

Developer / Contractor Legal Agreement Check List

Developer's Company name (DBA) _____

Mailing Address _____

Contractor's Company (DBA) Name _____

Mailing Address _____

Engineer Company Name _____

Engineer's Name _____

TMS of the parcel being developed (all that apply) _____

“EXHIBIT A” 8-1/2” x 11”

delineate limits of sewer system upgrade/ relocation

label existing Metro manhole numbers from start to stop of upgrade/
construction.

Deed book and page of dedication and conveyance of existing line and easement to
Metro

State the reason for revising the sewer system. IE [Upgrade, Relocation, Realignment,
etc.] is required for the proposed development.

Copy of Contractor Insurance Policy. Policy must meet all requirements on “EXHIBIT
B” of Developer/ Contractor Agreement.

Notification Letter Example

To Whom It May Concern,

*This letter is being sent as a courtesy to inform you that there is an existing 25' sewer easement on your property located at **address of property work will be performed on**. The easement, along with the sewer line located within the easement, are owned and operated by Metropolitan Sewer Sub-district. With Metropolitan's permission, **Developer's business name** contractor will be making improvements to this sewer line in the near future. **Developer's business name** will provide 72-hours written notice prior to the contractor mobilizing and beginning work on your property. The property will be returned to the present condition to the extent practical. Please call me if you have any questions concerning this letter.*

Sincerely,

Developer

Print Name Developer Representative

Developer Representative Phone Number

Sewer Line Upgrade/Relocation/Realignment Agreement

AGREEMENT

(Sewer Line Upgrade/Relocation/Realignment)

This Agreement made and entered into by and between _____, with an address at _____ (“Developer”), _____, with an address at _____ (Contractor”), and **Metropolitan Sewer Subdistrict d/b/a MetroConnects**, with an address at 120 Augusta Arbor Way, Greenville, SC 29605 (“Metropolitan”) this ____ day of _____, 2022 (the “Effective Date”).

RECITALS:

A. Developer is the owner of certain real property located within the boundaries of Metropolitan’s jurisdiction in Greenville County, South Carolina identified on the Greenville County Tax Map #[s] _____ and briefly described as follows: approximately _____ acres located on or near _____ in Greenville County, South Carolina, and being property acquired by Developer by deed recorded in Deed Book _____, Page _____, in the Office of the Register of Deeds Office for Greenville County (the “Property”). The Developer intends to construct and develop a _____ development on the Property (the “Project”)

B. The current sanitary sewer service to the Property presently does not have the _____ required by the development plans for the Project proposed by Developer.

C. Pursuant to that certain Right of Way Agreement recorded in Deed Book _____, Page _____ in the Office of the Register of Deeds for Greenville County, Metropolitan currently owns, operates and maintains a sanitary sewer line within the boundaries of a right of way twenty-five feet (25’) in width (twelve and one-half feet (12.5’) on either side of the sewer line) through and across other lands near or adjoining the Property (the “Right of Way”).

D. Developer desires to go upon a portion of the Right of Way to perform the Work (as defined below and depicted on **Exhibit A** attached hereto).

E. Metropolitan has agreed to allow Developer to perform the Work within the Right of Way pursuant to the terms and conditions hereinafter set forth.

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. Metropolitan consents and hereby grants permission to Developer to _____ within the boundaries of that portion of the

Right of Way as depicted on **Exhibit A** attached hereto and made a part hereof (the “Work”). The Work shall be performed by Developer and Contractor in strict compliance with the terms, provisions and conditions of this Agreement and in accordance with the plans and specifications prepared for Developer by _____ as approved in writing by Metropolitan (the “Work Plans”). The Developer shall be responsible for acquiring any and all access and ingress rights/easements to the Right of Way area in order to perform the Work.

2. The Work shall be performed and constructed by the Developer and Contractor in accordance with any applicable terms of the existing Right of Way and the terms of this Agreement. To the extent that any of the Work or ingress/egress shall exceed the boundaries of the Right of Way or require relocation of the sanitary sewer 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 Work shall be accomplished entirely within the boundaries of the Right of Way or new right of way acquired by Developer, in a good and workmanlike manner, and in accordance with the Work Plans approved by Metropolitan and all 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 Work shall be accomplished in a timely manner and without any disruption or interference with service afforded to constituents and customers of Metropolitan by the line. Prior to the commencement of the Work, Developer and Contractor shall provide Metropolitan at least five (5) business days prior written notice (the “Notice Letter”) setting forth the date that the Work will commence within the Right of Way (the “Commencement Date”) and the anticipated completion date (the “Completion Date”). The Notice Letter shall also include documentation that Developer has provided written notice of the Work to be performed by Developer to all property owners abutting or touching the boundaries of the Right of Way.

3. After the Commencement Date, Developer and Contractor shall diligently pursue all work to completion and in any event not later than the Completion Date. Upon completion of the construction operations, the condition of the Right of Way shall be restored, as nearly as practical to the same or a better condition as it existed prior to commencement of the Work (recommended that Contractor document existing ROW conditions via video). In the event that the Commencement Date has not occurred within ninety (90) days of the Effective Date, then this Agreement shall automatically terminate, and the Developer and Contractor shall have no further right to enter into the Right of Way to perform the Work.

4. All-costs of designing, engineering, right of way acquisition, constructing and installing the 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 repair and upgraded line to serve the Property, except as may be otherwise expressly agreed in writing between the Developer and Metropolitan.

5. The Contractor hereby represents and warrants that it is a water and sewer (WL) licensed contractor(s) authorized to transact business in the State of South Carolina and agrees to 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

6. Developer and 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 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 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 Contractor; and in the case of the filing of any such lien, Developer and Contractor will promptly pay, satisfy, and remove or bond off such lien.

7. Within thirty (30) days of Metropolitan’s inspection, developer testing, and CCTV acceptance (punch list items addressed), Developer shall deliver to Metropolitan copies of all recorded easement documents, as-built information (in PDF format) and electronic/CAD files relating to the Work. Upon review and acceptance of the documents, Developer shall dedicate and convey ownership of any sanitary lines, manholes, valves, adjuncts, facilities and appurtenances constructed or installed in connection with the Work (the “Upgraded Sewer Facilities”) to Metropolitan for public use pursuant to that certain dedication attached hereto as **Exhibit C** (the “Dedication Agreement”). Upon the delivery of the fully executed Dedication Agreement to Metropolitan, Developer shall have no further right, title or interest in and to the Upgraded Sewer Facilities that the Upgraded Sewer Facilities shall be available to serve the Property in accordance with rules and regulations of Metropolitan now or hereafter in effect. Notwithstanding anything contrary herein, the following must be completed within one hundred (180) days of the Commencement Date: (i) the completion and acceptance of the Upgraded Sewer Facilities by Metropolitan and the (ii) delivery of the fully executed Dedication Agreement and other deliverables listed in this Section 7 to Metropolitan from Developer.

8. Any notices which may be permitted or required under the terms and provisions of this Agreement shall be in writing and shall be deemed to have been duly given, except as otherwise provided in this Agreement, as of the date and time received by the parties to whom the notices are sent. Such notices shall be deemed received upon personal delivery or by Federal Express or equivalent overnight courier and evidenced by a notation on the records of that courier that such notices were delivered to the parties at the following addresses or a such other address as a party shall notify the other parties in writing:

Metropolitan:	Metropolitan Sewer Subdistrict 120 Augusta Arbor Way
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Greenville, SC 29605
Attention: _____

Developer: _____

Attention: _____

Contractor: _____

Attention: _____

9. If Developer or Contractor shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of three (3) days after written notice by Metropolitan, then Metropolitan shall have the right to (i) immediately terminate this Agreement and complete the Work at Developer's sole cost and expense; (ii) institute an action for specific performance; and/or (iii) pursue any available remedies under law or equity against Developer and Contractor.

10. 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. Developer shall not be permitted to assign any right or interest in this Agreement, in whole or in part, without the prior written consent of Metropolitan, which consent may be withheld for any reason.

11. No change, modification, or waiver of any provision of this Agreement shall be valid or binding unless it is in writing and signed by all parties to this Agreement.

12. The waiver by any party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party, nor shall any waiver operate or be construed as a rescission of this Agreement.

13. The parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this Agreement, that the parties have the sole right and exclusive authority to execute this Agreement, and that the parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or legal right that is the subject of this Agreement.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one

and the same Agreement. Facsimile and email signatures are binding as originals. All signatures are deemed to have been executed in Greenville County, South Carolina. The parties agree that executed copies of this Agreement shall be valid and binding, in the event that the original executed counterparts to the Agreement are missing.

15. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter

[Signatures on following page.]

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

DEVELOPER

By: _____

Print Name: _____

Its: _____

CONTRACTOR

By: _____

Print Name: _____

Its: _____

METROPOLITAN

Metropolitan Sewer Subdistrict d/b/a MetroConnects

By: _____

Name: _____

Its: _____

EXHIBIT A
Description of Work

[TO BE 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). <u>See also paragraph D. below.</u>	
(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.

and installation of the Upgraded Sewer Facilities or any activity within the Metropolitan Right of Way in connection therewith, including without limitation, court costs and expenses and reasonable attorneys' fees incurred by Metropolitan. Nothing contained herein shall be deemed or construed as an agreement by Metropolitan to be responsible for the costs of construction, installation or repair of the Upgraded Sewer Facilities prior to the dedication of same to Metropolitan or to subject the interests of Metropolitan to any mechanics' lien or lien resulting from said work. Grantor hereby represents and warrants that the Upgraded Sewer Facilities herein conveyed are not subject to any mortgage, judgment or lien, nor to any encumbrance which would interfere with Metropolitan's ability to operate, maintain, repair, replace, relocate or otherwise own and utilize the lines and system described above.

[SIGNATURE PAGE TO FOLLOW]

