

## AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_ 2022, by and between the County Commissioners of Calvert County, Maryland (hereinafter, the “County”), and the Drum Point Property Owners Association (hereinafter, “DPPOA”).

1. By Resolution 37-04 enacted on September 14, 2004, the County created the Drum Point Special Taxing District (the “District”). By Resolution 24-09 enacted on June 23, 2009, the County amended the District by lowering the annual assessment and by extending the life of the District to June 30, 2012. By Resolution 43-12 enacted on June 26, 2012, the County amended the District, setting the annual assessment and by extending the life of the District to June 30, 2016. By Resolution 22-16 enacted on June 30, 2016. By Resolution 29-17 enacted on June 27, 2017, the County created the Drum Point Special Taxing District, setting the annual assessment and by extending the life to June 30, 2022.
2. DPPOA submitted a Petition dated October 20, 2021 (the “Petition”) seeking an extension of the District, and amended levy, and a broader authorization of uses for which the funds could be expended. Following public hearing duly advertised, the County adopted Ordinance 10-22, thereby extending the District through June 30, 2027, authorizing additional uses of funds, and increasing the levy, all as requested by DPPOA.
3. Funds received pursuant to Resolution 29-17 and not expended or committed prior to June 30, 2022, shall be carried forward such that said funds become available for expenditure in accordance with this Agreement.
4. The DPPOA is to administer the works and finances of the District pursuant to this agreement.

**NOW, THEREFORE**, the parties agree as follows:

### I. GENERAL

1. The funds collected for the District shall be maintained in an unrestricted liability account by the Department of Finance and Budget (“Finance”). The District expenditures shall be divided into three categories: Administration, Routine Operations and Capital Improvements, each with a separate budget and bank account.
2. The Administration Budget shall be as set forth in Exhibit A, which is incorporated herein by reference and shall include only those expenses related to the annual audit. The Routine Operations budget shall be as set forth in Exhibit B hereto, which is incorporated herein by reference and shall include all expenditures pertaining to general and recurring maintenance of DPPOA roads and infrastructure related to roads, drainage and stormwater management, beach erosion, and community property. The Capital Improvements Budget shall be as set forth in Exhibit C, which is incorporated herein by reference and shall include the capital improvements projects undertaken by the District set forth therein. The District shall submit all requests for budget adjustment to any line item set forth in Exhibits A, through C, inclusive, to the Calvert County

Department of Finance and Budget for the approval of the County in accordance with laws, regulations, policies, and procedures applicable to County departments.

3. The District fiscal year shall begin on July 1 and terminate on June 30 of the following calendar year.
4. The DPPOA has purchased improved real property that it uses as its headquarters. In no event shall any District funds be used to pay any debt associated with the purchase of this headquarters or the acquisition or procurement of any interest in any real property except as specifically set forth in an approved budget as a separate line item.
5. Not later than October 15 of each year, DPPOA shall have an annual audit of each account performed by an independent auditing firm. The independent auditor's report shall state whether or not the receipts, deposits and disbursements of tax funds were in accordance with approved appropriations set forth in Exhibits A through C hereof and state and local law. DPPOA may satisfy this requirement by submitting to the County by October 15 each year an annual audit acceptable to the County Department of Finance and Budget performed of DPPOA finances, which audit is required by DPPOA bylaws.
6. During the term of the District, the DPPOA may request the County to approve projects regarding amenities other than those set forth in the Petition -following the procedures required in Title 4 of the Public Local Laws of Calvert County, including but not limited to, convening a public hearing on the request.
7. Finance will provide a detailed statement to DPPOA ending each month showing the Accounts Receivable and collections for the previous month.

## **II ADMINISTRATION AND ROUTINE OPERATIONS**

### **A. Administration**

The general administration of the District shall be carried on by the DPPOA and shall include all activities and expenditures necessary for the proper execution and operation of the District.

### **B. Routine Operations**

The DPPOA shall provide for the routine maintenance of the DPPOA roads, assets and related infrastructure in accordance with Exhibit B. Exhibit B shall be amended to reflect a reduction in the levy of Ten Dollars (\$10) per lot per year if DPPOA shall receive grant funding from the Maryland Department of Natural Resources to address beach erosion.

### **C. Funds Distribution for Administration and Routine Operations**

1. Each quarter beginning on July 1, 2022, the DPPOA shall submit to Finance, a request for funds needed to finance the Administration and Routine Operations accounts of the

District, not to exceed Thirty Thousand Dollars (\$30,000.00). The request shall include vouchers for the latest quarter. Finance shall review the draw request and verify that sufficient funds are available to meet the request. Upon verification that funds are available and that the expenditure is consistent with the approved budget, Finance shall pay over to the DPPOA an amount equal to the request into an account designated by DPPOA.

2. If a payment or payments will become due in a quarter and the amount of the payment or payments combined with all other anticipated quarterly expenses will exceed the amount held by DPPOA, Finance may approve a quarterly distribution in an amount sufficient to cover the anticipated payment or payments. Notwithstanding the above, the amounts distributed to the DPPOA for Administration Budget, Exhibit A hereto, and Routine Operations Budget, Exhibit B hereto, in any fiscal year shall not exceed the annual amount for any specific budget line item for that fiscal year as shown in Exhibits A and B, as may be amended upon the request of DPPOA and approved by the County in accordance with Section I.2, above.

### III CAPITAL IMPROVEMENTS

1. The Capital Improvements to be undertaken by the DPPOA for the District are as set forth on Exhibit C hereto. The Calvert County Department of Public Works ("Public Works") shall provide the DPPOA examples of written specifications of standards and such other assistance as appropriate prior to the issuance of bids or contracts for all Capital Improvement projects set forth on Exhibit C hereto.
2. Before the DPPOA enters into a contract for any work or commits itself financially in any other way, the DPPOA shall certify that the proposed project is set forth in Exhibit C hereto and request that Finance verify that there are sufficient funds in the Capital Improvements Budget to pay for the project, including a contingency of 10% if none is included in the budget for the project. Once Finance has verified the funds are available and DPPOA has entered into a contract, the Calvert County Department of Finance and Budget shall restrict the funds needed for that project, including a contingency of 10% if none is included in the budget for the project. Funds restricted for one project may not be used for any other project. If there are any restricted funds remaining at the conclusion of a contract, after all expenses associated with the contract and the project have been paid, those remaining funds shall be returned to the unrestricted liability account.
3. Each project undertaken by the DPPOA shall include an inspection schedule approved by Public Works. At the end of each phase of a project that is to be constructed and paid for in phases, an inspector from Public Works shall inspect the work as promptly as practicable, to determine that it has been completed according to contract plans and specifications or require DPPOA to have a qualified person certify the same. If the work has been performed according to contract plans and specifications, the inspector shall approve the work and shall note the approval on a copy of the inspection schedule. Upon such inspection and approval, work shall be allowed to progress to the next phase

and invoices submitted to Finance for distribution of funds to DPPOA for payment.

4. In the event that work in one phase has been performed prior to the inspection and approval of work performed in a previous phase, the inspector may require the DPPOA and its contractor to return all or part of the project to a condition that will allow the inspector to properly inspect the work performed in the previous phase. Notice of this provision shall be included in each bid solicitation issued by the DPPOA and each contract entered into by the DPPOA.
5. Upon completion, final inspection and approval of a project, the DPPOA shall submit a written request to Finance for final disbursement of funds sufficient to cover the previously unpaid cost of the work. The request shall include a copy of the inspection schedule indicating that all required inspections have been completed and a certification signed by the inspector and a representative of the DPPOA.

#### IV CONTRACTING PROVISIONS

All contractual work to be performed by the District shall be conducted through a competitive bidding process which shall include, at a minimum, the following:

1. Contracts for the purchase of supplies or services involving \$15,000.00 or more shall be by formal bidding procedures. The bids shall be opened and the contract awarded at a meeting of the DPPOA which has been properly advertised and is open to the public. The contract shall be awarded to the lowest responsible bidder meeting contract specifications. A project may not be subdivided to avoid the requirements of this section.
2. The DPPOA shall invite proposals for all contracts subject to this section by publishing a notice in at least two County newspapers for at least two consecutive weeks. The notice shall state that in not less than three weeks the DPPOA will meet in a meeting open to the public to receive bids for the described purchase or contract, state the time and place of the meeting, and reserve the right to reject any and all bids.
3. Prior to the letting of any Capital Improvements contract, the Drum Point Property Owners' Association shall submit appropriate documentation and a request for approval to Public Works. Public Works shall review the request and approve or disapprove the project based on the requirements set forth in this agreement within two weeks of their request. In addition, before the contract is executed, the expenditure must be approved by Finance. Within ten days of receiving the request to approve the contract, Finance shall make a decision on the expenditure.
4. In determining the lowest responsible bidder, in addition to considering the price, the DPPOA shall consider:
  - i. the ability, capacity and skill of the bidder to perform the contract or provide the service required;

- ii. whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
  - iii. the character, integrity, reputation, judgment, experience and efficiency of the bidder; and
  - iv. any other information that may have a bearing on the decision to award the contract.
5. If a contract is not awarded to the lowest bidder in price, the reasons for the decision shall be stated in the minutes of the meeting in which the contract is awarded.
6. Contracts for professional services such as those of attorneys, architects, engineers, accountants, consultants, and others possessing a similar high degree of technical skill and expertise, and emergency services, including but not limited to snow removal, need not be let by competitive bid, provided that, to the extent appropriate for the particular service to be provided, a documented attempt is made to secure competitive proposals for these services.
7. If the DPPOA receives no bids or only one bid for an item, the DPPOA may reject the one bid, provided it has so reserved the right, and negotiate a contract for the desired item or service. In the case of a rejected bid, the contract price shall be less than the rejected bid.

## V MISCELLANEOUS

1. Notwithstanding any other provisions of this Agreement, the County's obligation to fund the District shall never exceed the amount of funds collected through the special tax assessment. Interest shall accrue for the DPPOA on funds held by the County Treasurer at a rate equal to the money market rate earned by the County on average amounts collected.
2. If during the term of the District any property subject to the special tax is purchased at tax sale by the DPPOA, the DPPOA shall receive as a credit toward the amount payable at the tax sale, the amount of the special tax. If a property is not purchased and the County initiates action to foreclose the right of redemption, the County shall not be required to pay to the DPPOA the amount of the special tax assessed against the property. County shall mail notice to DPPOA of all properties within the Special Taxing District that become subject to tax sale by the County.
3. If the County determines in its sole and absolute discretion that the DPPOA is not properly administering the District or violates the terms, conditions or provisions of this Agreement, the County may take such action that it deems necessary to correct the situation, including but not limited to:
  - a) suspension of the tax district;

- b) assumption of the day-to-day control of the tax district and capital improvements program in accordance with DPPOA's budget;
  - c) appointment of a third-party to oversee the tax district in accordance with DPPOA's budget; or
  - d) criminal or civil prosecution of offending parties.
4. Any person or firm who shall have access to the DPPOA funds collected or expended in the tax district shall post a bond with the County in the amount of \$100,000.00 insuring against financial loss due to theft, malfeasance, misfeasance, and misappropriation of funds or any other mismanagement of funds.
  5. This Agreement contains the entire agreement between the parties regarding the subject matter of this Agreement. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them, relating to this subject matter, other than as herein set forth. This Agreement is intended by the parties to be an integration of all prior or contemporaneous promises, agreements, conditions, negotiations and undertakings between them relating to this subject matter. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by all the parties or their respective successors in interest. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
  6. This Agreement shall be construed, interpreted and enforced according to the internal laws of the State of Maryland, without regard to principles of conflict of laws.
  7. By entering into this contract, the County and its "employees," as defined in the Local Government Tort Claims Act §5-301 et seq. of the *Courts and Judicial Proceedings Article* of the Maryland Annotated Code, do not waive sovereign immunity, do not waive any defenses and do not waive any limitations of liability as may be provided for by law. No provision of this contract modifies and/or waives any provision of the Local Government Tort Claims Act.
  8. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein without the written consent of the County and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof in fulfilling the obligations of the Agreement.
  9. No elected official, appointed official, employee, servant, agent, or law enforcement officer shall be held personally liable under this Agreement and any extension or renewals thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

10. The County's financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the County for the performance of this Agreement. The County's decision as to where sufficient appropriations are available shall be accepted by the other party or parties to this Agreement and shall be final.
11. In the event any portion of this Agreement is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the County to sever only the invalid portion or provision, and that the remainder of the Agreement shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Agreement, or unless deletion of the invalid portion would produce a result inconsistent with the purpose and intent of the County in entering into this Agreement.
12. DPPOA agrees to defend and hold the County harmless from and against any and all injury, loss, damage or liability or any claims in respect of the foregoing, costs or expenses, including reasonable attorney's fees and court costs, arising directly or indirectly out of DPPOA's activities under or pursuant to this Agreement or execution thereof.
13. DPPOA has applied for a grant through the Maryland Department of Natural Resources to address erosion at the Drum Point community beach. Should this grant be approved, the amount of the assessment would decrease from \$175.00 per lot/per year to \$165.00 per lot/per year for the years not yet assessed. This Agreement may not be assigned without the prior written consent of the County.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by a duly authorized representative by their hands and seals, intending to be so bound, as of the day and year first written above.

**Attest:**

**Board of County Commissioners of  
Calvert County, Maryland**

Rachel M. Distel  
Rachel M. Distel, Clerk

By: Earl F. Hance (SEAL)  
Earl F. Hance, President

**Attest:  
Association**

**Drum Point Property Owners'**

Chris White, Manager

By: Michael Snapp (SEAL)  
Michael Snapp, President, DPPOA