

**Utility Master Agreement  
By and Between  
Maryland Department of Transportation State Highway Administration  
And**

\_\_\_\_\_

This Utility Master Agreement (this "Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Maryland Department of Transportation State Highway Administration, acting for and on behalf of the State of Maryland (hereinafter referred to as "MDOT SHA") and \_\_\_\_\_, a \_\_\_\_\_ corporation, with a Federal Employer Identification Number of \_\_\_\_\_ and a principal place of business at: \_\_\_\_\_ (insert address) (hereinafter referred to as "the Company").

WHEREAS, MDOT SHA has established, operates and maintains a State highway system within the State of Maryland, under the authority granted by Title 8 of the Transportation Article of the Annotated Code of Maryland; and

WHEREAS, the Company has requested MDOT SHA to allow the placement of the Company's facilities ("Company Facilities") within MDOT SHA's rights-of-way ("ROW") in order to provide \_\_\_\_\_ services within the State of Maryland; and

WHEREAS, the Company Facilities shall include, but not be limited to, such things as \_\_\_\_\_; and

WHEREAS, the Company has submitted to MDOT SHA a New Public Utility Company Application Package (hereinafter defined) for MDOT SHA to review and approve, as a prerequisite to MDOT SHA issuing the Company the necessary Utility Permits (hereinafter defined and referred to as "MDOT SHA Utility Permits") which will allow the Company to access MDOT SHA's ROW in order to install the Company Facilities; and

WHEREAS, MDOT SHA and the Company desire to enter into this Agreement to evidence each party's acceptance of the terms and conditions set forth herein for the installation of the Company Facilities within the MDOT SHA's ROW; and.

WHEREAS, there is nothing contained in this Agreement to be construed or interpreted to give, grant or convey any rights or interests in any property of the State of Maryland.

**NOW THEREFORE, be it understood that MDOT SHA and the Company do hereby agree as follows:**

**SECTION 1. NEW PUBLIC UTILITY COMPANY APPLICATION PACKAGE**

A. The New Public Utility Company Application Package (hereinafter referred to as “NPUCAP”) which has been submitted by the Company to MDOT SHA and which requests MDOT SHA to approve the Company as an Authorized Public Utility in order to obtain MDOT SHA Utility Permits to install the Company Facilities within MDOT SHA’s ROW. The NPUCAP consists of the following:

- 1) Documentation that the Company qualifies under one of the following conditions:
  - a) The Company is under the jurisdiction of the Maryland Public Service Commission; or
  - b) The Company is under the jurisdiction of the Federal Communications Commission; or
  - c) The Company is covered by the Cable Communications Policy Act of 1984 codified as 47 USC Section 541 and 556, as amended; or
  - d) The Company is governed by Title 9 of the Environmental Articles of the Annotated Code of Maryland 24/7 contact information.
- 2) Documentation that the Company maintains a permanent office in Maryland, manned 7 days a week, 24 hours a day. The Company shall provide to MDOT SHA the Company’s 24/7 contact information on Company letterhead, and shall revise it as needed.
- 3) Documentation that the Company is an “owner-member” of the “One-call system” as defined and required in Title 12 – Underground Facilities - of the Public Utilities Article of the Annotated Code of Maryland if the Company has or will have any underground facilities.
- 4) Documentation that the Company is insured in accordance with MDOT SHA’s [Standard Specifications For Construction And Materials](#), Sections GP-7.14 Liability Insurance and TC-5.01 Insurance.
  - a) The Maryland State Highway Administration shall be listed as a “Certificate Holder” on the “Certificate of Insurance” form.
- 5) The completed, dated and signed Utility Permit General Provisions Acknowledgement Form acknowledging the Company’s acceptance to agree to and abide by the Utility Permit General Provisions’ terms and conditions.

B. Once MDOT SHA has executed this Agreement, the NPUCAP will be deemed to be an approved Authorized Public Utility and the Company may apply for the MDOT SHA Utility Permits.

## **SECTION 2. MDOT SHA UTILITY PERMITS**

A. After execution of this Agreement, the appropriate MDOT SHA District(s) will be notified that the Company is an Authorized Public Utility, and that the appropriate MDOT SHA District(s) may begin to issue the MDOT SHA Utility Permits to the Company.

B. MDOT SHA issues Utility Permits in two (2) parts which when combined comprise a Complete Authorized Utility Permit.

1) Part 1: Utility Permit General Provisions

a) The Company shall download the Utility Permit General Provisions from MDOT SHA's internet web site.

2) Part 2: Individual Work Order Permits

a) Individual Work Order Permits are issued by the appropriate District office under the signature of that District Engineer or their approved designee or designee.

3) The Company shall attach **BOTH PARTS** of the Utility Permit together in order to constitute a Complete Authorized Utility Permit prior to beginning any work within MDOT SHA ROW.

### **2.01. UTILITY PERMIT GENERAL PROVISIONS**

A) The Utility Permit General Provisions contains the general requirements, conditions, procedures and contact information required for all activities performed within MDOT SHA's ROW. Because the Utility Permit General Provisions apply to all Utility Permits, MDOT SHA provides the Utility Permit General Provisions via MDOT SHA's website. As such, it is the responsibility of the Company to: (i) obtain the Utility Permit General Provisions from MDOT SHA's website; (ii) attach the Utility Permit General Provisions to each and every Individual Work Order Permit obtained from the appropriate district office; and (iii) insure that the Complete Authorized Utility Permits are at all the job sites at all times.

B) The Company shall download both the Utility Permit General Provisions and the Utility Permit General Provisions Acknowledgement Form from MDOT SHA's web site initially when the Company is requesting to be approved as an Authorized Public Utility. Whenever the Company is notified by the appropriate MDOT SHA District(s) that the Utility Permit General Provisions have been revised, the Company shall again download both the Utility Permit General Provisions and the Utility Permit General Provisions Acknowledgement Form.

1) The Company shall (i) initially when requesting to be approved as an Authorized Public Utility; (ii) and again at each notification that the Utility Permit General Provisions have been revised; sign, date and return the Utility Permit General Provisions Acknowledgement Form acknowledging the Company's acceptance to agree by the Utility Permit General Provisions' terms and conditions.

- C) Utility Permit General Provisions are Part 1 of 2 and every Individual Work Order Permit is Part 2 of 2 of obtaining a Complete Authorized Utility Permit.
- 1) The Company shall attach a copy of the Utility Permit General Provisions to each and every Individual Work Order Permit to comprise a Complete Authorized Utility Permit to allow the Company access to MDOT SHA's ROW to perform specific activities as requested by the Company.
  - 2) The Utility Permit General Provisions by itself DOES NOT grant permission to the Company to work within MDOT SHA's ROW.

## **2.02. WORK ORDER UTILITY PERMIT(S)**

A) The appropriate MDOT SHA District issues various types of Utility Permits for specific types of utility work to be performed within MDOT SHA's ROW. These Utility Permits contain the special requirements, conditions, procedures and contact information required for job-specific activities performed by the Company and includes job-specific attachments, plans and addenda. (These Utility Permits are collectively hereinafter referred to as Individual Work Order Permits.) The types of Individual Work Order Permits issued are as follows:

- 1) **Utility Construction Permit** is issued for the installation, construction, removal, relocation, replacement, adjustment and significant maintenance of utility infrastructure as needed and requested by the Company.
- 2) **Utility Relocation Permit** is issued for the installation, construction, removal, relocation, replacement and adjustment of utility infrastructure as required by the MDOT SHA. Utility Relocation Permits are issued specifically in connection with MDOT SHA projects.
- 3) **Utility Blanket Permit** is issued for routine operations such as tree trimming and minor utility infrastructure maintenance activities. Utility Blanket Permits also include utility work required in emergency situations. A Utility Blanket Permit is issued annually from the appropriate districts for emergencies and these types of maintenance activities so the Company would not need to submit numerous individual site-specific Utility Permit Application Packages.
  - a) The Company shall notify the appropriate District of any work to be performed under a Utility Blanket Permit.
- 4) **Utility Permit Extension** is issued for the extension of previously issued Utility Construction Permits and/or Utility Relocation Permits when the proposed utility work will not be completed by the expiration date of the existing permits. Utility Permit Extensions apply to only Utility Construction Permits and Utility Relocation Permits.
  - a) Blanket Permits shall require the issuance of a new permit upon their expiration.
  - b) The requirement for submitting an annual Utility Permit Application Package for Utility Blanket Permit(s) will be as determined by each of the MDOT SHA District(s).

- B) Individual Work Order Permits are Part 2 of obtaining a Complete Authorized Utility Permit.
- 1) The Company shall submit Utility Permit Application Package for all installation, construction, relocation, removal, replacement, adjustment and significant maintenance of utility infrastructure requested by the Company, for review and approval, to the appropriate MDOT SHA District(s).
  - a) The appropriate MDOT SHA District(s) may issue a Individual Work Order Permit provided the Utility Permit Application Package submitted by the Company is reviewed, approved and in compliance with MDOT SHA's Utility Policies.
  - b) Individual Work Order Permits are issued under the signature of the appropriate District Engineer or designee.
  - 2) The Company shall attach a copy of the Utility Permit General Provisions to each Individual Work Order Permit to comprise a Complete Authorized Utility Permit to allow the Company access to MDOT SHA's ROW to perform specific activities as requested by the Company.
  - 3) An Individual Work Order Permit by itself DOES NOT grant permission to the Company to work within MDOT SHA's ROW.
- C) Individual Work Order Permits have a term of twelve (12) months or until the work specified in the Work Order Utility Permit has been completed, whichever is shorter.

### **2.03. UTILITY PERMIT APPLICATION PACKAGE**

- A) The Company shall submit a Utility Permit Application Package for all installation, construction, relocation, removal, replacement, adjustment and significant maintenance of utility infrastructure requested by the Company, for review and approval, to the appropriate MDOT SHA District(s). Significant maintenance work will be as determined by the appropriate MDOT SHA District(s).
- B) The Company shall submit the Utility Permit Application Package to the appropriate District(s) which is to be submitted as three (3) separate packages and each individual package neatly folded to an 8½" X 11" size and shall contain the following items:
- 1) A copy of the completed and signed permit application.
  - 2) A copy of an 8½" X 11" vicinity map (1" = 1000') with the area of work indicated with a colored pen or pencil.
  - 3) A complete set of plans for the proposed work within MDOT SHA's ROW.
  - 4) A copy of the completed and signed Traffic Control Permit Application.
  - 5) A copy of the Traffic Control Plan ("TCP") for the work or an applicable TCP template.
  - 6) One electronic set of plans as determined by MDOT SHA

### **SECTION 3. COMPLIANCE WITH MDOT SHA UTILITY POLICIES**

A. In return for permitting the Company to install Company Facilities within MDOT SHA's ROW, the Company agrees to comply with MDOT SHA's Utility Policies, Permits and the provisions of this Agreement. Any infraction of this Agreement or any issued MDOT SHA Utility Permits shall be just cause for immediate revocation or termination of the MDOT SHA Utility Permits in accordance with **SECTION 6.A. CONSEQUENCES OF NON-COMPLIANCE**.

B. The Company, on behalf of itself, its successors and assigns, agrees that it shall relocate the Company Facilities at its own expense if the Company Facilities are impacted by future changes to the State highway system or State needs.

C. The Company agrees to meet MDOT SHA's construction schedule requirements and to coordinate with MDOT SHA any design, removal, relocation(s), and/or adjustment(s) to the Company Facilities.

D. The Company agrees that upon receipt of MDOT SHA's construction schedule or any plans of proposed highway improvements that may impact the Company Facilities, that the Company shall, with due diligence, inform MDOT SHA in writing of said impacts and the estimated magnitude of the design, removal, relocation(s), and/or adjustment(s) to the Company Facilities.

E. On MDOT SHA construction projects where the Company requests the Company's utility relocation and adjustment work to be incorporated into the MDOT SHA project, the MDOT SHA and the Company will execute a separate Utility 3rd Party Work Agreement. This Utility 3rd Party Work Agreement shall consist of all essential terms and conditions to include the utility work into MDOT SHA's project and shall contain project-level details and specific provisions such as financial responsibility, project changes, progress and final billing, etc.

F. Any Company construction and maintenance activities not performed in accordance with MDOT SHA construction schedules provided by MDOT SHA shall constitute an infraction of this Agreement and any contractor delay claims incurred by MDOT SHA as a result of the Company's non-compliance shall be reimbursed to MDOT SHA by the Company in accordance with **SECTION 6.A. CONSEQUENCES OF NON-COMPLIANCE**.

G. Any Company construction and maintenance activities not performed in accordance with this Agreement, the issued MDOT SHA Utility Permits, MDOT SHA Utility Policy and/or construction schedules provided by MDOT SHA shall constitute an infraction of this Agreement and any infraction of any issued MDOT SHA Utility Permits and may result in the MDOT SHA immediately revoking or terminating the MDOT SHA Utility Permits in accordance with **SECTION 6.A. CONSEQUENCES OF NON-COMPLIANCE**.

### **SECTION 4. CONSENT BY MDOT SHA TO ASSIGNMENT - SUCCESSORS AND ASSIGNS**

#### **A. ASSIGNMENT**

The Company hereby acknowledges and agrees for itself and its successors and assigns that it will not: (a) assign any of its rights under this Agreement; or (b) make or permit any voluntary or involuntary total or partial sale, assignment, conveyance, or other transfer of any or

all of the Company Facilities or the occupancy or use of the MDOT SHA's ROW (each of which is hereinafter referred to as a "Transfer") without first obtaining the express written consent of the MDOT SHA Statewide Utility Engineer (which consent shall not constitute a consent to any subsequent Transfer, whether by the party hereinabove named as "the Company" or by any other party). The use of the terms "sale" "conveyance", and such other terms herein shall not be interpreted in any manner that would give the Company, or any permitted assignee of the Company, anything other than a mere right of use under this Agreement, it being understood and agreed by the Company that no interest in the MDOT SHA ROW or any other State property is created or intended to be created by this Agreement. Any party to whom any Transfer is attempted without first having obtained the above consents from MDOT SHA shall have no claim, right or remedy whatsoever hereunder against MDOT SHA, and MDOT SHA shall have no duty to recognize any party claiming under or through the same. No Transfer made with or without the consent of Statewide Utility Engineer shall alter or impair the obligations of the Company hereunder before such Transfer. The Company shall only be released from its obligations hereunder upon a Transfer approved as set forth herein and only if the Company's assignee agrees in writing to assume all of the Company's obligations hereunder.

**B. SUCCESSORS AND ASSIGNS**

All of the terms, conditions, obligations and provisions contained in this Agreement shall inure to the benefit of and be binding upon the parties hereto and: (a) in the case of MDOT SHA, its successors and assigns; and (b) in the case of the Company, any successors or assigns that have been approved in accordance with the provisions of this Agreement.

**SECTION 5 CONTACT INFORMATION AND NOTICES**

A. The Company shall maintain a manned telephone number, 24 hours a day, seven (7) days a week, which number the Company shall have provided to MDOT SHA and shall update as needed, so that MDOT SHA may contact the Company promptly in case of emergency.

B. The Company shall maintain a mailing address and other contact information, including the name and title of a contact person with the person's email and telephone information so the person may be contacted both in emergency and in normal situations. In addition, the information may be used to send future construction plans along with a construction schedule of highway projects.

C. The Company shall notify MDOT SHA within seven (7) business days of any changes to any of the contact information. If the Company has been purchased or sold, the Company shall notify MDOT SHA within seven (7) business days of such occurrence and shall provide to MDOT SHA all contact information for the new entity so that MDOT SHA may easily contact the new entity, as needed.

D. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be in one of the following manners:

**SECTION 6 COMMUNICATIONS BETWEEN THE PARTIES**

- a) **Emergencies** - Shall be by telephone for immediate notification and followed by email or in writing, with the pertinent information regarding the emergency, within twenty-four (24) hours after notifying MDOT SHA by telephone. Emergency communications to MDOT SHA shall be to:

Statewide Operations Center  
 7491 Connelley Drive  
 Hanover, Maryland 21076  
 Telephone: 1-800-543-2515 or 410-582-5650

to the Company will be to:

(Name) \_\_\_\_\_  
 (Title) \_\_\_\_\_  
 (Address) \_\_\_\_\_  
 (Address) \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_

- b) **Routine Communications** - Communications for routine matters, such as consent, approval, and request or other communication or document concerning a Utility Permit Application, may be by email or in writing. If communication is by email, the email shall be followed in writing, with the pertinent information that was contained in the email, within seventy-two (72) hours after the email to MDOT SHA. Routine communications to MDOT SHA shall be to:

DISTRICT 1	660 West Road, Salisbury, MD 21801	410-677-4000 or 410-667-4095
DISTRICT 2	615 Morgnec Road Chestertown, MD 21620	410-778-3061 or 410-778-3061
DISTRICT 3	9300 Kenilworth Ave., Greenbelt, MD 20770	310-513-7300 or 301-513-7350
DISTRICT 4	320 West Warren Road, Hunt Valley, MD 21030	410-229-2300 or 410-229-2340
DISTRICT 5	138 Defense Highway, Annapolis, MD 21401	410-841-1000 or 410-841-1039
DISTRICIT 6	1251 Vocke Road, LaVale, MD 21502	301-729-8400 or 301-729-8439
DISTRICT 7	5111 Buckeystown Pike, Frederick, MD 21704	301-624-8100 or 301-624-8116



to the Company will be to:

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Address) \_\_\_\_\_

(Address) \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

- c) **Other Communications** - All other communications to MDOT SHA for notice, consent, approval, request or other communication or document shall be given in writing and deemed to have been given seventy-two (72) hours after being sent by certified or registered mail in the United States mails, postage prepaid, return receipt requested. All other communications to MDOT SHA shall be to:

Deputy Administrator/Chief Engineer for Operations  
 State Highway Administration  
 707 North Calvert Street  
 Baltimore, MD 21202  
 Telephone: 410-545-0361

and to: State Highway Administration/Office of Construction  
 Statewide Utility Engineer  
 7450 Traffic Drive  
 Hanover, MD 21076  
 Telephone: 443-572-5264  
 E-mail: [OOC\\_Uilities@sha.state.md.us](mailto:OOC_Uilities@sha.state.md.us)

to the Company will be to:

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Address) \_\_\_\_\_

(Address) \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

## **SECTION 7 GENERAL**

### **A. CONSEQUENCES OF NON-COMPLIANCE**

1. In the event of non-compliance by the Company, its successors or assigns, with any terms of this Agreement or with the MDOT SHA Utility Permits, MDOT SHA shall have the right, but not the obligation, (a) to cancel the MDOT SHA Utility Permits thereby denying the Company the use of MDOT SHA ROW for the Company Facilities, and (b) to pursue any other legal remedies available.
2. Upon the revocation or termination of any issued MDOT SHA Utility Permits, the Company shall, at MDOT SHA's discretion and direction, remove all of the Company Facilities, and surrender possession of MDOT SHA ROW in good working order and condition.
3. Any representations, warranties, indemnifications and insurance requirements set forth in this Agreement or any issued MDOT SHA Utility Permits shall survive the revocation or termination of this Agreement and any MDOT SHA Utility Permits.
4. In the event of non-compliance by the Company, its successors or assigns, with any terms of this Agreement in meeting MDOT SHA project schedules, MDOT SHA shall have the right, but not the obligation, (a) to require the Company to reimburse MDOT SHA for any contractor delay claims incurred as a result of the Company's non-compliance, and (b) to pursue any other legal remedies available.

### **B. INSURANCE TO BE MAINTAINED BY THE COMPANY**

The Company shall maintain liability insurance: (i) as required herein; (ii) as required by any of the MDOT SHA Utility Permits; and (iii) as are in accordance with General Provision 7.14 – Liability Insurance; and Terms & Conditions 5.01 – Insurance of MDOT SHA's [Standard Specifications For Construction And Materials](#), for May 2017, as may be revised, amended, replaced or updated from time to time on MDOT SHA Internet Web Site at [www.roads.maryland.gov/Business/Business\\_Center/Business\\_Standards\\_and\\_Specifications](http://www.roads.maryland.gov/Business/Business_Center/Business_Standards_and_Specifications), for so long as the Company, its successors or assigns, have Company Facilities within any MDOT SHA ROW.

The Company shall maintain at its expense during its use or occupancy of any MDOT SHA ROW or other State property or during any activities conducted thereon: (a) insurance against loss or liability in connection with bodily injury, death, property damage or destruction arising under this Agreement or out of the use of MDOT SHA ROW by the Company or its agents, employees, officers, invitees, visitors, and guests, under one or more policies of Commercial General Liability (CGL) insurance having such limits as to each as are reasonably required by MDOT SHA or the State of Maryland from time to time, but in any event of not less

than a minimum coverage of \$2,000,000 combined single limit per occurrence, and containing broad form CGL Endorsement or its equivalent; and (b) workers compensation insurance as may be required by applicable law.

The Commercial General Liability policy shall: (a) name the State of Maryland, MDOT SHA and MDOT each as an additional insured thereunder; (b) by its terms as it relates to the acts of the Company be considered primary and non-contributory with respect to any other insurance (if any) carried by MDOT SHA or its successors or assigns; (c) by its terms, provide MDOT SHA with thirty (30) days prior written notice before cancellation, non-renewal, or material change to a policy; and (d) be issued by an insurer of recognized responsibility that is licensed to issue such policy in Maryland. The Company shall obtain from its insurer and deliver to MDOT SHA a certificate to evidence that the State of Maryland, MDOT and MDOT SHA are named each as an additional insured on the Company's CGL policy and that MDOT SHA will be given thirty (30) days notice prior to cancellation, non-renewal, or material change to the policy.

Prior to the commencement of Company activities hereunder or in connection with the MDOT SHA Utility Permits, the Company shall deliver to MDOT SHA a certificate of insurance evidencing the insurance stipulated above. Thereafter, each time the policy is renewed, the Company shall provide MDOT SHA with an updated Certificate of Insurance. In the event the Company fails to pay any insurance premium as and when due, MDOT SHA shall have the option but not the obligation of paying such insurance premiums on behalf of the Company and the Company shall immediately, upon demand, repay such sum to MDOT SHA.

If the Company fails to carry and maintain any insurance as required, such failure shall constitute an "Event of Non-Compliance" and shall subject the Company to termination of its activities hereunder and under the MDOT SHA Utility Permits.

### **C. INDEMNIFICATION OF MDOT SHA**

In accordance with General Provision 7.13 – Responsibility For Damage Claims of MDOT SHA's [Standard Specifications For Construction And Materials](#), for May 2017, as may be revised, amended, replaced or updated from time to time on the MDOT SHA Internet Web Site at [www.roads.maryland.gov/Business/Business\\_Center/Business\\_Standards\\_and\\_Specifications](http://www.roads.maryland.gov/Business/Business_Center/Business_Standards_and_Specifications), the Company shall be responsible for, defend (at MDOT SHA's option), indemnify and hold harmless the State of Maryland, MDOT and MDOT SHA, their respective members, officers, agents, and employees, against and from any and all liability or claim of liability for bodily injury (including death) or property damage (including reasonable attorney's fees) related to, involving or arising, in whole or in part from any act or failure to act or out of the use, occupancy, conduct, or operation, construction, maintenance or management of or upon any portion of the MDOT SHA ROW by the Company, its principals, contactors, employees, agents, licensees lessees or invitees, including by way of example only: (a) any work or thing whatsoever done or not done on MDOT SHA ROW under this Agreement or under the MDOT SHA Utility Permits by or on behalf of the Company; or (b) any breach or default by the Company in performing any of its obligations under the provisions of this Agreement or applicable law. The Company agrees that the indemnification as described herein shall include any liability or claim of liability that occurs under this Agreement,

even if the injury does not become apparent or does not manifest itself until after expiration of this Agreement. The Company shall indemnify MDOT SHA and hold them harmless from any and all claims, causes of action or suits arising in whole or in part from involving any acts of the Company in connection with this Agreement or the MDOT SHA Utility Permits including, but not limited to, the placement or existence of any of the Company Facilities on or near any property, road or highway that is owner and/or maintained by MDOT SHA or the State of Maryland. This provision applies to claims or suits involving all facilities regardless of when they were placed, constructed or replaced and it applies to any and all claims, even those which accrued previous to the issuance of this permit.

MDOT SHA reserves the right to assign inspection forces while work is being accomplished within the ROW at the expense of the Company.

**D. GOVERNMENTAL IMMUNITY**

Nothing in this Agreement shall constitute a waiver of any immunity to which the State of Maryland, MDOT or MDOT SHA may be entitled under any federal law or under the laws of the State of Maryland, as they may be amended from time to time.

**E. DAMAGE BY THE COMPANY**

Anything contained in any provision of this Agreement or the MDOT SHA Utility Permits to the contrary notwithstanding, if any damage to MDOT SHA's ROW or to any person or property is caused by or results from any act, failure to act or omission of the Company, or any of its officers, contractors, employees, or agents, then the Company shall perform or pay to MDOT SHA or to any other party, as applicable, to have performed the cost of all repairs and restoration required to restore it to the condition that existed prior to such damage. However, if MDOT SHA or the other party elects not to restore, the Company shall pay to the MDOT SHA and/or to any other party, as applicable, on a fully installed replacement cost basis, the cost to restore MDOT SHA's and any other party's facilities, property, or equipment that have been damaged or destroyed.

**F. NO WAIVER**

MDOT SHA shall not be deemed to have waived the exercise of any right that it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by the State in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other instance, or any other right.

**G. SEVERABILITY**

No determination by any court, governmental body or otherwise that any provision of this Agreement or any amendment hereto is invalid or unenforceable in any one instance shall affect the validity or enforceability of: (a) any other such provision; or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by law, and shall be construed wherever possible as being consistent with applicable law.

**H. MARYLAND LAW AND MARYLAND COURTS**

This Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.

**IN WITNESS WHEREOF**, each party hereto has executed and sealed this Agreement or caused it to be executed and sealed on its behalf by its duly authorized representative, the day and year first above written.

ATTEST:

COMPANY:

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

WITNESS:

STATE HIGHWAY ADMINISTRATION

\_\_\_\_\_

BY: \_\_\_\_\_ (SEAL)

Joseph Sagal  
Deputy Administrator/Chief Engineer for Hanover  
Operations

Approved for signature:

Date of Execution: \_\_\_\_\_

\_\_\_\_\_  
Nelson Smith, Statewide Utility Engineer

Approved as to form and legal sufficiency

\_\_\_\_\_  
Assistant Attorney General