

705

**CITY OF KENMORE, WA
AGREEMENT TO RESTORE CRITICAL AREAS**



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: <small>(must be attached to agreement)</small>	<input type="checkbox"/> Cash Deposit	<input type="checkbox"/> Assignment Of Funds	<input type="checkbox"/> Assignment Of Existing Const. Loan Proceeds	<input type="checkbox"/> Surety Bond	<input type="checkbox"/> 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 obtain permits to construct improvements and/or perform site work and/or site improvements at the above project address/parcel; and

WHEREAS the CITY will permit issuance of the permit upon agreement by the APPLICANT to, among other requirements for this project, complete all terms of this AGREEMENT; and

WHEREAS the AGREEMENT will be administrated 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. The APPLICANT shall fully install all environmentally critical area and/or buffer mitigation measures required pursuant to the above-referenced project/permit by the time specified by the CITY, (unless approved in writing by the DIRECTOR). Installation shall be in accordance with the approved critical area and/or buffer mitigation plan including any approved amendments or extensions thereto, and in conformance with applicable CITY ordinances, standards, and specifications. All improvements shall be installed to the satisfaction of the DIRECTOR or his/her designee.

2. The APPLICANT shall fulfill all other requirements of Kenmore Municipal Code Chapter 18.55 and other adopted CITY ordinances, standards and specifications, codes and regulations applicable to the project, even if these requirements are not set forth in this AGREEMENT.
3. The CITY must approve in writing any APPLICANT proposed change of work from the approved plans prior to beginning such work.
4. Prior to beginning installation of the mitigation plan, a pre-construction conference shall be held with the CITY, the APPLICANT and the APPLICANT's contractor(s).
5. The APPLICANT shall be responsible for costs of any corrective work on or off the site to the extent that such corrective measures are associated with work performed and/or not completed.
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. The APPLICANT shall notify the CITY in writing upon installation of the mitigation plan measures. Within 60 days after CITY approves mitigation installation, the APPLICANT shall submit as-built drawings, and shall thereafter submit monitoring reports by or before October 31st in every year following for a period no less than five years.
8. The APPLICANT shall perform monitoring and maintenance as set forth in the mitigation plan so as to create healthy growing conditions for five (5) years after the CITY approves installation of the mitigation plan. If the project site does not meet the performance standards established in the mitigation plan, the CITY may extend the monitoring period until those performance standards have been met.
9. Prior to the CITY's approval and authorization of mitigation installation, the APPLICANT shall post a financial guarantee in the above amount and in a form approved by the CITY to guarantee compliance with all terms of this AGREEMENT. The financial guarantee shall remain in force and effect until written release by the CITY. The APPLICANT's obligation to perform work and pay fees and other amounts is not limited to the amount of the associated financial guarantee.
10. The APPLICANT shall be responsible for maintaining all records of mitigation installation approval and ongoing maintenance and monitoring. APPLICANT shall provide such records upon the CITY's request.
11. 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.
12. Any failure on the part of the APPLICANT to proceed with due diligence and in good faith in the mitigation installation, maintenance, and/or monitoring work provided herein shall, upon notice by the CITY, constitute a default of the terms of this AGREEMENT pursuant to Kenmore Municipal Code 21.15.100.

13. The APPLICANT shall reimburse the CITY for all direct and indirect costs necessitated by this AGREEMENT, including but not limited to plan review and inspection fees pursuant to Kenmore Municipal Code Title 21, hourly monitoring and inspection fees pursuant to Title 20, and corrective action or abatement.
14. The APPLICANT hereby grants the CITY the right to enter and inspect the project site, and, in the event of any failure to perform terms of this AGREEMENT, to implement such corrective measures as the CITY deems necessary.
15. The obligation to install, maintain, and monitor the mitigation measures set forth in the mitigation plan shall run with the land. The applicant shall record a CRITICAL AREAS NOTICE ON TITLE as required by Kenmore Municipal Code Chapter 18.55.
16. 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.
17. 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.
18. 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.
19. 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: