

Town of Boonsboro
PUBLIC WORKS AGREEMENT

THIS PUBLIC WORKS AGREEMENT 2020, made and entered into the _____ day of _____, 2020 by and between the Mayor and Council of Boonsboro, 21 N. Main St., Boonsboro, MD 21713, a body corporate and politic of the State of Maryland, herein called “Boonsboro” and Preserve at Fox Gap, LLC, a Maryland Corporation, herein called “Applicant”.

WHEREAS, the Applicant desires a permit to improve the land known as **Easterday Post Office along Ostertag Pass** and to complete Phase II of the **South End Pumping Station** in the Town of Boonsboro, Maryland, herein collectively called the “Property” owned by the applicant; and

WHEREAS, the Applicant, in furtherance of its effort to obtain building permits, has agreed to make certain improvements including **stormwater management, storm drainage, site work, landscaping, earthwork, signage and striping, sanitary sewer construction, waterline construction, pavement, curbing, and sidewalk construction related to the extension of Ostertag Pass and the roadway between Parcel C and Lots 2, 3, and 4 as identified on the plans attached as Exhibit A, and complete Phase II of the South End Pumping Station** in accordance with the requirements of Boonsboro and shown on the approved preliminary plans for the development; and

WHEREAS, Boonsboro has approved the cost of construction of improvements mentioned above, either by a sum referenced in a contract between the Applicant and a contractor to perform the work contemplated hereby or by an engineering estimate; and

WHEREAS, Applicant and Boonsboro have consented and agreed to enter into this Agreement believing it to be to their mutual benefit.

NOW THEREFORE, in consideration of the premises, and in order to carry out the requirements of Boonsboro, it is agreed by and between the parties as follows:

SECTION I

The Applicant agrees:

1. To construct within **one (1) year** from the date of final execution of this Agreement, with extensions as necessary due to delays beyond the control of the Applicant, the following Public Works facilities according to the standards and specifications heretofore established; **including roads, storm drainage, water and sewer systems, storm water management ponds and related appurtenances** in accordance with the approved plans marked as Exhibit A, attached hereto and made a part hereof.
2. As security for said improvements and facilities, the Applicant has posted with Boonsboro, Irrevocable Letters of Credit and/or Bonds in amounts set forth in Exhibit B

attached hereto and made a part hereof, which amounts have been determined based upon One Hundred Percent (100%) of the contract sum or engineering estimate, as the case may be.

3. To provide written progress reports to the Town no less frequently than the first day of every month on a template to be provided by the Town reporting on the status of project milestones and any changes to the project schedule. The initial report shall include a schematic of work flow, and monthly reports shall include updates thereto.
4. To convey or sign any future agreements needed to fulfill the terms of this Agreement.

SECTION II

Once the improvements are completed by the Applicant and are accepted by Boonsboro, Boonsboro agrees:

1. To provide continuous water and sewer service to the Property, subject to normal interruptions for repair and maintenance.
2. To provide public services to the Property.
3. To maintain streets as public streets.

SECTION III

It is understood and agreed by the parties hereto that this Agreement and security obligation shall terminate upon the timely and faithful performance of each and every term and condition set forth herein.

It is further understood and agreed by the parties hereto that the failure, neglect or refusal of the Applicant to perform the terms and conditions of this Agreement, in addition to any other remedies which Boonsboro may have against the Applicant, shall also entitle Boonsboro to the following:

1. Forfeiture to Boonsboro of the funds posted in guarantee of performance and Boonsboro may enter into and upon the Property to be improved to construct said improvements, the Applicant to be responsible for any costs and expenses incurred which are not paid for by the Performance Bond and/or Letters of Credit posted to guarantee performance by the Applicant.
2. Any balance remaining out of the forfeited funds after completion of required improvements may be recovered by the Applicant.

It is further understood and agreed by the parties hereto that Boonsboro is obligated to maintain improvements after the improvements are acquired pursuant to this Agreement. Upon final acceptance of the improvements by Boonsboro after the expiration of a one (1) year maintenance period applicable to the improvements to be accepted, Boonsboro will accept title to the same unless specifically set forth herein or by separate agreement.

SECTION IV

Applicant acknowledges that Boonsboro shall have the right to enter upon the Property at any time within sixty (60) days prior to the termination date of the Performance Bond or Letter of Credit and at such time, Boonsboro shall have the right to cite Applicant for failure to completed the construction of the improvements in accordance with this Public Works Agreement executed in conjunction with the development. The intent of Section IV being to allow Boonsboro to file a claim in order to preserve its rights against the surety of the Applicant.

SECTION V

In the event of any default hereunder of the part of the Applicant, a written statement of the particular facts showing default and date thereof which shall act as a notice of default, shall be mailed by Boonsboro to the Applicant, certified mail, and the Applicant shall have twenty (20) days to commence to cure such default and shall complete such cure within sixty (60) days of commencing to cure the default. In the event the default is not cured within sixty (60) days, Boonsboro may elect to draw upon the Letter of Credit of Bond for the above-described improvements in accordance with its terms.

SECTION VI

The parties further agree as follows:

1. Effectiveness. This Agreement shall become effective on the date signed by both Parties and, unless otherwise specified herein, shall remain in full force and in effect until terminated by written mutual agreement of the Parties.
2. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland. Any suit involving any dispute or matter arising under this Agreement shall be brought in the Circuit Court for Washington County, Maryland, unless that court does not have subject matter jurisdiction, in which case the action shall be brought in the District Court of Maryland for Washington County. The parties hereto consent to such jurisdiction.
3. Notices. Notices required under this Agreement are effective if the same is in writing and sent, postage prepaid, by United States mail, directed to the other party at their

address hereinafter mentioned, or such other addresses 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:

If to the Town:

Town Manager
21 North Main Street
Boonsboro, MD 21713

If to the Applicant:

Todd Easterday, Authorized Representative
Preserve at Fox Gap, LLC
20320 Ayoub Lane
Hagerstown, MD 21742

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered.

Witness:

Preserve at Fox Gap, LLC:

_____ (SEAL)

Attest:

Mayor and Council of Boonsboro:

_____ (SEAL)

Howard Long, Mayor