

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Parcel ID No. 09100-00-00-01100

This agreement is exempt from Clerk's fees under *Virginia Code* § 17.1-266.

**AGREEMENT TO MAINTAIN
STORMWATER MANAGEMENT FACILITIES AND OTHER TECHNIQUES**

THIS AGREEMENT is entered into by and between **COUNTY SCHOOL BOARD OF ALBEMARLE COUNTY, VIRGINIA**, hereinafter called the "Owner," and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter called the "County."

RECITALS

R-1. The Owner is the fee simple owner of certain real property described as Albemarle County Parcel ID No. 09100-00-00-01100 (hereinafter called the "Property"), by instrument recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 5258, page 620; and

R-2. The Owner is proceeding to build on and develop the Property; and

R-3. The Property is within the County's Municipal Separate Storm Sewer System (hereinafter, "MS4") jurisdictional area; and

R-4. The Site Plan/Subdivision Plat identified as New Southern Feeder Pattern Elementary School, was approved and, in conjunction therewith, a Stormwater Management Plan, identified as New Southern Feeder Pattern Elementary School-WPO-2024-00012, hereinafter (as may be amended from time to time) called the "Plan," which is expressly made a part hereof, as approved or to be approved by the County, and which provides for water quantity and/or water quality compliance within the confines of the Property; and

R-5. The Plan and the land disturbing activity related thereto are subject to the Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as implemented in part by Chapter 17 (Water Protection) of the Albemarle County Code; and

R-6. 9VAC25-875-130 and Albemarle County Code § 17-415 require an agreement to ensure the

long-term maintenance of the permanent stormwater management facilities and/or other techniques required to serve the Property and, for those facilities within the County's MS4 jurisdictional area, 9VAC25-890-40 imposes additional requirements, and the County implements 9VAC25-875-130 and 9VAC25-890-40 through Albemarle County Code § 17-415 and this Agreement; and

R-7. For those facilities within the County's MS4 jurisdictional area, this Agreement also addresses, in part, the County's obligations under Minimum Control Measure Number 5 (post-construction stormwater management) in the Albemarle County 5-Year MS4 General Permit and Program Plan; and

R-8. Albemarle County Code § 17-415 requires that permanent on-site stormwater management facilities and/or other techniques, as shown on the Plan, including all pipes and channels built to convey stormwater to and from the facilities, all structures, berms, inlet and outlet structures, pond areas, filtration media, and forested and open space areas (which are considered to be a nonstructural technique to meet stormwater management requirements), provided to control the quantity and quality of the stormwater, access roads, and any other improvement that may affect the proper functioning of the Facilities (hereinafter, "stormwater management facilities and other techniques" are referred to individually as a "Facility" and collectively the "Facilities") be constructed and adequately maintained by the Owner in perpetuity.

In consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. Obligation of the Owner to construct the Facilities. The Owner must construct and protect the Facilities that are required to be constructed, and must do so in accordance with the Virginia Erosion and Stormwater Management Act plans and specifications identified in the Plan.

2. Obligation of the Owner to maintain the Facilities. The Owner must maintain the Facilities in good working condition for so long as the Facilities exist, in a manner that meets or exceeds the maintenance standards provided herein, subject to the following:

A. "Good working condition" defined. For the purposes of this Agreement, a Facility is in "good working condition" when it performs its design function in accordance with the plans and specifications identified in the Plan, including all conditions imposed in conjunction with approval of the Plan, and complies with all applicable standards, as determined by the Albemarle County Engineer (hereinafter, the "County Engineer").

B. "Maintain and maintenance" defined. For the purposes of this Agreement, "maintain" and "maintenance" include (but are not limited to) maintaining, repairing, replacing,

reconstructing, preserving, and restoring the Facilities or any part thereof necessary to comply with the plans and specifications identified in the Plan.

C. Maintenance schedule. The Owner must maintain the Facilities in compliance with the maintenance schedule in the approved Plans as required under Albemarle County Code § 17-403(C)(5).

D. Professional engineer may be required to direct work. The County Engineer may require that specific maintenance work be performed under the direction of a professional engineer.

3. Inspections and the Inspection Report by the Owner. The Owner must have the Facilities inspected to ensure that the Facilities are in good working condition, subject to the following:

A. Who may inspect the Facilities. Whether initiated by the Owner, upon written demand by the County Engineer, or by the County as outlined in Section 4, the Facilities must be inspected by a person who: (1) is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Virginia Code § 54.1-400 *et seq.*; (2) works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor referenced in subsection (A)(1); or (3) who holds an appropriate certificate of competence from the State Water Control Board.

B. What must be inspected. The inspections must be conducted according to the requirements of 9VAC25-875 *et seq.* (as hereafter amended).

C. When inspections must be conducted. The Facilities must be inspected as specified in the approved Plans or when requested by the County Engineer.

D. What documents must be maintained. The inspection must be documented on a form provided by the County Engineer (hereinafter, the “Inspection Report”) and must be completed to the satisfaction of the County Engineer. At a minimum, the Inspection Report must provide, as applicable, the date of the inspection, the name of the inspector, a description of the condition of all pipes and channels built to convey stormwater to and from the facilities, all structures, berms, inlet and outlet structures, pond areas, filtration media, forested and open space, vegetation provided to control the quantity and quality of the stormwater, access roads, and any other improvement that may affect the proper functioning of the Facilities, a list of all deficiencies causing the Facilities not to be in good working condition, including all control measures not operating effectively and all control measures that are inadequate, a list of required maintenance work to be performed so that the Facilities are restored to good working condition, and the date by

which the maintenance work will be performed.

E. To whom and when an Inspection Report must be submitted. The Owner must submit Inspection Reports and any other requested inspection documentation to the Director, Albemarle County Department of Facilities and Environmental Services, 401 McIntire Road, Charlottesville, Virginia 22902 or to a successor department, office, and address designated by the County. The Owner must provide the Inspection Reports to the Department within thirty (30) days after completion of the inspection.

F. Section 3 satisfied if County conducts inspection in any year. The Owner's obligations to have the Facilities inspected and to submit an Inspection Report under Section 3 will be deemed satisfied in any inspection period in which the County conducts an inspection under Section 4 and as provided in Albemarle County Code § 17-811.

G. Inspection Period defined. For the purposes of this Agreement, the term "inspection period" means the one-year period beginning and ending on the anniversary of the date of this Agreement.

4. Permission to the County to inspect the Facilities. The Owner hereby grants permission to the County, including its authorized agents and employees, to enter the Property and to inspect the Facilities whenever the County deems an inspection to be necessary, subject to the following:

A. Purposes for County inspection. The County may inspect the Facilities for the purpose of determining the condition of the Facilities including, but not limited to, determining whether the Facilities are in good working condition, investigating any deficiencies reported in the Inspection Report, responding to complaints about the Facilities, and inspecting or observing any maintenance of the Facilities.

B. Prior notice to the Owner not required. The County is not required to provide prior notice to the Owner to enter the Property to conduct the inspection. If minors are on the Property for school or related activities, County agents, including its authorized agents and employees, will make reasonable efforts to first report to the school office and be granted entry prior to performing any non-emergency services on the Property. If the County utilizes outside agents for inspections, the outside agents must provide a Certificate of Crimes Against Children form to the Owner prior to commencing any inspections or non-emergency work while minors are on the Property for school or related activities.

C. Inspection findings and demand for maintenance. The County will provide the Owner with a copy of the findings of its inspection of the Facilities. If the inspection concludes that

maintenance of any of the Facilities is required, the County also will provide the Owner with a demand that the Owner maintain the Facilities and the date by which the maintenance work must be completed.

5. The Owner's response to the Inspection, the Inspection Report or the County's demand for maintenance. The Owner must comply with the following:

A. Corrective action. If the inspection identifies the need for a corrective action, it must be completed as follows: (i) if the Albemarle County Engineer determines, in the Engineer's sole discretion, that failure to implement the corrective action creates an imminent or potentially imminent threat to the public health or safety, the Owner must complete corrective action as soon as practicable, but no later than seven (7) days after discovery; (ii) if an inspection identifies a Facility that is not operating effectively, but is not an imminent or potentially imminent threat to the public health or safety, the Owner must complete corrective action as soon as practicable, but no later than sixty (60) days after discovery or a longer period allowed in writing by the County Engineer; (iii) if an inspection identifies an existing Facility that needs to be modified or if an additional control measure is necessary, implementation must be completed prior to the next anticipated measurable storm event; if implementation before the next anticipated measurable storm event is impractical, then it must be implemented no later than sixty (60) days after discovery or a longer period allowed in writing by the County Engineer. The term "control measure" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to State waters, or otherwise restrict or alter the hydraulics of stormwater flow and discharge.

B. Maintenance. If the Inspection Report under Section 3 or the inspection conducted by the County under Section 4 identifies Facility deficiencies, the Owner must promptly complete the maintenance work by the date specified in the Inspection Report or as demanded by the County. When the maintenance work is completed, the person performing or directing the work must certify to the County that the Facilities are in good working condition.

6. Right of the County to enter the Property to maintain the Facilities. If the Owner fails to maintain the Facilities in good working condition as required by Section 2 or fails to complete timely maintenance work as required by Section 5, the County, including its authorized agents and employees, may enter the Property and take whatever steps necessary to bring the Facilities into good working condition and to otherwise correct all deficiencies identified in the Inspection Report under Section 3 or the inspection conducted by the County under Section 4, subject to the following:

A. No right to erect permanent structures; exceptions. The County’s right to take “whatever steps necessary” does not allow the County to erect any structure of a permanent nature on the Property unless: (1) the structure is required to ensure that the Facilities perform their design functions; or (2) it is a structure to house equipment to monitor the Facilities and any fencing related thereto.

B. County not obligated to maintain the Facilities. The County is under no obligation to repair or otherwise maintain the Facilities, and this Agreement does not impose any such obligation on the County.

C. Prior notice to the Owner not required. The County is not required to provide prior notice to the Owner to enter the Property to perform maintenance. If minors are on the Property for school or related activities, County agents, including its authorized agents and employees, will make reasonable efforts to first report to the school office and be granted entry prior to performing any non-emergency services on the Property. If the County utilizes outside agents for maintenance, the outside agents must provide a Certificate of Crimes Against Children form to the Owner prior to commencing any non-emergency work while minors are on the Property for school or related activities.

7. Right of the County to charge the Owner for its costs of maintenance; obligation of the Owner to reimburse the County. If the County performs any maintenance work on the Facilities under Section 6, it will charge to the Owner all of the County’s costs including, but not limited to, those costs for labor, equipment, supplies, materials, and project or contract administration. The Owner must reimburse the County for its costs, subject to the following:

A. Written demand. The County will send to the Owner a written demand for payment of all of its costs. The demand may be sent by first class mail to the address to which County real property tax bills are mailed or to another address provided by the Owner to the County.

B. Timely payment. The Owner must reimburse the County for the costs identified in the County’s written demand within thirty (30) days after the date of the written demand.

C. Collection by County. The County may collect any amount not timely reimbursed by the Owner in any manner authorized by law and may place a lien against the Property in the amount of the non-reimbursed costs, plus interest at the rate authorized by law.

8. Obligation of the Owner to indemnify and hold harmless the County. The following terms apply to this Agreement:

A. No County liability. This Agreement imposes no liability of any kind whatsoever on

the County, including its agents, officers, and employees.

B. Obligation of the Owner to indemnify and hold harmless. The Owner indemnifies and holds harmless the County, including its agents, officers and employees, for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County, including its agents, officers and employees, resulting from the failure of the Facilities to perform their design function or to otherwise operate properly; any repairs, maintenance, construction, or any other acts performed by the County or the Owner, including their respective agents, officers and employees, related to the Facilities, regardless of how those acts were performed except if the County's acts are the product of willful misconduct; or the Facilities' existence.

C. Notice of and defense of actions. If a claim is asserted against the County, including its agents, officers and employees, based upon any of the indemnities in subsection (B), the County will promptly notify the Owner of the claim. The Owner must defend, at its expense, any lawsuit or other action arising therefrom. If, as a result of a claim, any judgment is allowed against the County, its agents, officers and employees, or any of them, the Owner must pay all damages, costs, expenses and fees associated with the judgment.

9. References to County departments and officers; successors. Any reference in this Agreement to a County department or office includes its successor department or office as determined by the County.

10. Covenant running with the land. This Agreement will be recorded by the County in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, will constitute a covenant running with the land, and will be binding on the Owner, its administrators, executors, assigns, heirs, and any other successors in interests, including any homeowners' association.

11. Date of this Agreement. This Agreement has been entered into by the parties and will be effective on and after the date it is signed by the Albemarle County Executive.

WITNESS the following signatures:

SIGNATURES BEGIN ON THE FOLLOWING PAGE

**OWNER:
COUNTY SCHOOL BOARD OF ALBEMARLE COUNTY, VIRGINIA**

Judy Le
Chair

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by Judy Le, Chair, on behalf of County School Board of Albemarle County, Virginia.

Notary Public

My Commission Expires: _____

Registration Number: _____

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey B. Richardson
County Executive

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____,
____ by Jeffrey B. Richardson, County Executive, on behalf of the County of Albemarle, Virginia.

Notary Public

My Commission Expires: _____

Registration Number: _____

Approved as to Form:

County Attorney

Date