

BALTIMORE COUNTY, MARYLAND

**PUBLIC WORKS AGREEMENT
AND LIMITED IRREVOCABLE POWER OF ATTORNEY**

WHEREAS, _____
(hereinafter "APPLICANT") represents that it is the owner, contract purchaser, or legally authorized representative of the owner or contract purchaser, of certain real property, known or proposed to be known as _____
(hereinafter ("THE DEVELOPMENT")), which APPLICANT desires to develop in accordance with applicable law;

WHEREAS, pursuant to the Baltimore County Code and duly promulgated regulations, APPLICANT is required first to obtain certain approvals and authorizations from Baltimore County, Maryland (hereinafter the "COUNTY") and its various departments, offices and agencies before necessary building permits may be issued;

WHEREAS, _____
(insert name of owner if different than applicant otherwise insert "same")
(hereinafter "PROPERTY OWNER"), is the title owner of the real property which is the subject of this Public Works Agreement (the "Agreement"), and joins in this Agreement for the limited purposes of granting a right of entry to facilitate the construction, inspection and completion of the improvements contemplated by this Agreement, and assuring that certain rights-of-way and other interests are conveyed to the COUNTY; and

WHEREAS, the COUNTY is willing to grant the required approvals and/or authorizations required for THE DEVELOPMENT, provided that APPLICANT first promises to perform certain obligations in accordance with applicable law, regulations and policies of the COUNTY, and comply with such other conditions as are more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing and for such other good and valuable consideration, the adequacy and receipt whereof is hereby acknowledged, the parties covenant and agree as follows:

1. TYPE OF PROPOSED DEVELOPMENT: _____
2. APPROVED PLAN/ HEARING OFFICER'S ORDER

The following documents, and comments contained therein, are incorporated by reference and made a part of this Agreement as if fully set forth:

- () Approved CRG Plan for THE DEVELOPMENT dated _____ and any subsequent approved amendment thereto.
- () Approved Development Plan for THE DEVELOPMENT dated _____ and any subsequent approved amendment thereto.
- () Hearing Officer's Order dated _____
- () Other _____

Subject to applicable COUNTY law, any inconsistencies between the text of the referenced documents and text of this Agreement shall be resolved in favor of this Agreement.

3. NAMES AND SCOPE OF ROADS TO BE CONSTRUCTED

See Exhibit A, which is attached hereto and incorporated herein by reference.

4. GRADING AND CONSTRUCTION OF IMPROVEMENTS

A. APPLICANT agrees that, prior to the issuance of any grading permit, APPLICANT shall complete and obtain an approved Environmental Agreement (“EA”) from the Department of Environmental Protection and Sustainability (“DEPS”). APPLICANT further agrees that prior to construction of any improvements under this Agreement, APPLICANT shall complete and obtain an approved Right-Of-Way Improvement Agreement (“RA”) and/or Utility Agreement (“UA”) from the Department of Permits, Approvals and Inspections (“DPAI”), as applicable, and (if not already obtained) an approved EA from DEPS.

B. Upon receiving a Notice to Proceed in accordance with applicable laws and regulations of the COUNTY, APPLICANT agrees to cause the construction of the improvements required by the documents referenced in paragraph 2 above, said construction to be carried out in a workmanlike manner, in accordance with the applicable laws and regulations of the State of Maryland, and of the COUNTY. These improvements include, but may not be limited to:

- Sewer Mains
- Sanitary Sewer Connections
- Water Mains
- Water Services
- Storm Drains
- Bridges and/or Culverts
- Traffic Signalization
- Storm Water Management/ Water Quality Facilities
- Roads
- Street Lights
- Sewage Pumping Station and Force Main
- Open Space
- Sidewalks
- _____
- _____

[NOTE: The above listed improvements are intended to conform to the documents referenced in paragraph 2 above and are identified for illustrative purposes only. If any of the above items are determined by the Department of Public Works to qualify as a “Major Facility”, refer to “Major Facility Addendum” which is made a part of this Agreement.]

C. The APPLICANT and PROPERTY OWNER (if different from the APPLICANT) hereby grant the COUNTY (including the COUNTY’s agents, contractors, officials and employees) an irrevocable right to enter onto the real property which is the subject of this Agreement for the purpose of inspecting grading and construction activities related to THE DEVELOPMENT and for any other purpose contemplated by the Agreement.

5. FINANCIAL ARRANGEMENTS

A. Fees and Charges

The APPLICANT agrees to pay, by cash, cashier’s check or certified check, all required fees and charges related to THE DEVELOPMENT, including but not limited to, review fees, inspection fees, sewer and water charges, meter fees and permit fees, in accordance with the executive orders, policies or regulations in effect at the time the invoice for those charges is paid by the APPLICANT.

B. Engineering Plans, Drawings and Plats

The APPLICANT shall be responsible for the cost of design and preparation of construction drawings and right-of-way plats, which shall be presented to the COUNTY for its review, revision and final approval.

C. Performance Security

Where performance security is required by applicable law or regulation to be posted with the COUNTY, APPLICANT shall deliver security when required in accordance with Section 32-4-305 of the Baltimore County Code (Rev. 7/2004) in the form of an irrevocable letter of credit, cash, or cashier's check, and in the amounts stated in any applicable EA, RA or UA related to THE DEVELOPMENT. If a letter of credit is used, it shall be in the form and contain the essential terms required by the COUNTY. The APPLICANT is fully aware of the provisions of Sections 32-4-309, 32-4-312, 32-4-313 of the Baltimore County Code, (Rev. 7/2004) and acknowledges the COUNTY's rights under those sections with regard to any security posted.

D. Recovery of Costs to Complete Improvements

Nothing contained in this Agreement shall be construed in any manner to require the COUNTY to undertake, fund or complete the required improvements for the benefit of the APPLICANT, PROPERTY OWNER or any third party. However, in the event the COUNTY proceeds to complete the improvements, the APPLICANT agrees to reimburse the COUNTY for all costs of completion over and above the amount of any available security recovered by the COUNTY, including, without limitation, COUNTY administrative costs, attorneys fees and pre-judgment interest at the rate of ten (10%) percent per annum. The APPLICANT further hereby authorizes the COUNTY to recover its cost of completion by placing a lien on any properties of record owned by the APPLICANT.

6. CONVEYANCE OF DEEDS

As further consideration for the COUNTY's approval of this Public Works Agreement, APPLICANT and PROPERTY OWNER (if different from APPLICANT) irrevocably covenant and agree to execute, or cause to be executed, and deliver to the COUNTY recordable, legal instruments for the following interests, all in accordance with the requirements of any COUNTY approved plan or plat related to THE DEVELOPMENT (including, but not limited to, grading plans, storm water management plans, construction drawings, site plans, record plats and documents referred to in paragraph 2 of this Agreement):

A. Permanent easements to lay, construct and maintain sewers, drains, drainage outfalls and drainage areas, water pipes and any other public improvements;

B. Fee simple title to all roads, streets, highways, storm water management areas, local open space or any other areas designated as being "offered for dedication" or "to be conveyed to" the COUNTY or other named entity;

C. Fee simple title or permanent easements to any offsite right-of-way;

D. Declaration of covenants to reserved areas, including, without limitation, greenways, forest buffer, wetlands and conservancy areas; and

E. Such other rights and interests as required by the COUNTY approved plans and/or plats.

All instruments contemplated by this paragraph (the "INSTRUMENTS") shall be prepared in conformance with the current "*Right of Way Manual*" published by DPAI and be certified by an attorney admitted to practice before the Court of Appeals of Maryland. The INSTRUMENTS shall identify the grantee as "Baltimore County, Maryland," unless otherwise required by the COUNTY approved plans and/or plats (i.e. State of Maryland or homeowners' association). All interests granted in said INSTRUMENTS shall be for no additional consideration, shall contain covenants of special warranty and further assurances, and shall be executed by all parties of interest.

7. IRREVOCABLE LIMITED POWER-OF-ATTORNEY

The COUNTY reserves the right at any time to request, in writing, the delivery of any or all of the INSTRUMENTS contemplated by this Agreement. In order to assure that the required INSTRUMENTS are delivered to the COUNTY, APPLICANT and PROPERTY OWNER (if different from the APPLICANT) hereby irrevocably nominate and appoint the Director of the Baltimore County Department of Permits, Approvals, and Inspections ("DPAI DIRECTOR") (or such official who may assume any of the powers and duties of the DPAI DIRECTOR) as his/its/their lawful attorney-in-fact with the limited power of (1) executing and delivering to the COUNTY any or all of the INSTRUMENTS contemplated by this Agreement, and (2) securing the necessary signatures of any other parties of interest so as to be able to deliver said INSTRUMENTS to the COUNTY.

This limited power of attorney, being a power-of-attorney coupled with an interest, is intended to be irrevocable, but shall terminate upon delivery and acceptance of all of the INSTRUMENTS contemplated by this Agreement. In the event that the COUNTY requests the APPLICANT or PROPERTY OWNER to deliver any required INSTRUMENTS, and such INSTRUMENTS are not delivered within thirty (30) calendar days of the date of the COUNTY's written request, the DPAI DIRECTOR may proceed to cause to be prepared and execute the appropriate INSTRUMENTS in his capacity as Attorney-in-Fact for the APPLICANT and/or PROPERTY OWNER.

8. OWNERSHIP OF PUBLIC IMPROVEMENTS/ INDEMNIFICATION OF COUNTY

In the event APPLICANT seeks to construct public improvements within any County-owned easement, based upon construction drawings approved by the Department of Public Works, COUNTY hereby authorizes and approves a right of entry to APPLICANT and its agents to perform said improvements thereon.

The COUNTY agrees that, upon construction of public improvements contemplated by this Agreement, and delivery to and acceptance by the COUNTY of title to rights-of-way for said improvements, the COUNTY shall accept and own said improvements. Acceptance and ownership by the COUNTY of any improvements shall not relieve APPLICANT from any maintenance obligations during any maintenance period set forth in applicable regulations. In addition, until the COUNTY has given written notice that the required maintenance period has been satisfactorily completed, APPLICANT agrees to indemnify, defend and save harmless the COUNTY (including its officers, agents and employees), from any and all costs, losses, expenses, claims and judgments (including attorney's fees) resulting from death or injury to person, or damage to property, arising out of or in connection with the construction, maintenance or lack of maintenance of the improvements contemplated by this Agreement, or the COUNTY's grant of the right of entry herein, whether performed by the APPLICANT or any third party, except this obligation shall not be applicable to injury, death or property damage arising from the sole negligence of the COUNTY (or its officers, agents or employees). The APPLICANT further shall maintain comprehensive general liability coverage with minimum limits of \$1,000,000 per occurrence, and shall, prior to authorization to proceed with construction of improvements, provide a certificate of such insurance coverage to the COUNTY identifying "Baltimore County, Maryland" as an additional insured.

9. RIGHT TO RECORD AGREEMENT

The parties hereto agree that, at the COUNTY's option, the COUNTY may record this Agreement among the Land Records of Baltimore County, in which event this Agreement, and the terms, obligations, covenants and conditions contained herein shall run with the land and shall be binding upon and inure to the benefit of the parties' respective successors, personal representatives, heirs and assigns.

10. BINDING ON HEIRS AND ASSIGNS

This Agreement shall be binding upon the parties hereto, their successors, personal representatives, and heirs and assigns.

11. REMEDIES

If This Agreement is violated in any manner by the APPLICANT or PROPERTY OWNER, the COUNTY may pursue all available remedies, whether legal or equitable, provided for by applicable law.

No remedy herein conferred upon or reserved to the COUNTY is intended to be exclusive of any other remedies provided for in this Agreement or by law, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the COUNTY may be exercised from time to time as often as may be deemed expedient by the COUNTY. If a lawsuit is required to be instituted due to the default of any party, the APPLICANT and PROPERTY OWNER consent to be subject to the jurisdiction of the appropriate court of law located within Baltimore County, Maryland.

12. NO ASSIGNMENT

This Agreement cannot be assigned to a separate person or entity without the written approval of the COUNTY. As a condition of its approval, the COUNTY may require the execution of a new public works agreement.

13. APPLICABLE LAW

This Agreement shall be given effect and shall be governed by and construed in all respects in accordance with the laws of the State of Maryland.

14. PREPARATION OF AGREEMENT

This Agreement is intended to repeat verbatim the language contained in the Master Public Works Agreement, revision date 10/01/04, maintained by the DPAI DIRECTOR. Any inconsistencies between the form of this Agreement and the Master Public Works Agreement shall be resolved in favor of the Master Public Works Agreement.

15. EXECUTION OF AGREEMENT

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

WHEREFORE, the Parties hereto have caused this Agreement to be executed individually or by their duly authorized representatives, as the case may be.

FOR THE APPLICANT:

Witness/Attest

(Type name of company or partnership above the signature line)

By: _____ (SEAL)
Type Name: _____
Type Title: _____
Date: _____

FOR THE PROPERTY OWNER (S)

Witness/Attest

(Type name of company or partnership above the signature line)

By: _____ (SEAL)
Type Name: _____
Type Title: _____
Date: _____

FOR BALTIMORE COUNTY

Recommended for approval:

Director of Permits, Approvals
and Inspections Date

Approved for Legal Form and Sufficiency *

Assistant County Attorney Date

* Approval of legal form and sufficiency does not convey approval or disapproval of the substantive nature of this transaction. Approval is based upon typeset document. All modifications require re-submission for re-approval.

APPROVED:

County Administrative Officer Date

Received by the Department of Permits, Approvals and Inspections _____

Survey made and plans prepared by _____

PWA NO. _____

Public Works Agreement No. _____

Dated: _____

Development _____

EXHIBIT A

Names of roads to be constructed:

1. _____

From: _____

To: _____

Length: _____

2. _____

From: _____

To: _____

Length: _____

3. _____

From: _____

To: _____

Length: _____

4. _____

From: _____

To: _____

Length: _____

5. _____

From: _____

To: _____

Length: _____

BALTIMORE COUNTY
PUBLIC WORKS AGREEMENT ESTIMATE SHEET

DEVELOPMENT NAME _____

<u>SANITARY SEWER MAINS</u>	SIZE	LINEAR FEET	UNIT PRICE	TOTAL
	_____	_____	_____	_____
	_____	_____	_____	_____

<u>SANITARY SEWER CONNECTIONS</u>	SIZE	NUMBER	UNIT PRICE	TOTAL
	_____	_____	_____	_____
	_____	_____	_____	_____

<u>WATER MAINS</u>	SIZE	LINEAR FEET	UNIT PRICE	TOTAL
	_____	_____	_____	_____
	_____	_____	_____	_____

<u>WATER SERVICES</u>	SIZE	NUMBER	UNIT PRICE	TOTAL
	_____	_____	_____	_____
	_____	_____	_____	_____

<u>STORM DRAINAGE PIPE</u>	SIZE	LINEAR FEET	UNIT PRICE	TOTAL
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

<u>PUBLIC ROADS</u>				
CONCRETE CURB AND GUTTER	_____	LINEAR FEET	TOTAL	_____
BITUMINOUS CURB	_____	LINEAR FEET	TOTAL	_____
BITUMINOUS CONCRETE PAVING	_____	SQ. YARDS	TOTAL	_____
CONCRETE PAVING	_____	SQ. YARDS	TOTAL	_____

<u>STREET LIGHTS</u>	_____	# OF LIGHTS	TOTAL	_____
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<u>SIDEWALKS</u>	_____	LINEAR FEET	TOTAL	_____
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<u>LANDSCAPING</u>			TOTAL	_____
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GRAND TOTAL _____

ENGINEER'S CERTIFICATION:

I certify that these estimates have been prepared based on the approved CRG or Development Plan and with county approved unit prices at minimum. Where construction must be done in existing paved roads, deep cuts, or other extraordinary circumstances, unit prices have been revised upward as necessary.

Signed _____
(Type name of engineer beneath signature line) Date _____

APPROVED BY PAI BUREAU OF DEVELOPER'S PLAN REVIEW

estimate sheet only