

**City Code, Chapter 8: SUBDIVISION REGULATIONS**

**Appendix D3: MINOR SUBDIVISION HAZARDOUS WASTE INDEMNITY AGREEMENT**

**MINOR SUBDIVISION  
DEVELOPMENT CONTRACT AND  
HAZARDOUS WASTE INDEMNITY AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is by and between the City of Columbus, Anoka County, Minnesota, hereinafter referred to as the “City,” and [fee owner and contract purchaser], hereinafter [collectively] referred to as “Developer.”

**INSTRUCTIONS FOR MODIFYING THIS FORM IF A PERFORMANCE SECURITY OR PAYMENT SECURITY IS NECESSARY:**

1. IF the proposed Minor Subdivision contemplates construction by the subdivider of public improvements or installation by the subdivider of elements of a Wetlands Mitigation or Replacement Plan or of a Stormwater Management Plan or other such required work (e.g., installation of Buildable Areas),  
AND IF such work is planned to occur after the approval and recording of the documents which evidence the subdivision by metes-and-bounds description,  
THEN utilize (and copy into this agreement) the relevant portions of Part A., Form A., Appendix D1, and require the subdivider to post the necessary performance security and payment security.
  
2. IF the proposed Minor Subdivision contemplates construction by the subdivider of public improvements or installation by the subdivider of elements of a Wetlands Mitigation or Replacement Plan or of a Stormwater Management Plan or other such required work (e.g., installation of Buildable Areas),  
AND IF such work is planned to occur before the approval and recording of the documents which evidence the subdivision by metes-and-bounds description,  
THEN utilize (and copy into this agreement) the relevant portions of Part A., Form B., Appendix D1, and require the subdivider to post the necessary performance security and payment security.

**WITNESSETH:**

WHEREAS, Developer has obtained preliminary approval for a minor subdivision containing dedications easements to the City of Columbus over the property described on the attached Exhibit “A”, which is by reference incorporated herein;

WHEREAS, Developer desires to obtain final subdivision approval from the Columbus City Council, and the City desires that all improvements as required by the Columbus City Code be installed and constructed in compliance with said City Code;

WHEREAS, To induce City to accept said Dedications, Developer has agreed to indemnify City against loss or damage from hazardous substance liability; and

WHEREAS, The purpose of this agreement is to specify the terms and conditions of the indemnity.

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NOW, THEREFORE, incorporating the recitals above, and to induce City to accept said Dedications, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

- a. "Hazardous Substance" means hazardous substance or waste, toxic substances, polychlorinated biphenyls, asbestos or related materials and also includes, but is not limited to substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601, et seq. (Federal Superfund Act) as amended by the Superfund Amendments and Re-Authorization Act of 1986 (SARA), Hazardous Materials Transportation Act, 49 U.S.C. Sec. 6901, et seq., Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991, et seq., or as "hazardous substance," "hazardous waste" or "pollutant or contaminant" in the Environmental Response and Liability Act. Minn. Stat. Sec. 115B.01, et seq., or the Petroleum Tank Release Cleanup Act, Minn. Stat. Sec. 115C.01, et seq. The term does include petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel or mixtures thereof.
  - b. Hazardous Substance Claim ("Claim") means discovery of Hazardous Substance on the real property to be platted or receipt of a notice, claim, demand or complaint from any government agency or office or from any third party for the payment of damages, costs or expenses for Hazardous Substance disposal or remedial action pursuant to federal, state or local law relative to the Project and relating to Hazardous Substance deposited on the real property prior to the time that City becomes an owner of the Dedications, including, but not limited to, legal, engineering, testing and other fees.
  - c. Hazardous Substance Liability ("Liability") means the occurrence of a claim, and all damages, costs and expenses in connection therewith, including, but not limited to, legal engineering, testing and other fees, and including a final determination or judgment entered or agreed upon.
2. Notice. If a Claim occurs, the party (either Developer or City) receiving notice thereof shall immediately notify the other party in writing.
3. Disposal. If a Claim occurs, Developer will proceed immediately and diligently after receipt of notice of the Claim to dispose of or secure the Substance in full compliance with all applicable laws and regulations, and if Developer fails to commence disposal or security within five (5) days after receipt of notice of a Claim, City may, at its option, proceed to so dispose of or secure the Substance, provided, however, if the Developer, in good faith, believes that the claimed Substance is not in fact a Hazardous Substance, Developer shall have the right to challenge such Claim in an appropriate forum before commencing such disposal work.
4. Legal Actions. In the event legal action is taken against City or the Dedications regarding a Claim or commenced by Developer to challenge a Claim, Developer shall defend such action at its

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own expense, and City shall cooperate with Developer in the defense thereof, or, at City’s election, assume the defense, at the expense of Developer. City shall have the right to join Developer as party defendant in any such legal action brought against it or the Dedications, and Developer hereby consents to the entry of an order making it a party defendant.

5. Indemnity. Developer shall at all times indemnify and save City harmless from and against all Liability which City may for any cause and at any time sustain or incur by reason of a Claim. This indemnity shall survive all transactions and inspections between City and Developer. This indemnity shall not be modified, except by subsequent written agreement between the parties. The Developer’s obligations, covenants and liabilities under this agreement are not limited.

6. Payment By Developer. Developer shall pay, upon demand by City, the amount of any Liability paid by City. Developer shall satisfy and discharge any judgment recovered against City or the Dedications by reason of such Liability promptly after the entry thereof, unless an appeal is taken and any bonds required to stay the collection thereof are procured and filed by Developer. If a final judgment is entered against City or the Dedications after appeal, Developer shall satisfy and discharge such judgment. City may, in its reasonable discretion, make any payment as required herein, and Developer shall promptly repay to City the amount of such payment, with interest.

7. Written Amendment. This Contract may be modified, changed or amended only by subsequent writing by and between the same parties hereto.

8. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties, their legal representatives, and their heirs, successors and assigns.

CITY OF COLUMBUS  
ANOKA COUNTY, MINNESOTA  
CITY COUNCIL

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_

STATE OF MINNESOTA        )

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COUNTY OF ANOKA            )            ss.  
  )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ Mayor of the City of Columbus, and by \_\_\_\_\_, City Clerk, on behalf of the City of Columbus, a municipal corporation, under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  )            ss.  
COUNTY OF ANOKA        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  )            ss.  
COUNTY OF ANOKA        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  )            ss.  
COUNTY OF ANOKA        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  )            ss.  
COUNTY OF ANOKA        )

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The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT DRAFTED BY:

City of Columbus  
16319 Kettle River Blvd.  
Forest Lake, MN 55025  
(612) 464-3120

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**EXHIBIT "A" to**

**Minor Subdivision Hazardous Waste Indemnity Agreement**

Legal description of lands subject to this Contract:

216853.2

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*[Appendix D3 amended by Ord. No. 07-02, effective March 1, 2007.]*