

Agreement # _____

TEMPORARY SHORING INDEMNIFICATION AGREEMENT

dated as of the _____ day of _____, 20____.

BETWEEN:

THE CITY OF CALGARY
a municipal Corporation under the laws of
The Province of Alberta

(the "City")

and

NAME OF DEVELOPER
a Corporation incorporated and carrying on business
pursuant to the laws of The Province of Alberta

(the "Developer")

TEMPORARY SHORING INDEMNIFICATION AGREEMENT

1.0 RECITALS

- 1.1 The Developer is the owner of the Development Site, and the Developer has an approved Development Permit from the City for the development of the Development Site.
- 1.2 The Developer requires temporary support for the walls of the excavation required for the construction of the development authorized by the Development Permit.
- 1.3 Pursuant to s. 61 of the *Municipal Government Act*, R.S.A. 2000, c.M-26 and in accordance with the provisions of The City of Calgary Street Bylaw 20M88 the City is prepared to allow the temporary use and occupation of the City-Lands by the Developer for the purpose of providing temporary support for the excavation required by the Developer's development, subject to the terms and conditions contained in this agreement.
- 1.4 This agreement witnesses that in consideration of the mutual covenants hereinafter contained the parties hereto agree as follows:

2.0 DEFINITIONS

- 2.1 In addition to those terms defined parenthetically, in this agreement the following terms have the following meanings:
- (1) **"Additional Insured"** means a party added as an insured party entitled to benefit from a current comprehensive general liability insurance policy held by the Developer and as further defined in such policy;
 - (2) **"Administration and Inspection Fee"** means those amounts, set out in Schedule "A", collected by the Director for the administration and Inspection of the Shoring Work and City-Lands;
 - (3) **"City Inspector"** means an employee of the City who inspects the Shoring Work and City-Lands for acceptance on behalf of the Director;

- (4) **“City-Lands”** means the City-owned street, roadway, public right(s)-of-way, and may include an easement and utility right-of-way, as described in Schedule “A”;
- (5) **“City Solicitor”** means the City employee with the title of City Solicitor or his authorized representative, and any person or position which succeeds the person with the title of City Solicitor;
- (6) **“City Standard Rates”** means the rates set by the Director from time to time, for payment in lieu of the removal of the Removable Portions of the Shoring Work;
- (7) **“City’s Standards and Specifications”** means the current City standards and specifications for construction work prepared by the City;
- (8) **“Construction Completion Certificate”** means the documentation issued to the Developer by the Director certifying that the City-Lands have been Restored;
- (9) **“Development Permit”** means the development permit set out in Schedule “A”;
- (10) **“Development Site”** means the parcel or parcels set out in Schedule “A”;
- (11) **“Director”** means the City employee with the title of Director of the Roads business unit appointed by the City from time to time, and any individual designated to carry out his duties in connection with this agreement;
- (12) **“Emergency”** means any situation determined by the Director to require immediate action by the City;
- (13) **“Final Acceptance Certificate”** means the documentation provided to the Developer by the City certifying that the Developer’s work on the City-Lands has been accepted by the Director;
- (14) **“Indemnification Agreement Coordinator”** means the individual appointed to the position and holding the title Indemnification Agreement Coordinator of the City of Calgary from time to time, or the individual designated to act in his place for the purpose of administering this agreement, and who may be contacted at 403-268-3505;
- (15) **“Independent Professional Engineer”** means a professional engineer, who is registered in the Province of Alberta and is a member in good standing of the Association of Professional Engineers, Geologists and Geophysicists of Alberta, and who has no affiliation with the Developer, but is retained by the Developer in connection with the obligations contained in this agreement;
- (16) **“Inspection”** means an attendance or re-attendance by a City Inspector to either or both the City-Lands and the development site where Shoring Work is occurring and any comments, rulings or directions given by such person;
- (17) **“Maintenance Period”** means the period commencing upon the issuance of the Construction Completion Certificate and continuing until the Director issues the Final Acceptance Certificate;

- (18) **“Plan and Specifications”** means the approved development engineering drawings and associated specifications associated with the Shoring Work;
- (19) **“Restore”** or **“Restored”** means that all Removable Portions of the Shoring Work has been removed from the City-Lands, with the excavated portions being restored to surface level in accordance with the Plan and Specifications and the City’s Standards and Specifications all to the satisfaction of the Director and the restoration of all disturbed areas of and appurtenances to the City-Lands to a state equal to or better than that which existed prior to commencement of the Shoring Work, as deemed satisfactory by the Director and in accordance with the Plan and Specifications, and includes sidewalks, curbs, gutters, asphalt areas, driveways, street surfaces, trees and grassed areas, fences, Utilities, and above-ground structures or facilities;
- (20) **“Removable Portions of the Shoring Work”** means all shoring components within the City-Lands which includes piles, timber lagging, Tiebacks, steel columns, corner bracings, wailers, low strength concrete support wall, and all other related components within the City-Lands except any cement grout and bell anchor (metal anchor and grout body which are less than 760 mm (30”) in length and 200 mm (8’) in diameter);
- (21) **“Security”** means that amount, set out in Schedule “A”, in the form of an irrevocable letter of credit, bank draft, or certified cheque satisfactory to the Director, provided from the Developer to the City;
- (22) **“Shoring Work”** means a temporary shoring system or backsloping, or both, and excavation in accordance with the attached Schedule “A” including piles, timber lagging, Tiebacks, steel columns, and related components which are to be installed in the City-Lands, and the installation of same;
- (23) **“Tieback”** means a steel tendon, connection and all related components including a steel rod in any dywidag anchor;
- (24) **“Term”** means the term of this agreement which commences on the date first written until either party terminates this agreement in accordance with this agreement; and
- (25) **“Utility”** or **“Utilities”** means any public or private utility including water, storm sewer, sanitary sewer, gas, electric, heat, transportation, telephone or telecommunications, or all of them if plural.

3.0 INTERPRETATION OF THIS AGREEMENT

3.1 This agreement shall be interpreted as follows:

- (1) This agreement shall be interpreted under and governed by the laws of the Province of Alberta;
- (2) Nothing in this agreement relieves the Developer from compliance with all applicable municipal bylaws, laws or regulations established by the City or any other government body that may have jurisdiction over the Development Site or the City-Lands or activities therein;
- (3) Nothing in this agreement shall be construed to relieve the Developer from the full performance of all obligations, terms, conditions and work to be performed under this agreement;
- (4) This agreement shall be construed with all changes in number and gender as may be required by the context;
- (5) References herein to any statute or bylaw or any provision thereof include such statute or bylaw or any provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute or bylaw thereto;
- (6) Whenever a statement or provision in this agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” or “including but not limited to” do not precede such list or reference;
- (7) If more than one entity constitutes the Developer, Developer and all words pending thereon shall be read and construed in the plural instead of the singular, in which case the covenants shall bind the entities severally as well as jointly;
- (8) This agreement contains the entire terms, conditions and warranties relating to the Shoring Work agreed to by the City and the Developer and there are no terms, conditions, warranties or other agreements except as stated in this agreement. All previous verbal or written agreements as to the Shoring Work between the City and the Developer, if any, are hereby cancelled and are of no force or effect;
- (9) If any covenant or term of this agreement, or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this agreement other than the term, covenant or portion hereto which is invalid or unenforceable, will not be affected thereby and the covenant or term of this agreement will be valid and in force to the extent permitted by law;
- (10) The part, numbers, headings, subheadings, paragraphs, subparagraphs, and associated numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this agreement;
- (11) Every provision of this agreement by which the Developer is obligated in any way shall be deemed to include the words “at the expense of the Developer” unless the context otherwise requires;

- (12) This agreement does not constitute a development permit, building permit, or any other permit issued by the City;
- (13) The above recitals and schedules attached hereto shall form part of this agreement; and
- (14) Time is of the essence of this agreement.

4.0 SUCCESSORS AND ASSIGNS

- 4.1 This agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns, provided that in the case of an assignment, the assignee has first provided an assumption agreement to the City in accordance with this agreement, and has provided Security and proof of insurance to satisfy the obligations of this agreement to the satisfaction of the Director.

5.0 ASSIGNMENT

- 5.1 Prior to any assignment, sale or transfer of all or any portion of the Development Site, the Developer shall cause the assignee, purchaser or transferee to enter into an assumption agreement with the City, in a form satisfactory to the City Solicitor, duly executed by the vendor, assignor or transferor and the assignee, purchaser or transferee, whereby the assignee, purchaser or transferee covenants and agrees to be bound by, observe, assume, perform and cause to be performed all of the covenants, terms and conditions contained in this agreement, irrespective of whether said covenants, terms and conditions should have been performed prior to the date of this agreement.
- 5.2 Upon receipt by the City of such assumption agreement and Security and proof of insurance satisfactory to the Director, the assignor, vendor or transferor of such portion shall be deemed to be released from the obligations contained herein.

6.0 WAIVER

- 6.1 The failure of the City at any time to require strict performance by the Developer of any obligation under this agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the City of the performance of any obligation hereunder be taken or held to be a waiver of the performance of any other obligation hereunder at any later time.
- 6.2 The City shall specifically retain its rights at law to enforce this entire agreement.
- 6.3 The City's waiver of all or any portion of this agreement must, without exception, be in writing and signed by the Director, and any action that fails to comply with this requirement will under no circumstances be considered or construed to be a waiver.

7.0 WARRANTY

7.1 The Developer represents and warrants to the City as follows:

- (1) The Developer is a corporation validly subsisting under the laws of Alberta and has full corporate power and capacity to enter into this agreement and any documents arising from or in connection with this agreement; and
- (2) All necessary corporate action has been taken by the Developer to authorize the execution and delivery of this agreement.

8.0 NOTICES AND COMMUNICATIONS

8.1 Any notice, communication or request to be given to any party must be written and delivered by registered mail, postage prepaid, or by personal delivery or FAX addressed to such party at the following address:

- (1) (a) by the City to the Developer if the same is delivered or sent by postage prepaid mail to the Developer at:

Attention:

- (b) or sent by fax to the fax number of the Developer at:

- (2) (a) by the Developer to the City if delivered to:

**2808 Spiller Road SE,
Calgary, Alberta T2G 4H3
Attention: Indemnification Agreement Coordinator
Roads (#4003)**

or if mailed postage prepaid and addressed to:

**The City of Calgary
Transportation Department
Roads #4003
P.O. Box 2100, Postal Station M
Calgary, Alberta T2P 2M5**

- (b) or sent by fax to the fax number of the City at:
403-268-2682

or at such other address as any party may from time to time notify the others. Any such notice, communication or request whenever mailed will be deemed to have been received on the fourth (4th) business day next following the date it was mailed or, if by FAX, the business day next following the date of transmission; provided that if normal mail or FAX

services are interrupted by strikes, slowdown or other cause, then any of the said services which have not been so interrupted will be utilized or the notice, communication or request will be personally delivered to ensure prompt receipt. Notices and communications, including demands and certificates, made in connection with this agreement must be in writing.

8.2 Either party may change its address for service by notice in writing to the other party.

9.0 TERMINATION

9.1 This agreement takes effect from the date above first written and continues until either party terminates it in accordance with subsections 9.2 and 9.3.

9.2 The City may terminate this agreement upon fifteen (15) days written notice to the Developer.

9.3 The Developer may not terminate this agreement prior to a Final Acceptance Certificate being issued by the City for the Restored City-Lands. After that time, the Developer may terminate this agreement upon thirty (30) days written notice to the City.

9.4 Notwithstanding subsections 9.1, 9.2, and 9.3, the indemnifications provided by the Developer to the City in this agreement survives the Term of this agreement.

10.0 SECURITY AND FEES

10.1 Concurrent with the execution of this agreement, the Developer shall provide to the Director the Security and the Administration and Inspection Fee.

10.2 The Director may reduce the amount of the Security only after all excavations on the Development Site have been filled to the grade of the City-Lands and further at the time of the issuance of the Construction Completion Certificate. The reduction of the Security will only be by such amount as determined by the Director so that the remaining Security is sufficient to cover the cost of all of the Developer's remaining obligations under this agreement.

10.3 The City may use the Security whenever and as often as the Director believes is necessary to secure the performance and maintenance of any and all of the obligations under this agreement.

10.4 If the Security is in the form of a letter of credit, the Developer shall ensure the Security under this agreement contains a condition for the auto-renewal of the Security to the satisfaction of the Director;

10.5 Subject to subsection 10.2, the Security will not be released by the City until the Final Acceptance Certificate has been approved and all other requirements of this agreement have been met by the Developer. After the Developer is entitled to its Security under this subsection, the Developer may make a request to the City for the release of its Security and subject to subsection 10.11 the City will release the Security to the Developer.

10.6 During the Term of this agreement, if the Director believes that the amount of the Security required under this agreement is insufficient, the Director may require that the Developer

provide further security. Additional security must be in the same form of the original Security and will be deemed to be part of the Security. The Developer shall, within ten (10) days of receipt of written notice from the City that such additional security is required, provide such additional security to the City.

- 10.7 If there is a dispute between the Developer and the City as to the amount of Security, the Director's records will prevail.
- 10.8 Regardless of the adequacy of the Security, any deposits or other sums credited by or due from the City to the Developer and any securities or other property of the Developer in the possession of the City may be applied to or set off against the obligations of the Developer hereunder and any or all other liabilities, direct or indirect, absolute or contingent, due or to be come due, now existing or hereafter arising, of the Developer to the City at any time after the occurrence and during the continuance of any Defect or Default.
- 10.9 The City may cash in any or all of the Security to secure the payment and performance of all present and future debts and liabilities of the Developer to the City, whether such debts and liabilities were incurred alone or with another or others and whether as principal, surety or guarantor, and whether matured or not matured, and whether absolute or contingent.
- 10.10 The Developer must make a request for the release of its Security no later than five (5) years after the day it is entitled to the release of its Security pursuant to subsection 10.5.
- 10.11 If the Developer does not make a request pursuant to subsection 10.5, the Developer forfeits the Security and the Security becomes the sole property of the City to do with as it pleases without restriction and all right in property in said funds is transferred to the City.

11.0 INDEMNITY

- 11.1 The Developer hereby covenants and agrees that it shall indemnify, defend and save harmless the City and the owners of each Utility within the City-Lands, and their employees, agents, contractors, officials and authorized representatives, from and against any and all liabilities, actions, causes of action, claims, charges, losses, damages, legal fees on a solicitor-client basis, and costs and expenses whatsoever, that may be brought against or suffered by the City or the owner of any Utility, and which the City or any Utility owner may incur, sustain or pay arising directly or indirectly out of or in connection with the Developer's obligations under or otherwise in connection with this agreement, whether arising before or after completion of any activity, work or construction contemplated herein.

12.0 INSURANCE

- 12.1 During the Term of this agreement, the Developer shall maintain insurance policies in a form and substance and with an insurer all satisfactory to the City including:
 - (1) A commercial general liability (CGL) insurance policy with an inclusive limit of not less than FIVE MILLION DOLLARS (\$5,000,000.00) for any one occurrence for death, bodily injury and property damage, and such policy must include:
 - (i) the City as an Additional Insured;
 - (ii) the cross liability clause;
 - (iii) a sufficiently broad form of contractual liability coverage;
 - (iv) products and completed operations coverage; and

(v) non-owned automobile liability;

- (2) Automobile third party liability insurance (Owner's form) for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence insuring each and every automobile used in the performance of this agreement, and such insurance policy must include specific clauses or coverage as may be required by the City Solicitor; and
- (3) Any other insurance in amounts that a prudent Developer acting reasonably would deem appropriate given the scope of work, with associated risks, to be carried out under this agreement.

- 12.2 Insurance policies required under this agreement must include a provision that the insurance policy must not be cancelled or materially altered without at least thirty (30) days' written notice to the City.
- 12.3 The City's insurance requirements mentioned above will not be construed to, and will in no manner limit or restrict the liability of the Contractor.
- 12.4 The Developer shall be solely responsible for the payment of every deductible amount provided in any policy of insurance furnished pursuant to this agreement.
- 12.5 The Developer shall furnish to the City prior to commencing any Shoring Work or operation under this agreement, documentation satisfactory to the City Solicitor evidencing such insurance and also furnish evidence satisfactory to the City Solicitor of the renewal or continuation of such insurance within ten (10) business days of any expiry dates thereof.
- 12.6 In addition to subsection 12.5, the City may demand and the Developer provide proof of insurance when so requested by and in a form satisfactory to the Director.
- 12.7 If the Developer fails to provide the City with any documents mentioned in this Part, or otherwise failing to prove to the City the existence of any required insurance, the City may purchase on behalf of and at the expense of the Developer the required insurance coverage.
- 12.8 From time to time the City may require the Developer to either or both extend and increase the insurance otherwise required under this agreement. The Developer shall make any changes to the insurance as may be required by the City Solicitor within thirty (30) days of being notified.

13.0 DEFECT OR DEFAULT BY DEVELOPER

- 13.1 For the purposes of this section, there is a "Defect or Default" if any one or more of the following occurs:
 - (1) The Director determines that the Developer has not performed any or all of its obligations under this agreement;
 - (2) The Director determines that there is an Emergency relating to either or both the City-Lands and Development Site;

- (3) The Developer has become insolvent or bankrupt or voluntarily subject as a debtor to the provisions of the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c.B-3, or other law for the reorganization, arrangement, composition, relief or aid of debtors or voluntarily goes into liquidation or consents to the appointment of a receiver or makes a general assignment for the benefit of creditors or otherwise acknowledge its insolvency; or
 - (4) The Developer has a liquidator or a receiver or a trustee in bankruptcy appointed for it under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c.B-3, or any law of Canada or any province thereof relating to bankruptcy or insolvency and such appointment is not vacated or terminated within thirty (30) days or stayed on appeal.
- 13.2 Subject to subsection 13.5, if there is a Defect or Default and the Developer fails, neglects to, or refuses to comply with any notice of defect or default in connection with this agreement within thirty (30) days of the delivery of a written notice to the Developer by the Director, the City may take all or any of the following actions:
- (1) Cash the Security and any additional Security provided under this agreement and use the proceeds therefrom to do any or all of the actions set out in this subsection 13.2;
 - (2) Work or measure the Director determines is necessary to protect, remediate, or prevent damage to any or all of the following:
 - (a) City-Lands,
 - (b) public safety, or
 - (c) any place to which the public has or may gain access, including privately-owned adjacent lands, including removing the Removable Portions of the Shoring Work and backfilling any excavation on the Development Site to the grade of the City-Lands;
 - (3) Perform or cause to be performed, or maintain or cause to be maintained the Shoring Work or any portion thereof;
 - (4) Correct any Emergency relating to either or both the City-Lands and Development Site;
 - (5) Hire a geotechnical consultant or soil consultant; and
 - (6) Restore the City-Lands.
- 13.3 If the City exercises any or all of its powers under subsection 13.2 and the Security is insufficient to cover the City's costs incurred, including the cost of City employees and contractors, the difference in amounts will be a debt due and owing to the City, which the Developer shall immediately pay to the City.
- 13.4 If the Developer does not immediately pay the City the amounts owing under subsection 13.3, the City may add the debts due and owing to the City to the tax roll of the Development Site to be collected in the nature of an amount owing pursuant to section 553.1 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

13.5 If the Director determines that there is an Emergency relating to either or both the City-Lands and the Development Site, no notice to the Developer is required.

13.6 The Developer hereby grants to the City, Utility owners, and their representatives, agents, and contractors the right, privilege, and license to enter upon the Development Site on foot and with all necessary machinery, equipment, and vehicles to perform such work or measures as set out in subsection 13.2.

14.0 PUBLIC PROTECTION

14.1 Where the Shoring Work under this agreement is performed or is to be performed or maintained at, or in the vicinity of any place to which people have or may gain access, including privately-owned adjacent lands, the Developer shall do all things necessary to protect each and every person from personal injury (including death) caused or contributed to by any act or acts or omissions of the Developer, its employees, subcontractors, engineers or any other of its agents or in any way connected with the performance or maintenance of the Shoring Work by the Developer.

14.2 Any failure to take precautions for public safety is the sole responsibility of the Developer, and the Developer shall absolve the City of all liability arising therefrom, regardless of whether the City has instructed the Developer to take action.

15.0 PRIOR TO COMMENCEMENT OF CONSTRUCTION

15.1 The Developer shall not conduct Shoring Work on the City-Lands if it has not performed all of the following:

- (1) Provided the City with Security and proof of insurance to the satisfaction of the Director; and provided the City with the Administration and Inspection Fee;
- (2) Determined the location of all Utilities located in the vicinity of the Shoring Work;
- (3) Obtained all permits required by the City for the construction of the Shoring Work;
- (4) Submitted the Plan and Specifications to the City and the Director has reviewed and accepted the Plan and Specifications;
- (5) Provided a written statement from the Independent Professional Engineer to the Director certifying:
 - (a) that the Independent Professional Engineer has been retained by the Developer to approve the design and method of installation and removal of the Shoring Work and to monitor the installation and removal of the Shoring Work;
 - (b) the lifespan of the Shoring Work; and
 - (c) that the specifications prepared by the Independent Professional Engineer meet the City's design and construction standards.

- (6) Provided a minimum of forty-eight (48) hours telephone notice to the appropriate City Inspector's business units and the owners of all Utilities in the area to be affected by the Shoring Work;
- (7) Provided a minimum of forty-eight (48) hours notice to the Director by contacting Traffic Engineering at 403-268-3290, FAX 403-268-5850 if any traffic control signage is to be removed including stop signs, yield signs, parking control signs, parking meters and information or guide signs (fees may apply);
- (8) Provided a minimum of forty-eight (48) hours notice to the Director by contacting Traffic Engineering at 403-268-3658 to determine the requirements for traffic control measures and or road closures (permits and fees may apply);
- (9) Obtained an Excavation Permit from the Excavation Permit Clerk at 403-268-4936 at least forty-eight (48) hours before construction; and
- (10) Obtained the grade sheet from Roads. The Developer shall provide at least three (3) weeks' notice to Roads at 403-268-3505, FAX 403-268-2682 for the preparation of a grade sheet.

16.0 WORK

- 16.1 The Developer is hereby granted the privilege to use the City-Lands for the purpose of installing the Shoring Work and maintaining and removing the same, subject to this agreement.
- 16.2 The Developer shall retain an Independent Professional Engineer to certify and seal all of the following:
 - (1) Approval of the design and method of installation and removal of the of the Shoring Work;
 - (2) The on-site inspections and continuous monitoring of the Shoring Work and the removal of the Removable Portions of the Shoring Work;
 - (3) A statement to Transportation Department, Roads, of the City that the Shoring Work was actually completed is in accordance with the Schedules to this agreement; and
 - (4) A statement to the Transportation Department, Roads, of the City providing the design lifespan of the Shoring Work.
- 16.3 The Developer shall proceed expeditiously with the Shoring Work and the removal of the Removable Portions of the Shoring Work, and shall remove all Removable Portions of the Shoring Work before the expiration of the design lifespan of the Shoring Work.
- 16.4 The Developer shall perform the Shoring Work and the removal of the Removal Portions of the Shoring Work:
 - (1) In a good and workmanlike manner;
 - (2) In accordance with the City's Standards and Specifications;

- (3) In compliance with the requirements of all applicable legislation, including any occupational health and safety enactment;
 - (4) In accordance with the Plan and Specifications as approved by the Director; and
 - (5) To the satisfaction of the Director.
- 16.5 The Developer shall perform the Shoring Work in accordance with this agreement and if any deviations are required, the Developer shall again obtain all the approvals referred to in this agreement and submit revised Schedules including plans signed and sealed by the Independent Professional Engineer to the City for the purpose of amending this agreement.
- 16.6 The Developer shall take all necessary precaution to protect any Utility from damage.
- 16.7 The Developer shall ensure complete stabilization of soil behind the Shoring Work during installation of the Shoring Work and for the duration of the existence of the Shoring Work and following the removal of the Removable Portions of the Shoring Work or portions thereof.
- 16.8 The Tiebacks located within the City-Lands shall be placed by drilling rather than driving.
- 16.9 Where granular soils are present and where the Shoring Work may cause movement in the soils below the roadway, sidewalk, and/or boulevard adjacent to the Development Site, pressure injection of grout may be required and will be done at the cost of the Developer. The requirement for such work shall be determined by the Director. The Developer shall remove the Removable Portions of the Shoring Work in their entirety to a depth of seven (7) metres below grade.
- 16.10 If required to do so by the City, the Developer shall cause to be provided to the City a report prepared by the Independent Professional Engineer together with all relevant information related to the Shoring Work and that addresses all concerns of the Director to his satisfaction.
- 16.11 The Director may direct the Developer to perform any remedial, preventative or protective work or measure which the Director determines may be necessary or prudent to be performed to ensure the stability of the City-Lands or public safety, including privately-owned adjacent lands.

17.0 INSPECTIONS

- 17.1 The Developer grants to the City, its representatives, agents and contractors the free and uninterrupted access to any and all parts of the Development Site for the purpose of making Inspections and taking samples of materials being used in connection with the Development Site and City-Lands.
- 17.2 The City Inspector may attend and re-attend where Shoring Work is occurring, and make comments, rulings or directions regarding such Shoring Work at any time during the construction or maintenance of the Shoring Work.

17.3 Notwithstanding any Inspection, the Developer shall be fully responsible for the fitness of the Shoring Work for the purpose for which it was intended.

17.4 Inspection is for the benefit of the City and an Inspection, or failure to make an Inspection, does not relieve the Developer of any obligations it has under this agreement or at law.

18.0 REMOVAL OF SHORING WORK

18.1 The Developer shall not commence removal of the Removable Portions of the Shoring Work unless it has provided the City at least forty-eight (48) hours notice to the Transportation Department, Roads at 403-268-2156.

18.2 The Developer shall, to the satisfaction of the Director remove all Removable Portions of the Shoring Work from the City-Lands:

(1) In their entirety to a depth of 15.3 metres below grade where the Removable Portions of the Shoring Work are adjacent to an existing or proposed Light Rail Transit ("LRT") alignment; and

(2) In their entirety to a depth of 7.0 metres below grade where the Removable Portions of the Shoring Work are not adjacent to an existing or proposed LRT alignment.

18.3 Subject to subsection 18.4, if the Developer leaves any portion of the Removable Portions of the Shoring Work in the City-Lands, the Developer shall pay to the City a payment in lieu of removal of such portions of the Removable Portions of the Shoring Work in accordance with City Standard Rates, except that no costs shall be deemed to occur for the non-removal of:

(1) A bell anchor (metal anchor and grout body) of less than 760 mm (30 inches) in length and 200 mm (8 inches) in diameter; or

(2) Any Removable Portions of the Shoring Work that are:

(i) located at a depth greater than 15.0 metres below grade where adjacent to an existing or proposed LRT alignment, or

(ii) located at a depth greater than 7.0 metres below grade where not adjacent to an existing or proposed LRT alignment.

18.4 The Developer shall remove all shoring components within the two (2.0) metre depth below ground level to the satisfaction of the Director.

18.5 The Developer shall make the payment referred to in subsection 18.3:

(1) To the City within thirty (30) days of notice in writing of the amount thereof being sent to the Developer by the City; and

(2) Based on the City Standard Rates in effect as of the date of application for the Construction Completion Certificate.

18.6 The Developer shall provide a minimum of forty-eight (48) hours notice to the Indemnification Agreement Coordinator at 403-268-3505 before commencing replacement of the sidewalk, curb, and gutter damaged during construction:

(1) If the total length of such replacement exceeds 25% of the frontage the Developer shall be required to enter into a Sidewalk Indemnity Agreement in a form

satisfactory to the City Solicitor; and

- (2) All restoration work and all concrete replacements must adhere to City standard specifications current at the time of restoration work and concrete replacements, and the Developer shall notify Roads Materials and Research at 403-268-1602.

18.7 If the City requests, the Developer will submit "as-built" drawings, "as-built" electronic files (AutoCad or Microstation format) and update any existing block profiles showing the alignment and elevation of the components of the Shoring Work that have not been removed from City-Lands, certified as being accurate by an Alberta Land Surveyor or other qualified professional land surveyor acceptable to the Director.

19.0 CONSTRUCTION COMPLETION CERTIFICATES

19.1 Prior to the application for the Construction Completion Certificate, the Developer shall Restore, except for those items listed in subsection 18.2(1) or (2) for which payment has been made pursuant to subsection 18.5, the City-Lands disturbed by the Shoring Work to a state equal to or better than that which existed prior to the commencement of the Shoring Work.

19.2 If the Developer has Restored the City-Lands, excluding those items listed in subsection 18.2(1) or (2) for which payment has been made pursuant to subsection 18.5, the Developer shall provide written notice to the Director requesting Inspection of the Work and submit to the Indemnification Agreement Coordinator a certified and sealed certificate from an Independent Professional Engineer indicating that all Removable Portions of the Shoring Work have been removed from the City-Lands or what components of the Shoring Work have not been removed from City-Lands.

19.3 If the Director determines there are defects or deficiencies on or in the City-Lands, the Construction Completion Certificate will not be issued by the Director and a list of identified defects and deficiencies will be returned to the Developer. The Developer shall correct the said defects and deficiencies and any other defects or deficiencies, and the Developer shall request a further Inspection of the City-Lands.

19.4 The Developer shall submit a separate certificate duly signed and sealed by a Independent Professional Engineer certifying that all backfilling operations carried out by the Developer have been carried out in accordance with the backfilling requirements in the City's Standards and Specifications.

19.5 If an Inspection shows that the City-Land is Restored in accordance with this agreement and to the satisfaction of the Director, the Director will issue the Construction Completion Certificate.

20.0 MAINTENANCE PERIOD

20.1 After the acknowledgement of the Construction Completion Certificate, the Developer shall be responsible for the maintenance of and any and all repairs and replacements to the City-Lands that the Director believes is necessary from any cause whatsoever up until the acknowledgment of the Final Acceptance Certificate.

20.2 Maintenance and repairs and replacements under subsection 20.1 includes:

- (1) Remediating the failure of or damage to underground utilities resulting from defective materials, or improper installation;
- (2) Settlement of road rights-of-way;
- (3) Repairs and/or replacement of road and lane surfaces including any access roads specified herein, sidewalks, curbs and gutters, surface drainage facilities, catch basins and catch basin leads; and
- (4) Such other repairs as may be required by and to the satisfaction of the Director.

20.3 The City may, but is not obligated to, perform an Inspection of the City-Lands at any time during the Maintenance Period, but notwithstanding such Inspection, the Developer shall remain and be fully responsible for the maintenance of the City-Lands.

21.0 FINAL ACCEPTANCE CERTIFICATE

21.1 Not less than three (3) months prior to the expiration of the Maintenance Period, as specified in the Construction Completion Certificate, the Developer shall inspect the City-Lands and correct all defects due to damage and other causes. Upon correction of all defects, the Developer shall provide written notice to the Director requesting a final Inspection of the City-Lands.

21.2 If the Inspection confirms that the City-Lands has been maintained to the Director's satisfaction, the Director will issue the Final Acceptance Certificate.

21.3 If the Director determines there are defects or deficiencies in the City-Lands, the Final Acceptance Certificate will not be issued and a list of the defects and deficiencies will be given to the Developer. The Developer shall correct the said defects and deficiencies and any other defects or deficiencies, and then the Developer shall request a further Inspection of the City-Lands.

22.0 CHARGE AGAINST THE DEVELOPMENT SITE

22.1 This agreement constitutes a charge by the City against the Development Site for all sums payable or which may become payable to the City, plus interest thereon at an interest rate equal to the prime commercial per annum lending rate plus three (3%) percent as published by the main branch of the Royal Bank of Canada, Calgary, Alberta from the date the sum was payable until the date paid, pursuant to the terms of this agreement and the Developer does hereby encumber the Development Site for the benefit of the City with such sums to be paid pursuant to the terms of this agreement. The Developer shall register this charge on title to the Development Site in priority to all other financial instruments of any kind, options, agreements for sale or rights of first refusal.

22.2 The City may file and maintain a caveat evidencing this agreement against the interest of the Developer in any or all portions of the Development Site. The City shall from time to time, upon the request of the Developer execute and deliver to the City for registration in the appropriate Land Titles Office, registerable postponements of that Caveat, postponing the said Caveat in favour of any encumbrance or encumbrances to be registered against the whole or any portion of the Development Site to secure advances made for interim or long term financing (or either of them) of the Development Site, provided that the secured

party under the terms of such encumbrance covenants and agrees with the City to assume all the obligations of the Developer under this agreement in the event that such secured party shall foreclose or otherwise take possession of the Development Site pursuant to its encumbrance if and so long as such possession is taken and retained by such secured party, and that if it shall exercise any power of sale under its encumbrance it shall require the purchaser to assume all the obligations of the Developer under this agreement.

The City and the Developer execute this agreement under seal by the signatures of the properly authorized officers signing below.

NAME OF DEVELOPER

Officer

(corporate seal)

Officer

THE CITY OF CALGARY

Director, Roads



Schedule

THE CITY OF CALGARY

Agreement # _____
D.P. # _____

TO ROADS TEMPORARY SHORING INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF CALGARY AND

2. **Shoring Work (describe the construction to be done on the City-Lands)**
3. **City-Lands**
The City's streets, roadways, utility rights of way and easements located within Plan _____ and, more specifically, _____ metres of the right of way identified municipally as _____.
4. **Development Site**
Legal Description:

Municipal Address:
5. **Plans and Specifications - ATTACHED AS Appendix "A" TO THIS SCHEDULE (IDENTIFY ALL ATTACHED APPENDICES)**
6. **Administration and Inspection Fee:** \$ _____
7. **Security** \$ _____
Form of Security (bank draft / cheque / letter of credit) _____
Provided by _____
8. **All attached appendices form part of this Schedule.**