

CALVERT COUNTY BAY RESTORATION FUND
AGREEMENT AND EASEMENT FOR INSTALLATION
OF BEST AVAILABLE TECHNOLOGY SYSTEMS
WITH BAY RESTORATION GRANT FUNDS.

THIS AGREEMENT AND EASEMENT is made this _____ day of _____, _____, by and between _____ and _____, (hereinafter referred to as "Owner"), and the Calvert County Health Department, (hereinafter referred to as the "Health Department"). Owner and Health Department collectively referred to as the "parties".

WHEREAS, Owner owns a tract of land located at address: _____, City: _____, State: **MD**, Zip Code: _____; Tax Map / Parcel #: _____, Lot # _____ in the _____ Election District of Calvert County, Maryland, and recorded among the Land Records of Calvert County, Maryland, in Liber/Folio: _____/_____ and referred to in the Maryland Tax Assessment Records at Tax I.D. # _____, hereinafter referred to as the "Property."

WHEREAS, the Bay Restoration Fund (BRF) may provide a grant for the cost attributable to upgrading an onsite sewage disposal system to the Best Available Technology (BAT) for the removal of nitrogen; and

WHEREAS, the BRF may also provide a grant for the cost difference between a traditional onsite sewage disposal system and a system that utilizes the BAT for the removal of nitrogen; and,

WHEREAS, the Health Department applied for and was awarded a BRF grant from the Maryland Department of the Environment, ("MDE"), to upgrade onsite sewage disposal systems to the BAT for the removal of nitrogen and to also provide for the cost difference between a traditional onsite disposal system and a system that utilizes the BAT for the removal of nitrogen to selected and qualified property owners as determined by the Health Department.

NOW, THEREFORE, in consideration of the terms and conditions noted herein, the receipt and sufficiency of which are hereto acknowledged, the parties agree as follows:

A. Owner agrees to:

1. Use any Grant Award received from the BRF grant for that portion of the On-Site-Sewerage-Disposal-System (OSDS) attributable to (BAT) for the removal of nitrogen.
2. Obtain a Sanitary Construction Permit from the Health Department for the installation of the BAT system.
3. Allow a manufacturer-approved and MDE certified BAT system installer to install a BAT system according to the manufacturer's recommended plans and specifications approved by the Department.
4. Permit the manufacturer, or the manufacturer's designee, to provide for Operation and Maintenance of the BAT system for a period of 2 years as a condition of sale of the BAT. **After the initial 2 year period it shall be the responsibility of the property owner to maintain an annual Operation and Maintenance contract with a qualified service provider.**
5. Provide the manufacturer appointed Operation and Maintenance provider access to the BAT system. Owner acknowledges and agrees that the manufacturer or manufacturer's designee will have access to sample the effluent of the BAT system during reasonable and customary business days and hours.
6. Provide and pay for the electricity to operate the BAT system for the life of the system.
7. **Not alter or bypass the BAT system at any time without prior written approval from the Health Department including but not limited to turning the system off, switching breakers off, relocation of control panels and landscaping over BAT access openings or vents.**

8. Maintain the BAT system to ensure against faulty operation and to follow the operating instructions and pumping recommendations of the manufacturer and/or manufacturer's designee and to meet the terms of the manufacturer's warranty.
9. Inform, in writing, any purchaser or lessee of the property that the system shall require maintenance or other attention and that continuance of the maintenance agreement is the responsibility of the property owner as this Agreement shall run with the land and bind the Owner, his heirs, successors and assignees.

B. The parties acknowledge and agree that:

1. The Owner shall select the BAT system after thoroughly reviewing the ranking and evaluation documents provided by the Health Department.
2. The Grant Award amount for the BAT system shall be determined by the most recent MDE procurement.
3. The Owner and the Health Department shall enter into a contract with an authorized vendor of an approved BAT system.
4. In the event the total project cost is greater than \$25,000 the proposal must be approved by the Maryland State Board of Public Works.
5. Funds shall not be provided if the installation of the BAT system deviates substantially from the approved plans and permit or changes such that performance of the system is compromised or reduced.
6. This Agreement shall not be construed to limit any authority of the Health Department to: protect the public health, safety or comfort; issue any other orders or take any other action that is now or may hereafter be within its authority.
7. This Agreement may be terminated at the discretion of the Health Department if the system construction is not completed within two (2) months of the effective date of this Agreement.

8. The grant award does not provide funding for replacement of on-site sewage disposal components such as trenches, seepage pits, sand mounds, pumping stations and equipment, etc
9. The Owner shall not allow backwash wastewater from water softeners or other water treatment devices to be introduced into the BAT system and the Health Department shall provide guidance on disposal options.
10. The Health Department does not warrant or guarantee that the BAT system will adequately or properly function, as neither the Health Department, nor any of its agents or employees, either officially or individually, underwrites the operation of any system approved by them.

C. Hold Harmless. Owner acknowledges and agrees that the proposed installation of a BAT system funded by the Bay Restoration Fund is voluntary and to hold harmless and indemnify the Health Department, its agents and employees from and against any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature, including reasonable attorney's fees, incurred by, or asserted or imposed against the Health Department as a result of or in connection with the installation of the BAT system. All money expended by the Health Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall constitute an indebtedness of the Owner and shall be immediately and without notice due and payable by the Owner to the Health Department.

D. Third party beneficiary. It is specifically agreed between the parties that it is not intended by any of the herein provisions to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein.

E. No individual liability. No elected official, appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under the foregoing 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.

F. Sufficient appropriations. The Health Department's financial obligations are contingent upon sufficient appropriations and authorization being made by the State of Maryland, Department of the Environment for the purchase of the item(s) referenced herein. The Health Department's decision as to whether sufficient appropriations are available shall be accepted by the other party or parties and shall be final.

G. Entire Agreement. This Agreement contains the entire agreement and understanding between the Health Department, and the Owner. There are no additional terms other than as contained in this Agreement. This Agreement may not be modified except in writing signed by each of the parties or by their authorized representatives.

H. Governing Law. The laws of the State of Maryland govern the provisions of all transactions pursuant to this Agreement.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement on the date indicated above.

DATE: _____

Owner

DATE: _____

Owner

DATE: _____

Matthew N. Cumers, Director of Environmental Health
Calvert County Health Department