

Assignment of Funds to the City of Bothell Performance

- Landscape
 Public Works Improvements

Date posted: _____

RE: Bothell Subdivision/Plat/Permit No.: _____

Owner/Developer/Contractor: _____

Project Address: _____

WHEREAS, _____
(hereinafter "Applicant") has applied to the City of Bothell (hereinafter the "City"), for: _____

to construct _____ on a site located at _____; and

WHEREAS, the City approved the requested action on _____, 200__;
and

WHEREAS, the approval granted by the City and the provisions of the Bothell Municipal Code and State law require that certain improvements be made in connection with the construction of the project, which improvements are shown on the approved plans and as further defined by the conditions identified in City File No. _____; and

WHEREAS, the Applicant does business with _____
(hereinafter the "Institution"), whose branch address and phone number is: _____,
which is a financial institution qualified to do business in the State of Washington, Now, Therefore,



C i t y o f B o t h e l l

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

1. Cash on Deposit.

The Applicant has established an account on deposit with the Institution in account no. _____ under the name of _____, in the amount of \$_____ to secure for the City the Applicant's satisfactory performance of the above-described improvements, which are required in connection with the above-referenced project.

The Institution hereby certifies that such account has been established, and agrees that at no time shall any portion of the funds in the account be released without written authorization from the City. The amount deposited in the account shall represent the costs of the required improvements, as determined by the City, plus 20% as a reserve. If, after final review by the Director of Public Improvements, these cost estimates are deemed low, then the Applicant shall insure that the amount in the account is increased to make up any deficiency. In addition, in the event bids received for improvements and accepted by the Applicant are in excess of previous estimates, the amount in the escrow account shall be increased by the Applicant in the amount of said excess.

Applicant hereby agrees to this Assignment of Funds and acknowledges that its obligation to perform the required work is not limited to the amount of funds held by the Institution.

Both the Applicant and Institution agree that this Assignment of funds is irrevocable and cannot be cancelled by the Institution or Applicant.

2. Funds to Secure Performance.

In the event the Applicant shall not have (a) completed all improvements required by the above-referenced conditions, plans and file, (b) paid all sums owing to contractors, 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, all on or before _____, 200__, 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 two days of receipt 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. **City May Complete Improvements.**

In the event the Applicant 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 2 of this Agreement may be used by the City to complete said improvements and to pay any and all sums owing to contractors, suppliers or others as a result of said work or that caused to be performed by the Applicant.

Further, said funds may be used to cover the cost of correcting any damage which may have occurred off-site during construction of the project, including damage, if any, to public property. This provision shall not be construed as creating an obligation on the part of the City or its representatives to perform such work.

4. **Expiration.**

This Agreement shall remain in full force and effect until the obligations secured hereby have been fully performed and a bond guaranteeing maintenance of all improvements for a period of _____ 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 upon expiration of the period mentioned in paragraph 2 above.

5. **Litigation.**

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 in the account, but also over and above the funds in the account as 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 and to be subject to the jurisdiction of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.

DATED this _____ day of _____, 200__

FINANCIAL INSTITUTION

DEVELOPER/OWNER

By: _____
Its _____

By _____
Its _____

Business Name

Business Name

Business Address

Business Address

City/State/Zip

City/State/Zip

Telephone Number

Telephone Number

CITY OF BOTHELL

By: _____
Its _____

City of Bothell
9654 NE 182nd Street
Bothell, Washington 98011
(425) 486-2768

Bonding Agency Notary

STATE OF WASHINGTON

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 uses and purposes mentioned in the instrument.

Dated: _____, 200__

Signature: _____

Name Printed: _____

Title: _____

My appointment expires: _____