

## SAMPLE

### 2018 FLOOD MITIGATION PILOT PROGRAM AGREEMENT

**THIS AGREEMENT** (the “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the County of James County, Virginia (the “County”) and \_\_\_\_\_, (the “Owner”) (if more than one Owner, the word “Owner” shall be read as if written in the plural).

WHEREAS, the Owner owns property located in James City County with the address: \_\_\_\_\_ (the “Property”).

WHEREAS, the Board of Supervisors for the County of James City allocated \$50,000 to fund flood mitigation grants; and

WHEREAS, the James City County Stormwater Division has established the 2018 Flood Mitigation Pilot Program (the “Program”) to make the flood mitigation grants; and

WHEREAS, the Director of the James City County Stormwater Division, or her designee shall serve as the Administrator for the Program (the “Program Administrator”); and

WHEREAS, the Program’s purpose is to reduce damages to properties located in Special Flood Hazard Zones, established by the Federal Emergency Management Agency (“FEMA”); and

WHEREAS, the Property is located in a Special Flood Hazard Zone; and

WHEREAS, the Owner applied for financial assistance in installing flood mitigation improvements to the Property pursuant to the Program; and

WHEREAS, County approved the Owner’s application for assistance in the amount and subject to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the County and the Owner (together, “the Parties”) hereby enter into this Agreement, and agree as follows:

#### 1. SCOPE OF THE AGREEMENT:

- a. **Statement of Work:** The Owner shall construct, or cause to be constructed, the flood mitigation improvements in the Statement of Work. The Statement of Work, prepared by Program staff, is attached as Exhibit A (the “Statement of Work” or the “Project”).
- b. **Grant Amount:** Subject to the terms and conditions herein, the County shall reimburse the Owner up to 50% of the cost of eligible work enumerated and valued in the Statement of Work. The costs of the design, permitting, construction, inspection, and certification for the Project shall qualify for grant reimbursement. In no event shall the grant reimbursement to the Owner or on behalf of the Owner exceed \$\_\_\_\_\_. The Owner shall be responsible for the total costs of all change orders, upgrades, and any other items not enumerated in the Statement of Work.

- 2. OWNER REPRESENTATIONS:** The Owner certifies the following:
- a. The Owner agrees to the Statement of Work, including the reimbursement value for each eligible flood mitigation method.
  - b. The Owner agrees to employ the contractor selected by the Owner (the “Contractor”), whose proposal is attached as Exhibit B.
  - c. The Owner provided true and accurate information on all Program documents, including the Scope of Work and cost proposals prepared by the Contractors.
  - d. No person, other than those signed below, are owners of the Property and the undersigned Owner has full power, authority, and legal right to execute this Agreement.
  - e. The Owner agrees to maintain flood insurance on the Property in an amount no less than the assessed value of the improvements on the Property for so long as the Property is in a FEMA Flood Hazard Zone. When requesting reimbursement for the Project, the Owner shall provide County with a certificate of flood insurance for the Property.
  - f. Owner shall pay the Contractor for all work included in the Statement of Work and shall only receive payment from the Program on a reimbursement basis as stated in Section 1.
  - g. The Owner shall report problems concerning the County’s agents, the Contractor and/or its sub-contractors to Marion Paine, Assistant Administrator, James City County Neighborhood Development at [marion.paine@jamescitycountyva.gov](mailto:marion.paine@jamescitycountyva.gov) or (757) 253-6673.
- 3. RIGHT OF ACCESS:** Owner gives the County and its agents the right to access and inspect the Property to assess the improvements made pursuant to this Agreement. The County may access and inspect the improvements:
- a. During the term of this Agreement to ensure compliance with this Agreement.
  - b. One year after the work is complete.
  - c. During and for 30 days after any flooding events that occur within ten years after Project completion.
  - d. The County shall give the Owner notice:
    - i. In writing ten days prior to the one-year inspection.
    - ii. By telephone or in person during or after flood events. If the County is unable to contact the Owner during or after flood events, the Owner agrees that County agents may access the Property.
- 4. FUNDING AND REIMBURSEMENT:**
- a. The Owner shall pay all costs of construction, permitting, inspection, and certification for the Project.
  - b. The Owner shall complete and submit the Project Reimbursement Forms, including an itemized list of all expenditures made to complete the Project with evidence sufficient that the Project is complete and that the Contractor has been paid in full. Project

Reimbursement Forms are attached to this Agreement as Exhibit C. Completed forms shall be delivered to the Program Administrator at:

James City County  
Attn: Administrator, Stormwater Division  
101-E Mounts Bay Road  
Williamsburg, Virginia 23185

- c. The Program Administrator will inspect the Project and verify that the reimbursement request includes the required documentation prior to approving payment.
- d. The County shall issue a check payable to the Owner within 30 days after the Program Administrator approves payment. The County shall remit payment to:

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

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

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

**5. COMPLIANCE:**

- a. The Contractor or Owner shall contact Miss Utility prior to commencement of any work on the Project.
- b. Owner shall ensure that all repairs or improvements comply with all relevant laws and ordinances including the James City County *Stormwater Drainage Conveyance Systems (non-BMP related) General Design and Construction Guidelines* and the Hampton Roads Planning District Commission *Regional Construction Standards* (latest edition).
- c. If required, the Owner shall obtain a Building Permit from the County Building Safety and Permits Division. If required, the Owner shall obtain a Land Disturbing Permit from the County's Stormwater and Resource Protection Division. The Program Administrator may assist the Owner with acquiring permits for the Project; however, Owner shall be the signatory and shall satisfy all requirements of the permits.

**6. DEFAULT AND REMEDY:**

- a. The following shall be deemed an event of default under this Agreement: (i) failure to comply with any term of this Agreement; (ii) failure by Owner to complete the Project consistent with the terms of the Statement of Work.
- b. If the failure to complete the Project is solely the fault of the Contractor and not attributable to the Owner, such failure shall not immediately constitute default under this Agreement. The County, in its sole discretion, shall determine whether the failure is solely the fault of the Contractor. In such event, the County shall notify Owner of the right to proceed. The Owner shall solicit proposals for the remainder of the Project within 30 days of the notice of right to proceed. Within 60 days of the notice of right to proceed, the Owner shall deliver the proposal from the new Contractor who shall be deemed the "Contractor" under this Agreement. Owner's failure to select a new Contractor for the Project within 60 days shall constitute default under this Agreement.
- c. If Owner is in default, County shall provide the Owner written notice of default. The Owner shall have 30 days to cure such default. If such default is uncured after 30 days,

the County shall have no obligation to provide any reimbursement under this Agreement and may immediately provide Owner written termination of the Agreement. The remedies in this section are in addition to and separate from any recourse or remedy available to the County under the Land Disturbing Permit.

**7. TERM AND TERMINATION:**

- a. This Agreement begins on the date the County Administrator signs the Agreement (the “Agreement Date”).
- b. The Agreement shall terminate the earlier of;
  - i. six months after the Agreement Date,
  - ii. the date the County issues final payment to Owner,
  - iii. or the date the County or Owner terminate the Agreement in accordance with the conditions herein.
- c. The County, in its sole discretion, may agree to extend the Agreement. Any extension shall be in a writing signed by the Parties.
- d. Prior to the payment of any funds by the County pursuant to this Agreement, Owner may terminate this Agreement upon 30 days written notice to the County. Termination by Owner shall negate any obligations the County has under this Agreement.

**8. ASSIGNMENT:** This Agreement shall not be assignable by either party without the prior written consent of the other party.

**9. INDEMNIFICATION:** Owner shall indemnify and hold the County harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorney’s fees, or injury to person or property resulting from or arising out of the Project, excepting claims or damages as may be due or caused by the acts of the County, its employees or agents. Such indemnification shall include liability arising out of any activity occurring on the Property while operating under this Agreement.

**10. RESPONSIBILITY:** Owner shall be solely responsible for the administration of any agreement between the Owner and the Contractor. The County shall not be liable to the Owner or the Contractor for any Project work performed or not performed. The County shall not take ownership of the Property or be subject to any maintenance obligations for the Project. The County shall have no obligation to complete the Project should either the Owner or the Contractor fail to do so; however, if the Owner or the Contractor fail to complete the Project after work has commenced, the County may, at its sole option, complete the Project and recover the costs of completion from Owner. The County’s only obligation shall be to reimburse Owner for work actually completed and paid for under the terms of this Agreement.

**11. THIRD PARTY BENEFICIARY:** The Contractor shall not be a third party beneficiary of this Agreement. This Agreement is strictly for the benefit of the Owner and the County and any benefit or compensation gained by the Contractor is merely incidental and is not made intentionally by this Agreement.

- 12. INDEPENDENT CONTRACTOR:** For the purposes of this Agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party shall make any statements, representations, or commitments of any kind, or take any action, which shall be binding on the other party, except as may be explicitly provided for herein or authorized by the other party in writing.
- 13. PUBLICITY:** Owner consents to the County's use of photographs or videos of the Project and the Property in any publicity, advertising, or news release without the prior written approval of Owner. Owner shall not use the name or trademarks of the County in any publicity, publication, dissertation, or formal oral presentation without the prior written approval of the County.
- 14. PUBLICATION:** The County reserves the right to publish or otherwise publicly disclose information gained in the course of this Project.
- 15. GOVERNING LAW, FORUM, AND VENUE:** The validity and interpretation of this Agreement and the legal relations of the Parties shall be governed by the laws of the Commonwealth of Virginia, without regard to its Conflict of Laws provisions. Any claim or suit under this Agreement shall be brought in the Williamsburg-James City County Courts.
- 16. NOTICES:** Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class mail to the following address of either party:

**OWNERS:** \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip \_\_\_\_\_

**COUNTY:** James City County  
 Director of the Stormwater and Resource Protection Division  
 101-E Mounts Bay Road  
 Williamsburg, VA 23185

or to such other addresses as have been furnished by written notice to the other party.

- 17. AUTHORITY:** Each signatory to this Agreement warrants that it has the authority to sign this Agreement.
- 18. WHEREAS CLAUSES INCORPORATED:** The whereas clauses and recitals made above are hereby incorporated into this Agreement.
- 19. MODIFICATION:** No change, modification, extension, termination, or waiver of this Agreement, or any of the provisions herein, shall be valid unless made in writing and signed by duly authorized representatives of the Parties hereto.
- 20. AGREEMENT DOCUMENTS:** The Agreement Documents include this Agreement and the attachments hereto and the 2018 Flood Mitigation Pilot Program Guidelines. No verbal agreement, conversation or representation between any officers, agents, or employees of the Parties hereto either before or after the execution of this Agreement, shall affect obligations herein contained.

**21. ORDER OF PRECEDENCE:** In the event of any inconsistency between the clauses of this Agreement and the attached Exhibits, the inconsistency shall be resolved by giving precedence to the clauses of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

\_\_\_\_\_  
Owner:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner:

\_\_\_\_\_  
Date

The County of James City, Virginia

By: \_\_\_\_\_  
William C. Porter, Interim County Administrator

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
County Attorney

EXHIBIT A  
STATEMENT OF WORK

The following table itemizes the flood mitigation work to be completed on the Property pursuant to this Agreement.

“Item” shall define the work to be completed for the Flood Mitigation Project. “Price” shall establish the cost the “Item” including elevation certificates, permits, inspections, other fees, and the prices indicated on the selected Contractors written proposal that is attached hereto as Exhibit B. “Maximum Program Payment” shall establish the amount that could be paid under the Program terms. “Agreed Program Payment” establishes the amount accepted by the Parties as the final amount that will be paid to the Owner if the terms and conditions of this Agreement are completed.

Item	Price	Maximum Program Payment	Agreed Program Payment*
<i>Initial Elevation Certificate</i>			
Totals			

\*Not to Exceed \$3000

The undersigned has reviewed and approved this Statement of Work:

\_\_\_\_\_

Owner

\_\_\_\_\_

Date

\_\_\_\_\_

Owner

\_\_\_\_\_

Date

EXHIBIT B

Accepted Proposal/Scope of Work

(to be added prior to execution)



EXHIBIT C

**2018 Flood Mitigation Pilot Program  
Project Reimbursement Request Form**



Owner/Payee: \_\_\_\_\_

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

<b>Item</b>	<b>Price</b>	<b>Reimbursement Requested</b>

Upon project completion, submit this form with the following documents:

- 1. A copy of the construction contract,
- 2. Copies of invoices from the contractor,
- 3. Receipt from the contractor verifying it payment,
- 4. Mechanics lien waivers from all subcontractors and suppliers,
- 5. A current certificate of flood insurance,
- 6. An approved final inspection report from James City County Building Safety and Permits,
- 7. A post-construction Elevation or Floodproofing Certificate