

709

CITY OF KENMORE, WA
AGREEMENT TO PRESERVE, PROTECT
AND/OR REPLACE TREES



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 [ ] 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 is required to protect and retain existing trees and/or install new trees for the above-referenced project; and

WHEREAS the CITY will grant final project approval upon agreement by the APPLICANT to, among other project requirements, 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. The APPLICANT shall implement the tree protection measures identified in the approved tree management plan issued under permit \_\_\_, and as required pursuant to KMC 18.57. The APPLICANT shall implement such tree protection measures prior to the start of construction activities and shall remain in place until CITY's authorization to remove.
2. Replacement trees shall be planted and installed in conformance with CITY specifications, to the satisfaction of the DIRECTOR or his/her designee. All planting shall be performed in accordance with accepted practices, in good soil with adequate water available. This includes but is not limited to supplemental irrigation may be required during dry months.
3. The APPLICANT shall complete the installation of all replacement trees within the applicable timeframe as determined by the DIRECTOR.
4. Any APPLICANT proposed change of work from the approved plans shall be approved in writing by the CITY prior to beginning such work.

5. The APPLICANT shall fulfill all other requirements of Kenmore Municipal Code Chapter 18.57 and adopted CITY ordinances or standards in connection with tree protection, preservation, or replacement, even if these requirements are not set forth specifically in this AGREEMENT.
6. The APPLICANT shall complete all tree protection, preservation, and replacement work requirements with due diligence. The DIRECTOR may extend the time limit for compliance up to six (6) months when, at the DIRECTOR's discretion, circumstances beyond the control of the APPLICANT warrant an extension.
7. The APPLICANT shall reimburse the CITY for all actual direct and indirect costs necessitated by this AGREEMENT including, but not limited to, plan review and inspection fees pursuant to Kenmore Municipal Code Title 20 and corrective work and/or abatement.
8. The APPLICANT hereby grants the CITY the right to enter and inspect the project site and, in the event of any failure to comply with terms of this AGREEMENT, to implement such corrective measures as the CITY deems necessary.
9. The APPLICANT shall provide the CITY with a financial guarantee in the amount and in a form approved by the CITY in order to secure the APPLICANT's compliance with the terms of this AGREEMENT. The guarantee shall remain in force and effect until written release by 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.
10. The APPLICANT shall notify the CITY in writing when all tree protection, preservation, and replacement is completed in accordance with approved plans. The CITY may require the APPLICANT provide a as-built and/or affidavit from the project arborist to confirm the condition of retained/protected trees.
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. The APPLICANT shall perform monitoring and maintenance as recommended by the project arborist or as directed by the CITY to ensure trees remain in good condition for three (3) years plus 60 days. Upon completion of the required tree protection, preservation, and replacement improvements to the CITY's satisfaction, the three (3) year plus 60 day monitoring period will begin.
13. 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.
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: