



Loudoun County, Virginia

Department of General Services

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Administration: 703/771-5552 Fax: 703/771-5553

Technical and Procedural Newsletter

September 20, 2012

TO: Members of the Land Development and Building Community

FROM: Randall J. Williford, Assistant Director of General Services

The purpose of this correspondence is to inform the Land Development and Building Community of technical and procedural matters related to the financial guarantee required for on-site stormwater management facilities and infrastructure employing and utilizing manufactured filtration devices and systems. Please distribute this information to applicable personnel within your organization.

Topic included in this Newsletter:

1. Facilities Maintenance Performance Agreements--Formula and Process for Determining Filtration System Maintenance Fund Fees

Applicants who elect to construct/install manufactured filtration devices for stormwater treatment will be required to enter into a Facilities Maintenance Performance Agreement with the County (See Attachment A.) This agreement requires the owner to maintain the system and to furnish, in conjunction with the agreement, a one-time financial guarantee to secure such maintenance. Clarification has been requested regarding the amount of the security and the manner in which, and the point in time that, the security will be calculated.

When a stormwater management facility utilizing manufactured filtration devices for stormwater treatment has been inspected and determined by the County to be substantially complete and eligible to receive untreated stormwater, the developer shall submit a request to the Director to enter, execute, and record a Facilities Maintenance Performance Agreement (Agreement). Such request shall include an executed Agreement, in form as indicated in Attachment A, and all the information as indicated in the FMPA Request Form (See Attachment B)

The amount of the maintenance security to be inserted into the blank in paragraph 9 of the Agreement will be calculated as of the date the Agreement is submitted to the Director and will be 10% of the cost of two complete filter replacements, with the cost of the filters being the market rate as of the date the Agreement is submitted to the Director. The following formula will be used:

$$\text{Maintenance Security} = 0.1 \times 2CN$$

where C = the cost of an individual filter cartridge and
N = the number of filter cartridges on the project

If the total maintenance security calculated per the above is \$600 or less, no Agreement or security shall be required and the County will maintain the system.

This formula will apply to all cartridge-type filtration devices approved for use in Loudoun County (StormFilter, BayFilter, etc.).

Note: Please use the URLs provided below to access standalone copies of the attachments.

Attachment A - Facilities Maintenance Performance Agreement Form

<https://www.loudoun.gov/DocumentCenter/View/130741>

Attachment B - FMPA Request Form

<https://www.loudoun.gov/DocumentCenter/View/130773>

**FACILITIES MAINTENANCE PERFORMANCE AGREEMENT FOR BONDED
STORMWATER MANAGEMENT FACILITIES**
(Manufactured Filtration Devices And Systems)
(Attachment A)

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between _____
_____ ("**Developer**");

Association ("**Association**") OR _____[("**Lot Owner**")]; and **THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA**, a body corporate and politic ("**County**");

WITNESSETH:

WHEREAS, the Developer is the owner of certain real property described as _____, acquired by Deed recorded [in Deed Book _____ at Page _____][as Instrument # _____], among the land records of Loudoun County (the "**Property**"), and

WHEREAS, the Property is being developed as part of the subdivision/development known as _____ (the "**Development**");

WHEREAS, the Developer has received approval of the plans and specifications for certain on-site stormwater management facilities and infrastructure employing and utilizing manufactured filtration devices and systems (the "**Facilities**") known as _____,

{fill in the manufacturer name and Model and/or other description of device and/or system}
such plans and specifications being designated as County application number STPL _____- _____ / CPAP _____- _____ (the "**Plans**"), which are expressly made a part hereof, and which include provision for storm water management facilities within the confines of the Property; and

WHEREAS, the proper and complete construction of the Facilities in accordance with the approved Plans has been assured by the Developer pursuant to the Performance Agreement for the Development which is secured by a cash or corporate surety bond or letter of credit (such Agreement and surety or letter of credit together hereafter referred to as the "**Development Performance Bond**") previously entered into and furnished by the Developer; and

[**WHEREAS**, said Facilities will provide storm water detention and treatment necessary for other currently pending or future applications for subdivision/site plan development in the Development; and]

WHEREAS, the County and the Developer agree that the health, safety, and general welfare of the residents of Loudoun County, Virginia, require that on-site stormwater management facilities and infrastructure be constructed and properly maintained on the Property by the Developer, its successors and assigns; and

WHEREAS, the County and the Developer agree that the health, safety, and general welfare of the residents of Loudoun County, Virginia, require that a long term financial commitment shall be in place with the County to assure that timely, regular, and proper maintenance of such on-site stormwater management facilities and infrastructure employing and utilizing manufactured treatment devices and systems shall be performed following approval of the construction of such facilities; and

WHEREAS, the County has agreed to accept a one-time financial guarantee (the "**Maintenance Security**") from the Developer in an amount substantially less than the amount necessary to properly maintain the Facilities for the life of the Facilities in consideration of the Developer's agreement that such Maintenance Security shall be a non-refundable cash contribution which may be used by the County for maintenance and repair of the subject Facilities in the event such Facilities are not timely, regularly, and properly maintained by Developer, Association, Lot Owner, or assigns, or for the maintenance and repair of like facilities elsewhere in the County in the interest of the health, safety, and general welfare of the residents of the County; and

WHEREAS, the parties have agreed that, based upon the size, design, type, and anticipated future maintenance and replacement costs for the Facilities, the Maintenance Security shall be \$ _____; and

WHEREAS, in addition to posting the Maintenance Security, the Developer has obtained the agreement of the property owners association for the Development (the "**Association**"), as evidenced by its signature hereto, that the Association shall be responsible for the timely, regular, and proper maintenance of the Facilities, without requiring the County to utilize its own funds (including the Maintenance Security) to maintain the Facilities, or, if there is no such Association, Developer has obtained the agreement of the fee owner of the property on which the

Facilities are located (the "**Lot Owner**"), as evidenced by its signature hereto, that the Lot Owner shall be responsible for such maintenance; and

WHEREAS, the County has conducted a final inspection of the Facilities, found the construction and installation of the Facilities to be in accordance with the approved Plans and applicable County regulations, and approved the Facilities to be placed in operation, and the Developer herewith furnishes the Maintenance Security and this Agreement in recordable form obligating the Association or Lot Owner, as applicable, to maintain the Facilities.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, and in further consideration of the County's approval to permit the Facilities to be placed into operation, the parties hereto agree as follows:

1. The Developer specifically acknowledges that the Facilities as described herein and shown on the Plans were selected and installed by Developer at its sole option.

2. The Developer, its successors and assigns (including the Association or Lot Owner, as applicable), shall perform maintenance and repair of the Facilities in accordance with the maintenance procedures shown on the Plans and in accordance with the County's Stormwater Management Ordinance, Chapter 1096 of the Codified Ordinances of Loudoun County, as hereafter may be amended or replaced (the "**Ordinance**") in order to assure continuous good working order and condition acceptable to the County, such maintenance and repair ("**Maintenance and Repair**") to include, without limitation, providing a maintenance plan acceptable to the County's Director of General Services, or designated agent (the "**Director**"), the regular and timely removal of accumulated sediments, litter, and other debris, the regular and timely replacement of treatment devices, and the correction of all defects and damages, so as to keep such Facilities operating to their original design capability and condition acceptable to the County for the lifetime of the Facilities.

3. The Developer, on behalf of itself and its successors and assigns, hereby grants permission to the County, its authorized agents, assigns, and employees to enter upon the Property, at reasonable times, and to inspect the Facilities whenever in the sole discretion of the Director it is deemed necessary. Whenever reasonably possible, the County shall notify the Developer prior to entering the Property.

4. In the event the Developer, its successors and assigns, fails to maintain the Facilities as shown on the Plans and in good working order, repair, and condition acceptable to the County as required by the Ordinance, or if any deficiencies are found in the course of a County inspection and the Developer, its successors and assigns, fails to effect a cure of such deficiencies within ten (10) days after notice, or such longer period as may be approved in writing by the Director, any such failure shall constitute a default under this Agreement, the Developer, and its successors and assigns, shall be subject to the notice and enforcement provisions of the Ordinance, and in addition to any other remedy provided in this Agreement, the County may enter upon the Property and take whatever steps it deems necessary to maintain said Facilities. This provision shall not be construed to allow the County to erect any structure of a permanent nature on the land of the Developer other than a reconstruction or replacement of all or any part of the Facilities, without first obtaining written approval of the Developer, its successors and assigns.

5. The Developer, on behalf of itself and its successors and assigns, specifically acknowledges and agrees that the determination of whether the Facilities are being maintained in accordance with the Plans and in good working order and repair so as to keep such Facilities operating to their original design capability and condition acceptable to the County, and whether any and all deficiencies found in the Facilities have been corrected so as to return the Facilities to their original design capability, shall be at the sole discretion of the Director and shall be based upon objective standards and conditions promulgated by the Director.

6. In the event the County, pursuant to this Agreement, performs work of any nature, or expends any funds in performing or obtaining the performance of any work for labor, use of equipment, supplies, materials, and the like, the Developer, and its successors and assigns, shall be liable for all such expenditures and costs, and shall reimburse the County upon demand within ten (10) days after receipt of such demand, for all costs incurred by the County hereunder.

7. It is the intent of this Agreement to ensure, as between the parties hereto, the proper maintenance, repair, and replacement of the Facilities by the Developer, and its successors and assigns. However, it is the specific intent of the parties hereto that this Agreement shall not be deemed to create or effect any additional liability or cause of action to or for any third party for damage alleged to result from or be caused by storm water drainage. Additionally, nothing herein shall be construed so as to hold the County liable for any failure to perform or enforce the obligation of the Developer, its successors and assigns.

8. The Developer, and its successors and assigns, shall indemnify and hold the County and its agents and employees harmless from any and all damages, accidents, casualties, occurrences, causes of action, expenses, or claims which might arise from, or be asserted against the County as a result of, the construction, installation, repair, replacement, or maintenance, or failure to properly maintain, repair, or replace the above described Facilities by the Developer, and its successors and assigns, or the County. In the event any such claim is asserted against the County, its agents or employees, the County shall promptly notify the Developer or its successors as applicable, and the Developer, its successors and assigns, shall defend at its own expense any suit based on such claim. If any such judgment or claim against the County, its agents or employees, shall be allowed, the Developer, its successors and assigns, shall be liable for and shall pay such judgment or claim together with all costs and expenses in connection therewith, including any attorney's fees incurred by the County.

9. In order to secure performance of Developer's obligations hereunder, Developer hereby furnishes the one-time Maintenance Security in the amount of

\$ _____ as a financial guarantee of maintenance. Such Maintenance Security is not refundable and shall be held by the County to be used (a) to perform Maintenance and Repair of said Facilities upon default or breach of any of the terms and conditions of this Agreement by the Developer its successors and assigns or (b) in the Director's discretion, to perform Maintenance and Repair of stormwater management facilities and infrastructure employing and utilizing manufactured treatment devices elsewhere in the County. The said Maintenance Security is delivered herewith by certified check, wire transfer, or cashier's check issued by a bank satisfactory to the County, receipt of which is hereby acknowledged by the County. Such amount shall be placed in an account to be held by the Treasurer of Loudoun County as agent for the County until drawn upon by the County. This account and all interests accruing on it shall be held by the County to be applied to the Maintenance and Repair of stormwater management facilities as described in this Agreement, except that, in any event, five percent (5%) of any interest accrued may be retained by the Treasurer to cover the cost of administering the account. This paragraph shall not be construed in any manner as a waiver of any right of the County to enforce the obligations of this Agreement against the Developer or its successors and assigns, but shall be in addition to any other remedy available under this Agreement.

11. The Developer, on behalf of itself and its successors and assigns, specifically acknowledges and agrees that in the event the Developer, its successors and assigns, shall default in its obligations under this Agreement and it becomes necessary for the County to institute legal proceedings to enforce compliance with said obligations or to obtain reimbursement for costs incurred in fulfilling said obligations on behalf of the Developer, its successors and assigns, the Developer, on behalf of itself and its successors and assigns, shall pay all reasonable attorney's fees and all other costs that may reasonably be incurred by or on behalf of the County.

12. The Developer, on behalf of itself and its successors and assigns, specifically acknowledges and agrees that the Developer's, its successors and assigns, obligations under this Agreement shall not terminate in whole or in part unless and until the County, at its sole discretion, assumes any responsibility for maintenance, repair, and replacement of the Facilities pursuant to a Stormwater Maintenance Agreement ("**Stormwater Maintenance Agreement**") between the Developer, its successors and assigns, and the County, as defined and referenced in the Ordinance, which agreement specifically references that it is intended to replace this Agreement. The Developer, on behalf of itself and its successors and assigns, specifically acknowledges and agrees that this Agreement does not, and shall not be deemed to, constitute a Stormwater Maintenance Agreement such as is referenced above, that the County is under no obligation pursuant to this Agreement to maintain or repair said Facilities, and that in no event shall this Agreement be construed to impose any such obligations on the County.

13. The Developer shall promptly record this Agreement, and provide to the Director documentation of such recordation, among the land records of Loudoun County, Virginia, and this Agreement shall constitute a covenant running with the land and shall be binding on the Developer, its administrators, executors, assigns, heirs and successors in interest.

The undersigned warrants that this Agreement is made and executed pursuant to authority properly granted by the [partnership agreement] [charter, bylaws and action of the Board of Directors] [articles of organization, operating agreement or majority vote of the members] of the Developer.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Developer has caused its name and seal to be affixed hereto, by _____, its duly authorized representative.

Developer: _____
[Type or print name of Developer]

By: _____ (SEAL)
[Signature]

Title: _____
[Type or print]

COUNTY OF _____
STATE OF _____, to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of _____, whose name is signed to the foregoing Facilities Maintenance Performance Agreement for Bonded Stormwater Management Facilities, appeared before me and personally acknowledged the same in my jurisdiction aforesaid..

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

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the [Association][Lot Owner] has caused its name and seal to be affixed hereto, by _____, its duly authorized representative.

[Association][Lot Owner]: _____

[Type or print name of [Association][Lot Owner]]

By: _____ (SEAL)

[Signature]

Title: _____

[Type or print]

COUNTY OF _____

STATE OF _____, to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of _____, whose name is signed to the foregoing Facilities Maintenance Performance Agreement for Bonded Stormwater Management Facilities, appeared before me and personally acknowledged the same in my jurisdiction aforesaid..

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

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

**BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA**

APPROVED AS TO FORM:

Assistant County Attorney

By: _____
Director, General Services

**COUNTY OF LOUDOUN
STATE OF VIRGINIA, to-wit:**

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of _____, whose name is signed to the foregoing Facilities Maintenance Performance Agreement for Bonded Stormwater Management Facilities, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

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

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

FMPA Request Form
(Attachment B)

DATE: _____

NAME OF PROJECT: _____

CPAP OR STPL #: _____

BRIEF DESCRIPTION OF PROJECT LOCATION: _____

TYPE/DESCRIPTION OF MANUFACTURED FILTRATION DEVICE/SYSTEM: _____

MANUFACTURER NAME: _____

MODEL NUMBER/NAME: _____

NUMBER OF FILTER CARTRIDGES COVERED BY THIS AGREEMENT: _____

COST OF ONE (1) INDIVIDUAL FILTER CARTRIDGE/DEVICE AS OF THE ABOVE
DATE: _____

SUPPLIER FROM WHICH COST WAS OBTAINED: _____

Developer: _____
[Type or print name of Developer]

By: _____ (SEAL)
[Signature]

Title: _____
[Type or print]