

PUBLIC WORKS AGREEMENT

This Public Works Agreement, is executed this ____ day of _____, 20____, by and between the St. Mary's County Metropolitan Commission (hereinafter, the "Commission"), and _____, (hereinafter, the "Developer"), and _____, (hereinafter, the "Owner"), and _____, (the "1st Lien Holder"), and _____, (the "2nd Lien Holder"), and _____ (the "Issuer of Letter of Credit or Bond").

WITNESSETH

WHEREAS, the Commission is responsible for all public water and sewerage projects in St. Mary's County, Maryland (the "County"); and,

WHEREAS, the Owner is the owner in fee simple of all that lot, tract or parcel of land located St. Mary's County, Maryland, subject to this Agreement, more particularly described as Exhibit **D**, attached hereto and incorporated herein, (hereinafter referred to as the "Property"); and,

WHEREAS, the Developer is developing the Property as a project known and further described as **NAME OF PROJECT**, (hereinafter referred to as the "Project"); and,

WHEREAS, the Developer, either by requirement of St. Mary's County or by choice, intends to construct certain central sewage facilities and/or central water facilities (the "Facilities"), to serve the Project. The Facilities shall include all water and sewer improvements to be made by the Developer, including those on-site and any improvements required or intended to be made off-site; and,

WHEREAS, the Developer seeks the approval of the Commission for the construction of the Facilities; and,

WHEREAS, the Concept Plan for the development of the Project has been submitted to and approved by the Board of County Commissioners of St. Mary's County or their duly appointed agent; and

WHEREAS, Developer has designed the Facilities in accordance with the St. Mary's County Standard Specifications for Water and Sewerage Construction, the Comprehensive Water and Sewerage Plan for St. Mary's County and any other rules, regulations, directives or special instructions issued by the Commission for the State of Maryland and/or the Federal Government; and

WHEREAS, Developer has submitted a statement, attached hereto and incorporated herein as Exhibits **A&B**, setting forth a proposed phasing schedule for the construction of the Facilities and a proposed schedule of completion for said phase or phases, said statement having been approved by the Commission. The Developer has also submitted an itemized engineer's estimate of the cost to construct the Facilities (the "Engineer's Cost Estimate"), which has been approved by the Commission; and

WHEREAS, Developer has furnished a Performance and Payment Bond or an Irrevocable Letter of Credit with a minimum two year expiration date to be renewed automatically or without interruption, which has been approved by the Commission, a copy of which is attached hereto and incorporated herein as Exhibit **C**, payable to the Commission, its successors and assigns, in an amount of **\$000.00**, conditioned that the Developer shall well and truly perform and fulfill the covenants, conditions and terms of this Agreement, and shall assure payment for all materials utilized and work performed, all of which shall remain in force until the expiration of the warranty period as set forth in Paragraph **EIGHTH**; and

WHEREAS, Developer has conveyed unto the Commission any and all required interest in the Property necessary to complete the construction of the Facilities within the Project, including all necessary fee simple interests, as well as easements, rights-of-way and rights-of-entry, as required by the Commission and as more particularly shown and described on Exhibit **D** attached hereto and incorporated herein; and

WHEREAS, as further specified upon the said Exhibit **D**, upon recordation of the final plat of subdivision for the Project, if applicable, Developer shall convey, by reference upon said final plat, all those standard utility easements as may be required by all applicable local, State and Federal regulations, to provide for the construction, installation, maintenance, repair and inspection of any water distribution and/or sewer collection lines and appurtenances, to the extent that any such lines and appurtenances are a part of the Facilities; and

WHEREAS, all parties holding a lien against the Property and/or any party which has issued a letter of credit, identified first herein above, hold an interest in the Property; and

WHEREAS, Owner, if different from Developer, has joined in the execution of these presents to acknowledge the obligations of the Developer set forth herein;

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

FIRST: If necessary, the Commission shall grant unto the Developer a right of entry onto the Commission Property for the purpose of construction and maintenance of the Facilities provided, however, that Developer hold the Commission harmless for and indemnifies the Commission against any and all losses or damages incurred by the Commission during such time as Developer occupies such Commission Property, and further provided that Developer maintains sufficient and appropriate insurance coverage, naming the Commission as an additional insured, to adequately protect all interests of the Commission.

SECOND: Developer shall construct all of the Facilities according to the phasing and completion schedules set forth on Exhibits A and B, and in the case of multi-phased projects, no phase beyond the first phase shall be commenced until the Facilities constructed under any of the previous phases have been approved and accepted by the Commission.

THIRD: Developer shall construct the Facilities in accordance with final plans and specifications for the Project, and amendments thereto, as approved by the Commission (the "Final Plans"). In the event that Final Plans have not been approved at the time of execution of this Agreement, no work in connection with the construction of the Facilities shall be commenced prior to the approval by the Commission of the Final Plans. Furthermore, within sixty (60) days after the construction of any phase of the Facilities is completed and approved, a completed set of "As-Built Drawings" (CD & hard copy) shall be submitted and approved by the Commission.

FOURTH: Developer shall maintain the Performance and Payment Bond or Letter of Credit provided in Exhibit C, without interruption for the period of construction of the Facilities, and for the period of the required warranty without interruption as set forth herein.

FIFTH: Developer shall make available the Property to duly authorized representatives of the Commission at all reasonable times for purposes of inspecting construction of the Facilities.

SIXTH: Developer shall pay the following fees and charges:

DUE/

INSPECTION CHARGES: \$0,000.00 based upon:

APPLICABLE

2.5% of Bond or 110% of Engineers Cost Estimate for Project Costs \leq \$385,000.00

- OR -

1.5% of Bond or 110% of Engineers Cost Estimate for Project Costs $>$ \$385,000.00

* *As verified by MetCom at the time of the Pre-Construction Meeting, which verification results in the payment of additional Inspection Charges under this Agreement.*

This charge reflects the currently approved inspection fees and is subject to change.

APPLICABLE

CONNECTION PERMIT FEES: \$000.00 based upon the following fees per connection permit issued, as applicable, payable at the time each connection permit(s) is/are issued. Upon the Developer's election, this charge may be paid in advance at the time this Agreement is executed. This charge reflects the currently approved connection fee and is subject to change.

_____	\$ 70.00 Sketch Plan Fee (diagram of building connection).
_____	\$180.00 Water & Sewer Occupancy Inspection
_____	\$120.00 Water (only) or Sewer (only) Occupancy Inspection
_____	\$145.00 Grinder Pump Inspection (in addition to Occupancy Inspection)
_____	\$276.00 Water Meter - 5/8" x 3/4" (Includes 20% storage/handling fee)

_____ \$250.00 Residential Water Tap Fee
_____ \$250.00 Residential Sewer Tap Fee

APPLICABLE

CAPITAL CONTRIBUTION CHARGE: \$00,000.00 based upon the following fee per EDU, as applicable, payable at the time a property owner makes application or otherwise is required to connect to a water or sewer system, **in addition to the Connection Permit Fees specified herein above.** This charge reflects the currently approved fee and is subject to change.

WATER:

_____ \$10,955.87/EDU Residential
_____ \$13,147.04/EDU Commercial

SEWER:

_____ \$6,941.21/EDU Residential
_____ \$8,329.44/EDU Commercial

APPLICABLE

SYSTEM IMPROVEMENT CHARGE: \$0.00, based upon the following monthly fee per EDU allocated, payable at the time any EDU allocation is made. This charge reflects the currently approved fee and is subject to change.

WATER:

_____ \$12.87/month/EDU Residential
_____ \$15.44/month/EDU Commercial

SEWER:

_____ \$15.39/month/EDU Residential
_____ \$18.47/month/EDU Commercial

APPLICABLE

READY TO SERVE CHARGE FOR WATER: \$10.14 per meter, per month based on a 5/8" water meter, beginning when service is utilized. The meter will be read on a monthly basis and a Usage Charge applied based on a graduating rate scale per thousand gallons of water used per month. The Ready to Serve Charge reflects the currently approved rate and is subject to change.

APPLICABLE

READY TO SERVE CHARGE FOR SEWER: \$19.45 per meter, per month based on a 5/8" water meter, beginning when service is utilized. The meter will be read on a monthly basis and a Usage Charge applied based on **\$5.29** per thousand gallons of water used per month up to 10,000 gallons per month for residential customers with 5/8" meters. The Ready to Serve and Usage Charges reflect the currently approved rates and are subject to change.

NOT APPLICABLE

USAGE CHARGE ONLY FOR IRRIGATION METER: The irrigation meter will be read on a monthly basis and a Usage Charge will be applied based on a graduated rate scale, per thousand gallons of water used per month. Usage Charges are subject to change.

APPLICABLE

BAY RESTORATION FEE: Per Senate Bill 320 (Bay Restoration Fund) the Commission is charged with collecting Bay Restoration fees from its customers beginning in January of 2005. This includes customers connected to the Public Wastewater System and customers connected to a Public Water System who have Onsite Septic Systems. A **\$5.00** fee per month per EDU beginning when the service is utilized will be added to the Monthly Bill received by each residential customer that is served by the public wastewater system or by an onsite system; and the fee is **\$5.00** for each 250 gallons per day (7,500 gallons per month) of water used up to a maximum of \$10,000.00 per month for non-residential customers.

SEVENTH: No premises within the Project to be connected to the Facilities shall be occupied or used for any purpose whatsoever prior to the Facilities being accepted by the Commission without the express written prior approval of the Commission.

EIGHTH: Developer shall warrantee all mechanical, electrical and control Facilities for a period of twelve (12) months, and all earthwork and associated underground construction for a period of eighteen (18) months, after approval and acceptance by the Commission. The warranties shall cover the cost of labor, equipment and materials necessary to correct any problems with the Facilities.

NINTH: In addition to the occurrence of other circumstances which may constitute a default of this Agreement, the parties hereto expressly acknowledge that the following shall constitute events of Default of this Agreement:

1. Failure of Developer to construct the Facilities according to the schedule and in the phase or phases set forth herein.
2. Failure of Developer to construct the Facilities in accordance with the approved Final Plans approved by the Commission, as set forth herein.
3. Failure of Developer to provide a complete set of "As-Built Drawings" (CD & hard copy) pursuant to Paragraph Third above.
4. Failure of Developer to maintain the required bonding and/or letters of credit for the period of construction and warranty of the Facilities.
5. Failure of Developer to prosecute work according to the Commission's standard specifications.
6. Failure of Developer to respond to requests to honor warranties within a reasonable time schedule, such schedule to be established by the Commission.
7. Failure of Developer to perform any of the terms and conditions of this Agreement.

TENTH: The parties hereto acknowledge and agree that in an event of Default the Commission may avail itself of any and all available legal or equitable remedies, which may include, but which shall not be limited to, the following actions:

1. Notify Developer to Stop Work.
2. Demand that Developer vacate Commission Property, if applicable.
3. Notify Developer of intention to call bond or Irrevocable Letter of Credit.

The Commission may, in its sole discretion and for the benefit of the Project, give Developer a reasonable period to cure an event of Default. Failure of Developer to cure Default during such cure period shall constitute an event of continuing Default, with all remedies available to the Commission. Forbearance by the Commission shall not constitute a waiver of its rights to declare subsequent default.

ELEVENTH: Upon completion and acceptance by the Commission of the Facilities as set forth in Paragraph Second above, the Developer, when requested to do so by the Commission, agrees to convey all of the Facilities to the Commission for the nominal sum of One Dollar (\$1.00).

TWELFTH: This Agreement shall be binding upon and inure to the benefit of the heirs, successors, personal representatives and assigns of the parties hereto.

DRAFT

WITNESS THE HANDS AND SEALS OF THE PARTIES HERETO:

ATTEST:

**ST. MARY'S COUNTY METROPOLITAN
COMMISSION**

By: _____
George A. Erichsen, Executive Director

Date

ATTEST:

DEVELOPER:

By: _____

(Name)

(Title)

(Company)

Date

ATTEST:

OWNER:

By: _____

(Name)

(Title)

(Company)

Date

ATTEST:

1st LIEN HOLDER:

By: _____

(Name)

(Title)

(Company)

Date

ATTEST:

2nd LIEN HOLDER

By: _____

(Name)

(Title)

(Company)

Date

ATTEST:

ISSUER OF BOND / LETTER OF CREDIT

By: _____

(Name)

(Title)

(Company)

Date

DRAFT

[NOTARY PROVISIONS ON FOLLOWING PAGES]

(COMMISSION)

STATE OF MARYLAND, COUNTY OF ST. MARY'S to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, a Notary Public in and for the County of St. Mary's, aforesaid personally appeared George A. Erichsen, Executive Director of the St. Mary's County Metropolitan Commission, and on behalf of said Commission did acknowledge the foregoing instrument to be the act and deed of the St. Mary's County Metropolitan Commission.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

(DEVELOPER)

STATE OF MARYLAND, COUNTY OF ST. MARY'S to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, a Notary Public in and for the County of St. Mary's, aforesaid personally appeared _____
_____,
of _____, and on behalf of said entity did acknowledge the foregoing instrument to be the act and deed of the said entity.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

(OWNER)

STATE OF MARYLAND, COUNTY OF ST. MARY'S to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, a Notary Public in and for the County of St. Mary's, aforesaid personally appeared _____
_____,
of _____, and on behalf of said entity did acknowledge the foregoing instrument to be the act and deed of the said entity.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

(1st LIEN HOLDER)

STATE OF MARYLAND, COUNTY OF ST. MARY'S to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, a Notary Public in and for the County of St. Mary's, aforesaid personally appeared _____
_____,
of _____, and on behalf of said entity did acknowledge the foregoing instrument to be the act and deed of the said entity.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

(2nd LIEN HOLDER)

STATE OF MARYLAND, COUNTY OF ST. MARY'S to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, a Notary Public in and for the County of St. Mary's, aforesaid personally appeared _____
_____,
of _____, and on behalf of said entity did acknowledge the foregoing instrument to be the act and deed of the said entity.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

(ISSUER OF BOND or LETTER OF CREDIT)

STATE OF MARYLAND, COUNTY OF ST. MARY'S to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, a Notary Public in and for the County of St. Mary's, aforesaid personally appeared _____
_____,
of _____, and on behalf of said entity did acknowledge the foregoing instrument to be the act and deed of the said entity.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

EXHIBIT A
STATEMENT OF
PROPOSED WATER FACILITIES
AND PHASING

PROJECT NAME:

TOTAL # OF PHASES **1**

DEVELOPER

PHASE I:

Plat Ref: _____ # OF LOTS/EDUS TO BE SERVED _____
(Note: EDUs are subject to adjustment based on actual use.)

PROJECTED CONSTRUCTION START DATE: **Date of Execution of the P.W.A.**

PROJECTED CONSTRUCTION COMPLETION
DATE **Two years after the execution of the P.W.A.**

FACILITIES TO BE CONSTRUCTED*: Water distribution system with all appropriate appurtenances in accordance with the definition below and per the approved construction plans as signed by the Metropolitan Commission's Chief Engineer on: 00-00-00.

COMMISSION PARTICIPATION: **NONE**

*The facilities listed also include for WATER PUMPING STATION: Wells, pumps, controls, generators, chlorinators, compressors, meters, valves, interior and exterior piping and appurtenances, together with all sites on which they are situated and 20' access to the same. FOR WATER STORAGE TANKS: Elevated storage tanks, standpipes, fittings, blow offs, water house connections, water house service lines, curb stops, curb stop boxes, water meter settings and appurtenances, together with a 20' permanent easement over the same for maintenance and modifications of an connection to these facilities; along with any and all other facilities or appurtenances which in any way could be construed as part of the water system.

EXHIBIT B

STATEMENT OF

PROPOSED SEWER FACILITIES

AND PHASING

PROJECT NAME:

TOTAL # OF PHASES **1**

DEVELOPER

PHASE I:

Plat Ref: _____ # OF LOTS/EDUS TO BE SERVED _____
(Note: EDUs are subject to adjustment based on actual use.)

PROJECTED CONSTRUCTION START DATE: **Date of Execution of the P.W.A.**

PROJECTED CONSTRUCTION COMPLETION
DATE **Two years after the execution of the P.W.A.**

FACILITIES TO BE CONSTRUCTED*: Sewerage collection system with all appropriate appurtenances in accordance with the definition below and per the approved construction plans as signed by the Metropolitan Commission's Chief Engineer on: 00-00-00.

COMMISSION PARTICIPATION: **NONE**

*The facilities also include for WASTEWATER PUMPING STATIONS: pumps, wet, wells, generators, compressors, meters, valves, interior and exterior piping and appurtenances, together with all sites on which they are situated and 20' access to the same. FOR WASTEWATER TREATMENT PLANTS: Storage lagoons, physical plants influent and effluent lines, lift stations, generators, together with all sites on which they are situated and 20' access to the same; FOR COLLECTION SYSTEMS: Collector and lateral sewers, force mains, sewer house service lines, air release valves, together with 20' permanent easements over the same for maintenance and modifications of connection to these facilities, along with any an and all other facilities or appurtenances which in any way could be construed as part of the sewerage system.