

PROJECT: (Project Name as it appears on plans) Tax ID: \_\_\_\_\_

### **LANDSCAPING LICENSE AGREEMENT**

THIS LANDSCAPING LICENSE AGREEMENT (this "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("Licensee"), and **Frederick County, Maryland**, a body corporate and politic of the State of Maryland ("County").

#### **RECITALS:**

WHEREAS, \_\_\_\_\_ is a public street located within the \_\_\_\_\_ subdivision in the \_\_\_\_\_ Election District, Frederick County, Maryland, and

WHEREAS, the County owns and maintains a public road right-of-way (the "Right-of-Way") and appurtenant Facilities (defined below) for \_\_\_\_\_ Road and may also maintain public water and sewer lines therein, and

WHEREAS, Licensee is the owner of certain property located in Frederick County, Maryland identified as Parcel \_\_\_\_\_ on Tax Map \_\_\_\_\_, and

WHEREAS, in consideration of this Agreement, the Licensee hereby agrees to indemnify and absolve the County of all liability for personal or property damages related to this Agreement, and responsibility for the construction, replacement or restoration of the Landscaping, in the event it becomes necessary to disturb, alter or remove all or any portion of the Landscaping in order to repair, replace or maintain the County's roadway and appurtenances, including but not limited to, asphalt paving, curb and gutter, median, water or sewer lines, storm drains, and stormwater management facilities, or any other public utility or public improvements located with the County Right-of-Way (the "Facilities") and

WHEREAS, the parties desire to memorialize this Agreement by the execution of this document and its recordation among the land records for Frederick County, Maryland.

NOW THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the recitals above, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The foregoing Recitals are incorporated into this Agreement to the same extent as if they were repeated in this Paragraph 1.
2. The County hereby grants to Licensee a nonexclusive license and right to use a portion of the Right-of-Way for the limited purposes of installing the Landscaping and performing necessary maintenance, upkeep and repairs of the Landscaping, per approved plans as required in Paragraph 3. As used herein, the term "Landscaping", includes the planting of trees, woody shrubs and bushes and small flower beds, and the installation of other permanent landscape features created by timber, adobe or other permanent structures

within the Right-of-Way. The term “Landscaping” as used herein does not include grasses, individual flowers (not within a structural flower bed), wild flowers, and mulching within the Right-of-Way.

3. Licensee has provided plans describing the proposed Landscaping and its placement in the Right-of-Way (“Landscape Plan”). Licensee shall not begin installation of the Landscaping prior to receiving approval of the Landscape Plan from the County. In order to be approved by the County, the Landscape Plan must comply with all applicable standards, including but not limited to AASHTO design guidelines. The Landscaping shall be installed in accordance with all applicable laws, regulations and County policies for work within the Right-of-Way.
4. Licensee shall keep and maintain the Landscaping as shown on the approved Landscape Plan, in good repair, in a manner to insure long term sight distance is maintained, and in accordance with the approved Landscape Plan, and shall comply with the Frederick County Division of Public Works Policy regarding the placement of Permanent Structures within County-maintained Rights-of-Way. Except in the case of an emergency, and except for routine maintenance (e.g., routine lawn mowing, landscaping, etc.), which must be regularly performed by Licensee, Licensee shall obtain a permit to work within the County Right-of-Way from the Division of Highway Operations, prior to all intended maintenance or repairs. Licensee shall be authorized by the County to install the Landscaping upon approval by the County of the Landscape Plan, any necessary public works agreements and guarantees and this agreement.
5. Upon receipt of notice from the County of any problems or deficiencies in the Landscaping, Licensee shall correct the problems as directed by the County. If, in the County’s sole judgment, the problems or deficiencies create an immediate or imminent safety concern, the County will specify that the required maintenance must be performed within 5 days after receipt of notice. If, in the County’s sole judgment, the problems or deficiencies do not create an immediate or imminent safety concern, the notice from the County will specify that the required maintenance must be performed within thirty (30) days after receipt of notice. If the Licensee fails to perform the required maintenance with the specified time period, the County may, at its discretion: (a) terminate this Agreement and require Licensee to remove all of the Landscaping covered by this Agreement; or (b) perform all of the necessary work to bring the Landscaping into compliance with applicable laws, regulations and County policies. If the County chooses to terminate the Agreement, and Licensee fails to complete removal of the Landscaping within thirty (30) days after the date of written notice of termination, or if the County performs the necessary work to bring the Landscaping into compliance, then Licensee shall be sent an invoice by the County for the reasonable cost of the work. In the event that the Licensee fails to reimburse the County within thirty (30) days after receiving the invoice, then the County may include such costs on the tax bill(s) for the Licensee’s property referenced in this Agreement. Nothing herein shall prevent or preclude the County from using any legal remedies available to the County to collect these costs from the Licensee.

6. In the event it becomes necessary to disturb or remove the Landscaping in order to repair, replace or maintain the water and/or sewer lines or other Facilities located within the Right-of-Way, Licensee hereby waives any rights it may have under Section 2-13-28 of the Public Local Laws, agrees that the County shall not be responsible for the removal, replacement or restoration of any portion of the Landscaping and/or related improvements, and agrees that the County's only responsibility will be limited to the replacement and restoration of any asphalt paving, or other public facilities disturbed or removed, as aforesaid.
7. The Licensee hereby agrees to comply with the terms and conditions of this Agreement as of the date first listed above, even if the Right-of-Way has not yet been accepted for dedication by the County. In addition, nothing herein shall change or affect the terms and conditions of any water or sewer easements granted to the County in the Right-of-Way.
8. Licensee shall indemnify, defend upon request, and hold harmless the County from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs, and expenses (including, without limitation, reasonable attorney's fees and expenses) of any kind whatsoever, including injury to or death of persons, or loss or damage to property, arising from, incident to, or occurring in connection with this Agreement.
9. Licensee hereby represents and warrants to the County that upon the execution hereof, and during the term of this License Agreement, Licensee shall maintain comprehensive general public liability insurance protecting against any and all claims for injury to persons or property occurring within the Right-of-Way, with such policy to be in the minimum amount of One Millions (\$1,000,000.00) single limit coverage, without deductible. Frederick County shall be named as additional insured on each such policy. The County shall have the right to review the amount of insurance required under this License Agreement every three (3) years and based on the then present conditions may require Licensee to acquire additional insurance.
10. This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of Maryland without accordance to conflict of law principles.
11. Any modification of this Agreement or any additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party.
12. The rights, privileges, duties and obligations contained in this Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties hereto.
13. If any of the covenants, restrictions, or other provisions of this Agreement shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last surviving person to execute this Agreement on behalf of the parties hereto.

14. Each party hereby warrants and covenants that it has full right, power and authority to enter into, carry out and perform this Agreement without obtaining any further approvals or consents.
15. All notices under this Agreement shall be hand delivered, sent by overnight delivery (with signed receipt), or sent by certified mail (return receipt requested), to the County and the Licensee at the following addresses:

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

County: Frederick County Government  
30 North Market Street  
Frederick, Maryland 21701  
Attn: Development Review Engineering

Either party may, at any time, change its notice address by giving the other party notice, in accordance with the above, stating the change and setting forth the new address.

**IN WITNESS WHEREOF**, The Parties hereto have executed this Agreement in accordance with the terms and conditions set forth herein, under their respective seals as of the day and year first above written.

**Witness/Attest:**

\_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LICENSEE**

**Witness/Attest:**

**FREDERICK COUNTY, MARYLAND**, a body  
corporate and politic of the State of Maryland

\_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Chief Administrative Officer

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared \_\_\_\_\_ who acknowledged he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing Agreement for the purposes therein contained, by signing on behalf of the \_\_\_\_\_ by himself/herself as \_\_\_\_\_.

AS WITNESS my hand and Notarial Seal:

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, FREDERICK COUNTY, TO-WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared \_\_\_\_\_ who acknowledged he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing Agreement for the purposes therein contained, by signing on behalf of the \_\_\_\_\_ by himself/herself as \_\_\_\_\_.

AS WITNESS my hand and Notarial Seal:

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_