

CITY OF PORTLAND, MAINE

PLANNING BOARD

Sean Dundon, Chair
Brandon Mazer, Vice Chair
David Eaton
David Silk
Austin Smith
Maggie Stanley
Lisa Whited

November 29, 2018

Transport Leasing Corporation
Atten: Mark Sanborn
58 Lowell Junction Road
Andover, MA 01810

Stantec
Atten: Stephen Bushy
778 Main Street, Suite 8
South Portland, ME 04106

| | | | |
|----------------------|------------------------------------|--------------------|----------------|
| Project Name: | Building and Parking Lot Expansion | Project ID: | PL-000232-2018 |
| Address: | 90 Johnson Road | CBL: | 214A A001 001 |
| Applicant: | Transport Leasing Corporation | | |
| Planner: | Shukria Wiar | | |

Dear Mr. Sanborn:

On November 27, 2018, the Planning Board considered a site plan for an addition of approximately 22,000 SF to the existing building and associated parking of 175 parking spaces. The Planning Board reviewed the proposal for conformance with the standards of the Site Plan Ordinance. The Planning Board unanimously voted 6-0 (Whited absent) to approve the application with the following waiver and conditions as presented below:

A. Waivers

1. The Planning Board unanimously voted 6-0 (Whited absent) to waive the Site Plan Standard, Section (14-526 (a) (3)) Public Transit Access, requires a transit facility shall be constructed, to allow no new transit facility given the proximity of existing transit measures (two transit shelters are located less than ¼ mile from the site and the two transit shelters are located on the Jetport Boulevard sidewalk) to the development

B. Site Plan Review

The Planning Board unanimously voted 6-0 (Whited absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval:

TO BE MET PRIOR TO THE START OF SITE WORK:

1. That the applicant shall post a Performance Guarantee to cover the costs of the entire development improvements; and
2. Detectable Warning Panels on the exit only driveway on Johnson Road are not required by either by City standard or American with Disability Act (ADA) and shall be removed.

TO BE MET PRIOR TO APPLYING FOR A BUILDING PERMIT FOR THE BUILDING ADDITION:

3. That the applicant shall provide a traffic study and trip generation estimate for the full project. If the

analysis indicates an increase in traffic is generated in excess of 100 new peak hour trips, the applicant shall comply with all requirements of obtaining a Traffic Movement Permit, which includes Planning Board review; and

4. That the applicant shall advise the Planning Authority as to the floorspace and number of employees of the future building expansion. If the building expansion and use triggers a Transportation Demand Management Plan, then the applicant shall submit a TDM for review and approval; and
5. That the inbound bus stop shall be fully compliant with American with Disability Act (ADA) by ensuring a full 5' x 8' bus stop landing area at this location. The outbound bus stop on Johnson Road improvement shall be based on the conclusion of the Traffic Study and/or Traffic Movement Permit; and
6. That the applicant shall revise the final plans to provide a direct, bi-directional sidewalk connection to the development to be reviewed and approved by the Planning Authority; and
7. That the applicant shall formally close the driveway apron by the addition of curbing and loam/seeding the effect area as shown on the site plan. Any amendments to the driveway and access points are subject to review and approval as part of the traffic study; and
8. That the seven (7) Zelkova street trees on the landscaping plan shall be changed to 'Spring Snow' Crabapple due to the overhead utility lines and shown on the final plans; and

TO BE MET PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

9. That the all proposed lighting has be full cut off and the color temperature shall not be greater than 3000K. A revised lighting plan shall be submitted for review and approval by the Planning Authority; and
10. Confirmation of ability to serve water and sewer from PWD and DPS shall be forwarded to the Planning Authority; and
11. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines. The owner/operator of the approved stormwater management system, and all assigns. shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form, shall be submitted for review by Corporation Counsel. Once approved, the document shall be signed and recorded at the Cumberland County Registry of Deeds prior to the issuance of a building permit. Please submit final copies to both the Department of Planning and Urban Development and the Department of Public Works; and

PROJECT MONITORING:

12. If the building does not go forward with construction, the applicant will be required to remove sixteen of the existing parking spaces at the 90 Johnson Street site. The performance guarantee shall provide a cost estimate and sufficient funds for the pavement removal; and
13. The parking lot is accessory to the uses on the site and shall not be utilize by other entities, such as the Portland Jetport.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application PL-000232-2018 which is attached.

Standard Conditions of Approval

Please Note: The following standard conditions of approval and requirements apply to 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 Permitting and Inspections Department.
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 and Urban Development Department and Public Works 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 Works 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. Construction Management Plans The applicant, contractor and subcontractors are required to conform to the approved Construction Management Plan, and all conditions contained within the project's approval, for the entire duration of the project. Any amendments to the approved Construction Management Plan shall be reviewed and approved by the Department of Public Works prior to the execution. The Planning Authority and the Department of Public Works have the right to seek revisions to an approved Construction Management Plan. The applicant shall coordinate the project's construction schedule with the timing of nearby construction activities to avoid cumulative impacts on a neighborhood and prevent unsafe vehicle and pedestrian movements. Accordingly, nearby construction activities could involve a delay in the commencement of construction.
8. Department of Public Works Permits If work or obstructions will occur within the public right-of-way, such as utilities, curb, sidewalk, driveway construction, site deliveries and equipment siting, a Street Opening and/or Occupancy Permit (s) is required for your site. Please contact the Department of

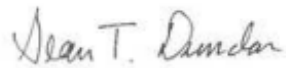
Public Works Permit Clerk at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

9. As-Built Final Plans Final sets of as-built plans shall be submitted digitally to the Planning and Urban Development Department, 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 and Urban Development Department 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 Shukria Wiar at (207) 756-8083 or via shukriaw@portlandmaine.gov

Sincerely,



Sean Dundon, Chair
Portland Planning Board

Attachments:

1. Planning Board Report
2. Sample Stormwater Maintenance Agreement
3. Performance Guarantee Packet



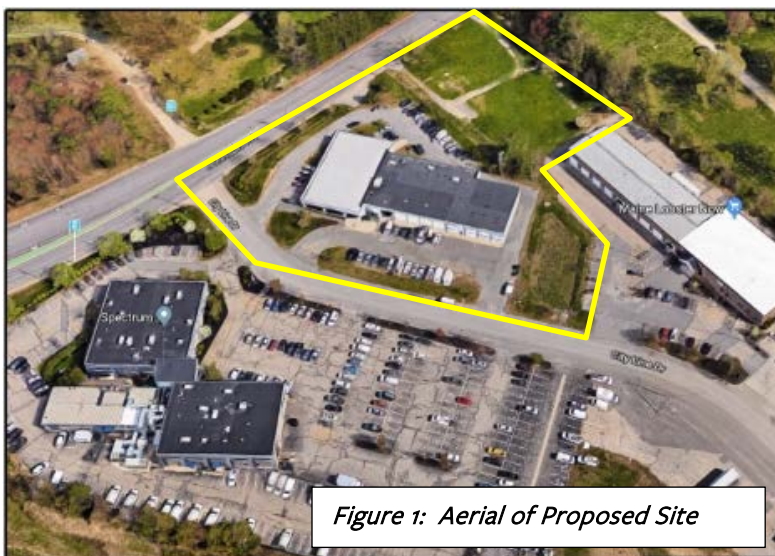
PLANNING BOARD REPORT PORTLAND, MAINE

Building and Parking Lot Expansion
90 Johnson Road
Level III Site Plan
PL-000232-2018
Transport Leasing Corporation, Applicant

| | |
|--|--|
| Submitted to: Portland Planning Board: Public Hearing Date: November 27, 2018 | Prepared by: Shukria Wiar Date: November 21, 2018 |
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I. INTRODUCTION

Transport Leasing Corporation appears before the board for a public hearing on the development of an addition to the Charter Communication building and associated parking lot on a 2.66-acre site at 90 Johnson Road. Under the current proposal, the existing 17,482 SF office/warehouse building would be expanded with an addition of approximately 22,000 SF. The site is in the B4 Commercial Business Zone. Currently, the building space is used for both office and warehouse functions and according to the application, Charter Communication will continue these programs. The applicant's intention is to lease the new space to another office user. The development is no longer proposed in two phases.



The applicant requested a review and the Planning Board considered the preliminary submission at a Planning Board workshop on October 9th, 2018. This proposal is being reviewed as a final plan and subject to the Site Plan Ordinance of Land Use Code.

A total of 33 notices were sent to property owners within 500 feet of the site and a legal ad ran in the *Portland Press Herald* on November 5th and 6th, 2018.

II. REQUIRED REVIEWS

| <i>Waiver Requests</i> | <i>Applicable Standards</i> |
|---|---|
| Public Transit Access- A waiver is requested given the proximity of existing transit measures to the development. Two transit shelters are located less than ¼ mile from the site and the two transit shelters are located on the Jetport Boulevard sidewalk. | 14-526 Site Plan Standards (a) Transportation Standards (3) Public Transit Access |
| <i>Review</i> | <i>Applicable Standards</i> |
| Site Plan | <i>Section 14-526</i> |
| Subdivision | <i>Section 14-497</i> |

III. PROJECT DATA

| | |
|-----------------|----------------------|
| Existing Zoning | B-4 |
| Existing Use | Office and Warehouse |
| Proposed Use | Office and Warehouse |
| Parcel Size | 2.66 acres |

| | <i>Existing</i> | <i>Proposed</i> | <i>Net Change</i> |
|---------------------------|-----------------|-----------------|-------------------|
| Impervious Area | 55,329 SF | 98,072 SF | 42,743 SF |
| Building Footprint | 17,842 SF | 39,546 SF | 21,704 SF |
| Building Floor Area | 24,249 SF | 42,511 SF | 18,262 SF |
| Parking Spaces – Provided | 42 | 175 | |
| Parking Spaces – Required | 96 | | |
| Bicycle Parking Spaces | 0 | 10 | 10 |
| Estimated Cost of Project | \$3,900,000 | | |

IV. BACKGROUND & EXISTING CONDITIONS

The project site, located at 90 Johnson Road, is approximately 2.67 acres and is comprised of two properties (1.68 and 0.99 acres respectively). The existing 20,260 SF single story building houses Charter Communications. The site has four access drives (at the two properties) with a total of forty-two (42) parking spaces. The site has frontage on Johnson Road and access on City Line Drive, which is a private roadway. The adjacent property at 68 Johnson Road was historically occupied by a single-family home but has since been demolished and the property is a grassed lot. Commercial uses abut the site on the southwest and cemeteries on both to the northeast and across Johnson Road.

At the October workshop, the Planning Board members had a number of concerns to be addressed in the final submission and staff has worked with the applicant to address these concerns:

- Development Buildout: Planning Board members were concerned that if Phase II (the building portion) does not go forward, what happens to the project/site?

Staff Comments: The applicant is no longer phasing the project. The revised plan shows a single development, please refer to the Applicant’s Attorney Matt Manahan letter, Attachment 6. City staff has recommended that if for some reason the building construction does not move forward, then portions of the existing parking lot be removed. The applicant has stated in their cover letter dated October 12th, 2018:

Unless otherwise approved by the Planning Authority the applicant will agree to eliminate 16 parking spaces and 5,870 SF of impervious area from the existing parking surrounding the 90 Johnson Road building. The resultant parking supply will be 94 spaces.

- Landscaping- there needs to be more landscaping on and round around the site.

Staff Comments: The Planning Board members wanted to see a larger green space between the proposed parking and the back of the existing Johnson Road sidewalk. In order to accomplish this, the applicant has eliminated sixteen (16) of the perpendicular parking spaces and replaced with five parallel spaces. The revision generated a minimum 10’ pavement setback from the right of way line for a total of approximately twenty-three feet (23’) of landscaped area. The landscaping plan has been modified to provide five deciduous shades trees and twenty (20) small shrubs to match the currently landscaping now existing along the street frontage of 90 Johnson Road.

- Total Number of Parking Spaces: Justification why the applicant needs all the proposed parking spaces.

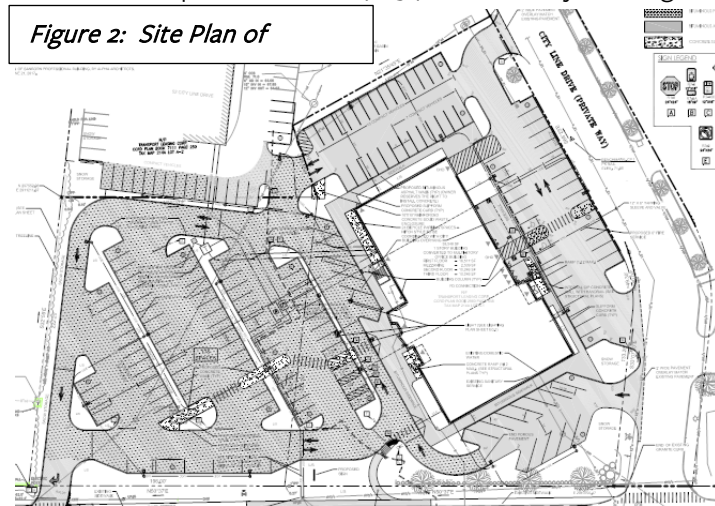
Staff Comments: The existing site has forty-two (42) parking spaces for the existing tenant, Charter Communication and the parking requirement per zoning is 46 spaces. The applicant states that eight-nine (89) spaces are needed for the existing businesses/uses on this site. The proposed building expansion requires ninety-six (96) spaces under zoning, but the applicant states a total of 175 parking spaces are the projected need for the uses. According to the applicant, the need for the larger amount is:

Periods when existing and new fleet vehicles arrive for servicing, new equipment fit ups, and training periods. They may have 80-100 additional vehicles at the site at which time the combined parking demand is at the capacity of the existing supply.

Personnel Training Periods - training may involve additional staff visiting the site for extended periods.

V. PROPOSED DEVELOPMENT

The applicant has now revised the applicant to a full development scheme. The proposed development project includes the expansion of the 17,234 SF one-story building to include a 1,574 SF addition on the first floor and the



construction of second and third floor with 10,245 + SF on each level for a total of 20,490 SF. Vehicular access and circulation are proposed from City Line Drive and a right-turn egress only from Johnson Road. A total of 175 spaces will be provided for the project, of which six will be handicapped spaces. This will provide a ratio of six spaces per 1,000 SF of office space. The new parking area will be constructed prior to the building addition and consist primarily of porous asphalt pavement. The applicant is no longer proposing utilizing the parking lot for Jetport parking as an interim use.

The site plan shows a right turn exit only driveway, which is located within an existing curb opening that served the former residence at the property. The plan has been revised to show two of the driveways to be closed and introducing an internal circulation with access to the driveways on City Line Drive. The applicant is proposing to improve to the existing driveway with a sidewalk and curbing.

The applicant wants to have a tenant secured before submitting a traffic study. The applicant is seeking to conduct the traffic impact study once the tenant is known. This would allow them to project traffic demands, evaluate the Johnson Road access conditions, including potential adjustments to the existing median, the City Line Drive connection/operations, and the Jetport Boulevard signalized intersection. A site plan approval can be extended up to three (3) years from the date of approval and construction of the building would need to commence within that time frame to retain approvals. This approach for the traffic study may require the applicant to return to the Board for an amendment.



Figure 3: Aerial of Proposed

VI. PUBLIC COMMENT

Staff has not received any public comments on this application.

VII. RIGHT, TITLE, & INTEREST

The applicant has provided a release deed (Attachment I), recorded at the Cumberland County Registry of Deeds (Book 34653 Page 201), which demonstrates their right, title and interest in the property.

The estimated cost of the development is \$ 3,900,000. The applicant has submitted a letter from Bangor Savings Bank, dated June 14, 2018 as demonstration of their financial and technical capacity to complete the proposed development.

VIII. ZONING ANALYSIS

The Planning staff performed a zoning review of the site development and the proposal meets the dimensional requirements of the B-4 zone. In addition, the applicant has addressed how the proposal meets the zoning requirements of Section 14-229.14 and Sec. 14-229.5 (Attachment R). Ann Machado, Zoning Administrator, has reviewed the project and in her memo (Attachment 3) she addresses the uses and the parking requirement on this site, as well as Attorney Manahan's letter. Based on Ms. Machado, the parking requirement for the development is the following:

Section 14-332(j) requires one parking space for each 400 square feet, or major fraction thereof, of floor area used for offices. Section 14-332(i) requires one parking space for each 1,000 square feet of floor area, or major fraction thereof, for industrial use if the area is over 3,000 square feet.

Based on the Parking Analysis dated October 12, 2018 from Stephen Bushey, the proposed warehouse area is 6463 sf, the proposed office area is 30633 sf, and the proposed common area is 5283 sf. Since section 14-332(j) includes all area associated with the office use, I have combined the office space and common space figures provided for a total of 35916 sf of office space. Under zoning, the warehouse space requires 6 parking spaces (6463/1000) and the office space requires 90 parking spaces (35916/400). The total number of parking spaces required by zoning is 96. The proposed 175 parking spaces exceeds the parking requirement outlined in section 14-332 for the proposed uses.

IX. SITE PLAN STANDARDS (Section 14-526)

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's site plan ordinance and applicable regulations. Staff comments are listed below.

1. Transportation Standards

a. Impact on Surrounding Street Systems

The Applicant is required to conduct a traffic impact study for this project. Tom Errico, Consultant Traffic Engineer has reviewed the project and has the following comments in regard to traffic study:

The Applicant will be required to conduct a traffic impact study for the project. The key issue to be evaluated is the creation of a full movement driveway on Johnson Road, which has historically experienced safety problems. I would suggest that we schedule a meeting to identify the specific scope of the study.

Status: The Applicant is suggesting that the traffic study be conducted at the time of Phase 2 (or when a tenant for the building expansion is identified). I continue to review this suggested condition, but as noted in comments below, I am concerned about access conditions on Johnson Road.

Status: A traffic study is required and shall be provided prior to issuance of a building permit. This should be noted as a Condition of Approval.

The applicant has revised the plans to eliminate the second existing curb cut on Johnson Road, therefore addressing transportation concerns about the access and safety. According to the applicant, the project is expected to have an insignificant impact on traffic in the neighborhood, based on the limited intensity of use of building. Vehicle and loading circulation to the building are shown on the plan. The applicant states in their cover letter dated November 13, 2018, that “*a traffic study, and if necessary, Traffic Movement Permit, will be a condition of any approval and said Study or TMP, may require at a minimum, Staff review and if necessary, Planning Board Approval. These approvals may be linked to the issuance of a building permit or Certificate of Occupancy, which is to be determined by the Planning authority*”.

b. Access and Circulation

There are three existing curb cuts on Johnson Road to the proposed site: two curb cuts to 68 Johnson Road and a curb cut that has been closed off to 90 Johnson Road (south). Revised plans have been submitted that show a single right-turn only exit drive on Johnson Road and will utilize the two full driveways on City Line Drive, the circulation will all be internal. The existing Johnson Road (south) curb opening will be eliminated by removing the existing paved apron and radial curbing and this will be replaced with curbing and sidewalk. The applicant wants to reserve the right to reconsider this driveway for future traffic circulation. Mr. Errico has reviewed the access and circulation on site and finds them acceptable. He recommends “*that a Condition of Approval regarding formal closure (curbing/loam/seeding) of the driveway apron be required. Final driveway conditions may be modified following the preparation of the traffic study*”.

Mr. Hyman has reviewed the access and circulation (Attachment 7), and recommends the following:

For the final condition once the office building expansion takes place, a more direct, bi-directional sidewalk connection is to be designed.

Detectable Warning Panels on the exit only driveway on Johnson Road are not required by ADA. If they are installed by the applicant, they are to meet the city's current standard of Cast Iron with a 4" concrete border. If not, the plans are to be revised; if they are used; a note or detail indicating the use of cast iron is to be provided.

c. Public Transit Access

This standard requires that “commercial or institutional development of at least 20,000 square feet gross floor area, a transit facility shall be constructed”. The applicant has requested a waiver of this standard, under the waiver criteria:

All or some of this standard may be waived if the Reviewing Authority determines one or more of the following: (i) That some or all of the required improvements cannot reasonably be made due to site constraints and/or insufficient right of way width; or (ii) That the development is not anticipated to generate public transit usage due to particular characteristics or proposed use of the development.

The applicant states a “waiver is requested given the proximity of existing transit measures to the development. Two transit shelters are located less than ¼ mile from the site and the two transit shelters are located on the Jetport Boulevard sidewalk”. City staff recommends the waiver as long as improvements are made to the existing bus stops. Bruce Hyman, Transportation Manager, offers the following comments:

Due to the site plan not extending to show the vicinity of the existing bus stop on City Line Drive and Jetport Blvd, I would like an explicit Condition of Approval to be that the applicant will make the inbound bus stop fully ADA-compliant by ensuring a full 5' x 8' bus stop landing

area is provided at this location. This was a previous comment. Improvements to the outbound bus stop on Johnson Road are to be pending the outcome of the Traffic Study and/o Traffic Movement Permit.

d. Parking

A total of 175 spaces will be provided for the entire development, of which six will be handicapped spaces. The proposed building expansion requires ninety-six (96) spaces under zoning, but the applicant states a total of 175 parking spaces are needed. Section 14-526 (a)(4)(a)(iii) state:

Developments proposing to exceed minimum parking requirements by 10% or more must demonstrate through a parking analysis that the amount of parking is appropriate for the proposed use of the site.

According to the applicant, the need for the larger amount is:

Periods when existing and new fleet vehicles arrive for servicing, new equipment fit ups, and training periods. They may have 80-100 additional vehicles at the site at which time the combined parking demand is at the capacity of the existing supply. Personnel Training Periods - training may involve additional staff visiting the site for extended periods.

The parking lot will be constructed as a porous pavement surface, like the Dept of Human Services site nearby, and the drainage associated with the lot will ultimately flow into the Johnson Road storm drain system that ultimately discharges to the Stroudwater River, off Congress Street east of the site.

e. Transportation Demand Management (TDM)

According to the applicant, they are open to preparing a full traffic study and if necessary, a Traffic Movement Permit, once a tenant user is identified and in advance of the applicant seeking a building permit. Based on the application, the development does not need a Transportation Demand Management (TDM) as proposed. If the floorspace of the future building expansion brings the total to 50,000 SF or above, or if the uses are designed to accommodate 100 or more employees, a TDM plan will be required and submitted for review and approval prior to the issuance of a building permit. The applicant is aware that this may require reappearing before the Planning Board and aware that the City may revisit access conditions Johnson Road and City Line Drive at that time.

2. Environmental Quality Standards

a. Preservation of Significant Natural Features

There are no known existing heritage trees or significant natural features on the site.

b. Landscaping and Landscape Preservation

The preliminary plan had sixteen (16) perpendicular parking spaces located adjacent the City's right of way line. The Planning Board recommended a larger green space be created between the proposed parking and the back of the existing Johnson Road sidewalk. In order to accomplish this, the applicant has eliminated the perpendicular parking spaces and replaced with five parallel spaces. The outcome will generate a minimum 10' pavement setback from the right of way line for a total of approximately twenty-three feet (23') of landscape. The landscaping plan has been modified to provide five deciduous shades trees and twenty (20) small shrubs to match the existing landscaping now existing along the street frontage of the 90 Johnson Road site. Jeff Tarling, City Arborist, has reviewed the landscaping plan and recommends that the applicant:

...change the (7) Zelkova street trees to 'Springsnow' Crabapple due to the overhead utility lines. 'Spring Snow' are fruitless crabapples and should work well in this location.

c. Water Quality, Storm Water Management and Erosion Control

The proposed development includes the renovations and expansion of the existing Spectrum office/warehouse building. The existing building will be renovated including a vertical expansion to go from one story to three stories. The existing parking area and drive will also be redeveloped into a more functional layout for the expanded use. The undeveloped grassed lot at 68 Johnson Road will include new development of a parking area and associated stormwater management and landscaping. A total of 175 parking spaces are proposed as part of the entire development. Stormwater management will primarily be in the form of porous pavement within the new parking area. The porous pavement will be similar to the porous pavement installed at the nearby State of Maine DHHS building off the Jetport Boulevard.

The proposed porous asphalt parking area will consist of materials that will provide both water quality treatment and stormwater runoff storage and control. Drainage patterns in the existing parking areas will remain basically unchanged. The new parking area will drain runoff to an existing municipal drainage system in Johnson Road, which ultimately conveys runoff northerly along Johnson Road and Congress Street to a culvert outlet located on Congress Street, opposite the cemetery entrance. From this point a natural drainage tributary conveys any water to the Stroudwater River and ultimately the Fore River.

Lauren Swett, Consultant Civil Engineer, reviewed the stormwater management study and plans, and finds it acceptable (Attachment 2).

3. Public Infrastructure and Community Safety Standards

a. Consistency with Master Plans

The project has been designed to be consistent with the City's Zoning Ordinance and off-site infrastructure plans.

b. Public Safety and Fire Prevention

There seems to be adequate access to all four sides of the proposed building. Chief Robert Thompson, Fire Department, has reviewed the project and finds it acceptable.

c. Availability and Adequate Capacity of Public Utilities

There are existing electrical water, sewer, and gas services to the property from mains located in the abutting streets. The expansion will involve the installation of a sprinkler system to the building which involves a new fire supply water main off the PWD main in City Line drive. The existing building has a sanitary sewer service and the flows from the site ultimately discharge to the South Portland municipal wastewater collection, conveyance and treatment systems, per an inter-municipal agreement. The applicant has contacted all governing utility agencies and the ability to serve letters will need to be forwarded to the planning office upon receipt but prior to the issuance of a building permit for the addition.

4. Site Design Standards

a. Massing, Ventilation and Wind Impact

The height of the proposed addition is 57'-5" which is within the allowed height standards of 65'. The project will not result in any significant changes to the wind environment. The site is located near an airport and a cemetery. The adjoining development lots are owned by the applicant. There are no nearby developed lots that may be negatively impacted. According to the applicant, if HVAC venting is proposed, it will be directed through rooftop units and will not impact any adjacent public spaces.

b. Shadows

This standard does not apply since the building is not located near publicly accessible open space.

c. Snow and Ice Loading

The site and utility plan show designated snow and loading areas in the parking lot.

d. View Corridors

This standard does not apply since the development is not in a view corridor.

e. Historic Resources

The development is not located in a historic district, historic landscape district and is not a City designated landmark, and is not located adjacent to or within 100 feet of a designated landmark, historic district, or historic landscape district. There are no known archaeological resources on the site either.

f. Exterior Lighting

The applicant has submitted a lighting and photometric plan. The photometric plans show light pollution onto neighboring properties. There is light trespass at the property line onto the abutting parcel along the northly side and along Johnson Road. The lighting standard for light trespass is .1-foot candle at the property line and a light trespass of .4 to 3.7-foot candles is shown on the plan; therefore, the plan does not meet the light trespass standard. Since the property on northly side is a cemetery and there is no existing street lighting on Johnson Road, the light trespass is acceptable.

The majority of the proposed lighting fixtures meet the cut-off standards except the ParkPak fixture; that does not meet the full cut standard. In order for this to be a full cut off, the proposed fixture needs to be housed within the ceiling. All the LED fixtures proposed will have to be 3000K or less.

g. Noise and Vibration

All heating, ventilation and air conditioning equipment (HVAC), air handling units (AHU), emergency generators, and similar equipment will have to be shown on the plans and meet state and federal emissions requirements. These should be located to the interior of the site and be screened from view from any public street and from adjacent sites by structure walls, evergreen landscaping, fencing, masonry wall or a combination thereof. The project noise levels shall be designed to meet the permitted levels as outlined in the B4 Zone.

h. Signage and Wayfinding

The applicant has submitted a signage and wayfinding plan for review and staff finds it acceptable.

i. Zoning Related Design Standards

The site is located in the B4 zone and there are no specific design standards that apply to this development.

X. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed development.

XI. PLANNING BOARD MOTIONS

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on November 27, 2018 for application PL-000232-2018 relevant to Portland's technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board [**waives/does not waive**] the Site Plan standard (14-526 (a) (3)) Public Transit Access, requires a transit facility shall be constructed, to allow no new stransit facility given the proximity of

existing transit measures (two transit shelters are located less than ¼ mile from the site and the two transit shelters are located on the Jetport Boulevard sidewalk) to the development

B. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for the public hearing on November 27, 2018 for application PL-000232-2018 relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing that the Planning Board finds that the plan [is or is not] in conformance with the site plan standards of the land use code, subject to the following conditions:

TO BE MET PRIOR TO THE START OF SITE WORK:

1. That the applicant shall post a Performance Guarantee to cover the costs of the entire development improvements; and
2. Detectable Warning Panels on the exit only driveway on Johnson Road are not required by either by City standard or ADA and shall be removed.

TO BE MET PRIOR TO APPLYING FOR A BUILDING PERMIT FOR THE BUILDING ADDITION:

3. That the applicant shall provide a traffic study and trip generation estimate for the full project. If the analysis indicates an increase in traffic is generated in excess of 100 new peak hour trips, the applicant shall comply with all requirements of obtaining a Traffic Movement Permit, which includes Planning Board review; and
4. That the applicant shall advise the Planning Authority as to the floorspace and number of employees of the future building expansion. If the building expansion and use triggers a Transportation Demand Management Plan, then the applicant shall submit a TDM for review and approval; and
5. That the inbound bus stop shall be fully compliant with American with Disability Act (ADA) by ensuring a full 5' x 8' bus stop landing area at this location. The outbound bus stop on Johnson Road improvement shall be based on the conclusion of the Traffic Study and/or Traffic Movement Permit; and
6. That the applicant shall revise the final plans to provide a direct, bi-directional sidewalk connection to the development to be reviewed and approved by the Planning Authority; and
7. That the applicant shall formally close the driveway apron by the addition of curbing and loam/seeding the effect area as shown on the site plan. Any amendments to the driveway and access points are subject to review and approval as part of the traffic study; and
8. That the seven (7) Zelkova street trees on the landscaping plan shall be changed to 'Spring Snow' Crabapple due to the overhead utility lines and shown on the final plans; and

TO BE MET PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

9. That the all proposed lighting has be full cut off and the color temperature shall not be greater than 3000K. A revised lighting plan shall be submitted for review and approval by the Planning Authority; and
10. Confirmation of ability to serve water and sewer from PWD and DPS shall be forwarded to the Planning Authority; and

11. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines. The owner/operator of the approved stormwater management system, and all assigns. shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form, shall be submitted for review by Corporation Counsel. Once approved, the document shall be signed and recorded at the Cumberland County Registry of Deeds prior to the issuance of a building permit. Please submit final copies to both the Department of Planning and Urban Development and the Department of Public Works; and

PROJECT MONITORING:

12. If the building does not go forward with construction, the applicant will be required to remove sixteen of the existing parking spaces at the 90 Johnson Street site. The performance guarantee shall provide a cost estimate and sufficient funds for the pavement removal; and
13. The parking lot is accessory to the uses on the site and shall not be utilize by other entities, such as the Portland Jetport.

XII. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

1. Traffic Engineer review (memo from Thomas Errico, 11.20.2018)
2. Civil Engineer review (memo from Lauren Swett, 11.20.2018)
3. Zoning Administrator (memo from Ann Machado, 11.15.2018)
4. City Arborist (memo from Jeff Tarling, 11.20.2018)
5. Fire Department (memo from Robert Thompson, 11.20.2018)
6. Attorney Matt Manahan, dated 11.13.2018
7. Transportation Manager (memo from Bruce Hyman, 11.21.2018)

APPLICANT'S SUBMITTALS

- A. Cover Letter
- B. Level III Development Revie Application
- C. Certification Neighborhood Meeting
- D. Construction Management Plan July2018
- E. Environmental and Landscape Features
- F. Environmental and Stormwater
- G. Financial Capacity
- H. Public Infrastructure and Safety
- I. Right, Title, And Interest
- J. Site Design
- K. Stormwater Management Report
- L. Transportation
- M. Zoning Assessment
- N. Waiver Requests
- O. Wastewater Capacity Application
- P. Lor_1_Barhydt_20180904_Final
- Q. Lor_2_Barhydt_20180920_Final
- R. Lor_3_barhydt_20181012_final
- S. Lor_5_barhydt_20181025_final
- T. Lor_6_barhydt_20181029_final
- U. Lor_7_barhydt_20181113_final
- V. Letter from Paul Bradbury To Mark Sanborn 09.20.2018

- W. Elec cut sheets
- X. fire_checklist

PLANS

- Plan 1. c-1.0_cover sheet_general_notes_and_legend City Context Plan
- Plan 2. c-2.0_3RD Amend Subdiv. 06.11.2014
- Plan 3. c-2.1_existing_conditions_and_demolition_plan_phase1
- Plan 4. c-2.2_existing_conditions_and_demolition_plan_phase2
- Plan 5. c-3.1_site_layout_and_utility_plan_building_
- Plan 6. c-3.2_signage_and_wayfinding_plan
- Plan 7. c-3.3_construction_management_plan
- Plan 8. c-4.0a_grading_and_drainage_plan_initial_construction
- Plan 9. c-4.0b_grading_and_drainage_plan_building_phase
- Plan 10. c-4.1_stormwater_management_plan
- Plan 11. c-4.2_stormwater_management_plan_2of2
- Plan 12. c-5.0_erosion_control_plan_phase1
- Plan 13. c-5.1_erosion_control_plan_phase2
- Plan 14. c-7.1_landscape_plan_building_phase
- Plan 15. c-8.0_details
- Plan 16. c-9.0_details
- Plan 17. c-8.2_details
- Plan 18. c-10.0_erosion_and_sediment_control_notes
- Plan 19. c-11.0_pre-development_watershed_plan
- Plan 20. c-12.0_post-development_watershed_plan
- Plan 21. e-0.1
- Plan 22. e-0.2
- Plan 23. e-1.1
- Plan 24. e-1.2
- Plan 25. e-1.3
- Plan 26. arch plans

**STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT**

For SITE PLANS (THAT ARE NOT SUBDIVISIONS)

IN CONSIDERATION OF the site plan approval granted by the Planning Board/Planning Authority of the City of Portland to the proposed _____ (*name of development and project number*), and the associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit A) submitted by _____, prepared by _____ (*engineer/agent*) of _____ (address) dated _____, and pursuant to a condition thereof, _____ (*name of owner*) a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of _____, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

That it, its successors and assigns, will, at its own cost and expense and at all times in perpetuity, maintain in good repair and in proper working order the _____ (*details of the system such as underdrained subsurface sand filter BMP system, rain gardens, storm drain pipes, underdrain pipes, catch basins*), (hereinafter collectively referred to as the “stormwater system”), as shown on the _____ Plan in Exhibit A and in strict compliance with the approved Stormwater Maintenance and Inspection Agreement (*insert correct name of document*) prepared for the Owner by _____ (copy attached at Exhibit B) and Chapter 32 of the Portland City Code.

Owner of the subject premises further agrees, at its own cost, to keep a Stormwater Maintenance Log. Such log shall be made available for inspection by the City of Portland upon reasonable notice and request.

Said agreement is for the benefit of the said City of Portland and all persons in lawful possession of said premises and abutters thereto; further, that the said City of Portland and said persons in lawful possession may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further, that after giving the Owner written notice and a stated time to perform, the said City of Portland, by its authorized agents or representatives, may, but is not obligated to, enter upon said premises to maintain, repair, or replace said stormwater system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the Owner upon written demand. Any funds owed to the City under this paragraph shall be secured by a lien on the property.

This Agreement shall also not be construed to allow any change or deviation from the requirements of the site plan most recently and formally approved by the Planning Board/Planning Authority of the City of Portland.

This agreement shall bind the undersigned only so long as it retains any interest in said premises, and shall run with the land and be binding upon the Owner's successors and assigns as their interests may from time to time appear.

The Owner agrees to record a copy of this Agreement in the Cumberland County Registry of Deeds within thirty (30) days of final execution of this Agreement. The Owner further agrees to provide a copy of this Agreement to any Condominium Association or management company, and to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions and the successor or assign will obtain and forward to the City's Department of Public Services and Department of Planning and Urban Development a similar Addendum from any other successor or assign.

For the purpose of this agreement and release "Owner" is any person or entity who is a successor or assign and has a legal interest in part, or all, of the real estate and any building. The real estate shown by chart, block and lot number in the records on file in the City Assessor's office shall constitute "the property" that may be entered by the City and liened if the City is not paid all of its costs and charges following the mailing of a written demand for payment to the owner pursuant to the process and with the same force and effect as that established by 36 M.R.S.A. §§ 942 and 943 for real estate tax liens.

Any written notices or demands required by the agreement shall be complete on the date the notice is attached to one or more doors providing entry to any buildings and mailed by certified mail, return receipt requested or ordinary mail or both to the owner of record as shown on the tax roles on file in the City Assessor's Office.

If the property has more than one owner on the tax rolls, service shall be complete by mailing it to only the first listed owner. The failure to receive any written notice required by this agreement shall not prevent the City from entering the property and performing maintenance or repairs on the stormwater system, or any component thereof, or liening it or create a cause of action against the City.

Dated at Portland, Maine this _____ day of _____, 2014.

(name of company)

(representative of owner, name and title)

STATE OF MAINE
CUMBERLAND, ss.

Date: _____

Personally appeared the above-named _____ *(name and title)*, and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

Notary Public/Attorney at Law

Print name: _____

Exhibit A: Approved Grading and Drainage Plan *(name of the plan showing the Stormwater System in detail)*

Exhibit B: Approved Stormwater Maintenance and Inspection Agreement

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP

Director, Planning & Urban Development Department

Performance Guarantee, Inspection Fee, and Infrastructure Financial Contribution Packet

A. Site Plan/Subdivision Performance Guarantees Required

Portland's Land Use Code requires all developers with approved site plan and/or subdivision applications to submit a performance guarantee to the City prior to the start of any construction or site improvements. The performance guarantee represents 100% of the total cost of site improvements, as determined by the City. The code further requires developers to pay an inspection fee of 2% of the performance guarantee amount to the City for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications. (Portland's Land Use Code, Sections 14-501 and 14-530)

B. Cost Estimate Form and Inspection Fee

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. Please submit an itemized cost estimate form to determine the detailed costs of both public and private site improvements to the Planning Division for review and approval. The cost estimate form is included as [Attachment 1](#). The approved amount on the Cost Estimate form is the amount to be covered by the performance guarantee and is the basis for calculating the 2% inspection fee.

C. Acceptable Types of Performance Guarantees

The accepted forms of a performance guarantee, covering the amount approved on the Cost Estimate form, must be one of the following options consistent with the attached templates, with **NO** exceptions:

1. A letter of credit from a bank/credit union (Attachment 2)
2. A deposit into a bank-held escrow account (Attachment 3)
3. A deposit into a City-held escrow account (Attachment 4)

NOTE: No land use application of any kind shall be processed, reviewed or issued, no signed subdivision plat shall be released or recorded, and no building permit of any kind shall be issued unless all fees have been paid and every aspect of the proposed development is in compliance with City Codes as determined by the Development Review Coordinator in the Planning Division.

The developer is eligible to receive up to three reductions from the performance guarantee in a calendar year equal to the estimated cost of the completed improvements. In no case, however, shall any performance guarantee be reduced 1) in any line item where improvements remain to be completed; or 2) to a value which is less than the estimated cost of completing all remaining required improvements; or 3) to a value less than 10% of the Performance Guarantee.

At the conclusion of the project, the City will release 90% of the performance guarantee after the Development Review Coordinator determines that site improvements have been satisfactorily completed at the time of the final inspection. The City will then retain a 10% defect guarantee to cover the workmanship and durability of materials used in construction. The defect guarantee will be released one (1) year from date of acceptance, subject to the Development Review Coordinator inspecting the site and finding it in compliance with the approved site plan.

D. Housing Replacement Performance Guarantees

For those projects that are subject to Portland's Housing Preservation and Replacement Ordinance (Section 24-483) and have an approved plan, then a performance guarantee is required for housing replacement. An owner or developer must post a performance guarantee in the form of a letter of credit in the amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Fund, if the applicant had chosen that option. The guarantee shall be valid for no more than three years, after which the full amount shall be provided to the City's Housing Trust Fund, if replacement units meeting the code do not have certificates of occupancy. The guarantee can be released upon the issuance of a certificate of occupancy for the replacement units. A suggested template for a Housing Replacement Performance Guarantee is included as Attachment 5.

E. Infrastructure Accounts

Contributions to infrastructure accounts may be required as part of the conditions of site plan approval. The contributions must be submitted prior to the issuance of any permits, unless stated otherwise in the approval. The form for submitted required contributions is included as Attachment 6.

F. Administrative Process for Submitting Performance Guarantee

- **Step 1 - Cost Estimate**
Submit completed cost estimate form to Planning Division for review and approval. Once approved, use this total amount as the performance guarantee amount in Step 2.
- **Step 2 - Performance Guarantee**
Complete a draft of 1 of the 3 attached performance guarantee templates, inputting project specific information into blank and bracketed areas, and submit to the Planning Division for final approval. Once staff approved the draft, the applicant shall submit the official signed original performance guarantee document, which for option 1) or 2) must be on Bank/Credit Union letterhead with original signatures.
- **Step 3 - Submit Performance Guarantee, Inspection Fee, and Infrastructure Contributions**
Submit the final original Performance Guarantee, the required inspection fee, and any infrastructure contributions to the Planning Division. The Planning Division will confirm that the final documents are accurate and acceptable.
- **Step 4 - Release of Recording Plat and Permits**
Only after the performance guarantee is issued, fees paid, and all other conditions of site plan approval and compliance are met, will the recording plat be released for recording at the Cumberland County Registry of Deeds and/or City permits issued.

Contact: Please email the cost estimate form to jdealaman@portlandmaine.gov

After the cost estimate is approved, all subsequent paperwork can be submitted by mail to 389 Congress Street, 4th Floor, Portland, ME 04101, Attn: James Dealaman.

Please call 207-874-8721 with any questions.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Escrow Form with the City of Portland
5. Housing Replacement Performance Guarantee Form
6. Infrastructure Financial Contribution Form with the City of Portland

| | | | | | | |
|---|-------|-------|-------|-------|-------|-------|
| 6. SITE LIGHTING | _____ | _____ | _____ | _____ | _____ | _____ |
| 7. EROSION CONTROL | | | | | | |
| Silt Fence | _____ | _____ | _____ | _____ | _____ | _____ |
| Check Dams | _____ | _____ | _____ | _____ | _____ | _____ |
| Pipe Inlet/Outlet Protection | _____ | _____ | _____ | _____ | _____ | _____ |
| Level Lip Spreader | _____ | _____ | _____ | _____ | _____ | _____ |
| Slope Stabilization | _____ | _____ | _____ | _____ | _____ | _____ |
| Geotextile | _____ | _____ | _____ | _____ | _____ | _____ |
| Hay Bale Barriers | _____ | _____ | _____ | _____ | _____ | _____ |
| Catch Basin Inlet Protection | _____ | _____ | _____ | _____ | _____ | _____ |
| 8. RECREATION AND OPEN SPACE AMENITIES | _____ | _____ | _____ | _____ | _____ | _____ |
| 9. LANDSCAPING (Attach breakdown of the quantities of plant material and unit costs) | _____ | _____ | _____ | _____ | _____ | _____ |
| 10. MISCELLANEOUS | _____ | _____ | _____ | _____ | _____ | _____ |
| TOTAL: | _____ | _____ | _____ | _____ | _____ | _____ |
| GRAND TOTAL: | _____ | _____ | _____ | _____ | _____ | _____ |

INSPECTION FEE (to be filled out by the City)

| | PUBLIC | PRIVATE | TOTAL |
|----------------------------|---------------|----------------|--------------|
| A: 2.0% of totals: | _____ | _____ | _____ |
| <u>or</u> | | | |
| B: Alternative Assessment: | _____ | _____ | _____ |
| Assessed by: | _____ | _____ | _____ |
| | (name) | (name) | |

TEMPLATE – PERFORMANCE GUARANTEE LETTER OF CREDIT

SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: [Insert: Name of Applicant]
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Applicant] (hereinafter referred to as “Applicant”), held for the exclusive benefit of the City of Portland, in the aggregate amount of [Insert: amount of original performance guarantee]. These funds represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/ or site plan], approved on [Insert: Date] and as required under the City of Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Applicant has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Applicant 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 Applicant has failed to notify the City for inspections.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the Bank, by written certification, to reduce the available amount of the escrowed money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this Letter of Credit that the expiration date be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank’s offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 530 and shall automatically expire one (1) year from the date of its creation (“Termination Date”).

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank’s offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]
[Title]
Its Duly Authorized Agent

TEMPLATE –ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT WITH FINANCIAL INSTITUTION
[ACCOUNT NUMBER]

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: [Insert: Name of Applicant]
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby certifies to the City of Portland that [Bank] will hold the sum of [Insert: amount of original performance guarantee] in an interest-bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/or site plan], approved on [Insert: date] as required under the Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by [Insert: Applicant].

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

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

1. the Applicant has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Applicant 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 Applicant has failed to notify the City for inspections.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the [Bank], by written certification, to reduce the available amount of the escrowed

money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Escrow Account will automatically expire on **[Insert date one year from the date of this Escrow Account]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this Escrow Account that the expiration date be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank’s offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Escrow Account No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance 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 shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 530 and shall automatically expire one (1) year from the date of its creation (“Termination Date”).

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank’s offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]
[Title]
Its Duly Authorized Agent

Seen and Agreed to: **[Applicant]**

By: _____

TEMPLATE - PERFORMANCE GUARANTEE ESCROW ACCOUNT
with the City of Portland

Applicant’s Tax Identification Number: _____

Applicant’s Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ [Applicant] for _____ [Insert
street/Project Name] at _____ [Address], Portland, Maine.

The City of Portland (hereinafter the “City”) will hold the sum of \$_____ [amount of performance
guarantee] on behalf of _____ [Applicant] in a noninterest bearing account
established with the City. This account shall represent the estimated cost of installing
_____ [insert: subdivision and/ or site improvements (as applicable)] as depicted
on the subdivision/site plan, approved on _____ [date] as required under the Portland Code of
Ordinances Chapter 14 §§ 501, 530and Chapter 25 §§46-65.

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 Applicant has failed to satisfactorily complete the work on the improvements contained within
the _____ [insert: subdivision and/ or site improvements (as applicable)]
approval, dated _____ [insert date]; or
2. the Applicant 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 Applicant 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 mail (restricted delivery to Brendan O’Connell,
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 City, 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, 530 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 [Insert date one years from the date of this performance
guarantee] (“Expiration Date”), or on the date when the City determines that all improvements guaranteed
by this Performance Guarantee are satisfactorily completed, whichever is later, provided that the expiration

date does not fall between October 30th and April 15th.

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 **[the applicant]**. 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 **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** 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 Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site plan]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

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

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Applicant.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ****Signature required if over \$50,000.00.

**TEMPLATE - PERFORMANCE GUARANTEE FOR
COMPLIANCE WITH HOUSING REPLACEMENT ORDINANCE**

Demolition and Housing Replacement
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]

[Insert Date]

Jeffrey Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: [Insert Project Address] Demolition and Housing Replacement

[Insert Name of Lender] (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of **[Insert Name of Applicant]** (“Applicants”), held for the exclusive benefit of the City of Portland (“City”), in the aggregate amount of **[Insert exact amount to be determined by the City]**. These funds represent the estimated cost of **[Insert Amount]** for the housing replacement fee applicable to the demolition of **[insert number of units demolished]** dwelling units if no replacement units are constructed, as approved on _____ (“**Demolition Approval**”) and as required under Portland Code of Ordinances Chapter 14-483(j).

In the event that Applicant fails to satisfy its housing replacement obligation, the City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, if any.

The housing replacement requirement shall be deemed satisfied upon the City’s issuance of a Certificate of Occupancy for **[insert number of units to be replaced]** dwelling units located in the City of Portland provided that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

After construction of each of the replacement units has been completed, the City, as provided in Chapter 14 of the Portland Code of Ordinances, may authorize the Bank, by written certification along with the return of the original of this Letter of Credit, to reduce the available amount of the escrowed money by the full amount of the Letter of Credit.

In the event of the Bank’s dishonor of the City of Portland’s sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this

Letter of Credit that the expiration date be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Brendan O'Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event that the Bank provides notice of its election to discontinue this Letter of Credit and Applicant has not satisfied its housing replacement obligation, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement signed by the Director of Planning and Urban Development, at Bank's offices located at Portland Maine stating that:

this drawing results from notification that the Bank has elected to discontinue its Letter of Credit No. _____.

Date: _____ By: _____

[Name]

[Title]

Its Duly Authorized Agent

**Contribution Form (Watershed, Tree, and Infrastructure Accounts)
Planning and Urban Development Department - Planning Division**

| | | | |
|-----------------------------|--|----------------------|--|
| Application ID: | | Planner: | |
| Project Name: | | Date of Form: | |
| Project Address: | | | |
| Applicant's Name: | | | |
| Applicant's Address: | | | |
| Project Description: | | | |

| TYPE OF CONTRIBUTION | Account # | Project Code | Funds Intended for: | Retained by City | Funds not Expended | Expiration Date: | Amount |
|----------------------|--------------------|--------------|---------------------|------------------|--------------------|------------------|--------|
| Infrastructure #1 | 710-0000-236-98-00 | | | | | | \$ |
| Infrastructure #2 | 710-0000-236-98-00 | | | | | | \$ |

| TYPE OF CONTRIBUTION | Account # | Project Code | Funds Intended for: | Amount |
|----------------------------|--------------------|--------------|---------------------|--------|
| Transportation Fund | 710-0000-238-01-00 | | | \$ |
| Infrastructure (Tree Fund) | 242-3100-341-00-00 | PR0045 | | \$ |
| Watershed (Nason's Brook) | 257-3100-327.10-00 | CFUP03 | | \$ |
| Watershed (Fallbrook) | 257-3100-327.10-00 | CFUP02 | | \$ |
| Watershed (Capisc Brook) | 257-3100-327.10-00 | CFUP01 | | \$ |

| | |
|----------------------|----|
| Total Amount: | \$ |
|----------------------|----|

* Funds not expended or encumbered by the expiration date, shall be returned to contributor within 6 months of said date.

* Office Use Only

FORM OF CONTRIBUTION: (Please check the applicable box below for an Infrastructure Account only)

| |
|--------------------------|
| Cash Contribution |
| Escrow Account |

Interest on funds to be paid to contributor only if project is not commenced.

The City shall periodically draw down funds from Public Works, which form shall specify use of City Account # as shown above.

Electronic Distribution:

Tiffany Mullen, Finance Department
 Joanna Coey, Principal Financial Officer, Recreation and Facilities Mgt.
 Stuart O'Brien, City Planning Director
 Barbara Barhydt, Development Review Services Manager, Planning Division
 Jeremiah Bartlett, Public Services Department
 Christopher Branch, Public Services Director

Philip DiPierro, Development Review Coordinator, Planning Division
 Katherine Earley, Engineer Services Manager, Public Services
 Michael Farmer, Project Engineer, Public Services Department
 David Margolis Pineo, Deputy City Engineer, Public Services Department
 Jeff Tarling, City Arborist, Public Services Department
 Planner for the Project