

**TOWN OF WARRENTON
PUBLIC IMPROVEMENTS CONTRACT**

FOR TOWN USE ONLY:

Project name: _____
Project number: _____
Letter of Credit Number: _____
OR Bond Number: _____
Amount: _____
Developer: _____
State of Organization: _____
Type of Entity: _____
Address: _____

Completion Date: _____

* * * * *

THIS CONTRACT, dated this _____ day of _____ 20__, by and between the undersigned Developer (“Developer”), and the TOWN OF WARRENTON, VIRGINIA, (“Town”).

W I T N E S S E T H :

IN CONSIDERATION of the approval by the Town, through its designee, of a subdivision plat/site plan/construction plan, for the project identified above, hereinafter referred to as the “Plan”, the Developer agrees as follows:

1. To construct and install all of the improvements and facilities shown on the approved plans, specifications and profiles, or revisions thereof, all of which are incorporated herein and made a part of this Contract by reference, which are located on land belonging to or to be conveyed to the Town or another public body or in public rights-of-way or easements running to or to run to the Town or another public body or which relate to drainage for the project.

2. That all of the construction and installation of all of the facilities and improvements required by this Contract shall be completed by the Completion Date defined above.

3. To provide and maintain proper grading, drainage, and siltation and erosion control on all of the property to which the Plan relates until such time as all of said property is stabilized; to provide for reforestation of all of the property to which the subdivision Plan relates and of all public properties affected by development of the project, in accordance with all applicable ordinances and regulations of the Town, and to perform all landscaping shown on the Plan, in a manner judged satisfactory by the Town Director of Public Works; and to promptly restore, repair and/or replace, as is judged appropriate in the discretion of the Town Director of Public Works, any and all damage caused to existing Town public utilities in connection with development relating to the above-referenced Plan.

4. That the methods and materials used in the construction and installation of the improvements and facilities and all of the other work required by this Contract will conform to most current Town of Warrenton standards and specifications, to the most current Town design and construction standards (as published and referred to as the Town Public Facilities Manual), and to the Virginia Department of Highways and Transportation road and bridge specifications, all of which are incorporated herein and made a part of this Contract by reference. In case of conflict between those standards and specifications, the Town standards and specifications will control, and if there is no applicable Town standard or specification, the most stringent of those standards and specifications referred to in this paragraph will control.

5. To comply with all applicable Town ordinances, state and federal laws and governmental regulations, all of which are incorporated herein and made a part of this Contract by reference.

6. That all required improvements and facilities and all other work undertaken in connection with this Contract will be constructed, installed, implemented, and maintained in a workmanlike manner.

7. That the Town's decision as to the acceptability of the types, quantities and qualities of materials and the quality of workmanship shall be conclusive and final unless said decisions are in violation of applicable law or are arbitrary and capricious.

8. That the Town has the right to inspect all work performed in connection with this Contract and that Town personnel shall have the right to enter upon and remain upon Developer's property at any time for the purposes of inspection and/or evaluation of Developer's performance under this Contract, and that, in the event of Developer's breach of this Contract, personnel of the Town and every other person(s) acting on behalf of the Town Director of Public Works, or acting in connection with work to be performed on the property under the authority or direction of the Town Director of Public Works, shall have full authority to enter upon and to remain upon Developer's property for the purposes of inspecting, evaluating, and/or correcting performance and/or nonperformance of Developer's responsibilities, obligations, undertakings and/or duties under this Contract.

9. That changes to the plans, profiles and specifications may be made only by revision of the plans with written approval of either the Town Planning Director or Town Director of Public Works, or their designee, or in accordance with applicable provisions of the Town ordinances. In no event, however, shall the fact that changes acquiesced in or consented to by authorized representatives of the Town be made without such written approval operate to discharge or release or have any other impact upon any letter of credit, bond, surety or any other security or performance guarantee provided the Town in connection with this Contract.

10. That issuers of letters of credit and all others who provide security or performance guarantees in connection with this Contract, excepting sureties providing performance bonds, affirmatively consent to and waive notice of any and all changes to the plans, profiles and specifications and/or to this Contract and to any and all extensions of this Contract in advance. Sureties providing performance bonds in connection with this Contract shall be governed and bound by all other provisions of this Contract and by all other provisions of their bonds provided in connection with this Contract, and if Developer submits a performance bond as the security or performance guarantee in connection with this Contract, Developer shall be likewise governed and bound.

11. That all changes to the plans, profiles and specifications required by the Town for

the purpose of complying with applicable law or for the purpose of attaining standards of the Virginia Department of Highways and Transportation or the Town Public Facilities Manual will be accepted, complied with and performed.

12. To notify the Town Public Works Department, in writing, at least three (3) days before the beginning of any construction and to attend a pre-construction meeting between the Developer and the Director of Public Works or his designee prior to commencing any construction.

13. To provide adequate supervision on the site at all times that construction or installation of required improvements or facilities is underway and to have a responsible foreman or superintendent and one complete set of approved plans, profiles and specifications, including all revisions thereof, available at the site at all times that work is being performed.

14. To maintain dust control on the site at all times until such time as the entire site has been stabilized.

15. To not permit occupancy of any dwelling unit and to not transfer ownership of any dwelling unit to any person(s) anticipating immediate occupancy thereof until the Director of Public Works is satisfied that streets, off-street parking and other facilities have been installed to the extent necessary to service the dwelling and until an occupancy permit has been issued by the Zoning Administrator.

16. To provide and maintain clean, safe and adequate vehicular and pedestrian all-weather access including, but not limited to, snow removal, ice control and dust control, from all occupied dwellings to either a Town-maintained street or to a public highway in the primary or secondary highway system.

17. To comply with all requirements of the Town and other governmental units in order that all streets and other improvements and facilities in or on or proposed to be in or on public properties, rights-of-way or easements will be accepted by the Town of Warrenton or other governmental unit which is to have ultimate responsibility for its maintenance, and, upon completion of the required work, construction, installations, facilities and improvements, to

make prompt application for acceptance by the Town and/or other governmental unit which is to have ultimate responsibility for its maintenance. It is agreed that the Town shall have no duty to approve or accept any such work, construction, installations or improvements prior to such time as the Director of Public Works determines, in his sole discretion, that such work, construction, installations or improvements will not be likely to be damaged during the course of other work which is anticipated to be performed in conjunction with proposed development of the property.

18. That with respect to all work and activities undertaken by the Town which the Town would not have undertaken to have performed absent a breach by Developer of this Contract or undertaken by the Town as a consequence or result of Developer's breach of this Contract: a) all Town personnel involved in such work and/or activities shall be deemed to be employees of Developer for purposes of assessing liability for their acts, and to that end Developer agrees to indemnify and/or hold harmless the Town for any and all such damage(s) as may occur, whether such damage(s) be sustained by Developer, the Town, and/or by any other person(s) or entity(ies), and b) the Town shall have no liability to Developer and Developer agrees to indemnify and/or hold harmless the Town with respect to any and all damage(s) sustained by Developer, the Town, and/or any other person(s) or entity(ies) regardless of whether such damage(s) result from activities of or work performed by Town personnel or by other person(s) or entity(ies) acting under the authority or direction of the Town.

19. That the Town Director of Public Works may stop all or any part of the work at the site at any time that he, in his sole discretion, determines that work is not being performed in accordance with this Contract or that any of the terms of this Contract have not or are not being complied with. Failure of the Town Director of Public Works to do so shall, however, in no way be construed to imply approval of the work or compliance with or proper performance of this Contract.

20. To be responsible for all maintenance of and correction of deterioration in the work, construction, installations, improvements, and facilities required under this Contract until the improvements and facilities are accepted by the governmental unit(s) which are to have

ultimate responsibility for maintenance, and, towards that end, no facility or improvement shall be considered complete until it is accepted by the governmental unit which is to have ultimate responsibility for its maintenance.

21. To execute and file with the Town a properly executed letter of credit, bond or cash escrow identified above, in the amount identified above, in a form which is acceptable to the Town Attorney and secured by a source satisfactory to the Town Council. It is expressly agreed that if such security or performance guarantee is not submitted to the Town within forty-five (45) days of the Town's execution of this Contract, then this Contract shall, at the option of the Town, be rendered null and void in like manner as if this Contract had never been executed by the parties hereto and no agreement had ever been reached by the parties hereto.

22. That notwithstanding approval of the facilities and improvements as built and/or acceptance by the Town of the facilities and improvements, including offsite facilities and improvements, no approval or acceptance by the Town of any facility or improvement, and no release by the Town of any security or performance guarantee supplied to the Town by Developer in connection with this Contract, shall be considered binding upon the Town for the purposes of any determination as to whether Developer has fulfilled Developer's obligations to the Town under this Contract, and that this proviso is for the purpose of assuring, and it is hereby agreed, that the correction of any omissions or defects in the work and/or correction of any work performed in any unworkmanlike or faulty manner or contrary to the terms of this Contract be performed by and at the expense of Developer.

23. That all releases of Developer and any security or performance guarantee provided for by any sureties for the faithful performance of the work required by this Contract shall be governed by the Town ordinances.

24. That failure of Developer to maintain any security or performance guarantee in full force and effect during the entire term of this Contract or any extensions thereof shall be deemed to be a breach of this Contract at the option of the Town.

25. Whenever in this Contract reference is made to any person, party, official, body,

or other entity, said reference shall be deemed to refer also to the successor(s), assign(s), heir(s), executor(s), administrator(s), and/or personal representative(s) of such person, party, official, body, or other entity.

26. That if any clause or portion of this Contract is found not to be valid and binding in any respect or circumstance, this Contract shall continue in full force and effect in all other respects and circumstances.

27. That no other agreement(s) to which the Town is a party shall in any way be construed as impairing or diminishing the obligations and duties to the Town arising under this Contract or arising under any security or performance guarantee provided the Town in connection with this Contract.

28. That, regardless of when a breach of this Contract occurs, the measure of damages recoverable by the Town against Developer and/or surety, issuer of a letter of credit, or other provider of security or other performance guarantee, shall include: a) the costs of completion and/or correction of the work required by this Contract as of the earlier of the following two (2) dates: (i) when the work is actually performed; or (ii) date of trial, b) an additional amount in the sum of ten percent (10%) of the aforesaid costs of completion and/or correction, said sum being to compensate the Town for its resulting increased supervisory and administrative burden, c) costs of maintenance and costs of corrections resulting from deterioration prior to public acceptance of the required facilities and improvements, d) interest accruing at the rate of ten percent (10%) compounded annually on each expense incurred by the Town as a consequence of Developer's breach of this Contract, commencing from the various times such expenses are paid by the Town, plus any and all interest charges incurred by the Town on expenses incurred by the Town as a consequence of Developer's breach of this Contract, and e) the Town's reasonable attorney's fees and its costs expended in connection with any litigation, threatened or instituted, which may arise in connection with this Contract and/or any security or performance guarantee provided the Town in connection with this Contract.

THE PARTIES INTEND that each provision of this Contract be valid and binding upon each and all of them and expressly agree to abide by all terms of this Contract and agree that all matters pertaining to this Contract shall be governed by the law of Virginia.

IN WITNESS of which the parties hereto sign and seal this Contract:

DEVELOPER:

[NAME]

[ADDRESS]

ATTEST:

[NAME, TITLE]

BY: _____(SEAL)
[NAME, TITLE]

COMMONWEALTH OF VIRGINIA

COUNTY OF _____ to-wit:

I, _____, a Notary Public in and for the jurisdiction aforesaid, do certify that the foregoing instrument was acknowledged before me this _____ day of _____ 20__, by _____ of _____, a _____ corporation.

Given under my hand and seal this _____ day of _____, 20__.

NOTARY PUBLIC

My commission expires: _____.

TOWN OF WARRENTON, VIRGINIA

APPROVED AS TO FORM:

[PRINT NAME]
Town Attorney

[SIGNATURE]

ATTEST:

[PRINT NAME]
Town Clerk

[SIGNATURE]

[PRINT NAME]
Town Manager

[SIGNATURE]

COMMONWEALTH OF VIRGINIA

COUNTY OF _____ to wit:

I, _____, a Notary Public in and for the jurisdiction aforesaid, do certify
that the foregoing instrument was acknowledged before me this ____ day of
_____ 20__, by _____, in [his/her] capacity as
_____, for The Town of Warrenton.

Given under my hand and seal this ____ day of _____, 20__.

NOTARY PUBLIC

My commission expires: _____.