



PERFORMANCE AGREEMENT
Public Improvements - Roads and Drainage
Use when securing with a Letter of Credit or Escrow

THIS AGREEMENT is made this * day of , 20 , by and

** [Please leave the above date blank. The COUNTY will enter the date upon final approval of this agreement]*

between Frederick County, Maryland, a body corporate and politic of the State of Maryland (hereinafter referred to as COUNTY) and;

(hereinafter referred to as OWNER)

RECITALS

WHEREAS, OWNER is the owner of certain real property located in Frederick County, Maryland,

Project Name: Section: Lot(s):

Street Address: Tax ID:

(Hereinafter referred to as PROPERTY); and

WHEREAS, the OWNER intends to construct the following public improvements:

on the PROPERTY (hereinafter referred to as IMPROVEMENTS) in accordance with the approved plans, as defined below.

WHEREAS, COUNTY regulations require OWNER to construct the IMPROVEMENTS in advance of plat recordation or building permit issuance, or in lieu thereof provide adequate security and enter into a written agreement, wherein OWNER agrees, inter alia, to construct and maintain the IMPROVEMENTS to obtain approval to record plats or obtain building permits.

WHEREAS, in consideration for the OWNER obtaining the necessary approvals and permission from the COUNTY to record lots and construct the IMPROVEMENTS, the OWNER has agreed to provide certain security guarantees, in a form acceptable to the COUNTY as hereinafter set forth, in favor of the COUNTY, to guarantee completion of the IMPROVEMENTS in accordance with COUNTY specifications, and approved cost estimate(s).

NOW, THEREFORE, in consideration of the aforesaid promises and recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. The recitals above are hereby incorporated herein by reference and made a part of this Agreement.

2. OWNER shall cause the IMPROVEMENTS to be constructed and completed, to the COUNTY'S specifications and satisfaction, within months of the date of this agreement.

3. OWNER shall proceed with the construction of the IMPROVEMENTS in accordance with the specifications set forth in the approved plans and the inspection procedures specified by the COUNTY in adopted ordinances.

4. OWNER does hereby deposit with the COUNTY, secured funds, in a form satisfactory and acceptable to the COUNTY, being a(n):

☐

Letter of Credit,

-OR-

☐

Escrow Account (Cash, Company Check, Certified

in the amount of the approved cost estimate plus a 15% contingency. (Hereinafter referred to as SECURITY); that total amount being:

Dollars

(\$),

5. The amount of the aforesaid SECURITY has been determined in accordance with a detailed cost estimate, approved by the COUNTY, which is attached hereto as Exhibit A and incorporated herein by reference.

6. The SECURITY shall be deposited with the COUNTY to guarantee payment for the construction and completion of the IMPROVEMENTS, as more particularly set forth on the following referenced drawings and plans (hereinafter referred to as PLANS), with all revisions noted,

PLANS Entitled:

Sheet No(s).

Prepared By: (Engineer)

Date signed/appr. by COUNTY:

PROJECT No.

With the COUNTY's approval, PLANS may be revised from time to time, provided that adequate SECURITY is available or provided by OWNER to cover any increased costs.

7. OWNER shall construct and complete the IMPROVEMENTS in accordance with COUNTY specifications and those specifications set forth in the PLANS, which shall be subject to inspection and approval by COUNTY inspectors.

8. If OWNER does not complete the IMPROVEMENTS within the time set forth in paragraph 2., above, the COUNTY may draw upon all or any part of the security as necessary for the completion of the IMPROVEMENTS.

9. Notwithstanding the drawing upon by the COUNTY of all or any part of the SECURITY, OWNER shall remain liable to the COUNTY for the full and total cost of any of the IMPROVEMENTS not completed by the date as set forth in paragraph 2., above.

10. Prior to the release of the SECURITY, OWNER shall provide to COUNTY proof of OWNER's payment for the IMPROVEMENTS, and the COUNTY shall inspect the completed IMPROVEMENTS to ensure that the IMPROVEMENTS have been constructed according to COUNTY specifications. If the IMPROVEMENTS involve a stormwater management structure, an as-built drawing package is required for review and approval.

11. The OWNER shall warrant all IMPROVEMENTS, where applicable, per Maryland State Highway Administration General Provisions for Construction Contracts, Section GP-4.10 ("COUNTY" shall be substituted for "State"). A fifteen percent (15%) retainage of the SECURITY will be held until the end of the one (1) year warranty period, with extensions as necessary to provide a full one-year warranty on any items repaired or replaced during the applicable warranty period. The warranty period shall begin following written conditional acceptance from the appropriate COUNTY inspector.

12. The COUNTY (without notice to or consent of surety) shall have the right, in its sole discretion, to approve any changes relating to the construction of the IMPROVEMENTS, or the terms of this Agreement. All proposed changes shall be in writing and signed by all parties to the document(s) being changed.

13. OWNER shall maintain the IMPROVEMENTS (including snow removal) at OWNER's expense until the IMPROVEMENTS are accepted by the COUNTY for maintenance. Not all IMPROVEMENTS will be eligible for acceptance by the COUNTY for maintenance.

14. OWNER shall be responsible for the erection of street name signs, stop signs and other signs as determined by the COUNTY. All signage must comply with COUNTY and Manual of Uniform Traffic Control Devices (MUTCD) requirements.

15. Upon any breach of this Agreement by OWNER, OWNER shall be liable to the COUNTY for all costs and expenses, including attorneys' fees, that the COUNTY may incur if the COUNTY chooses to complete the IMPROVEMENTS, and COUNTY may retain the balance of any SECURITY for payment of the costs and expenses. Nothing herein shall prevent the COUNTY from using any available legal means to collect costs and expenses from OWNER that are not covered by the SECURITY.

16. OWNER agrees to obtain, at OWNER's sole expense, all easements which are reasonably necessary for the construction and maintenance of the IMPROVEMENTS, which easements shall be in a form acceptable to the COUNTY.

17. OWNER shall indemnify and hold harmless the COUNTY, its officials, employees, agents and representatives, from any and all claims, actions, suits and demands, of any nature, arising from the construction of the IMPROVEMENTS.

18. OWNER warrants that it is the fee simple OWNER, or an authorized agent of the fee simple OWNER of the PROPERTY and that all parties having any right, title or interest in the PROPERTY have consented to and joined in this Agreement.

19. All or any part of the provisions of this Agreement shall not be deemed merged in the execution and delivery by OWNER to COUNTY of a Deed for the IMPROVEMENTS, but shall remain in full force and effect, nor shall COUNTY thereby be deemed to have waived any of its rights at law or in equity against OWNER.

20. The applicable provisions of the COUNTY's Ordinances, Rules and Regulations and the County Code are incorporated herein by reference, and together with this Agreement contain the entire understanding of the parties and may not be modified or amended unless in writing signed by the parties hereto.

21. This Agreement may not be assigned by OWNER without the express prior written consent of the COUNTY, which consent will not be unreasonably withheld.

22. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Maryland, and OWNER hereby consents to jurisdiction in the State of Maryland, and venue in Frederick County, Maryland.

23. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representative, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have placed their hands and seals as of the date first written above.

COUNTY SIGNATORY	
WITNESS/ATTEST:	FREDERICK COUNTY, MARYLAND
_____	By _____
	Director (SEAL)
	<i>Department of Permits and Inspections</i>

OWNER SIGNATORY	
_____ CORPORATION OR PARTNERSHIP NAME <i>(If Applicable)</i>	
_____ Witness	_____ Signature: (SEAL)
	_____ Name and Title <i>(Please Print)</i>
_____ Witness	_____ Signature: (SEAL)
	_____ Name and Title <i>(Please Print)</i>

Reviewed and approved as to form: _____
County Attorney

(Notarial for: SOLE OWNERSHIP, CO-OWNERSHIP AND PARTNERSHIPS)

STATE OF _____ COUNTY OF _____, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20_____, before me, the subscriber
a Notary Public in and for the State and County aforesaid, personally appeared _____
who is either known to me (or satisfactorily proven) to be the party whose name(s) is/are subscribed to within the
instrument, and acknowledged that he/she executed same for the purposes therein contained.

IN WITNESS WHEREOF,
I hereunto set my hand and official seal.

Notary Public

My Commission Expires _____

(Notarial for: CORPORATIONS, LIMITED PARTNERSHIPS, TRUSTEES AND LLCs)

STATE OF _____ COUNTY OF _____, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20_____, before me, the subscriber
a Notary Public in and for the State and County aforesaid, personally appeared _____
who is either known to me (or satisfactorily proven) to be and who acknowledged himself/herself to be the
_____ of _____ a body corporate, and that he/she was
authorized by the corporation to execute this instrument for the purposes contained herein.

IN WITNESS WHEREOF,
I hereunto set my hand and official seal.

Notary Public

My Commission Expires _____

(Notarial for: FREDERICK COUNTY; DIRECTOR OF DEPARTMENT OF PERMITS AND INSPECTIONS)

STATE OF _____ COUNTY OF _____, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20_____, before me, the subscriber
a Notary Public in and for the State and County aforesaid, personally appeared _____
who acknowledged him/herself to be the Director of the Dept. of Permits and Inspections for Frederick County,
Maryland, that in his/her capacity as director, being authorized to do so, executed the foregoing instrument on behalf
of Frederick County, Maryland, a body corporate and politic, for the purposes therein contained.

IN WITNESS WHEREOF,
I hereunto set my hand and official seal.

Notary Public

My Commission Expires _____