

UPON CONDITION

1. The Owner is hereby permitted to construct the CULVERT and perform the GRADING in and over the EASEMENT in accordance with the Grading and Utility plan that was submitted to the City Engineer (SD 1.2) and is attached herein (Attachment A).
2. That the Owner hereby assumes all liability for: 1) Any damage to the existing sanitary sewer and its appurtenances in the EASEMENT, hereinafter referred to as "FACILITIES"; 2) Any damage to said CULVERT; 3) Personal injuries to a person or persons resulting from construction, maintenance or use of said CULVERT on, over and abutting said FACILITIES and said EASEMENT; and will save and keep the City clear and harmless at all times from any and all claims from any negligence on the part of the Owner, or of persons other than the City; and in case the City shall suffer or become liable for any loss or damage whatsoever resulting from negligence on the part of the Owner arising from or growing out of operation, inspecting, maintaining, repairing, reconstructing, enlarging or using said CULVERT, then the Owner shall reimburse the City for the full amount of the loss, cost or damage which the City may have sustained, or for which it may become liable; provided however, that if any loss, cost or damage results from the joint negligence of the parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses, which, under law, the City is entitled to raise.
3. That the culvert shall be at least thirty-six (36") inch diameter pipe to be laid at a slope no less than 0.007 feet/feet and covered with a minimum of at least three (3') feet of earth. The ditch area shall be graded to accept roadway drainage and directed to the culvert through a minimum of three (3) inlets.
4. That the owner shall be responsible for the cleaning, maintenance and proper operation of the CULVERT, as well as the drainage from the surface area where the CULVERT was built. The city shall have the right to inspect, clean and repair if the owner neglects the maintenance of the same. The owner may be liable for maintenance costs if the City has to perform any maintenance work in the CULVERT. The owner shall not seek any reimbursement from the City for cost related with construction, maintenance, repairs and/or removal of the CULVERT and GRADING. The Owner shall restore the ditch to existing conditions if the culvert is removed in the future.
5. That any subsequent costs for the replacement of any part of said culvert and drainage or their contents will be borne by the Owner, its successors or assigns, at no cost to the City.
6. That all provisions of the EASEMENT which are not inconsistent with this agreement shall remain in full force and effect.
7. That this agreement shall extend to and apply to both parties, City and Owner, including heirs, personal representatives, successors or assigns, as may be or may become applicable.