DEVELOPER’S AGREEMENT

INSERT CONTRACT NUMBER

**BY AND BETWEEN**

**MAYOR AND CITY COUNCIL OF BALTIMORE**

**AND**

**DEVELOPER’S LEGAL NAME**

**THIS AGREEMENT** (this “Agreement”), made and entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland (the “City”), acting by and through its **DEPARTMENT OF TRANSPORTATION** (the “Department”), and **DEVELOPER’S LEGAL NAME**, a sole proprietorship / limited liability company / corporation formed / registered and in good standing in the State of Maryland (the “Developer”).

**WHEREAS**, the Developer has applied for permission from the City to construct road, alley, sidewalk, water, conduit, street lighting, storm drain, and /or sanitary improvements in a public right of way in Baltimore City;

**WHEREAS**, the Developer has submitted to the City plans for the construction of the improvements, which plans have been approved by the City;

**WHEREAS**, the Developer is willing and able to post a performance bond or irrevocable letter of credit in the full amount of the anticipated costs of construction; and

**WHEREAS**, the City is willing to grant to the Developer the right to construct said improvements to that property located in the vicinity of Insert Property Address (the “Property”), pursuant to the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **THE PROJECT**
   1. The project (the “Project”) shall consist of the repair, replacement and/or installation of various utilities, along with all pertinent work set forth on the plans entitled “Insert Contract Number” which are on file with the Department and are incorporated herein by reference.
   2. The Project work shall include, but is not limited to, the repair, replacement and/or installation of the following:

Provide the specific Project work.

* 1. The Developer shall cause all work relating to the Project to be performed in a good and workmanlike manner, and in accordance with all applicable laws and other governmental requirements.
  2. The Developer shall work diligently to complete the Project on schedule.

1. **RIGHT OF WAY/RIGHT OF ENTRY**
   1. The Developer shall perform all work relating to the Project only within a City-owned right-of-way or easement. In instances where the Developer is performing work in City-owned streets or easements, this Agreement will serve as a right of entry for the Developer to enter the streets and easements to perform work. Execution of this Agreement by the City shall not constitute a right of entry for the Developer to work anywhere but in a designated City-owned right of way or approved easement.
2. **TERM**
   1. This Agreement shall commence upon the date of approval by the Board of Estimates of Baltimore City and terminate upon Final Acceptance (as defined in the “Green Book”) by the City after the Maintenance Period (as defined herein) (the “Term”).
3. **DESIGN PLANS AND CONSTRUCTION**
   1. The Developer hereby assumes responsibility for all construction designs, plans and preparations relating to the Project.
   2. All plans submitted to the Department for approval must bear the stamp of a registered professional engineer who is licensed in the state of Maryland. Further, all applicable Baltimore City standard numbers must be clearly labeled on all plans.
   3. All plans and construction methods must be in accordance with the City’s (a) Book of Standards, and (b) Specifications for Materials, Highway, Bridges, Utilities and Incidental Structures (the “Green Book”), and all amendments thereto.
   4. The Developer’s plans for construction must include all work contemplated under the Project, a sequence for construction, and any and all related notes.
   5. The Developer shall have already furnished to the Department, and the Department shall have approved, up to thirty (30) sets of plans, including the original set of plans and one (1) Mylar copy thereof. These sets of plans shall include preliminary, semi-final, and final construction plans, as applicable.
   6. The plans, as approved by the City, shall be amended only by prior written agreement between the parties hereto.
4. **CONSTRUCTION**
   1. The Developer shall be solely responsible for the construction of the Project in accordance with the City-approved plans and in conformity with all applicable laws and construction standards.
   2. The Developer shall use only those contractors who are prequalified by the City’s Office of Boards and Commissions for the specific work they are to perform, and for which they have been given work classification code numbers as follows:  **PROVIDE THE CLASSIFICATION CODE NUMBERS**. Any and all sanitary and storm drainage work shall be performed by bonded drain layers.
   3. The Developer shall comply with all requirements of the Baltimore City Erosion and Sediment Control Manual in the performance of the work hereunder.
   4. For any new street, avenue, thoroughfare, or alley constructed under this Project, that is offered to the City, the Developer, at its sole cost and expense shall prepare a deed, plat(s), legal description and title report for the parcel(s) in a form acceptable to the City prior to the City’s acceptance as a public street, avenue, thoroughfare, or alley, and prior to the expiration of the Maintenance Period, and the release of any performance bond or letter of credit.
   5. The Developer, at its sole cost and expense, shall repair and restore all roadway areas which are impacted by the performance of the work hereunder, and such repair and restoration work shall be in compliance with the requirements of the City’s grade establishment and standard specifications.
   6. In the event that the City, in its sole but reasonable discretion, determines that it is necessary to remove the whole or part of any street or alley return, or street or alley approach, adjacent to the work performed hereunder, whether due to differences in field conditions or otherwise, this additional work shall be performed by the Developer, at its sole cost and expense.
   7. In the event that the Developer disconnects or renders inoperable during any portion of the Project the existing street lighting, the Developer at its sole cost and expense shall provide temporary street lighting, immediately at current lighting levels to the Project, until permanent street lights are installed and operational.
   8. Any and all services, including water, conduit, storm drain, and/or sanitary services, that are abandoned by the Developer shall be abandoned at the mains, and all related meters must be promptly returned to the City.  In the event such meters are not promptly returned to the City, the Developer shall reimburse the City for the cost of each meter at the current cost of such meter(s) as established by the City.  In the event that more than one service is installed pursuant to the Project, then the Developer shall, at the its sole cost and expense, install check valves on all services, both existing and proposed, on the Property.  Such check valves shall be indicated on the plans, and shall be visually verified by the Department prior to establishing any new service.
   9. The Developer shall, at its sole cost and expense, be responsible for obtaining all required permits (including but not limited to paving permits, building permits for work on private property, and permits for sanitary and private clear water connections, sanitary sewers, storm water drains, and private clear water drains) and making all applications (including but not limited to meter applications) necessary for the Project.  The approval of this Agreement by the City in no way waives the Developer’s obligation to make such applications and obtain such permits.
   10. The City shall inspect the Project as it deems necessary during construction, upon the completion of the work and at the expiration of the Maintenance Period.
5. **OWNERSHIP AND MAINTENANCE**
   1. The parties hereby agree that, upon submission of the Developer’s plans to the City, the plans become the property of the City. The Department shall provide the Developer with two (2) complete copies of the final approved plans. If additional copies are needed, the Developer may request such from the Department, and shall pay all reproduction costs associated therewith.
   2. Upon the completion of construction of the Project and notification thereof by the Developer, the City shall inspect all work performed pursuant to the Project, and if it finds the work to be satisfactory, it shall issue a conditional acceptance thereof. From the date of issuance of the conditional acceptance, a one (1) year maintenance period shall commence (the “Maintenance Period”). Upon the expiration of the Maintenance Period, a final inspection shall be made by the City, and if it finds the work performed pursuant to the Project remains satisfactory, the City shall issue a Final Acceptance.
   3. From the commencement of the work through Final Acceptance, any and all costs incurred for any emergency repairs to the Project which, in the sole discretion of the City, may be required to be made by the City, shall be the responsibility of the Developer, who shall promptly reimburse the City for all such costs.
   4. All improvements, with the exception of the Developer’s fiber optic cable, if any, shall become the sole property of the City, and under its complete control, upon Final Acceptance.
   5. At all times during the Term, the City, its employees and other agents, shall have the absolute right of ingress, egress and access to the Project site for any and all purposes, including but not limited to inspection, maintenance, repair, removal, relocation, alteration, or any other purpose deemed necessary based upon the results of any inspection performed by the City.

# DEVELOPER’S PERFORMANCE BOND OR LETTER OF CREDIT

* 1. As a condition of this Agreement, and prior to the Developer initiating the performance of any work under the Project, the total estimated cost of the work to be performed pursuant to the Project shall be secured by a performance bond or irrevocable letter of credit furnished by the Developer or its agent, for the benefit of the City, and in the amount of **DOLLARS** **($.00). Said performance bond or letter of credit shall remain in effect throughout the entire Term of this Agreement**, and may be revoked during the Term only by mutual consent of the parties. Release of the performance bond or irrevocable letter of credit shall occur upon completion of the work, the City’s receipt of As-Built (as defined in the Green Book) revisions of the plan set accepted and approved by the City, the issuance of Final Acceptance of the Project by the City, and the acceptance of any new street, avenue, thoroughfare, or alley by the City, constructed under this Project.

1. **RIGHT OF EXTENSION OR EXPANSION**
   1. The City shall have the right, at any time, and at its own expense, to extend or expand any and all of the Developer’s extensions under the Project in right-of-ways owned by the City or in any permanent easement contiguous to or beyond the Property.
2. **FEES**
   1. In order to perform the Project, the Developer shall pay to the City the following costs and fees:
   2. (i) A non-refundable fee in the amount of  **DOLLARS ($.00),** equal to percent ( %) of the amount of the performance bond or irrevocable letter of credit;
   3. (ii) The cost of all meters, as specified in Section 11 below, in the amount of  **DOLLARS ($.00).**
   4. (iii) A fee of  **DOLLARS ($.00)** required by the Department of Transportation.

# PAYMENTS

* 1. The Developer shall proffer all fees, costs, bonds and/or letters of credit required by this Agreement to the City no later than upon the submission of this Agreement to the City for execution.

1. **METER COSTS**
   1. The Developer shall pay the costs for all meters as may be required for the Project hereunder, which costs shall vary depending on the size and type of the meter(s) involved. The cost of the meter(s) shall be the current cost in effect at the time of application for service, and payment for all meter(s) is due at the time of application.
2. **OTHER AGENCIES’ COSTS**
   1. In the event that services and/or materials of other agencies of the City are required by the Developer in the performance of the work hereunder, the Developer shall pay the full cost of these services and/or materials directly to the various agencies involved. Such expenditures may include, but are not limited to, expenditures for maintenance of traffic signage, traffic signal installation, relocation of light poles, frames, grates, other metal work, and televising of mains.
3. **INDEMNIFICATION**
   1. The Developer shall indemnify, save, defend and hold harmless the City, its elected/appointed officials, departments, agencies, agents, servants and employees, from any and all suits, actions, claims, demands, damages, losses, expenses and/or costs of every kind and description, including attorneys’ fees and court costs associated therewith, to which the City may be subjected or put by reason of injury (including death) to persons or property, arising out of or resulting from any act or omission, whether willful, negligent, or otherwise, of the Developer, its employees or agents, in connection with the performance of the work hereunder.
   2. The City shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall the Developer settle any such claim, lawsuit or proceeding without City’s prior written approval. In the event of any liability claim against the Developer, the Developer shall not seek to join the City, its elected/appointed officials, employees, or agents in such action or hold such responsible in any way for legal protection of the Developer.
   3. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.
4. **INSURANCE**
   1. The Developer shall cause to be procured or maintained during the Term of this Agreement, reasonable and customary insurance, including builder’s risk and liability insurance, sufficient to cover any claim or loss to person(s) or property arising out of the Developer’s performance of the work pursuant to the Project. Herein, the term “Developer’s insurance” shall mean insurance provided by Developer’s contractor.
   2. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents, shall be covered, by endorsement, as an additional insured on Developer’s insurance hereunder, with regard to liability arising out of work performed by or on behalf of the Developer in connection with this Agreement.
   3. The Developer’s insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability.
   4. The Developer’s insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, departments, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, departments, employees, or agents, shall not contribute with the Developer’s insurance or benefit the Developer in any way.
   5. Required insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.
   6. Insurance is to be placed with insurers with a Best’s rating of no less than A:VII, or, if not rated with Best’s, with minimum surpluses the equivalent of Best’s surplus size VII and insurers must be licensed/approved to do business in the State of Maryland.
   7. The Developer shall furnish to the City a “Certificate of Insurance” with a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.
   8. Failure to obtain or maintain insurance coverage as required, or failure to furnish Certificates of Insurance as required, shall constitute a material breach of this Agreement and shall entitle the Department to terminate this Agreement immediately upon written notice to the Developer.
   9. Notwithstanding anything to the contrary in any applicable insurance policy, the Developer expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations stated herein, except as required by law.
5. **COMPLIANCE WITH LAWS:**
   1. The Developer hereby represents, warrants, covenants, and agrees that:
      1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
      2. It represents and warrants that it is the owner or contract purchaser of the Property;
      3. The Developer’s name in this Agreement is its full legal name;
      4. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;
      5. The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);
      6. During the Term, it will comply with all federal, state and local laws, ordinances, rules and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;
      7. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of the Developer’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of the Developer; and
      8. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.
   2. If the Developer fails to fulfill its obligations under this Agreement properly and in a timely manner, including failure to perform construction in accordance with the approved construction schedule, or otherwise violates any provision of this Agreement, including the above representations and warranties, the Department shall have the immediate right to complete or remove the work utilizing the performance bond or irrevocable letter of credit provided for herein, and the parties agree that the City shall automatically be released from any and all claims the Developer may otherwise have relating to the Project. The Department may, in its sole discretion, allow the Developer a specified time period in which to cure a breach and/or otherwise correct and/or improve its performance under the Agreement to the Department’s sole satisfaction.
6. **GENERAL PROVISIONS**
   1. Notice.
      1. All notices, requests, claims, demands and other communications required or permitted under this Agreement (collectively, “Notices”) shall be in writing and be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing to the following:

|  |  |
| --- | --- |
| **FOR THE DEVELOPER**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **FOR THE DEPARTMENT**  , Director  Department of Transportation  417 East Fayette Street, 5th Floor  Baltimore, Maryland 21202 |
|  | *with copies to:*  Mr. David Framm, Supervisor  Department of Transportation  Right of Way Services Division  Land Conveyance Section, Rm. 204  Baltimore, Maryland 21202 |

* + 1. All Notices shall be effective upon receipt by the party to which notice is given.
  1. Governance.
     1. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, including the applicable statute of limitations, without regard to the conflict of law rules.
     2. The legal venue of this Agreement and any disputes arising from it shall be settled in Baltimore City, Maryland. The Developer hereby irrevocably waives any objections and any right to immunity on the ground of venue or the convenience of the forum, or to the jurisdiction of such courts or from the execution of judgments resulting therefrom.
  2. No Waiver. A party’s failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.
  3. Severability. Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of this Agreement, which shall remain in full force and effect.
  4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective personal and legal representatives, successors, guardians, heirs and permitted assigns of the parties hereto and all persons claiming by and through them.
  5. Agency. Nothing herein contained shall be construed to constitute any party the agent, servant or employee of the other party, except as specifically provided in this Agreement. No party has the authority to act as an agent of the other party except as specifically provided in this Agreement.
  6. Gender. Words of gender used in this Agreement may be construed to include any gender; words in the singular may include the plural of words, and vice versa.
  7. Headings. Any heading of the paragraphs in this Agreement is inserted for convenience and reference only, and shall be disregarded in construing and/or interpreting this Agreement.
  8. Multiple Copies. This Agreement may be executed in any number of copies and each such copy shall be deemed an original.
  9. Recitals. The recitals are hereby incorporated as part of this Agreement.
  10. Survival. The representations, warranties, covenants promises and agreements contained in this Agreement shall survive the execution and consummation of this Agreement, and shall continue until the applicable statute of limitations shall have barred any claims thereon.
  11. Interpretation. In the event of an ambiguity or question as to the meaning of any provision of this Agreement, or a conflict, or inconsistency between similar terms, conditions, or language between or within this Agreement and the provisions of any exhibit or schedule attached hereto or any document referred to herein, the interpretation placed thereon by the City shall be final and binding on the parties hereto, provided that any such interpretation shall not be unreasonable.
  12. Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
  13. Modifications and Amendments. Any and all modifications, alterations, or amendments to the provisions of this Agreement must be by means of a written amendment that refers to and incorporates this Agreement, is duly executed by an authorized representative of each party, and is approved by the City’s Board of Estimates. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.
  14. Assignability/Subcontracting. The Developer shall not assign, transfer, or subcontract any part of this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.
  15. Entire Agreement. This Agreement constitutes the entire, full and final understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein. The parties do not intend to sign this Agreement under seal to make it a specialty under Maryland law and hereby agree to impose the standard statute of limitations on this Agreement.
  16. Null and Void. Should this Agreement not be approved by the City’s Board of Estimates, it shall be considered null and void.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the day and year first above written.

**ATTEST MAYOR AND CITY COUNCIL OF BALTIMORE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Custodian of the City Seal Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESS DEVELOPER’S LEGAL NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Seal)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPROVED AS TO FORM APPROVED BY THE BOARD OF ESTIMATES**

**AND LEGAL SUFFICIENCY**

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Assistant Solicitor Clerk Date

Being page of a Developer’s Agreement by and between the Mayor and City Council of Baltimore and the Developer.