

**CO-APPLICANT AGREEMENT FOR A
HIGHWAY OCCUPANCY PERMIT FOR
ENCLOSED SURFACE STORMWATER DRAINAGE FACILITIES**

THIS AGREEMENT made this _____ day of _____
20 ____, by and between _____, having a mailing address of
_____ (the "Landowner").

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_____ a [INSERT TYPE OF LOCAL
GOVERNMENT], situate in _____ County, Pennsylvania, having the address
of _____, Pennsylvania ("Local Government").

WHEREAS, Landowner is the owner of a certain parcel of property situate in
_____ County, Pennsylvania, as is evidenced by a deed of record in the Office of
the Recorder of Deeds of _____ County, Pennsylvania, as Instrument No.
_____, hereinafter referred to as the "Property";

WHEREAS, Landowner desires to develop the Property;

WHEREAS, Landowner desires to utilize the state highway public right-of-way for storm
water management in the development of the Property;

WHEREAS, Landowner's storm water management efforts must utilize enclosed surface
drainage facilities;

WHEREAS, the Pennsylvania Department of Transportation ("PennDOT") in accordance with
Section 421 of the Pennsylvania State Highway Law, 36 P.S. § 670-421 has adopted a policy
requiring any application for a Highway Occupancy Permit (a "HOP") for subsurface storm water
management to be submitted by the Local Government of the property to be developed either as
applicant or co-applicant;

WHEREAS, this same PennDOT policy directs that any HOP permit issued concerning subsurface management shall include conditions that the enclosed surface drainage facilities installed shall be the primary responsibility of the Local Government and that any co-applicant is responsible for providing funding to the Local Government to offset future maintenance, repair, replacement and reconstruction costs associated with the enclosed surface drainage facilities installed under the HOP;

WHEREAS, Landowner and Local Government agree that, at the option of the Local Government, either (a) the Local Government, or (b) the Local Government and the Landowner, shall file an application for an HOP for the Property; and

WHEREAS, Landowner and Local Government now desire, through this Agreement, to allocate the rights and responsibilities between each other for the, repair, replacement and reconstruction cost of the enclosed surface drainage facilities constructed should PennDOT issue the applied for HOP and to provide for the Landowner's indemnification of the Local Government for any and all liability related to the matters set forth in this Agreement.

WHEREAS, upon execution of this Agreement it shall be recorded in the Office of the Recorder of Deeds of _____ County, Pennsylvania for the Property at _____.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and further intending to be legally bound thereby, the parties hereto agree as follows:

The foregoing recitals are incorporated herein and made a part hereof

ARTICLE I
PLANNING, CONSTRUCTION, AND
MAINTENANCE RESPONSIBILITIES

1.01. Landowner agrees to be responsible, at its own cost and expense, for the design of the enclosed surface drainage facilities and the preparation and submission of the application to PennDOT for the associated HOP.

1.02. Landowner agrees that any design of such facilities shall comply with all applicable building and other codes, industry standards, and laws.

1.03. Landowner agrees that the Local Government, or its engineer, shall have the right to review and make changes to the proposed design of the enclosed surface drainage facilities and to the proposed application for the associated HOP before submission to PennDOT. Landowner agrees to reimburse the Local Government for reasonable costs of the Local Government's review of the designs and application.

1.04. Upon receipt of the HOP, Landowner agrees to construct the enclosed surface drainage facilities in accordance with any and all approvals required and received from the Local Government and otherwise to construct these facilities in accordance with all applicable building codes, industry standards, and laws.

1.05. Landowner agrees to be responsible, at its own cost and expense, for regularly maintaining or replacing the installed enclosed surface drainage facilities as necessary or when the Local Government or PennDOT determines that maintenance or replacement is necessary.

1.06. To the full extent permitted by law, Landowner shall indemnify, defend and hold harmless the Local Government and its professional advisors, agents, servants, workmen and

limited to, attorneys' fees, and all suits, claims, actions, workers' compensation claims, damages, losses and expenses brought by any third parties, and/or employees of Landowner or contractors and subcontractors of Landowner, and for all costs or liability to which the Local Government may be held responsible, and for any injury or alleged injury to the person or property of another resulting from negligence or carelessness arising out of or resulting from the construction, operation, or failure of the enclosed surface drainage facilities that are the subject of the HOP.

1.07. In the event Landowner shall neglect, fail or refuse to maintain or replace the installed subsurface storm water facilities as necessary or when the Local Government or PennDOT determines that maintenance or replacement is necessary, then the Local Government may correct said deficiencies and Landowner shall be required to reimburse Local Government for all costs of said corrections, including administration, attorney and engineering fees, together with any additional payment authorized by law. Said costs may be collected by the Local Government from Landowner by an action in assumpsits or as otherwise permitted by law.

ARTICLE II
LANDOWNER'S SECURITY

2.01. At the sole discretion of the Local Government, Landowner shall be required to provide security for its construction, maintenance, and indemnity obligations concerning the enclosed surface drainage facilities in the form of (a) a deposit of funds into an Escrow Account maintained by the Local Government or (b) the posting of a construction and maintenance bond in a form and amount satisfactory to the Local Government.

2.02. Escrow Account. (check if this section is applicable _____).

(A) Landowner agrees to place into an escrow account, for the sole benefit of the Local Government, as escrow agent, the initial sum of _____ (\$ _____) Dollars; said monies to be held in the Local Government's name alone, as escrowee, in an interest bearing segregated account not co-mingled with its general fund (but

which may be part of a shared escrow fund as determined by the Local Government), for the exclusive purposes hereinafter set forth (the "Stormwater Maintenance Escrow Account"). Receipt of the amount of \$ _____ will be acknowledged by the Local Government when so deposited. The Stormwater Maintenance Escrow Account shall be maintained by the Local Government for the particular development project in which the stormwater facilities are included.

(B) Landowner agrees that the Stormwater Maintenance Escrow Account shall be used to reimburse the Local Government for any and all expenses, fees and charges incurred by the Local Government for maintenance, repair, replacement, or reconstruction of the enclosed surface drainage facilities that are the subject of the HOP. The Local Government shall be permitted to utilize the funds in the Stormwater Maintenance Escrow Account to pay for maintenance, repair, replacement, or reconstruction of the enclosed surface drainage facilities only after the Local Government has notified Landowner in writing of the need to perform maintenance, repair, replacement, or reconstruction of the enclosed surface drainage facilities. Landowner shall have at least 10 days from the date of the Notice to begin such action on the enclosed surface drainage facilities or otherwise provide the Local Government with a response adequate to the Local Government.

(C) The balance of the Stormwater Maintenance Escrow Account shall at no time be in an amount of less than _____ percent of the original amount, or _____ (\$ _____) Dollars ("Minimum Balance"). In the event that the balance of the Stormwater Maintenance Escrow Account falls below the Minimum Balance, the Local Government shall require that the Landowner deposit in the Escrow Account, within ten (10) business days after receipt of the Notice of Deficiency from the Local Government, the difference between the then current balance and the original escrow amount. At its sole discretion,

the Local Government shall review the Stormwater Maintenance Escrow Account on a periodic

basis and may require a reasonable increase in the Minimum Balance by the Landowner, after taking into account all relevant factors, including inflation, estimated maintenance, repair, replacement and reconstruction costs, the financial condition of the Landowner, and any material alteration of the property serviced by the enclosed surface drainage facilities.

(D) The Local Government shall have the sole discretion when, or if, the funds in the Stormwater Maintenance Escrow Account are released to the Landowner.

2.03. Bond (check if this section is applicable _____).

(A) Landowner shall cause to be issued a bond or bonds ("Bond"), issued by an acceptable surety authorized to do business in the Commonwealth of Pennsylvania, and executed by the Landowner, in the amount of _____, naming the Local Government as obligee, and certifying that the Landowner will complete and maintain (including repair, replacement and reconstruction if necessary) the enclosed surface drainage facilities that are the subject of the HOP.

(B) Landowner agrees that the Bond shall be utilized for maintenance, repair, replacement and reconstruction of the enclosed surface drainage facilities only if after 10 days written notice to Landowner by the Local Government of the need to maintain, repair, replace or reconstruct those facilities, Landowner has failed to address the matters contained in the Notice to the satisfaction of the Local Government.

(C) The Local Government shall review the Bond on a periodic basis and may require a reasonable increase in the amount of the Bond after taking into account all relevant factors, including inflation, estimated maintenance, repair, replacement and reconstruction costs,

the financial condition of the Landowner, and any material alteration of the property serviced by the enclosed surface drainage facilities.

(D) The Local Government shall have the sole discretion to decide when, or if, the Bond is released.

ARTICLE III
GENERAL TERMS

3.01. This Agreement shall be binding upon the successors and assigns of the Landowner and the Local Government.

3.02. Any notice to be given hereunder shall be deemed given when personally delivered to the party to receive such notice, or when mailed postage prepaid, by registered or certified mail at the following address:

(LOCAL GOVERNMENT] - _____

Landowner - _____

3.03. This agreement will be interpreted according to the laws of the Commonwealth of Pennsylvania.

3.04. This agreement represents the entire understanding of the parties with respect to the subject matter of this agreement and supersedes all prior agreements, contracts, understandings, negotiations and other arrangements between the parties.

3.05. This agreement may be amended, modified or supplemented only by the written agreement between the parties.

3.06. This agreement and all rights under it will be binding on and inure to the benefit of and be enforceable by the successors and assignees of the Landowner.

3.07. Landowner shall promptly notify the Local Government of any material changes in ownership of Landowner and provide any information about that change in ownership reasonably required by the Local Government.

3.08. Landowner and Local Government agree that this Agreement shall be recorded in the Recorder of Deeds' Office (or other appropriate government office for records reflecting title to real property) of the County where the Property is located. This recording shall be evidence of the obligations of the parties concerning the Property which shall be binding on all subsequent owners thereof.

The parties hereunto set their hands and seals this _____ day of _____, 20____

ATTEST:

LANDOWNER:

COMMONWEALTH OF PENNSYLVANIA

)

COUNTY OF _____

) ss:)

On this _____ day of _____, 20____, before me, the undersigned authority, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of _____, the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Notary Public

ATTEST:

[LOCAL GOVERNMENT]

COMMONWEALTH OF PENNSYLVANIA)

) ss:

COUNTY OF _____)

On this ____ day of _____, 20____, before me, the undersigned authority, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of _____, the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Notary Public