



Drain Tiles in the Right-of-Way

A Strategic Risk Management Guideline for County Road Commissions

Liability

Strategic Risk Management Guideline

Issue 201608-1

What Road Commissions can do to limit costs and liability exposure arising from drain tiles tied to highway right-of-ways.

Agricultural fields are commonly upgraded with tiles to help remove excess water from the soil subsurface. Often, these tiles tie into roadside ditches within the county highway right-of-way. In many cases, the roadside ditches are not capable of accommodating the increased drainage, which can spell trouble on a number of fronts for Road Commissions.

This guideline advises Road Commissions how to address the issues that may arise as a result of unapproved drain tiles emptying into roadside ditches, and how to use right-of-way permits to avoid the associated increased costs and liability exposure.

The Problem

Ditches are designed to drain and channel water from the surface of a highway. They are not designed or intended

to drain adjacent private property. An unexpected and new source of water can cause a ditch to become inundated and overflow. If the subsurface water of a large field is suddenly routed into a roadside ditch, even an average rainfall can cause flooding. An overflowing ditch can:

- damage the surface and subsurface of the adjacent highway. In turn, a damaged highway can pose a threat to the public, and can lead to liability for the Road Commission.
- increase the Road Commission's maintenance and repair costs associated with the highway.
- flood adjacent property. Flooding of this nature might fall within an exception to governmental immunity known as the

The Road Commission's Permit Authority

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MCL 224.19b(1) states: A person, partnership, association, corporation or governmental entity shall not construct, operate, maintain or remove a facility or perform any other work within the right-of-way of a county road except sidewalk installation and repair without first obtaining a permit from the county road commission having jurisdiction over the road and from the township, city or village in which the county road is located when a permit is required by ordinance of the township, city or village, pursuant to authority conferred by article VII, section 29 of the Michigan constitution of 1963. The adjacent property owner shall not be required to obtain a permit for work incidental to the maintenance of the right-of-way lying outside of the shoulder and

“sewage disposal system event exception.”

Right-of-Way Permits

In Michigan, any work within a county highway right-of-way requires a permit from the Road Commission. The costs and liability risks associated with overflowing ditches provide good reasons to require a permit anytime a drain tile is tied into a roadside ditch. The permit process will allow the Road Commission to inspect the ditch to ensure that it has the capacity to accept the additional water without overflowing, and to require that the applicant make any necessary changes to the ditch or to the drain tile as a condition to the permit.

For example, the Road Commission may require that, before a permit is issued:

- the ditch be improved or enlarged, or
- the drain tile be redesigned so as to lessen the impact on the ditch.

These types of conditions allow Road Commissions to head off problems before they occur.

It is important to note that the purpose of such conditions is not to make things more difficult for applicants. In fact, Road

Commissions are not required to request improvements or impose any conditions. If there are no safety or liability concerns with the capacity of the ditch, even factoring in the additional drainage, then conditions are not necessary. Conditions are simply a good way to protect the highways, limit liability exposure and to promote safety.

Existing Drain Tiles

Existing drain tiles that were tied to roadside ditches without a permit present a different set of challenges, but there are options for Road Commissions. Under Michigan law, Road Commissions can insist upon the removal of unauthorized encroachments into a right-of-way. Where the Road Commission seeks to remove an encroachment, it can:

- demand that the encroachment be removed within 30 days of notice.
- remove the encroachment itself, and be reimbursed, if the encroachment is not removed within the 30-day period.

An alternative is to contact, in writing, the person responsible for the encroachment, explaining that the Road Commission has the authority to demand or arrange for the

removal of the encroachment, but would consider issuing a retroactive right-of-way permit if the Road Commission's specified concerns are addressed. In other words, the Road Commission can use the authority it has to remove encroachments as leverage to ensure that the responsible person addresses the Road Commission's safety and liability concerns.

Of course, not every case will be easily solved with a letter. In those tougher cases, it is best to consult the Pool who can help develop a solution tailor-made to the circumstances.





THE USE OF GREEN LIGHTS DURING ROADWAY MAINTENANCE

A Liability Guideline for County Road Commissions

Liability

Strategic Risk Management Guideline

Issue 201608-2

Green Lights:

How to properly use your newfound legal right.

A few months ago, Governor Snyder signed House Bill 5247, a piece of legislation that enables State, County, or Municipal vehicles to use green lights while engaged in certain roadway maintenance activity. We helped to lead the charge for these new rights, and fought to keep them unique to Road Commissions and other public entities with similar responsibilities. We are firmly convinced that public safety will be maximized by ensuring that our Members, and those like them, are the only ones using green lights on the roadway.

The purpose of this Guideline is to provide you with information regarding your new rights. We want to make sure that you are using green lights properly and in a manner consistent with your obligations to the motoring public.

1. The Law: What Changed.

The portion of the Motor Vehicle Code amended by House Bill 5247, MCL 257.698, says this:

The use or possession of flashing, oscillating, or rotating lights of any color is prohibited except as otherwise provided by law, or under the following circumstances:

... Flashing, rotating, or oscillating amber or green lights, placed in a position as to be visible throughout an arc of 360 degrees, shall be used by a State, County, or Municipal vehicle engaged in the removal of ice, snow, or other material from the highway and in other operations designed to control ice and snow, or engaged in other non-winter operations.” MCL 257.698(5)(d).

As a result of these changes, the Motor Vehicle Code now allows governmental entities, including Road Commissions, the ability to operate flashing, oscillating, or rotating green lights while doing roadway maintenance, as long as the lights, or any combination of them, is visible throughout an arc of 360°. You are not obligated to use a green light. Instead, you

Relevant Portion of the Motor Vehicle Code

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(5) The use or possession of flashing, oscillating, or rotating lights of any color is prohibited except as otherwise provided by law, or under the following circumstances:

...

(d) Flashing, rotating, or oscillating amber or green lights, placed in a position as to be visible throughout an arc of 360 degrees, shall be used by a state, county, or municipal vehicle engaged in the removal of ice, snow, or other material from the highway and in other operations designed to control ice and snow, or engaged in other non-winter operations. This subdivision does not prohibit the use of a flashing, rotating, or oscillating green light by a fire service.

MCL 257.698(5)(d)

can continue to use amber alone, or amber and green together. That being said, scientific literature that we reviewed – and shared with the members of your State Legislature – suggests that green lights are much easier to see than amber alone. As such, we encourage you to take full advantage of your newfound right to use them.

We encourage you to use your green lights whenever the vehicle on which they are mounted is actively working on the roadway surface. During the winter months, this could include when you are snowplowing, salting, or engaging in other activity that is designed to manage snow or ice on the roadway. During warmer months, green lights can be used whenever you are blading a gravel roadway, pulling shoulders, or otherwise actively tending to the right-of-way.

Please note, however, that you are only allowed to use green lights while you are “engaged” in the removal of ice, snow, or other material from the highway; or involved in other non-winter operations. In other words, you must be actively maintaining the roadway surface to use your green lights. You should not run them when you leave the garage, or are otherwise simply driving through your county.

2. The Law: What Hasn’t Changed.

Other important portions of State and Federal law have not changed. For example, MCL 257.688, which governs the

placement and location of lights and reflectors on trucks and other vehicles, remains the same; as do the relevant portions of the Federal Motor Carrier’s Safety Administration’s regulations.

So, this new change in the law does not allow you to swap out red or white lights on your truck with a green light. Nor does it allow you to replace every amber light with a green light. The use of green lights is permissible only if, while flashing, oscillating, or rotating, those lights, or any combination of them, is visible throughout an arc of 360°. This can be accomplished, for example, by placing a green light on the top of your truck; or by placing green lights on the front, rear, side, and top so that, in combination, they cover a 360° arc.

All other lights on your truck should stay the same.

3. Final Thoughts.

The motoring public, which already benefits from all of your hard work, will be made even safer by your ability to use green lights during roadway maintenance. These lights make your trucks much more visible – in nearly all weather conditions – than amber lights alone. Additionally, because the use of green lights is limited to Road Commissions and other similarly situated entities, as opposed to commercial snowplowers, we hope that their use will ultimately condition the motoring public to be more cautious around your vehicles. This will further

protect your employees, and reduce the number of accidents on our roadways.

As a liability insurance pool, we will continue to fight for new rights benefiting our Members. Our ability to obtain those rights, however, will largely depend upon the manner in which our Members use those already afforded to them. Put another way, if you use your green lights responsibly and effectively, the State Legislature will be more willing to help us down the road.

As always, if you have any specific questions or concerns regarding the usage of green lights, please let us know. We are happy to assist you, or obtain additional guidance from one of the liability professionals under our direction. In the meantime, congratulations on being the beneficiary of this new legal right. You have earned it.



ACCIDENT INVESTIGATIONS AND THE FREEDOM OF INFORMATION ACT

Accident Investigation and the Freedom of Information Act

Liability

Strategic Risk Management Guideline

Issue 201608-3

What every Road Commission should know about the Freedom of Information Act, and investigations conducted at the request of the Pool or its counsel.

The Pool requires that its Members investigate every accident resulting in serious injury or significant property damage. Some of our Members have expressed concern that the documents created during one of these investigations could be discoverable under the Freedom of Information Act (the “FOIA”). As discussed below, that is not the case. Any tangible documents created during an investigation conducted by a Road Commission at the request of its insurer or attorneys is protected by the work-product doctrine and, accordingly, immune from disclosure under the FOIA.

1. The FOIA: An Overview

The FOIA was enacted to allow the citizenry of our State the ability to evaluate and hold accountable its government. To that end, the Legislature set forth a statutory regime that mandates certain documents must be made available to the public. Specifically, under the FOIA, any

public body, such as a Road Commission, must produce public records if requested to do so in a specific manner. However, the disclosure of records under the FOIA is not without exception. One of those statutory exceptions immunizes from disclosure any information protected by the so-called work-product doctrine.

2. The Work-Product Doctrine

Michigan law has long protected the notes, papers, and other materials prepared by an attorney in the anticipation of a lawsuit from disclosure to another party. This protection, which was first established by common law and later codified in the Michigan Court Rules, is known as the work-product doctrine. The doctrine not only protects certain materials prepared by an attorney or a party involved in litigation – it also includes those prepared by a party’s insurer or agent.

In application, however, the work-product doctrine has at

Privileged Material is Exempt from Disclosure Under the FOIA

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(1) A public body may exempt from disclosure as a public record under this act any of the following:

(h) Information or records subject to the physician-patient privilege, the psychological-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

MCL 15.243(1)(h)

least one exception: A party may obtain otherwise protected material by showing a substantial need for them, and an inability to obtain the same materials by other means without undue hardship. In any event, though, the mental impressions, conclusions, opinions, or legal theories of an attorney or party representative concerning litigation are always protected from disclosure.

3. The FOIA and Work-Product Doctrine

The FOIA has a broad exception to disclosure where the materials being sought are privileged. The exception applies to documents protected by the work-product doctrine. In other words, where materials are produced in conjunction with an investigation that was initiated in the anticipation of litigation, then those same materials are not discoverable under the FOIA. Not only does the plain letter of the FOIA itself exclude these materials from disclosure, but the Michigan Court of Appeals has also explicitly recognized this exception.

In *Messenger v Ingham County Prosecutor*, the Court ruled that the FOIA's privilege exception protected a public body from disclosing materials covered by the work-product doctrine. In that case, an individual sought discovery of a prosecutor's investigation file by issuing a FOIA request. The Court concluded that those materials were protected by the work-

product doctrine and, therefore, need not be produced. Even more importantly, the Court explained that a public body denying a FOIA request under this particular privilege exception was not required to take into account the need of the requesting party, even though that need is considered when otherwise undertaking a work-product analysis. Once a public body establishes that the work-product doctrine is applicable, it has no further obligation under the FOIA, and the materials need not be produced.

4. Your Takeaway

Where the Pool, or its attorneys, asks a Road Commission to conduct an accident investigation, documents prepared during the course of that investigation need not be disclosed under a FOIA request as long as the work-product doctrine applies. And, that doctrine applies to all tangible things prepared by, or at the request of, a party or its insurer in the anticipation of litigation. Therefore, whenever, based upon the occurrence of an accident or other serious event, a Road Commission anticipates that litigation is likely, the work-product doctrine covers the materials generated during any subsequent investigation, and immunizes them from disclosure under the FOIA.

In conclusion, whenever you reasonably anticipate litigation as a result of a serious accident or event, we encourage you to

investigate right away. Also, you need not be worried that the materials generated during your investigation are discoverable under the FOIA. As always, however, we are happy to consult with you, or put you in contact with one of the various professionals employed by us, to assist in any way. Your safety, as well as that of the public, is our highest priority, and we are proud to stand by your side.



Placement of Wireless Network Facilities Within Highway Right-of-Ways

Proposed Action for County Road Commissions

Liability

Strategic Risk Management Guideline

Issue SRM201612-4

How Road Commissions can prepare to process right-of-way permits for placement of wireless network facilities

The Problem: DAS Permits

County Road Commissions around Michigan have recently received an influx of right-of-way permit requests for the construction of wireless network facilities called Distributed Antenna Systems (DAS). These systems are designed to promote stronger wireless Broadband signals and better connectivity for new technologies, including driverless cars. We expect these permit applications to proliferate across the state.

However, there have been some problems with processing these DAS right-of-way applications because of the shared authority over right-of-ways held by Road Commissions and municipalities. At times, after a DAS installer has obtained a permit (often a Metro Act permit) from a municipality, the installer views a Road Commission permit as a mere formality—or even entirely unnecessary. This can lead to refusal to comply with permit requirements or even legal challenges to those requirements.

The Solution: Cooperation

To avoid these problems, MCRC SIP has prepared the letter that follows for each Road Commission to send to every municipality in its County. The letter is meant to inform the municipalities of the issues surrounding DAS right-of-way permits, and to promote intergovernmental cooperation.

By reaching out and fostering cooperation now, Road Commissions should be able to establish a unified front with their local municipalities. This will help ensure that DAS installations are implemented safely, under the coordinated supervision and fully informed consent of both the local municipality and the Road Commission. Achieving this goal will further the interests of the public in safe and convenient right-of-ways, and will help Road Commissions avoid unnecessary litigation.

Right-of-Way Permit Authority

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*MCL 224.19b(1) states in part: A person, partnership, association, corporation or governmental entity shall not construct, operate, maintain or remove a facility or perform any other work within the right-of-way of a county road except sidewalk installation and repair **without first obtaining a permit from the county road commission having jurisdiction over the road** and from the township, city or village in which the county road is located when a permit is required by ordinance of the township, city or village, pursuant to authority conferred by article VII, section 29 of the Michigan constitution of 1963.*



[**DATE]

[**Mr./Ms. NAME]

[**OPTIONAL TITLE]

[**ADDRESS]

[**ADDRESS]

[**ADDRESS]

Re: **Placement of Wireless Network Facilities Within Highway Right-of-Ways Under the
Jurisdiction of the [**COUNTY NAME] County Road Commission**

Dear [**OPTIONAL TITLE AND NAME]:

This letter is written to seek the assistance of all Cities, Villages and Townships (“municipalities”) in processing requests to place wireless network facilities, including poles, conduit, towers, and related hardware, whether underground or above ground, in the [**COUNTY NAME] County Road Commission (“Road Commission”) road rights-of-way. These activities are subject to the Road Commission’s constitutional right to reasonable control over its highways, streets, alleys, and public places and require a permit from the Road Commission.¹ At the same time, the Road Commission recognizes the coincident or concurrent rights of municipalities to reasonable control over their highways, streets, alleys, and public places.² The Road Commission believes that cooperation and coordination among all levels of government involved in processing these requests is essential to ensure that the public’s interests are best served. This letter is the first step in the Road Commission’s efforts toward that goal.

Recently, a County Road Commission was sued by a self-described Distributed Antenna System (DAS) and fiber optic cable installer because the Road Commission stopped work on a specific project. That stop-work order was issued as a result of (1) the Road Commission’s discovery that the alleged DAS Company and its contracted fiber optic cable installer had improperly located township-permitted poles in the county road right-of-way contrary to the Road Commission’s permits, and (2) a subsequent review of a legal opinion from the attorney for the County Road Association of Michigan advising that placements of such DAS installations in county road right-of-ways are not entirely subject to the Metro Act.

Several other municipalities have also received requests to place cable, fiber optic cable, antennas, and related structures in the right-of-way of county roads. Some requests were submitted as Metro Act applications; some requests were not. However, when these applications were approved by the municipality, the requesting company often then claimed a “right” to install its equipment without a Road Commission permit. No such right exists, even where Metro Act Permits are involved: paragraph 4.8 of the State Metro Act Permit provides that all applicants “shall secure all necessary permits, licenses, and approvals” from all levels of government. Nonetheless, the claim of a “right” based upon a prior permit issued by a municipality has a tendency to place the Road Commission in a difficult position.

¹ Michigan Constitution 1963 Art. VII, Sec. 29; MCL 224.19(b); and MCL 247.184.

² Michigan Constitution 1963 Art. VII, Sec. 29; MCL 247.183; and MCL 484.3101. *et seq.*

The Road Commission's first priority is the safety of those who use public highways in [**COUNTY NAME] County. Each and every obstacle in the right-of-way of a public road becomes a potential hazard for an out-of-control vehicle. While it is clear that some reasonable use of the road right-of-ways for placement of surface and sub-surface non-transportation related infrastructure will occur, any use of the road right-of-ways for non-transportation purposes must be prudent and well planned.

Accordingly, at this time, the Road Commission requests that whenever your municipality receives an application for an installation in the right-of-way of a county road, whether framed as a Metro Act request or otherwise, a copy of the request be immediately forwarded to [**MANAGER/ENGINEER NAME], [**COUNTY NAME] Road Commission, at the following addresses:

Surface Mail:	[**MANAGER/ENGINEER NAME] [**COUNTY NAME] County Road Commission [**ADDRESS] [**ADDRESS]
Email:	[**EMAIL ADDRESS]
Fax:	[**FAX NUMBER]

The Road Commission will then review the request for safety considerations and legality. Your municipality can perform its own review concurrently to ensure that the request complies with all applicable state and local law, including your rules, codes, and zoning ordinances. Ideally, the Road Commission and your municipality will act upon the request in a consistent and timely manner, and any necessary permits can be issued with joint consent. If either governmental entity objects to the request, then further discussions with the applicant can occur. If the areas of concern cannot be resolved, then a denial of the request can be posted to the applicant by the respective unit(s) of government pursuant to their coincident or concurrent authority.

We must also keep in mind that both Michigan and Federal law speak to some of the applications, giving a limited time to deny a permit request. By Michigan law, the response time could be as short as forty-five (45) days; under federal law, issuance of a notice of incompleteness could be required within thirty (30) days. Therefore, we must be expeditious in the processing of these requests.

Please feel free to share this letter with your municipal attorney. Thank you for your anticipated cooperation. Together we will protect the continued safety of the motoring public.

Sincerely,

[**MANAGER/ENGINEER NAME, PE/Ph.D./etc].
[**OFFICIAL TITLE]



Policy for Wireless Facilities, Wireless Support Structures, and Utility Poles Within Highway Right-of-Ways

Liability

Strategic Risk Management Guideline

Issue SRM201701-5R4

Proposed Action for County Road Commissions:

The Problem: Proliferation of Wireless Facilities

County Road Commissions periodically receive right-of-way permit requests from wireless services providers or wireless infrastructure providers. Some of these providers balk at the authority of Road Commissions to impose terms and conditions on the location of their facilities within the right-of-ways. Road Commissions receive their right-of-way authority from a number of statutes and the Michigan Constitution. Road Commissions act as trustees of right-of-ways to protect public safety and convenience. In contrast, wireless services and infrastructure providers are motivated to place their facilities in the public right-of-ways as quickly and as cheaply as possible. If each provider is allowed to place its own facilities as it pleases, right-of-ways would become congested and overburdened, jeopardizing public safety and convenience. The Legislature has recently weighed in through 2018 P.A. 365, providing a comprehensive framework for evaluating wireless services or infrastructure permit applications.

The Solution: Expedient Policy Implementation

To help County Road Commissions navigate these problems, MCRCSIP has prepared this guideline and the attached sample policy. The policy is meant to provide a clear and consistent structure for evaluating wireless services and wireless infrastructure provider permit applications in a manner that protects legitimate Road Commission interests and is consistent with Public Act 365, MCL 460.1301, et seq.

The policy's primary purpose is to work within the confines of the wireless statutes to guide Road Commissions on how to best fulfill their obligation to protect public safety and convenience in the use of right-of-ways. In doing so, the policy sets clear expectations for the wireless industry concerning how the Road Commission will apply PA 365, and at the same time exercise its discretion in every manner possible to promote public safety and convenience.

Road Commission ROW Authority

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"Except as otherwise provided in this constitution, the right of all counties...to reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government." Mich. Const. Art 7 § 29.

"In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced."

MCL 247.184.



[COUNTY NAME] County Road Commission Permit Policy for Safely Allowing Limited
Wireless Facilities, Wireless Support Structures, and Utility Poles Access Within the County
Road Right-of-Ways**

WHEREAS, the Board of County Road Commissioners for the County of [**COUNTY NAME] (the “Board” or “Road Commission”) is a body corporate with the statutory mandate created by MCL 224.9 to formulate policy and to perform those official duties imposed by law or delegated by the [**COUNTY NAME] County Board of Commissioners; and

WHEREAS, real property interests—including easements, various fees, and the right to regulate related to the use of public right-of-ways within the county road system—have been vested in the Road Commission to be held in trust for the benefit of the public; and

WHEREAS, the Road Commission intends to discharge its obligations as trustee of those certain real property interests in a manner that benefits and protects the public generally, and any adjacent landowners specifically; and

WHEREAS, Article 7, §29 of the Michigan Constitution of 1963 reserves to county road commissions the reasonable control of their highways, streets, alleys and public places, and specifically prohibits any person, partnership, association or corporation, public or private, from operating a public utility within the highways, streets, alleys and public places of any county without first obtaining the consent of the duly constituted authority of the county road commission; and

WHEREAS, MCL 247.184 requires the consent of the Road Commission before any public utility may construct wires, cables, poles or like structures upon, over or under a county right-of-way including any improved highway or bridge; and

WHEREAS, MCL 224.19b(1) requires any person, partnership, association, corporation or governmental entity to obtain a permit from the Road Commission (and the applicable township, city or village if required by those entities) before constructing, operating, maintaining or removing any facility or performing any work within a county highway right-of-way; and

WHEREAS, MCL 224.19b(2) empowers a county road commission to adopt reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection and related expenses; and

WHEREAS, MCL 691.1402 charges a county road commission with maintaining highways under its jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel; and

WHEREAS, MCL 460.1301, et seq., provides for the regulation by state or local governmental authorities of the activities of wireless infrastructure providers and wireless services providers and of wireless facilities, wireless support structures, and utility poles; and

WHEREAS, communications technologies are constantly evolving, resulting in the potential for proliferation of communication service facilities within the public right-of-ways which carry the potential, if not appropriately managed, to jeopardize the safety and convenience of the public; and

WHEREAS, those seeking to install and operate wireless facilities, wireless support structures, and utility poles within county highway right-of-ways to meet demand for such service, gain a pecuniary profit therefrom; and

WHEREAS, certain entities seeking to install wireless facilities, wireless support structures, and utility poles claim public right-of-way access by virtue of MCL 460.1301, et seq., regarding which the Road Commission specifically reserves its right to challenge this claimed right-of-way access through any appropriate legal means; and

WHEREAS, the Road Commission has made significant investments of time and resources in the acquisition, construction, repair and maintenance of the public right-of-ways under its jurisdiction, for the principal purpose of making such rights-of-way safe and convenient for public travel, and such investment has enhanced the utility and value of those public ways; and

WHEREAS, the public right-of-ways under the Road Commission's jurisdiction are used by and useful to private or public enterprises including wireless infrastructure providers and wireless services providers and others engaged in providing wireless services to citizens, institutions, and businesses that are served by the county highway system; and

WHEREAS, the right to access and/or occupy portions of such public right-of-ways for limited times, for the business of providing wireless services is a valuable economic privilege; and

WHEREAS, beneficial competition between providers of wireless services can be furthered by the Road Commission's consent to locate within and for rights to use the public right-of-ways on non-discriminatory and competitively neutral terms and conditions; and

WHEREAS, the Applicant is a private or public enterprise engaged in installing facilities related to and/or providing various wireless services; and

WHEREAS, the Road Commission will grant its consent pursuant to its constitutional and statutory authority to manage and control its public right-of-ways, and will issue a permit to a wireless services provider or a wireless infrastructure provider in consideration of the terms and conditions set forth herein:

1. Purposes

The purposes of this Policy are to balance the interests of protecting the public from harm with the interests of the public and applicants in the expansion of wireless services via the preceding and following statements of interest:

- 1.1. Establish a local policy concerning wireless services for use of the public right-of-ways that is consistent with MCL 460.1301, et seq., and also serves the Road Commission's statutory mandate to make the rights-of-way under its jurisdiction safe for public travel;
- 1.2. The Road Commission specifically reserves its right to alter, amend and adjust this policy where public safety or convenience requires on a per application basis;
- 1.3. Establish a local policy that promotes beneficial competition between wireless services providers and wireless providers on non-discriminatory and competitively neutral terms and conditions; and that ensures that the Road Commission retains the authority and ability to act to protect the public safety and welfare in the face of multiple rapidly-changing industries, including the wireless communications industry, that are placing increasing demand on public property and resources;
- 1.4. Consistent with constitutional, statutory and administrative regulatory mandate, establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the use of public right-of-ways by wireless services providers and wireless providers, and their respective facilities and licenses;
- 1.5. Consistent with constitutional, statutory and administrative regulatory mandate, permit and manage reasonable access to the public right-of-ways under the jurisdiction of the Road Commission for wireless services purposes on a competitively neutral basis, to the extent required by law;
- 1.6. Consistent with constitutional, statutory and administrative regulatory mandate, conserve the limited physical capacity of the public right-of-ways held in trust for the benefit of the public by the Road Commission, and over which the Road Commission shares jurisdiction with other governmental entities;
- 1.7. Assure that the Road Commission's current and ongoing actual costs of granting and regulating access to and use of its public right-of-ways are fully paid by the persons seeking such access and causing such costs;
- 1.8. Secure fair and reasonable compensation to the Road Commission and the residents of [**COUNTY NAME] County, in a nondiscriminatory manner, for permitting use of the public right-of-ways;
- 1.9. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground facilities;

- 1.10. Assure that all persons or entities providing wireless services within public right-of-ways in the county highway system comply with all state, federal and local laws and administrative rules and regulations;
- 1.11. Enable the Road Commission to manage its obligations to the public generally, and adjacent landowners specifically, consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and
- 1.12. Reserve to the Road Commission and provide for the fullest exercise possible of its authority and discretion to require that:
 - 1.12.1. Wireless facilities, wireless support structures, and utility poles are installed and maintained within public right-of-ways under the jurisdiction of the Road Commission in such manner and at such points so as not to inconvenience the public use of the public right-of-ways or to adversely affect the public safety and welfare;
 - 1.12.2. Consistent with constitutional, statutory and administrative regulatory mandate, all wireless services providers and wireless infrastructure providers using the right-of-ways under the jurisdiction of the Road Commission shall be required to defend, reimburse, indemnify and hold harmless the Road Commission for the all costs, fees, expenses and damages incurred by the Road Commission by reason of the construction or presence in the public rights-of-way of the facilities of such users. Further, that insurance and bonding be secured to assure that such defense, reimbursement and indemnity is available.

2. Definitions

- 2.1. This Policy adopts the definitions set forth in MCL 460.1301, et seq., Any words not defined in those statutes shall be construed consistent with Title 47 of the United States Code and Chapter 484 of the Michigan Compiled Laws. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereafter enacted or amended. “Applicant” means any person applying for a right-of-way permit pursuant to MCL 460.1301, et seq.
- 2.2. “Person” means an individual, partnership, cooperative, association, private corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.
- 2.3. “Permit” or “right-of-way permit” as used herein means the Road Commission’s legal authorization, terminable as defined in the permit, to use a particular, discrete, and limited portion of the public right-of-way to construct, operate, or repair a wireless support structure, wireless facility, or utility pole, including any

permit special terms and conditions. The term “permit” or “right-of-way permit” shall not mean or include:

- 2.3.1. Any other permit, authorization, agreement or franchise required for the privilege of transacting and carrying on a business within the applicable county, city, village or township required by state or local law;
- 2.3.2. Any other permit, authorization or agreement required in connection with operations on public streets or property.
- 2.3.3. Any other permits, authorization or agreements required for occupying any public or private property to which access is not specifically granted by statute or by the right-of-way permit.

3. Policy Guidelines

The administration of this Policy shall be governed by the following Communication Service Provider Facility policy guidelines:

- 3.1. The Road Commission supports efforts to establish an open, competitive marketplace for wireless services that also serves the Road Commission’s statutory mandate to promote safety and convenience in the use of public right-of-ways under its jurisdiction. The Road Commission promotes and encourages competition for wireless services that make the latest and best technology available and keep service prices affordable for all county residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all wireless services providers and wireless infrastructure providers and the preservation of local authority over matters of local impact.
- 3.2. The Road Commission recognizes that to balance the needs and interests of the public in the management of the right-of-ways together with the desire of the wireless services and wireless infrastructure services industries to access such right-of-ways, facilities supporting wireless services may be integrated into the right-of-ways in conformity principally with community standards, also taking into account industry standards and best practices. Guidelines identifying community standards together with an understanding of industry standards and best practices may be incorporated into the terms and conditions of the Road Commission’s right-of-way permit and permit process and may change from time to time, in the Road Commission’s sole judgment and discretion.

3.3. Use/Installation Priority Preference Considerations

- 3.3.1. The Road Commission’s primary goal is to make and maintain the right-of- ways under its jurisdiction safe and convenient for public travel. To further this goal, the Road Commission recites the following siting priority preferences, which shall be enforced wherever possible under existing constitutional, state, and federal law, as well as any applicable administrative rules and regulations, in the Road Commission’s discretion:

- 3.3.1.1. Collocation on an existing facility outside the right-of-way shall be preferred to collocation on an existing facility within the right-of-way.
- 3.3.1.2. Locating a new wireless support structure or utility pole outside the right-of-way shall be preferred to locating a new wireless support structure or utility pole within the right-of-way.
- 3.3.1.3. Collocation on an existing wireless support structure or utility pole within the right-of-way shall be preferred to locating a new wireless support structure or utility pole within the right-of-way.
- 3.3.1.4. Locating a new wireless support structure or utility pole in the right-of-way shall only be permitted when the Applicant demonstrates, in the Road Commission's judgement, that locating a new wireless support structure or utility pole outside of the right-of-way, or collocating on any existing facility, is not possible or practical.
- 3.3.1.5. Where possible and practical, wireless facilities will be required to be located below ground where other existing facilities or structures are located below ground.

332. Collocation Guidelines

- 3.3.2.1. Consistent with constitutional, state, and federal law, as well as administrative rules and regulations, all permit applications shall be subject to collocation with existing structures where possible and practical. Mandatory future collocation of all subsequent wireless facilities shall be required where possible and practical for any newly authorized structure under this Policy.
- 3.3.2.2. Any application that is not for a collocated wireless facility must contain a statement justifying why collocation is not possible or practical. Such statement shall include:
 - 332.2.1. Such structure and technical information and other justifications as are necessary to document the reasons why collocation is not possible or practical, including all communication of denials of collocation requests from 3rd party entities; and
 - 332.2.2. A list of all eligible support structures and alternative structures considered as alternatives to the proposed location.
 - 332.2.3. A written explanation why the alternatives considered were not possible or practical due to technical or physical constraints.
- 333. Consistent with constitutional, state, and federal law, as well as administrative rules and regulations, stealth installations or otherwise aesthetically consistent designs

shall be required at the discretion of the Road Commission and will generally be similar to the existing infrastructure in the area.

- 334. Consistent with constitutional, state, and federal law, as well as administrative rules and regulations, new structures shall be limited to 40 feet in height, unless otherwise shown to be needed by the applicant based upon the technical characteristics of the area or other considerations, including collocation. The dimensions of new facilities will generally not be permitted to exceed existing infrastructure in the same vicinity.
- 335. To the greatest extent possible and practical, placement of such wireless support structures and utility poles in Industrial Zones shall be preferred, followed by Commercial Zones, followed by Residential Zones.
- 336. Where possible and practical, location on private property shall be preferred to location on public property.
 - 336.1. An application shall contain a statement explaining all alternative sites considered, including private property, and why such alternatives are not possible or practical.
- 337. The Road Commission will manage access to the public right-of-ways for wireless services providers and wireless infrastructure providers in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and, to the extent allowed under applicable law, to receive fair compensation. The public interest will be protected by collecting associated fees and administrative costs for use of the public right-of-ways under the jurisdiction of the Road Commission.
- 338. Right-of-way permits for location of wireless facilities and all supporting equipment and wireless support structures will be managed to preserve the integrity of the county highway system's infrastructure, ensure efficient use of the property under the jurisdiction of the Road Commission, and ensure compliance with state, federal and local law.
- 339. In order to effectively manage and regulate the use of public right-of-ways under the Road Commission's jurisdiction in the best interests of the public, it is necessary for the Road Commission to reserve and exercise all proprietary, legislative, administrative and discretionary authority it may have to the full extent allowed or not prohibited by law and nothing in this policy shall be construed to diminish or in any way to limit the proprietary, discretionary, administrative or legislative authority of the Road Commission and its officials as respects the management and use of the Road Commission's public right-of-ways or in respect to the granting, delaying, or denying any right-of-way permit.

4. General Provisions

- 4.1. No wireless services provider or wireless infrastructure provider shall install, construct, or otherwise place within public right-of-way under the jurisdiction of the [**COUNTY NAME] County Road Commission any wireless facilities, wireless support structures or utility poles except pursuant to the provisions of this Policy.
- 4.2. A wireless services provider or a wireless infrastructure provider must obtain a right-of-way permit under this Policy from the Road Commission prior to constructing any wireless facilities, wireless support structures or utility poles within a right-of-way under the jurisdiction of the Road Commission. The fact that a particular permitted wireless support structure, wireless facility, or utility pole may be used for multiple purposes does not obviate the need to obtain a permit for such purposes unless applicable federal or state law prohibits the Road Commission from requiring such additional permit or permits. No permit shall become effective without the grantee signing an acceptance of the permit.
- 4.3. A wireless services provider or a wireless infrastructure provider must provide a complete written right-of-way permit application on a form prescribed by the Road Commission, along with all requested supporting documentation.
- 4.4. If a right-of-way permit is granted pursuant to this Policy, a wireless services provider and a wireless infrastructure provider must agree to abide by the terms and conditions imposed by the permit and any permit special terms and conditions.
- 4.5. A right-of-way permit under this Policy shall not convey equitable or legal title to the public right-of-ways. The right granted is only the right to occupy those portions of the public right-of-way to which the Road Commission has the right to grant access, for the purposes and the time period stated in the permit, and the right may not be subdivided or subleased. A right-of-way permit shall not grant a vested right for any wireless facilities, wireless support structures or utility poles to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the Road Commission and the facility therein removed at the cost of the operator in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public interest as determined by the Road Commission.
 - 4.5.1. A wireless services provider or a wireless infrastructure provider shall immediately (subject to seasonal work restrictions) restore, at its sole expense, in a manner approved by the Road Commission, any portion of the public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the wireless facilities, wireless support structures or utility poles, to a reasonably equivalent or better condition as that which existed prior to the disturbance. In the event that the wireless services provider or wireless infrastructure provider, or its contractors or subcontractors, fail to make

such repair within a reasonable time, the Road Commission may make the repair and the wireless services provider or wireless infrastructure provider shall pay the costs the Road Commission incurs for such repair.

4.6. No reference herein, or in any right-of-way permit under this Policy, shall be deemed to be a representation or guarantee by the Road Commission that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a permit shall be deemed to grant no more than those rights which the Road Commission may have the undisputed right and power to give.

4.7. Before any right-of-way permit will be issued, a wireless services provider or wireless infrastructure provider must demonstrate that it has obtained the necessary permits and/or consent of all units of state, local or federal government vested by law with the authority to require and grant permits and/or consent.

5. Fees and Costs.

5.1. To the full extent permitted by law, recovery of all Road Commission costs related to the issuance of a right-of-way permit, or a consent fee, may be charged to a wireless services provider or wireless infrastructure provider related to its installation and maintenance of wireless facilities, wireless support structures or utility poles in the right-of-way. Any such permit fee shall be approved by the Board of County Road Commissioners.

5.2. Pursuant to applicable constitutional, federal and state law, and administrative rules and regulations, the wireless services provider or wireless infrastructure provider shall provide security, in a manner acceptable to the Road Commission, to ensure compliance with its obligations under Section 4.5 and 4.5.1 of this Policy to remove wireless facilities, wireless support structures or utility poles, and restore the adjacent right-of-ways at the termination of any Permit.



Communication Service Provider (DaS) Right-of-Way Permit: Special Terms and Conditions

Proposed Action for County Road Commissions

Liability

Strategic Risk Management Guideline

Issue SRM201703-6R1

A necessary tool for Road Commissions to lawfully exercise permit authority over CSPs installing DaS Facilities in highway right-of-ways

The Problem: Permitting CSP Facilities in the Right-of-Ways Poses Unique Considerations for Road Commissions

County Road Commissions have recently received an influx of right-of-way permit requests from communication service providers ("CSP's") to construct or install various types of Distributed Antenna Systems ("DaS") in the right-of-ways. These systems involve various types of structures to support broadband and wireless network services, including poles, antennae, and associated devices.

A recommended policy has been developed to assist Road Commissions in communicating their right-of-way authority in SRM201701-5R (rev 3/20/2017).

Due to the complexity of balancing the need of the public, with the requirement of several competing CSPs, a detailed set of special requirements for CSP facilities in the right-of-way is needed to accompany the standard permit applications utilized by our Road Commissions. These special requirements support the recommended policy and help to ensure that the Road Commission discharges their duties fairly and

appropriately. The standard permit applications alone are simply not designed to address the unique safety and legal issues posed by CSP facilities.

The Solution: CSP Right-of-Way Permit Special Terms and Conditions

To help County Road Commissions navigate these unique issues, MCRCSIP has prepared the attached template for CSP Right-of-Way Permit Special Terms and Conditions. The template provides a convenient and consistent way to communicate and enforce the special terms and conditions necessary to permit the construction and continued presence of CSP facilities within right-of-ways. Implementing these special terms and conditions in conjunction with the recommended policy will help Road Commissions fulfill their statutory duty to promote public safety on the highways, and to ensure that access to the right-of-ways is granted on a lawful and even-handed basis.

Any questions regarding these special terms and conditions should be directed to MCRCSIP or your local legal counsel.

Road Commission Permit Authority

"A person, partnership, association, corporation or governmental entity shall not construct, operate, maintain or remove a facility or perform any other work within the right-of-way of a county road . . . without first obtaining a permit from the county road commission having jurisdiction over the road." MCL 224.19b(1).

"In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced."

MCL 247.184.

HENN LESPERANCE PLC
ATTORNEYS AT LAW



[COUNTY NAME] COUNTY ROAD COMMISSION COMMUNICATION SERVICE
PROVIDER RIGHT-OF-WAY PERMIT: SPECIAL TERMS AND CONDITIONS**

1. Definitions

- 1.1. **Company, Provider, Applicant, Permittee, or Operator**, shall mean _____ [type of entity] organized under the laws of the State of _____, whose address is _____, and who satisfies the definition of “Communication Service Provider” set forth in the Road Commission’s Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Ways, any Right-of-Way Permit, or these special terms and conditions.
- 1.2. **Effective Date** shall mean the date set forth in Part 13.
- 1.3. **Manager** shall mean the [**COUNTY NAME] County Road Commission’s Manager-Director or his or her designee.
- 1.4. **Communication Service Provider Permit, Right-of-Way Permit, or Permit**, shall mean a Right-of-Way Permit issued to a Communication Service Provider by the [**COUNTY NAME] County Road Commission, and shall include all general terms and conditions applicable to [**COUNTY NAME] County Road Commission Right-of-Way Permits, as well as the special terms and conditions set forth in this document.
- 1.4.1. Company shall obtain both an individual construction/installation Permit for each proposed new Facility or other project within the Right-of-Ways, and also a separate annual maintenance permit applicable to all such Facilities or projects within the Right-of-Ways. These special terms and conditions apply to both the individual and annual Right-of-Way Permits.
- 1.5. **Right-of-Way** shall mean the area on, below, or above any land acquired or dedicated for public roads, highways, streets, alleys, easements, or waterways, to the extent the Road Commission has jurisdiction and the ability to grant the rights set forth herein. Right-of-Way does not include a federal, state, or private right-of-way.
- 1.6. **Road Commission** shall mean the Board of County Road Commissioners for the County of [**COUNTY NAME].
- 1.7. **Communication Service Provider** is a person who provides voice, video, and/or data to the public or other end users through Communication Service Provider Facilities as defined in the Road Commission’s Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within County Road Right-of-Ways and these terms and conditions.
- 1.7.1. A person who operates under written agreement with a Communication Service Provider to provide communication services over a communications service facility or to install, maintain, house, manage or operate communications service facilities, shall

be treated as a Communication Service Provider for purposes of any Right-of-Way permit and these terms and conditions.

1.8. **Communication Service Facilities, or Facilities**, shall mean the Company's equipment or personal property, including but not limited to copper and fiber cables, lines, wires, switches, conduits, pipes, antennae, radio devices, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide voice, video, and/or data, to the public or other end users. For purposes of any Right-of-Way permit and these terms and conditions only, and where specifically approved by Franchise, License, Lease or other such agreement by the constitutionally authorized franchising authority, Facilities may include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.

1.9. **Person** means an individual, partnership, cooperative, association, private corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.

2. Grant

2.1. Consideration. The Road Commission may, if at all, grant a Permit or Permits to Company for the construction and installation of individual Facilities, and for the annual access to and ongoing use of the public Right-of-Way to construct, install and maintain Facilities in those portions of the public Right-of-Way identified on **Exhibit A** only in consideration of and upon the terms and conditions set forth herein.

2.1.1. Exhibit A may be modified by written request by Company and only upon approval by the Road Commission.

2.2. Overlapping. Company shall not allow the wires or any other facilities of a third party to be overlapped in the Facilities without the Road Commission's prior written consent, which consent shall not be unreasonably withheld or delayed.

2.3. Non-exclusive. The rights granted by any Right-of-Way permit and these terms and conditions are non-exclusive. The Road Commission reserves the right to approve, at any time, additional permits for access to and ongoing usage of the public Right-of-Way by Communications Service Providers and to enter into such other agreements for use of the public Right-of-Way with other Communications Service Providers.

3. Contacts, Maps and Plans

3.1. Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Facilities are as follows:

3.1.1. The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near [**COUNTY NAME] County) is

3.1.2. If Company's engineering drawings, as-built plans and related records for the Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is _____

3.1.3. The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Facilities is _____

3.1.4. The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Facilities is _____

3.1.5. Company shall at all times provide Manager with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency. The phone number is (____) ____ - ____.

3.1.6. The preceding information is accurate as of the Effective Date. Company shall notify the Road Commission in writing as set forth in Part 12 of any changes in the preceding information.

3.2. Route Maps. At the time of Application and again within ninety (90) days after the substantial completion of construction of new Facilities pursuant to this permit and these terms and conditions, a Communications Service Provider shall submit route maps showing the specific location of the Facilities to the Road Commission.

3.3. As-Built Records. Company, without expense to the Road Commission, shall give the Road Commission access to all "as-built" maps, records, plans and specifications showing the Facilities or portions thereof in the public Right-of-Way following completion of construction. Upon request by the Road Commission, Company shall inform the Road Commission as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by the Road Commission so as to show the location of the Facilities.

4. Use of Public Right-of-Way

- 4.1. No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Facilities shall not unduly burden or interfere with the present or future use of any of the public Right-of-Way. Company's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the public Right-of-Way. If the Road Commission reasonably determines that any portion of the Facilities constitutes an undue burden or interference due to changed circumstances, Company, at its sole expense, shall modify the Facilities or take such other actions as the Road Commission may determine is in the public interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. The Road Commission shall attempt to require all occupants of a pole or conduit whose Facilities are a burden to remove or alleviate the burden concurrently.
- 4.2. No Priority. Any Right-of-Way permit and these terms and conditions do not establish any priority of use of the Right-of-Way by Company over any present or future permittees or parties having agreements with the Road Commission or franchises for such use. In the event of any dispute as to the priority of use of the Right-of-Way, the first priority shall be to the public generally, the second priority to Road Commission, the third priority to any other applicable unit of local government, and fourth to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by the Road Commission in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3. Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by the Road Commission any portion of the public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Facilities to an equivalent or better condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, the Road Commission may make the repair and Company shall pay the costs the Road Commission incurred for such repair.
- 4.4. Marking. Company shall mark the Facilities as follows:
- 4.4.1. Aerial portions of the Facilities shall be marked with a marker on Company's lines on alternate poles which shall state Company's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Facilities shall have (1) a conducting wire placed in the ground at least several inches above Company's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Company's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Facilities located in conduit, including conduit of others used by Company, shall be marked at its entrance into and exit from each manhole and handhole with Company's name and a toll-free telephone number.

- 4.5. Tree Trimming. Company may trim trees upon and overhanging the public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Facilities, consistent with any standards adopted by the Road Commission. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Facilities. Except in emergencies, all trimming of trees in the public Right-of-Way shall have the advance approval of the Road Commission.
- 4.6. Installation and Maintenance. The construction and installation of the Facilities shall be performed pursuant to plans approved by the Road Commission. The open cut of any public Right-of-Way shall be coordinated with the Road Commission. Company shall install and maintain the Facilities in a reasonably safe condition. If the existing poles in the public Right-of-Way are overburdened or unavailable for Company's use, or the facilities of all users of the poles are required to go underground then Company shall, at its expense, place such portion of its Facilities underground, unless the Road Commission approves an alternate location. Company may perform routine maintenance on the Facilities only if it has obtained a separate permit to work within the Right-of-Way for the maintenance activity, or a seasonal permit to work within the Right-of-Way for the performance of that activity.
- 4.6.1. All proposed above ground Facilities (poles, guys, pedestal boxes, etc.) shall be staked for field inspection during the Road Commission's plan review of any Right-of-Way Permit application.
- 4.7. Pavement Cut Coordination. Company shall coordinate its construction and all other work in the Right-of-Way with the Road Commission's programs for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1. The goals of such coordination shall be to encourage Company to conduct all work in the Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by the Road Commission.
- 4.8. Compliance with Laws and Standards. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. These may include the following list of potential laws, statutes, ordinances, rules and regulations that may apply in addition to this Road Commission's requirements and is provided here as an instructive list and for the benefit of the Company and Road Commission alike. This list, however, creates no duties or obligations upon the Commission whatsoever. Compliance with any such laws, statutes, ordinances, rules and regulations that follow remain the sole responsibility of the Company:
- 4.8.1. Utility line permits and highway permits/agreements with any involved utility, MDOT or FHWA.
- 4.8.2. All applicable national, regional and local codes and industry standards, including but not limited to:
- 4.8.2.1. The National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission); and

- 4.8.2.2. The National Electric Code (latest edition); and
- 4.8.2.3. AASHTO Guidelines including but not limited to guarding of new objects in the right of way and sight distance obstructions; and
- 4.8.2.4. MDOT Guidelines including but not limited to sight distance obstructions; and
- 4.8.2.5. MMUTCD Guidelines; and
- 4.8.2.6. All zoning, land use and building ordinances including setback requirements, fall radius issues and historic preservation ordinances and State Historic Preservation Office regulations as may exist or may hereafter be amended.
- 4.8.2.7. FAA review and approvals; and
- 4.8.2.8. Federal, state or local environmental regulations; and
- 4.8.2.9. Local franchise, license or lease of the Right-of-Way requirements; and
- 4.8.3. In addition, the following checklist of issues and concerns should be addressed and considered by the Company and Commission Staff when submitting and reviewing an application:
- 4.8.3.1. Has the applicant satisfied the Use/Installation Priority Preference Considerations contained in Section 3.3 of the Road Commission's Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Ways?
- 4.8.3.2. Will the proposed construction methods and duration interfere with public travel?
- 4.8.3.3. Does placement of poles, equipment or appurtenances interfere with, and if so, do the construction plans include adequate provisions for addressing:
- 4.8.3.3.1. Existing or proposed intersections or driveways;
- 4.8.3.3.2. Existing aboveground or underground utilities or other structures;
- 4.8.3.3.3. Existing or proposed drainage systems;
- 4.8.3.3.4. Clear vision requirements;
- 4.8.3.3.5. Clear zone guidelines;
- 4.8.3.3.6. Planned development or construction on adjacent land?

- 4.8.3.4. Is the Route map specific as to the dimensions of the proposed facilities to be installed and precisely where they are proposed—both above and below ground?
- 4.8.3.5. If the facility requires electric supply or back up, has that been included in plans?
- 4.8.3.6. Will routine service and maintenance of the facility require separate driveway permit approval?
- 4.9. Inspections. The Road Commission shall have the right, at the Company's sole expense, to inspect the facility before, during and after construction, and thereafter annually, or more frequently if necessary as determined by the Road Commission.
- 4.10. Street Vacation or Abandonment. If the Road Commission vacates or abandons a Right-of-Way within its jurisdiction, and such vacation or abandonment necessitates the removal and relocation of Company's Facilities in the vacated Right-of-Way, Company shall, as a condition of this permit and these terms and conditions, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by the Road Commission or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as the Road Commission and Company mutually agree, applying reasonable engineering standards.
- 4.11. Relocation. If the Road Commission requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, other public projects, or public safety concerns, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as deemed necessary by the Road Commission. The work shall be completed within a reasonable time period.
- 4.12. Public Emergency. The Road Commission shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, the Road Commission shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by the Road Commission.
- 4.13. Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to 2013 PA 174; MCL 460.721et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.14. Underground Relocation. If Company has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Company shall relocate its Facilities underground in the same location at Company's sole cost and expense.

- 4.15. Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Company's name, their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

5. Indemnification

- 5.1. Indemnity. Company, its assigns, and successors shall defend, indemnify, protect, and hold harmless the Road Commission, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees and associated defense costs) arising out of or resulting from the presence of the Company's Facility or Facilities within the Right-of-Way, or the acts or omissions of Company, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Company's use of or installation of Facilities in the Right-of-Way and only to the extent such acts or omissions are the fault or responsibility of Company, its officers, agents, employees, contractors, successors and assigns, or such acts or omissions are the joint fault of the Road Commission and the Company, its officers, agents, employees, contractors, successors and assigns.
- 5.2. Notice, Cooperation. The Road Commission shall notify Company promptly in writing of any such claim and the method and means proposed by the Road Commission for defending or satisfying such claim. The Road Commission shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. The Road Commission shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3. Settlement. Neither the Road Commission nor the Company shall settle any claim subject to indemnification under this Part 5 without the advance written consent of the other.

6. Insurance

- 6.1. Coverage Required. Prior to beginning any construction in or installation of the Facilities in the Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with the Road Commission. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to the Road Commission, by providing reasonable evidence of its financial resources. The Road Commission's acceptance of such self-insurance shall not be unreasonably withheld.
- 6.1.1. Commercial general liability insurance, including, as appropriate and in the Road Commission's discretion, Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than five million dollars (\$5,000,000).

- 6.1.2. Liability insurance for sudden and accidental environmental contamination with minimum limits of two million dollars (\$2,000,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
- 6.1.3. Automobile liability insurance in an amount not less than two million dollars (\$2,000,000).
- 6.1.4. Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
- 6.1.5. The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2. Cancellation.
All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to the Road Commission. Company shall annually provide the Road Commission with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3. Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4. Deductible. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by the Road Commission in advance in writing. Company shall indemnify and save harmless the Road Commission from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5. Contractors. Company's contractors and subcontractors working in the Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6. Insurance Primary. Company's insurance coverage shall be primary insurance with respect to the Road Commission, its officers, agents, employees, elected and appointed officials,

departments, boards, and commissions (collectively “them”). Any insurance or self-insurance maintained by any of them shall be in excess of Company’s insurance and shall not contribute to it (where “insurance or self-insurance maintained by any of them” includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7. Term

7.1. Term. The term (“Term”) of any Permit shall be until the earlier of:

- 7.1.1. The expiration date identified in the Permit.
- 7.1.2. The expiration of any permit or franchise or similar agreements issued by the relevant municipality; or
- 7.1.3. When the Facility or Facilities have not been used to provide communications services for a period of one hundred and eighty (180) days by the Company or a successor or an assign of the Company; or
- 7.1.4. One-hundred and eighty (180) days (or sooner if agreed to by the Road Commission) after the Company, at its election and with or without cause, delivers written notice of termination to the Road Commission; or
- 7.1.5. Upon the Road Commission giving written notice to the Company of the occurrence or existence of a violation or default by the Company of any general or special terms or conditions of any Right-of-Way Permit, where Company fails to cure, or commence good faith efforts to cure, such violation or default within thirty (30) days (or such shorter period of time as expressly required by the Road Commission or elsewhere in general or special terms and conditions) after delivery of such notice; or
- 7.1.6. Unless the Road Commission grants a written extension, one year from the Permit’s effective date if prior thereto Company has not started the construction and installation of the Facility or Facilities within the Right-of-Way, and two years from the Effective Date if by such time construction and installation of the Facilities is not complete.

8. Performance Deposit or Letter of Credit

8.1. Performance Deposit Requirement. The Road Commission may, at its sole discretion, require Company to post a cash performance deposit (or similar security acceptable to the Road Commission) to ensure full compliance with these terms and conditions, including but not limited to the removal of the Facilities at the termination of this Permit, as provided in MCL 224.19b and set forth in the Road Commission’s adopted fee schedule. Proof of such deposit or security shall be attached to these terms and conditions as **Exhibit B**.

- 8.1.1. Any cash performance deposit tendered to the Road Commission will be held in escrow pending termination of all applicable Right-of-Way Permits and removal of all applicable Facilities to the satisfaction of the Road Commission in its sole discretion and judgement.

9. Fees

- 9.1. Establishment; Reservation. The Road Commission is entitled to full recovery of all costs and fees associated with any Right-of-Way Permit and the general or special terms and conditions as provided in MCL 224.19b, or otherwise at law, and as set forth in the Road Commission's adopted schedule.

10. Removal

- 10.1. Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any underground cable or other portions of the Facilities from the Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way. Company shall not remove any underground cable or other portions of the Facilities which requires trenching or the opening of the Right-of-Way except with the prior written approval of the Road Commission. All removals shall be at Company's sole cost and expense.

10.1.1. For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

- 10.2. Removal; Above Ground. As soon as practicable after the Term, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by the Road Commission, remove from the Right-of-Way all above ground elements of its Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

- 10.3. Schedule. The schedule and timing of removal shall be subject to approval by the Road Commission. Unless extended by the Road Commission, removal shall be completed not later than twelve (12) months following the Term. Portions of the Facilities in the Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of the Road Commission exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in the Road Commission.

11. Assignment. Company may assign or transfer its rights under this permit and these terms and conditions, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:

- 11.1. No such transfer or assignment or change in the control of Company shall be effective under this permit and these terms and conditions, without the Road Commission's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Facilities in those portions of the Right-of-Way identified on Exhibit A.

11.1.1. After the completion of such construction, Company must provide notice to the Road Commission of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.1.2. In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the general and special terms and conditions of any Right-of-Way Permit, and to comply with all applicable law; and Company shall comply with any updated insurance and performance deposit requirements under Sections 6 and 8 respectively.

11.2. Any transferee or assignee of any Right-of-Way permit shall be qualified to perform under all general and special terms and conditions; must comply with all applicable law; shall be subject to the obligations of the Right-of-Way Permit and all general and special terms and conditions, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply the Road Commission with the information required under Section 3.1, and shall comply with any updated insurance and performance deposit or other security requirements under Sections 6 and 8 respectively, which the Road Commission deems necessary, and

11.3. Pole tag replacement will comport with any such assignment or other change.

12. Notices

12.1. Notices. All notices under any Right-of-Way Permit and these terms and conditions shall be given as follows:

12.1.1. If to the Road Commission, to _____

12.1.2. If to Company, to _____

12.2. Change of Address. Company and the Road Commission may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13. Other items

13.1. No Cable, OVS. Any Right-of-Way Permit and these terms and conditions do not authorize Company to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2. Duties. Company shall faithfully perform all duties required by this permit and these terms and conditions.

13.3. Effective Date. Any Right-of-Way Permit, and all general and special terms and conditions thereto, shall become effective when issued by the Road Commission. It is intended that any Right-of-Way Permit and all general and special terms and conditions not be issued or become binding unless and until:

13.3.1. All laws, regulations and rules of all other government entities with concurrent, coincident, concomitant or other jurisdiction of the affected right-of-ways have been complied with and authorized by such governmental entities and as referenced in section 4.8.

13.3.2. All insurance documents and the required cash performance deposit (or similar approved security) are received in proper form.

- 13.4. Authority. Any Right-of-Way Permit, as subject to all general and special terms and conditions, satisfy the requirement for a permit under MCL 224.19b.
- 13.5. Amendment. Any Right-of-Way Permit and any general or special terms and conditions thereto, may be amended by the Road Commission with notice to the Company.
- 13.6. Interpretation and Severability. The provisions of any Right-of-Way permit and all general and special terms and conditions thereto shall be liberally construed to fulfill the Road Commission's Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Ways, which is incorporated herein by reference, and to protect and preserve the peace, health, safety and welfare of the public. Should any provision or section of any Right-of-Way Permit or any general or special terms and conditions thereto be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining Right-of-Way Permit or general or special terms and conditions. If any provision in any Right-of-Way Permit or any general or special terms and conditions thereto is found to be partially overbroad, unenforceable, or invalid, Company and Road Commission may nevertheless enforce such provision to the extent permitted under applicable law. No provision of any Right-of-Way Permit and these special terms and conditions shall be construed to be a waiver or any rights either the Road Commission or Company may have under applicable federal, state or local law.
- 13.7. Governing Law. This permit and these terms and conditions shall be governed by the laws of the State of Michigan.

Outdated -- Revisions in Process

“Company agrees and acknowledges that these Communication Service Provider Right-of-Way Permit: Special Terms and Conditions apply to all CSP Right-of-Way Permits issued to Company by the [**COUNTY NAME] County Road Commission at any and all times prior or subsequent to execution of this agreement.”

[Company Name]

By: _____

Its: _____

Date: _____

[**COUNTY NAME] County Road Commission

By: _____

Its: _____

Date: _____

Outdated -- Revisions in Process

Exhibit A

Detailed Route Map and Specifications of All Facilities Authorized for
Access to the Public Right-of-Way by Company

Outdated -- Revisions in Process

EXHIBIT B

Evidence of Security as Required By Section 8.1 Above



Recommended Technology Policy

Proposed Action for County Road Commissions

July 1, 2017

Liability

Strategic Risk Management Guideline

Issue SRM201707-7

How Road Commissions can address the ever increasing security threats they face on the internet

A technology policy provides standards and safeguards to protect an organization's IT assets and sensitive data. It is important as well for employees to understand what is expected of them with the technology that your road commission provides them.

This guideline contains a recommended Technology Policy for your road commission to adopt. It covers the following areas:

1 & 2. Technology Hardware and Software Purchasing – Ensures that all hardware/software is appropriate, and integrates with the existing technology at your road commission.

3. Use of Software – Covers software licensing, installation, and its use at your road commission.

4. Bring Your Own Device (BYOD) – Important guidelines to implement for employees who want to use their own mobile devices to connect to your road commission's network and equipment.

5. IT Security – Helps ensure the integrity, confidentiality, and availability of data and assets.

6. Password Policy – Designed to make sure users are changing their passwords regularly to minimize the threats by hackers and non-authorized employees seeking to gain access to your system and data.

7. Remote Access – Guidelines to help minimize the potential exposure which can result when employees work remotely.

8. Internet Usage – Ensures your employees are using the internet responsibly and productively.

9. Hardware Destruction – Ensures that the information on your devices is adequately removed or destroyed before being sold or transferred to another department.

10. Security Procedures for Terminated Employees – This will minimize the security risk to your road commission by former employees.

The Serious and Growing Danger of Cyber Attacks

...

"Cyber crime...is the greatest threat to every profession, every industry, every company in the world."

– Ginni Rometty, IBM Chairman, President and CEO

"One single vulnerability is all an attacker needs."

– Window Snyder, Chief Security Officer, Fastly

"More than 4,000 ransomware attacks have occurred every day since the beginning of 2016. That's a 300% increase over 2015, where 1,000 ransomware attacks were seen per day."

– Computer Crime and Intellectual Property Section (CCIPS)

Technology Policy

1. Technology Hardware Purchasing	3
Purpose	3
Procedures	3
Purchase of Hardware	3
Purchasing desktop computer systems	3
Purchasing portable computer systems	4
Purchasing server systems	4
Purchasing computer peripherals	4
Purchasing mobile telephones	5
2. Software Purchasing	6
Purpose	6
Procedures	6
Request for Software	6
Purchase of software	6
Obtaining open source or freeware software	6
3. Use of Software	7
Purpose	7
Procedures	7
Software Licensing	7
Software Installation	7
Software Usage	7
Breach of Policy	8
4. Bring Your Own Device (BYOD)	9
Purpose	9
Procedures	9
Current mobile devices approved for business use	9
Registration of personal mobile devices for business use	9
Keeping mobile devices secure	10
Exemptions	11
Breach of this policy	11
Indemnity	11
5. IT Security	12

Purpose.....	12
Procedures.....	12
Physical Security.....	12
Technology Access	12
6. Passwords	13
Purpose	13
Procedures.....	13
Password requirements.....	13
Breaches	13
7. Remote Access	14
Purpose.....	14
Procedures.....	14
General	14
Requirements	14
Breach of this policy	15
Definitions.....	15
8. Internet Usage Policy	16
Purpose	16
Procedures.....	16
Computer, Email and Internet Usage	16
Unacceptable Use of the Internet	16
9. Hardware Destruction	18
Purpose.....	18
Procedures.....	18
Standard	18
Disposal.....	18
Process	19
Penalties	19
10. Security Procedures for Terminated Employees.....	20
Purpose.....	20
Procedures	20
Regular Users Process.....	20
IT Privileged Users Process	20

1. Technology Hardware Purchasing

Purpose

This section provides guidelines for the purchase of hardware for the **{name of road commission}** to ensure that all hardware technology is appropriate, a value for the money and, where applicable, integrates with other technology for the business. The objective is to ensure that there is minimum diversity of hardware within the business.

Procedures

Purchase of Hardware

All hardware purchases must be approved by the **{title}**

{Contact information of vendor}:

Purchasing desktop computer systems

The desktop computer systems purchased must run at least **{operating system}** and integrate with existing hardware.

The desktop computer systems must be purchased as standard desktop system bundle and must be **{approved brands, e.g., HP, Dell}**.

The desktop computer system bundle must include:

Desktop tower

Desktop screen of **at least {size of screen}**

Keyboard and mouse, wireless or non-wireless.

- **{operating system}**
- **{additional spec}**

The minimum capacity of the desktop must be:

- **{processor}**
- **{memory}**
- **{hard drive}**

- **{# USB ports}**

Any change from the above requirements must be authorized by the **{title}**.

All purchases of desktops must be compatible with the road commission's server system.

Purchasing portable computer systems

The purchase of portable computer systems includes notebooks, laptops, and tablets.

Portable computer systems purchased must run **{operating system}** and integrate with existing hardware. The portable computer systems purchased must be **{approved brands, e.g., HP, Dell}**.

The minimum capacity of the portable computer system must be:

- **{processor}**
- **{memory}**
- **{hard drive}**
- **{# USB ports}**

The portable computer system must include the following software provided:

{list of programs}

Any change from the above requirements must be authorized by the **{title}**.

Purchasing server systems

Server systems can only be purchased by the **{title}**.

Server systems purchased must be compatible with all other computer hardware in the road commission.

All purchases of server systems must be compatible with the road commission's other server systems.

Any change from the above requirements must be authorized by the **{title}**.

Purchasing computer peripherals

Computer system peripherals include printers, scanners, external hard drives, etc.

Computer peripherals can only be purchased where they are not included in any hardware purchase or are considered to be an additional requirement to existing peripherals.

Computer peripherals purchased must be compatible with all other computer hardware and software in the business.

The purchase of computer peripherals can only be authorized by the **{title}**.

Any change from the above requirements must be authorized by the **{title}**.

Purchasing mobile telephones

A mobile phone will only be purchased once the eligibility criteria is met. Refer to the Mobile Phone Usage policy in this document.

The purchase of a mobile phone must be from **{vendor name}** to ensure the business takes advantage of volume pricing based discounts provided by **{vendor or program name}**. Such discounts should include the purchase of the phone, the phone call and internet charges, etc.

{vendor contact information}:

The mobile phone must be compatible with the road commission's current hardware and software systems.

The mobile phone purchased must be **{product names}**.

The purchase of a mobile phone must be approved by the **{title}** prior to purchase.

Any change from the above requirements must be authorized by the **{title}**.

2. Software Purchasing

Purpose

This section provides guidelines for the purchase of software for the **{name of road commission}** to ensure that all software used is appropriate, a value for the money and, where applicable, integrates with other technology for the business. This section applies to software obtained as part of hardware bundle or pre-loaded software.

Procedures

Request for Software

All software, including any non-commercial software such as open source, freeware, etc. must be approved by the **{title}** prior to the use or download of such software.

Purchase of software

The purchase of all software must adhere to this policy.

All purchased software must be purchased by the **{title}**.

All purchased software must be purchased from reputable software sellers, such as **{name of sellers}**.

All purchases of software must be compatible with the road commission's server and/or hardware system.

Any changes from the above requirements must be authorized by the **{title}**.

Obtaining open source or freeware software

Open source or freeware software can be obtained without payment and usually downloaded directly from the internet.

In the event that open source or freeware software is required, approval from the **{title}** must be obtained prior to the download or use of such software.

All open source or freeware must be compatible with the road commission's hardware and software systems.

Any change from the above requirements must be authorized by the **{title}**.

3. Use of Software

Purpose

This section provides guidelines for the use of software for all employees within the **{name of county road commission}** to ensure that all software use is appropriate. The use of all open source and freeware software will be conducted under the same procedures outlined for commercial software.

Procedures

Software Licensing

All computer software copyrights and terms of all software licenses will be followed by all employees of the business.

Where licensing states limited usage (i.e., number of computers or users, etc.), then it is the responsibility of the **{title}** to ensure these terms are followed.

The **{title}** is responsible for completing a software audit of all hardware twice a year to ensure that software copyrights and license agreements are adhered to.

Software Installation

All software must be appropriately registered with the supplier where this is a requirement.

{Name of road commission} is to be the registered owner of all software.

Only software obtained in accordance with the purchasing software section of the policy is to be installed on the road commission's computers.

All software installation is to be carried out by the **{title}**.

A software upgrade shall not be installed on a computer that does not already have a copy of the original version of the software loaded on it.

Software Usage

Only software purchased in accordance with the purchasing software section of the policy is to be used within the business.

Prior to the use of any software, the employee must receive instructions on any licensing agreements related to the software, including any restrictions on use of the software.

All employees must receive training for all new software. This includes new employees to be trained to use existing software appropriately. This will be the responsibility of the **{title}**

Employees are prohibited from bringing software from home and loading it onto the road commission's computer hardware.

Unless express approval from the **{title}** is obtained, software cannot be taken home and loaded on an employee's home computer.

Use of Software (continued)

Where an employee is required to use software at home, an evaluation of providing the employee with a portable computer should be undertaken in the first instance. Where it is found that software can be used on the employee's home computer, authorization from the **{title}** is required to purchase separate software if licensing or copyright restrictions apply. Where software is purchased in this circumstance, it remains the property of **{name of county road commission}** and must be recorded on the software register by the **{title}**.

Unauthorized software is prohibited from being used at **{name of county road commission}**. This includes the use of software owned by an employee and used within the organization.

The unauthorized duplicating, acquiring, or use of software copies is prohibited. Any employee who makes, acquires, or uses unauthorized copies of software will be referred to the **{title}** for further review, discussion and/or reprimand. The illegal duplication of software or other copyrighted works is not condoned within this organization and the **{title}** is authorized to undertake disciplinary action where such event occurs.

Breach of this Policy

Where there is a breach of this section of the policy by an employee, that employee will be referred to the **{title}** for further review, discussion and/or reprimand.

Where an employee is aware of a breach of the use of software in accordance with this policy, they are obliged to notify the **{title}** immediately. In the event that the breach is not reported and it is determined that an employee failed to report the breach, then that employee will be referred to the **{title}** for further review, discussion and/or reprimand.

4. Bring Your Own Device (BYOD)

At **{name of road commission}** we acknowledge the importance of mobile technologies in improving business communication and productivity. In addition to the increased use of mobile devices, staff members have requested the option of connecting their own mobile devices to the road commission's network and equipment.

Purpose

This section of the policy provides guidelines for the use of personally owned notebooks, smart phones, and tablets for business purposes. All staff who use or access **{name of road commission}**'s technology equipment and/or services are bound by the conditions of this policy.

Procedures

Current mobile devices approved for business use

The following personally owned mobile devices are approved to be used for business purposes:

- **{approved device}**
- **{approved device}**
- **{approved device}**

Registration of personal mobile devices for business use

When using personal devices for business use, employees will register the device with the **{title}**, who will record the device and all applications used by the device.

Personal mobile devices can only be used for the following business purposes:

- **{list purposes, e.g., email access, business internet access, business telephone calls}**.

Each employee who utilizes personal mobile devices agrees:

- Not to download or transfer business or personal or sensitive information on **{categories of information e.g., employee, county residents, etc.}**.
- Not to use the registered mobile device as the sole repository for **{name of road commission}**'s information. All business information stored on mobile devices should be backed up.
- To make every reasonable effort to ensure that **{name of road commission}**'s information is not compromised through the use of mobile equipment in a public place. Screens displaying sensitive or critical information should not be seen by unauthorized persons and all registered devices should be password protected.

BYOD (continued)

- To maintain the device with security software provided by **{name of road commission}**'s outside technology services provider.
- Not to share the device with other individuals to protect the business data access through the device
- To abide by **{name of road commission}**'s internet policy for appropriate use and access of internet sites etc.
- To notify **{name of road commission}** immediately in the event of loss or theft of the registered device
- Not to connect USB memory sticks from an untrusted or unknown source to **{name of road commission}**'s equipment.

All employees who have a registered personal mobile device for business use acknowledge that **{name of road commission}**

- Owns all intellectual property created on the device.
- Can access all data held on the device, including personal data
- Will regularly back up data held on the device
- Will delete all data held on the device in the event of loss or theft of the device
- Has first right to buy the device when the employee wants to sell the device
- Will delete all data held on the device upon termination of the employee. The terminated employee can request personal data be reinstated from back up data
- Has the right to deregister the device for business use at any time.

Keeping mobile devices secure

The following must be observed when handling mobile computing devices such as notebooks and iPads:

- Mobile computer devices must never be left unattended in a public place, or in an unlocked house, or in a motor vehicle, even if it is locked. Wherever possible they should be kept on the person or securely locked away.
- Cable locking devices should also be considered for use with laptop computers in public places (e.g., in a seminar or conference) even when the laptop is attended.
- Mobile devices should be carried as hand luggage when traveling by aircraft.

Exemptions

This policy is mandatory unless the **{title}** grants an exemption. Any requests for exemptions from any of these directives, should be referred to the **{title}**.

Breach of this policy

Any breach of this section of the policy will be referred to the **{title}** who will review the breach and determine adequate consequences, which can include confiscation of the device and or termination of employment.

Indemnity

{Name of road commission} bears no responsibility whatsoever for any legal action threatened or started due to conduct and activities of staff in accessing or using these resources or facilities. All staff indemnify **{name of road commission}** against any and all damages, costs and expenses suffered by **{name of road commission}** arising out of any unlawful or improper conduct and activity, and in respect of any action, settlement or compromise, or any statutory infringement. Legal prosecution following a breach of these conditions may result independently from any action by **{name of road commission}**.

5. IT Security

Purpose

This section provides guidelines for the protection and use of information technology assets and resources within the **{name of road commission}** to ensure integrity, confidentiality, and availability of data and assets.

Procedures

Physical Security

For all servers, mainframes, and other network assets, the area must be secured with adequate ventilation and appropriate access through **{description of security}**.

It will be the responsibility of **{title}** to ensure that this requirement is followed at all times. Any employee becoming aware of a breach to this security requirement is obliged to notify **{title}** immediately.

All security and safety of all portable technology, laptops, iPhones, iPads, etc. will be the responsibility of the employee who has been issued with the device(s). Each employee is required to use password protection on all devices and to ensure the asset is kept safely at all times to protect the security of the asset issued to them.

In the event of loss or damage, **{title}** will assess the security measures undertaken to determine if the employee will be required to reimburse the **{name of road commission}** for the loss or damage.

All issued electronic devices when kept at the office desk are to be secured by password protection provided.

Technology Access

Every employee will be issued with a unique identification code to access the business technology.

Where an employee forgets the password or is 'locked out' after three attempts, then the **{title}** is authorized to reissue a new initial password that will be required to be changed when the employee logs in using the new initial password.

It is the responsibility of the **{title}** to keep all procedures for this policy up to date.

6. Passwords

Purpose

This section is designed to make sure users are changing passwords on a regular basis and to verify the passwords are strong enough to handle brute force attacks to minimize the impact of hacker, employee, etc. from gaining unauthorized access to the system.

Procedures

Password requirements

The road commission's employees are expected to use complex passwords. Complex passwords are defined by being 10 characters in length, containing one number, and one symbol such as \$%@#.

Passwords will change every 90 days in an effort to prevent people from having someone else's password.

Remote access passwords are to be used only by the individuals to whom they were assigned and may not be shared.

All passwords, unless with written permission, will not be shared.

All vendors will have separate usernames and passwords that also change every 90 days.

All devices, including firewalls, routers, switches, DVRs, cameras, and printers will change default passwords.

Firewall passwords will change every 180 days.

Local login passwords will need to be changed from default of system.

At no time is an eight character password, blank password, or default password ever permitted.

All company cell phones will be password restricted.

Applies

Password policies are enforced to the following areas: wireless network (guest and production), local computers, Active Directory, firewalls, routers, switches, printers, organization phones, email, and {name of road commission}'s website.

Breach of this policy

Any employee found to have violated this section of the policy may be subject to disciplinary action, up to and including termination of employment. Deliberate, unauthorized disclosure of confidential information may result in civil and/or criminal penalties.

7. Remote Access

Purpose

These requirements are designed to minimize the potential exposure from damages which may result from unauthorized use of **{name of county road commission}** resources. Damages include the loss of sensitive and/or confidential information, damage to public image and damage to critical internal systems.

Procedures

General

Storage of confidential information on any non-organization owned device is prohibited. Confidential information may not be stored on any non-organization owned portable device without prior written approval from the supervisor (or delegated authority). Approved storage on any portable device must be encrypted.

It is the responsibility of the road commission employees and contractors with remote access privileges to the organization's network to ensure that their remote access connection is given the same consideration as the user's on-site connection to the company.

All remote access users are expected to comply with the road commission's policies, may not perform illegal activities, and may not use the access for outside business interests.

Requirements

Remote access must be strictly controlled by the use of unique user credentials. For more information, please view Password Policy.

Remote access passwords are to be used only by the individuals to whom they were assigned and may not be shared.

All remote access connections that utilize a shared infrastructure, such as the internet, must utilize some form of encryption.

Reconfiguration of a home user's equipment for the purpose of split-tunneling or dual homing is not permitted at any time.

All hosts that are connected to the road commission's internal networks via remote access technologies must have up-to-date anti-virus software implemented.

All hosts that are connected to the road commission's internal networks via remote access technologies must have current operating system security patches installed.

Personal equipment that is used to connect to the company's networks must meet the requirements of the road commission-owned equipment for remote access.

Organizations or individuals who wish to implement non-standard remote access solutions to the road commission production network must obtain prior written approval from **{name of road commission}**.

Breach of this policy

Any employee found to have violated this policy may be subject to disciplinary action, up to and including termination of employment. Deliberate, unauthorized disclosure of confidential information may result in civil and/or criminal penalties.

Definitions

Term	Definition
Cable Modem	Cable companies provide Internet access over Cable TV coaxial cable. A cable modem accepts this coaxial cable and can receive data from the Internet.
Dial-in Modem	A peripheral device that connects computers to each other for sending communications via the telephone lines.
Dual Homing	Having concurrent connectivity to more than one network from a computer or network device. Examples include: Being logged into the Corporate network via a local Ethernet connection, and dialing into AOL or other Internet service provider (ISP).
DSL	Digital Subscriber Line (DSL) is a form of high-speed Internet access competing with cable modems.
Remote Access	Any access to the corporate network through a non-company controlled network, device, or medium.
Split-tunneling	Simultaneous direct access to a non-company network (such as the Internet, or a home network) from a remote device (PC, PDA, WAP phone, etc.) while connected into the corporate network via a VPN tunnel. Virtual Private Network (VPN) is a method for accessing a remote network via "tunneling" through the Internet.
Wi-Fi	Wireless networking technology that uses radio waves to provide wireless high-speed Internet and network connections. A Wi-Fi enabled device such as a PC, mobile phone, or PDA can connect to the Internet when within range of a wireless network.

8. Internet Usage

Purpose of the Policy

These requirements are designed to minimize the potential exposure from damages which may result from unauthorized use of **{name of county road commission}** resources. Damages include the loss of sensitive and/or confidential information, damage to public image, and damage to critical internal systems.

Procedures

Computer, Email and Internet Usage

{name of county road commission} employees are expected to use the internet responsibly and productively. Internet access is limited to job-related activities only and personal use is not permitted.

Job-related activities include research and educational tasks that may be found via the internet that would help in an employee's role.

All internet data that is composed, transmitted and/or received by a road commission's computer systems is considered to belong to the road commission and is recognized as part of its official data. It is therefore subject to disclosure for legal reasons or to other appropriate third parties.

The equipment, services and technology used to access the internet are the property of **{name of county road commission}**, which reserves the right to monitor internet traffic and monitor and access data that is composed, sent or received through its online connections.

Emails sent via the company email should not contain content that is deemed to be offensive.

All sites and downloads may be monitored or blocked by **{name of road commission}** if they are deemed to be harmful and/or if the road commission deems it not productive to business.

The installation of software such as instant messaging technology is strictly prohibited unless otherwise stated by **{name of road commission}**.

Unacceptable use of the internet by road commission employees includes, but is not limited to:

Sending or posting discriminatory, harassing, or threatening messages or images on the internet or via the road commission's email service.

Using computers to perpetrate any form of fraud, and/or software, film or music piracy.

Stealing, using, or disclosing someone else's password without authorization.

Downloading, copying or pirating software and electronic files that are copyrighted or without authorization.

Internet Usage (continued)

Sharing confidential material, trade secrets, or proprietary information outside of the organization.

Hacking into unauthorized websites.

Sending or posting information that is defamatory to the organization, its products/services, colleagues and/or customers.

Introducing malicious software into the road commission's network and/or jeopardizing the security of the organization's electronic communications systems.

Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities.

Passing off personal views as representing those of the organization.

9. Hardware Destruction

Purpose

These requirements outline the proper disposal/sanitization/destruction of media (physical or electronic) at **{name of road commission}**. These rules are in place to protect sensitive and classified information, employees and **{name of road commission}**. Inappropriate disposal of **{name of road commission}** may put employees at **{name of road commission}** at risk.

Procedures

Standard

Licensed Software programs, institutional/business data, personally identified or identifiable data, and/or non-public data must be reliably erased and/or destroyed from any electronic device before the device is transferred out of **{name of road commission}** control or erased before being transferred from one **{name of road commission}** department or individual to another. Failure to properly purge data correctly that renders the data unrecoverable may pose a risk to **{name of road commission}**'s data since data often can be easily recovered with readily available tools.

Disposal

When no longer usable, hard drives, diskettes, tape cartridges, CDs, ribbons, hard copies, printouts, and other similar items used to process, store and/or transmit classified and sensitive data shall be properly disposed of in accordance with measures established by **{name of road commission}**.

Physical media (printouts and other physical media) shall be disposed of by one of the following methods:

- Shredded using **{name of road commission}** issued cross-cut shredders
- Placed in locked shredding bins for **{name of vendor}** to come on-site and cross-cut shred, witnessed by **{name of road commission}** personnel throughout the entire process
- Incineration using **{name of road commission}** incinerators or witnessed by **{name of road commission}** personnel onsite at agency or at contractor incineration site, if conducted by non-authorized personnel.

Electronic media (Hard drives, tape cartridge, CDs, printer ribbons, flash drives, printer and copier hard-drives, etc.) shall be disposed of by one of the **{name of road commission}**'s methods:

- Overwriting (at least 3 times) – An effective method of clearing data from magnetic media. As the name implies, overwriting uses a program to write (1s, 0s, or a combination of both) into the location of the media where the file is to be sanitized is located.
- Degaussing – A method to magnetically erase data from magnetic media. Two types of degaussing exist: strong magnets and electric degausses. Note that

Hardware Destruction (continued)

common magnets (e.g., those used to hang a picture on a wall) are fairly weak and cannot effectively degauss magnetic media.

- Destruction – A method of destroying magnetic media. As the name implies, destruction of magnetic media is to physically destroy by methods of crushing, disassembling, etc. ensuring that the platters have been physically destroyed so that no data can be pulled.

IT systems that have been used to process, store or transmit sensitive and classified information shall not be released from **{name of road commission}**'s control until the equipment has been sanitized and all stored information has been cleared using one of the above methods.

Process

No computers or digital storage devices may leave **{name of road commission}**'s possession without undergoing the described sanitization methodology.

Documentation, for potential audit purposes, attesting to the erasure of licensed software and institutional data is required in order to complete the transfer both within and external to **{name of road commission}**, including devices for trade-in or that must be replaced as part of a warranty or repair contract. Documentation should be retained securely at each **{name of road commission}**'s site.

Penalties

Any **{name of road commission}** employee found to have violated this policy may be subject to disciplinary action, up to and including termination.

10. Security Procedures for Terminated Employees

Purpose

These requirements are designed to minimize the security risk to **{name of county road commission}**'s network by terminated employees.

Procedure:

When an individual's employment with **{name of road commission}** is terminated, for any reason, the **{title}** will adhere to the following procedures:

Regular Users Process — Upon notification of the termination by the **{title}**, immediately disable the terminated employee's:

- Email Account
- Network Account
- Voice Mail System
- VPN/Remote Access Accounts
- Web-meeting & Collaboration accounts
- All application accounts
- Access to any road commission financial accounts
- Access to road commission information/data backups
- Access to road commission owned social media accounts or web properties

IT Privileged Users Process — For users with system administration privileges the account termination process must be even more extensive. A thorough analysis to determine the extent of the person's access should be conducted to validate that all access is terminated as expected. Special attention should be paid to:

- Database accounts
- Application level service accounts
- Accounts with shared passwords
- Network/Router passwords
- Generic test accounts
- Remote access accounts including VPNs, Jump boxes or even analog modem connections



Indemnification, Proof of Insurance and Additional Insured Endorsements

Liability

Strategic Risk Management Guideline

Issue SRM201801-8

What are they really and why should you worry about using them?

For many years, Road Commissions were told that they should obtain coverage as an Additional Insured whenever they issue a permit or enter into a contract with a third party contractor. Obtaining that security used to be easy. The insurance agent would type the Road Commission's information on the insured's Certificate of Insurance, send it over, and you were all set. That worked, until the insurance underwriters realized that they were providing insurance to entities that they did not know, for risks that they had not anticipated, and for free.

Road Commissions have seen changes to the law that have significantly narrowed their exposure for liability in the right of way.

Now, insurance agents generally are not allowed to type anything additional on the Certificate of Insurance. The only recognized Additional Insured Coverage comes in the form of an Endorsement to the named insured's policy. And, this coverage is no longer free. The

named insured has to pay to add the Road Commission to its policy.

Simultaneously, Road Commissions have seen changes to the law that have significantly narrowed their exposure for liability in the right of way. Being responsible for maintaining local roads previously included liability for any right of way issue –like trees, signs, and bad excavating. Today, our Members have job responsibility for a wide variety of things related to the right of way, but legal liability exposure only for maintenance and repair of the traveled portion of the highway.

In light of these developments, we took a hard look at what Road Commissions really need to do to limit their exposure to liability when issuing a permit or entering into a contract with a third party. We also considered what is being provided in response to your request for Additional Insured status and how that succeeded or failed in protecting the Road Commission. Our recommendations follow.

Quick Summary

For Permits – you need (at least):

1. Proof of Insurance
2. Indemnification

For Contracts – you need (at least):

1. Proof of Insurance
2. Indemnification
3. To be Named Additional Insured
4. You should have a copy of the Policy Endorsement
5. Make sure it is Primary Coverage
6. Watch the Dates



Permits

For all permits, the Road Commission should require indemnification.

When you are the indemnified party, the indemnification clause is a promise by the other party to cover your losses if they do something that causes you harm, costs you money, or causes a third party to sue you. The key words in an indemnification clause are “indemnify,” “hold harmless” and “defend”.

What risks does the Road Commission have when it issues a permit to a contractor or other entity to perform work in the right of way?

The biggest risk here is for damage to the traveled portion of the road itself, damage to right of way generally, or failure to complete a project that the Road Commission then has to fix.

What do you need?

First, proof that the contractor or entity has Commercial General Liability and/or Professional Liability insurance in amounts sufficient to pay for any and all potential damages. Alternatively, you could obtain a Cash Bond to hold until they are complete and you have had time to inspect the operation.

What risks does the Road Commission have when it issues a permit to a landowner (i.e., a private individual) to perform work in the right of way?

The landowner may cause damage to the right of way, perform sub-standard work that requires the Road Commission to provide corrections, or fail to adhere to the terms of the permit (i.e., encroach upon the right of way).

What do you need?

Private individuals generally do not have Commercial General Liability Insurance, and most homeowner policies do not cover this type of exposure. If an individual performs work in violation of the permit, the Road Commission should first look for remedies within the terms of the permit itself—including, but not limited to, revocation and/or indemnification. Additionally, the Road Commission may be able to utilize the encroachment statute, Michigan PA 283 (Section 230.7), to recoup costs. Under certain circumstances, and at the Road Commission’s discretion, obtaining a cash bond could be appropriate.

What risks does a Road Commission have when it issues weight, size or load exemption permits—to contractors, agricultural operations, corporate entities or individuals?

While there are associated risks, permits for transportation on our roads generally do not create a situation that increases the Road Commissions’ liability exposure.

What do you need?

First, Road Commissions should make sure that vehicles operating under the transportation permit have insurance coverage needed to legally operate on Michigan roads. Michigan No Fault Law requires automobile insurers to pay for accidental damage to tangible property—such as road surfaces or facilities on a highway—caused by a motor vehicle. Obtaining proof of insurance from anyone receiving a permit for special use of the road will provide the information needed to collect for damages to the road or other Road Commission property under the provisions of our No-Fault laws.

If the transportation permit is issued to an entity, corporation, business, etc., Road Commissions should also obtain proof of Commercial General Liability and/or Professional Liability insurance in amounts sufficient to pay for any and all potential damages. Always retain this for your file.



Contracts

It is not a matter of choosing between indemnification and additional insured status – properly done, you should seek both.

Indemnification and additional insured status are two complementary risk-transfer provisions. They perform similarly in most respects but are two totally independent coverage provisions. They act as two separate contracts for coverage. Additional insured coverage should coordinate with the indemnity provision.

When entering into a contract with any outside contractor, Road Commissions should, generally, always obtain proof of Commercial General Liability and/or Professional Liability insurance in amounts sufficient to pay for any and all potential damages. Moreover, Road Commissions need to be indemnified, held harmless, and named as an Additional Insured on the contractor's Commercial General Liability and/or Professional Liability policy when they enter into a contract with a third-party in any of the following situations:

- a. If the contractor is performing work on behalf of the Road Commission, or that the Road Commission would otherwise do itself;
 - b. If the contractor will have the ability to direct or control the work of any of your employees or agents;
 - c. If the contractor will be occupying or utilizing Road Commission facilities or property for any reason; or
 - d. If the contractor is performing an activity that could give rise to liability exposure for the Road Commission under one of the exceptions to governmental immunity
-

Summary

For businesses seeking right-of-way permits, Road Commissions should always obtain proof of insurance. Road Commissions must then review the types of coverage and limits to be sure that the insurance is sufficient to cover any potential damage to the roads or road commission property.

For permits to landowners or other private individuals, there is not likely to be any applicable general liability insurance, so Road Commissions will have to rely on remedies included in the Permit terms, in the encroachment or highway damage statutes, or with a cash bond (if required). If the permit involves transportation, Road Commissions should obtain proof of No-Fault Insurance. Road Commissions do not always need to ask for Additional Insured status before issuing right-of-way permits to third parties, but should reserve the right to do so if needed.

Road Commissions should insist on being indemnified and named as an Additional Insured when entering the contract listed above. The Additional Insured Endorsement must specify that the coverage is Primary, and that it is effective for the appropriate period of time.

Strategic evaluation of each set of circumstances, careful evaluation of the verbiage in your permits and contracts and specific requirements for insurance and additional insured clauses will ensure maximum benefit to the Road Commissions and the public we serve.



What to Look for in an Additional Insured Endorsement

Who?

The Road Commission, including its commissioners, officers, agents, volunteers and employees.

What?

Exposure under the activity being contracted.

When?

Watch the dates! If the timing of the work performed under a contract spans more than one coverage year, the renewal of coverage is not automatic. Specify in your contract that the contractor has the obligation to secure continuous coverage.

Where?

The location of the work under contract.

Exclusions?

There should not be any exclusions for Bodily Injury or Property Damage. Or any other exposures that the Road Commission encounters if the contractor is negligent. We would expect that the endorsement would exclude completed operations.

Limitations?

Watch out for these – the limits need to coincide with your needs. We would expect that the endorsement would mention that coverage applies only to the extent permitted by law, and is limited to coverage by the contract. You need to make sure that your contracts describe the coverage required.

Coverage?

Liability caused in whole or in part by (alternatively, arising out of...) the acts or omissions of the named insured, or others on their behalf in the performance of operations for the additional insured at the designated locations.

As we print this, the most common Form used to provide an Additional Insured Endorsement for the construction industry is the ISO CG 20 10 04 13. A copy of this Form is attached to this guideline.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



Engineer Liability Issues

Liability

Strategic Risk Management Guideline

Issue SRM201902-09

Professional Engineers and Road Commissions – Protecting Each Other

In 2016, we discovered that some of the Licensed Professional Engineers (PEs) working for our Road Commissions had concerns that the exposure they have under the professional liability standards of their PE licenses may be different than the exposures the Road Commission has insured through our Pool. While we believe that the insurance offered by MCRCSIP covers all insurable risks for the Road Commission and its employees, our legal research has found that there is a (very small) possibility that Licensed Professional Engineers working for a Road Commission could be held individually liable for

professional malpractice to a member of the public or to another governmental entity for whom they have performed services under their license.

There is also a (very small) risk of exposure to individual liability for professional malpractice when a PE employed by a Road Commission performs professional services for a different Road Commission.

What standards apply to engineers? Those in the engineering and construction trades are required to act in a way that is characterized by care “normally possessed by members of the profession in good standing.” You can see that is a somewhat subjective definition. As an engineer, you are required to make the same reasonable, sound decisions that others educated in your field would be expected to make.



Key Terms

Engineering Malpractice is an area of law dealing with a **professional's** wrongdoing or **negligence** that causes injury or damage. A few typical examples of **professional malpractice** are breach of fiduciary duty, fraud, mismanagement, errors in judgment, misconduct or carelessness that would not be observed in an ordinarily prudent member of the profession.

...

Gross negligence is a substantial disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary **Negligence**, which is a mere failure to exercise reasonable care

...

Who can recover damages? Members of the public can collect financial compensation because of professional malpractice. Engineers need to make sure they are taking appropriate measures to protect themselves from civil litigation by adhering to ethical and legal requirements associated with the profession.

If a PE does work for others either on their own, or for a private company, their insurance representative will recommend they purchase a Professional Liability policy to cover their malpractice risks.

MCRC SIP does not have a coverage type that is titled "Professional Liability." Instead, the risks covered by professional liability policies are generally covered in our Public Officials' Errors and Omissions Coverage. That coverage provides a defense for all Road Commission employees when there is a claim of Negligence or Gross Negligence for work they have done, as long as they were performing authorized work for their Road Commission. No coverage is provided for intentional or illegal acts, and there is an exclusion for any claim arising out of the performance, or rendering of, or failure to perform professional

To support a claim of negligence, plaintiffs must prove that the engineer had a duty to protect the victim, that the duty was breached, that the victim suffered injury and that the injury was caused by the engineer's actions.

Negligence is not always cut-and-dried, which is why we have civil litigation to protect the due process rights of both victims who have been wronged by professional malpractice and professionals who have been wrongly accused of malpractice.

services to anyone other than the Member Road Commission by any engineer (or architect, accountant or member of the medical profession). We believe that coverage to be appropriate to protect our Road Commissions and their employees in a responsible manner.

Because of the fine line between some of the terminology in insurance coverage and professional

engineering standards, we recommend that your Board of Road Commissioners pass a Resolution that indemnifies your Professional Engineers and holds them harmless to the fullest extent permitted by law. The Sample Resolution attached to this SRM Guideline has been developed for you to adapt and use. It is intended to make it clear to all that the Road Commission accepts all of the necessary risks for their Professional Engineer employee's work.

We further recommend that Road Commissions sharing the work of one engineer enter into an Intergovernmental Agreement, as authorized by MCL 124.2, to ensure that immunity for their PE is preserved to the greatest extent possible.

A Sample Intergovernmental Agreement is also attached to this SRM Guideline.

Attachments:

1. SAMPLE: Resolution to Defend, Indemnify and Hold Harmless the County Highway Engineer for Professional Liability
2. SAMPLE: Intergovernmental Agreement – Engineering Services



Resolution to Defend, Indemnify and Hold Harmless the County Highway Engineer for Professional Liability

WHEREAS, pursuant to MCL 224.1, *et seq.*, the Board of County Road Commissioners of the County of _____ employs a county highway engineer.

WHEREAS, pursuant to MCL 224.10(2) and MCL 224.19(3), the county highway engineer fulfills and performs statutory obligations at the pleasure of the Board, which may include: preparation and review of surveys; preparation and review of plans and specifications for roads, bridges, and culverts; supervision over construction and implementation of said plans and specifications; and other engineering duties as appropriate.

NOW, THEREFORE BE IT RESOLVED, that the Board shall defend, indemnify, and hold harmless, to the fullest extent permitted by law, the county highway engineer for and against any claim or liability arising from his or her acts or omissions as a professional engineer, and occurring within the course of his or her employment, and within the scope of his or her authority , while acting on behalf of the Board.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that this Resolution shall not require the Board to indemnify or hold harmless the county highway engineer for and against any act or omission constituting gross negligence or an intentional tort .

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

INTERGOVERNMENTAL AGREEMENT – ENGINEERING SERVICES

This Agreement is made and entered into on [month/day/year] by and between the Board of County Road Commissioners of the County of [Name of County] (hereinafter referred to as the [Name of County] Road Commission), and the Board of County Road Commissioners of the County of [Name of County] (hereinafter referred to as the [Name of County] Road Commission), collectively referred to as “the Parties.”

Recitals

1. [Name of County] Road Commission and [Name of County] Road Commission are both “municipal corporations” within the meaning of MCL 124.1.
2. [Name of County] Road Commission has sole jurisdiction over certain roads within [Name of County], as provided by the laws of the State of Michigan.
3. [Name of Engineer] is an engineer licensed in the State of Michigan and is employed by the [Name of County] Road Commission.
4. [Name of County] Road Commission, by and through its primary contractor, will be making certain improvements to roads within its jurisdiction, as specified in Attachment 1.
5. [Name of County] Road Commission requests the professional services of [Name of Engineer] for the project described above.
6. This Agreement is made pursuant to MCL 124.2, which permits any municipal corporation to contract with any other municipal corporation for the performance of any service which each would have the power to perform separately.

The Parties therefore agree as follows:

1. **Professional Services.** [Name of Engineer] agrees to provide professional engineering services in connection with the Project described in Attachment 1. The Parties agree that these services are to be provided within the scope of [Name of Engineer's] authority as a licensed engineer for the Board of the County Road Commissioners for the [Name of County] pursuant to MCL 124.2 and MCL 691.1407(2)(a) or their successor statutes. The Parties further agree that professional services of [Name of Engineer] are to be used in the exercise or discharge of a governmental function assigned by operation of law to the Parties.
2. **Consideration.** In exchange for the professional services of [Name of Engineer], [Name of County] Road Commission agrees to compensate the [Name of County] Road Commission in the amount of [form and amount of payment or other valuable consideration].
3. **Acknowledgement.** The Parties acknowledge and represent that this Agreement is entered into freely and voluntarily, without duress, undue influence, or misrepresentation.
4. **Amendment.** This Agreement shall not be modified or amended in any manner, except by written agreement signed by each Party. There are no representations or agreements beyond those expressly set forth in this Agreement.
5. **Signatures.** This Agreement will bind each Party and its respective heirs, personal representatives, successors, and assigns.
6. **Indemnification, Subrogation, and Insurance.** [Name of Road Commission for whom Engineer will be providing services] (as indemnitor) agrees to protect, defend, indemnify, and hold [Name of Road

Commission loaning engineer] (as indemnitee), and its officers, employees, and agents, free and harmless to the fullest extent permitted by law from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's acts, errors and/or omissions in conjunction with *[name of Engineer's]* professional services provided pursuant to this Intergovernmental Agreement. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto to the fullest extent permitted by law. Indemnitor also agrees to waive any right of subrogation against indemnitee should the above-mentioned expenses be incurred. Indemnitor shall be responsible for maintaining adequate liability insurance to provide for any such expenses.

7. **Governmental Immunity.** All activities performed under this Agreement are governmental functions. Governmental immunity is not waived or altered for any governmental entity, or individual, including services provided by the Engineer, *[Name of Engineer]*, in connection with the project.
8. **Governing Law.** This Agreement will be governed by the laws of the State of Michigan and must not be construed against any party.
9. **Interpretation.** For purposes of interpretation of this Agreement, neither *[Name of County]* Road Commission, nor *[Name of County]* Road Commission shall be deemed to have been the drafter of this Agreement.

[NAME OF COUNTY] ROAD COMMISSION
[Name of Engineer]

[NAME OF COUNTY] ROAD COMMISSION

[Signatory Printed Name]
[Signatory's Position]

[Signatory Printed Name]
[Signatory's Position]

Dated:_____

Dated:_____



Protecting our Roads Bonding Work in the ROW

Liability

Strategic Risk Management Guideline

Issue SRM201903-10

When awarding contracts and approving permits for work in the right-of-way, county road commissions are often advised to secure a Bond. What does that mean?

Surety Bonds

A Surety Bond is a three-party contract comprised of the Surety, the Principal (contractor) and the Obligor (road commission) where the Principal promises to perform in accordance with its contract obligations.

While most surety companies are subs or divisions of insurance companies, insurance policies are designed to compensate against unforeseen adverse events. Surety Bonds are designed to guarantee the contractor's contractual obligations. The Surety company prequalifies the contractor based on financial strength and construction expertise. Most bonds are underwritten with little expectation of loss. On public projects, surety bonds support prequalification of contractors, payment protection for subcontractors and contract completion protection for the public.

For contractors to qualify for a bond, they must first prove that they are capable of performing the work and completing the job.

Once this is proven, they must show that they qualify for the bond. The bond producer wants to know that they have the assets to pay for a claim should things go awry. A surety company will write a bond if these two criteria are met.

The surety has the authority to step in to avoid default on the contract. They may use any means necessary to complete the work and expire the bond.

Surety companies have the means to underwrite a Bond Form provided by the contracting party.

Attached, is a Bond Form Template developed by our insurance and legal partners and specially designed to protect our Members in the event of a contract failure, and to provide a reasonable means to collect on the Bond's guarantee. This Bond Form Template has been reviewed and accepted by several National Surety Underwriters who have all indicated they would have no problem accepting it.

Surety Bonds v Letter of Credit

Surety bonds and letters of credit are similar in that both involve third parties acting as a guarantor for transactions. Letters of credit (LoC) are considered interest-bearing debt for accounting purposes, while surety bonds are a form of insurance. LoCs are issued by commercial or merchant banks and guarantee payments to the beneficiaries (road commissions) on behalf of the applicants (contractors).

There are two types of letters of credit: A commercial letter of credit is a contractual agreement in which the issuing bank authorizes another bank to make payment on behalf of its client. A standby letter of credit is issued by a bank to a beneficiary to demonstrate the applicant's ability to make payments.



Letter of Credit Information

Letter of Credit Forms come from a bank, and the verbiage in these will differ from bank to bank, somewhat. ***Attached, is a Standby Letter of Credit Template*** developed for your use by our Legal team. This template contains the elements we want you to look for in the letter, but if the Bank issues their own letter, you should look for the following:

1. The LOC must be irrevocable.
2. The Beneficiary (Obligee) of all LOCs must be the Road Commission.
3. The bank issuing the LOC must be located within the US.
4. The LOC can be drawn on more than once, up to its total value.
5. LOCs are not required to have an expiration date. If it has an expiration date, make sure that it is an acceptable date, or has an evergreen clause.

Cash Bonds

Some of our Members have had success using Cash Bonds to protect their Road Commission from contract problems and damage to county road infrastructure. We have also ***Attached a Cash Bond Template*** developed for your use by our Legal team.

Whichever vehicle you choose to use to Protect your Roads, we recommend that you make it a part of your permit application package when contractors are looking to work in the county road rights-of-way, and to also make it a required part of your contract bid packages.

If you have any questions, please let us know.....

Guidance on Bond, Insurance and LOC Requirements

The Surety Bond, Irrevocable Letter of Credit or Cash Bond must be in amounts sufficient to finish any contract work outstanding. We recommend the full contract price be Bonded.

The General and Automobile Liability Insurance coverages need to be in an amount sufficient to repair any damages made to the road and appurtenances, and to cover exposure to third party lawsuits in the event of a loss. We recommend \$2 Million as a minimum for each type of coverage.

The Road Commission should be named additional insured (see SRM Guidelines 20181-8) when they are contracting work out to a private contractor, or when permitting work in the travelled portion of the road.

Remember to require that all contractors or permittees must Indemnify and Hold Harmless the Road Commission and its commissioners, officers, agents, volunteers and employees from and against any and all claims, allegations, actions, proceedings, liabilities, judgments, losses, costs, expenses (including attorney's fees) and damages.



BOND FOR WORK IN THE RIGHTS-OF-WAY

KNOW ALL MEN BY THESE PRESENTS, that

(complete name of Permittee/Principal)

(complete address of Permittee/Principal) (the "Principal"), and

(complete name of Surety Company)

(complete address of Surety Company) (the "Surety")

for value received, are held and firmly bound unto the Board of County Road Commissioners of the County of [Name of County], State of Michigan, as Obligees, hereinafter referred to as [Name of Road Commission, e.g., KCRC], in the sum of \$_____ dollars lawful money of the United States of America to be paid to the [Name of Road Commission], to which payment, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly and irrevocably by this bond.

WHEREAS, Principal has been issued a Permit(s) by the [Name of Road Commission] permitting it to work within certain public rights-of-way in the County of [Name of County];

WHEREAS, a surety bond from a surety licensed to transact business in the State of Michigan and rated no less than A.M. Best A minus VII is required to guarantee the proper performance and completion of the work, and also restoration and repair of the rights-of-way to the [Name of Road Commission]'s satisfaction, all within the time specified in the Permit(s) for such completion.

THE CONDITION OF THIS BOND is such that if the Principal, to the satisfaction of the [Name of Road Commission], shall in all particulars promptly and faithfully perform all obligations of the Permit including restoration and repair of all affected rights-of-way, including the surface, subsurface, and all adjacent structures and appurtenances no matter by whom owned, then this obligation shall become void, except as provided in paragraph (4) above, upon receipt by Surety of a notice of termination of performance obligations from the [Name of Road Commission]; otherwise, this obligation shall remain in full force and effect. Regardless of the number of years this bond shall continue in full force and effect, and of the number of premiums that shall be payable or paid, the Surety shall not be liable hereunder for a larger amount, in the aggregate, than the penal amount of this bond. The Surety may terminate its liability hereunder as to future acts of the Principal at any time by giving 60 days written notice of such termination to the Obligees.

WHEREFORE, the Surety hereby stipulates and agrees that:

1. No change, extension of time, alteration or addition to the terms of the Permit(s) or the work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such event.
2. Wherever Principal shall be, as declared solely by the [Name of Road Commission], in default under the Permit(s) or this bond, the Surety shall promptly remedy the default within thirty (30) days after receiving notice from the [Name of Road Commission] of said default. The default may be remedied by completion of any required permit work, as directed and approved solely by the [Name of Road Commission], or by payment to the [Name of Road Commission] of costs and damages incurred by the [Name of Road Commission] to correct said default, including materials, labor, costs associated with bidding the work or any part of the work, and all costs associated with enforcing the Principal's or Surety's obligations under the Permit or this bond. In no event shall Surety incur or pay any costs or expenses in excess of the penal sum of this bond.
3. Its obligations assumed herein remain in full force and effect until notice of termination of such obligations is given to Surety by the [Name of Road Commission].
4. The Surety guarantees all construction and/or restoration work required by the Permit against defective workmanship or materials for a period of one (1) calendar year from the date of acceptance of such work by the [Name of Road Commission]. All claims for defective workmanship or materials must be made against the Principal and the Surety no later than thirty (30) calendar days after the expiration of the one (1) calendar year period from the date of the acceptance of the work.

THIS BOND EXPIRES ON _____, 20 ____

Signed and sealed this _____ day of _____, 20 ____

(Witness)

(Permittee and Title)

(Witness)

(Surety and Title)

IRREVOCABLE STANDBY LETTER OF CREDIT
{Number of LOC}

Beneficiary:

[Name of Road Commission]
[First line of address]
[Second line of address]
[Third line of address]

Applicant:

[Name of Applicant]
[First line of address]
[Second line of address]
[Third line of address]

Amount: [Amount of LOC]

We hereby establish our Irrevocable Standby Letter of Credit [Number of LOC] in your favor and authorize you to draw on us, for the account of [Name of applicant] up to an aggregate amount of [Amount of LOC].

In accordance with Michigan law, this Letter of Credit is issued in connection with an application for [Name of Road Commission] Right-of-Way Work Permit Number [Permit Number].

Payment under this Letter of Credit is available by your draft at sight, drawn on [name and address of bank] to be accompanied by original beneficiary's statement purportedly signed by an authorized representative of [Name of Road Commission] certifying that:

"Applicant has failed to complete the proposed work in a manner sufficiently consistent with the permit requirements, and the amount drawn is required to complete the unfinished or unsatisfactory work."

Partial drawings are allowed.

This Letter of Credit sets forth in full the terms of our undertaking which shall not in any way be modified, amended, amplified or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

We hereby agree that drawings under this Letter of Credit will be duly honored upon presentation and shall state that they are drawn under [name of Bank], [Bank address], Letter of Credit # _dated ____.

This original Letter of Credit must be submitted to us together with any drawings hereunder for our endorsement of any payments effected by us and/or for cancellation.

This Letter of Credit shall be deemed automatically extended without amendment for one year from the expiration date hereof or any future expiration date unless at least sixty (60) days prior to any expiration date, we notify beneficiary in writing by certified mail that this Letter of Credit will terminate.

Except so far as otherwise stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credit (2007 Revision)," International Chamber of Commerce Publication No. 600.

This is an operative instrument and no confirmation to follow.

(Authorized Bank Signature)

(Typed Name and Title)

[ROAD COMMISSION LETTERHEAD]

CASH BOND

GUARANTEEING COMPLIANCE WITH THE TERMS AND CONDITIONS OF [NAME OF ROAD COMMISSION]'S PERMIT NUMBER [PERMIT NUMBER]

I hereby establish a bond in the form of cash or check/money order made payable to the [Name of Road Commission] at the request and for the account of:

Permit Applicant's Name _____
Please Print

Permit Applicant's Address _____
Please Print

to provide financial assurance for the satisfactory performance of [Name of Road Commission]'s Permit Number [Permit Number], in the amount of [Amount of Bond]. Provided herein is the aggregate amount of U.S. Dollars \$ _____. The bond shall be deposited with the [Title of Road Commission Official, e.g., Clerk, Finance Director, etc.].

This cash bond shall be effective as of _____ and shall remain in full force and effect until such time as the Permit Applicant submits a written request for refund to the [Title of Road Commission Official] of the [Name of Road Commission] and Permit Applicant's performance under Permit Number [Permit Number] is deemed full and complete in the sole discretion of the [Name of Road Commission]. The [Name of Road Commission] reserves the right to return the bond to the Permit Applicant at any time and for any reason. The Permit Applicant agrees, in exchange for [Name of Road Commission]'s costs in administering and managing the bond funds, that it forfeits any accrued interest on the bond funds at the time of refund.

Name of Permit Applicant's Representative

Signature of Permit Applicant's Representative

Date

Acknowledgement of Receipt:

[Name of Road Commission Official]

Title of Road Commission Official

Date