

**LONG-TERM STORMWATER MANAGEMENT FACILITY
MAINTENANCE AGREEMENT**

VSMP/Stormwater Permit #: _____

TAX PARCEL NUMBER: _____

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between, _____, Grantor, hereinafter called the "Owner," whose legal address is _____, and Montgomery County, Virginia, a political subdivision of the Commonwealth of Virginia, acting by and through its Board of Supervisors, Grantee, hereinafter called the "Montgomery County," whose legal address is 755 Roanoke St, Christiansburg, VA 24073.

WITNESSETH:

WHEREAS, _____ is the Owner of that certain parcel of land lying and being in the _____ [Magisterial District of Montgomery County, Virginia], identified as Tax Parcel # _____, being of record in the [Clerk's Office of the Circuit County of Montgomery County, Virginia], in Deed Book ____ at Page ____ or Deed Instrument No. _____, referred to herein as the "Property," which Property is briefly described as follows: _____

WHEREAS, Owner desires the approval of an Erosion and Sediment Control and Stormwater Management Plan (Plan File # _____), referred to as the "Plan," for erosion and sediment control and stormwater management measures and facilities, as required by the Montgomery County, a copy of which Plan is attached hereto and which is expressly incorporated by reference herein; and

WHEREAS, the Plan provides for a stormwater management facility(ies) and other drainage conveyance channels or permanent erosion and sediment control measures and improvements within the confines of the Property, referred to as the "Facilities"; and

WHEREAS, Montgomery County and the Owner agree that the health, safety, and general welfare of the residents of Montgomery County, Virginia require that on-site stormwater

management Facilities as shown on the Plan be constructed on the Property by the Owner and adequately maintained by the Owner;

NOW, THEREFORE, in consideration of the foregoing Property, the mutual benefits and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The on-site stormwater management Facilities shall be constructed by the Owner in accordance with the attached Plan and specifications, and, upon completion of construction of such Facilities Owner shall provide a construction record drawing as required by §62.1-44.15 of the Code of Virginia.
2. The Owner shall maintain the Facilities in accordance with the maintenance procedures shown on the attached Plan to assure good working order acceptable to the Montgomery County. Such maintenance procedures shall meet or exceed those maintenance requirements set forth in the Stormwater Management Ordinance of Montgomery County.
3.
 - a. The Owner identifies _____ as the person responsible *for performing* the required maintenance of the Facilities. The street address and telephone number where such person may be contacted are: _____; (____) ____-____.
 - b. Owner hereby acknowledges that identification of such person shall not be deemed to relieve Owner, its administrators, executors, assigns, heirs, and any other successors in interest of its/their ultimate responsibilities under the provisions of this Agreement or under the pertinent provisions of [local code] or applicable statutes or regulations.
 - c. Owner further agrees to provide written notification to Montgomery County of the name, address, and telephone number of any person whom Owner may identify subsequently as the person responsible *for performing* required maintenance.
4. The Owner shall inspect the Facilities in accordance with and within the timeframes provided in the requirements set forth in the Stormwater Management Ordinance of Montgomery County. The Owner shall provide a copy of the inspection report in

accordance to the inspection schedule to Montgomery County within 30 calendar days of the required inspection date.

5. The Owner hereby grants permission to Montgomery County, its authorized agents and employees to enter upon the Property and to inspect the Facilities upon providing Owner ten (10) calendar days written notice by first class mail. Such notice requirement may be waived or modified by agreement between the Owner and Montgomery County. Such right of access will *allow* Montgomery County to inspect the facility, but Montgomery County is under no obligation to conduct periodic inspections. Defects or deficiencies discovered during any such inspection shall be documented and specific measures to be taken to remedy such defect or deficiency shall be described in writing, a copy of which shall be provided to Owner. Owner agrees to perform promptly all needed maintenance and correct defects and/or deficiencies reported to it by Montgomery County. Such defects and/or deficiencies shall be corrected within a reasonable period of time as determined between Owner and Montgomery County, but such period shall not exceed fifteen (15) calendar days.
6. Owner further agrees to waive the notice requirement specified in Paragraph 5 above when Montgomery County determines that an immediate inspection of the Facilities is necessary due to threat of imminent danger to life or property or other emergency. Montgomery County, or its agents, may enter immediately upon the Property and take whatever reasonable steps it deems necessary to mitigate the danger or emergency. Montgomery County shall notify the Owner of such entrance as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, Montgomery County may notify the Owner by telephone to take necessary action within a specified time period. Should Owner fail to respond, or should Owner inform Montgomery County that it does not intend to act with the specified time period, then Montgomery County, or its agents, may enter immediately upon the Property and take whatever reasonable steps it deems necessary to mitigate the danger or emergency.
7. In the event of notice being required under Paragraph 5 above or any other provision of this Agreement, such notice shall be deemed to have been given when put in writing and deposited in the U. S. Mail (first class mail with postage prepaid) to the following:

If to the Owner:

Name of person: _____ OR

Name of entity if a corporation, partnership, etc.: _____

Name of officer AND title if a corporation, partnership, etc.: _____

Address: _____

Telephone Number: _____

If to Montgomery County:

[LOCALITY ADMINISTRATOR]

[LOCALITY ADDRESS]

Owner further agrees to notify Montgomery County in writing at the above address immediately upon any change in legal status, address, or telephone number of Owner.

8. In the event the Owner fails to maintain the Facilities, as shown on the attached Plan, in good working order acceptable to Montgomery County], or to promptly correct defects and/or deficiencies reported to it by Montgomery County within the prescribed time period, Montgomery County may enter upon the Property after notice as required in Paragraph 5 above and take whatever steps it deems necessary to maintain said Facilities. This provision shall not be construed to allow Montgomery County to erect any structure of a permanent nature on the land of the Owner without first obtaining written approval of the Owner. It is expressly understood and agreed that Montgomery County is under no obligation to maintain or repair said Facilities, and in no event shall this Agreement be construed to impose any such obligations on Montgomery County.
9. In the event Montgomery County, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner, its administrators, executors, assigns, heirs, and any other successors in interest shall reimburse Montgomery County upon demand, within thirty (30) calendar days of receipt thereof for all costs incurred by Montgomery County hereunder.
10. Notwithstanding the above-mentioned remedies, Owner and Montgomery County acknowledge that Montgomery County may take such other additional enforcement actions as are set forth in Chapter [XXX] of the Montgomery County Code of [xxXX], including, but not limited to, those prescribed in [§8-11] of that chapter, as Montgomery County may deem necessary.

11. It is the intent of this Agreement to ensure the proper maintenance of onsite Facilities by the Owner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater damage.
12. The Owner, its executors, administrators, assigns, heirs, and other successors of interest shall indemnify and hold Montgomery County and its agents and employees harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against Montgomery County from the construction and/or maintenance of the described onsite Facilities by the Owner or Montgomery County.

In the event a claim is asserted against Montgomery County, its agents or employees, Montgomery County shall promptly notify the Owner and the Owner shall defend, at its own expense, any suit based on such claim. If any judgment or claim against Montgomery County, its agents or employees shall be allowed, the Owner shall pay all costs and expenses in connection therewith.
13. Montgomery County shall not pay any compensation to Owner, its administrators, executors, assigns, heirs, or any other successors in interest at any time for its use of the Property in any way necessary for the inspection and maintenance of the Facilities, including access to the Facilities.
14. This Agreement shall be governed by the laws of the Commonwealth of Virginia.
15. Plans and specifications for stormwater management facilities and measures to be undertaken on the subject property shall be attached hereto and are hereby incorporated by reference as a part of this Agreement.
16. This Agreement shall be recorded among the land records in the Clerk's Office of Montgomery County, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs, and any other successors in interest.
17. Such covenant running with the land shall be described in full or incorporated by reference into each deed of conveyance out of the described Property, and such covenant shall be noted on any subsequently recorded plat of subdivision or re-subdivision of Property.

IN WITNESS WHEREOF, _____, Owner, has affixed his signature and seal; **OR IN WITNESS WHEREOF**, _____, a Virginia Corporation, pursuant to a Resolution duly adopted on the ____ day of _____, 20____, has caused this instrument to be executed by _____, its _____, on behalf of the Corporation; and

IN FURTHER WITNESS WHEREOF, the BOARD OF SUPERVISORS of Montgomery County, VIRGINIA, has caused this instrument to be executed by [NAME], [TITLE], on behalf of the Board of Supervisors, of Montgomery County, VIRGINIA.

[Signature] _____(SEAL)

[Print Name] _____

OR

[Name of corporation, partnership] _____

[Signature of Officer] By: _____(SEAL)

[Print name of officer and his title] _____

THE BOARD OF SUPERVISORS OF Montgomery County, VIRGINIA

By: _____(SEAL)

[NAME], [TITLE]

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by _____, Owner.

(SEAL)

Notary Public

My commission expires: _____.

OR

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by _____ [name of officer], _____ [name of office held] of
_____ [name of corporation], a Virginia corporation, on behalf of
the Corporation, **Owner**.

(SEAL)

Notary Public

My commission expires: _____.

COMMONWEALTH OF VIRGINIA,
Montgomery County, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by [NAME], [TITLE] for Montgomery County, Virginia, on behalf of the BOARD OF SUPERVISORS
of Montgomery County, VIRGINIA.

(SEAL)

Notary Public

My commission expires: _____.

[A resolution, or a certified copy thereof, authorizing a designated officer of the corporation or other entity to execute this Agreement on behalf of the corporation or other entity shall be attached to this Agreement and recorded with said Agreement in the Clerk's Office of the Circuit Court of Montgomery County, Virginia.]

RESOLUTION

I, _____, the duly elected and qualified Secretary of _____, a Virginia Corporation duly organized, validly existing and in good standing under the laws of Virginia, hereby certify that at a legally convened meeting of the Board of Directors of _____, duly called and held on the ____ day of _____, 20 __, the following Resolution was duly adopted in accordance with the articles of incorporation and bylaws of _____, and is now in full force and effect:

BE IT RESOLVED by the Board of Directors of _____, a Virginia Corporation, that the _____ [specify office], _____ [name of officer], of this Corporation is authorized to execute, acknowledge, and deliver on behalf of the Corporation any deed or other instrument conveying or encumbering land, or interest therein, including but not limited to a Stormwater Management Facility Maintenance Agreement by and between the Corporation and Montgomery County, Virginia, or granting any easement or right-of-way over land owned by the Corporation.

BE IT FURTHER RESOLVED that the Secretary of the Corporation shall attach to such deed or other instrument a copy of this Resolution by the Board of Directors authorizing the above-named officer of the Corporation to execute, acknowledge, and deliver such deed or instrument on behalf of the Corporation.

I further certify that _____ is the duly elected and acting
_____ [specify office] of the Corporation and, as such, has the authority to
perform the powers listed above.

IN WITNESS WHEREOF, I have hereunto subscribed my name hereto as Secretary of
_____, on the ___ day of _____, 20__.

[Name of Corporation] _____

[Signature of Corporate Secretary] _____ (SEAL)

[Print name of Secretary] _____, Secretary

DRAFT