



Siltation Agreement

THIS AGREEMENT by and between _____, and all successors in interest (the “Developer”), and the County of James City, Virginia, (the “County”), and the County’s Administrator of the Erosion and Sediment Control Ordinance (the “Agent” and together with the Developer and the County, the “Parties”).

WITNESSETH:

WHEREAS, Developer desires approval of plans (the “Plans”) by the Agent for the County, for a project known as _____ County Plan No. _____ (the “Project”), located at _____ (the “Property”), which plans include provision of siltation and erosion control measures as required by Chapter 8 of the County Code; and

WHEREAS, the County desires to ensure the installation, maintenance, and adequate performance of such control measures.

NOW THEREFORE, for and in consideration of the foregoing premises and the following terms and conditions, and in further consideration of the approval of the Plans by the County and the issuance of permits for the work proposed to be done thereunder the Parties agree as follows:

1. Developer has either:
 - a. deposited with Agent, and Agent by this execution hereof acknowledges that he holds, the sum of _____ dollars (\$_____) in escrow under and subject to the terms of this Agreement, or;
 - b. has furnished the County an irrevocable letter of credit or bond with corporate surety, whose terms and conditions are acceptable in substance and in form to the County Attorney, in the sum of _____dollars (\$_____), which letter of credit or bond is under and subject to the terms of this Agreement.

The deposit, letter of credit, or bond (collectively the “Security Instrument”) is designed to insure performance of the Developer’s obligations and to insure reimbursement to the County in the event that it performs work or causes work to be performed, pursuant to this Agreement and Plans approved by and on file with the County.

2. In the event measures for the control of siltation and/or erosion as provided for on the Plans or on any approved revision thereof, are not constructed at or prior to the occurrence of any rainstorm or other phenomena actually causing any siltation or erosion, the County or its authorized agent shall have the right to enter upon the Property and construct such measures or do such other work as may be necessary to prevent further erosion or siltation, provided that the County shall first give notice in writing to the Developer or his superintendent of its intent so to do.

3. In the event measures for the control of siltation and/or erosion have been constructed, but fail, through overload and/or inadequate maintenance, to perform the function for which they were intended, the County or its authorized agent, may in like manner to paragraph 2 of this Agreement, enter to perform such reconstruction or maintenance as may be necessary to restore performance in accord with the Plans, or approved revisions thereof, upon giving notice in writing to the Developer or his superintendent of its intent so to do.

4. In the event there occurs siltation and/or erosion from the Property in sufficient quantity to adversely affect downstream drainage or travel on any street, road, highway, or other public way, the County may take such steps as may be necessary to restore functions to the affected drainage or travel way.

5. a. In the event the County determines work shall be performed or causes to be performed work of any nature, including labor, use of equipment and materials, under the provisions of paragraphs 2, 3, and 4 of this Agreement, either by County staff or other contractor, Agent shall draw and disburse to the County on its order such sum or sums as may be requested, provided, however, that Agent's liability so to disburse shall be limited to the undistributed balance in its hands of:

1. the escrow amount, or
2. the letter of credit, or
3. the bond

The Security Instrument may be drawn in total, if at the time the Security Instrument is to expire, if all improvements or any portion thereof are not complete and the Security Instrument has not been adequately extended or replaced to ensure completion of the improvements. In addition, the County may draw a Security Instrument in the event it is not renewed or amended to remain in effect at least ten (10) days prior to its expiration. A notice that such draw has been made shall be delivered or mailed by the County to the Developer.

- b. In the event the County calls, collects, or otherwise draws on the Security Instrument pledged under this Agreement, the Developer agrees to either pay, or have the County use the proceeds of the draw to pay, a reasonable administrative fee of \$35.00 plus any costs actually incurred by the County in drawing on the Security Instrument. The charge for an administrative fee plus costs shall apply regardless of whether the County later accepts a renewal or amendment of the Security Instrument.

6. In the event the Agent makes disbursement pursuant hereto, the Developer agrees to deposit within ten (10) days of such disbursement, an amount sufficient either:

- a. to restore escrow amount to its original balance as shown in paragraph 1; or
- b. to furnish an additional letter of credit in the amount of the draft; or
- c. to secure such additional bonds as to restore same to its original balance as shown in paragraph 1.

7. It is expressly agreed by the Parties hereto that it is the purpose and intent of this Agreement to ensure the installation, maintenance, and performance of measures provided for on approved Plans or revisions thereof, for the control of siltation and erosion, and for the restoration of function of facilities for drainage or vehicular travel if such facilities are adversely affected in their function by siltation or erosion from the Property, the subject of the Plans. This Agreement shall not be deemed to create or affect any liability of any party hereto for any damage alleged to result from or be caused by erosion or siltation.

8. It is expressly agreed by the Parties that either:

- a. the escrow amount shall be held by the Agent unless distributed in accordance with paragraph 5 of this document, or paid to the County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by the County, through its Agent, or
- b. the letter of credit or bond shall be held by the Agent unless distributed in accordance with paragraph 5 of this document, or paid to the County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by the County, through its Agent.

IN WITNESS WHEREOF, the Parties, being first duly authorized, have affixed their signatures on the date first above written.

Developer: _____

ATTEST:

(Signature)

BY: _____
(Signature)

Name/Title: _____
(Print Name and Title)

Responsible party for completing required items once construction is substantially complete.

Name: _____

Address: _____

Phone No.: _____

Email: _____

Approved as to form:

COUNTY OF JAMES CITY, VIRGINIA

County Attorney

BY: _____
County Agent

DATE: _____