



CITY OF SAMMAMISH

801 228th Avenue SE
Sammamish, WA. 98075
Tel: 425-295-0500 Fax 425-295-0600
Web: www.sammamish.us

PERMIT NUMBER: _____

DATE STAMP

**FINANCIAL
GUARANTEE AGREEMENT**

FINANCIAL GUARANTEE FOR: (check one) <input type="checkbox"/> Restoration <input type="checkbox"/> Performance <input type="checkbox"/> Maintenance & Defect	PROJECT NAME
SECURITY: (check one) <input type="checkbox"/> Work in Right-of-Way <input type="checkbox"/> Landscaping <input type="checkbox"/> Subdivision Improvements <input type="checkbox"/> Critical Areas Mitigation	APPLICANT'S NAME AND ADDRESS:
FINANCIAL SECURITY DEVICE: <input type="checkbox"/> Assignment of Funds <input type="checkbox"/> Cash Deposit <input type="checkbox"/> Surety Bond	PROJECT ADDRESS: PARCEL NUMBER(S):
GUARANTEE AMOUNT \$ _____	GUARANTEE DURATION: _____ YEARS

This AGREEMENT is made and entered into this _____ day of (month) _____, 20_____, by and between The City of Sammamish, hereinafter referred to as the "CITY", and the above named applicant, hereinafter the "APPLICANT."

Recitals:

WHEREAS the APPLICANT either completed or financially guarantees completion of Security as selected above in connection with the above referenced project, permit no _____ outlined in the (Report/Plan _____ {prepared by (Consultant) _____ dated _____ ("APPROVED PLAN"); and

AGREEMENT

WHEREAS, approval of _____(project name and permit number) has been granted by the CITY (“APPROVAL”) and requires that certain improvements be made in connection with construction of the project; and that such improvements be constructed in full compliance with CITY standards, and the APPROVED PLANS and specifications submitted with the project, as required by the CITY; and

WHEREAS, the APPROVAL requires that the improvements are to be made or constructed within a certain period of time, unless an extension is granted in writing by the CITY; and

WHEREAS the APPLICANT has agreed to financially guarantee the improvements pursuant to CITY of Sammamish Municipal Code (SMC) Title 19A, Title 21A, and Title 27A, respectively; and

WHEREAS the APPLICANT filed the FINANCIAL SECURITY DEVICE referenced above with the CITY to financially guarantee the aforementioned project; and

WHEREAS the APPLICANT has provided the attached “BOND QUANTITY WORKSHEET” that accurately reflects the replacement, installation, and monitoring of the improvements in the APPROVED PLAN; and

NOW, THEREFORE, it is understood and agreed that this AGREEMENT shall continue in effect until released in writing by the CITY, but only after the APPLICANT has performed and satisfied the following conditions:

Terms of the AGREEMENT:

The recitals set forth above are incorporated into the terms of this AGREEMENT.

1. The APPLICANT agrees to financially guarantee the improvements for _____ years from the date of installation, or (date)_____, whichever is later (GUARANTEE DURATION).
2. The APPLICANT shall provide a yearly monitoring report of the improvements made to the CITY on or before November 21st of each year until the terms of this AGREEMENT expire. The report is only required for performance and mitigation and defect financial guarantees. The CITY will provide verification that the report is consistent with the provisions of the APPROVED PLAN on or before January 31st of the next calendar year; and
3. The APPLICANT agrees that the annual monitoring report of the improvements made shall summarize the overall conditions of the improvement and discuss how the improvements installed pursuant to the APPROVED PLAN, are being met. Photos of the improvements shall also be provided. At the end of the GUARANTEE DURATION a final monitoring report shall be prepared, which shall determine if the improvements satisfy the established goals, objectives, and performance standards contained within the APPROVED PLAN; and

4. At the end of a GUARANTEE DURATION, as more fully described below, the CITY will evaluate whether the APPLICANT has met the requirements of the monitoring plan and this AGREEMENT;
5. The APPLICANT shall install, develop construct, plant, or place the improvements pursuant to the APPROVED PLANS to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the CITY in the above-referenced CITY file.
6. The APPLICANT shall have completed all improvements required by the above-referenced conditions, plans and City file within the permit approval period unless an extension is granted by the CITY.
7. The APPLICANT shall have paid all sums owing to laborers, contractors, mechanics, subcontractors, materialmen and suppliers or others as a result of such work for which a lien against any CITY property has arisen or may arise.
8. In the event the APPLICANT fails to complete all of the above referenced improvements within the time period specified in the GUARANTEE DURATION above, then the CITY, its employees and agents shall have the right at the CITY's sole election to enter onto said property described above for the purpose of completing the improvements. This provision shall not be construed as creating an obligation on the part of the CITY or its representatives to complete such improvements.
9. The APPLICANT shall be responsible for all maintenance of the improvements in the APPROVED PLAN, during the GUARANTEE DURATION.
10. In the event of any failure of the mitigation to satisfactorily meet the APPROVED PLAN requirements or in the event of a defect in design, workmanship or materials, the APPLICANT shall promptly and satisfactorily repair and/or correct the failure or defect and any accompanying or resulting damage within 30 days of notification from the CITY that the mitigation is unsatisfactory and does not meet the APPROVED PLAN.
11. The CITY may perform periodic inspections during the GUARANTEE DURATION.
12. Upon notification by the CITY during the GUARANTEE DURATION, the APPLICANT shall perform necessary maintenance and/or correct and/or repair any defects in the improvements, and any accompanying or resulting damage, within the time frame specified by the CITY.

13. In the event the CITY determines, at its sole discretion, that repairs must be performed immediately to prevent damage or risk to person(s) and/or property, the CITY may make necessary repairs and perform corrective action. The costs of these repairs/corrections shall be paid by the APPLICANT, upon demand by the CITY.
14. The APPLICANT shall pay all required fees in accordance with all applicable provisions in the Sammamish Municipal Code.
15. If, at the end of the GUARANTEE DURATION, the CITY, at its sole discretion, determines that the improvements are not or have not been adequately maintained per the APPROVED PLAN, the CITY will notify the APPLICANT in writing. The APPLICANT shall promptly perform maintenance, correction or repair, to the CITY's satisfaction. If such does not occur to the satisfaction of the CITY, the CITY may declare a default and use the remedies for a default provided for in section 17 below. In its sole discretion, the CITY may extend the GUARANTEE DURATION for purposes of allowing the APPLICANT additional time to perform or complete maintenance, correction or repair.
16. Any failure by the APPLICANT to comply with the terms of this AGREEMENT in a timely manner shall constitute a default. In the event of a default, the CITY shall notify the APPLICANT and, if applicable, the guarantor/surety, of the fact of default and the need to perform corrective action. If the CITY does not receive satisfactory assurance that corrective action will be taken in 30-days, the CITY may:
 - a. require the APPLICANT to perform all necessary corrective work; or
 - b. demand and obtain payment on the financial guarantee, and enter onto the property and perform such work. This provision shall not be construed as creating any obligation on the CITY, its employees, agents and representatives to perform such work.

If the APPLICANT does not complete the Improvements to the CITY's reasonable satisfaction as described above, then within thirty (30) days after the CITY's written demand to the APPLICANT, the APPLICANT shall pay to the CITY all amounts necessary to complete the Improvements up to and including the full penal sum of this guarantee.

Nothing contained in this section shall be construed to limit the remedies available to the CITY in law and in equity in enforcing or otherwise compelling compliance with the terms of this Agreement. Further, any action or inaction by the CITY following any default under any term or condition of this AGREEMENT shall not be deemed to waive any rights of the CITY pursuant to this AGREEMENT. All costs, including reasonable attorney's fees for the enforcement of the terms of this AGREEMENT, shall be borne by the APPLICANT. In the event that the guarantee amount is demanded and the total costs associated with curing the default exceed the guarantee amount, the APPLICANT shall remain responsible to the CITY for payment of any remaining amount. In the event of a default, the CITY may contract with a third party to cure the default.

17. The APPLICANT shall indemnify, hold harmless and defend, all at APPLICANT's sole expense, the CITY, its agents, employees and/or officers against claims, damages, suits at law or equity, actions, penalties, losses, or costs of whatsoever kind or nature, brought against the CITY arising out of, in connection with, or incident to the execution of this AGREEMENT, the CITY's obligations under this AGREEMENT, and/or the APPLICANT's performance or failure to perform any obligation under this AGREEMENT. Provided, however, that the requirements of this section shall not apply to that portion of the claim due to the negligence of the CITY, its agents, employees and/or officers.
18. The APPLICANT shall pay all additional costs the CITY incurred in the administration of the AGREEMENT, including monitoring by the CITY as required. Said costs will be paid from the Project permitting deposit. Should there not be sufficient funds in the Project permitting deposit to cover such additional costs, then said costs shall be paid by APPLICANT after receipt of invoice from the CITY. The Director of the Department of Community Development, the Director of Public Works, and/or their designees may periodically inspect the work required hereunder and inspect completed improvements. Notwithstanding the foregoing, if APPLICANT fails to pay for said inspections, the CITY may use funds from section 17.b. as applicable to cover said costs. This provision shall not be construed as creating any obligation on the CITY, its employees, agents and representatives to perform such work
19. Funds obtained by the City pursuant to 17.b. above may be used by the City to remedy said defects and pay any and all sums owing to contractors, suppliers, laborers, materialmen, 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 occur off-site due to defects, 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.
20. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in King County, Washington. This AGREEMENT creates no rights, power, or authority in any entity or person not a party to this AGREEMENT.
21. Written notice to all parties shall be by prepaid first class mail to the address specified below or as subsequently amended in writing. Notice shall be considered delivered three (3) days after having been deposited in the mail:

CITY:

APPLICANT:

SURETY (If Applicable):

Conditions of Release: This AGREEMENT shall remain in full force and effect and shall not be released until all terms of this AGREEMENT have been completed to the satisfaction of the CITY of Sammamish Director of the Department of Community Development, the Director of the Department of Public Works, or his/her designee.

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

APPLICANT:

Signature

Date

Title

State of Washington, County of King

I certify that I know or have seen satisfactory evidence that _____ signed this instrument and acknowledges it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

(Notary Seal or Stamp)

Dated: _____

Signature of Notary Public: _____

Title: _____

My Appointment Expires:

On Behalf of the CITY OF SAMMAMISH

Signature

Title

Date