

## **CASH PERFORMANCE AND PLEDGE OF MONIES AGREEMENT**

This Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Highline Water District, a municipal corporation ("District"), and \_\_\_\_\_ ("Developer") (individually a "Party" and collectively the "Parties") for the purposes set forth herein.

### SECTION 1: RECITALS

- 1.01 The District and the Developer are parties to a developer extension contract dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Extension Contract") regarding the construction of certain water extension improvements ("Extension Improvements") for the project known as \_\_\_\_\_ ("Project") referenced therein.
- 1.02 Pursuant to Section 7 "Insurance and Bonding" of the Extension Contract, the Developer is required to furnish the District with a performance guarantee of a type and in a form as determined by the District to guarantee the installation of the Extension Improvements and the performance of the Developer's obligations and duties under the Extension Contract. Pursuant to such provision, the Developer desires to furnish the District with cash as the required performance guarantee.
- 1.03 The District will accept, hold and disburse such cash as the performance guarantee as set forth below.
- 1.04 Therefore, the Parties, in consideration of the terms and conditions herein stated, now agree as follows:

### SECTION 2: CASH PERFORMANCE GUARANTEE

- 2.01 The Developer shall provide the District cash funds ("Funds") in the amount of U.S. \_\_\_\_\_ to guarantee the Developer's installation of the Extension Improvements and completion of the Extension Contract as referenced in Section 1.02 above.
- 2.02 The District shall hold and deposit the Funds in an interest-bearing deposit account in \_\_\_\_\_ Bank ("Bank"), such account to be in the sole name of the District. District shall have the right to direct the Bank regarding the disposition of the Funds pursuant to this Agreement without the Developer's consent.
- 2.03 The conditions under which the District will disburse or utilize the Funds for the completion of the Developer's obligations under the Extension Agreement are such that:
- a. If the Extension Improvements are completed by the Developer and given final acceptance by the District within eighteen (18) months of the date the District Board of Commissioners adopts a resolution accepting Developer's application to enter into an Extension Contract and the Developer fully performs all other duties and

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obligations set forth in the Extension Contract, the District shall disburse the Funds less charges for District administrative and other costs referenced in this Agreement to the Developer within thirty (30) days of such determination by the District; or

- b. If the Extension Improvements are not completed by the Developer and given final acceptance by the District within eighteen (18) months of the date the District Board of Commissioners adopts a resolution accepting Developer's application to enter into an Extension Contract or the Developer fails to fully perform all other duties and obligations set forth in the Extension Contract by such date, the District shall have the right to use the Funds to complete the installation of the Extension Improvements to the District's satisfaction and specifications referenced in the Plans and the Extension Contract and the Bank shall immediately release the Funds to the District for that purpose upon demand by the District; in such event, the District shall return any unused Funds thereon to the Developer within thirty (30) days of the completion and acceptance of the Extension Improvements by the District.

### SECTION 3: PLEDGE AND SECURITY AGREEMENT

- 3.01 Developer hereby grants to the District, its successors and assigns, a security interest in the Funds pursuant to Chapter 62A.9A RCW, including RCW 62A.9A-312, 313 and 314, and as such statutes may be amended and revised, which Funds will be delivered to the District and placed in the District's possession and control. Developer further grants to the District a security interest in all proceeds of the Funds, whether in the form of profits, dividends, accrued interest or otherwise.
- 3.02 For purposes of the security interest granted herein, Bank shall be the agent of the District for possession of the Funds such that possession of the Funds by Bank shall be deemed to be possession and control of the Funds by the District.
- 3.03 Developer warrants that, except as provided for herein, Developer has full title to the Funds and the Funds are free and clear of any other security interest, encumbrance, or claim of right, title or ownership. Developer shall not create or permit the existence of any lien or security interest other than that hereby created in the Funds without the express written consent of the District nor shall Developer assign any interest in the Funds to any other person or entity without the District's written consent, such consent to be in the District's sole discretion.
- 3.04 Developer agrees to repay to the District all sums including, but not limited to, legal fees and costs which the District may expend or incur in conserving or protecting the Funds, or in enforcing its security interest herein, including without limitation such sums as may be charged by Bank or any governmental entity with respect to the Funds. The sums agreed to be paid herein shall be secured by this Agreement.
- 3.05 The District shall have the right to enforce and collect on its security interest in the Funds

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in accordance with the terms and provisions contained in this Agreement. Enforcement and collection of the District's security interest in the Funds shall be in addition to all other rights and remedies placed by law, equity or contract to the District to seek reimbursement of additional damages incurred and/or to enforce the provisions of the Extension Agreement and this Agreement, should the Funds be insufficient to discharge the Developer's obligations to the District.

SECTION 4: GENERAL PROVISIONS

- 4.01 This Agreement shall serve as an addendum to the Extension Contract and shall supersede and amend such Extension Contract to the extent provided herein.
- 4.02 All time limits set forth herein are of the essence. The Parties agree to perform all obligations under this Agreement with due diligence.
- 4.03 In the event that this Agreement or any obligation secured by it is referred to an attorney to protect or defend the priority of the District's interest in the Funds, or for collection or realization procedures, Developer agrees to pay the District's reasonable attorneys' fees and costs incurred by the District and such fees and costs shall be secured by this Agreement
- 4.04 The District will cause to be performed certain services by its legal counsel, engineers and District personnel to carry out the foregoing purposes, including but not limited to the preparation and administration of this and any related agreements and documents. The Developer agrees to pay the cost of such services as a condition of the District's agreement herein.
- 4.05 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The State of Washington shall also be the jurisdiction for the Bank for the purposes of this Agreement pursuant to RCW 62A.9A-304(b). Venue for any action arising out of or relating to this Agreement shall lie in King County Superior Court.

**HIGHLINE WATER DISTRICT**

("District")

\_\_\_\_\_  
("Developer")

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_



