**INDEMNITY AGREEMENT FOR FIBER OPTIC FACILITY**

**Attachment to U Number:**

**or Attachment to Utility ID:**

**or Permit No.**

|  |  |
| --- | --- |
| District:       | County:       |
| ROW CSJ No.:       | Federal Project No.:       |
| Highway No.:       | Limits: From        To       |

**WHEREAS**,      , hereinafter called **Owner**, is desirous of placing a fiber optic facility along or across and within that section of the herein above indicated highway right of way; and

**WHEREAS**, 43TAC §21.51, as amended, requires a minimum depth of 42 inches of cover below ditch grade or 60 inches below the top of pavement structure, whichever is greater, for crossings and 42 inches of cover for longitudinal placement. This cover may be reduced to a minimum depth of 36 inches below the ditch grade or 60 inches below the top of the pavement structure, whichever is greater, for crossings and 36 inches of cover for longitudinal placement upon indemnification by **Owner** in favor of the State of Texas, hereinafter called the **State**, acting by and through the Texas Department of Transportation; and,

**WHEREAS,** **Owner** has requested it be permitted to construct said fiber optic facility with a minimum depth of 36 inches of cover below ditch grade or 60 inches below the top of the pavement structure, whichever is greater, for crossings and 36 inches of cover for longitudinal placement; and

**WHEREAS,** the **State** by execution of this agreement agrees to said request based upon the indemnity assurance of **Owner** set forth herein below;

**NOW, THEREFORE,** in consideration of the premises herein and the mutual benefit of the parties hereto, it is mutually agreed that **Owner** may construct a fiber optic facility within the aforementioned right of way with a minimum depth of 36 inches of cover below ditch grade or 60 inches below the top of the pavement structure, whichever is greater, for crossings and 36 inches of cover for longitudinal placement. **Owner** does hereby agree to indemnify fully and to save and hold harmless the **State**, the **State's** agents or employees, from and against any and all liability, suits, actions, claims, costs and expenses (including reasonable attorney's fees) and damages of whatsoever nature arising, now or in the future, out of the placement of said fiber optic facility at the reduced depth.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures.

|  |  |
| --- | --- |
| **OWNER** | **EXECUTION RECOMMENDED:** |

Owner:

 District Engineer,       District

By:

Title:

**THE STATE OF TEXAS**

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By:

Right of Way Division Director

Date:

By:

 John P. Campbell, P.E.

 Right of Way Division Director

By:

 John P. Campbell, P.E.

 Right of Way Division Director

Date:

\*NOTE: Form ROW-U-40, Signature Authority will be required for individuals other than elected officials to ensure that the party signing on behalf of the utility does have authority to bind the company to the terms and conditions of this agreement, and must be attached to this agreement.