



ADVISORY BULLETIN

March 2012

(Updated March 2016)

Subject:

Standard form indemnity agreement for excavations adjacent to streets

Background:

Between 2008 and 2011, The City was actively involved in monitoring and or directing activities on as many as 24 suspended construction sites at any given time. The City took action whenever the owner was unable or unwilling to ensure that public safety and City infrastructure were adequately protected. The City utilized public funds when taking these actions and while most of the funds were secured as a debt owed on respective tax roll, there were several occasions where full cost recovery was not achieved. Ultimately, Council directed Administration to pursue Security to mitigate risks posed by large scale construction projects.

The City controls and regulates the use of streets in the city and restricts and regulates activities on, adjacent, or near to streets through bylaw [20M88](#).

With respect to excavations adjacent to streets, the bylaw states:

47. If the Chief Executive Officer of The City of Calgary or his designate of the opinion that an excavation adjacent to the Street does or may create a danger to persons using the Street, or may be liable to damage the Street, they may require the person making the excavation to apply and obtain authorization in the form of an indemnification agreement furnishing such necessary performance security and certificate of insurance to secure the performance of the excavation and saving harmless the City and public utilities as may be affected by the excavation from any liability, loss, or damage arising from the existence of the excavation. Such security and insurance shall be in the amounts established by the Chief Executive Officer of The City of Calgary or his designate.

A summary of the Council direction on this matter is as follows:

- On 2008 November 03, Council approved LPT2008-68, directing Administration “to report back to LPT no later than 2009 March with a plan for security and remedial options for suspended and abandoned sites on approved developments; and an update on the status of remedial actions taken by The City.”

- On 2009 April 6, Council approved LPT2009-22 directing Administration to:
 1. “Take any and all actions necessary to ensure the costs of taking remedial actions on suspended or abandoned construction sites are recovered;
 2. Discuss with industry the requirement of a performance security for the purpose of securing the performance of an excavation and associated shoring; and
 3. Report back to LPT no later than 2009 April 15 with recommendations to amend Building Permit Bylaw 64M94 and the results of industry discussions.”
- On 2009 April 27, Council approved LPT2009-29 giving three readings to the amending bylaw to allow for two extensions each for a period of up to 180 days and directing Administration to: “Proceed with a working committee including industry representatives for the purpose of ensuring performance securities associated with excavation and shoring are appropriate; & Consider opportunities to create public spaces, & Report back to LPT with the follow-up report on suspended construction sites, including, but not limited to, partnerships between developers and other partners; & Report back to LPT no later than 2009 June 10 with Administrations recommendations.”
- On 2009 June 22, Council approved LPT2009-41 directing Administration to:
 1. “Revise the existing Roads indemnity agreement and associated securities for the purpose of securing the performance of an excavation;
 2. Continue discussions with industry to explore further options that will address joint City and industry concerns regarding major construction projects;
 3. Continue to review suspended construction sites as they arise, for green space opportunities, either permanent or temporary; and
 4. Report back to LPT on the results of industry discussions no later than June 2010.”
- LPT2010-42: On 2010 July 05, Council approved LPT2010-42 by consent directing Administration to develop financial securities in consultation with industry to mitigate risks posed by large scale construction projects.

Advisory:

In accordance with Council direction (see Background above) The City has developed a new Temporary Shoring Indemnification Agreement (the Agreement). The Agreement is effective immediately and it combines the previous temporary shoring indemnity agreement with section 47 of the Calgary Streets Bylaw which considers such things as the risks to City infrastructure should the performance of the excavation become a concern. This is a joint Calgary Roads and Calgary Building Services matter with industry input from stakeholders in April 2012 on the process for the agreement.

As with the previous temporary shoring indemnity agreement, a Security (irrevocable letter of credit, bank draft or certified cheque) must be submitted. The amount of the security will be calculated based on the cost to fill the entire excavation with compacted fill. Accordingly, the security will be based on a standardised rate per cubic metre of compacted fill plus 15

per cent. The rate has been set at \$25 per cubic meter with the understanding that the Security can be adjusted at The City's discretion (as per section 47 above) to take into account other considerations for increasing or decreasing this amount. Should the construction of the project reach grade level the developer will have an opportunity to request a reduction of the amount of the Security. The conditions under which this can be achieved are specified by the Indemnification Coordinator with Calgary Roads.

As per standard practice, building permits will not be released until all applicable indemnification agreements have been executed.

Calgary Building Services
Planning & Development