

PERFORMANCE AND INDEMNIFICATION

Resolution 2003-11

This Performance and Indemnification Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Trunkline Right of Way" (form 2205), or an "Annual Application and Permit for Miscellaneous Operations Within State Trunkline Right of Way" (form 2205B).

RESOLVED WHEREAS, the Township of Birch Run
(city, village, township, etc.)

hereinafter referred to as the "GOVERNMENTAL BODY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utility or other facilities, or to conduct other activities, on, over, and under state trunkline right of way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL BODY agrees that:

1. It will fulfill all permit requirements and will indemnify, save harmless, represent and defend the State of Michigan, Michigan Transportation Commission, and the DEPARTMENT and all officers, agents, employees and those contracting governmental bodies performing permit activities for the DEPARTMENT according to a maintenance contract:

a. from any and all claims and losses occurring or resulting to any and all persons, firms, or corporations furnishing or supplying work, services, materials, or supplies to the GOVERNMENTAL BODY as the result of the GOVERNMENTAL BODY's installation, construction, operation, or maintenance activities which are being performed under the terms of the PERMIT on, over, and/or under the state trunkline right of ways; and

b. from any and all claims of every kind for injuries to, or death of, any and all persons, and for loss of or damage to property, and environmental damage or degradation, and from attorney's fees and related costs arising out of, under, or by reason of the GOVERNMENTAL BODY's installation, construction, operation or maintenance activities which are being performed under the terms of the PERMIT on, over, and/or under the state trunkline right of way, except claims resulting from the direct negligence or willful acts or omissions of said DEPARTMENT performing permit activities.

c. from any and all claims made by any and all persons, firms, or corporations furnishing or supplying materials, supplies, work, or services on, over, and/or under the State trunkline right of way pursuant to an agreement with the State of Michigan, the DEPARTMENT and/or the Michigan Transportation Commission, as a result of the GOVERNMENTAL BODY's failure to move or otherwise relocate its facilities in a timely manner after being requested to do so by the DEPARTMENT.

2. Any work performed for the GOVERNMENTAL BODY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL BODY and not as a contractor or agent of the DEPARTMENT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL BODY. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL BODY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT.

3. The GOVERNMENTAL BODY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

4. It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State trunkline right of way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL BODY'S facilities according to a PERMIT issued by the DEPARTMENT.

5. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL BODY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

6. The incorporation by the DEPARTMENT of this indemnification resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

7. This indemnification resolution shall continue in force from this date until cancelled by the GOVERNMENTAL BODY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL BODY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the Michigan Department of Transportation for the necessary permit to work within state trunkline right of way on behalf of the GOVERNMENTAL BODY.

Name	And/or	Title
Earl Schlegel		Township Supervisor
Mike Setzer		Building Administrator
Amy Cook		Clerk

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by

the Birch Run Township Board of Trustees
(Name of Board, etc)
of the Township of Birch Run of Saginaw
(Name of GOVERNMENTAL BODY) (County)
at a Regular Meeting meeting held on the 11th day of

Signed Amy Cook
November 11 A.D. 2003
Amy Cook

Title Clerk