

Construction Management Agreement – 3900 Wisconsin Avenue, NW

This Construction Management Agreement outlines the framework the parties will follow for the duration of the construction of a mixed-use project at 3900 Wisconsin Ave. NW (the “Project”). The agreement addresses such things as communication, how to deal with the impacts of the construction, how to handle complaints and more. The parties entering into the agreement include the McLean Gardens Community Association and NASH-Roadside 3900 Wisconsin, LLC (“Roadside”) and ANC3C. All parties, the Contractor (and its subcontractors), ANC representatives and the Neighborhood Advisory Group will be given a copy of this agreement and shall comply with its provisions for the success of the Project. McLean Gardens and Roadside have collectively developed the contents of these construction management guidelines.

1. CONSTRUCTION

Definitions

The Neighborhood Advisory Group (NAG) shall include the McLean Gardens engineer or another designee selected by the McLean Gardens Board of Directors, the representative for ANC3C06, a member of the McLean Gardens Community Association Board of Directors, and two community members to be selected by the McLean Gardens Board of Directors.

Roadside is the authorized representative of NASH-Roadside 3900 Wisconsin, LLC.

Communication

- The NAG will identify a member to serve as a construction liaison/community representative (the “Liaison”) as well as a secondary contact.
- Roadside will also identify a primary contact to serve as a liaison to the NAG. Roadside will also designate secondary and tertiary contacts in the event the primary liaison or secondary contact are unavailable for any reason.
- Roadside will provide the Neighborhood Advisory Group with a construction update via an in-person meeting held on an as-needed basis (as agreed upon by Roadside and the NAG). The update shall contain: 1) information about construction activities since the last report; and 2) a look ahead of upcoming construction activities during the next month and the potential effects on the neighborhood. If the parties agree a meeting is not necessary, Roadside will provide the NAG with a written construction update every two weeks.
- The Neighborhood Advisory Group will disseminate the information to the community via the neighborhood listserv. In addition, the McLean Gardens Condominium Association office staff will distribute the information by email to residents, and the ANC3C will post the updates on its website.
- Roadside will maintain construction fencing around the property, which will contain information regarding how and where to find project updates (website address, contact information, etc.)

- The meeting schedule for the Roadside/NAG meetings will be shared with the community through joint Roadside– Neighborhood Advisory Group communications.
- If any additional material construction activities not included in the above-mentioned reports are required that may affect McLean Gardens, Roadside will communicate those to the Neighborhood Advisory Group Liaison and the ANC3C06 representative within 48 hours of learning about them.
- Roadside shall maintain a project page section on its 3900 Wisconsin website with a description of the project, a schedule, and any additional information important to the neighborhood about construction activities.
- All complaints/concerns during construction shall be consolidated by the NAG Liaison and directed to the Roadside representative by the NAG Liaison.
- Roadside shall be reasonably accessible during business hours. For emergencies, such as loss of property or safety issues, Roadside shall be reasonably accessible at any time.
- The Neighborhood Advisory Group liaison shall communicate all complaints to Roadside.
- If Roadside receives a complaint from the neighborhood, Roadside will alert the NAG.
- Roadside shall report immediately all emergency matters that have a material impact on the neighborhood to the Neighborhood Advisory Group Liaison and the ANC3C06 representative. A material impact is one that affects health, safety or property.
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Work Hours

- Construction is allowed when permitted by D.C. regulations. There will be no construction deliveries outside the construction hours allowed by D.C. regulations. On Saturday work hours shall be permitted as follows:
 1. All above grade exterior work, except demolition, may commence at 7am on the portion of the property that are north of the line that generally follows the south face of the existing building to remain and the north face of the new buildings to be constructed along the shared property line with McLean Gardens (see attached Exhibit A);
 2. All above grade exterior work on portions of the property that is within 50 feet of the shared property line with McLean Gardens may commence no earlier than 8am;
 3. All exterior demolition work on all portions of the property may commence no earlier than 8am;
 4. All excavation, below grade work, pouring of concrete and work inside enclosed spaces on all portions of the property may commence at 7am.

Parking

- Contractors and subcontractors working on the project will be instructed that they are not allowed to park their vehicles in the neighborhood. Roadside will endeavor to enforce this restriction to the extent practicable. Contractors will park company vehicles on site if construction allows. Once the garage is operational, Roadside will make such garage available for contractor parking as space permits.

- Roadside will accept deliveries through the Wisconsin Avenue site access points without exception.

Traffic

- Construction-related vehicles shall not stage at the construction site before 7 a.m. except that Roadside will establish a staging zone on the northern access road of the site where such staging will be permitted.
- Roadside shall coordinate with the District Department of Transportation (DDOT) and Donohoe Construction to the extent possible.
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- Flagmen shall be provided to facilitate traffic and the safe arrival and departure of construction vehicles.
- All loads on dump trucks shall be covered, and all excavation, concrete and dump trucks will be cleaned as necessary before leaving the site to minimize any gravel or dirt from leaving the construction site.
- Pedestrian movement on the sidewalks surrounding the construction area shall be maintained.
- Roadside shall develop a Traffic Management Plan in coordination with DDOT that shall be shared with ANC 3C and the McLean Gardens Condominium Association. ANC3C, the McLean Gardens Condominium Association and Roadside shall post the plan on their websites.

Site Management

- Roadside will be required to provide a safe and efficient site with controlled access.
- Roadside shall be required to provide wheel washing stations on site to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.
- All sidewalks adjacent to the site for the duration of the Project shall be maintained except for temporary closures during public space work.
- All construction materials and equipment, including construction storage, trailers, and dumpsters, shall be secured nightly on the site with construction fencing.
- Roadside shall lock all motorized equipment and vehicles, stack any building materials (i.e., brick, lumber, etc.), and comply with the D.C. approved erosion and sediment control plan daily.

Cleanliness

- Roadside shall require cleaning of rubbish, open dumpsters, and food and drink containers that have been secured in closed trash bins (if any), and construction debris during the normal construction workday and any other periods of work.
- Portable toilets shall be located away from immediate neighbors and serviced regularly, not less than each week, during approved construction hours.
- Trucks carrying debris, excavation materials, or fill will meet all DDOT requirements.
- Removal and replacement of dumpsters shall occur regularly and only during approved construction hours. Once the garage is operational, dumpster service from inside the garage may occur at night.
- Roadside shall ensure that any streets immediately adjacent to the construction site that serve as construction routes are kept clean of dirt and any trash and debris resulting from construction activities.

- Roadside shall require the implementation of a rodent control plan.
- Roadside shall meet all DOEE erosion and sediment control standards per the approved plan.

Noise

Roadside will abide by the D.C. Noise Control Act, which sets maximum noise levels for construction activities.

Light Pollution

Roadside shall ensure that light from the construction site will not shine directly into McLean Gardens residents' windows. Any lighting – such as nighttime security lighting – will be directed away from the neighborhood.

Hazardous Materials/Blasting

- Roadside shall install settlement and crack monitoring sensors in McLean Gardens buildings 1-6 (3801, 3807, 3815, 3823, 3831, 3839, 3847, 3855, 3863, 3871, 3879, 3887 and 3895 Porter Street NW, and 3801, 3811, 3821, 3800, 3810, 3820, 3830, 3840 and 3850 39th St. NW) prior to demolition, pile driving, and other construction related activities that may cause movement, cracking, settlement or seismic activity.
- Roadside shall conduct preconstruction surveys of structures and improvements to determine the condition of the McLean Gardens buildings 1-6 before demolition begins so that Roadside may monitor them for any settlement/cracking/movement during construction as provided above. Roadside shall share with McLean Gardens Condominium Association and the NAG the survey results.
- Roadside shall keep detailed records documenting work done to ensure compliance with all laws.
- If hazardous or toxic materials, including underground storage tanks, are identified and need to be abated or removed, removal and resident notification – shall be conducted in compliance with a D.C. Department of Energy and Environment-approved Corrective Action Plan and other applicable DOEE rules and regulations.
- Upon request by the NAG, Roadside will share quarterly reports filed with DOEE in connection with any open Leaking Underground Storage Tank (LUST) case to the extent that sharing same is not prohibited by any agreement to which Roadside may be a party.
- If any hazardous or toxic substances are used in conjunction with construction work, other than those typical of construction activity (i.e., gasoline, diesel, propane, etc.), such substances shall be used only if they can be used safely and in compliance with all applicable federal and D.C. laws.
- Should blasting be required during the construction project, Roadside shall notify the Neighborhood Advisory Group and the ANC3C06 representative at least 48 hours before the commencement of blasting activities. Roadside also shall provide written notification via door-to-door fliers to residents who live in buildings within 200 feet of the property.
- Roadside shall give at least 72 hours' notice to the ANC3C06 representative and the Neighborhood Advisory Group before commencement of pile-driving activities, if any.

DAMAGE CLAIMS

- If the McLean Gardens buildings sustain any damage as a direct result of Roadside's demolition or construction activities, Roadside shall pay for all associated repair costs.
- If the buildings cannot be occupied during repairs for damage resulting as provided in the immediately preceding sentence, Roadside shall compensate the neighbors for the reasonable costs of alternative lodging and reasonable per diems.

ENFORCEMENT

Complaints

- Roadside is committed to the speedy resolution of disputes with neighbors. Any construction-related complaint that cannot be resolved within one week of the Roadside-designated contact person receiving the complaint shall be referred to the Neighborhood Advisory Group.
- The Neighborhood Advisory Group shall make recommendations to assist with resolution.
- Roadside will be diligent in making known the provisions of this Agreement among all contractor personnel at and around the site.

AMENDING THE AGREEMENT

Any amendment to this Agreement must be in writing signed by all the parties hereto. No action or failure to act by any party hereto shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

Authorization, Non-Assignment. Each of the Parties to this Agreement represents and warrants to each of the other Parties that the signatory on behalf of each Party is authorized to sign for and bind that party, and that they are the sole holders of the claims alleged herein and have not assigned or transferred the rights to any claim that is the subject of this Agreement.

Severance of Unenforceable Provisions. If any provision or part of any provision of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability.

Choice of Law. This Agreement shall be interpreted, construed and enforced according to District of Columbia law, without regard to choice of law principles and venue for any disputes that arise out of or relate to this Agreement will be in the District of Columbia.

Counterparts, Interpretation. This Agreement may be executed in counterparts and each counterpart shall be and constitute a part of this Agreement and all counterparts

taken together shall constitute the Agreement, and be binding and effective on all Parties. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. Electronic signatures are accepted as effective under the provisions of the Uniform Electronic Transactions Act.

Entire Agreement. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. No other communications (written or oral) or documents shall be construed as a part of or used for interpretation of this Agreement.

EXHIBIT A:

Saturday Work Zone Buffer