

## PRIVATE PAVING AGREEMENT

### Agreement No.: PP-

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between, \_\_\_\_\_ ("Developer") and the **City of Philadelphia, acting through its Department of Streets** ("City").

**WHEREAS**, pursuant to the Philadelphia Code Section 11-504, when requested by the owner of property and deemed by the Department of Streets to be in the best interest of the City, the Department of Streets has the authority to enter into a contract for the paving or repaving of the street in front of the property of such owner, under certain conditions;

**WHEREAS**, Developer, as the owner of the property at \_\_\_\_\_, **Philadelphia, PA**, has requested for the construction and/or paving of the streets(s) at the property, to be done at the sole cost of the Developer; and

**WHEREAS**, the City, has agreed to and approved certain work in the street(s) as set forth in the Proposal for the Private Paving of \_\_\_\_\_, dated \_\_\_\_\_ ("Work"), attached as **Exhibit A**.

**THEREFORE**, in consideration of the foregoing premises and the mutual covenants, terms and conditions set forth herein, the Developer and the City intending to be legally bound agree as follows:

1. Developer shall perform the Work in strict accordance with the City-approved Plans and Specifications entitled: \_\_\_\_\_. Said Plans and Specifications prepared by \_\_\_\_\_ and consist of \_\_\_\_\_ sheets, namely Sheet of \_\_\_\_\_, which were approved by the City on \_\_\_\_\_.
2. Developer shall be solely and exclusively responsible for the costs for the Work and under no circumstance shall Developer or its contractor make any claim or demand from the City for any portion of these costs.
3. Developer shall be solely and exclusively responsible for the costs of Department of Streets' Engineering Inspection and Surveyor services.
4. Developer and Contractor shall perform all Work under the direction and supervision and to the satisfaction of the Department of Streets.
5. Developer shall comply with all ordinances, regulations and policies that affect the Work and obtain all permits required by the City of Philadelphia, its departments and agencies and the Commonwealth of Pennsylvania, its departments and agencies.

6. Developer shall file a performance bond with the City, in the amount of \$ \_\_\_\_\_ as fixed by the City Law Department, conditioned upon compliance with the City's regulations and specifications.

7. Developer shall begin Work only after the Department of Streets issues the Notice to Proceed date and the Work is to be completed within five (5) years from such date.

8. In the event the Developer abandons or fails to complete the Work in a manner that the City determines is in violation of this Agreement, the City reserves the right, after providing Developer with forty-eight (48) hours written notice, to complete any and all remaining Work or to replace any and all defective materials, at the sole and exclusive expense of the Developer.

9. Upon completion by the Developer, City agrees to accept ownership of the paved street(s), if the following conditions have been satisfied:

- (a) the Work was done in a good and workman like manner, under the supervision and to the satisfaction of the City;
- (b) the Work was approved and accepted in writing by the Department of Streets' Commissioner ("Commissioner") or his/her authorized representative;
- (c) all labor and materials are in the quantity and quality, required and necessary for the proper performance of the Work;
- (d) all materials and equipment are of the quality satisfactory to the City and subject to the inspection and approval of Commissioner; and
- (e) filing of a maintenance bond as set forth in Paragraph 10 below.

10. Developer shall file a maintenance bond in the amount of \$ \_\_\_\_\_ for a period of five (5) years, guaranteeing to keep the Work in good repair for five (5) years after the Work is completed and accepted by the City.

- (a) During the five (5) year maintenance period, Developer is responsible for the replacement of any unsuitable or unfit materials and to fix any portion of the Work that has been determined by the City to have been improperly constructed or is defective.
- (b) If, after being provided by the City with forty-eight (48) hours written notice, Developer fails to replace the improperly constructed or defective Work, the City reserves the right to draw on the maintenance bond and to make the required repairs.

11. Developer shall, at a minimum, provide general supervision of the Work, including the review and periodic inspection of all Work and material so as to ascertain and determine whether its contractor and others engaged in the Work are properly performing their duties, whether all Work is being performed in conformity with the Plans and Specifications and whether proper materials are being used in the Work.

12. Developer shall indemnify, defend and hold harmless the City, its agents, employees and officers from and against any and all losses, costs, including litigation costs, settlement costs and counsel fees, claims, suits, actions, damages, liability and expenses, including but not limited to, those in connection with the loss of life, bodily and personal injury or damages to property occasioned wholly or in part by Developer's acts or omissions or the acts or omissions of Developer's agents, contractors, employees or servants arising from or related to the Work.

13. Throughout the entire period of Work, Developer shall, or shall require its contractor(s) to procure and maintain, or cause to be procured and maintained, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers authorized to do direct business in the Commonwealth of Pennsylvania and acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been furnished. If Developer or Developer's contractor(s) fails to obtain or maintain the required insurance, the City shall have the right to treat such failure as a breach of this Agreement and to exercise all appropriate rights and remedies. The insurance shall provide for at least thirty (30) days prior written notice to the City in the event coverage is materially changed, canceled or non-renewed.

The City of Philadelphia, its officers, employees and agents are to be named as additional insured on the General Liability Insurance Policy. Also, an endorsement is required stating that the coverage afforded the City and its officers, employees, and agents as additional insured will be primary to any coverage available to them.

(a) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

- (1) Workers' Compensation: Statutory Limits
- (2) Employers' Liability: \$500,000 each Accident-Bodily Injury by Accident; \$500,000 Each Employee – Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (3) Other States coverage and Pennsylvania Endorsement.

(b) GENERAL LIABILITY INSURANCE

- (1) Limit of Liability: \$2,000,000 per occurrence combined

single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate; and \$1,000,000 aggregate for products and completed operations.

- (2) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insurers; cross liability (insured vs. insured); and broad form property (including completed operations).

(c) AUTOMOBILE LIABILITY

- (1) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned and hired vehicles.

Certificates of insurance evidencing the required coverage must specifically reference the Agreement Number for which they are being submitted and shall be submitted to the Department of Streets and the City's Risk Manager at One Parkway, 1515 Arch Street, Philadelphia, Pennsylvania 19102 at least ten (10) days before work is begun and at least ten (10) days before each renewal date. The ten (10) days requirement for advance documentation of coverage may be waived in situations where such waiver will benefit the City, but under no circumstances shall Developer or Developer's contractor(s) actually begin work (or continue work in the case of renewal) for the roadway improvement construction without providing evidence of insurance. The City reserves the right to require Developer to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days prior written notice to Developer. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnification made in this Agreement by Developer to the City or limit Developer's liability under this Agreement to the limits of the policies of insurance required to be maintained hereunder.

14. Notifications shall be made in writing:

City:  
Nancy Sen  
Director, Transportation Planning & Analysis  
Streets Department  
1401 JFK Blvd.  
930 Municipal Services Building  
Philadelphia, PA 19102  
(215) 686-5507

Developer:

15. The responsibilities and duties set forth in this Agreement shall not be assigned by the Developer except for those items specifically set forth in this Agreement or by prior written approval by the Commissioner or his/her authorized representative.

16. This Agreement represents the entire agreement between the parties hereto and shall not be modified in any manner except by written instrument executed by the parties and attached hereto.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the City of Philadelphia, by its Commissioner of the Department of the Streets, and Developer have caused this Agreement to be duly executed as of the date first above written.

**APPROVED AS TO FORM**

**FOR THE CITY OF PHILADELPHIA**

By: \_\_\_\_\_  
Ji Y. Jun  
Assistant City Solicitor

By: \_\_\_\_\_  
David J. Perri  
Streets Commissioner,

**DEVELOPER**

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

**EXHIBIT A**

SAMPLE