

**TERMINABLE RIGHT OF ENTRY PERMIT
AND
ACCESS AGREEMENT**

THIS TERMINABLE RIGHT OF ENTRY PERMIT AND ACCESS AGREEMENT (the "**Agreement**" or "**Right of Entry Permit**") is entered into as of the date of the last signature below ("**Effective Date**") by and between Prince George's County, Maryland, a body corporate and politic, acting by and through its Office of Central Services (the "**County**" or "**Licensor**"), and the Town of Upper Marlboro, Maryland, a body corporate and politic in the State of Maryland, (the "**Licensee**"). The County and Licensee are sometimes referred to herein individually as "**Party**" and collectively as "**Parties**."

RECITALS:

WHEREAS, the County is the fee owner of that certain real property located at 14500 Church Street, Upper Marlboro, in the County of Prince George's, Maryland, as described in **Exhibits "A", "B" and "C"** of this Agreement, which is attached hereto and fully incorporated herein (the "**Property**"); and

WHEREAS, the Licensee, for itself and its independent contractors and invitees, desires to obtain the County's permission to enter onto the Property, on a temporary basis, for the purpose of undertaking tests, inspections and other site assessment activities, as described in **Exhibit "D"** of this Agreement, which is attached hereto and fully incorporated herein (the "**Scope of Work**"); and

WHEREAS, the County is willing to grant the Licensee, and its independent contractors and invitees, the right and permission to enter upon the Property for this limited purpose, subject however, to the terms and conditions set forth in this Agreement; and

WHEREAS, in order to complete the Scope of Work described in Exhibit D, the Licensee, and its independent contractors and invitees, will need to access the Property; and

WHEREAS, the County desires to accommodate Licensee's request.

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein contained, and for other goods and valuable considerations, the receipt and sufficient of which are hereby mutually acknowledged, the parties agree as follows:

- 1. Right of Entry Permit.** The County grants to Licensee, its employees, independent contractors, and invitees (collectively "**Independent Contractors**") a non-exclusive, temporary right to enter the Property as depicted on **Exhibit "C"** attached hereto, at any time during daylight hours Monday through Saturday (unless otherwise specified in the Right of Entry Permit), to perform the following site assessment activities:
 - a. Topographic surveys of and around existing facilities
 - b. Opening and inspecting existing sewer manholes
 - c. Environmental delineation around existing sewer facilities
 - d. Other site visits as may be necessary or desirable to evaluate the Property or as may be required by applicable laws, regulations or codes.

Licensee or its Independent Contractors may store equipment on the Property during the term of this Right of Entry Permit; provided, however, that Licensee and its Independent Contractors shall be solely responsible for securing such equipment on the Property and, except for the intentional or negligent acts of the County, including its agents, servants, and employees, the County shall not be liable for any theft or damage to any equipment stored on the Property. No other use shall be made of the Property by Licensee or its Independent Contractors other than the performance of the Scope of Work described in Exhibit C without the County's prior written approval, which approval shall not be unreasonably conditioned, withheld or delayed. Prior to entering the Property, Licensee or its Independent Contractors shall provide notification to the County to coordinate access on the Property. Licensee's Independent Contractor shall provide proof of insurance as required in Paragraph 14.

2. **Term.** The term of this Agreement shall automatically terminate on **December 31, 2024**, unless earlier terminated as provided herein. The term may be extended by written notice to the County, which extension shall not be unreasonably conditioned, withheld or delayed. The Agreement is subordinate to all prior or future rights and obligations to the County in the Property, except that the County shall grant no rights inconsistent with the reasonable exercise by the Licensee or its Independent Contractors of its rights under this Agreement.
3. **Prohibited Uses.** During the term of this Agreement, Licensee or its Independent Contractor shall prohibit its Agents from conducting the following activities on the Property:
 - a) Constructing any permanent improvements on the Property without the prior written consent of the County as to the scope and manner of such work, which consent may be withheld by the County in its sole and absolute discretion;
 - b) Digging or excavating on the Property (excluding borings and soils samples);
 - c) Invasive activities or tests upon the Property, or any environmental testing on the Property beyond the scope of a standard "Phase I" investigation, without the prior written approval by the County of a workplan for such "Phase II" or invasive testing;
 - d) Engaging in any activity that is illegal under applicable federal law or the laws of the State of Maryland or Prince George's County;
 - e) Exchanging of monies or funds on the Property in violation of law;
 - f) Connecting to on-site utilities on the Property, unless the utilities have been transferred into the name of the Licensee and the Licensee pays for the cost of such utilities;
 - g) Conducting any form of political activity on the Property;
 - h) Consuming alcoholic beverages on the Property;
 - i) Using illegal substances or items such as explosives, firecrackers, firearms, or weapons on the Property;
 - j) Permitting any hazardous material to be brought upon the Property; except for those materials in the minimal amounts that are necessary and directly related to the Scope of Work and in which case Licensee's use, storage, and disposal of such hazardous materials shall be in compliance with applicable environmental laws, regulations and guidelines governing same;

- k) Kindling, burning, maintaining, or using fire in any place, portable receptacle, or grill;
- l) Lighting campfires on the Property; leaving, throwing away, or tossing any lighted match, cigar, or cigarette, hot coals, or other flammable material within 500 feet of the Property;
- m) Engaging in disorderly behavior in a manner that might cause a danger or nuisance to the public;
- n) Driving and/or parking unauthorized vehicles on the Property.

Violation of any provision of this Paragraph 3 by any of Licensee's Independent Contractor's Agents, and continuation of such violation for a period of three (3) days after receipt of written notice thereof from the County to the Licensee, shall result in the revocation of this Permit.

4. **No Real Property Interest.** It is expressly understood that this Right of Entry Permit does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to Licensee or its Independent Contractor. This Right of Entry Permit is not exclusive. Unless doing so frustrates the purpose or intent of this Right of Entry Permit, the County specifically reserves the right to grant other rights of entry within the vicinity of the Property. However, this Agreement shall have priority over any subsequently granted right to enter the Property.
5. **Revocable Licenses; Termination of Permit.** Notwithstanding any improvements made by Licensee to the Property or any sums expended by Licensee in furtherance of this Right of Entry Permit, the Right of Entry Permit granted herein is revocable and may be terminated by the County in accordance with the terms of this Agreement. In the case of an emergency, this Right of Entry Permit may be terminated by the County immediately.
6. **Protection of Persons and Property.** The Licensee and its Independent Contractors shall take commercially reasonable steps to prevent any activity of the Licensee or any of its Independent Contractors from endangering any persons present at the Property with the permission of the Licensee or its Independent Contractors, and except as otherwise provided herein, shall not cause any change to any element of the Property which might subject any person to injury.
7. **Release of Liability; Limitation of Liability.** The Licensee agrees to release the County from any and all liability for any claims for damages resulting from bodily injury, death or property damage as a result of the Licensee's access to, construction on and use of the Property. Under no circumstance shall the County be liable to the Licensee or any other third party based on contract, tort, or otherwise, for any damages (including indirect, consequential, incidental, special or punitive damages) or any liability whatsoever arising out of or relating in any way to Licensee's proposed Scope of Work.
8. **Insurance.** Licensee's Independent Contractor, at its sole cost and expense, shall obtain a Certificate of Insurance (COI) prior to the event as evidenced that the insurance has been satisfied and maintained in full force and effect insurance in the amounts and coverage as specified below:
 - a) *Liability Insurance.* Occurrence-based liability insurance covering third party bodily injury, personal injury, and property damage, including injury or

damage arising, with limits not less than \$1,000,000 for each occurrence and \$2,000,000 annual aggregate.

- b) *Automobile Liability Insurance.* Automobile liability insurance policy with a minimum limit of not less than \$1,000,000 per accident. Coverage shall be applicable to all owned, hired or non-owned vehicles placed, parked or used by and under the control of Licensee's Contractor(s), subcontractors, consultants, employees, officers, agents and invitees. This coverage shall be provided on an occurrence based form.
- c) *Workers' Compensation and Employers' Liability.* Workers' compensation policy written in accordance with the laws of the State of Maryland that includes Employer's liability coverage with limits not less than \$500,000 per occurrence.
- d) ***Other.***
 - i. The minimum limits of insurance coverage required of Licensee's Independent Contractor under this Agreement shall in no event limit the liability of Licensee's Independent Contractor under this Agreement. Licensee's Independent Contractor shall deliver to County evidence of the coverage required hereunder on or before the Effective Date, and delivery of such evidence shall be a prerequisite to and condition of Licensee's Independent Contractor right to enter the Property pursuant to this Agreement.
 - ii. All insurance required above provides Licensee 30 day's written notice in the event of cancellation. In the event Licensee receives notice of cancellation, Licensee shall provide County 10 day's written notice of cancellation.
 - iii. Licensee's Independent Contractor's compliance with the provisions of this Section 8 shall in no way relieve or decrease Licensee's indemnification obligations under this Agreement or any of Licensee's other obligations hereunder. Notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate immediately, without notice to Licensee, upon the lapse of any required insurance coverage. Licensee or its Independent Contractor shall be responsible, at its expense, for separately insuring Licensee's or its Independent Contractor's personal property.

9. Indemnification. To the extent permitted by law, and subject to available appropriations, the Licensee shall indemnify, defend and hold harmless the County, its employees, officers, officials, agents and representatives (collectively, the "Indemnitees"), and shall require that each subcontractor indemnify, defend and hold harmless the Indemnitees, from and against all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property due to acts, omissions or grossly negligent performance of the Licensee, its employees, independent contractors, agents, invitees, consultants, subcontractors or representatives in connection with the Property. This indemnification does not create any rights in third parties. Licensee's liability under this indemnification provision shall be subject to and limited by the provisions, types of liability, notice requirements, and maximum amounts established in the Local Government Tort Claims Act (MD. CODE ANN., CTS. & JUD. PROC. § 5-301, *et seq.*

10. Improvements. No temporary or permanent improvements shall be constructed or installed on the Property by the Licensee or its Independent Contractor except for as specifically

consented to in a scope of work signed by the County. Upon termination of this Agreement for any reason, the Licensee agrees that the County shall not be responsible for reimbursing the Licensee for the cost of any improvements to the Property, or the cost of any required repairs to the Property; however, the County shall allow Licensee or its Independent Contractor reasonable and sufficient time to remove any such temporary or permanent improvement.

11. Waste Disposal. The Licensee agrees that there shall be no burning, burial or disposal of any waste or excess materials, of any kind, on the Property. The Licensee also agrees that there shall be no storage of hazardous waste, of any kind, on the Property.

12. Reports. The Licensee shall promptly provide written notification to County of the results of the Site Assessment Activities and any other investigation of the Property and shall provide County with copies of all sampling results and any written summaries, reports, or evaluations of such results within thirty (30) days of its finds. County makes no representations or warranties as to the presence or absence of Hazardous Materials (defined hereinafter) in or on the Property. This provision shall survive the expiration or earlier termination of this Right of Entry Permit.

Such written notification shall be sent to the County pursuant to Section 13 hereof.

13. Notices:

- a) Notices from Licensee or its Independent Contractors concerning entries upon the Property by Licensee and its Independent Contractors, and coordination of scheduling, as provided in Paragraph 1, shall be sent at least forty-eight (48) hours prior to entry to the County at:

Office of Central Services
1400 McCormick Lane, Suite 336
Largo, Maryland 20774

All other notices and communications under this Agreement shall be in writing and shall be deemed duly given (a) upon delivery, if delivered by prepaid reputable delivery service (with signed receipt), or by postage paid, certified (return receipt requested) or overnight U.S. mail, or (b) upon receipt, if send by facsimile transmission, with electronic verification, or (c) upon refusal, if delivery is attempted by a means provided in (a). Notices shall be sent:

To County:

Prince George's County, Maryland
Attn: Director
Office of Central Services
1400 McCormick Dr., Suite 336
Largo MD 20774

With Copies to:

County Attorney
Wayne K. Curry County Administration
Building
1301 McCormick Drive
Suite 4100
Largo, MD 20774

To Licensee:

Town of Upper Marlboro
Attn: Mayor
14211 School Lane
Upper Marlboro, MD 20772

With Copies in any event to:

The foregoing addresses may be changed by written notice to the other party as herein provided.

- 14. Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Maryland and enforced in a court of competent jurisdiction in Prince George's County, Maryland.
- 15. Amendments.** This document shall not be amended without the written agreement of both Parties.
- 16. Assignment.** This Agreement may not be assigned without the prior written agreement of both Parties.
- 17. Severability.** If any provision of this Agreement is determined to be invalid or illegal by a court of law, it shall be severed from this Agreement and shall not affect the remainder of any other provision contained herein.
- 18. Waiver.** The failure of either party to enforce any part of this Agreement shall not be deemed as a waiver of a further breach of the same covenant, condition, or agreement or of any other covenant, condition, or agreement.
- 19. Execution in Counterparts.** This Agreement may be executed in counterparts each of which shall constitute an original.
- 20. Miscellaneous:** Licensee understands that this Right of Entry Permit shall not in any way whatsoever grant or convey any permanent easement or other interest in the County Property to the Licensee. Any entry onto the Property by the Licensee or its Independent Contractors shall not interfere with the operation or use of the Property by the County or County agencies or its tenants, as applicable, or cause any damages to any improvements on the Property.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have executed this Right of Entry Permit and Access Agreement under their respective hands and seals as of the Effective Date.

WITNESS/ATTEST:

**THE TOWN OF UPPER MARLBORO,
MARYLAND**

a body corporate and politic

(signature)

By: _____

Name: Sarah Franklin

Title: President & Mayor

Date: _____

PRINCE GEORGE'S COUNTY, MARYLAND

A body corporate and politic

By: _____

Name: Jared M. McCarthy

Title: Deputy Chief Administrative Officer
for Government Operations

Date: _____

[Exhibits to Follow]

EXHIBIT "A"

Property Description

Being the property of Prince George's County, Maryland located in the Third Election District at Map 101, Grid E2, Parcel 90, Part Triangle Lot totaling +/- 5,180 square feet, with an above ground historical stone building structure totaling +/- 1,426 square feet.

Property also known as the "Old Stone House" located at the intersections of Old Crain Highway, Church Street, and Old Marlboro Pike and addressed "14500 Church Street, Upper Marlboro".

Tax Identification Number: 03-0229922

EXHIBIT "B"

Property Map

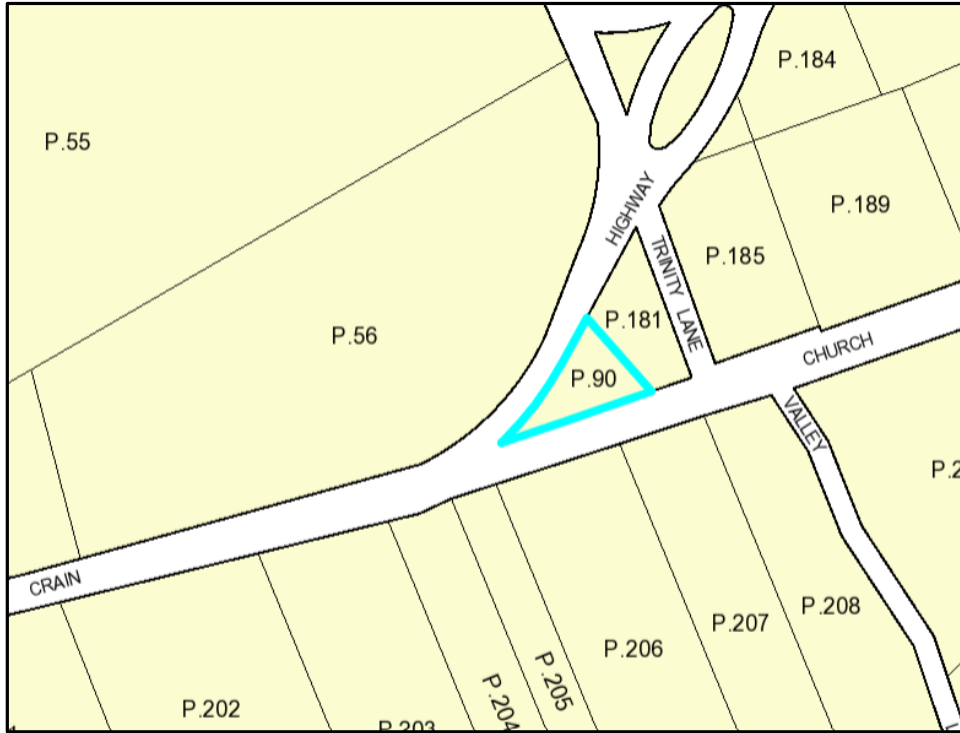


EXHIBIT "C"

Site Image

14500 Church Street, Upper Marlboro 20772



EXHIBIT "D"

Scope of Work

<PLEASE INSERT PARAGRAPH DETAILING SCOPE OF WORK TO BE PERFORMED
WITHIN AND AROUND THE PROPERTY>