse Grantor/ Grantee Index supplied.
- Exhibit "A" owners of properties included in the indemnification
- Exhibit "B" memorandum from District Executive attached if Section 9 covenant requirement is excused.
- Indemnification properly executed. See Appendix F (Signature Authority Guide) to Right of Way Manual.

**LIST OF PROPERTIES INCLUDED IN INDEMNIFICATION**

1.

2.

3.

4.

**MEMORANDUM EXCUSING COVENANT REQUIREMENT**

[This exhibit is to be a memorandum signed by the applicable District Executive or their designee; use only if Section 9 is excused.]