**Application and Utility
Use and Occupancy
Agreement**

Agreement No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
State Route No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Project No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
County \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Type of Surety \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Bond / Check No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Application is hereby made by Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Applicant”)
Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
for permission to install and maintain the following described utility facilities on the right-of-way of
State Highway No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Tennessee,
Description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
At the following described location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

GPS = Start N \_\_\_\_\_\_\_\_\_\_\_\_\_\_ W \_\_\_\_\_\_\_\_\_\_\_\_\_\_ , End N \_\_\_\_\_\_\_\_\_\_\_\_\_\_ W \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Log Mile = Start \_\_\_\_\_\_\_\_\_\_\_\_\_\_ End \_\_\_\_\_\_\_\_\_\_\_\_\_\_

in accordance with the attached plans and subject to *RULES AND REGULATIONS FOR ACCOMMODATING UTILITIES WITHIN HIGHWAY RIGHTS-OF-WAY* hereto issued by the Tennessee Department of Transportation (“TDOT”), and made a part hereof by reference thereto, and particularly to those provisions shown on this agreement and any special provisions set forth herein.

Special Provisions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Applicant is to deliver a **bond**, in a form acceptable to TDOT, in the sum of
$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to guarantee installation of facilities consistent with provisions of this Agreement and maintenance of the State highway right-of-way for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ months after acceptance of the condition of the State highway right-of-way by an authorized representative of TDOT.

# OR

1. An active, fully executed **General Agreement** is in effect for Applicant, dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This agreement is to be strictly construed and no work other than that specifically described above is authorized.

**The applicant, in applying for this agreement, agrees to the following:**

1. Applicant shall design, install and maintain its facilities in accordance with *RULES AND REGULATIONS FOR ACCOMMODATING UTILITIES WITHIN HIGHWAY RIGHTS-OF-WAY* hereto issued by TDOT.
2. Applicant, before commencing any work or installing any facilities, shall submit plans to TDOT's regional utility office showing the location, type, and scope of all work to be done or appliances to be installed in order that the Regional Utilities Coordinator may recommend approval of the proposed work.
3. Applicant is responsible for any damages caused by any negligence on its part, including but not limited to the improper placing of or failure to display construction signs, danger signs, and other required signing, and shall bear any expense proximately caused by its operation on the State highway right-of-way.
4. Applicant is responsible for identifying, surveying, and staking the State highway right-of-way boundary in the above-described work area, and for maintaining said staking for the duration of the installation of Applicant’s facilities.
5. Applicant is responsible for acquiring all utility rights-of-way or easements outside the State highway right-of-way as may be needed to perform the installation and maintenance of its facilities, and is responsible for any damages caused by trespass or installation or maintenance of facilities outside the State highway right-of-way.
6. Applicant shall pay the salary and expenses of any inspector(s) that TDOT may see fit to place upon the work while such inspector(s) is/are assigned to this work. TDOT, before incurring any expenses expected to be charged to the Applicant, shall advise the Applicant in writing of this fact.
7. Applicant shall replace or repair any portion of the pavement, shoulders, bridges, private driveways or any part of said highway which may be disturbed or damaged. Replacements and repairs shall be made in accordance with the TDOT *Standard Specifications for Road and Bridge Construction* and any additional instructions which may be issued by TDOT. Applicant agrees that TDOT may accomplish further replacements or repairs if those made by the Applicant are not satisfactory, in which event the Applicant will reimburse TDOT for the cost of such other replacements or repairs. Except in cases of emergency, TDOT shall notify the Applicant of the nature and extent of such further replacements or repairs to be accomplished prior to undertaking the work.
8. If at any future time it should become necessary in the maintenance, construction, or reconstruction of said highway to have Applicant's facilities removed in order that said highway may be properly maintained, constructed or reconstructed, or in the event said facilities should, at any time, interfere with the use of said highway, the Applicant agrees, upon being requested so to do by TDOT, to remove said facilities as promptly as the magnitude of the work to be accomplished will permit, at its own expense and without cost to TDOT, unless any requested removal should be contrary to any law of the State. The relocation of the Applicant’s facilities shall be accomplished in accordance with the provisions of Tennessee Code Annotated, Title 54, Chapter 5, Part 8, Relocation of Utilities. If the Applicant fails to remove and relocate its facilities promptly and timely in accordance with the plan and schedule approved, or as directed, by TDOT pursuant to these provisions, the Applicant understands and agrees that it shall be subject to any or all of the following remedies in accordance with T.C.A. § 54-5-854:
	1. TDOT’s contractor may undertake the highway construction project without liability to the Applicant for damages to the Applicant’s facilities;
	2. The Applicant shall be liable to TDOT’s contractor for damages resulting from the failure, including without limitation the contractor’s delay damages; and
	3. The Applicant shall be liable for any civil penalty assessed by TDOT for each calendar day the Applicant fails to complete the relocation of its facilities within the required schedule.

Neither the actions of TDOT nor those of its contractor after the Applicant’s failure to remove and relocate its facilities in accordance with the required schedule shall constitute a waiver of any of these statutory remedies.

1. Applicant shall be responsible for any conflicts with other utilities or appurtenances that are on the highway right-of-way and shall notify the respective owner(s) of any conflicts and secure the owners permission for any alterations.
2. Applicant hereby indemnifies and holds harmless TDOT, its employees, officers and agents, from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Applicant, its employees, its contractors, or any person acting for or on its or their behalf in the performance any activities relating to this Agreement. Applicant shall be liable for the reasonable cost of attorneys for TDOT in the event such services are necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of the Applicant to TDOT.

In the event of any such suit or claim, the Applicant shall give TDOT immediate notice thereof and shall provide all assistance required by TDOT in TDOT’s defense. TDOT shall give the Applicant written notice of any such claim or suit, and the Applicant shall have full right and obligation to conduct its own defense thereof. Nothing contained herein shall be deemed to accord to the Applicant, through its attorney(s), the right to represent TDOT in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

1. TDOT does not grant the Applicant any right, title or claim on any State highway right-of-way, and in granting this permission to go upon the State highway right-of-way, TDOT does not in any way assume the maintenance of the Applicant's facility.
2. Applicant may be required by law to obtain one or more environmental permits prior to installing its facilities. Determining which permits are necessary and obtaining those permits are the sole responsibility of the Applicant. Contact information for the regulatory agencies is available from TDOT upon request. The activities of the Applicant in installing its facilities pursuant to this Agreement are not covered under any permit associated with TDOT construction activities.
3. Applicant agrees that if the total area of disturbed land associated with the installation of its facilities is planned to exceed, or does at any time actually exceed, one (1) acre, Applicant shall obtain coverage under a *National Pollutant Discharge Elimination System General Permit For Discharges Of Stormwater Associated With Construction Activities*.
4. Applicant agrees that during all phases of work permitted herein, it shall implement and maintain appropriate Erosion Prevention and Sediment Control measures, as described in the TDOT *Standard Specifications for Road and Bridge Construction* and/or the Tennessee Department of Environment and Conservation *Erosion and Sediment Control Handbook*.
5. The Utility agrees that it shall comply with all State and Federal laws, rules, regulations, and permit terms and conditions applicable to the installation and maintenance of the Applicant’s facilities.
6. This agreement shall become void if work is not commenced within a year from the date of execution of this Agreement.

**Applicant**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_
 Signature Date
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Title

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**State of Tennessee Department of Transportation**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_
 Regional Utility Coordinator Date
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_
 Regional Engineering Director Date