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CITY OF KENMORE, WA
AGREEMENT TO WORK IN THE RIGHT-OF-WAY
AND/OR CONSTRUCT SITE IMPROVEMENTS



18120 68th Ave NE, Kenmore, WA 98028

425-398-8900

www.kenmorewa.gov

Applicant:
Address:
City: State: Zip:
Phone Number: Email:

Project/Permit #:
Project Address/Parcel:
Financial Guarantee Amount:
Financial Guarantee Type:
[ ] Cash Deposit [ ] Assignment Of Funds [ ] Assignment Of Existing Const. Loan Proceeds [ ] Surety Bond [ ] Public Agency Agreement

This agreement is made and entered into this \_\_\_ day of \_\_\_, 20\_\_\_, between the City of Kenmore, hereinafter called the CITY, and the above named applicant, hereinafter called the APPLICANT.

Basis for AGREEMENT:

WHEREAS the undersigned APPLICANT wishes to construct right-of-way improvements and/or perform site work and/or site improvements at the above project address/parcel; and

WHEREAS the CITY will authorize site work, site improvements, and/or limited right-of-way use upon agreement by the APPLICANT to comply with all terms of this AGREEMENT; and

WHEREAS this AGREEMENT will be administered on behalf of the CITY by the Development Services Director, hereinafter called the DIRECTOR;

NOW THEREFORE, the APPLICANT hereby agrees and binds itself and its legal representatives, successors, and assigns, as follows:

Terms of the AGREEMENT:

- 1. Prior to beginning construction, a pre-construction conference shall be held with the CITY, the APPLICANT and the Applicant's contractor(s).
2. The CITY shall approve in writing any proposed changes from the approved plans prior to the APPLICANT beginning such work.
3. The APPLICANT shall pay any fees required in conjunction with the project pursuant to Title 20 of the Kenmore Municipal Code.

4. The APPLICANT guarantees that construction, maintenance, and restoration of roadway, drainage, clearing, grading and stormwater facilities will occur in full compliance with the approved construction plans and profiles, including any approved amendments thereto, and in full conformance with applicable CITY ordinances, standards and specifications, to the satisfaction of the CITY.
5. Unless otherwise authorized by the CITY in writing, all work shall be completed prior to final construction approval by the CITY, or prior to issuance of a Certificate of Occupancy, whichever comes first.
6. The APPLICANT shall implement all necessary erosion-sedimentation facilities to insure sediment-laden water will not enter natural or manmade drainage facilities and will maintain them until such time as erosion potential is past. In the event erosion and sedimentation is observed, the APPLICANT shall immediately take actions to mitigate erosion on or off the site. The CITY may take immediate action to remedy the problem if deemed necessary by the DIRECTOR. In such cases, the APPLICANT shall reimburse the CITY for the corrective work.
7. If the subdivision is not recorded, the building does not receive any Certificate of Occupancy, or the development permit is not completed, the APPLICANT agrees to restore the right-of-way to original condition or better AND stabilize the site or comply with the conditions of any permit or approval, including corrective work necessary to provide drainage consistent with approved plans and conditions, and to protect the public health, safety, and welfare, including effects on water quality.
8. The APPLICANT shall be responsible for costs of any corrective work on the site, off the site, or within the right-of-way to the extent that such corrective measures are associated with work performed and/or not completed as part of the project, pursuant to Kenmore Municipal Code 21.20.
9. If the APPLICANT fails to proceed with due diligence and in good faith in the construction and maintenance work provided herein, the APPLICANT shall remove all or part of constructed facilities and restore all disturbed areas to the original condition or better at the APPLICANT's sole expense. The APPLICANT shall not stop, delay or abandon the project without first rectifying any damage, or restoring the site to a level deemed acceptable by the CITY.
10. The APPLICANT shall provide the CITY with a financial guarantee in the amount and in a form approved by the CITY to secure compliance with all terms of this AGREEMENT. The financial guarantee shall remain in force and effect until written release by the CITY. At least \$7,500 of the guarantee shall be in the form of an Assignment of Funds or a Cash Deposit with the CITY. The APPLICANT's obligation to perform work and pay fees or other amounts is not limited to the amount of the associated financial guarantee.
11. The APPLICANT shall furnish to the CITY a set of "final corrected (as-built) plans" (photo mylar quality or equivalent *and* digital copies) of all public property, facilities, and improvements associated with the project prior to final construction approval.
12. Upon completion of the required improvements to the satisfaction of the CITY, the APPLICANT shall file further financial guarantees and agreements in the amounts and forms acceptable to

the CITY to secure the successful operation and maintenance of the improvements for a minimum period of two years after construction approval pursuant to Kenmore Municipal Code 21.15.090. In the event that the applicant fails to post such additional financial guarantee(s), the CITY may demand payment on the performance financial guarantee and may utilize such amount to secure operation and maintenance of improvements in accordance with the Kenmore Municipal Code and this AGREEMENT.

13. The APPLICANT shall be responsible for contacting the CITY and requesting release of this AGREEMENT once all terms have been met. Failure to request release of the AGREEMENT shall not release the APPLICANT from the terms of the AGREEMENT. Failure to request and obtain release of the AGREEMENT does not absolve the APPLICANT of the maintenance of improvements and financial guarantee requirements of the Kenmore Municipal Code and this AGREEMENT.
14. The APPLICANT shall be responsible for the proper performance, safe conduct and adequate policing and supervision of the project. The APPLICANT's responsibility shall not be lessened or otherwise affected by the CITY's approval of plans, specifications, or work, or by the presence of the CITY's representative(s) at the site.
15. The APPLICANT shall indemnify and hold the CITY and its agents, employees and/or officers harmless from and shall process and defend at its own expense all claims, damages, suits at law or equity, actions, penalties, losses, or costs of any kind or nature, brought against the CITY arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the APPLICANT's performance or failure to perform any aspect of the AGREEMENT. Provided, however, that nothing herein shall require the APPLICANT hold harmless or defend the CITY from any claim arising from the sole negligence of the CITY's agents, employees and/or officers.
16. 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.
17. Any failure by the APPLICANT to comply with the terms of this AGREEMENT in a timely manner shall constitute a default pursuant to Kenmore Municipal Code 21.10.020. Any action or inaction by the CITY following any default in any term or condition of this AGREEMENT shall not be deemed to waive any rights of the CITY pursuant to the AGREEMENT or associated financial guarantee.

#### **Release Requirements:**

This AGREEMENT shall remain in full force and effect and the associated financial guarantee shall not be released until all terms of this AGREEMENT have been completed to the satisfaction of the CITY and the APPLICANT has received written notice of release of the AGREEMENT. The APPLICANT shall be responsible for maintaining all records of release of this AGREEMENT. The APPLICANT shall produce evidence of the AGREEMENT release upon request of the CITY or financial institutions associated with the financial guarantee.

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

**APPLICANT**

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

**Received for CITY**

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

STAFF USE AREA
Release Date:
Released By: