

**CITY OF SUFFOLK, VIRGINIA  
EASEMENT AND MAINTENANCE AGREEMENT**

*This deed is exempt from the recordation taxes imposed by § 58.1-801 of the Code of Virginia (1950), as amended, pursuant to § 58.1-811(A)(3).*

THIS EASEMENT AND MAINTENANCE AGREEMENT (“Agreement”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, and its heirs, successors and assigns, hereinafter referred to as "Owner," party of the first part; and the CITY OF SUFFOLK, VIRGINIA, a Municipal Corporation of the Commonwealth of Virginia, and its successors and assigns, hereinafter referred to as "City," party of the second part, whose address is City of Suffolk, c/o City Clerk’s Office, 442 West Washington Street, Suffolk, VA 23434.

WHEREAS, the City of Suffolk has established a stormwater facility transfer program whereby the City assumes responsibility for the functional and structural maintenance of qualified stormwater management facilities within the City upon the request of a qualified applicant; and

WHEREAS, the Owner is a registered Association under Virginia Code Section 55-508, *et seq.* or is a Residential Condominium Project under the Owner’s control registered with the Virginia Department of Professional and Occupational Regulations (DPOR) Common Interest Community Liaison Office, and has applied for approval to transfer to the City the functional and structural maintenance responsibilities of its existing stormwater facility (the “Facility”); and .

WHEREAS, the Owner’s Stormwater Facility Maintenance Program Transfer Application has been completed and the Facility described in said application has been approved by the City for its assumption of the Facility’s functional and structural maintenance responsibilities as set forth herein; and

WHEREAS, the City’s assumption of responsibility for the Facility’s functional and structural maintenance will require full access by the City to the Facility and all associated areas; and

WHEREAS, the Owner will continue to be responsible for the aesthetic maintenance of the Facility as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby covenants and agrees with the City as follows:

1. The Owner does hereby grant and convey unto the City an easement for the purposes of ingress/egress to the Facility and for the functional and structural maintenance of the same, under, through, upon, over and across the property of the Owner located in the City of Suffolk, Virginia, together with all of the rights and privileges hereinafter enumerated pertaining to said property, being more particularly bounded and described as follows:

[Description of Property]

2. Maintenance of the Storm Water Management Facility

The Owner agrees that it shall maintain indefinitely the aesthetic needs of the Facility in any manner it so desires. The Owner agrees that it shall perform the preventative/aesthetic Maintenance which specifically includes:

- A. Maintaining all fences or aesthetic applications that are not integral to the operation and functionality of the facility.
- B. Planting and mowing grass or maintaining a vegetative cover on the slopes, if applicable, surrounding the Facility.
- C. Aquatic plant control that is not affecting the operations of the Facility.
- D. Upkeep and maintenance of any aerators or aesthetic devices within the Facility.
- E. Removal of trash or debris and cleaning of inlet/outlet areas to promote positive drainage of the Facility and prevent clogging.

The City shall be responsible for maintaining the functional needs of the facility in a manner which will permit the Facility to perform the purposes for which it was designed and constructed, and in accordance with the standards by which it was designed and constructed, all as shown and described on the approved Plan which is on file in the Department of Public Works and is made a part hereof by reference. The Owner agrees that the City shall perform the functional Maintenance which specifically includes:

- A. Removal of silt and other debris from the Facility so as to maintain the elevation of the bottom of the Facility as shown on the approved plans,

- B. Embankment repair.
- C. Outfall pipe, catch basins, and structures repair and upkeep.

### 3. Completion of Transfer Application

The Owner agrees that this easement and maintenance agreement will not take effect until the entire BMP Transfer Application process has been completed and approved by the City. This process includes

- A. Submission of a transfer application including all required documentation.
- B. Completion of a site inspection arranged with the City of Suffolk by the owner. Unless the facility meets the standards set forth by the City of Suffolk, as checked on the site inspection, the facility will not be approved for BMP transfer. The Owner will have one (1) year after the inspection to improve the facility and arrange for a follow-up inspection.
- C. Receipt of approval from the City of Suffolk declaring that the transfer has been approved.

### 4. Rights of the City in the Event of Default by the Owner

In the event of any default or failure by the Owner in the performance of any of the covenants and warranties pertaining to the aesthetic maintenance of the Facility, in accordance with the terms and conditions hereof, the City shall have the right, at its option, to enter upon the properties owned by the Owner and, for the account of the Owner, maintain and repair the Facility as provided herein. All costs thereof shall constitute a lien upon the properties owned by the Owner.

### 5. Indemnification of City

The Owner hereby agrees that it shall save, hold harmless, and indemnify the City from and against all liability, losses, claims, demands, costs and expenses arising from, or out of, default or failure by the Owner to maintain the Facility, in accordance with the terms and conditions set forth herein or arising from, or out of, the construction, operation, repair or maintenance of the Facility.

### 6. No Public Rights

The parties hereto expressly do not intend by execution of this Agreement to create in the public, or any member thereof, any rights as a third party beneficiary or to authorize anyone not a party hereto to maintain a suit for any damages pursuant to the terms or provisions of this Agreement.

### 7. Covenants Running With the Land

The foregoing agreements shall be covenants which run with the land and shall inure solely to the benefit of, and shall be binding upon the parties hereto, their respective successors and assigns, and all subsequent owners of the property.

### 8. Recordation

Upon full execution of this Agreement and determination by the City that the transfer application is complete, this Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia.

**(SIGNATURE PAGES ATTACHED)**

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

OWNER/COVENANTOR:

\_\_\_\_\_  
Owner / Covenantor's Name

BY: \_\_\_\_\_

TITLE:  
\_\_\_\_\_

ATTEST:

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

OWNER ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_  
CITY OF \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and State aforesaid, do hereby certify that \_\_\_\_\_ (name), \_\_\_\_\_ (title), of \_\_\_\_\_ (name of corporation, partnership, individual, assoc.), whose name as such is signed to the foregoing Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced \_\_\_\_\_ identification.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_

CITY SIGNATURES / NOTARY CERTIFICATION

ATTEST:

CITY OF SUFFOLK, VIRGINIA

\_\_\_\_\_  
Signature – City Clerk

\_\_\_\_\_  
City Manager/Authorized Designee of City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
Signature – Department of Public Works

\_\_\_\_\_  
Signature – City Attorney

CITY’S ACKNOWLEDGEMENT

STATE OF VIRGINIA  
CITY OF SUFFOLK, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and State aforesaid, do hereby certify that \_\_\_\_\_ City Manager/Authorized designee of the City Manager Pursuant to §2-1 of the City Code, whose name is signed to the foregoing Agreement, bearing date the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me.

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

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

My Commission Expires: \_\_\_\_\_  
Notary Registration No.: \_\_\_\_\_

STATE OF VIRGINIA  
CITY OF SUFFOLK, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and State aforesaid, do hereby certify that \_\_\_\_\_, City Clerk for the City of Suffolk, Virginia, whose name is signed to the foregoing Agreement, bearing date the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has acknowledged the same before me in my City and State aforesaid. She is personally known to me.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public

My Commission Expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_