

**CITY OF GIG HARBOR  
MAINTENANCE BOND for  
ENCROACHMENT PERMIT**

City Project EN #: \_\_\_\_\_

Surety Bond No.: \_\_\_\_\_

DATE POSTED: \_\_\_\_\_

PROJECT COMPLETION DATE: \_\_\_\_\_

RE: Owner/Developer/Contractor: \_\_\_\_\_  
Project Address: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS: That we, \_\_\_\_\_, (hereinafter called the "Principal"), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and authorized to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City of Gig Harbor, Washington, in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements in connection with a project as described above within the City; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or replace said improvements against defects in workmanship, materials or installation for a period of twenty-four (24) months after written and final acceptance of the same and approval by the City; and

WHEREAS, in order to enable the City to release the Right-of-Way Use Performance Bond filed by the Principal with the City in connection with such improvements;

NOW, THEREFORE, this Right-of-Way Use Maintenance Bond has been secured and is hereby submitted to the City. It is understood and agreed that this obligation shall continue in effect until released in writing by the City of Gig Harbor, but only after the Principal has performed and satisfied the following conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions of this Bond are as follows: (Insert complete description of work here)

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B. The Principal and Surety agree that the work and improvements installed pursuant to the Performance Bond or other security instrument filed with the City in the above-referenced project shall remain free from defects in material, workmanship and installation (or, in the case of landscaping, shall survive,) for a period of two (2) years after written and final acceptance of the same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the 24 month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of two (2) years from the date of acceptance of the work by the City, the Principal shall repair and/replace the same within ten (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the City that it will either:
  - a) remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
  - b) tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, 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 repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.

E. **Corrections.** Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

F. **Extensions and Changes.** No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.

G. **Enforcement.** 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 bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney 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 attorney 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 proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in Pierce County Superior Court.

H. **Bond Expiration.** This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

**SURETY COMPANY**

**(Signature must be notarized)**

By: \_\_\_\_\_  
Its \_\_\_\_\_

Business Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

**CONTRACTOR**

**(Signature must be notarized)**

By \_\_\_\_\_  
Its \_\_\_\_\_

Print Name: \_\_\_\_\_  
Business Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Its \_\_\_\_\_

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

City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

**CHECK FOR ATTACHED NOTARY SIGNATURE**

_____	Individual (Form P-1)
_____	Partnership or Corporation (Form P-2a)
_____	Surety (Form P-2b)

## **FORM P-1 / NOTARY BLOCK**

STATE OF WASHINGTON )  
 ) ss.  
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 the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(print or type name)

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NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**FORM P-2a /NOTARY BLOCK**

(Use for Partnership or Corporation Only)

STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF             )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged as the \_\_\_\_\_ of \_\_\_\_\_ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**FORM P-2b /NOTARY BLOCK**

(for Surety Company Only)

STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF             )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged as the \_\_\_\_\_ of \_\_\_\_\_ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_