

## INDEMNITY AND INSURANCE AGREEMENT

This **INDEMNITY AND INSURANCE AGREEMENT** ("Agreement") is entered into by and between Anderson County, South Carolina, a body politic and political subdivision of the State of South Carolina ("County"), \_\_\_\_\_, a corporation or limited liability company organized and existing under the laws of the State of \_\_\_\_\_ which its principal place of business located at \_\_\_\_\_ ("Developer") and the general contractor for the project referenced below, \_\_\_\_\_, a corporation or limited liability company organized and existing under the laws of the State of \_\_\_\_\_ which its principal place of business located at \_\_\_\_\_ ("General Contractor").

**WHEREAS**, the Developer is installing utility infrastructure within right-of-way owned and maintained by the South Carolina Department of Transportation ("SCDOT") which will run longitudinally along side the following SCDOT road/highway: \_\_\_\_\_ ("Project");

**WHEREAS**, General Contractor has been engaged by the Developer to build the Project;

**WHEREAS**, SCDOT requires that the County be a signatory to the required encroachment permit; and

**WHEREAS**, the County wishes to accommodate the Developer and facilitate the Project provided Developer and General Contractor supply the indemnity and insurance required under this Agreement as more fully set forth below.

**NOW, THEREFORE** in exchange for good and valuable consideration, including the promises contained herein, the receipt and sufficiency of which is expressly acknowledged, the parties agree as follows:

1. No County Responsibility for Design and Construction. Developer and/or General Contractor shall be solely responsible for the design and construction of the Project.
2. Limitation on Liability, Release, and Indemnification.
  - 2.1 To the fullest extent allowed by South Carolina law, the Developer and General Contractor hereby release the County from any claim or liability for damages that the Developer and/or General Contractor may have arising out of the Project, including but not limited to, property damage, injury or death.
  - 2.2 The Developer and General Contractor shall hold the County harmless and indemnify the County, its employees, agents, officers, County Council

members, and employees from and against any and all claims, actions or causes of action and for any and all damages, liabilities, claims, penalties, expenses and costs, including, but not limited to, attorney's and other professional fees, arising out of the Project, but only to the extent caused by the negligent or intentional acts or omissions of the Developer and/or General Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing contained in this Paragraph shall be construed as requiring indemnity by the Developer or the General Contractor for any injury, damage, loss or claim proximately caused by or resulting from the sole negligence of the County.

2.3 Developer and General Contractor shall assume all risks and responsibilities for losses of every description in connection with the Project that can be attributed either directly or indirectly to the Developer and/or General Contractor.

2.4 All indemnification and release provisions in favor of the County shall survive the expiration or sooner termination of the Agreement.

3. Status of Developer and General Contractor as Independent Contractors. It is expressly agreed that Developer's and General Contractor's status hereunder are that of independent contractors and neither are an agent, employee, servant, partner, nor joint venturer of the County. Developer and General Contractor are exclusively responsible for and in control of the Project until such time as it is dedicated and accepted by the County. Neither Developer or General Contractor nor any person hired by them shall be considered employees of the County for any purpose.

4. Insurance. The Developer and General Contractor shall, at their sole cost and expense, procure and maintain in full force and effect until the Project is dedicated and accepted by the County, insurance in the types and limits specified below. In addition to the insurance coverage and limits listed herein, the Developer and General Contractor shall obtain any other insurance coverage as may be required by law.

4.1 General Liability Insurance:

4.1.1 Limits of Liability: \$2,000,000 in the aggregate and \$1,000,000 per occurrence.

4.1.2 Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent Developers, employees and volunteers as additional insureds, joint liability, and broad form property damage (including completed operations).

4.1.3 Pollution Endorsement: Said policy shall have a pollution endorsement and/or any other necessary endorsement specifically insuring against claims or claim expenses arising from the Project.

4.2 Workers' Compensation and Employers' Liability Insurance:

4.2.1 Limits of Liability: Workers' Compensation - Statutory Limits.

4.2.2 Employers' Liability - Statutory Limits.

4.3 Automobile Liability Insurance:

4.3.1 Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

4.3.2 Coverage: Owner, non-owned and hired vehicles.

4.4 All insurance provided for in this section shall be maintained on an occurrence basis and obtained under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of South Carolina. The County requires that Certificates of Insurance evidencing the existence of such insurance shall be submitted to the County at least ten (10) days before the Project is started.

4.5 With the exception of the Automobile Insurance Policy, each policy and Certificate of Insurance shall contain an endorsement or other acceptable evidence of insurance executed by a person authorized to bind insurance coverage naming the County as additional insured party thereunder; and a provision that at least thirty (30) days prior written notice be given to the County in the event coverage is canceled or non-renewed or coverage is reduced.

4.6 If the Developer and/or General Contractor desire to self insure any or all of the coverages listed in this section, they shall provide to the County documentation that such self insurance has received all the approvals required by law or regulations, as well as its most recent audited financial statement. Any coverage which is self insured shall provide the same coverage limits and benefits as the coverages listed in this Paragraph 5.

4.7 The County reserves the right to review categories and levels of insurance coverage held by the Developer and General Contractor in an ongoing program of risk management. The Developer and/or General Contractor will be notified, in writing, of coverage requirements as determined by this review and the Developer and General Contractor agree to secure such requested coverage.

4.8 The Developer and General Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Paragraph 5. Neither the securing of required insurance on behalf of any subcontractor nor the provision of the subcontractor's insurance information/documentation shall relieve Developer or

General Contractor of their respective obligations under this Agreement including, but not limited to, the indemnification obligation contained in Paragraph 2.

5. Testing. The Developer, at its sole expense, shall hire an independent, third party material testing firm to determine if compaction of the sewer trench meets SCDOT standards. All testing methods will meet SCDOT standards. The testing frequency will be every lift ( a lift will be 6-inches of loose material deep) and every 200 linear feet of trench.
6. Bonding Requirements. The Developer and/or General Contractor will provide the County with a performance and payment bond equal to the cost of the Project. The bond(s) required herein will be maintained for twelve (12) months after acceptance of the Project by the County.
7. Notices. Any and all notices or other communications required to be given to, or delivered to any party will be in writing and will be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or without personal delivery, when three (3) business days have elapsed following deposit of the notice or other communication in the United States mail, first-class postage prepaid, certified, return receipt requested, and:

If to County, addressed to:  
addressed to:

Anderson County

735 Michelin Boulevard

Anderson, SC 29626

Attn: Holt Hopkins

If to Developer,

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

If to General Contractor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Any party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

8. No Waiver of Breach. No failure by any party to this Agreement to insist upon the strict performance by the other of any covenant, agreement, term or condition contained herein, or to exercise any right or remedy consequent upon a breach of any covenant, agreement, term or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of the Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

9. Applicable Law to the Contract Documents and Venue. This Agreement shall at all times be construed and interpreted in accordance with the laws of the State of South Carolina, without regard to conflict of law principles. Any and all legal proceedings between the parties shall be brought exclusively in the Anderson County, South Carolina Court of Common Pleas.

10. Amendment and Merger Clause. This Agreement constitutes the full and final agreement between the parties and supersedes all prior verbal or written communications. This Agreement may be modified only by a writing signed by both parties.

**AGREED**, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ANDERSON COUNTY:**

**DEVELOPER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**GENERAL CONTRACTOR**

By: \_\_\_\_\_

Its: \_\_\_\_\_