

# Appendix D

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**Henrico County  
Department of Public Works**

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**Information for Submitting Agreements, Declarations and Letters of Credit**

Because of various legal requirements, all Erosion and Sediment Control Agreements, Letters of Credit, Assignments, and Declaration of Covenants are reviewed by the County Attorney's Office for proper signatures and form. In addition, the Clerk's Office also reviews all Declaration of Covenants submitted for recordation in the Records Room.

In order to help you submit documents which can be approved, the County Attorney's Office has prepared the following information. Any documents that do not comply will be rejected.

1. If there is a need to erase, cross out, or add any information to a preprinted form, the persons who sign the document must also initial each change. To prevent fraud, the document may not be modified by anyone other than the persons signing it. Changes must be on an original document, not a copy, in order to be sure that there are not multiple versions of the document.
2. If a church is a contracting party, all trustees for the church must sign. If the document requires notarization, all signatures must be notarized. The notary's acknowledgement should state that each person signing is "Trustee of \_\_\_\_\_."
3. There must be at least one document with original signatures and, on forms which require notary signatures, original notary signatures.
4. The name of the applicant on the first sheet of the Erosion and Sediment Control Agreement must match the applicant's name on the signature page. For example, if the applicant listed on the first page is an individual, the individual, not a company office, must sign on the signature page.
5. The applicant listed in the Letter of Credit or Assignment must be the same as the applicant in the Erosion Control Agreement.
6. The date of the Erosion and Sediment Control Agreement listed in the Letter of Credit must match the date of the Erosion and Sediment Control Agreement.
7. If a corporation is the contracting party, an officer authorized to sign for the corporation must sign as officer of the corporation and the signature should be notarized as such, e.g., "XYS Corporation, by John Smith, President." If a partnership is the contracting party, a partner or officer of the partnership authorized to sign must sign for the partnership and have the signature notarized as such.
8. Letters of Credit may be issued on out-of-area banks but must list a draw address at a bank in the City of Richmond, Chesterfield County, or Henrico County, Virginia.

Should you have any questions, please call Ms. Dawn Morris at (804) 501-4278.

POST OFFICE BOX 27032 / RICHMOND, VIRGINIA 23273-7032  
FAX (804) 501-7470 ASSIGNMENT FOR SUBDIVISION DEFECT BOND

## ASSIGNMENT FOR SUBDIVISION DEFECT BOND

This Assignment made and entered into by and among \_\_\_\_\_ ("Developer"), the County of Henrico, Virginia, a political subdivision of the Commonwealth of Virginia ("County"), and \_\_\_\_\_ ("Bank") provides as follows:

1. The Developer owns a certain parcel of real estate located in Henrico County, Virginia, described as Exhibit A attached hereto, which real estate is contemplated to be further developed as a single family residential subdivision ("Property"), known as \_\_\_\_\_.

2. The Developer has entered into a contract ("Contract") with certain Subcontractors ("Subcontractors") by which the Subcontractors will construct the Improvements in accordance with requirements of the Code of Henrico County, Virginia, Henrico County Department of Public Works, and conditions imposed hereunder by the Planning Commission (all of which are collectively referred to herein as the "Requirements").

3. In connection with its approval of development of the Property, the County desires to obtain security, through the assignment of certain funds evidenced by a Certificate of Deposit held at the Bank, against all loss, cost, damage or expense incurred in the repair and/or replacement of roadway pavement, underlying base material and structures, curb and gutter, driveway entrances, storm sewers, roadway shoulders, and side ditches ("Improvements") from damage or deterioration which occurs within the boundaries of the public right of way and/or public drainage easement, or for damage to such Improvements occurring, appearing or manifesting itself within the one (1) year period described herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Assignment of Certificates of Deposit. The Developer hereby irrevocably assigns to the County

all of its right, title, and interest in and to funds represented by a Certificate of Deposit in the face amount of \$\_\_\_\_\_ issued by the Bank, copies of which are attached hereto as Exhibit B ("Certificate"), as security for the maintenance of the Improvements. The Certificate shall be held by the Bank as escrow agent for the County. The Bank shall hold the Certificate and its principal amount for the benefit of the County. The Bank shall not release the Certificate to the Developer or other third party unless directed by the official of the County charged with the enforcement of the Requirements pursuant to the terms and conditions set forth in this Assignment.

2. Payment of Assigned Proceeds. If the Developer does not complete, construct, repair and maintain the Improvements in accordance with the Requirements within one (1) year of the date of this assignment, then the funds evidenced by the Certificate shall be paid directly by the Bank to the County. As a condition precedent to receiving the funds assigned hereunder, the County shall provide the Bank with a certified statement, signed by an official charged with the enforcement of Requirements, stating that the Developer has failed to satisfactorily repair and maintain the Improvements in accordance with the Requirements. Upon receipt of such certified statement, the Bank will be unconditionally obligated to release the funds to the County. Upon receipt of such funds from the Bank, the County shall forthwith apply same for the sole and exclusive purpose of maintenance of the Improvements, and upon completion of such Improvements, shall promptly return all unused amounts thereof to the Developer.

3. Termination. This Assignment shall terminate and be of no further force and effect on the date upon which maintenance of all Improvements has been completed and accepted in accordance with the Requirements, as evidenced by a certified statement signed by an official charged with the enforcement of the Requirements stating that the Developer has satisfactorily repaired and maintained all Improvements required by this Agreement and authorizing all funds assigned hereunder to be returned to the Developer.

4. Warranties. The Bank warrants that there are no legal or equitable defenses currently available to the Bank that might affect the County's ability to use proceeds of the Certificate for the purpose of completing repair or maintenance of the Improvements. The Developer warrants that there are no defects or prior liens incumbent on the properties.

5. Effect of Assignment. Nothing herein shall be construed to relieve the Developer of its independent legal obligation to complete and maintain the Improvements.

6. Interpretations. This Assignment shall be governed by and construed in accordance with the laws of Commonwealth of Virginia and shall be binding on the parties, their successors and assigns.

WITNESS the following signatures and seals all as of this \_\_\_\_\_ day of \_\_\_\_\_.

(Bank)

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

(Developer)

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

COUNTY OF HENRICO, VIRGINIA

By \_\_\_\_\_  
Director of Public Works/County Engineer

Approved as to form:

\_\_\_\_\_  
Assistant County Attorney

11/98 Rev.

## ASSIGNMENT FOR EROSION CONTROL MEASURES

This Assignment made and entered into by and among \_\_\_\_\_ ("Developer"), the County of Henrico, Virginia, a political subdivision of the Commonwealth of Virginia ("County"), and \_\_\_\_\_ ("Bank") provides as follows:

1. The Developer owns a certain parcel of real estate located in Henrico County, Virginia, described as Exhibit A attached hereto, which real estate has been developed as a single family residential subdivision or plan of development ("Property"), known as \_\_\_\_\_.

2. The Developer has entered into a contract ("Contract") with certain Subcontractors ("Subcontractors") by which the Subcontractors will construct the Erosion Control Measures in accordance with requirements of the Code of Henrico County, Virginia, and conditions imposed hereunder by the Department of Public Works (all of which are collectively referred to herein as the "Requirements"); and

3. In connection with its approval of development of the Property, the County desires to obtain security, through the assignment of certain funds evidenced by a Certificate of Deposit held at the Bank, for the installation and maintenance of Erosion Control Measures in accordance with the Requirements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Assignment of Certificates of Deposit. The Developer hereby irrevocably assigns to the County all of its right, title, and interest in and to funds represented by a Certificate of Deposit in the face amount of \_\_\_\_\_ issued by the Bank, copies of which are attached hereto as Exhibit B ("Certificate"),

as security for construction, completion, and the maintenance of the Erosion Control Measures. The Certificate shall be held by the Bank as escrow agent for the County. The Bank shall hold the Certificate and its principal amount for the benefit of the County. The Bank shall not release the Certificate to the Developer or other third party unless directed by the official of the County charged with the enforcement of the Requirements pursuant to the terms and conditions set forth in this Assignment.

2. Payment of Assigned Proceeds. If the Developer does not complete, construct, and maintain the Erosion Control Measures in accordance with the Requirements of Henrico County Department of Public Works, then the funds evidenced by the Certificate shall be paid directly by the Bank to the County. As a condition precedent to receiving the funds assigned hereunder, the County shall provide the Bank with a certified statement, signed by an official charged with the enforcement of the Requirements, stating that the Developer has failed to satisfactorily construct, complete, and maintain the Erosion Control Measures in accordance with the Requirements. Upon receipt of such certified statement, the Bank will be unconditionally obligated to release the funds to the County. Upon receipt of such funds from the Bank, the County shall forthwith apply same for the sole and exclusive purpose of construction, completion and maintenance of the Improvements, and upon completion of such Erosion Control Measures, shall promptly return all unused amounts to the Developer.

3. Termination. This Assignment shall terminate and be of no further force and effect on the date that completion of the land-disturbing activity and achievement of adequate stabilization of the land has occurred, as evidenced by a certified statement signed by the Director of the Department of Public Works verifying that the Developer has satisfactorily constructed, completed and maintained all Erosion Control Measures and adequately stabilized the disturbed area(s) required by this Agreement and authorizing all funds assigned hereunder to be returned to the Developer. If the improvements are not completed at the end of the term of the Certificate, the Certificate shall be renewed.

4. Warranties. The Bank warrants that there are no legal or equitable defenses currently available to the Bank that might affect the County's ability to use proceeds of the Certificate for the

purpose of completing maintenance of the Erosion Control Measures. The Developer warrants that there are no defects or prior liens incumbent on the properties.

5. Effect of Assignment. Nothing herein shall be construed to relieve the Developer of its independent legal obligation to complete and maintain the Erosion Control Measures.

6. Interpretations. This Assignment shall be governed by and construed in accordance with the laws of Commonwealth of Virginia and shall be binding on the parties, their successors and assigns.

WITNESS the following signatures and seals all as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Bank)

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

(Developer)

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

COUNTY OF HENRICO, VIRGINIA

By \_\_\_\_\_  
Director of Public Works/County Engineer

Approved as to form:

\_\_\_\_\_  
Assistant County Attorney

02/01 Rev.



## ASSIGNMENT FOR UNIMPROVED DRIVE APRONS

This Assignment made and entered into by and among \_\_\_\_\_ ("Developer"), the County of Henrico, Virginia, a political subdivision of the Commonwealth of Virginia ("County"), and \_\_\_\_\_ ("Bank") provides as follows:

1. The Developer owns a certain parcel of real estate located in Henrico County, Virginia, described as Exhibit A attached hereto, which real estate is contemplated to be further developed as a single family residential subdivision ("Property"), known as \_\_\_\_\_.
2. The Developer has entered into a contract ("Contract") with certain Subcontractors ("Subcontractors") by which the Subcontractors will construct the Improvements (Driveway Aprons) in accordance with requirements of the Code of Henrico County, Virginia, the Virginia Department of Transportation, Henrico County Department of Public Works, and conditions imposed hereunder by the Planning Commission (all of which are collectively referred to herein as the "Requirements"); and
3. In connection with its approval of development of the Property, the County desires to obtain security, through the assignment of certain funds evidenced by a Certificate of Deposit held at the Bank, for the installation and maintenance of Improvements (Driveway Aprons) remaining to be completed at the execution of this Agreement in accordance with the Requirements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Assignment of Certificates of Deposit. The Developer hereby irrevocably assigns to the County all of its right, title, and interest in and to funds represented by a Certificate of Deposit in the face amount of \_\_\_\_\_ issued by the Bank, copies of which are attached hereto as Exhibit B ("Certificate"), as security for construction, completion, and the maintenance of the Improvements (Driveway Aprons). The Certificate shall be held by the Bank as escrow agent for the County. The Bank shall hold the Certificate and its principal amount for the benefit of the County. The Bank shall not

release the Certificate to the Developer or other third party unless directed by the official of the County charged with the enforcement of the Requirements pursuant to the terms and conditions set forth in this Assignment.

2. Payment of Assigned Proceeds. If the Developer does not complete, construct, and maintain the Improvements (Driveway Aprons) in accordance with the Requirements of Henrico County Department of Public Works within one (1) year of the date of this assignment, then the funds evidenced by the Certificate shall be paid directly by the Bank to the County. As a condition precedent to receiving the funds assigned hereunder, the County shall provide the Bank with a certified statement, signed by an official charged with the enforcement of the Requirements, stating that the Developer has failed to satisfactorily construct, complete, and maintain the improvements in accordance with the Requirements. Upon receipt of such certified statement, the Bank will be unconditionally obligated to release the funds to the County. Upon receipt of such funds from the Bank, the County shall forthwith apply same for the sole and exclusive purpose of construction, completion and maintenance of the Improvements, and upon completion of such Improvements, shall promptly return all unused amounts to the Developer.

3. Termination. This Assignment shall terminate and be of no further force and effect on the date upon which construction and maintenance of all Improvements has been completed and accepted in accordance with the Requirements, as evidenced by a certified statement signed by an official charged with the enforcement of the Requirements stating that the Developer has satisfactorily constructed, completed and maintained all Improvements required by this Agreement and authorizing all funds assigned hereunder to be returned to the Developer.

4. Warranties. The Bank warrants that there are no legal or equitable defenses currently available to the Bank that might affect the County's ability to use proceeds of the Certificate for the purpose of completing the Improvements. The Developer warrants that there are no defects or prior liens incumbent on the properties.

5. Effect of Assignment. Nothing herein shall be construed to relieve the Developer of its independent legal obligation to complete and maintain the Improvements.

6. Interpretations. This Assignment shall be governed by and construed in accordance with the laws of Commonwealth of Virginia and shall be binding on the parties, their successors and assigns.

WITNESS the following signatures and seals all as of this \_\_\_\_\_ day of \_\_\_\_\_.

(Bank)

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

(Developer)

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

COUNTY OF HENRICO, VIRGINIA

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

Approved as to form:

\_\_\_\_\_  
Assistant County Attorney

11/98 Rev.

**DECLARATION OF COVENANTS**

**INSPECTION/MAINTENANCE OF RUNOFF CONTROL MEASURES**

**THIS DECLARATION**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, between \_\_\_\_\_, and all successors in interest, hereinafter referred to as the "COVENANTOR(S)," owner(s) of the following property: \_\_\_\_\_ on which best management practices, hereinafter referred to as "BMPs", or stormwater management facilities, hereinafter referred to as "SWM Facilities", to control stormwater runoff have been constructed, and County of Henrico, Virginia, hereinafter referred to as the "COUNTY."

**WITNESSETH:**

We, the COVENANTOR(S), with full authority to execute deeds, mortgages, other covenants, and all rights, titles and interests in the property described above, do hereby covenant with the COUNTY as follows:

1. The COVENANTOR(S) shall provide maintenance for the BMPs and/or SWM Facilities located on and serving the above-described property to ensure that the BMPs and/or SWM Facilities are and remain in proper working condition in accordance with approved design standards and with applicable legal requirements.

2. If necessary, the COVENANTOR(S) shall levy regular or special assessments against all present or subsequent owners of property served by the BMPs

and/or SWM Facilities to ensure that the BMPs and/or SWM Facilities are properly maintained.

3. The COVENANTOR(S) shall provide and maintain perpetual access from public rights-of-way to the BMPs and/or SWM Facilities for the COUNTY, its agents and its contractors.

4. The COVENANTOR(S) shall grant the COUNTY, its agents and its contractors, a right of entry to the BMPs and/or SWM Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the BMPs and/or SWM Facilities, as necessary.

5. If, after reasonable notice by the COUNTY, the COVENANTOR(S) shall fail to maintain the BMPs and/or SWM Facilities to control stormwater runoff in accordance with the requirements of Section 24-106.3 of the County Code in effect at the date of these covenants, the COUNTY may perform all necessary repair or maintenance work, and the COUNTY may assess the COVENANTOR(S) and/or all property served by the BMPs and/or SWM Facilities for the cost of the work and any applicable penalties.

The COVENANTOR(S) shall indemnify and save the COUNTY harmless from any and all claims for damages to persons or property arising from the installation, construction, maintenance, repair, operation or use of the BMPs and/or SWM Facilities .

7. The COVENANTOR(S) shall promptly notify the COUNTY when the COVENANTOR(S) legally transfer any of the COVENANTOR(S)' responsibilities for the BMPs and/or SWM Facilities. The COVENANTOR(S) shall supply the COUNTY with a copy of any document of transfer, executed by both parties.

8. The covenants contained herein shall run with the land and shall bind the COVENANTOR(S) and the COVENANTOR(S)' heirs, executors, administrators, successors and assignees, and shall bind all present and subsequent owners of property served by the BMPs and/or SWM Facilities as long as they own an interest in the property.

9. This COVENANT shall be recorded in the Circuit Court of Henrico County.

IN WITNESS WHEREOF, the COVENANTOR(S) have executed this DECLARATION OF COVENANTS as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

COVENANTOR(S)

ATTEST:

COVENANTOR(S)

ATTEST:

STATE OF VIRGINIA  
CITY/COUNTY OF

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the subscribed, a Notary Public of the State of Virginia, and for the City/County of \_\_\_\_\_, aforesaid personally appeared before me \_\_\_\_\_,

Name of COVENANTOR(S)

and did acknowledge the foregoing instrument to be their Act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public

My Commission expires:

Approved as to form:

Rev. 8/01

## DEFECT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_,  
(Principal) and \_\_\_\_\_, a corporation duly incorporated under the laws of  
the State of \_\_\_\_\_, (Surety) are held firmly bound unto the County of  
Henrico, Virginia, (County) in the full and just sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
current money of the United States, to be paid to the County, to payment whereof we hereby  
bind ourselves and each of us and each of our heirs, executors, administrators, successors and  
assigns, jointly and severally, this \_\_\_\_\_ day of \_\_\_\_\_,  
2001.

WHEREAS, Principal has constructed and County has accepted or will in the near future  
determine whether or not to accept into the County system of roads, the street, road and  
drainage improvements described below together with adjacent street or roadway pavement,  
underlying base material, surface and subsurface structures, curb and gutter, driveway  
entrances, storm sewers, roadway shoulders and side and public drainage improvements lying  
within the boundaries of the right-of-way and/or any public drainage easement described as  
follows:

NOW, THEREFORE, the condition of this obligation is such that if Principal shall, according to  
the terms of the defect bond, indemnify and save harmless the County for a period of one (1)  
year from the date of acceptance of the above-described improvements by the County from all  
loss, cost, damage or expense incurred in the repair and/or replacement of roadway pavement,  
underlying base material and structures, curb and gutter, driveway entrances, storm sewers,  
roadway shoulders, and side ditches, which damage or deterioration occurs within the  
boundaries of the public right-of-way and/or any public drainage easement, and damage to  
other work or improvements resulting therefrom and occurring, appearing or manifesting itself  
within the one (1) year period described herein, then this obligation shall be void; otherwise, it  
shall remain in full force and effect.

It is expressly understood that this bond shall not be cancelled by Surety and nothing  
herein shall operate to relieve, release or discharge Surety from liability on this bond.



Whenever Principal shall fail, and be declared by County to have failed, to repair or replace the above-described improvements or correct such damage or deterioration:

Surety, upon demand by County, shall promptly remedy or cause to be remedied such failure; or,

County, after five (5) days written notice to Surety may perform or arrange for performance of Principal's obligations and Surety shall promptly reimburse County for the actual cost of such performance; provided, however, that in no event shall the liability of Surety exceed the face amount of this bond.

The expiration of this bond shall not relieve Surety from any liability previously accrued pursuant to this bond.

IN WITNESS WHEREOF, Principal and Surety have caused these presents to be executed and their seals affixed on the day and during the year above written.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney In Fact

Countersigned:

\_\_\_\_\_  
Resident Virginia Agent

**ACKNOWLEDGEMENT FOR PRINCIPAL**

State of \_\_\_\_\_  
County/City of \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public in and for the County/City and State aforesaid, do certify that \_\_\_\_\_, whose name is signed to the foregoing bond, personally appeared before me in my County/City and State aforesaid and acknowledged the same to be his act and deed.

My commission expires \_\_\_\_\_.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public

**ACKNOWLEDGEMENT FOR SURETY**

State of \_\_\_\_\_  
County/City of \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public in and for the County/City and State aforesaid, do certify that \_\_\_\_\_, whose name is signed to the foregoing bond, personally appeared before me in my County/City and State aforesaid and acknowledged the same to be his act and deed.

My commission expires \_\_\_\_\_.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public

(REV. 02/01)

## Erosion and Sediment Control Agreement

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and \_\_\_\_\_, hereinafter called "Developer", party of the first part, and the County of Henrico, Virginia, hereinafter called "County", party of the second part.

### W I T N E S S E T H

WHEREAS, Developer desires approval of plans for \_\_\_\_\_, which include provisions for erosion and sediment control measures as required by Chapter 10 of the Code of the County of Henrico, Virginia, and

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

NOW, THEREFORE, in consideration of the foregoing premises and the following terms and conditions, as well as approval of the aforesaid plans by the County and the issuance of permits for the work, the parties hereto agree as follows:

1. Developer has provided the County financial security for the performance of its obligations in the amount of \_\_\_\_\_ by cash, irrevocable letter of credit or an assignment for erosion control measures ("assignment"), the terms and conditions of which are acceptable in substance and in form to the County Attorney. The cash deposit, letter of credit or assignment is designed to insure full and complete reimbursement to the County in the event that it performs work or causes work to be performed pursuant to paragraphs 2, 3, and 4 of this agreement.

2. In the event developer has not conducted measures for the control of sedimentation and erosion as provided by the plans, or on any approved revision, prior to the occurrence of any rainstorm or other event actually causing any sedimentation or erosion, County shall have the right to enter upon Developer's property and construct such measures or do such other work as may be necessary to prevent further erosion or sedimentation, provided that County shall first give notice in writing to Developer.

3. In the event Developer has constructed measures for the control of sedimentation and erosion but through overload or inadequate maintenance, they fail to perform the function for which they were intended, County may enter upon Developer's property 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 Developer.

4. In the event sedimentation or erosion from the property covered by the plans occurs in sufficient quantity to adversely affect downstream drainage, or travel on any street, road, highway, or other public way, then County may take all necessary steps to restore functions to the affected drainage area or travel way without prior written notice.

5. In the event County performs or causes to be performed work under the provisions of paragraphs 2, 3, and 4 above, either by County forces or private contractor, the County may draw upon Developer's cash deposit, letter of credit or assignment in the amount necessary for complete reimbursement of County for such work. The County will deliver or mail to Developer a copy of an invoice for work performed.

6. In the event County draws upon the Developer's financial security, Developer agrees within ten (10) calendar days of such disbursement either:

- a. to deposit an amount sufficient to restore the cash amount to its original balance; or
- b. to furnish an additional letter of credit or assignment in the amount necessary to restore the amount of the initial letter of credit or assignment.

7. In addition to paragraph 6 above, where the cost to the County for work performed pursuant to the provisions of paragraphs 2, 3, and 4 above exceeds the amount of the cash deposit, letter of credit or assignment held by the County, Developer shall pay in full to the County the cost incurred by the County in excess of the cash deposit, letter of credit or assignment within ten (10) calendar days of the time the County incurred such cost.

8. The parties agree that the purpose of this agreement is to insure the installation, maintenance, and performance of measures for the control of erosion and sedimentation and to provide

for the restoration of facilities for drainage or vehicular travel if such facilities are adversely affected by sedimentation or erosion from the Developer's property.

9. The parties agree that the cash deposit, letter of credit or assignment shall be held by the County until utilized in accordance with paragraph 5 or released in writing by the County's Director of Public Works.

WHEREFORE, the parties have executed this agreement by their signatures below.

\_\_\_\_\_  
Developer

Attest \_\_\_\_\_

By: \_\_\_\_\_(Seal)

Its

\_\_\_\_\_

County of Henrico, Virginia

By: \_\_\_\_\_  
Director of Public Works/County Engineer

**BANK LETTERHEAD**

Date

County of Henrico, Virginia  
Department of Public Works  
P.O. Box 27032  
Richmond, Virginia 23273

Attention: County Engineer

Gentlemen:

We hereby open our Irrevocable Letter of Credit No. ( \_\_\_\_\_ ) in your favor for the account of ( Name of Developer ), ( Address ) for a sum not exceeding ( Gross sum required on Erosion and Sediment Control Agreement ) available by your sight drafts on the ( Name of Bank ) at ( address ), Richmond, Virginia, and accompanied by documents specified below:

A certified statement signed by an official of Henrico County, Virginia stating that the ( Name of Developer ) has not satisfactorily provided for the control of sedimentation and/or erosion as required by Chapter 10 of the Code of the County of Henrico, Virginia, as stated in the Erosion and Sediment Control agreement dated ( Date ) and as provided by the approved plans for ( Name of Project ).

A statement signed by an official of Henrico County to the effect that the drawing is for the explicit purpose of providing for the control of sedimentation and/or erosion pursuant to the terms of the Code of the County of Henrico, Virginia (and any amendment thereto) and as provided on the approved construction plans for ( Name of Project ).

All drafts must bear the clause "Drawn under the ( Name of Bank ) Letter of Credit No. ( \_\_\_\_\_ ) dated ( \_\_\_\_\_ )."

We hereby engage with drawers, endorsers, and bona fide holders that all drafts drawn in compliance with the terms of this credit shall be duly honored upon presentation and delivery of the documents. This Irrevocable Letter of Credit shall remain in full force and effect for a period of three (3) years from the date hereof. While this Letter of Credit is in effect, the County may draw up to the full amount of the sum at (must be a Richmond location). This credit shall be terminated upon the County of Henrico's County Engineer (or his appointed agent) giving written release to ( Name of Developer ) stating that he has well and truly performed and fulfilled the obligations of the required improvements for ( Name of Project ). This Irrevocable Letter of Credit shall be construed in accordance with the "Uniform Customs and Practices for Commercial Documentary Credits" promulgated by the XIII Congress of the International Chamber of Commerce (International Chamber of Commerce Brochure No. 500, 1993 revision) and the provisions of the Uniform Commercial Code - Letters of Credit - Title 8.5 of the Code of Virginia, 1950, as amended.

Very truly yours,

\_\_\_\_\_ ( Name of Bank )

\_\_\_\_\_ ( Authorized Bank Officer )

(Corporate Seal)  
Rev. 7/98

**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 \_\_\_\_\_, 20\_\_, 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 27032  
Richmond, 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

REV. .7/01