City of Fairfax – Community Development and Planning
10455 Armstrong Street #207A Fairfax, VA 22030
Phone: 703-385-7820

BONDING INFORMATION PACKAGE

Dear Applicant,

During the final stages of the City of Fairfax Development Review Process, a surety value estimate will be reviewed by City staff to insure that proposed improvements are bonded. The estimates are based on the most current Fairfax County Unit Price Schedule, which can be found at the following web address for download:
https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/Assets/documents/PDF/publications/unit-price-schedule.pdf

Once the surety value estimate has been approved by City staff, a Site Bond, Site Agreement, Siltation Agreement and possibly a Best Management Practices (BMP) Agreement will require completion and submission with the bond instrument to the City's Development Bond Administrator with the appropriate surety review fees (below). Once the agreement(s) have been executed by the City, copies of the signed agreements will be sent electronically and/or by first class US mail for your records.

Account Number & Title FY 16-17 Adopted Fees 316466 Surety Review
(Performance bond*, letter of credit, cash escrow)

Less than $100,000	$290.00 each
$100,001-300,000	$575.00 each
More than $300,000	$840.00 each
Request for reduction	$290.00 each
Request for replacement/extension/release	$290.00 each

***Note: a performance bond/corporate surety, cash escrow or letter of credit will be accepted for Site Bonds. Siltation Agreements will be accepted with <u>cash escrow or letter of credit only</u>.**

If you should have any questions regarding the bonding process, please contact the Development Bond Administrator at 703-385-7820.

The City of Fairfax is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability, please call 703-385-7930, (TTY 711)

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IMPORTANT PHONE NUMBERS

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Site Plan Coordinator	703-385-7820
Development Bond Administrator	703-385-7820
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Street Superintendent	703-385-7980
Zoning Administrator	703-385-7820

CITY OF FAIRFAX
SILTATION AGREEMENT

THIS SILTATION AGREEMENT, made this _____day of _____, 20 _____, by and between:_____, hereinafter called "Developer", party of the first part, and the City of Fairfax, Virginia, a Virginia municipal corporation, hereinafter called "City", party of the second part.

WITNESSETH:

WHEREAS, Developer, desires approval of plans for (enter address of the property below): _____, which include provision of siltation and erosion control measures as required by the Erosion and Sediment Control Ordinance of the City, and are more specifically identified as (enter tax map number here): _____, and (enter the City of Fairfax Plan No. here):_____,prepared by: _____and dated _____and as revised through:_____; and

WHEREAS, City 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 other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are hereby incorporated into this Agreement in their entirety.

2. Developer has deposited with City, and City by its execution of this Agreement acknowledges that it holds, the sum of _____Dollars ($_____) under and subject to the terms of this Agreement.

3. 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 fully constructed at or prior to the occurrence of any rainstorm or other phenomena actually causing any siltation or erosion, the City shall have the right, but not the obligation, to enter upon the property and construct or complete such measures or do such other work as may be necessary to prevent further erosion or siltation, provided that City shall first give a written notice of its intention to undertake such work to the Developer or its authorized superintendent at least five (5) days in advance. Developer hereby identifies _____as its superintendent for the project and that he/she has all requisite authority to act of behalf of the Developer with respect to this Agreement (the "Superintendent").

4. In the event measures for the control of siltation and/or erosion have been constructed but fail, through overload or improper construction or design, or inadequate maintenance, to perform the functions for which they were intended, City shall have the right, but not the obligation, to enter the Property and to perform such reconstruction or maintenance as are necessary to ensure performance of such measures in accordance with the Plans, or approved revisions thereof, upon giving notice in writing to Developer or its Superintendent of its intent to do so at least five (5) days in advance.

5. If siltation and/or erosion from the Property occurs which adversely affects downstream drainage or travel on any street, road, highway or other public way, then the City may, but shall not be obligated, to take such steps as are necessary to restore the proper functions of the affected drainage or travel way(s).

6. In the event City performs work of any nature (without limitation, including labor, use of equipment and materials) under the provisions of sections 3, 4, or 5 above, either by contract or force account, the City or its contractor for such work shall be compensated with such sum or sums from the Cash Escrow/Letter of Credit as are supported by invoice for such work. A copy of such invoice shall be delivered or mailed by City to Developer. If the City or its Contractor for such work receives compensation pursuant to this section 6, then Developer agrees to deposit, within ten (l0) days of such compensation, an amount sufficient to restore the Cash Escrow /Letter of Credit amount to its original balance.

7. It is expressly agreed by the parties hereto that it is the purpose and intent of this Agreement to ensure the proper installation, maintenance and performance of measures provided for on the 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. This agreement shall not be deemed to create or affect any liability of the City to any third party for any damage alleged to result from or be caused by erosion or siltation and the Developer agrees to indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all claims, demands, actions, suits or liabilities arising out of this agreement, including, but not limited to, reasonable attorney's fees and cost of litigation.

8. Developer represents and warrants that the individual executing this Agreement for the Developer has all requisite authority to so execute this Agreement and to bind the Developer hereto and that all resolutions necessary for Developer to enter into this Agreement have been duly obtained.

NOTARIZED SIGNATURES TO FOLLOW ON PAGES 3 AND 4

IN WITNESS WHEREOF, the parties hereto, have executed this Agreement as of the date set forth above.

_____
Developer Name

By:_____
Signature

(Corporate Seal)

Attest:_____

Secretary

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF _____County/City/Town of _____to-wit:

I, the undersigned, A Notary Public in and for the State and County, City or Town aforesaid, do hereby certify that this day personally appeared before me in the State and County, City or Town aforesaid:

_____,
(Name) (Title)

whose name(s) is(are) signed to the foregoing and hereunto annexed agreement bearing the _____day of _____, 2_____, and acknowledged the same before me.

Given under my hand this _____day of _____,2_____.

Notary Registration Number#: _____

My Commission expires: _____day of _____,2_____.

_____
(Notary Public Signature)

CITY OF FAIRFAX

By:_____
City Attorney – Approved as to Form

By:_____
City Manager

Attest:_____
City Clerk

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

COMMONWEALTH OF VIRGINA
CITY OF FAIRFAX to-wit:

The foregoing instrument was acknowledged before me this:

_____day of _____,2_____.by_____, as City Manager, on behalf of the City of Fairfax, Virginia.

My Commission expires: _____day of _____,2_____.

Notary Registration Number#: _____

_____
(Notary Public Signature)

SAMPLE LETTER OF CREDIT

(Must be on letterhead of the issuing institution)

IRREVOCABLE LETTER OF CREDIT NUMBER: _____

City of Fairfax
City Hall
10455 Armstrong Street
Fairfax, VA 22030

NOTE: (DATE OF ISSUANCE MUST BE ON OR AFTER THE SILTATION AGREEMENT DATE)

Date of Issuance: _____

Applicant: _____

Beneficiary: City of Fairfax

Project Name & Location:

Site Plan #: _____

Ladies and Gentlemen:

We hereby open our Irrevocable and Unconditional Letter of Credit No._____, effective date _____, for the account of _____(developer's name) and in favor of the City of Fairfax, Virginia, for the sum of U.S. Dollars not to exceed in the aggregate _____Dollars ($_____) available by your sight drafts drawn on (bank name):_____ accompanied by written certification of the Director of Public Works or the City Manager of the City of Fairfax that the Applicant has:

1. Failed to install the siltation and erosion control measures as required by the Erosion and Sediment Control Ordinance of the City of Fairfax, in accordance with plan number _____ **or**

2. Failed to meet its obligations in accordance with a SILTATION Agreement, dated _____ between the Applicant and the City of Fairfax **or**

3. Is not diligently and satisfactorily completing the siltation and erosion control measures set forth on plan number _____ in a manner that such siltation and erosion control measures will be complete within a reasonable time.

We hereby further agree that:

1. All drafts hereunder must bear the clause "Drawn under the (bank name):_____ Letter of Credit Number _____ dated _____." (**NOTE:** Letter of Credit shall be drawn under a bank located in the state of Virginia or a confirming letter must be submitted in conjunction with a Letter of Credit on an institution outside of the state of Virginia).

2. The Bank hereby engages with drawers, endorsers and bona fide holders that all drafts drawn in compliance with the terms of the Letter of Credit shall be duly honored upon presentation and delivery of such documents.

3. Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored at the location of the issuing bank if presented at our office on or before _____ and this Letter of Credit shall remain in full force and effect until such Expiration Date.

4. Notwithstanding any other language to the contrary contained elsewhere in this Letter of Credit, it is a condition of this Letter of Credit that it shall automatically renew itself from year to year after the Expiration Date thereof unless and until the Bank shall give ninety (90) days prior written notice to the City Manager or Director of Public Works of the City of Fairfax, Virginia, by certified mail, returned receipt requested, of it's intent to terminate same at the expiration of said ninety (90) day period. During said ninety (90) days notice period, this Irrevocable Letter of Credit shall remain in full force and effect.

5. Upon receipt by the Beneficiary of such notice of non-renewal, the Beneficiary may draw upon this Letter of Credit by means of sight drafts accompanied by such written certification of the Director of Public Works or the City Manager as set forth in the opening paragraph of this Letter of Credit.

6. This Letter of Credit may be terminated by the Beneficiary giving a written release to the Applicant and to the Bank stating that the Applicant has furnished the Beneficiary with an acceptable substitute form of surety in an amount required by the Beneficiary.

7. This Letter of Credit is not assignable by the Bank, Beneficiary or Applicant.

8. Funds available under this Letter of Credit shall be paid to the Beneficiary in such amounts and at such times as set forth by the Director of Public Works or City Manager of the City of Fairfax, Virginia in the written certification as set forth in the opening paragraph of this Letter of Credit, provided that the total amount drawn shall not exceed the face amount of this Letter of Credit. Checks will be made payable to the City of Fairfax and directed to the attention of the Director of Public Works or City Manager.

9. The Bank shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of any underlying obligations, contractual or otherwise, between the Applicant and the Beneficiary or between the Applicant and any third party.

10. The Bank hereby agrees that no change, extension of time, alteration or addition to the work to be performed or the plans or specifications relating to the same or the Applicant's obligations under the Site Agreement, shall in any way effect the Bank's obligation to honor drafts under this Letter of Credit.

11. Approval of this Letter of Credit by the Beneficiary shall be deemed acceptance thereof without further notice to either the Bank or the Applicant.

12. Notwithstanding any other language to the contrary contained elsewhere in this Letter of Credit, if the Bank becomes critically undercapitalized, as defined in the Code of Federal Regulations, or insolvent, as defined in any applicable federal or state statute or regulation, the Beneficiary shall be immediately entitled to draw on this Letter of Credit. In such event, the Beneficiary may draw on this Letter of Credit by means of sight drafts accompanied by certification of the Director of Public Works or the City Manager that the Bank has become critically undercapitalized, as defined in the Code of Federal Regulations, or insolvent, as defined in any applicable federal or state statute or regulation.

13. This Letter of Credit shall be construed in accordance with the "Uniform Customs and Practices for Commercial Documentary Credits, International Chamber of Commerce" in effect on the date of issuance of this Letter of Credit 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)

By: _____
(Name)

Its: _____
(Title)

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF _____: COUNTY/CITY/TOWN OF: _____, To wit,

I, _____, A Notary Public in and for the said State and
(Notary Name)

County, City or Town do hereby certify that this day personally appeared before me in my said State and County, City or Town:

_____
(Name) (Title)

Whose name is/are signed to the foregoing in writing, dated _____, 2_____ and being duly sworn acknowledged the same to be his or her (their) own.

Given under my hand this _____day of _____,2_____.

My Commission expires: _____day of _____,2_____.

Notary Registration Number#: _____

_____
(Notary Public Signature)

Note: A written declaration of authority is required which attests that the signatory has the authority to sign Letter of Credit (LOC) for said Bank. Authority may not be required when the LOC is signed by the President of the issuing Bank.

SITE AGREEMENT # (to be filled in by staff): _____

CITY OF FAIRFAX
SITE AGREEMENT

THIS SITE AGREEMENT, made this _____ day of _____, 20_____, by and between:

_____ party of the first part, also called Developer, and

THE CITY OF FAIRFAX, VIRGINIA, a municipal corporation, party of the second part; also called City,

WITNESSETH,

The obligations required of the Developer by this Agreement and by the Ordinances of the City of Fairfax are secured by a (check one):

☐ Personal Bond / Corporate Bond
☐ Letter of Credit
☐ Cash Escrow

dated _____ in the amount of $ _____.

WHEREAS, the Developer proposes to develop improvements on the following described land located in the City of Fairfax, to wit (enter address of the property below):

_____ and,

WHEREAS, pursuant to the Ordinances of the City of Fairfax, the Developer has presented for approval a site plan prepared by: _____ dated: _____and as revised through: _____,

NOW, THEREFORE, for and in consideration of the sum of One Dollar ($1.00), the approval of the aforesaid plat, plans, profiles and specifications and other good and valuable consideration, the parties agree as follows:

1. The Developer shall undertake and complete not later than _____ all work set forth on the aforesaid site plan and related documents and all work required in accordance with the applicable provisions of the Code of the City of Fairfax and all regulations adopted pursuant thereto including, but not limited to:

    a. A drainage system by means of gutters, storm sewers, culverts under roadways and other structures to provide adequate drainage for the disposition of storm and natural waters for all streets and adjoining properties.

    b. Streets, concrete curbs, gutters and sidewalks to the requirements of the City of Fairfax.

c. A public water and sewerage system made available to each site as shown.

d. Screening, fences and walls within the public rights-of-way or easements as shown.

e. Other (If "none", **enter** "none" below):

_____

_____

2. The Developer shall promptly furnish to the City all necessary additional plats, plans, profiles, specifications and other related documents which may be required in order to complete the work contemplated hereunder, which documents shall become the property of the City.

3. It is agreed and understood that final approval of completed work can only be given by the Director of Public Works, City of Fairfax.

4. It is understood and agreed that by approving the aforesaid site plan and related documents the City of Fairfax assumes no liability or responsibility for the accuracy thereof or for the compliance with sound engineering or other professional practices.

5. This Agreement shall benefit and bind the parties hereto, their successors, heirs, executors, administrators and assigns.

6. The bankruptcy or receivership of the Developer, whenever occurring, may be construed by the City as a default under this Agreement.

7. The Developer agrees to indemnify and hold harmless the City, its elected officials, employees and agents from and against any and all claims, demands, actions, suits or liabilities arising out of this agreement, including, but not limited to, reasonable attorney's fees and cost of litigation.

8. Additional Provisions (If "none", **enter** "none" below):

_____

_ _____.

NOTARIZED SIGNATURES TO FOLLOW ON PAGES 3 AND 4

IN WITNESS WHEREOF, the Developer herein has caused this Agreement to be executed by_____, and the City, acting pursuant to authorization from the City Council, has caused this Agreement to be executed on its behalf by _____, its City Manager, and its seal to be affixed and attested by _____, its Clerk, all on the date first above mentioned.

_____
Developer

By:_____
Signature

_____
Name

_____
Title

(Corporate Seal)

Attest:_____

Secretary

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF _____County/City/Town of _____to-wit:

I, the undersigned, A Notary Public in and for the State and County, City or Town aforesaid, do hereby certify that this day personally appeared before me in the State and County, City or Town aforesaid:

_____,
(Name) (Title)

whose name(s) is(are) signed to the foregoing and hereunto annexed agreement bearing the _____day of _____, 2_____, and acknowledged the same before me.

Given under my hand this _____day of _____,2_____.

Notary Registration Number#: _____

My Commission expires: _____day of _____,2_____.

_____
(Notary Public Signature)

SITE AGREEMENT # (to be filled in by staff): _____

CITY OF FAIRFAX

By:_____
City Attorney – Approved as to Form

By:_____
City Manager

Attest:_____
City Clerk

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

COMMONWEALTH OF VIRGINA
CITY OF FAIRFAX to-wit:

The foregoing instrument was acknowledged before me this:

_____day of _____,2_____.by_____, as City Manager, on behalf of the City of Fairfax, Virginia.

My Commission expires: _____day of _____,2_____.

Notary Registration Number#: _____

_____
(Notary Public Signature)

CORRESPONDING AGREEMENT# (to be filled in by staff): _____

CITY OF FAIRFAX
SITE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
party of the first part, also called Developer, as Principal, hereinafter called Principal, and (enter Surety name below – i.e, insurance company name):
_____
as Surety, hereinafter called Surety, are held and firmly bound unto the City of Fairfax, as Obligee, hereinafter called Obligee, in the amount of :
_____ Dollars ($_____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into a Site Agreement with Obligee to undertake and complete the work therein described and to perform pursuant to the terms thereof, which Agreement is incorporated herein by reference and is made a part hereof, and is hereinafter referred to as the "Agreement".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly and faithfully perform said Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time; or of any maintenance required by the Obligee.

Whenever Prinicipal shall be in default, or declared terminated for default by the Obligee, for completing the Agreement, the Surety shall at the option of the Obligee:

1. Complete the Agreement in accordance with its terms and conditions; or
2. Obtain a bid or bids for submission to Obligee for completing the Agreement in accordance with its terms and conditions. Upon determination by Obligee and Surety of the lowest responsive and responsible bidder or bidders, arrange for a contract between such bidder or bidders and Obligee and make available as work progresses (even if there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion, but not exceeding (including other costs and damages for which the Surety may be liable to the Obligee hereunder), the amount set forth in the first paragraph hereof.

A suit may be brought for the amount of this bond after ten (10) days from the date of written notification of the Surety by the Obligee of the default of the Principal.

IN WITNESS THEREOF, the parties hereto have hereunto set their hand and seals this _____day of _____ 20_____.

PRINCIPAL

By: _____
Signature (Seal)

_____
Name (print) Title

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF _____, COUNTY/CITY/TOWN OF _____ to-wit:

I, _____, a Notary Public in and for the said State and County, City or Town do hereby certify that:

_____

(Name) (Title)

this day personally appeared before me in the State and County, City or Town whose name(s) is (are) signed to the foregoing writing, dated _____, 20_____, and being duly sworn, acknowledged the same to be his (their) own.

Given under my hand this _____day of _____,2_____.

Notary Registration Number#: _____

My Commission expires: _____day of _____,2_____.

_____
Notary Public Signature

IN FURTHER WITNESS WHEREOF, the **SURETY** herein has caused this bond to be executed on its behalf by _____, Agent by authority of the power of attorney attached hereto.

_____
Surety

By: _____
Agent

STATE OF _____, COUNTY/CITY/TOWN OF _____ to-wit:

I, _____, a Notary Public in and for the said State and County, City or Town do hereby certify that:

_____

(Name) (Title)

this day personally appeared before me in the State and County, City or Town whose name(s) is (are) signed to the foregoing writing, dated _____, 20_____, and being duly sworn, acknowledged the same to be his (their) own.

Given under my hand this _____day of _____,2_____.

Notary Registration Number#: _____

My Commission expires: _____day of _____,2_____.

_____
Notary Public Signature

SAMPLE LETTER OF CREDIT

(Must be on letterhead of the issuing institution)

IRREVOCABLE LETTER OF CREDIT NUMBER: _____

City of Fairfax
City Hall
10455 Armstrong Street
Fairfax, VA 22030

NOTE: (DATE OF ISSUANCE MUST BE ON OR AFTER THE SITE AGREEMENT DATE)

Date of Issuance: _____

Applicant: _____

Beneficiary: City of Fairfax

Project Name & Location: _____

Site Plan #: _____

Ladies and Gentlemen:

We hereby open our Irrevocable and Unconditional Letter of Credit No._____, effective date _____ , for the account of _____ (developer's name) and in favor of the City of Fairfax, Virginia, for the sum of U.S. Dollars not to exceed in the aggregate _____Dollars ($_____) available by your sight drafts drawn on (bank name):_____ accompanied by written certification of the Director of Public Works or the City Manager of the City of Fairfax that the Applicant has:

1. Failed to complete installation of the public improvements in accordance with a site plan known as _____ **or**

2. Failed to meet its obligations in accordance with a SITE Agreement, dated _____ between the Applicant and the City of Fairfax **or**

3. Is not diligently and satisfactorily completing the public improvements set forth on the site plan in a manner that such improvements will be complete by the completion date of the Site Agreement.

We hereby further agree that:

1. All drafts hereunder must bear the clause "Drawn under the (bank name):_____ Letter of Credit Number _____ dated _____." (**NOTE:** Letter of Credit shall be drawn under a bank located in the state of Virginia or a confirming letter must be submitted in conjunction with a Letter of Credit on an institution outside of the state of Virginia).

2. The Bank hereby engages with drawers, endorsers and bona fide holders that all drafts drawn in compliance with the terms of the Letter of Credit shall be duly honored upon presentation and delivery of such documents.

3. Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored at the location of the issuing bank if presented at our office on or before _____ (**NOTE:** this date must be at least six months after the Site Agreement project completion date) and this Letter of Credit shall remain in full force and effect until such Expiration Date.

4. Notwithstanding any other language to the contrary contained elsewhere in this Letter of Credit, it is a condition of this Letter of Credit that it shall automatically renew itself from year to year after the Expiration Date thereof unless and until the Bank shall give ninety (90) days prior written notice to the City Manager or Director of Public Works of the City of Fairfax, Virginia, by certified mail, returned receipt requested, of it's intent to terminate same at the expiration of said ninety (90) day period. During said ninety (90) days notice period, this Irrevocable Letter of Credit shall remain in full force and effect.

5. Upon receipt by the Beneficiary of such notice of non-renewal, the Beneficiary may draw upon this Letter of Credit by means of sight drafts accompanied by such written certification of the Director of Public Works or the City Manager as set forth in the opening paragraph of this Letter of Credit.

6. This Letter of Credit may be terminated by the Beneficiary giving a written release to the Applicant and to the Bank stating that the Applicant has furnished the Beneficiary with an acceptable substitute form of surety in an amount required by the Beneficiary.

7. This Letter of Credit is not assignable by the Bank, Beneficiary or Applicant.

8. Funds available under this Letter of Credit shall be paid to the Beneficiary in such amounts and at such times as set forth by the Director of Public Works or City Manager of the City of Fairfax, Virginia in the written certification as set forth in the opening paragraph of this Letter of Credit, provided that the total amount drawn shall not exceed the face amount of this Letter of Credit. Checks will be made payable to the City of Fairfax and directed to the attention of the Director of Public Works or City Manager.

9. The Bank shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of any underlying obligations, contractual or otherwise, between the Applicant and the Beneficiary or between the Applicant and any third party.

10. The Bank hereby agrees that no change, extension of time, alteration or addition to the work to be performed or the plans or specifications relating to the same or the Applicant's obligations under the Site Agreement, shall in any way effect the Bank's obligation to honor drafts under this Letter of Credit.

11. Approval of this Letter of Credit by the Beneficiary shall be deemed acceptance thereof without further notice to either the Bank or the Applicant.

12. Notwithstanding any other language to the contrary contained elsewhere in this Letter of Credit, if the Bank becomes critically undercapitalized, as defined in the Code of Federal Regulations, or insolvent, as defined in any applicable federal or state statute or regulation, the Beneficiary shall be immediately entitled to draw on this Letter of Credit. In such event, the Beneficiary may draw on this Letter of Credit by means of sight drafts accompanied by certification of the Director of Public Works or the City Manager that the Bank has become critically undercapitalized, as defined in the Code of Federal Regulations, or insolvent, as defined in any applicable federal or state statute or regulation.

13. This Letter of Credit shall be construed in accordance with the "Uniform Customs and Practices for Commercial Documentary Credits, International Chamber of Commerce" in effect on the date of issuance of this Letter of Credit 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)

By: _____
(Name)

Its: _____
(Title)

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF _____: COUNTY/CITY/TOWN OF: _____, To wit,

I, _____, A Notary Public in and for the said State and
(Notary Name)

County, City or Town do hereby certify that this day personally appeared before me in my said State and County, City or Town:

_____
(Name) (Title)

Whose name is/are signed to the foregoing in writing, dated _____, 2_____ and being duly sworn acknowledged the same to be his or her (their) own.

Given under my hand this _____day of _____,2_____.

My Commission expires: _____day of _____,2_____.

Notary Registration Number#: _____

_____
(Notary Public Signature)

Note: A written declaration of authority is required which attests that the signatory has the authority to sign Letter of Credit (LOC) for said Bank. Authority may not be required when the LOC is signed by the President of the issuing Bank.

BMP AGREEMENT# (to be filled in by staff): _____

CITY OF FAIRFAX
STANDARD BEST MANAGEMENT PRACTICES (BMP) FACILITIES MAINTENANCE AND MONITORING AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20 _____, by and between _____, its successors and assigns, hereinafter called (the "Landowner"), and the City of Fairfax, Virginia, a Virginia municipal corporation (the "City");

WITNESSETH:

WHEREAS, the Landowner is the owner of record certain real property located within the City, and described as:

_____

Tax map, block, and lot number

as acquired by deed recorded in the land records of the County of Fairfax, Virginia in Deed Book _____ at Page _____, (the "Property").

WHEREAS, Landowner is proceeding to build on and develop the Property and;

WHEREAS, Erosion and Sediment Control Plan/ Plan of Development/Site Plan/Subdivision Plan (describe fully)_____, (the "Plan"), which is expressly made a part hereof by reference, as approved or to be approved by the City, provides for detention or on-site treatment of stormwater within the confines of the Property and;

WHEREAS, Erosion and Sediment Control Plan/Plan of Development/Site Plan/Subdivision Plan identifies the type of structural best management practices facility or facilities as:

1)_____
2)_____ 4)_____
3)_____ 5)_____ as defined by the Virginia Stormwater Management Handbook and;

WHEREAS, Erosion and Sediment Control Plan/Plan of Development/Site Plan/Subdivision Plan identifies the geographic location (HUC), hydrologic unit code of each facility as:

1)_____(HUC as established in 4 VAC 50-60-10) _____(USGS HUC)
2)_____(HUC as established in 4 VAC 50-60-10) _____(USGS HUC)
3)_____(HUC as established in 4 VAC 50-60-10) _____(USGS HUC)
4)_____(HUC as established in 4 VAC 50-60-10) _____(USGS HUC)
5)_____(HUC as established in 4 VAC 50-60-10) _____(USGS HUC)

WHEREAS, Erosion and Sediment Control Plan/Plan of Development/Site Plan/Subdivision Plan identifies the impaired surface water that the best management practices facility is discharging into as:

1)_____
2)_____
3)_____
4)_____
5)_____

WHEREAS, Erosion and Sediment Control Plan/Plan of Development/Site Plan/Subdivision Plan identifies the number of acres treated by each facility as:

1)_____ 2)_____
3)_____ 4)_____
5)_____ and;

WHEREAS, Landowner acknowledges that the City Zoning Ordinance requires that on-site Best Management Practices, facilities, (the "Facilities"), be properly constructed and maintained, inspected on the property and;

WHEREAS, the City requires that the Facilities as shown on the Plan be constructed and adequately maintained by the Landowner.

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

1. The Facilities shall be constructed by the Landowner, in accordance with the plans and specifications as identified in the Plan.
2. Landowner shall maintain the Facilities in good working condition, in a manner to be acceptable to the City, so that the Facilities perform as designed.
3. Landowner, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Facilities whenever the City deems it to be necessary. The purpose of the inspection shall be to assure safe and proper functioning of the Facilities, berms, outlet structures, pond areas, etc. When deficiencies are noted, the City shall give the Landowner, copies of the inspection report with its findings and evaluations within 30 days.
4. Landowner will submit inspection reports and perform maintenance in accordance with the maintenance schedule for the Facilities including sediment removal as outlined on the approved plans and the following specific requirements:
    a. Maintenance of the aforementioned facility or facilities shall conform to the maintenance requirements contained in Chapter 6 of the Northern Virginia BMP Handbook, published by the Northern Virginia Planning District Commission and Virginia Stormwater Management Handbook, First Edition, published by the Virginia Department of Conservation and Recreation Division of Soil and Water Conservation.
    b. Inspection of Facilities shall be performed every **12** months by a qualified professional licensed to perform said work in the State of Virginia; an inspection report shall be submitted to the City Zoning Administrator.
5. In the event the City, pursuant to this Agreement, enters upon the Property and takes whatever steps it deems necessary to maintain said Facilities and in performance of said work for labor, use of equipment, supplies, materials and the like on account of the Landowner's failure to perform such work, the Landowner shall reimburse the City, upon demand, within 30 days of receipt thereof for all costs incurred by the City hereunder. It is expressly understood and agreed that the City is under no obligation to maintain or repair said Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. If not paid within such 30-day period, the City shall have a lien against the Property to the extent permitted by law, in the amount of such costs, plus interest at the highest rate permitted by law.
6. Landowner shall indemnify and hold harmless the City, its officers, agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City for the construction, presence, existence of or maintenance of the Facilities by the Landowner. In the event a claim is asserted against the City, the City shall promptly notify the Landowner, and the Landowner shall defend, at its own expense, any suit based on such claim. If any judgment or claim against the City shall be allowed, the Landowner shall pay all of the City's costs and expenses in connection therewith, including attorneys' fees.
7. Landowner hereby grants permission to the City, its authorized agents and employees, and the Northern Virginia Planning District Commission, its authorized agents, employees and consultants, to enter upon the property, and to install, operate and maintain equipment to monitor the flow rate and pollutant content of the input flow, the effluent, and at intermediate points in the BMP.
8. This Agreement shall be recorded among the land records of the County of Fairfax, Virginia, and shall constitute a covenant running with the land/or equitable servitude,

and shall be binding on the Landowner, its administrators, executors, assigns, heirs and other successors in interest.

WITNESS the following signatures and seals:

_____
(Landowner) (Seal)

By: _____
Name (type or print)

Attest:_____
Secretary

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF _____County/City/Town of _____to-wit:

I, the undersigned, A Notary Public in and for the State and County, City or Town aforesaid, do hereby certify that this day personally appeared before me in the State and County, City or Town aforesaid:

_____,
(Name) (Title)

whose name(s) is(are) signed to the foregoing and hereunto annexed agreement bearing the _____day of _____, 2_____, and acknowledged the same before me.

Given under my hand this _____day of _____,2_____.

Notary Registration Number#: _____

My Commission expires: _____day of _____,2_____.

_____
(Notary Public Signature)

CITY OF FAIRFAX

BMP Agreement Reviewed by: _____
Stormwater Resources Engineer

By:_____
City Attorney – Approved as to Form

By:_____
City Manager

Attest:_____
City Clerk

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

COMMONWEALTH OF VIRGINA
CITY OF FAIRFAX to-wit:

The foregoing instrument was acknowledged before me this:

_____day of _____,2_____.by_____, as City Manager, on behalf of the City of Fairfax, Virginia.

My Commission expires: _____day of _____,2_____.

Notary Registration Number#: _____

_____
(Notary Public Signature)