|  |  |
| --- | --- |
|  | Standard Form AgreementsDevelopment Permit & SubdivisionApplications **Development Engineering****Infrastructure Planning****Water Resources** |

**Your application to The City of Calgary for either a Development Permit or Subdivision has been processed and various documents may be required as a condition of the development or subdivision.**

**When completing the attached Indemnification Agreement**, **please follow the instructions below.**

* The agreement provided by The City of Calgary is locked and only the field areas indicated may be completed. Each field specifies the information required to be keyed into each space. You may tab from field to field.
* Once all the field areas have been filled in, save the document.

**NOTE: THIS PAGE IS FOR INFORMATION ONLY AND IS NOT PART OF THE AGREEMENT.**

* The order of assembly of the agreement should be:
	1. the agreement
	2. Affidavits after the signing page, if required; and
	3. last, the required Schedule(s).
* Print three (3) copies of the agreement and have each copy signed by the Developer. **PLEASE DO NOT DOUBLE SIDE THE AGREEMENT, AFFIDAVIT(S) OR SCHEDULE(S) WHEN PRINTING.**
* Ensure that the signature of the Developer(s) is witnessed and that the witness completes the Affidavit of Execution. An originally sworn and signed Affidavit of Execution is required for each copy of the agreement.

Once the copies of the agreement have been signed and the an Affidavit of Execution has been completed and attached to each copy of the agreement - mail, courier or deliver the copies of the agreement, **with a cover letter setting out the DP or SB number** to:

By Delivery or Courier: Development Engineering (#8032), The City of Calgary

 Mail Room, Basement Floor, Municipal Building

800 Macleod Trail SE, Calgary

If by Mail: Development Engineering (#8032), The City of Calgary

P.O. Box 2100, Postal Station “M”, Calgary, Alberta T2P 2M5

This Agreement dated on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

BETWEEN:

Click here to enter text., individual(s) owning land in the City of Calgary, in the Province of Alberta

 (“the Developer”)

- and -

**THE CITY OF CALGARY,** a municipal corporation carrying on business in and pursuant to the Province of Alberta

 (“the City")

**INDEMNIFICATION AGREEMENT**

1. **Recitals**

1.01 The City is the owner of and has the direction, control and management of all streets, roadways and public road rights-of-way within the municipality.

* 1. The Developer has been retained to install and construct those items as set out in Schedule “A” to this Agreement and the Developer wishes to, from time to time, enter onto such streets, roadways and public road rights-of-way in order to do construction work thereon.
	2. The City and the Developer wish to enter into an agreement which sets out the general terms that will permit the Developer to engage in work within the City’s streets, roadways and public road rights-of-way.
	3. The City agrees to grant to the Developer permission to work upon, over, under and within the City-owned streets, roadways and public road rights-of-way commencing with the date this Agreement was first written and concluding on the date specified herein.
	4. Pursuant to the Street Bylaw 20M88, as amended from time to time, permission must be obtained in writing from the Director, Roads prior to the commencement of any work within a City street by any person.
	5. This Agreement is limited in scope to the work performed within the City’s streets, roadways and public road rights-of-way. The City does not make any representations or warranties with regard to the work performed outside the scope of the Agreement.

 **NOW THEREFORE IN CONSIDERATION** of the City’s consent to allow the Developer to carry out the Work, the premises, mutual covenants contained in this Agreement, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, **THE PARTIES AGREE AS FOLLOWS**:

1. **DEFINITIONS**

2.01 In this Agreement, including the Recitals and Schedules:

1. “**Administration and Inspection Fee**” means those amounts, set out in Schedule “A” to this Agreement, collected by the Director, Calgary Approvals Coordination for the administration and Inspection of the Work;
2. “**Agreement**” means this Indemnity Agreement, including the above Recitals and Schedule “A”, entered into between The City and the Developer;
3. “**CCC Items**” means the items identified as such in Schedule “A” to this Agreement;
4. “**City**” means The City of Calgary, a municipal corporation under the laws of Alberta;
5. “**City Inspector**” means an employee of The City who inspects the Work for acceptance on behalf of the Director, Calgary Approvals Coordination;
6. “**City Solicitor**” means the City employee with the title of City Solicitor or his/her authorized representative, and any person or position which succeeds the person with the title of City Solicitor;
7. “**City’s Standards and Specifications**” means the current City standards and specifications for construction work prepared by The City, including but not limited to:
	* 1. Design Guidelines for Subdivision Servicing;
		2. Standard Specifications, Sewers Construction;
		3. Standard Specifications, Streets Construction;
		4. Standard Specifications, Waterworks Construction;
		5. Standard Specifications, Landscape Construction; and
		6. Standard General Conditions;
8. “**Completion**” or “**Completed**” means Work completed and installed in accordance with the Plan and Specifications and the City’s Standards and Specifications;
9. “**Construction Completion Certificate**” or “**CCC**” means the documentation issued to the Developer by the Director, Calgary Approvals Coordination certifying that the Work has been completed;
10. “**Development Site**” means the parcel or parcels of land set out as such in Schedule “A” to this Agreement;
11. “**Director, Calgary Approvals Coordination**” means the City employee with the title of Director, Calgary Approvals Coordination, or his/her authorized representative, and any person or position which succeeds the person with the title of Manager, Urban Development;
12. “**Director, Roads**” means the City employee with the title of Director, Roads, or his/her authorized representative, and any person or position which succeeds the person with the title of Director, Roads:
13. “**Director, Water Services**” means the City employee with the title of Director, Water Services, or his/her authorized representative, and any person or position which succeeds the person with the title of Director, Water Services;
14. “**Emergency**” means any situation determined by the Director, Calgary Approvals Coordination to require immediate action by the City, its employees or agents;
15. “**Final Acceptance Certificate**” or “**FAC**” means the documentation provided to the Developer by the City, certifying that the Work has been accepted by the Director, Calgary Approvals Coordination;
16. “**FAC Items**” means the items identified as such in Schedule “A” to this Agreement;
17. “**Grade Sheet**” means a reference document prepared by a qualified person showing the vertical depth and horizontal distance from a reference stake line (hubs) to the design invert of the utility. This document shall be prepared in a format satisfactory to the Director, Calgary Approvals Coordination;
18. “**Inspection**” means an attendance or re-attendance by a City Inspector to Land where Work is occurring and any comments, rulings or directions given by such person;
19. “**Land**” means the City owned street, roadway, public right(s)-of-way, and may include an Easement and utility right-of-way;
20. “**Maintenance Period**” means the period commencing upon the issuance of the CCC and continuing until the Director, Calgary Approvals Coordination issues the FAC;
21. “**Performance and Maintenance Security**” means an irrevocable letter of credit drawn on a chartered bank or other financial institution acceptable to the City Solicitor, as specified on Paragraph 5.1 and in the amount of which shall be determined by the Director, Calgary Approvals Coordination and as set out in Schedule “A” to this Agreement and includes any additional security required by the Director, Calgary Approvals Coordination under Paragraph 5.5. The letter of credit shall be renewed from time to time by the Developer until the Term of this Agreement is at an end;
22. “**Plan and Specifications**” means the engineering drawings and associated specifications associated with the Work as set out in Schedule “A” to this Agreement;
23. “**Restore**” means the restoration of all disturbed areas and appurtenances to a state equal to, or better than that which existed prior to commencement of the Work, as deemed satisfactory by the Director, Calgary Approvals Coordination and in accordance with the Plan and Specifications, and shall include but not be limited to sidewalks, curbs, gutters, asphalt areas, driveways, land and street surfaces, trees and grassed areas, fences, Underground Utilities, and above ground structures or facilities;
24. “**Surface Improvements**” means sidewalks, curbs, gutters, driveways, catch basin leads, paved roads, paved walkways, pathways, paved lanes, graveled lanes and overland drainage facilities, or any of them;
25. “**Term**” means the term of this Agreement which commences on the date first written until either party terminates this Agreement in accordance with Paragraphs 17.1 and 17.2 herein;
26. “**Testing Agency**” means an independent enterprise qualified to carry out soil compaction testing and acceptable to the Director, Calgary Approvals Coordination;
27. “**Underground Utilities**” means sanitary sewers, storm sewers, watermains, hydrants, sewer and water service connections, or any of them; and
28. “**Work**” means the work as described in Schedule “A” to this Agreement.
29. **CONSULTING ENGINEER**

3.01 The Developer shall employ a Professional Engineer who is a member in good standing of The Association of Professional Engineers, Geologists and Geophysicists of Alberta, and who is licensed to practice engineering in the Province of Alberta (hereinafter called the "Consulting Engineer") to design and supervise all Work to be carried out under this Agreement by or at the expense of the Developer. The Consulting Engineer is deemed to be an agent of the Developer for the purposes of this Agreement. The Developer shall ensure that all materials supplied and all Work performed conforms in all respects to the City's specifications and designs, or as otherwise deemed acceptable by the Director, Calgary Approvals Coordination, and shall require the Consulting Engineer to certify such conformance on behalf of the Developer.

3.02 In Paragraph 3.1 the term "for the purposes of this Agreement" shall mean for the purposes of:

(a) certifying that all materials supplied and all Work performed conforms in all respects to the City's specifications and designs, or as deemed acceptable by the Director, Calgary Approvals Coordination, in writing;

(b) preparing, submitting, and certifying Construction Completion Certificates and Final Acceptance Certificates;

(c) certifying the correction of all defects and deficiencies as required by Paragraphs 12.3, 14.3 and 15.3;

(d) carrying out inspections necessary or prudent to be carried out by the Developer to ensure satisfactory performance of the Developer's obligations under this Agreement; and

(e) the preparation, review, certification and submission of the Plan and Specifications and schedules which the Developer is required to supply under this Agreement.

1. **TESTING AGENCY**

4.01 The Developer shall, at its own cost, retain a Testing Agency.

4.02 The Testing Agency shall carry out backfill compaction testing in conformity with Section 304.00.00 of the City’s Standards and Specifications, Streets Construction at the expense of the Developer.

4.03 The Testing Agency shall send all test results directly to Calgary Water Services within three (3) business days of obtaining the same.

4.04 The Testing Agency is deemed to be an agent of the Developer.

1. **PERFORMANCE AND MAINTENANCE SECURITY AND INSPECTION AND ADMINISTRATION FEES**

5.01 Concurrent with the execution of this Agreement, the Developer shall provide to the Director, Calgary Approvals Coordination with:

1. The Performance and Maintenance Security; and
2. The Administration and Inspection Fees.

5.02 The Performance and Maintenance Security shall be in effect and valid throughout the Term of this Agreement. The Developer agrees to take all necessary steps to renew the Performance and Maintenance Security, when and if necessary, in order to comply with this provision.

5.03 In the event that the Performance and Maintenance Security ceases to be valid or becomes ineffective for any reason during the Term of this Agreement, or has not been renewed at least thirty (30) days prior to its date of expiry, the Developer shall immediately notify the Director, Calgary Approvals Coordination and immediately cease all Work if so directed by the Director, Calgary Approvals Coordination.

5.04 The Performance and Maintenance Security will be used by the City as both performance security during the course of the Work and maintenance security during the Maintenance Period. The amount of the Performance and Maintenance Security will not be reduced upon the issuance of any CCC.

5.05 During the Term of this Agreement, if in the sole opinion of the Director, Calgary Approvals Coordination the amount of the Performance and Maintenance Security required pursuant to Paragraph 5.1 is insufficient, the Director, Calgary Approvals Coordination may require that the Developer post further security. Any such further security ordered to be posted by the Director, Calgary Approvals Coordination shall be in the form of and shall form part of the Performance and Maintenance Security.

5.06 If there is a dispute between the Developer and the City as to the amount of Performance and Maintenance Security, the Director, Calgary Approvals Coordination’s records will prevail.

5.07 Where the City determines, in its sole discretion, that the Developer has not performed its obligations under this Agreement, the City is entitled but not obliged to use the Performance and Maintenance Security to do any one or more of the following:

1. perform, or cause to be performed, the Work;
2. restore the Land;
3. remove any objects under Paragraph 9.4;
4. recover any fees or expenses incurred by the City in ensuring the performance of the Work by the Developer or restoration of the Land, including but not limited to those incurred:
5. due to the Developer’s failure to make such repairs or replacements as required pursuant to Paragraphs 12.3, 14.3 and 15.3; or
6. where the City has done repairs in an Emergency; and
7. correct any defect or default by the Developer in accordance with Paragraph 16.1.

5.08 In the event that the City exercises any or all of its powers under Paragraph 5.7 and the Performance and Maintenance Security is insufficient to cover the City’s costs incurred, the difference in amounts shall be a debt due and owing to the City, which the Developer agrees to immediately pay to the City.

5.09 Upon issuance of the final FAC under the Agreement and approval by the Director, Calgary Approvals Coordination of the “As-Built” Drawings of the Work, The City shall return whatever amount remains in the Performance and Maintenance Security to the Developer.

1. **INDEMNITY**

6.01The Developer shall indemnify, defend, and hold harmless the City and all of its respective officials, officers, employees and authorized representatives from and against any and all suits, actions, payments, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, legal fees, costs and expenses sustained by the City of every nature and description, whether arising before or after completion of any activity, work, maintenance or construction and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, error, omission or fault whether active or passive of the Developer, its employees, contractors, sub-contractors, engineers, agents or anyone acting under the Developers direction or control or on its behalf in connection with or incidental to this Agreement and the Work, including the maintenance thereof.

6.02 If the Land is subject to any charge or claim arising from or related to the Work, the Developer agrees to immediately commence and pursue legal action to remove such charge.

6.03 The obligation of the Developer to indemnify the City will apply to all matters arising from or related to the Work excepting a bona fide action by the Developer against the City or an action arising from the negligence or willful misconduct of the City, its officials, officers, employees or authorized representatives.

1. **INSURANCE**

7.01 During the Term of this Agreement the Developer shall, at its own expense, maintain with insurers allowed by the laws of the province of Alberta to issue insurance policies in Alberta, and in forms satisfactory to the City, the following insurance policies:

1. a commercial general liability (CGL) insurance policy for bodily injury (including death) and property damage in an amount of not less than FIVE MILLION DOLLARS ($5,000,000.00) inclusive limit for any one occurrence and shall include:
2. The City of Calgary as an additional insured;
3. blanket contractual liability coverage;
4. a cross liability and severability of interests clause;
5. products and completed operations coverage; and
6. non-owned automobile liability;
7. an automobile third party liability insurance policy (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 shall include specific clauses or coverage as may be required by the City. If automobiles are not used in connection with this Agreement, the requirement for automobile third party liability insurance may be waived if requested by the Developer in writing, and at the sole discretion of the City.
8. 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.

7.02 During the term of any construction done in connection with or in any way related to this Agreement (and until work is completed and accepted by the City), the Developer will ensure that any contractor hired by it maintains a commercial general liability insurance policy for bodily injury (including death) and property damage in an amount of not less than FIVE MILLION DOLLARS ($5,000,000.00) inclusive limit for any one occurrence, including products and completed operations coverage, contractual liability coverage, a cross liability clause and naming the City as an additional insured.

7.03 The insurance policies mentioned in sections 7.1 and 7.2 shall include a provision for the City to be given thirty (30) days’ written notice prior to cancellation or material change restricting coverage of said policies of insurance; and the Developer shall immediately advise the City should said policies of insurance lapse or otherwise be discontinued.

7.04 If more than one entity constitutes the Developer, only one of the Developers is required to have the insurance policies set out in section 7.1, but the other Developers that are parties to this Agreement must be named insureds to such policies.

7.05 Prior to commencing any work or operation under this Agreement the Developer shall provide a certificate of insurance indicating compliance with the insurance requirements listed above to the City, and furnish documentary evidence satisfactory to the City of the renewal or continuance of such insurance during the life of this Agreement within ten (10) business days of any expiry date(s) thereof.

7.06 In the event of the Developer failing to provide the City any of the documents mentioned in section 7.5, or otherwise failing to prove to the City the existence of any required insurance, the City shall at its discretion have the right to purchase on behalf, and at the expense of the Developer, the required insurance coverage.

7.07 The Developer agrees that the insurance requirements herein shall not be construed to and shall in no way whatsoever limit or restrict the liability of the Developer.

7.08 The Developer shall be responsible for the payments of every deductible amount provided in any policy of insurance furnished pursuant to this Agreement.

7.09 The Developer agrees that from time to time the City may require the Developer to increase the insurance otherwise required under this Agreement. The Developer agrees to make any changes to the insurance as may be required by the City within thirty (30) days of being notified. The City shall act reasonably in requesting any change to the form or amount of insurance required.

1. **COMMENCEMENT OF CONSTRUCTION**

8.01 The Developer shall, prior to commencement of the Work, determine the location of all utilities and service lines of any type located in the vicinity of the Work and shall not interfere with the operation of such utilities and service lines without first obtaining prior authorization from its respective operator.

8.02 The Developer shall, prior to the commencement of the Work, obtain all permits required by the City for construction of the Work and the contents of the permits shall form part of and be binding upon the parties to this Agreement.

8.03 The Developer shall submit Grade Sheets to the Director, Water Services and the Director, Roads for all deep utilities and surface improvements respectively to be installed, which shall be in a format satisfactory to the Director, Calgary Approvals Coordination.

8.04 The Work on the Land shall not take place without the Developer:

1. having submitted, or caused to be submitted, the Plan and Specifications to the City and the Director, Calgary Approvals Coordination having reviewed and accepted the Plan and Specifications to ensure general conformity with the City’s Standards and Specifications;
2. requesting and receiving the written permission of the Director, Calgary Approvals Coordination to commence construction;
3. providing 48-hours telephone notice to the appropriate City Inspector’s business units and the owners of all utilities; and
4. providing the City with both the Performance and Maintenance Securities and the Administration and Inspection Fees.
5. **WORK**

9.01 Pursuant to the terms and conditions of this Agreement, the Developer shall proceed expeditiously with the Work on the Land.

9.02 The Work shall be performed:

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 or safety enactment;
4. in accordance with the Plan and Specifications; and
5. to the satisfaction of the Director, Calgary Approvals Coordination.

9.03 The Developer shall restore the Land to a condition satisfactory to the Director, Calgary Approvals Coordination and in accordance with the Plan and Specifications and this Agreement.

9.04 Following Completion of the Work, the Developer shall remove all non-permanent objects including the construction debris, barricades and other similar objects not identified on the Plan and Specifications. If the Developer fails to remove the aforesaid objects, the Developer agrees:

(a) that the City may remove them at the expense of the Developer;

(b) to reimburse the City for all costs associated with the removal; and

(c) that the City is entitled but not obliged to use the Performance and Maintenance Security to recover all costs associated with the removal.

9.05 Backfilling, compaction and density testing shall be carried out by the Developer in accordance with Section 504.08.00 of The City of Calgary Standard Specifications for Calgary Waterworks Construction, and Sections 403.07.00 and 403.08.00 of The City of Calgary Standard Specifications for Sewer Construction.

9.06 The Developer shall on a progressive basis and to the satisfaction of the Director, Calgary Approvals Coordination:

(a) restore all Land as specified in the Work or, if not specified in the Work, then to its original conditions or equivalent; and

(b) remove all non-permanent objects and installations not part of the permanent installation of the Work including construction debris, barricades and other objects not shown on the approved Plan.

1. **PUBLIC PROTECTION**

10.01 Where the Work under this Agreement is performed or is to be performed at or in the vicinity of any place to which the public has or may gain access, the Developer shall do all things necessary to protect each and every member of the public from personal injury (including death) caused or contributed to by any act or acts or omissions of the Developer, its employees, contractors, engineers or agents or in any way connected with the performance of the Work by the Developer. Without limiting the generality of the foregoing or the responsibility of the Developer to assure the protection of the public as hereinbefore provided, the Director, Calgary Approvals Coordination may, but is not obligated to, instruct the Developer:

1. to take all reasonably necessary or desirable actions to protect the public from injury (including death) arising from or in conjunction with the performance of this Work;
2. to cease any action related to the Work which in the opinion of the Director, Calgary Approvals Coordination is causing or may cause or increase the danger to the public;
3. to close off access by the public to any area or portion of the area in the vicinity of the Work which cannot be made sufficiently safe; or
4. to provide alternate safe access for the public where such access has been restricted by the Work;

Upon such instruction the Developer shall ensure all Work is done to the satisfaction of the Director, Calgary Approvals Coordination.

10.02 The Developer shall perform the Work in accordance with all federal, provincial and municipal laws, bylaws and regulations.

10.03 Any failure to take precautions for the public safety is the sole responsibility of the Developer, and the Developer agrees to absolve the City of all liability arising therefrom and indemnify the City as set out in Paragraphs 6.1 through 6.3, regardless of whether the City has instructed the Developer to take action in accordance with the provisions of Paragraph 10.1.

10.04 If there is an Emergency, the City may undertake any necessary repair or replacement of the Work. The cost of such action shall be at the sole expense of the Developer and the Developer agrees to immediately reimburse the City for the same. The Developer also agrees that the City is entitled but not obliged to use the Performance and Maintenance Security to recover all costs associated with the costs of such action.

**11. INSPECTIONS**

11.01 The City Inspector may, but is not obligated to make an Inspection at any time during the construction of the Work, or during the Maintenance Period.

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

11.03 Inspection is for the benefit of the City and an Inspection, or failure to make an Inspection, shall not relieve the Developer of any obligations it may have under this Agreement or at law, including, but not limited to:

1. its obligations under this Agreement including performance and quality of workmanship or materials;
2. the duty of the Developer to comply with federal, provincial or municipal bylaws, enactment or regulations; and
3. the Developer’s liability for negligence, nuisance, damage or injury caused in any manner whatsoever by the Developer, its employees or agents.

11.04 The City has the right to impose, and the Developer is obligated to pay an Administration and Inspection Fee.

11.05 Notwithstanding the presence of a City Inspector on the job site and any comments, rulings, or directions he may give, the Developer shall be fully responsible for the fitness of the Work for the purpose for which it was intended.

**12. CONSTRUCTION COMPLETION CERTIFICATE**

12.01 Upon Completion of the Work, the Developer shall provide written notice to the Director, Calgary Approvals Coordination requesting joint inspection of the Work.

* 1. The Developer shall submit to the Director, Calgary Approvals Coordination, for each of the CCC Items, four (4) original copies of the Construction Completion Certificates and four (4) copies of an 81/2 inch by 11 inch map indicating the area that the infrastructure has been completed, to the satisfaction of the Director, Calgary Approvals Coordination, duly signed and sealed by the Developer's Consulting Engineer. Where applicable the Developer shall attach to each copy of the Construction Completion Certificate a separate certificate duly signed, and sealed, by a registered Professional Engineer of Alberta who is licensed to practice in the Province of Alberta, certifying that all the backfilling operations carried out by the Developer have been carried out in accordance with the backfilling requirements as specified in Section 504.08.00 of The City of Calgary Standard Specifications for Calgary Waterworks Construction, and Sections 403.07.00 and 403.08.00 of The City of Calgary Standard Specifications for Sewer Construction, and shall attach copies of the soil moisture/density tests.

12.03 If through the joint inspection the City determines there are defects or deficiencies in the Work, the CCC shall not be issued by the Director, Calgary Approvals Coordination and a list of identified defects and deficiencies shall be returned to the Developer. The Developer shall correct the said defects and deficiencies and any other defects or deficiencies, upon the completion of which the Developer shall request a further inspection of the Work.

* 1. Once the Work is completed to the satisfaction of the Director, Calgary Approvals Coordination, the Director, Calgary Approvals Coordination shall issue the Construction Completion Certificate.

**13. DELAY**

13.01 If the Work is not completed during the current construction season, the City may levy a fee, at the sole discretion of the Director, Calgary Approvals Coordination, to cover administrative costs and any and all additional expenses incurred by the City as a result of a further Inspection.

**14. MAINTENANCE**

14.01 The Developer shall maintain the Work during the Maintenance Period.

14.02 After the issuance of the CCC by the City, the Developer shall be responsible for any and all repairs and replacements of the Work as are deemed necessary as determined in the sole opinion of the Director, Calgary Approvals Coordination, from any cause whatsoever, until the issuance of the FAC.

14.03 If, during a Maintenance Period, the Director, Calgary Approvals Coordination identifies any defect in the Work and the Director, Calgary Approvals Coordination requires repairs or replacements to be made, the Developer shall, within thirty (30) days of delivery of notice, cause such repairs or replacements to be made.

14.04 If, in the opinion of the Director, Calgary Approvals Coordination, an Emergency requires immediate action to repair the Work, the City is entitled to take such action without prior notice to the Developer. The cost of such action shall be at the sole expense of the Developer and the Developer agrees to immediately reimburse the City for the same. The Developer also agrees that the City is entitled but not obliged to use the Performance and Maintenance Security to recover all costs associated with the costs of such action.

14.05 The Developer agrees that:

1. maintenance of the Work is a continuous operation which must be carried until issuance of the FAC; and
2. the Developer shall not be relieved from liability of any kind or from its indemnity obligations under Paragraphs 6.1, 6.2 and 6.3 until all repairs or replacement required by the Director, Calgary Approvals Coordination have been made.

14.06 The Developer shall not be responsible for:

1. damage caused by persons other than the Developer, its employees, agents or sub-contractors; or
2. any condition which, in the opinion of the Director, Calgary Approvals Coordination:
3. results from normal wear and tear; or
4. is beyond the Developer’s control.

**15. FINAL ACCEPTANCE CERTIFICATE**

15.01 Two months prior to the projected expiration of the Maintenance Period as specified in each CCC, the Developer shall inspect the Work and shall correct all defects noted due to damage and other causes. The Developer shall then submit to the City, for each of the FAC Items outlined in Schedule “A”, items 5 and 6, four (4) original copies of the Final Acceptance Certificate, duty signed and sealed by the Consulting Engineer, and four (4) copies of an 8 ½ inch by 11 inch map indicating the area that the infrastructure has been completed.

15.02 After receipt of the FAC the Director, Calgary Approvals Coordination shall make an Inspection within one (1) month of the receipt thereof, provided always that weather conditions permit a proper Inspection. If the Work is acceptable to the Director, Calgary Approvals Coordination, the Director, Calgary Approvals Coordination shall issue the FAC.

15.03 Notwithstanding Paragraph 15.2, if defects or deficiencies are apparent in the opinion of the Director, Calgary Approvals Coordination, the FAC shall be returned to the Developer unsigned with a list of the defects and deficiencies. The Developer shall correct the said defects and deficiencies and any other defects and deficiencies and then resubmit to the City the FAC.

15.04 Prior to the issuance of the last FAC by the Director, Calgary Approvals Coordination, the Developer shall submit "As-Built" Drawings of the Work satisfactory to the Director, Calgary Approvals Coordination.

**16. DEFECT OR DEFAULT BY DEVELOPER**

16.01 In the event that the Developer fails to effect the repairs or replacements as required by the Director, Calgary Approvals Coordination, in accordance with Paragraphs 12.3, 14.3 and 15.3, within thirty (30) days of written notice to the Developer, the City shall have the right, and is entitled, but not obligated, to take all or any of the following actions:

1. to remedy or cause to be remedied the defect or default;
2. to terminate this Agreement upon fifteen (15) days’ further notice to the Developer;
3. to complete or cause to be Completed the Work; and
4. to recover from the Developer the costs of any action taken by the City pursuant to (a) or (c) above, and any other monies owing to the City by the Developer under this Agreement, by drawing upon the Performance and Maintenance Security or by any or all other methods of recovery available to the City pursuant to the *Municipal Government Act,* R.S.A. 2000, c. M-26, as amended, or any successor legislation.

**17. TERMINATION**

17.01 The City may terminate this Agreement upon fifteen (15) days’ written notice to the Developer.

17.02 The Developer may not terminate this Agreement prior to all Final Acceptance Certificates being issued by the City for Work and the submission of the “As-Built” Drawings under Paragraph 5.9. After that time, the Developer may terminate this Agreement upon thirty (30) days’ written notice to the City.

1. **NOTICES**

18.01 Any notice or communication to be given or made to either party shall be in writing and may be sufficiently given if messenger delivered or faxed to such party at the following addresses:

To the City: The City of Calgary, Calgary Approvals Coordination (#8032)

 5th Floor, Municipal Building, 800 Macleod Trail S.E.

 Calgary, Alberta T2P 2M3

 Fax: 403-268-3636

 Attention: Director, Calgary Approvals Coordination

With a copy to: The City of Calgary, Law, Legal Services (#8053)

12th Floor, Municipal Building, 800 Macleod Trail S.E.

Calgary, Alberta T2P 2M3

Fax: 403-268-4634

Attention: Manager, Planning & Environment

and as to the Developer at the address noted in Schedule “A”,

or at such other address as any party may from time to time notify the others. Any such notice, communication or request whenever mailed shall be deemed to have been received on the fourth (4th) business day next following the date is was mailed or if by FAX, the business day next following the date of transmission; provided that if mail or FAX are interrupted by strikes, slowdown or other cause, then any of the said services which have not been so interrupted shall be utilized or the notice, communication or request shall be personally delivered to ensure prompt receipt. Notices and communication, including demands and certificates, made in connection with this Agreement must be in writing.

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

**19. GENERAL**

19.01 This Agreement is governed by the laws of Alberta.

19.02 A term of this Agreement, or a right created under it, may not be waived or varied except in writing signed by both the City and the Developer.

19.03 Time shall be of the essence of this Agreement.

19.04 The provisions of this Agreement are binding on the parties to it and their agents, successors and assigns.

19.05 The City and the Developer acknowledge that this Agreement contains the entire terms, conditions and warranties relating to the Work agreed to by the City and the Developer and that there are no terms, conditions, warranties or other agreements except as stated in this Agreement. All previous verbal or written agreements as to the Work between the City and the Developer, if any, are hereby cancelled and are of no force or effect.

19.06 If any covenant or term of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement other than the term, covenant or portion hereto which is invalid or unenforceable, shall not be affected thereby and each covenant or term of this Agreement shall be valid and in force to the extent permitted by law.

19.07 The City and the Developer acknowledge that the headings in this Agreement have been inserted for convenience of reference only.

19.08 This Agreement shall be in force and effect for the duration of the Term.

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

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness

|  |  |
| --- | --- |
| **Approved as to Content** | **Initials** |
| Bus. Unit: Infrastructure PlanningName: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |  |
| **Approved as to Form****by Law, Legal Services** | **Initials** |
| Name: File: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Click here to enter text. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Click here to enter text.**THE CITY OF CALGARY**Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Coordinator, Public InfrastructurePer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City Clerk |

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of the City of \_\_\_\_\_\_\_\_\_\_\_\_, in the Province of Alberta, **MAKE OATH AND SAY THAT**:

1. I was personally present and did see \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ named in the within instrument, who is(are) known to me to be the person(s) named therein or identification was provided to me, duly sign the instrument.
2. The instrument was signed at the City of \_\_\_\_\_\_\_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. That I believe the person(s) whose signature(s) I witnessed is(are) at least eighteen (18) year of age.

SWORN BEFORE ME at the City of )

\_\_\_\_\_\_\_\_\_\_\_\_, in the Province of Alberta, )

this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_. )

 )

 )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Commissioner for Oaths in and for Alberta ) Signature of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 )

Name of Commissioner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE “A”**

 **Agreement No. \_\_\_\_\_\_\_\_\_\_**

 **DP No. \_\_\_\_\_\_\_\_\_\_**

 **DSSP No. \_\_\_\_\_\_\_\_\_\_**

 **CD No. \_\_\_\_\_\_\_\_\_\_**

* + - 1. **WORK** means the construction to be completed on the Land and described as follows:

Construction within the Land, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and all associated rehabilitation, generally as shown on the Plan.

Construction within the Land, of approximately \_\_\_\_m of \_\_\_\_mm diameter sanitary sewer main including all appurtenances and all associated rehabilitation, in and on the Land, generally as shown on the Plan.

Construction within the Land, of approximately \_\_\_\_m of \_\_\_\_mm diameter storm sewer main including all appurtenances and all associated rehabilitation, in and on the Land, generally as shown on the Plan.

Construction within the Land, of sewer and water service connections from the main to the property line of:

Click here to enter text.

Construction within the Land, of approximately \_\_\_\_m and gutters, approximately \_\_\_\_m of sidewalk, residential/commercial driveway crossings and all associated rehabilitation in and on the Land, generally as shown on the Plan.

Construction within the Land, of approximately \_\_\_\_m2 of asphaltic roadway surface and all associated rehabilitation in and on the Land, generally as shown on the Plan.

Grading, loaming and seeding of all disturbed areas.

Page 2

1. **DEVELOPMENT SITE**

**Municipal Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Calgary

**Legal Description:**

Click here to enter text.

1. **PLAN AND SPECIFICATIONS** – Attached as Attachment “1”
2. **ADMINISTRATION AND INSPECTION FEE**

Remit payment in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_) Dollars (includes applicable G.S.T.) for inspection and administration fees in the form of a certified cheque, in accordance with the following schedule and which is due and owing upon execution of this Agreement:

Sewer inspection the amount of $\_\_\_\_\_\_\_\_\_\_

Water inspection the amount of $\_\_\_\_\_\_\_\_\_\_

Street inspection the amount of $\_\_\_\_\_\_\_\_\_\_

Administration fees the amount of $\_\_\_\_\_\_\_\_\_\_

(amounts include applicable G.S.T.)

**5. CCC ITEMS**

Watermains and hydrants*;*

Sanitary sewers*;*

Storm sewers*;*

Water and sewer service connections*;*

Sidewalks, curbs, gutters, and catch basin leads;

Paved roads and walkways*;*

Paved lanes and gravelled lanes*;*

Boulevards and median landscaping*;*

Sound attenuation*;*

Parks*;* and

Surface drainage facilities*.*

Page 3

1. **FAC ITEMS**

Watermains and hydrants;

Sanitary sewers;

Storm sewers;

Water and sewer service connections;

Sidewalks, curbs, gutters, and catch basin leads;

Paved roads and walkways;

Paved lanes and gravelled lanes;

Boulevards and median landscaping;

Sound attenuation;

Parks; and

Surface drainage facilities (except concrete swales).

**7. PERFORMANCE AND MAINTENANCE SECURITY** required in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_) Dollars.

1. **ADDRESS FOR THE DEVELOPER**

Click here to enter text.

Click here to enter text., Click here to enter text.

Email: Click here to enter text.

Fax: Click here to enter text.

Attention: Click here to enter text.

1. **ALL ATTACHMENTS FORM PART OF THIS SCHEDULE “A”.**

**Attachment “1”**

**PROJECT:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DRAWINGS:**

Entitled:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Prepared By**:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Prepared For:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| **Drawing No.** | **Title** | **Date Issued** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |