

**CITY OF GIG HARBOR
CASH SET ASIDE PERFORMANCE 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 to be constructed in accordance with the approved Permit and City of Gig Harbor Public Works Standards include: (insert complete description here)

_____, and

WHEREAS, the approval granted by the City and the provisions of the Gig Harbor Municipal Code and State law require that the Principal construct or install certain improvements in connection with the above project, which improvements are shown on the approved Permit, and

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

IN CONSIDERATION of the mutual covenants contained herein, and to ensure the performance of the conditions required for the City approval of the Principal's project, it is hereby agreed as follows:

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 costs of the required improvements, as established by the City. If, after final review by the City Engineer, these cost estimates are deemed low, then the Principal shall add funds to the account to make up the deficiency in an amount determined by the City Engineer. Said final review is estimated to be twenty (20) days from the date of this Agreement. In addition, in the event bids received for improvements and accepted by the Principal are in excess of

previous estimates, the amount in escrow shall be increased by the Principal in the amount of said excess.

2. Funds to Secure Performance. In the event the Principal shall not have: (a) completed all improvements required by the above-referenced conditions, plans and file, (b) paid all sums owing to contractors, subcontractors, materialmen, suppliers 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, and (c) obtained acceptance by the City of the project, or any extension of time granted by the City in writing, then the Institution shall, upon the demand of the City, remit to the City within five days of said demand, the amount of funds in the account, or such lesser amount as may be specified in the demand. The Institution agrees that it shall have no duty or right to evaluate the correctness or appropriateness of any such notice or determination by the City, and shall not interplead, or in any manner, delay payment of said funds to the City.
3. The 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.
4. 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.
5. City's Completion of Work. In the event the Principal fails to satisfactorily complete 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 4 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 work.
6. 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.
7. Expiration. This Agreement shall remain in full force and effect until the obligations secured hereby have been fully performed and a City of Gig Harbor Cash Set Aside Agreement for Maintenance, a City of Gig Harbor Maintenance Bond or other instrument

of security guaranteeing maintenance of all improvements for a period of two year(s) from acceptance, has been submitted to the City in an amount and form suitable to the City, and until released in writing by the City at the request of the Surety or the Principal.

8. 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 attorneys 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 attorneys' 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

By: _____
Its _____

Business Name: _____

Business Address: _____

City/State/Zip Code: _____

Phone Number: _____

Email: _____

CITY OF GIG HARBOR

By: _____
Its _____

City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

PRINCIPAL

By _____
Its _____

Business Name: _____

Business Address: _____

City/State/Zip Code: _____

Phone Number: _____

Email: _____

Date: _____

CHECK FOR ATTACHED NOTARY SIGNATURE

- ____ Individual (Form P-1)
____ Partnership or Corporation (Form P-2)
____ Financial Institution (Form P-3)

FORM P-1 / NOTARY BLOCK

(Use for Individual/Sole Proprietor 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 that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

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: _____

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: _____

NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____