

**CASH DEPOSIT AND PERFORMANCE AGREEMENT
FOR PUBLIC WORKS AGREEMENT**

This Cash Deposit and Performance Agreement (*Agreement*) is made this ____ day of _____, 20____ by and between ____ (*Developer*) and the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (*County Commissioners*).

RECITALS

WHEREAS, the Developer is the Owner and party entering into the Public Works Agreement No. ____ between the Developer and the County Commissioners for the construction of infrastructure as described in said Public Works Agreement for:

Subdivision Name/Section or Phase: _____

Recorded Plat No.: _____

Owner/Developer Name: _____

WHEREAS, it is one of the conditions entering into Public Works Agreement No. ____ that this Agreement should be executed.

NOW THEREFORE, in consideration of the covenants, conditions and agreement contained herein, and for good and valuable consideration, the parties agree:

1. Deposit: As security of the performance the construction of infrastructure by Developer as described in Public Works Agreement No. ____, Developer shall provide the County Commissioners the full and just sum of ____ dollars (\$____), in lawful money of the United States of America, to be held for the purposes indicated herein.

2. Performance: If the Developer shall faithfully perform all of the obligations of the Developer set forth in Public Works Agreement No. ____, and shall fully indemnify and save harmless the County Commissioners from all costs and damages which the county Commissioners may suffer by reason of the failure of the Developer to do so, and shall fully reimburse and repay the County Commissioners all reasonable outlays and expenses which the County Commissioners may incur by reason of such failure, then the Deposit Amount shall be returned to the Owner without interest.

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3. Failure to Perform: If the Developer fails to perform all obligations of the Developer set forth in Public Works Agreement No. ___, does not fully indemnify and save harmless the County Commissioners from all costs and damages which the County Commissioners may suffer by reason of the failure of the Developer to do so, or does not fully reimburse and repay the County Commissioners all reasonable outlays and expenses which the County Commissioners may incur by reason of such failure, then the Deposit Amount shall be forfeited to the county Commissioners in the amount equal to all costs and damages which the County Commissioners may suffer by reason of the failure of the Developer to: (i) perform all obligations relating to Public Works Agreement No. ___, (ii) indemnify and save harmless the County Commissioners from all costs and damages which the County Commissioners may suffer by reason of any failure of the Developer, or (iii) fully reimburse and repay the County Commissioners all reasonable outlays and expense which the County Commissioners may incur by reason of any such failure. Any remaining amount shall be returned to the Developer without interest.
4. Default: In the event of any default on the part of the Developer, a written statement of the particular facts showing the date and nature of such default shall be provided to the Developer by registered mail. If the Developer fails to cure the default within thirty (30) days of notice of such default, the County Commissioners shall be permitted to immediately take over and assume completion of the obligations relating to Public Works Agreement No. ___ through its agents, employees or contractors and shall be permitted to recover damages and expenses directly from the Developer or against the Deposit Amount.
5. Release: The obligations of this Agreement shall not be released until such time as the obligations relating to Public Works Agreement No. ___ are approved by the Director of Permits and Inspections, a maintenance security in the amount of twenty percent (20%) of this performance security is deposited with the Division of Permits and Inspections, and if required, a maintenance security agreement and an executed deed conveying the rights of way relating to said Public Works Agreement is received by the Division of Permits and Inspections.
6. Right of Entry: The Developer hereby grants the County Commissioners, its agents, employees and contractors the right of entry at reasonable times and in a reasonable manner for the purposed of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the infrastructure relating to Public Works Agreement No. ___.

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7. Suit: No suit or action may be maintained in relation to the Agreement unless it shall have been instituted within three (3) years from the date that this agreement is released.
8. Assignment: This Agreement shall not be assignable and transferrable b the Developer without the prior written approval and consent of the County Commissioners.
9. Notice: All notices and correspondence under or regarding this Agreement or any provisions hereof shall be in writing and shall be hand-delivered or sent postage prepaid by either (i) United States mail, certified, return receipt requested, or (ii) for delivery the next business day with a nationally recognized express courier:

To the Developer at:

Name: _____
Company: _____
Street: _____
City, State and Zip: _____

To the County at:

Director of Permits & Inspections/Code Official
Washington County Division of Permits & Inspections
747 Northern Avenue
Hagerstown MD 21742

and

County Attorney's Office
100 West Washington Street, Suite 1101
Hagerstown MD 21740

10. Laws of Maryland: This Agreement was made and entered into in the State of Maryland and is to be governed by and construed under the laws of the State of Maryland.
11. Recitals: The Recitals are hereby incorporated into this Agreement as substantive provisions.

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12. Entire Agreement; Modifications: This Agreement represents the complete and entire agreement between the parties concerning the deposit of funds as security for the performance of the obligations contained in Public Works Agreement No. _____. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of either party.
13. Severability: If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.
14. Waiver: Neither party's waiver of the other's breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Agreement.
15. Survival: The covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.
16. Counterparts/Execution: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or photocopy of a signature of a party shall constitute an original signature, fully binding the party for all purposes.
17. Successors Bound: This Agreement shall be binding on and shall inure to the benefit of the successors, assigns, heirs and legal representatives of the parties hereto.

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WITNESS our hands and seals this _____ day of _____, 20 ____.

OWNER/DEVELOPER:

[FOR INDIVIDUALS]

Witness:

(Signature)

(SEAL)

Printed Name

Witness:

(Signature)

(SEAL)

Printed Name

Developer (if not owner): _____

Phone No.: _____

Address: _____

[FOR ENTITIES, (i.e. corporations, partnerships, limited liability companies)]

ATTEST/WITNESS:

(Entity Name)

BY:

(Signature)

(SEAL)

(Printed Name and Title)

Developer (if not owner): _____

Phone No.: _____

Address: _____

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Washington County Division of Engineering
on behalf of the Board of County
Commissioners of Washington County,
Maryland

Witness:

By:

Director

Approved as to form and legal sufficiency:

County Attorney

Approved & Accepted by:

Real Property Administrator
Washington County Division of Engineering
747 Northern Avenue
Hagerstown MD 21742
Phone: 240.313.2410