

**Public Improvements Agreement
Water & Sewer
(Third Party Inspection)**

THIS AGREEMENT made this ____ day of _____ (Month), _____ (Year), by and
[Please leave the above date blank: The County will enter the date upon final approval of this agreement]
between Frederick County, a body corporate and politic of the State of Maryland (hereinafter referred to as the "County")
and _____(hereinafter referred to as the "Developer").

RECITALS

WHEREAS, the Developer is the owner or the authorized agent of the owner of certain real property located in Frederick County, Maryland, and described as:

(hereinafter referred to as the "Property"); and

WHEREAS, the Developer intends to construct the following public water and sewer improvements:

on the Property (hereinafter referred to as the "Improvements") in accordance with improvement plans entitled:
_____; prepared by _____;
W&S Reference No. _____; date signed by County _____ (hereinafter referred to as the "Plans"); and

WHEREAS, the County's water and sewer regulations require that the Improvements be constructed and operational prior to building permit issuance.

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 hereby agree as follows:

1. **Recitals.** The recitals above are hereby incorporated herein by reference and made a part of this Agreement.
2. **Warrant of Status of Developer.** The Developer warrants that it is the fee simple owner or a duly authorized agent of the fee simple owner of the Property.
3. **Improvements.** The Developer has applied to the County for approval to construct the Improvements necessary to serve the Property. The design of the Improvements has been undertaken by the Developer, and once the design has been approved by the County, the Developer shall be responsible, at its sole expense, for construction of the Improvements in accordance with County specifications, and the specifications set forth in the Plans within _____ (____) months of the date of this Agreement.
4. **Compliance.** The Developer shall be responsible for ensuring compliance with all local, state and federal requirements in its construction of the Improvements, including but not limited to requirements of all required permits, whether issued to the Developer, the Developer's contractor, or the County.

5. **Real Property Rights.** The Developer agrees to obtain, prior to starting construction and at the Developer's sole expense, all real property rights, including but not limited to, easements necessary for construction of the Improvements. Any transfer of real property rights to the County for the Improvements must be recorded in a form acceptable to the County prior to beginning construction of the Improvements. In the event that easements necessary for construction of the Improvements have been or are granted to the County, the County hereby grants to the Developer, its successors and assigns, a temporary license to enter upon such easements for the sole purpose of constructing the Improvements as required by this Agreement.
6. **Construction Management.** The Developer shall be responsible for management of the construction of the improvements, including but not limited to, the responsibilities described in Appendix A (Contract Management Responsibilities). The Developer agrees that construction of the Improvements shall not commence until this Agreement has been fully executed by both parties.
7. **Professional Engineer.** The Developer shall hire a Professional Engineer (P.E.) who will certify the work was completed in accordance with the approved plans/specifications and who is licensed in the State of Maryland with a minimum of five (5) years experience designing or managing construction of projects similar in scope to the Improvements being constructed under this Agreement (water booster pump stations, ground/elevated water storage tanks, sewage pump stations, small treatment works, and/or water & sewer utility line projects). The Developer must provide to the County a resume of the proposed Professional Engineer, including: (a) experience with the Engineer's current firm as well as any other applicable experience, including a list of applicable construction projects (minimum of 5) with a brief description of each; (b) the number of years they have been employed by the current firm; (c) a list of the individual's certifications and/or registrations; and (d) at least two (2) references. The County may elect to conduct an interview with the P.E. to verify experience and shall have the final approval authority in the selection of the Professional Engineer.
8. **Inspection.**
 - a. The Developer shall designate a third party inspection firm (the "Inspection Firm") to inspect, witness and verify that the Improvements are constructed in accordance with all local, state and federal requirements, including permit requirements, all County specifications, and those specifications set forth in the Plans, including but not limited to, compaction testing for water and sewer only. Any Inspection Firms designated by the Developer must have a minimum of two years experience in the field inspecting project installations that are similar in type and scope to the Improvements being constructed under this Agreement. The Developer must provide to the County a resume for each member of the proposed Inspection Firm staff, including (a) experience with the current Inspection Firm as well as any other applicable experience; (b) a list of applicable construction projects (minimum of 5) with a brief description of each; (c) the number of years this person has been employed by the current Inspection Firm; (d) a list of the individual's certifications and/or registrations; and (e) at least two (2) references. The County may elect to interview the Inspection Firm personnel to verify experience and shall have final approval authority in the selection of the Inspection Firm. As an alternative to the Developer designating an Inspection Firm, the Developer may request that the County designate an Inspection Firm to inspect, witness and verify that the Improvements are constructed in accordance with all local, state and federal requirements.
 - b. The County shall enter into a contract with the Inspection Firm that shall provide the services described

in Appendix B. The Developer agrees that all costs and expenses incurred by the County in connection with inspection of the Improvements shall be borne by the Developer. The Developer shall pay to the County the amount of the Inspection Firm contract price plus fifteen percent (15%) for contingencies (the "Inspection Advance") prior to the execution of the contract between the County and the Inspection Firm. This payment may be made in cash, by a draw-down letter of credit, escrow, or by another financial arrangement approved by the County to assure payment of all inspection costs by the Developer. The Inspection Advance must provide that the County shall be authorized to withdraw part or all of the funds to pay the Inspection Firm. If cash payment in advance is given, these funds will be put in a non-interest bearing escrow account. The County will withdraw the gross amount of the periodic payment estimates from the escrow account, pay the Inspection Firm, and notify the Developer of this transaction. Any unused portion of the Inspection Advance will be refunded to the Developer after the construction of the Improvements has been completed and accepted by the County. If the costs of inspection exceed the amount of the Inspection Advance, the Developer shall pay the additional monies necessary as billed by the County and prior to acceptance or operation of the systems by the County.

9. **Fees.** The Developer shall pay a design review fee for the review of the design plans for the Improvements, in advance, in accordance with the appropriate fee schedule. The Developer shall also pay to the County the fixed fee amount of _____ Dollars (\$_____) to cover the County's costs for review and oversight of the construction of the Improvements, and the administration of the Inspection Firm contract, as provided in this Agreement, including but not limited to, review of contractor's and inspector's reports, and observation of the tests described in Section 17 of this Agreement. It is acknowledged that the fixed fee cannot be quantified by way of a defined formula, since the size, scope, complexity and construction duration of any development infrastructure varies greatly from project to project; however, a general rationale is provided in Appendix C.
10. **Construction Cost Estimate.** The Developer shall provide the County with a detailed unit price estimate of the anticipated costs (excluding inspection costs), which, upon approval by the County, will be used to determine the value of required Construction Security (which may be in the form of surety or performance bond(s), letter(s) of credit approved by the County Attorney, and/or escrow funds) which the Developer shall post for the project.
11. **Construction Security.** The amount of the Construction Security shall be based on the approved detailed estimate of anticipated costs for the construction of the Improvements, excluding the estimated inspection costs, plus a fifteen percent (15%) contingency amount. The construction cost estimate shall be provided on a form provided by or acceptable to the County. The amount of the Security shall not be reduced until the Improvements are deemed operational by the Division of Water and Sewer Utilities (DWSU). At that time, the Security amount will be reduced to the fifteen percent (15%) contingency amount which shall not be released until the warranty period discussed below in Section 19 has expired.
12. **Materials.** Prior to starting construction, the Developer shall submit a detailed list of all materials for the Improvements and detailed submittals (including but not limited to manufacturers' cut sheets, shop drawings, the County DWSU's pre-approval listing, etc.) of each for approval by the County. Only materials approved for this Agreement shall be used in the construction of the Improvements.
13. **Preconstruction Meeting.** Prior to the commencement of work, the Developer shall conduct a preconstruction meeting with the Inspection Firm and the DWSU in attendance. All required submittals, meeting minutes, and

correspondence as determined at the preconstruction meeting shall be submitted to the DWSU.

14. **County Inspection.** The County has the right to inspect any material or equipment at any stage of development or fabrication, and shall be allowed access to the site at all times for inspection or observation. Such inspection by the County shall not release the Developer from responsibility or liability with respect to material or equipment. The Developer shall notify the County in writing, 24-hours prior to the event, so that the County may observe and witness the following tests:
 - a. Water line pressure testing
 - b. Connections to existing water and/or sanitary sewer systems; including removal of caps (and valves) to facilitate extension of the system, installing tapping sleeves and valves, tapping saddles, etc.
 - c. Sewer manhole vacuum testing and sewer pipe air/deflection testing
 - d. Water Quality sampling and disinfection prior to placing new main in service. Developer shall provide two (2) consecutive passing potable water test results from an MDE certified laboratory (see paragraph 18) prior to connecting to the existing water system.
 - e. Verify fire hydrant hose connections
 - f. Televising of sanitary sewer lines and laterals
15. **Walk-Through/Punchlist.** Upon completion of the Improvements, the Developer shall notify the County, in writing, so that the County may participate in the walkthrough to develop the punchlist. After the punchlist is developed the Developer shall send the punchlist to the County. The County will review the punchlist and determine what items will have to be completed prior to issuance of a Letter of Conditional Acceptance by the County (DWSU). Upon completion of punchlist items, the Developer shall contact the DWSU to conduct a walkthrough to verify.
16. **Conditional Acceptance.** The date of the Letter of Conditional Acceptance shall be the effective commencement date for the one year warranty as more particularly described below in Section 19. All written conditions, if any, in the Letter of Conditional Acceptance shall be binding on the Developer.
17. **Operational Acceptance.** Prior to operational acceptance, the Developer shall provide to the County:
 - a. As-built or record drawings, on mylar, showing the Improvements as actually constructed and final actual project costs in a format acceptable to the County sealed by a Professional Engineer registered in the State of Maryland,
 - b. Certification of work by the Professional Engineer as described in Paragraph 7.
 - c. Compaction testing results showing the compaction requirements were achieved, sealed by a Professional Engineer registered in the State of Maryland,
 - d. Two (2) Certified Water Testing reports from an MDE certified laboratory, including Chain of Custody forms, indicating the improvements meet the State of Maryland drinking water regulations, and
 - e. Proof of Developer's payment to the contractor and any subcontractors for the completed portion(s) of the Improvements. Letters from contractor/subcontractor on their letterhead indicating receipt of payment shall be adequate to fulfill this requirement.
 - f. Equipment warranty documents, final approved O&M Manuals, facility keys, spare parts, manufacturer start-up certifications, or other documents as required by the contract documents.

18. **County Ownership.** After Conditional and Operational Acceptance by the County, the County shall own and operate the Improvements, and among other activities, accept the responsibility of locating the subject utilities under the State's One Call (Miss Utility) law. The granting of Conditional and Operational Acceptance of the Improvements shall be at the sole discretion of the County. The Developer agrees to convey or sign any future agreements needed to transfer ownership of the Improvements to the County, and to otherwise fulfill the terms of this Agreement.
19. **Warranty.** The Developer shall warrant all Improvements for materials, equipment and workmanship, where applicable, for one (1) year, per the County's General Conditions and Standard Specifications for Water Mains and Sanitary Sewers and Related Structures. Fifteen percent (15%) contingency will be held by the County until the end of the one (1) year warranty period, except where extensions of the warranty period are necessitated by major repairs or replacements during the applicable warranty period.
20. **Final Review.** Prior to the end of the warranty period, the County and the Developer shall review the Improvements and develop a final list of repairs that are required for final acceptance. The Developer shall then complete the required repairs in a timely manner prior to release of contingency monies.
21. **Deviations/Changes.** The County shall have the right, but not the obligation, in its sole discretion, to approve any deviations from the Approved Plans, changes relating to the construction of the Improvements, or the terms of this Agreement. All proposed changes shall be in writing, signed by all parties to the document(s) being changed, and may require the payment or posting of additional or increased security (performance bond, letter of credit, escrow funds) or fees.
22. **Breach.** Upon any breach of this Agreement by Developer, Developer shall be liable to the County for all costs and expenses, including inspection costs and attorneys' fees that the County may incur if the County chooses to complete the Improvements. Nothing herein shall prevent the County from using any available legal means to collect from the Developer all of its costs and expenses, attorneys' fees, or other damages that are not covered by the Security.
23. **Indemnity.** The Developer 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 this Agreement or the construction of the Improvements.
24. **Incorporation by Reference.** The County's Ordinances, Design Manuals, and applicable Water and Sewer Rules and Regulations are incorporated herein by reference, and together with this Agreement, the Plans, the General Conditions and Standard Specifications for Water Mains, Sanitary Sewers and Related Structures, and Sanitary Sewer and Water Mains Special Provisions, contain the entire understanding of the parties and may not be modified or amended unless in writing signed by the parties hereto. In the above-referenced documents, where appropriate, all references to "contractor" shall be construed to be references to Developer.
25. **Assignment.** This Agreement may not be assigned by the Developer without the express prior written consent of the County, which consent will not be unreasonably withheld.
26. **Governing Law/Jurisdiction.** This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Maryland, and the Developer hereby consents to jurisdiction in the State of Maryland, and venue in Frederick County, Maryland.

27. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

28. **Notices.** Every notice, approval, consent or other communication authorized or required by this Agreement shall be effective if the same is in writing and sent, postage prepaid, by United States mail, directed to the other party at their addresses hereinafter mentioned, or such other address as either of the parties may designate by notice given from time to time in accordance with this paragraph. Notices necessary and provided in this Agreement shall be mailed to:

For the County:

Director
Division of Water and Sewer Utilities
4520 Metropolitan Court
Frederick, Maryland 21704

For the Developer:

29. **Saving Clause.** Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.

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

WITNESS/ATTEST:

FREDERICK COUNTY, MARYLAND,
a body corporate and politic

Chief Administrative Officer (SEAL)

CORPORATION OR PARTNERSHIP NAME:

Witness

Signature: (SEAL)

Name and Title (Please Print)

Reviewed and approved as to form:

County Attorney

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

State of _____ County of _____, to wit:

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

Witness my hand and Notarial Seal

Notary Public
My Commission Expires:

.....
(Notarial for: CORPORATIONS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS)

State of _____ County of _____, to wit:

I HEREBY CERTIFY that on this _____ day of _____ (Month) , _____ (Year) , before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____ who acknowledged him/herself to be the _____ of _____ a [CHECK ONE] corporation limited liability company limited partnership (the "company"), and that he/she was authorized by the company to execute this instrument for the purposes contained herein.

Witness my hand and Notarial Seal

Notary Public
My Commission Expires:

.....
(Notarial for: FREDERICK COUNTY CHIEF ADMINISTRATIVE OFFICER)

State of MARYLAND; County of FREDERICK, to wit:

I HEREBY CERTIFY that on this _____ day of _____ (Month) , _____ (Year) , before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, who acknowledged himself to be the Chief Administrative Officer of Frederick County, Maryland, a body corporate and politic, that in his capacity as Chief Administrative Officer, being authorized to do so, executed the foregoing instrument on behalf of Frederick County, Maryland, for the purposes therein contained

Witness my hand and Notarial Seal

Notary Public
My Commission Expires:

APPENDIX A
Contract Management Responsibilities

- a. Conduct a preconstruction meeting and issue meeting minutes. County shall be invited to attend.
- b. Schedule, organize, conduct and document progress meetings approximately every 30-days following construction start. Prepare meeting minutes in digital format. County shall be invited to attend.
- c. Coordinate and log the processing of shop drawings and submission of samples to facilitate maintenance of work progress schedule. The County's Preapproved Materials List may be used where applicable.
- d. Relevant to Shop Drawings and Samples: Establish and implement procedures for expediting the processing and logging of shop drawings and submittals, create and maintain shop drawing log including submittal and approval dates in digital format. Require the contractor to verify all field measurements prior to ordering materials/equipment.
- e. Relevant to Reports and Project Site Documents: Maintain and manage documents such as change orders, correspondence sent and received, electronic mail correspondence, payment requisitions, submittal logs and meeting minutes and provide documents to the DWSU upon completion of the work.
- f. Relevant to Substantial Completion or Conditional Acceptance: Determine and advise the County as to recommended substantial completion or conditional acceptance of the work, whichever applies, or designated portions thereof, as determined by the contract documents, and prepare a list in digital format of incomplete or unsatisfactory items (punchlist) and a schedule for their completion. Follow-up to ensure the punchlist items are adequately addressed within 30 days of the County granting Substantial Completion or Conditional Acceptance or as otherwise directed by the County and advise the County, in writing, of punchlist completion. Secure and transmit to the County required guarantees and affidavits. Turn over to the owner all keys, manuals, record drawings, and maintenance stocks and document such transfers in writing.
- g. Relevant to Final Completion or Final Acceptance: Generally 11 months, but no more than 11.5 months, following the Substantial Completion or Conditional Acceptance date, advise the County as to final completion or final acceptance, as determined by the contract documents, and provide written request in digital format to the County that the work is ready for final inspection. Have work inspected and ensure all deficiencies are adequately addressed. Final completion or final acceptance, as determined by the contract documents, shall be granted and guarantees released upon final County approval of the work.
- h. Keep accurate electronic spreadsheet records of the measurements and quantities of all contingent and unit price items so that final actual construction quantities and cost can be provided the County prior to operational acceptance.
- i. As required by the Public Improvements Agreement the Developer shall notify the County, in writing, so that the County may observe and witness the required tests.
- j. As required by the Public Improvements Agreement, provide the required deliverables to the County prior to operational acceptance.

Notification for these tests and end of project deliverables must be submitted to:

Construction Manager
Department of Engineering and Planning
Division of Water and Sewer Utilities
4520 Metropolitan Court
Frederick, MD 21704
Phone: 301-600-2078

APPENDIX B

Inspection Firm Responsibilities¹

- a. Project inspector shall be on the jobsite during construction as needed to ensure that all construction work is performed in complete conformity with the approved contract documents and shall prepare inspector's daily reports and progress photos.
- b. Project inspector shall check the materials, equipment, and labor entering the work and maintain daily records of these items. Ensure materials meet the approved submittal and/or shop drawing. Project inspector may also perform compaction testing for water and sewer only.
- c. Relevant to Quality Assurance: Project inspector shall observe the work of contractors to guard the Owner against defects and deficiencies in the work without assuming any of the Architect/Engineer's customary or statutory responsibilities for design of the work.
- d. Project inspector shall identify work or materials not in conformity with the contract requirements. Upon this occurrence, the inspector shall immediately notify the contractor and Developer about such nonconformity, citing particular references to the contract documents and making suitable efforts to obtain appropriate compliance with the project document requirements. Developer shall ensure the non-conforming work is corrected. Notification shall be in digital format with a copy to the assigned DWSU representative.
- e. Relevant to Reports and Project Site Documents: Project inspector shall record the progress of the project by means of Inspector's Daily Reports, construction logs, and ledgers. The inspector shall have in his/her possession, at all times on site, digital cameras that are capable of providing digital files to record normal daily progress of the work and to record and identify damage, critical work, or problem areas, as necessary. Daily progress photos shall be provided to the County on a weekly basis. All digital files shall become the property of the County at the end of construction unless otherwise directed by the County. All digital files shall be archived with the Project Title, Contract Number, Date and Location (i.e. Station, left/right/center line). Also, verify and record elevations of pipe and structure inverts, structure locations that differ from the approved design, etc.
- f. Project inspector shall maintain at the project site, on a current basis: records of all approved shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revision thereto which arise out of the contract or the work. The inspector shall obtain data from the contractor and maintain a current set of contract drawings, and specifications. At the completion of the project, the inspector shall deliver all such records to the Developer. Project inspector shall maintain concurrently with the course of construction a set of marked drawings sufficient to make permanent "as-built" drawings, and deliver to the Developer the complete set of marked up drawings and specifications for the total project, upon completion of the project or assignment to the project.

¹ The following list is not intended to be all inclusive, but representative of the typical scope of services necessary to provide a professional standard of care. The final scope of services is expected to be more detailed than that shown.

APPENDIX C

Fixed Fee Calculation Rationale

- a. Size of project
- b. Scope of project
- c. Complexity of project (e.g., number of site visits, requests for information, field issues, etc.)
- d. Inspection duration based on approved scope of Inspection Firm
- e. Administration of inspection firm; input firm into financial system (e.g., I-9, insurance, contract), create purchase order, review and process monthly invoices
- f. Base scope includes, but is not limited to, Material Submittal approval, testing observations per PIA, attend pre-construction and permit related meetings, review sewer videos, review as-built plans, review project closeout (operational acceptance) documents per PIA