

Off-Site Works Construction and Inspection Agreement

Off Site Works Construction and Inspection Agreement

AGREEMENT

THIS AGREEMENT made as of the [Click here to enter text.](#) day of [Click here to enter text.](#), 20_ [Click here to enter text.](#).

B E T W E E N:

[Click here to enter text.](#)
(hereinafter collectively called the “Developer”)

OF THE FIRST PART;

- and -

[Click here to enter text](#)
(hereinafter collectively called the “Consultant”)

OF THE SECOND PART

-and

THE CORPORATION OF THE CITY OF KITCHENER

(hereinafter called “the City”)

OF THE THIRD PART;

WHEREAS the Developer proposes to construct the off-site works for the property, commonly referred to as [Click here to enter text](#), and reference by that number by the City of Kitchener (as hereinafter defined as “the works”), as shown on the attached Schedule’A”.

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto mutually agree as follows:

1. The Developer agrees to construct the works in accordance with the City of Kitchener Development Manual and all other applicable Provincial and Regional Standards set out in the Development Manual, as amended from time to time, hereinafter collectively referred to as “the Design Standards”; a copy of which can be found on the City’s website at www.kitchener.ca. The Developer agrees to comply with the Design Standards.

2. The Developer agrees to construct the works in accordance with the approved construction drawings and the Plan must be stamped by the consultant professional engineer and approved by the City.
3. The Developer hereby acknowledges that it has retained the services of the Consultant for the provision of engineering services for the development of the works and as part of that retainer, the Developer requires the Consultant to monitor and inspect the works undertaken and provide to the City the required certifications, identified in the Design Standards all at the expense of the Developer. All invoicing and payment for the Consultant services shall be undertaken directly between the Developer and the Consultant.
4. The Consultant acknowledges that the Works must be constructed in accordance with the Design Standards; a copy of which can be found on the City's website at www.kitchener.ca and that the Consultant will take into account the Design Standards., as amended from time to time, when certifying any component of the development of the Works.
5. The Consultant agrees to administer, observe and certify that the construction is in accordance with the approved construction drawings and the Plan must be stamped by the consultant professional engineer or another professional engineer and approved by the City.
6. The Consultant agrees that it shall skilfully and competently perform its services in accordance with generally accepted engineering principles when it is monitoring and inspecting the work undertaken by the Developer, for which it will provide certification in accordance with the Design Standards.
7. The Developer and the Consultant shall notify the City immediately in the event the retainer between the Developer and Consultant for the Works is terminated or suspended for any reason. The Developer agrees to stop all work immediately until such time as a new Consultant is appointed to the City's satisfaction. The Developer agrees to hire a replacement Consultant within 2 weeks of said termination; the Developer acknowledges that failure to do so will result in the City calling upon the Letter of Credit to complete any work related to public safety.
8. The Consultant shall insure its undertaking, business and equipment so as to protect and indemnify and save harmless the City from any and all costs, claims, demands, damages, fines, suits, actions, and judgments made, brought or recovered against the City, for any bodily injury, death or property damage caused by or resulting from the operation and business carried on by the Consultant under this Agreement.
9. The Consultant shall maintain liability insurance acceptable to the City throughout the term of this Agreement. Coverage shall consist of a comprehensive policy of public liability and property damage insurance in an amount of not less than \$2,000,000 per occurrence. **Such insurance shall name The Corporation of the City of Kitchener as an additional insured** thereunder and shall be endorsed to include a Cross-Liability Endorsement with a Severability of Interests Clause and Blanket Contractual Liability.
10. The Consultant shall take out and keep in force until three (3) years after this Agreement is no longer in effect, Professional Liability insurance in the amount of \$1,000,000 providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement.
11. The Developer shall insure its undertaking, business and equipment so as to protect and indemnify and save harmless the City from any and all costs, claims, demands, damages, fines, suits, actions, and judgments made, brought or recovered against the City, for any bodily injury, death or property damage

caused by or resulting from the operation and business carried on by the Developer under this Agreement.

12. The Developer shall maintain liability insurance acceptable to the City throughout the term of this Agreement. Coverage shall consist of a comprehensive policy of public liability and property damage insurance in an amount of not less than \$2,000,000 per occurrence. **Such insurance shall name The Corporation of the City of Kitchener as an additional insured** thereunder and shall be endorsed to include a Cross-Liability Endorsement with a Severability of Interests Clause and Blanket Contractual Liability.
13. The Consultant and the Developer shall forward Certificates of Insurance on either the City's Forms (**STANDARD CERTIFICATE OF INSURANCE and CERTIFICATE OF PROFESSIONAL LIABILITY INSURANCE** located on the internet at <http://www.kitchener.ca/tender.asp>) or produce their own form evidencing this insurance with the executed Agreement. These Certificates shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail to the City. It is also understood and agreed that in the event of a claim any deductible or self-insured retention under this policy of insurance shall be the sole responsibility of the Consultant and the Developer and that this coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be considered excess of the Consultant's and Developer's insurance and shall not contribute with it. The City reserves the right to modify the insurance requirements as deemed suitable.
14. Neither the Consultant or any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of the Works, or have an interest either directly or indirectly in the construction of the Works.
15. Neither the Developer or the Consultant shall assign this Agreement in whole, or in part, without the prior written consent of the City, which consent may not be withheld without reason but the City may impose terms and conditions.
16. The Developer and the Consultant permit the City, its employees or persons authorized by the City, to inspect, at all reasonable times or otherwise review the services performed, or being performed, by the Developer and the Consultant, their contractor, sub-contractor, officers, directors, employees, sub-consultants and agents in regards to the Works and the premises where they are being performed.
17. Any dispute, difference or disagreement between the parties hereto in relation to the Agreement may, with the consent of all three parties, be referred to arbitration. No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Works or in the business or other affairs of either the Developer or the Consultant. The award of the arbitrator shall be final and binding upon the parties. The provisions of The Arbitrations Act, S.O., 1991, as amended shall apply.
18. The Consultant is and will at all times remain an independent contractor, retained by the Developer and the Consultant is not and shall not represent itself to be the agent or employee of the City.
19. This Agreement supersedes all previous agreements, arrangements or understandings between the three parties whether written or oral in connection with or incidental to the Works.
20. Prior to work commencing on site the Developer must obtain a road permit from Transportation Services at The City of Kitchener. Further all works must be performed in conformance with Ontario Manual Book 7 Temporary Conditions.

21. The Developer accepts all roads being accessed under this agreement in “as is” condition and The City of Kitchener is not obligated to undertake any action or remediation on any road to accommodate or as a result of the Developers work. The Developer acknowledges that certain risks which may include, but are not limited to, motor vehicle traffic, ground water and soil contamination exist when entering onto or beneath the road allowance pursuant to the Work and as such the Developer agrees to release and forever discharge The City of Kitchener, its elected officials, officers, employees, agents, contractors, successors and assigns (“the Releasees”) from any and all claims that the Developer or Consultant may have or may have in the future against the Releasees and to release the Releasees from any and all liability for any loss, damage, expense or injury the Developer or Consultant may suffer as a result of the Works and entrance upon or beneath the road allowance, due to any cause whatsoever, including negligence, breach of contract, or breach of any statutory or other duty of care, including any duty of care owned under the Occupiers’ Liability Act, R.S.O. 1990, c. O.2, as amended, on the part of the Releasees.
22. The Developer and the Consultant and their heirs, executors, administrators and assigns will indemnify and save harmless the City of Kitchener from any and all claims, damages, suits, actions and judgments made, brought or recovered against the City of Kitchener and from all loss, costs, damages, charges or expenses that may be incurred, sustained or paid by the City of Kitchener by reason of the granting of the Works, including any loss resulting from any violation under the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, together with defence costs, fines and penalties. The Developer shall be considered the “constructor” for the purposes of the Occupational Health and Safety Act. The indemnity provisions of this Agreement shall survive the termination of the Agreement.

IN WITNESS THEREOF the parties hereto have caused to be executed those presents by their officers properly authorized in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED

DEVELOPER

Click here to enter text.

(DEVELOPER NAME)

per: _____
(Signing Authority with Title/Position)
I have the authority to bind the Corporation

Type Name: Click here to enter text _____
 Title: Click here to enter text _____

per: _____
(Signing Authority with Title/Position)
I have the authority to bind the Corporation

Type Name: Click here to enter text _____
 Title: Click here to enter text _____

CONSULTANT

Click here to enter text.

(CONSULTANT NAME)

per: _____
(Signing Authority with Title/Position in Firm)
I have the authority to bind the Corporation

Type Name: Click here to enter text _____
Title: Click here to enter text. _____

per: _____
(Signing Authority with Title/Position in Firm)
I have the authority to bind the Corporation

Type Name: Click here to enter text _____
Title: Click here to enter text. _____

Click here to enter text _____
(Consultant Name)

Click here to enter text _____
(Street Address)

Click here to enter text _____
(City, Province)

Click here to enter text _____
(Postal Code)

THE CORPORATION OF THE CITY OF KITCHENER

Per: _____
(Signature)
Name: Justin Readman
Title: Executive Director, INS