



City of Havre de Grace

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PUBLIC WORKS AGREEMENT: UTILITIES

THIS PUBLIC WORKS UTILITY AGREEMENT, made and executed this ____ day of _____, 20____, by and between the **MAYOR AND CITY COUNCIL OF HAVRE DE GRACE**, a municipal corporation of the State of Maryland, hereinafter referred to as the "City"; _____, a Maryland limited liability company, hereinafter referred to as "_____"; and _____, a _____ corporation, hereinafter referred to as "_____."

WHEREAS, _____ is the Owner of parcels of land located in the City of Havre de Grace, Maryland, known as "_____" which are in the process of being developed as a commercial project, hereinafter referred to as "Development"; and

WHEREAS, the improvements shown on Contract No. _____, entitled _____ are required to serve the Development and are hereinafter referred to as the "Facilities"; and

WHEREAS, the City is willing to accept the dedication of the Facilities to be constructed at the Developer's expense pursuant to the terms and conditions of this Agreement; and

WHEREAS, if the Developer defaults on its obligations under this Agreement the Owner shall assume all obligations of the Developer under this Agreement; and

WHEREAS, the parties hereto desire to set forth in writing their respective rights, liabilities and duties with regard to the subject matter described herein.

WITNESSETH, that for and in consideration of the above recitals, which are incorporated herein, and the mutual conditions and promises contained herein, the parties hereto, intending to be legally bound, agree as follows:

I. Documents

The following documents are hereby made a part of this Agreement; are incorporated herein by reference; and must be complied with by the Developer unless otherwise provided herein:

A. The City of Havre de Grace Department of Public Works General Rules and Regulations which follow the Harford County Water and Sewer Design Guidelines, the Harford County Standard Specifications and Details for Water Mains and Sewer Mains and the Approved List of Suppliers and Materials for Water and Sewer Construction, hereinafter collectively referred to as

the "General Rules and Regulations." Should such standards, specifications, and rules and regulations be modified subsequent to the date of this Agreement, the Developer shall comply with the most current standards, specifications, and rules and regulations in force unless otherwise agreed by the City in writing.

B. Exhibit "A", a site location map depicting the general location of the Facilities and the Development, to be developed by the Developer as a commercial project.

C. Exhibit "B", copies of license agreements for the construction of the water and sewer facilities through the lands of the _____.

D. Exhibit "C", copy of the Amended Site Plan Approval Letter dated: _____.

E. Exhibit "D", copies of the deeds, showing all parties of interest, either legal or equitable, in the land shown on Exhibit "A".

F. Approved Water and Sewer Construction Drawings and Specifications, Contract No. _____ hereinafter referred to as "Drawings".

II. Service

The City agrees to provide to the Developer, subject to the terms and conditions hereinafter set forth, water and sewer service in an amount required to serve _____ commercial lots, as depicted on Exhibit "A", attached hereto, and per Exhibit "C" on the land to be developed and referenced in Section I, entitled Documents, contingent upon the property meeting all applicable codes, rules and regulations regarding development of the number of units specified herein. In the event that changes to applicable codes, rules and regulations do not allow the creations of the number of lots specified above, the obligations of the City to provide service under this Agreement shall be reduced to the appropriate number of services.

III. Design

The Developer has engaged an engineering firm to prepare all necessary right-of-way descriptions, drawings and other engineering and survey work necessary to design, locate and construct the Facilities as shown on the Drawings. The Drawings shall be completed by the Developer and reviewed and approved by the City as provided herein and any necessary permits including but not limited to, wetlands, grading, SHA or any other local, state or federal permits must be obtained by the Developer prior to the start of construction.

City design review costs will be billed at the charge in effect at the time the work is performed by each engineer assigned by the City, said costs to be billed to and paid by the Developer in a monthly basis.

IV. Term of PWUA (Agreement)

The Developer shall have nine (9) months following the date of execution of this Agreement in which to commence construction of the Facilities which are the subject of this Agreement. In the event the Developer fails to commence construction of the Facilities or, if after having commenced construction, the Developer stops construction of the Facilities for a period in excess of six (6) months, then this Agreement shall be null and void and of no further force and effect unless the City has granted an extension, in writing, at the request of the Developer.

If the Developer wishes to obtain an extension to the Agreement, the Developer must submit a written request for an addendum to extend this Agreement. Any such request must be submitted to the City at least sixty (60) days before this Agreement is scheduled or projected to expire. The City is under no obligation to extend this Agreement.

Upon receipt of an extension request from the Developer, the City shall determine whether the Drawings are in accordance with current General Rules and Regulations. The project shall also be evaluated to confirm that it is in compliance with the Water and Sewer portion of the City's Adequate Public Facilities legislation. If, in the opinion of the City, the above conditions are met, the City may issue an addendum to the original Agreement. The addendum will be for a period of no longer than one (1) additional year from date of expiration or projected termination of this Agreement.

V. Acquisition of Rights-of-Way and Easements

A. The Developer shall engage a qualified engineering firm to prepare all necessary documents and Developer and Owner agree to grant to the City all necessary right-of-ways and easements through any property over which the Owner or the Developer has control for the construction, operation, repair, inspection, alteration and maintenance of the Facilities constructed pursuant to this Agreement and for any future extension of the Facilities. Said right-of-ways and easements are to be granted at no cost to the City and must be recorded prior to operational approval (as defined in the General Rules and Regulations) of the Facilities.

B. To the extent that any off-site right-of-ways and easements are necessary for the construction, operation and maintenance of the Facilities through lands not owned or controlled by the Owner or the Developer, the Developer shall acquire and record said right-of-ways and easements prior to approval of the Drawings by the City. The cost of any and all right-of-ways and easements shall be paid by the Developer.

The City, at its discretion, may assist in the acquisition of any needed right-of-ways and easements; however, it is understood and agreed that the City is under no obligation to so assist, and that the Developer has the ultimate responsibility for obtaining the necessary right-of-

ways and easements and that the Developer shall reimburse the City for any costs associated with the rendering of such assistance.

Any necessary Procurement Agent costs will be billed at the charge in effect at the time the work is performed by each Procurement Agent assigned by the City, said costs to be billed to and paid by the Developer on a monthly basis.

C. If any portions of the Facilities are built outside of the recorded easement(s), the Developer, at its expense, must secure additional easement(s) or relocate the Facilities to the location depicted in the original approved construction drawings. The Owner and the Developer shall hold the City harmless against any claims or damages related to or arising from the incorrectly located construction.

VI. Construction of the Facilities

A. Construction of the water and sewer mains shall not commence until a pre-construction conference has been held. The Developer shall contact the City to schedule the pre-construction conference upon satisfying the pre-construction requirements set forth in the Harford County Standard Specifications and Details for Water Mains & Sewer Mains. The Developer shall provide the City, at the time of the pre-construction conference, with a schedule of operations, a list of suppliers/sub-contractors and any applicable utility permits.

Prior to the pre-construction conference, the Developer shall provide the City with the original signed and approved mylars and six (6) sets of the approved Drawings for the design and construction of the Facilities to be constructed pursuant to this Agreement.

B. The Developer agrees to construct the Facilities required in order to serve the Development in accordance with the Drawings, the General Rules and Regulations and any amendments thereto, and according to the requirements for plans, specifications and construction of water supply, sewer collection and sewage disposal systems set by the Harford County Standard Specifications and Details for Water Mains & Sewer Mains. The City shall not unreasonably withhold its approval and it shall act diligently to perform its duties as provided in this Agreement.

C. The Developer, its successors or assigns and their agents, agree to select utility contractors which are pre-qualified with the City's Procurement Office to perform the work required under the contract. Only utility contractors and vendors named on the City's Procurement List shall be utilized to perform certain specialty work on existing or new facilities such as water pressure testing, service tapping, chlorination/de-chlorination, air testing of gravity mains, manhole vacuum testing, coring and sealing of existing manholes, bacteria testing of water mains, etc... The Developer

shall not assign all or any part of the contract to construct the Facilities without the prior written approval of the City. Sub-contractors must be approved in writing by the City before they perform work on the facilities.

D. City Inspection costs will be billed at the charge in effect at the time the work is performed by each inspector assigned by the City, said costs to be billed to and paid by the Developer on a monthly basis.

E. During construction, any and all revisions to the Drawings must be reviewed and approved in writing by the City of Havre de Grace, Department of Public Works before construction may proceed in accordance with the approved revised Drawings.

F. The Developer shall be responsible for all costs associated with construction of the Facilities.

G. For all work done according to this Agreement, the Developer agrees as follows:

1. The land shall be graded in such a manner so as to prevent the pocketing of storm water and so as to prevent storm water from concentrating on or causing a nuisance to such properties. Such work shall be in complete compliance with Chapter 214 of the Harford County Code and any amendments thereto.

2. If springs and groundwater are encountered during excavation the Developer shall be responsible for obtaining any Local, State and Federal permits required in order to implement dewatering. Means and methods of dewatering shall be the responsibility of the Developer and any detrimental condition resulting from this activity such as subsidence, impacts to wells, erosion, etc., shall be the Developer's sole responsibility. The Developer shall dewater the excavation in accordance with accepted practices in the industry. The Developer shall, at the Developer's sole cost, direct the water from such dewatering activities to the storm drain system through piping which has been approved in writing by the City or shall dispose of the water via other methods designed by the Developer and approved by the agency which has permitting authority over the dewatering.

3. The Developer shall comply with the General Rules and Regulations, specifically, Section 02250 Trench Excavation, Backfill and Compaction. Any tests to be performed thereunder shall be performed by a recognized soils consulting company, subject to prior approval of the city, which approval shall not be unreasonably withheld. All costs for such tests shall be borne by the Developer.

4. Building excavations shall be established and set above the one hundred (100) year flood level or hurricane tide elevations and with proper regard to drainage, sewer and street requirements and be in compliance with Chapter 131 of the Harford County Code and amendments thereto.

VII. Operational Approval

Before operational approval can be granted by the City:

A. The Developer must complete all construction activities, including successful testing, cleaning, restoration and punch list items.

B. The Developer is required to request an operational inspection per the General Rules and Regulations.

C. the Developer is required for providing the city with certified as-built drawings as required by the General Rules and Regulations.

D. The Developer is required to post a maintenance security as stated in the section entitled Maintenance Security.

VIII. Performance Security

It is understood and agreed by all parties that the Developer is required to furnish a performance security in favor of the City in accordance with the General Rules and Regulations before the city may issue a building permit for any lot in the Development prior to completion of the Facilities. The security shall be in a form and with a surety approved by the City, binding the Developer as principal and the surety to guarantee the completion of the construction of the Facilities.

In the event that the Department of Public Works is required to complete any or all of the work described in this agreement and the expense of completion exceeds the amount of the secured sum that may be held by the Department of Public Works, the Developer shall remain liable to the City for all expenses exceeding the secured sum and shall indemnify and save the City harmless from all acts of omissions of the Developer for work required under this Agreement.

IX. Maintenance Security

A. The Developer agrees to furnish a maintenance security in favor of the City in accordance with the General rules and Regulations. The security shall be in a form and with a surety approved by the City, binding the Developer as principal and the surety to promptly and properly replace any improper work or material that may become apparent within the period during which the security is in effect. See the section entitled Release of maintenance Security, for the term of the security. In addition to the maintenance security, an original Project Cost Affidavit and a detailed quantities breakdown of all Facilities actually installed shall be submitted to the City.

B. Subsequent to dedication and acceptance of the Facilities, to the extent that damage is caused during future construction of the Development by the negligent acts or omissions of the Owner, the Developer, his agents, contractors, servants, employees, or any other persons, to any vaults, inlets, valve boxes, manholes, piping, curb stops, lamp holes, or any other appurtenances constructed pursuant to this Agreement, the Developer shall pay the entire cost of restoring or repairing such facility or appurtenance to original construction specifications. If such restoration necessitates adjusting the elevation of any water meter frame and cover, valve box, vault, inlet or other appurtenance after such facilities have been accepted by the City, the Developer will pay the entire cost of such elevation adjustment.

X. Project Acceptance

A. In accordance with the General Rules and Regulations the Developer shall, after all of the Facilities constructed under the terms of this Agreement have been approved as being constructed in accordance with the City requirements described herein, dedicate the Facilities to the City, being free and clear of any liens and encumbrances, including, but not limited to, any lien for construction or materials. The Owner and the Developer shall dedicate all rights-of-way and easements to the City.

B. Within ninety (90) days after the date that the construction, as described herein, has been declared operational, in writing, by the City and no outstanding punch list items exist, the Developer shall submit to the City a project cost affidavit along with an actual quantities breakdown accompanying the project acceptance paperwork.

C. If any portions of the Facilities are built outside of the recorded easement(s), Developer shall obtain additional easements in accordance with Section V. C, Acquisition of Rights-of-way and Easements.

XI. Release of Maintenance Security

A. The City shall release the maintenance security for the Development when all but one (1) commercial lot in _____ has been completed and connected to the Facilities, or one (1) year has passed since the date of operational approval for the Facilities, whichever is later, and, in addition, the Developer has requested a final inspection in writing, all punch list items have been completed by the Developer, the city has confirmed the completion of the punch list and all roadways within the limits of the Development have received final surface. Once the final inspection is complete, and all punch list items have been completed by the Developer, the City will hold the release of the security for forty-five (45) days or until all invoices have been paid, by the Developer, whichever comes first.

XII. Special Conditions

A. Obligations of the Owner if the Developer defaults under this Agreement:

In the event that the Developer defaults under this Agreement, then Owner shall assume all obligations of the Developer.

B. Conditions which must be met prior to pre-construction conference:

The Developer shall furnish a performance security for the off-site restoration in favor of the City prior to the preconstruction conference for the Facilities. The performance security shall be in the amount of ten percent (10%) of the amount of the contract to construct the off-site portion of the Facilities by and between the Developer and the utility contractor that will perform the work. The Developer must provide a copy of said contract to the City. Said contract shall describe a complete scope of work including all water and sewer utility grading costs, installation, material, excavation, equipment, labor, soil stabilization, seeding and mulching, known sub-surface rock removal, etc.

The performance security for the off-site restoration shall be in effect until the Developer had replaced this security with a performance security or a maintenance security for the entire project, phase or operational break that would include the off-site restoration. At that time, the City will release the off-site restoration security.

The performance security for off-site restoration, which is incorporated herein by reference, shall be in a form and with surety approved by the City, binding the Developer as principal and the surety to promptly and properly replace any improper work or material that may become apparent within the period during which the performance security is in effect.

C. Construction of Utilities in _____ **location** _____ Right-of-way:

Construction of the Facilities will require the construction of water and sewer mains in right-of-way of the **name of property**. The City has entered into **# of** license agreements with _____ for construction of **size** of diameter PVC sewer main encased in a **size (#)** diameter steel sleeve **located near** _____ and _____.

The Developer agrees that it shall assume all obligations of the Licensee and Permittee under the _____ Agreements until Final Acceptance for the Facilities is issued by the City, including but not limited to paying all fees associated with obtaining and implementing the _____ Agreements (including preparation fees, license fees and any fees such as watchman or flagman fees charged by _____ to the City) which have not been previously paid, providing insurance, indemnifying _____ and performing construction within the _____ right-of-way in accordance with the provisions of the _____ Agreements. The Developer shall indemnify and hold the City, its directors, officers, employees, agents and assigns harmless from and against any and all claims, costs, losses and damages, of any type or description, resulting from, related to or arising out of the construction of water and sewer mains by the Developer in the **Name of Property** right-of-way, including any claim asserted by _____ against the City.

D. Restoration of City Easements

When working in a City easement the restoration must be to the satisfaction of the City. If it is necessary for the Developer to work outside the limits of a City easement to facilitate construction of the Facilities, the Developer is responsible for securing any required easement or permission from the property owner. The Developer shall restore any disturbed areas to the original or better condition prior to Operational approval of the Facilities to be constructed pursuant to this Agreement.

E. Commercial Service Application (CSA)

The Developer must submit an Application for Commercial Water/Sewer and Fire Service Connection in accordance with the General Rules and Regulations for each lot and receive City approval prior to the City approving a building permit for said lot.

F. Building Permits

No building permits will be issued for the Development until the city has the fully executed Agreements for _____ and all other applicable requirements, including but not limited to, posting performance securities, approval of a commercial service application and payment of Hook-up charges have been met.

XIII. Further Assurances

By execution of this Agreement and by furnishing the document provided and attached as Exhibit "D" to this Agreement, the Owner certifies that it is, at the time of execution of this Agreement, the fee-simple owner of the property. The Owner further agrees to obtain the joinder or subordination of interest to this Agreement from any parties in interest not a party hereto, including mortgages and other lienholders.

XIV. Charges

A. The Developer shall pay area connection charges, connection charges, surcharges, system development charges, recoupments, assessments, surtaxes, and all other fees, hereinafter referred to as Hook-up charges", for the water and sewer service in accordance with the City Code, as amended, and any rules or regulations adopted thereto, at the rates that are in effect at the time the actual physical connection is made. The Hook-up charges shall be paid at the time of building permit application and they shall be calculated at the rates in effect at the time the application for plumbing connection/service connection permit to the City system is made or anticipated to be made. In the event that the actual Hook-up Charges owed are greater than the Hook-up Charges paid at application, the Developer shall pay the difference to the City prior to the city approving the certification of occupancy.

B. The Developer is responsible for paying recoupments and surcharges as established in the General Rules and Regulations, as amended, that are in effect at the time of application for plumbing connection/service connection permit to the City system.

C. Water and sewer usage rates shall be billed on a volumetric basis for quantity of service provided in accordance with the rates, including minimum consumption, as established and revised from time to time by the City. The Developer shall pay for any metering arrangement mutually agreed upon by the Developer and the City, and shall install said metering system which shall include, but not be limited to, meters, meter vaults, backflow prevention devices, and all appurtenances thereto at no cost to the City.

XV. General Conditions

A. The parties hereto agree to execute such documents and instruments as may be necessary in order to fulfill the terms of this Agreement.

B. Any and all provisions of this Agreement may be freely amended, modified or canceled in whole or in part by the unanimous action of the parties hereto at any time. Any such amendment, modification or cancellation shall be effected by written instrument executed by all parties hereto.

C. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such provision shall not affect the remaining provision of this Agreement, and this Agreement shall be construed and enforced as if such invalid or unenforceable provision has not been contained herein.

D. Failure by any party to insist upon strict performance of any or all of the provisions of this Agreement shall not constitute a waiver of any other term, covenant, or condition of this Agreement.

E. This Agreement shall be subject to and governed by the laws of the State of Maryland and the City Code of Havre de Grace.

XVI. Limits of Liability

A. The City shall not be responsible for delays in completion of the project because of delays in the acquisition of right-of-ways and easements, funding procedures, a lack of funding sources, or other similar reasons occasioned by factors beyond the control of the City.

B. In the event of any delay in the performance of the terms and conditions of this Agreement by the City occasioned by unforeseeable causes beyond its control, including, but not limited to, acts of God, acts or decisions rendered by any federal or State of Maryland governmental agency, moratoriums, fires, floods, nuclear waste discharge or disaster, unusually severe weather, the delays of subcontractors due to such enumerated or similar causes, or lack of capacity for service as described in this agreement, the Developer agree to extend the time for performance of the terms and conditions of this Agreement by the City for the period of the delay, provided that the Developer shall be entitled to the same extensions for its obligations under the Agreement for a like period of time.

C. The City does not guarantee to provide any sewage pumping, treatment and transmission and collection capacity which is beyond the capacity of the existing pumping, treatment and transmission and collection facilities at the time that the actual connections to the facilities are desired.

D. The City agrees not to permit additional connections to the water and sewer facilities constructed in accordance with this Agreement for the purpose of serving any properties which are not units covered by this Agreement if such additional connections would materially interfere with the construction by the Developer.

E. Neither the Owner nor the Developer may assign any of its rights, privileges, or immunities under this Agreement without the prior written consent of the City, which may not be unreasonably withheld. The water and sewer connection(s) provided for herein may not be sold, reassigned, or transferred by the Owner or the Developer without the prior written consent of the City. The Assignee must be deemed by the City to be financially solvent and responsible and able to perform the terms and conditions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed their names and affixed their seals the day and year first above written.

Attest/Witness:

Developer

Printed Name and Title Date

Attest/Witness:

CITY OF HAVRE DE GRACE, MARYLAND

BY: _____
DIRECTOR OF ADMINISTRATION

Approved for legal sufficiency this
____ day of _____, 20__

Recommended for approval this
____ day of _____, 20__

CITY ATTORNEY

DIRECTOR OF PUBLIC WORKS