

**ST. MARY'S COUNTY, MARYLAND**  
**GRADING AGREEMENT**

new

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_, Party of the First Part, and COMMISSIONERS OF ST. MARY'S COUNTY, MARYLAND, a body corporate and public of the State of Maryland, Party of the Second Part, Witness that:

WHEREAS, an approved Sediment Control Plan of the site situated in the \_\_\_Third\_(3<sup>rd</sup>) Election District of St. Mary's County, Maryland, entitled \_\_\_\_\_ dated \_\_\_\_\_ and revised \_\_\_\_\_, 20 \_\_\_\_\_, prepared by \_\_\_\_\_ is filed with the Department of Public Works of St. Mary's County, Maryland; and

WHEREAS, the above Party of the First Part has undertaken to grade certain lands lying in St. Mary's County, Maryland, subject to the provisions for grading set forth in the Environment Article, Section 4-103 of the Annotated Code of Maryland, and in the St. Mary's County Stormwater Management, Grading, Erosion and Sediment Control Ordinance, as enacted by the Commissioners of St. Mary's County, Maryland, May 28, 2013 as amended from time to time; and

WHEREAS, it is a requirement of the St. Mary's County Stormwater Management, Grading, Erosion and Sediment Control Ordinance, that financial responsibility in the form of a Performance Bond or other surety be furnished to protect the Party of the Second Part from the costs of erosion control and stabilization work upon the failure of the Party of the First part to maintain or complete in the required manner the authorized work; and

WHEREAS, it is the purpose of this Agreement to guarantee the maintenance and/or completion of the erosion control and stabilization work on the above-referenced site according to the provisions of the St. Mary's County Stormwater Management, Grading, Erosion and Sediment Control Ordinance, and as shown on the approved Sediment Control Plan(s) attached hereto; and

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WHEREAS, the Party of the First Part has agreed to complete the required erosion control and stabilization work in accordance with the specifications on or before \_\_\_\_\_, 20\_\_\_\_\_. This Agreement is executed for the purpose of guaranteeing the maintenance and the timely and satisfactory completion of the required work in accordance with the approved Sediment Control Plan(s) and the approved plan(s) duly stamped and approved by the Director of Public Works, and maintained on file with the Department of Public Works. All such plan(s) are incorporated herein by reference and are made a part hereof.

1. Now therefore, in consideration of the mutual promises and consideration contained herein, the receipt and sufficiency of which is hereby acknowledged, BE IT AGREED THAT: Upon the request of the Party of the First Part, and provided circumstances are warranted as determined by the Director of Public Works, the term for completion of the required work guaranteed by this Agreement may be extended, provided the amount of the bond, or any amendment thereto, is in sufficient amount to insure completion of the required work as specified; and, further provided, that both the Principal and Surety agree in writing to the said extension.

2. The Party of the First Part herewith furnishes a performance bond or other surety in the amount of \$ \_\_\_\_\_ which shall be returned to the Party of the First Part when the required work is satisfactorily and timely completed by the Party of the First Part; but in the event said work is not maintained and/or completed as specified, said guarantee shall indemnify the Party of the Second Part against loss or expense incurred by reason of failure of the Party of the First Part to complete the work as required by this Agreement. In no event shall the liability of the issuer of the surety exceed the face amount of the surety. Such liability shall not extend beyond the termination date set forth in the Bond, unless the termination date has been amended as set forth herein.

3. It is a condition of the guarantee securing this Agreement that, if the Party of the First Part fully and properly performs all of the work required, then the guarantee shall then and there expire and the said parties shall be released from this Agreement. Should the Party of the First Part fail to perform the work within the time specified herein and in accordance with the above-described approved plans and specifications, or fail to take appropriate and effective corrective action as specified by written notification by the Party of the Second Part of non-compliance with the specified requirements, or fail to perform this Agreement as herein set forth, then the Party of the Second Part shall have the right to require indemnification as to loss or expense incurred by the Party of the Second Part by reason of the failure of the Party of the First Part to perform this Agreement.

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4. In the event of default by the Party of the First Part in the performance of this Agreement, the Party of the Second Part shall give the Party of the First Part and his surety, if any, written notification of said default, and the surety shall, within thirty (30) days of such notice, elect in writing to: (a) complete the required work in conformance with the original plans and specifications within a reasonable period as the Party of the Second Part may specify; or, (b) indemnify the Party of the Second Part against loss or expense arising out of the failure of the Party of the First Part to complete said work as required by the terms of this Agreement. If there is no surety, or if the surety fails to take the required corrective action, it is hereby stipulated that any approvals granted to the Party of the First Part or his assigns in way of improvements guaranteed by this Agreement may be suspended by the Director of Public Works as may be necessary to protect the pending completion of the required work.

5. A Grading Permit is required before grading work can commence; and in order to obtain a Grading Permit, the said Party of the First Part has submitted for approval an information statement, plans and specifications. This Permit is issued by the Department of Public Works. A condition of both the Grading Permit and this Agreement is compliance by the Party of the First Part with the provisions of the St. Mary's County Stormwater Management, Grading, Erosion and Sediment Control Ordinance, No. 13-18, as amended from time to time, applicable to the work guaranteed by this Agreement.

6. Compliance with the material testing and inspection procedures as outlined within the St. Mary's County Subdivision Road Construction and Inspection Procedures is required. Failure to comply, once work has begun, shall result in revocation of any and all approvals granted to the Party of the First Part or his assigns by way of this Agreement, and the approvals may be suspended by the Director of Public Works until a new Agreement is executed incorporating therein any changes, increased guarantee or conditions as may be required by the St. Mary's County Commissioners, acting in the public interest.

7. Should the required work not be started and diligently pursued within one (1) year after execution of this Agreement, it is herein stipulated that any approvals granted to the Party of the First Part or his assigns, guaranteed by this Agreement, may be suspended by the Director of Public Works until a new Agreement, as outlined above, has been executed.

8. The Party of the First Part, in addition to recovery against it under the guarantee shall, nevertheless, remain liable to St. Mary's County, Maryland, for such additional costs as may necessarily be incurred in order to complete the required work herein described in accordance with the Grading Permit.

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Nothing herein shall be construed to waive the right of the County to maintain a suit against the Party of the First Part and/or surety on the indemnity bond nor to assign the right to recover the indemnity herein provided in whole or in part.

WITNESS this seal and signature of \_\_\_\_\_,  
Party of the First Part.

ATTEST: \_\_\_\_\_ BY: \_\_\_\_\_  
\_\_\_\_\_ TITLE: \_\_\_\_\_

STATE OF MARYLAND, ST. MARY'S COUNTY, TO WIT:

I, HEREBY, CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before the subscribed, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared \_\_\_\_\_ (PRINCIPAL), who acknowledged himself to be \_\_\_\_\_ (TITLE), and that he, as such, being authorized to do so, acknowledged the foregoing Agreement to be the act of said Principal.

Witness my hand and Notarial Seal.

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

My Commission Expires \_\_\_\_\_.

The \_\_\_\_\_  
Company, Bond No. / LOC NO. \_\_\_\_\_ is recognized and identified as being part of the Grading Agreement between \_\_\_\_\_ and "The Commissioners of St. Mary's County, Maryland", said Agreement being dated \_\_\_\_\_, 20\_\_\_\_\_.

**SURETY COMPANY**

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

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WITNESS, also, the signature of ST. MARY'S COUNTY, MARYLAND, a body corporate and public of the State of Maryland, by the hand of George A. Erichsen, P.E., Director of Public Works for St. Mary's County, Maryland.

RECOMMENDED BY:

ST. MARY'S COUNTY  
DEPARTMENT OF PUBLIC WORKS

\_\_\_\_\_  
John J. Groeger, P.E.  
*Deputy Director of Public Works &  
Transportation*

BY: \_\_\_\_\_  
George A. Erichsen, P.E.  
*Director of Public Works &  
Transportation*

**BOND NO.:** \_\_\_\_\_

**SURETY CO.:** \_\_\_\_\_

**EXPIRATION DATE:** \_\_\_\_\_