

MAINTENANCE AGREEMENT FOR IMPROVEMENTS IN THE PUBLIC RIGHT OF WAY  
HENRICO COUNTY DEPARTMENT OF PUBLIC WORKS

THIS AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ a \_\_\_\_\_ ("Owner"), and COUNTY OF HENRICO, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("County").

WITNESSETH:

Recitals

Owner is the owner and developer of certain real property in the \_\_\_\_\_ District of Henrico County, Virginia, known as \_\_\_\_\_. Pursuant to the development of \_\_\_\_\_, Owner wishes to place improvements in the public right-of-way.

In accordance with plans prepared by \_\_\_\_\_ ("Engineer") dated \_\_\_\_\_, ("Plans"), Owner will install a \_\_\_\_\_ within the right-of-way of \_\_\_\_\_ ("Road").

Owner and County enter into this agreement to provide for the installation and maintenance of such \_\_\_\_\_.

Agreement

In consideration of the mutual promises, benefits and covenants contained herein, the receipt and sufficiency of which are acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. Plans. Owner has caused Engineer to prepare Plans, which have been approved by County. All changes and revisions to the Plans shall, as they are prepared and prior to construction, be submitted to and subject to the written approval of the County Engineer.

2. Improvements. Owner shall have the right to install the \_\_\_\_\_ contemplated by the Plans in accordance with the Plans. Owner shall be responsible for the operation and maintenance of the \_\_\_\_\_. County shall have no responsibility whatsoever in connection with the operation and maintenance of such \_\_\_\_\_, and Owner shall indemnify and hold County harmless from any liability that may result from the operation or deterioration of the \_\_\_\_\_. Any damage to the roadbed or other public structures resulting from installation or maintenance of the \_\_\_\_\_ shall be the responsibility of Owner.

3. Maintenance. If at any time the County Engineer determines that any maintenance is required of Owner within the right-of-way of the Road, the County Engineer will give Owner written notice stating in reasonable detail the required maintenance work. Thereafter, Owner shall, at its own expense, promptly perform such maintenance work. If such maintenance work is not completed within sixty (60) days from receipt of such notice, or if within such sixty (60) day time period the work is not, in the sole opinion of the County Engineer, being diligently pursued and continues not to be diligently pursued to completion (unless prevented or delayed because of adverse or unfavorable weather conditions), or in the event of an emergency requiring that maintenance work be performed immediately in the sole opinion of the County Engineer, then the County may but is not required to perform maintenance work, and the County Engineer or his designee shall notify Owner of the amount of all costs incurred in performing such work. Owner hereby agrees to fully reimburse the County for the cost of such maintenance work. The foregoing shall not be deemed to prevent Owner from disputing whether such work is the responsibility of Owner under the terms of this Agreement.

4. Miscellaneous.

a. Owner shall have the right to assign its rights and obligations hereunder to an owner's association ("Association"), organized to maintain the \_\_\_\_\_ within the right-of-way of the Road in which event the obligations of Owner hereunder shall terminate. This Agreement shall be binding upon successors and assigns of the rights and obligations of Owner or Association as provided herein, but it is not intended to and shall not be a covenant running with any real estate now or hereafter owned by Owner or the Association, or either of their respective successors and/or assigns. No obligations imposed on Owner or the Association, or either of their successors and assigns, by this Agreement shall constitute a lien or otherwise encumber the title to any such real estate, it being intended that all obligations of Owner and the Association provided herein are personal to Owner or the Association, as the case may be, and the successors and assigns of their respective rights and obligations contained herein. Owner shall, at its expense, cause this Agreement to be recorded in the Clerk's Office of the Henrico County Circuit Court and indexed in the name of Owner as grantor and the County as grantee.

b. Nothing herein shall be construed to limit the right of Owner or the Association to sell, lease or otherwise dispose of or transfer title to all or any part of any land owned by either of them.

5. Termination. This Agreement shall terminate and be of no further force or effect upon the discontinuance and abandonment of the \_\_\_\_\_ with the right-of-way of the Road in accordance with procedures approved by the County, which approval shall not be unreasonably withheld.

6. Notices. All notices required, permitted or given pursuant to or in connection with this Agreement shall be sufficient if in writing and delivered in person or mailed by certified mail, return receipt requested, to the following persons at the following addresses:

Owner: (Name \_\_\_\_\_ )  
(Title) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County: The County of Henrico, Virginia  
P.O. Box 90775  
Henrico, Virginia 23273  
Attention: County Engineer

or to such other addresses of which notice shall have been pursuant to this paragraph. Notices shall be deemed given upon mailing.

The obligations of Owner shall neither be assigned nor transferred to any successor or assign of Owner until such time as Owner and such successor or assign shall have each notified the County Engineer, in writing, of the name and address or a person duly authorized to receive notice on behalf of the successor or assign pursuant to this Agreement.

If the name or address of any person authorized to receive notification pursuant to this Agreement changes, each party to this Agreement covenants that such party shall immediately notify, in writing, by the above-described procedure, each other party to this Agreement of such change.

7. Complete Agreement. This Agreement contains the entire understanding of the parties, and no amendment or modification shall be binding unless in writing and signed by all parties hereto.

8. Waiver. The failure of the County, the Association or Owner, their successors and assigns, to exercise, or to delay in exercising any right under this Agreement in the event of default, shall not be deemed to be and shall not constitute a waiver with respect to any subsequent default.

9. Paragraph Headings. The paragraph headings contained in this Agreement are intended for convenient reference only, and shall not be construed to affect the meaning or construction of any provisions of this Agreement.

10. Successors and Assigns. Whenever used in this Agreement, "successors and assigns" means the successors and assigns of Owner to its rights and obligations

under this Agreement, or the successors and assigns of the Association to its rights and obligations under this Agreement, as the case may be, and does not refer to any other successors and assigns of Owner or the Association.

11. Jurisdiction. This agreement shall be governed by the laws of the Commonwealth of Virginia, and all disputes shall be resolved in the Circuit Court of the County of Henrico.

WHEREFORE, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives:

\_\_\_\_\_  
a \_\_\_\_\_

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

COUNTY OF HENRICO, VIRGINIA  
A political subdivision of the  
Commonwealth of Virginia

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

ATTEST:

\_\_\_\_\_  
Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
(Assistant) County Attorney

STATE OF \_\_\_\_\_,

CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_,

\_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_,

\_\_\_\_\_, of the County of Henrico, a political subdivision of the Commonwealth of Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public