

## I. PERMIT APPLICATION

### PERMIT APPLICATION AND INSTALLATION & MAINTENANCE PERFORMANCE AGREEMENT FOR LAND DISTURBING ACTIVITY

Information referenced and relied upon in one section of this Permit Application and Installation & Maintenance Performance Agreement for Land Disturbing Activity (this “Agreement”) shall be incorporated in and made a part of this entire Agreement.

**For City Use Only:**

Permit No.	
City Land Disturbance Fee	\$
State Fee	\$
Surety Amount	\$

**PROJECT NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**LAND DISTURBING ACTIVITY:** \_\_\_\_\_ **LRSN:** \_\_\_\_\_

- Residential Use
  - Total Area of Disturbance: \_\_\_\_\_ sq.ft.
  - Total Area of Impervious: \_\_\_\_\_ sq.ft.
  - Located within the Chesapeake Bay Preservation District Area: Yes / No
- Commercial Use
  - Total Area of Disturbance: \_\_\_\_\_ sq.ft.
  - Total Area of Impervious: \_\_\_\_\_ sq.ft.
  - Located within the Chesapeake Bay Preservation District Area: Yes / No
  - BMP Type: \_\_\_\_\_
  - Nutrient Reduction Required: \_\_\_\_\_ (lbs/yr)
  - Nutrient Reduction Provided: \_\_\_\_\_ (lbs/yr)

**APPLICANT INFORMATION:**

Company name or Applicant’s Name: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**OWNER INFORMATION:**

Owner’s Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**PROJECT ADDRESS:**

\_\_\_\_\_

**DESCRIPTION OF PROJECT:**

\_\_\_\_\_

**SURETY:**  Cash Deposit  Escrow Agreement  Irrevocable Letter of Credit  Performance Bond

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*(Revised 07-12-2017)*

**The following attached items are made part of this Permit Application for City review:**

<b>FOR CITY REVIEW:</b>	
1. ___	Agreement in Lieu of an Erosion and Sediment Control Plan for a Single Family Residence ( <i>for residential use only</i> ) <b>Or</b> ___ Erosion & Sediment Control Plan
2. ___	Agreement in Lieu of a Stormwater Management Plan for a Single Family Residence ( <i>for residential use only</i> ) <b>Or</b> ___ Stormwater Management Plan
3. ___	Responsible Land Disturber Notification form and a copy of Responsible Land Disturber Certification from DEQ
4. ___	Signature Authorization form (if applicant is not the property owner)
5. ___	Land disturbing plan/development plan prepared in accordance with Chapter 13.1 of the Code of the City of Hampton
6. ___	Copy of VSMP/ CGP (Construction General Permit) application or permit (if more than one acre or within CBPD);
7. ___	Supporting documentation, if applicable (CBPD case, permits from the Army Corps of Engineers, DEQ, and/or VMRC, permits from the City's Wetlands Board, Community Development, Public Works, etc.): _____ _____ _____

- **I acknowledge receipt of the erosion control regulations. \_\_\_\_\_ (initials)**
- **I further understand that failure to comply with erosion and sediment control requirements as determined by the City inspector may result in citation for violation of the City Code. \_\_\_\_\_ (initials)**
- **Land Disturbance permits maybe issued for up to one (1) year. When warranted, the permit expiration date may be extended one time upon receipt of written notification prior to expiration. \_\_\_\_\_ (initials)**

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**II. RESPONSIBLE LAND DISTURBER (RLD) NOTIFICATION FORM**

Date: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

Plan Reference Number (if applicable): \_\_\_\_\_

The following person, (*print name*) \_\_\_\_\_, is responsible for carrying out the land disturbing activity associated with the above referenced project. This person meets the applicable requirements of the Virginia Code Sections 10.1-563 and 10.1-561 by virtue of the following (check the category that applies):

\_\_\_\_ Responsible Land Disturber. Certificate # \_\_\_\_\_, expires \_\_\_\_\_.

\_\_\_\_ DEQ Certification for E&S Combined Administrator, Administrator, Plan Reviewer, Inspector or Contractor. Certificate # \_\_\_\_\_, expires \_\_\_\_\_.

\_\_\_\_ VA Professional Engineer, Land Surveyor, Landscape Architect, or Architect.  
License # \_\_\_\_\_, expires \_\_\_\_\_.

\_\_\_\_\_  
(Signature of RLD)

Please include a copy of the RLD certification along with this form completely filled out.

**Responsible Land Disturber contact information:**

Company name (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Cellular Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

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### **III. INSTALLATION & MAINTENANCE PERFORMANCE AGREEMENT**

All information contained in the permit application is incorporated herein by reference as if fully set forth herein.

#### **WITNESSETH:**

**WHEREAS**, the City, pursuant to Chapter 13.1 of the City Code, requires the submission and approval of a permit application and land disturbing plan prior to engaging in a land disturbing activity;

**WHEREAS**, Owner submitted a permit application dated \_\_\_\_\_ (“Permit”) that has been approved pursuant to the letter from the Public Works Director or his designee or agent as defined in § 13.1-1 (the “Director”) attached hereto as Exhibit “A”;

**WHEREAS**, Owner submitted a land disturbing plan dated \_\_\_\_\_ (“Plan”) that has been approved pursuant to the letter from the Director attached hereto as Exhibit “B”; and

**WHEREAS**, before the permit is issued, Owner must submit and receive City approval of an installation and maintenance performance agreement and one of the following forms of surety: cash deposit, escrow agreement, irrevocable letter of credit, or performance bond (the “Bond”).

#### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises, covenants, and agreements, Owner agrees as follows:

1. **Owner’s Obligations.** Owner covenants (a) the controlled activity will be implemented in accordance with and at the same location as shown on the approved Plan; (b) to comply with all relevant provisions of Chapter 13.1 of the City Code; (c) to secure and maintain a performance and maintenance bond in favor of the City, subject to approval by the Director as to amount and the City Attorney as to form and legal sufficiency, *i.e. (identify one)*:

- (a) **Cash Deposit** in the amount of \$\_\_\_\_\_ covering one hundred percent (100%) of the costs of the control measures.
- (b) **Escrow Agreement**, placing \$\_\_\_\_\_ in escrow with \_\_\_\_\_, licensed to do business in the Commonwealth of Virginia, in an amount equal to one hundred percent (100%) of the cost of the control measures;
- (c) **Irrevocable Letter of Credit** issued by \_\_\_\_\_, licensed to do business in the Commonwealth of Virginia, dated \_\_\_\_\_ in the amount of \$\_\_\_\_\_, Bond No. \_\_\_\_\_ covering one hundred percent (100%) of the cost of the control measures; or
- (d) **Performance Bond** issued by \_\_\_\_\_, licensed to do business in the Commonwealth of Virginia, dated \_\_\_\_\_ in the amount of \$\_\_\_\_\_, Bond No. \_\_\_\_\_ covering one hundred percent (100%) of the cost of the control measures.

(“Bond”), a copy of which is attached hereto as Exhibit “C”.

2. **Term.** This Installation & Maintenance Performance Agreement shall be effective beginning on the date the controlled Land Disturbance activity commences until specifically released by the Director or agent (the “Term”).

3. **Release of Bond.** Within sixty (60) days of achievement of adequate stabilization of the land-disturbing activity, the Bond, or any unexpended or unobligated portion thereof, shall be refunded to the

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*(Revised 07-12-2017)*

Owner or terminated, as the case may be, upon issuance, by the Director, or a certificate of completion pursuant to § 13.1-25.

4. **Default.** Owner shall be in default for (i) failure to perform any term or condition of the permit issued under § 13.1; (ii) failure to secure and maintain the Bond for the Term of this Installation & Maintenance Performance Agreement; and/or (iii) violation of any term of this Agreement.

5. **Access.** The City, its agents, and employees, shall have the perpetual right of ingress and egress over the Property and the right to inspect at reasonable times and in a reasonable manner.

6. **Remedies.** In the event Owner is in default, the City shall provide Owner written notice of such default by registered or certified mail, return receipt requested, at the address referenced in Paragraph No. 6 herein. Owner shall have thirty (30) days from the date such notice is deemed given in which to cure the default. If it fails to do so, the City may draw upon the Bond to the extent required for payment of any costs incurred by the City under this Agreement. The City also has the right to seek any remedies available at law or in equity. The rights and remedies provided by this Installation & Maintenance Performance Agreement are cumulative and not exclusive of any other rights and remedies provided by law. Notwithstanding the foregoing, the City may make immediate repairs or alterations to correct dangerous conditions as defined in § 13-1.24. The cost of such emergency repairs or alterations shall be charged to the Owner or Developer if the required repairs or alterations are the result of the Owner's or Developer's failure to fulfill its obligations under this Agreement.

7. **Notices.** A notice, communication, or request under this Agreement by the City or Owner shall be sufficiently given or delivered if dispatched by either (a) registered or certified mail, return receipt requested, postage prepaid, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the Owner and the City at the addresses listed on page 1 herein. Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent if sent by a nationally recognized express mail service, (b) as of the fifth (5<sup>th</sup>) business day after being sent if sent by registered or certified mail or (c) upon receipt if sent by hand delivery. Any party may change its address for notice purposes by giving written notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

8. **Amendment.** This Agreement shall not be amended or modified except by prior written agreement executed by authorized representatives of the Owner and the City.

9. **Non-Assignment.** Owner shall not assign the rights granted under this Agreement without the prior written consent of the City, except assignment of rights and assumption of liabilities hereunder may be made to purchasers in a sale or other transfer of all or any portion of the property or to a lender secured by a deed of trust encumbering the property without the consent of the City so long as the instrument evidencing such assignment of rights and assumption of liabilities is recorded in the Office of the Clerk of the Circuit Court of the City of Hampton and a copy of the recorded instrument is provided to the Development Services Center.

10. **Waiver.** Waiver by the City or failure of the City to take action with respect to any breach of any term, covenant, or condition contained herein shall not be deemed a waiver of such term, covenant, or condition.

11. **Binding Effect.** The covenants and conditions contained herein, subject to the provisions as to assignment and transfer, shall apply to and bind the heirs, successors, executors, administrators, and assigns of Owner.

12. **Governing Law / Venue.** This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia; and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia.

13. **Severability.** If for any reason any provision in this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been a part of the Agreement.

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14. **Headings.** The headings contained herein are provided for convenience only and shall not be used in interpreting or construing this Agreement.

15. **Entire Agreement.** Except as otherwise provided herein, all existing agreements and contracts, both verbal and written, between the parties are superseded by this Agreement. This Agreement, including any addenda, attachments, and references, constitute the entire agreement between the parties.

**IN WITNESS WHEREOF**, the signatories covenant they have the authority to bind the parties hereto as evidenced by their affixed signatures on the dates indicated.

**OWNER** (attach additional signature pages if needed):

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to wit:

I hereby certify on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the foregoing Application for Land Disturbance Permit and Land Disturbance Installation and Maintenance Performance Agreement was executed before me by \_\_\_\_\_ (name), \_\_\_\_\_ (title) of \_\_\_\_\_ (company name). He/She is known to me personally or produced \_\_\_\_\_ as identification.

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

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

\* \* \* \* \*

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to wit:

I hereby certify on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the foregoing Application for Land Disturbance Permit and Land Disturbance Installation and Maintenance Performance Agreement was executed before me by \_\_\_\_\_ (name), \_\_\_\_\_ (title) of \_\_\_\_\_ (company name). He/She is known to me personally or produced \_\_\_\_\_ as identification.

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

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

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**THE CITY OF HAMPTON, VIRGINIA:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager / Authorized Designee

**Approved as to form and legal sufficiency:**

**Approved as to content:**

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Director of Public Works / Authorized Designee

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