

2016 Internal Performance Guarantee

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: 74-2730250

Developer's Name and Mailing Address: Whole Foods Market Services, Inc.

550 Bowie Street

Austin, TX 78703

City Account Number:

#710-0000-233-97-19

Application ID #: #2016-043  
(from Site Plan Application form)

Application of **Whole Foods Market Services, Inc.** for the **Whole Foods Parking Lot Improvements Project** at **160 Fox Street**, Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of **\$187,618.00** on behalf of **Whole Foods Market Services, Inc.** in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing **Site Plan Improvements** as depicted on the subdivision/site plan, approved on **April 1, 2016** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **site plan** approval, dated **April 1, 2016**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option, either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified

2016 Internal Performance Guarantee  
mail (restricted delivery to the Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Departments of Public Works, and Planning and Urban Development, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **June 15, 2017** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **Whole Foods Market Services, Inc.** The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **Site Plan** approval, dated **April 1, 2016** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship;  
or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the approved **Site Plan**.

Seen and Agreed to:

By: Blenda J. Jones  
**Whole Foods Market Services, Inc.**

2016 Internal Performance Guarantee  
Date: \_\_\_\_\_

By: [Signature]  
\*\*Planning Division Director

Date: 8/8/11

By: [Signature]  
Development Review Coordinator

Date: 8/8/14

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

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**Distribution**

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Kathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Report of Receipts form.
5. \*\*Signature required if over \$50,000.00.  
Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

PREPARED 8/09/16, 10:13:49  
PROGRAM CR400L  
CITY OF PORTLAND, ME

CASH EDIT LISTING

BATCH ID - JDEALAMAN 8/09/16 00 OVER THE COUNTER DRAWER #: 1

RECEIPT	TOTAL PAYMENT	CUSTOMER	LOCATION NAME/ADDRESS	CUST TP	DETAIL AMOUNT	PT	SV +- LIEN -- TM ERROR / WARNING MESSAGES	CHECK#	TOTAL TENDERED
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0008989 187618.00  
CR=71000002339719

GM-MISC (NEED ACCT #)  
2016 Performance Guarante / Whole F

187618.00 CK PG#2016-043

BATCH ID - JDEALAMAN 8/09/16 00 OVER THE COUNTER

DRAWER #: 1

DETAIL TOTALS

PYMT TYPE	DESCRIPTION	COUNT	AMOUNT	ZERO/VOID COUNT
GM	GM-MISC (NEED ACCT #)	1	187,618.00	0

TENDER METHOD	DESCRIPTION	COUNT	TENDERED AMOUNT	TENDERED TOTAL	NON-CASH AMOUNT
CK	CHECK	1	187,618.00	187,618.00	187,618.00
				NON-CASH TOTAL	187,618.00
				CASH IN DRAWER	.00
				GRAND TOTAL	187,618.00

ENDORSEMENT CODES	DESCRIPTION	COUNT	AMOUNT
**	DEFAULT ENDORSEMENT . . .	1	187,618.00

BANK CODE	TOTALS	AMOUNT
00	DEFAULT BANK CODE	187,618.00

VOIDED OR ZERO RECEIPTS	ENTERED TOTAL	COMPUTED NON-ZERO RCPTS
0	.00	1
0	.00	187,618.00
1	187,618.00	****

\*\*\*\* OUT OF BALANCE \*\*\*\*

WHOLE FOODS MARKET, NA  
RCO #50005

125 CAMBRIDGE PARK DR.  
CAMBRIDGE, MA 02140

5000501746

8-88  
1113

DATE 8/3/16

PAY  
TO THE  
ORDER OF

City of Portland

\$ 187,618.00

\*one hundred eighty seven thousand six hundred eighteen\*

DOLLARS



JPMORGAN CHASE BANK, N.A.

COUNTER SIGNATURE REQUIRED  
ON \$10,000 OR MORE

*David...*

*[Signature]*

FOR Parking Lot project

⑈5000501746⑈ ⑆111300880⑆ ⑈06300021436⑈



Tuck O'Brien  
City Planning Director, Planning Division

April 1, 2016

Kenneth Mavrogeorge  
Tighe & Bond Consultants  
171 Corporate Drive  
Portsmouth, N.H. 03801

Project Name: Whole Foods Market Parking Lot Improvements  
Project ID: 2016-043  
Address: 160 Fox Street  
CBL: 024-D-001  
Applicant: Franklin & Somerset Portland, ME, LLC, 550 Bowie Street, Austin, Texas 78703  
Planner: Richard Knowland

Dear: Mr. Mavrogeorge,

On April 1, 2016, the Planning Authority approved with conditions a Level II site plan for Whole Foods Market for parking lot improvements at 160 Fox Street. The decision is based upon the application, documents and plans as submitted by Franklin & Somerset Portland, ME, LLC and prepared by Tighe & Bond. The proposal was reviewed for conformance with the standards of Portland's site plan ordinance.

#### **WAIVERS**

1. The Planning Authority waives the Technical Standard, Section 14-527 (a)(9) Boundary Survey since an earlier Whole Foods survey was on-file, the site plan was based on a digitized version of the original site plan and the Applicant's land surveyor will stake out the perimeter of the proposed parking area in relation to the property line prior to construction.

#### **SITE PLAN REVIEW**

The Planning Authority found the plan is in conformance with the Site Plan Standards of the Land Use Code subject to the following conditions of approval and the standard conditions of approval:

1. Prior to the required pre-construction meeting on site, the Applicant shall have a registered land surveyor stake out the property line and outer perimeter of the new parking area (including new maneuvering aisles) to confirm that the new improvements are a minimum of 35 feet from the nearest property line. The City will review and approve the extent of the improvements at the pre-construction meeting. The Applicant shall contact Philip DiPierro (Development Review Coordinator) at 874-8632 or [pd@portlandmaine.gov](mailto:pd@portlandmaine.gov) to arrange the meeting.

2. That the Applicant shall submit an executed Stormwater Drainage System Maintenance Agreement for Planning Authority review and approval prior to the issuance of a building permit.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

#### **STANDARD CONDITIONS OF APPROVAL**

Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and



owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
  
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Richard Knowland at (207) 874-8725.

Sincerely,



Stuart G. O'Brien  
City Planning Director

**Attachments:**

1. Sample Stormwater Maintenance Agreement
2. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
Stuart G. O'Brien, City Planning Director  
Barbara Barhydt, Development Review Services Manager  
Richard Knowland, Senior Planner  
Philip DiPierro, Development Review Coordinator, Planning  
Ann Machado, Zoning Administrator, Inspections Division  
Tammy Munson, Inspections Division Director  
Jonathan Rioux, Inspections Division Deputy Director  
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division  
Brad Saucier, Administration, Inspections Division  
Katherine Earley, Engineering Services Manager, Public Services  
Bill Clark, Project Engineer, Public Services  
David Margolis-Pineo, Deputy City Engineer, Public Services  
Doug Roncarati, Stormwater Coordinator, Public Services  
Greg Vining, Associate Engineer, Public Services

Michelle Sweeney, Associate Engineer  
John Low, Associate Engineer, Public Services  
Rhonda Zazzara, Field Inspection Coordinator, Public Services  
Mike Farmer, Project Engineer, Public Services  
Jane Ward, Administration, Public Services  
Jeff Tarling, City Arborist, Public Services  
Jeremiah Bartlett, Public Services  
Keith Gautreau, Fire Department  
Jennifer Thompson, Corporation Counsel  
Thomas Errico, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File