



COUNTY OF YORK, VIRGINIA

EROSION AND SEDIMENT CONTROL DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20__, hereinafter referred to as “Agreement Date”, by and between _____, *(give full legal name or names, state of incorporation if incorporated, type of partnership if a partnership, or marital status if individual)* hereinafter referred to as the “DEVELOPER”, and the COUNTY OF YORK, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the “County”.

WITNESSETH:

WHEREAS, the Developer is the owner or an agent authorized by the owner of a certain parcel of land or lands located in the County bearing GPIN Number(s) _____, and has an Erosion and Sediment Control Plan for the said development dated on the _____ day of _____, 20__, prepared by _____ which plans, hereinafter called the “Plans”, have been approved by the County on the _____ day of _____, 20__. The plans are on file in the County’s Department of Planning – Development Services and/or the Department of Public Works – Stormwater Programs, and are incorporated herein by reference; and

WHEREAS, The County desires to ensure the Developer and/or the Developer’s representative adheres to the County’s Erosion and Sediment Control Ordinance. The County desires to ensure the proper and timely installation, maintenance, adequate performance, and removal when no longer required, of the erosion and sediment control measures shown on the Plans., hereinafter collectively referred to as the “Control Measures”; and

WHEREAS, the Developer has submitted herewith to the County a letter of credit, cash, cash escrow, bond, or certified check (*circle which*) in the amount of \$_____, (hereinafter called the “Surety”) securing the installation, maintenance, adequate performance, removal of the control measures as detailed, construction of stormwater infrastructure required to meet Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations, and overall adherence to the County’s Erosion and Sediment Control Ordinance. In addition, if the surety is subject to expiration, the expiration date must be at least 1 year after the agreement date.

NOW, THEREFORE, for and in consideration of the foregoing premises and the covenants and agreements herein contained, and in further consideration of the approval of the Plans by the County and the issuance by the County of a permit for the work proposed to be undertaken by the Developer, the parties agree as follows:

1. The County agrees that upon proper execution of this Agreement by the Developer and the submission to the County of the Surety, it will issue a permit for the work described in the Plans proposed to be undertaken by the Developer.
2. The Developer agrees that it will, without cost to the County, on or before three hundred and five (305) days after the agreement date, complete the Plans, or cause the Plans to be completed (including proper and timely installation, maintenance, adequate performance, and removal of the control measures, and adherence to the County's Erosion and Sediment Control Ordinance needed as a result of the Developer's land disturbing activities) to the satisfaction of and to the standards and specifications of the County and all other government agencies and authorities having jurisdiction over the Control Measures, including, but without limitation, the Virginia Department of Environmental Quality.
3. The developer has submitted herewith to the County Surety in the aforesaid amount. If the Surety is a letter of credit, it shall be in the form attached hereto as Exhibit A, be completed in conformance with the instructions attached thereto, be approved by the County Attorney as to form, content and issuing institution, be acceptable as to amount, effective period, and otherwise to the County Administrator, in order to secure proper and timely installation, maintenance, adequate performance, removal when no longer required, of the Control Measures and performance of the terms and conditions of this Agreement. Letters of credit shall be in effect for a minimum of three hundred and sixty-five (365) days beyond the Agreement Date. The County may enter upon the Property to inspect, install, maintain, remove the Control Measures, permanently stabilized the site, bring the site into compliance with the County's Erosion and Sediment Control Ordinance and may draw on the Surety in the following events:
 - i. The Developer fails to complete the Plans by the date specified in paragraph 2 above.
 - ii. The Developer fails to install, maintain, or remove when no longer required the Control Measures to the satisfaction, standards, and specifications of the County and all other governmental agencies having jurisdiction over the Control Measures.
 - iii. The Developer fails to commence construction of the Control Measures in conformance with the requirements specified in the Plans.
 - iv. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Developer.
 - v. The developer breaches any of the terms and conditions of this Agreement.
4. In the event that the County draws on the Surety, it may use such funds to install, maintain, or remove the Control Measures or cause them to be installed, maintained, or removed. The County may also use such funds to permanently stabilize the site from further erosion such that the Control Measures are no longer required. The Developer shall be liable to the County for any and all costs of installing, maintaining, or removing the purpose and intent of the parties that the amount of the Surety shall have been determined to be sufficient to estimated administrative costs and inflation which shall not exceed twenty-five percent of the estimated cost of completing the above actions, and any and all other reasonable costs which the County has incurred or may conclude, in its sole discretion, are to be incurred. The Developer hereby acknowledges that an administrative fee in the above amount is reasonable compensation to the County for its costs in drawing on the Surety and, when necessary, causing the above actions to be completed.
5. The County shall, upon drawing on any funds represented by the Surety, deposit the same in an interest-bearing account to the extent not needed to cover expenditures made or reasonably

anticipated to be made in the near future, but the County shall have no responsibility to deposit or maintain any of such funds in an account at the maximum interest available. Upon completion of the necessary actions, as determined by the County, and payment of all expenses incurred by the County in connection therewith, any unexpended funds, including any interest earned thereon, shall be returned to the Developer.

6. The County shall not be liable to the Developer or to any third party for the manner in which the actions listed in paragraph 4 above are completed nor for any delay in effecting the same, the fact that the cost of performing such work is in excess of or less than the amount made available by drawing down the funds or any part thereof represented by the Surety, or that the County has drawn on the entire amount of said Surety even though it subsequently develops that the entire amount was not required to carry out the provisions of this Agreement.
7. The Developer acknowledges that the County is under no obligation to extend the time herein provided for completion of the Plans by the Developer. However, in the event that the County unilaterally agrees in writing to do so, such writing shall, without more and without formal execution of any other agreement by the parties, constitute such an extension, and all of the terms of this Agreement shall continue in effect for the duration of such extension insofar as they are not inconsistent with the terms of the extension; provided, however, that no extension shall be effective until or unless the Developer furnishes to the County a new or amended Surety conforming to the requirements of paragraph 3 above. The County may require that the amount of the Surety be increased if an extension is permitted.
8. It is mutually understood and agreed that the Developer shall faithfully execute all requirements of this Agreement and all relevant laws and regulations, and shall indemnify, protect and save the County, its officers, agents and employees harmless from all loss, damage, expense or cost by reason of any claim made or suit or action instituted County, its officers, agents or employees on account of or in consequence of any breach on the part of the Developer, all of which the Developer hereby covenants to do, then the Surety shall be released by the County to the Developer; provided, however, that release of the Surety shall not in any way or to any extent release, diminish, or otherwise reduce any obligation or liability of the Developer provided in this Agreement.
9. The Developer does further hereby agree to indemnify, protect, and save the County, its officers, agents, and employees harmless from and against all losses and physical damages to property, bodily injury to any person or persons, and/or death to any person or persons, which may arise out of or be caused by the construction, maintenance, presence or use of any facility shown on the Plans as to be dedicated to the County or other governmental entity until such time as the said facilities shall be accepted as a part of the County's systems, or those of its agencies, or the State System of Secondary Highways, as the case may be.
10. This Agreement shall be binding upon the Developer and the Developer's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals:



DEVELOPER:

INDIVIDUAL OR INDIVIDUALS

____ (PRINTED NAME)
____ (SEAL)
____ (PRINTED NAME)
____ (SEAL)

CORPORATION

Attest _____ (PRINTED NAME)
_____ (SEAL)
_____ (Title)

Secretary

(A Copy of the corporate resolution authorizing execution is required and provided with the application)

PARTNERSHIP

____ (PRINTED NAME)
____ (SEAL)
____ (PRINTED NAME)
____ (SEAL)

LIMITED LIABILITY COMPANY

____ (PRINTED NAME)
____ (SEAL)
_____ (Title)

(A copy of the articles of organization are provided with the application)

Approved as to form:

COUNTY OF YORK, VIRGINIA

County Attorney

Director of Public Works