

**CITY OF GIG HARBOR
CASH SET ASIDE MAINTENANCE AGREEMENT
ENCROACHMENT PERMIT**

DATE RECEIVED BY CITY: _____

RE: City of Gig Harbor Permit No.: _____
Owner/Developer/Contractor (Principal): _____
Project Name: _____
Project Address: _____

WHEREAS, _____, hereinafter referred to as "the Principal" has applied to the City of Gig Harbor, hereinafter referred to as "the City", for an Encroachment Permit to construct the project known as _____ on a site located at _____; and

The improvements constructed included (Include full description):

_____, and

WHEREAS, the above-named "Principal" has constructed and installed certain improvements in connection with the above described project; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or replace said improvements against defects in workmanship, materials or installation for a period of twenty-four (24)-months after written and final acceptance of the same and approval by the City; and

WHEREAS, in order to enable the City to release the Cash Set Aside Performance Agreement or Performance Bond or other instrument of security filed by the Principal with the City in connection with the installation and/or construction of such improvements, this Cash Set Aside Maintenance Agreement has been secured and hereby submitted to the City;

WHEREAS, _____ hereinafter referred to as "the Financial Institution" is a financial institution qualified to do business in the State of Washington, now, therefore,

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect until released in writing by the City of Gig Harbor, after the Principal has performed and satisfied the following conditions:

1. Escrow Account.

Principal shall establish an escrow account with the Financial Institution in the amount of _____ Dollars and _____ Cents (\$ _____), Account No. _____.

At no time shall any portion of the sums in said account be released without written authorization from the City. Such amount shall represent the City's estimate of the amount necessary to ensure repair and replacement of the improvements during the period of this Agreement, as established by the City.

2. Funds to Secure Implementation of Warranty. The City agrees to accept this Agreement in lieu of a maintenance bond to ensure the Principal's warranty that the improvements constructed in conjunction with the project either remain free from defects in materials, workmanship or installation (or, in the case of landscaping, that the landscaping survives) for a period of two (2)-years from the date of acceptance of the installation of the improvements by the City. The Institution agrees that it shall have no duty or right to evaluate the correctness or appropriateness of any such notice or demand by the City, and shall not interplead, or in any manner, delay payment of said funds to the City.
3. Principal's Warranty. The Principal hereby warrants that in the event any of the improvements installed by the Principal pursuant to the above-referenced plans, conditions and specifications contained in the City's file, fail to remain free from defects in materials, workmanship or installation, or in the case of landscaping, that the landscaping fails to survive, for a period of two (2)-years from the date of acceptance of the installation of the improvements by the City, then the Principal shall either remedy the default, or forfeit the funds set aside in the escrow account for this purpose.
4. Principal's Remedy of Default. If the Principal decides to remedy the default, it shall within twenty (20) days of demand of the City make a written commitment to the City that it will: (a) remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; and (b) remedy the default.
5. Financial Institutions Release of Funds. In the event that the Principal fails to remedy the defect as provided above, then the Institution shall, upon the demand of the City, remit to the City within ten days of receipt of said demand, the amount of funds in the escrow account, or such lesser amount as may be specified in the City's demand.
6. City's Completion of Corrections Under Warranty. In the event the Principal fails to satisfactorily repair, replace or correct the improvements as requested by the City, the City's employees and agents are hereby authorized to enter onto said property and perform such work. Funds obtained by the City pursuant to paragraph 5 of this Agreement may be used by the City to restore said improvements and pay any and all sums owing to contractors, suppliers, laborers, materialmen, suppliers, subcontractors or others as a result of such work for which a lien against any City property or property where the improvements are located, has arisen or may arise. Further, said funds may be used to cover the cost of correcting any damage which may have occurred off-site due to disrepair of the project, including damage, if any, to public property. This provision shall not be construed as creating any obligation on the City, its employees, agents and representatives to perform such corrective work.

7. Inspection. The Principal shall pay all additional costs of the City incurred in the administration of this Agreement. As long as payment for such services has been made, the City Engineer or his/her designee shall periodically inspect said improvements while under the two-year warranty period and inspect completed improvements insofar as possible within five (5) working days after receiving written notice that the repairs have been completed. Lack of inspection within said five (5) days, however, shall not signify the City's approval.

8. Expiration. This Agreement shall remain in full force and effect for a period of two (2)-years after final acceptance of the improvements by the City; the obligations secured hereby have been fully performed and formal written notice from the City has been submitted to and received by the Principal, releasing the Principal from further obligation to restore improvements.

9. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this Agreement or to collect the funds in the escrow account, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the funds set aside, but also over and above the funds in the account as a part of any recovery in any judicial proceeding.

The Institution hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in Pierce County Superior Court.

DATED this _____ day of _____, 20__.

FINANCIAL INSTITUTION
 (Signature must be notarized)
 By: _____
 Print Name: _____
 Its _____
 Business Name: _____
 Business Address: _____
 City/State/Zip Code: _____
 Telephone Number: _____

PRINCIPAL
 (Signature must be notarized)
 By _____
 Print Name: _____
 Its _____
 Business Name: _____
 Business Address: _____
 City/State/Zip Code: _____
 Telephone Number: _____

CITY OF GIG HARBOR
 By: _____
 Its City Engineer
 Date: _____

City of Gig Harbor
 3510 Grandview Street

FORM P-2

(Use for Partnership, Corporation Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing

at: _____

My Commission expires: _____

FORM P-3

(Use for Financial Institution Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing

at: _____

My Commission expires: _____