

PUBLIC ROW INDEMNIFICATION AGREEMENT

THIS PUBLIC RIGHT OF WAY (ROW) INDEMNIFICATION AGREEMENT (the “Agreement”) made and entered into by and between [DEVELOPER NAME], with an address at [DEVELOPER BUSINESS ADDRESS] (“Developer”), and **Metropolitan Sewer Subdistrict**, with an address at 120 Augusta Arbor Way, Greenville, SC 29605 (“Metropolitan”) this ____ day of _____, 20__.

RECITALS

A. Developer is constructing and developing a _____ project known as the “_____” near _____ Road in Greenville County, South Carolina (the “Developer Project”).

B. The Developer Project will require the installation of a sanitary sewer line under a portion of [ROAD NAME], as more particularly shown on Exhibit A attached hereto (the “Roadway Work”).

C. Recognizing that [ROAD NAME] is a Public ROW and the Roadway Work must be performed subject to the rules and regulations adopted by the Public ROW agency from time to time, the parties are entering into this Agreement to establish responsibility for the performance of the Roadway Work within [ROAD NAME] and any right of way area associated therewith (collectively, the “Public Right of Way”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants, conditions and agreements hereinafter set forth, Developer, Contractor and Metropolitan hereby agree as follows:

1. The Roadway Work shall be constructed by the Developer’s Contractor within the Public Right of Way in accordance with any and all applicable terms of the Public ROW agency and plans and specifications. To the extent that any of the Roadway Work shall exceed the boundaries of the Public Right of Way or require relocation of the line, Developer shall be responsible for securing and acquiring any new or additional rights of way and easements from the owners of the properties affected. All construction and installation involved in connection with the Roadway Work shall be accomplished entirely within the boundaries of the Public Right of Way or new right of way acquired by Developer, in a good and workmanlike manner, and in accordance with the rules, regulations and requirements of Metropolitan and of any other governmental agency having jurisdiction thereof. Further, all construction and installation involved in connection with the Roadway Work shall be accomplished in a timely manner and without any disruption or interference with service afforded to constituents and customers of Metropolitan. Upon completion of the construction operations, the condition of the Public Right of Way shall be restored, per Public ROW agency requirements and as nearly as practical to the same or a better condition as it existed prior to commencement of the Roadway Work.

2. All-costs of designing, engineering, right of way acquisition, constructing and installing the Roadway Work shall be the responsibility of and borne solely by Developer, it being the intention of the parties that Metropolitan incur no cost or expense in connection with the construction and installation of the proposed sanitary sewer line to serve the Project, except as may be otherwise expressly agreed between the Developer and Metropolitan.

3. The Roadway Work involved shall be performed by a water and sewer licensed contractor(s) authorized to transact business in the State of South Carolina which shall provide and maintain insurance of the type and with the minimum limits set forth on **Exhibit "B"** attached hereto and made a part of this Agreement. The term "Owner" as contained in **Exhibit "B"** shall be deemed to include Metropolitan and the term "Engineers" shall be deemed to include [INSERT NAME OF **ENGINEERING COMPANY**].

4. Developer, Engineer and Developer's Contractor shall and each does hereby agree to indemnify, defend and hold Metropolitan harmless from any claim, cause of action, loss or damage to person or property of any type or nature arising out of or relating to the Roadway Work, including without limitation, court costs and expenses and reasonable attorneys' fees incurred by Metropolitan. Further, nothing contained herein shall be deemed or construed as an agreement by Metropolitan to be responsible for the costs of the construction, repair, or maintenance of any improvements to be made to the Right of Way by Developer hereunder or to subject the interests of Metropolitan to any mechanics' lien or lien resulting from such costs. Neither Developer nor Developer's Contractor shall have the power or authority to allow any lien and will not permit any lien to be placed upon the Right of Way, or the fee title to the property crossed by the Right of Way, resulting from any work performed, materials furnished, or obligations incurred by or at the request of Developer or Developer's Contractor; and in the case of the filing of any such lien, Developer and Developer's Contractor will promptly pay, satisfy, and remove or bond off such lien.

5. Upon completion of the Roadway Work and inspection and approval of the same by Metropolitan, Developer shall dedicate the line so constructed and installed to Metropolitan for public use; and Developer shall have no further right, title or interest in and to the line except that the line shall be available to serve the Project in accordance with rules and regulations of Metropolitan now or hereafter in effect.

6. This Agreement shall be construed in accordance with the laws of the State of South Carolina and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, legal representatives, successors and assigns.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Public ROW Indemnification Agreement as of the date and year first above written.

Witnesses:

DEVELOPER

Signature: _____

Printed Name: _____

Title: _____

Witnesses:

METROPOLITAN
Metropolitan Sewer Subdistrict

Signature: _____

Printed Name: _____

Title: _____

EXHIBIT A
ROADWAY WORK
(ATTACHED)

EXHIBIT B

(Insurance Requirements)

A. The Developer or its contractor shall, at its own expense, provide and maintain insurance of the type and with minimum limits indicated herein:

<u>Type of Insurance</u>	<u>Minimum Limits</u>
(1) Workmen's Compensation and Employer's Liability	
(1.1) Workmen's Compensation	Statutory Limits
(1.2) Employer liability	\$100,000/500,000 (occ/agg)
(2) Comprehensive General Liability	
(2.1) Contractor's Public Liability	
(2.2) Contractor's Protective (contingent) Liability	
(2.3) Contractual liability - (Broad form)	

Residual coverage (to insure the assumed liability under the foregoing Indemnity Agreement, excluding coverage for liability of the indemnity for which Owner's Protective Insurance is afforded). See also paragraph D. below.

- (2.4) Projects/Completed Operation liability
- (2.5) Personal Injury and Liability

(Note: The contractual and employee exclusion shall be deleted)

The following minimum limits shall apply to all of the above items.

\$1,000,000 o.c.c./2,000,000 a.g.g.

- (2.6) The above Commercial General Liability Policy shall include coverage for the explosion, collapse and underground hazards, and loss arising from nuisance, taking, whether inverse taking or direct taking, or negligence.
 - (2.7) The Property Damage Liability shall include the "Broad Form Property Damage" endorsement.
- (3) Comprehensive Automobile liability, including owned, non-owned, and hired vehicles (Business auto liability, symbol 1):

Bodily Injury and Property Damage \$1,000,000
each occurrence

(4) Umbrella Liability

Comprehensive Umbrella \$3,000,000
Excess of (1.2), (2), and (3.0) each occurrence

- B. All of the above insurance shall be obtained on occurrence forms from an insurance carrier or carriers satisfactory to Metropolitan.
- C. Before work is started, the Developer or its contractor shall furnish Metropolitan with a certificate of insurance or a copy of the endorsement showing evidence that the interests of all parties mentioned herein are protected by the policies in a like manner as the Developer or its contractor and that they are not subject to subrogation by the insurance company.
- D. The certificates of insurance for Contractual liability-Residual Coverage Insurance as required under A. (2.3) above shall include the following statement: "Includes Contractual liability Coverage for Hold Harmless Agreement in Contract
- E. The required Public Liability Policies covering property damage shall include an "Installation Floater or Rigger's Insurance Policy" covering the full amount of any damage to machinery and equipment. Property damage insurance coverage shall include explosion, collapse and underground hazards.
- F. The Developer or its contractor shall provide complete Operations Insurance, written so as to protect Metropolitan in event of damage to Metropolitan's and/or any other person's property, and for bodily injury or death, in the amounts shown above.
- G. Policies shall include Blasting Coverage.
- H. The contractor shall provide All Risk Builder's Insurance, including but not limited to fire, extended coverage, vandalism and malicious mischief, collapse, flood and earthquake to be furnished by the contractor. This insurance shall be in the name of Metropolitan, the Developer and its contractor and subcontractors and shall cover the work, materials and equipment which are on the site and incorporated or to be incorporated in the work to the full extent of their insurable value.