

TOWNSHIP OF MIDDLE SMITHFIELD
MONROE COUNTY, PENNSYLVANIA

RESOLUTION # 10-2023-1

**A RESOLUTION OF THE MIDDLE SMITHFIELD TOWNSHIP BOARD OF
SUPERVISORS, COUNTY OF MONROE, PENNSYLVANIA, AUTHORIZING THE
PLACEMENT OF BANNERS ACROSS A STATE HIGHWAY OR WITHIN THE
HIGHWAY RIGHT OF WAY, AND RESCINDING PRIOR RESOLUTIONS REGARDING
SAME**

WHEREAS, the Department of Transportation Publication 46, Section 2.10.12, states the requirements for displaying an overhead sign or banner; and

WHEREAS, the Township of Middle Smithfield ("Township") has single events, recurring events, and multiple events that occur throughout the year; and

WHEREAS, the Township desires to erect such overhead banners across State Route 209 in the Township; and

WHEREAS, State Route 209 is not considered a limited access highway in the Township; and

WHEREAS, the Township Board of Supervisors ("Board") previously adopted Resolutions 02-2013-05, 08-2013-05, 08-2016-1, 08-2016-2, and 06-2018-1 (the "Prior Banner Resolutions") authorizing certain persons, municipalities, and corporate entities to place overhead banners across State Route 209 under certain conditions; and

WHEREAS, the Board desires to adopt amended and restated regulations to replace the provisions of the Prior Resolutions.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of Middle Smithfield Township, Monroe County, Pennsylvania, and it is hereby resolved as follows:

SECTION 1: Conditions for Banner Placement.

The Board of Supervisors of Middle Smithfield Township approves and adopts the following amended and restated conditions for placement of overhead banners across State Route 209:

1. The locations for banner placement are: (1) State Route 209, Segment 540, Offset 0000' (Sellersville Drive), and (2) State Route 209, Segment 610, Offset 0000' (Winona Falls Road).

2. The minimum vertical clearance will be seventeen feet and six inches (17'6") above the roadway;

3. Banners will be erected not earlier than fifteen (15) days prior to the event and will be removed within two (2) days after the event.

4. The Township of Middle Smithfield assumes full responsibility for erecting, maintaining, and removing the device and all liability for damages occurring to any persons or property arising from any act of omission associated with the sign or banner. This provision shall not prohibit the Township from requiring the applicant requesting the banner to indemnify, defend and hold the Township harmless from any and all related claims.

5. Only Banners promoting community events shall be permitted. Banners shall concern events related to a national, state, regional or local function or charitable affair. Banners may be displayed by local nonprofit organizations such as veteran's organizations, or charitable, educational, fraternal, civic or service organizations, or by businesses for the purpose of promoting an event in support of a charitable organization or cause. Banners primarily promoting retail or wholesale businesses and/or commercial enterprises, private groups, or political candidates or issues, are prohibited. No more than twenty percent (20%) of the message on the banner shall relate to naming or advertising a commercial product, enterprise, business or company. The message on the banner may not contain vulgar or obscene language.

6. While erecting, maintaining and removing the banner, traffic control will be performed in accordance with the most current Pennsylvania Department of Transportation Publication 213, Temporary Traffic Control Guidelines.

7. Applicants will be charged a fee of \$125 to offset the Township costs for application review and banner placement/removal. The Township retains the right to waive the fee, for good cause, upon approval of the Middle Smithfield Township Board of Supervisors.

8. Middle Smithfield Township intends to keep the permanent cables across the right-of-way for erection of banners.

9. The applicant may only use a polyester mesh banner, satisfactory to the Township. The Township can provide an example of an acceptable material for the banner to the applicant. An applicant is encouraged to discuss required banner specifications with the Township before ordering a banner, so as to avoid the possibility of ordering a banner that

does not meet the Township's specifications. The Township will not be financially responsible for any loss sustained by an applicant who purchases a banner that does not meet Township specifications, and as a result cannot be used. The Township will allow an applicant to provide (2) two of the same banner for one location, in order for oncoming and outgoing traffic to see the same banner. For purposes of these regulations, one set of the same banner for on-coming and out-going traffic shall be considered one banner.

10. Banner size shall be limited to a maximum square footage of 32''(inch) x 25' (feet) for a total of 66.67 square feet.

11. The applicant organization requesting to display a banner shall provide the Township with a current certificate of insurance evidencing liability insurance coverage in the minimum amount of \$250,000 per incident/\$500,000 aggregate for general liability, and naming the Township of Middle Smithfield as an additional insured. Any applicant who desires to submit a banner to the Township for review, approval and placement, shall first execute and deliver to the Township an indemnity agreement substantially in the form attached hereto as Exhibit "A".

12. No banner may be placed across the highway unless the owner has first secured all applicable Township permits, including a zoning permit.

13. Banners must be provided to the Township not less than one (1) week prior to the event.

14. The Township Zoning Code Official shall be responsible for determining in the first instance whether the owner's banner complies with the requirements of this Resolution, which decision may be appealed to the Board of Supervisors, whose decision shall be final.

15. The Township shall consider applications for placement of banners on a first come, first serve basis. Banners may be placed for multiple events throughout the year.

16. Notwithstanding the foregoing provisions set forth in this Resolution, the following conditions shall also apply:

(a) Each entity, sponsor, or banner owner may hang no more than one (1) banner every three (3) months;

(b) The Township will accept no more than twelve (12) banners per annum for the permitted location.

(c) Banner placement scheduling must be reserved thirty (30) days in advance, which will be calculated from the date that a complete application is received, which shall include the payable fee, and the exact verbiage for the proposed signage.

Section 2: Severability.

The provisions of this Resolution shall be severable, and if any of the provisions hereof shall be found to be invalid or unenforceable, the remaining provisions shall remain in effect.

Section 3: Construction.

Any Ordinance in conflict with this Resolution shall take precedence over this Resolution. Any resolution conflicting or inconsistent with any of the provisions in this Resolution is hereby repealed, but only insofar as it is inconsistent. The Prior Resolutions are repealed and rescinded. Nothing in this Resolution is intended to create a contractual obligation on behalf of the Township. The Township may discontinue the banner placement program at any time. In the event that the program is discontinued prior to the placement of a banner for which fees have been received, the fees will be returned to the applicant.

Section 4: Effective Date.

This Resolution shall be effective immediately and shall remain in effect until modified, revoked, or repealed by further Resolution of the Board of Supervisors.

RESOLVED THIS 26th Day of OCT, 2023 BY THE BOARD OF SUPERVISORS OF MIDDLE SMITHFIELD TOWNSHIP AT A LAWFUL SESSION DULY ASSEMBLED.

ATTEST:

Michael G. Hurrell
Secretary

Charles D. Stevenson
Chairperson
Mark H. Dwyer
Vice Chairperson
Michael J. Kelly
Supervisor

EXHIBIT "A"

(Attached hereto)

INDEMNITY AGREEMENT FOR PLACEMENT

OF BANNER ACROSS STATE HIGHWAY 209

THIS AGREEMENT, made and entered into by and between _____, a Pennsylvania _____, with an address of _____, (hereinafter the "Owner"), and **TOWNSHIP OF MIDDLE SMITHFIELD, COUNTY OF MONROE, COMMONWEALTH OF PENNSYLVANIA**, a Pennsylvania Township of the Second Class, of 147 Municipal Drive, East Stroudsburg, Pennsylvania 18302, (hereinafter "Municipality");

WHEREAS, in accordance with the requirements of the Pennsylvania Department of Transportation ("PENNDOT"), the Municipality has adopted a Resolution authorizing the placement of banners across State Route 209 (the "Highway"), which Owner has reviewed, and is incorporated by reference; and

WHEREAS, Owner desires to place a banner (the "Banner") across the Highway, and, in accordance with the Resolution, is willing to accept the terms of this Indemnity Agreement, in consideration of the Municipality's review and approval to the placement of the Banner across the Highway.

NOW THEREFORE, in consideration of the Municipality agreeing to accept Owner's banner application for review, and if appropriate, permitting display of Owner's banner, Owner agrees to the following covenants and agreements for the benefit of Municipality, intending to be legally bound thereby:

1. Owner accepts the requirements of the Resolution, and agrees to be bound by them.

2. Owner shall be responsible, at its own cost and expense, for the design and construction of the Banner. Owner agrees that any design and construction of such Banner shall comply with all applicable industry standards and laws and the requirements of the Municipality and the Resolution.

3. The Municipality shall have sole discretion as to whether the Banner conforms to the requirements of the Resolution. The Municipality shall have no obligation to place any proposed Banner that does not, in the Municipality's opinion, conform to the requirements of the Resolution.

4. The Municipality's approval of the Banner for placement under the Resolution shall not constitute the approval of the Municipality under any other ordinance, resolution, or policy of the Municipality.

5. Owner agrees that the Banner shall only be placed and removed by the Municipality through its employees. Owner and its employees and agents may not at any time attempt to erect, place, maintain or remove the Banner.

6. Owner agrees that the Banner shall be placed only for the time period authorized by the Municipality, but in any event, not longer than the period allowed by PennDOT. The Municipality does not in any way guarantee that the Banner shall be in place for the entire permitted period. The Banner will be removed if the Municipality is directed to do so by PENNDOT.

7. The Municipality shall not be responsible in any manner to the Owner in the event of damage or destruction of the Banner for any reason. The Municipality is not required to maintain the Banner while in place.

8. To the fullest extent permitted by law, Owner agrees to and shall indemnify, defend and hold harmless the Municipality and its professional advisors, agents, servants, workmen and employees from and against all suits, claims, actions, damages, losses and expenses, including, but not limited to, attorneys' fees, and all suits, claims, actions, workers' compensation claims, damages, losses and expenses brought by any third parties, and/or employees of Owner, and for all costs or liability to which the Municipality may be held responsible, and for any injury or alleged injury to the person or property of another arising out of or resulting from, in whole or in part, the design, construction, content, erection, location, placement, maintenance or removal of the Banner.

9. Owner shall pay the Municipality a non-refundable fee as set forth in the Municipality's current fee schedule for banner displays. In addition, Owner shall reimburse the Municipality for all the costs it will incur, in excess of the fee, as a result of the review of the Owner's application for placement of the Banner and Municipality's placement and removal of the Banner.

10. Notwithstanding any other provision of this Agreement, in the event the Municipality, in its sole discretion, determines that an emergency or the occurrence of special or unusual circumstances or situations exists which jeopardizes the health, safety or welfare of the citizens, or for any other reason, the Municipality may remove the Banner.

11. During the erection, placement and removal of the Banner, Owner shall maintain commercial general liability insurance in amounts, and with an insurance carrier, satisfactory to the Municipality to insure against injury and loss in connection with placement of the Banner. The

Municipality shall be named as an additional insured on the Owner's insurance policy.

12. Owner agrees that the Municipality shall not be liable, and Owner covenants not to make any claim against the Municipality, for consequential or incidental damages, or lost profits, in the Municipality's breach of the Agreement. The Municipality's liability in such case shall be limited to the amount of any fees and reimbursement previously paid to the Municipality under this Agreement.

13. This Agreement shall be binding upon the successors and assigns of the Owner.

IN WITNESS WHEREOF, the Owner places his, her or its hand and seal to this Indemnity Agreement the date written below.

Owner: _____

By: _____

Name: _____

Title: _____

Date: _____