



Tuck O'Brien  
City Planning Director, Planning Division

January 22, 2018

Michael Lyne  
Developer's Collaborative  
100 Commercial Street, Suite 414  
Portland, ME 04101

Tom Greer, P.E.  
Pinkham and Greer, Civil Engineers  
28 Vannah Avenue  
Portland ME, 04103

**Project Name:** Reed School Redevelopment  
**Address:** 19 Libby Street  
**Applicant:** Michael Lyne  
**Planner:** Matthew Grooms

**Project ID:** 2017-234  
**CBL:** 338-K-004

Dear Mr. Lyne and Mr. Greer:

On January 22, 2018, the Planning Authority approved a Level I Site Alteration application for redevelopment of the Reed School site, including expansion of the existing parking area, installation of a playground, installation of a new stormwater system, and site landscaping. The decision is based upon the application, documents and plans as submitted. The proposal was reviewed for conformance with the standards of Portland's Site Plan Ordinance.

### Waivers

The Planning Authority waives the Site Plan Standard, Section 14-526(a)(2)(c)(i), which requires that all proposed developments provide a sidewalk along all frontages, to permit no public sidewalk along the property's Libby Street frontage.

### Stormwater Management Permit

Based upon the City of Portland's Delegated Review Authority, the Planning Authority approves the Stormwater Management Permit application, as submitted, subject to the following condition(s):

1. Storm Water Management Condition of Approval  
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.

### **Site Plan Review**

The Planning Authority finds that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

1. Applicant shall review entire site for ADA compliance and repair broken asphalt as needed to entire compliance. It is understood that the improvements along Homestead Avenue will be completed during the next phase of this project.
2. The ADA compliant entrance to this building will be the entrance by the parking lot, which serves as the main entrance generally. It is understood that subsequently mentioned conditions are to be completed during the next phase of this project. ADA compliant access to that entrance shall be provided by:
  - a. Repairing the sidewalk on Homestead in front of the building as needed; and
  - b. Providing a dedicated walkway from Homestead to the parking lot by either limiting vehicle access on the driveway to Homestead to emergency access only, or by providing a parallel walkway.
3. The applicant shall work with staff and METRO to resolve the best locations of bus stops along Forest Avenue to serve the site.
4. The applicant shall repair the fence along the property boundary as needed.
5. The City will look at the potential to complete the missing piece of sidewalk along Homestead Avenue just west of the site and asks for the applicant's support as necessary.

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 2017-234 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.

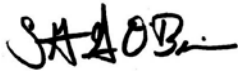
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Permitting and Inspections Department.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work 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 Matthew Grooms at (207) 874-8725

Sincerely,



Stuart G. O'Brien  
City Planning Director

Attachments:

1. Development Review Comments
2. Portland City Code: Chapter 32
3. Sample Stormwater Maintenance Agreement
4. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
Stuart G. O'Brien, City Planning Director, Planning and Urban Development  
Barbara Barhydt, Development Review Services Manager, Planning and Urban Development  
Matthew Grooms, Planner, Planning and Urban Development  
Philip DiPierro, DRC, Planning and Urban Development  
Mike Russell, Director of Permitting and Inspections  
Ann Machado, Zoning Administrator, Permitting and Inspections  
Jonathan Rioux, Deputy Director, Permitting and Inspections  
Jeanie Bourke, Plan Reviewer/CEO, Permitting and Inspections  
Chris Branch, Director of Public Works  
Keith Gray, Senior Engineer, Public Works  
Doug Roncarati, Stormwater Coordinator, Public Works  
Jane Ward, Engineering, Public Works

Rhonda Zazzara, Construction Engineering Coordinator, Public Works  
Jeff Tarling, City Arborist, Public Works  
Jeremiah Bartlett, Transportation Systems Engineer, Public Works  
William Scott, Chief Surveyor, Public Works  
Mike Thompson, Fire  
Danielle West-Chuhta, Corporation Counsel  
Jennifer Thompson, Corporation Counsel  
Victoria Volent, Housing Program Manager, Housing and Community Development  
Thomas Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard and Curran  
Christopher Huff, Assessor

# Planning and Urban Development Department Planning Division



December 1, 2017

Michael Lyne  
Developer's Collaborative  
100 Commercial St., Ste. 414  
Portland, ME 04101

Tom Greer, P.E.  
Pinkham and Greer Consulting  
Engineers  
28 Vannah Ave  
Portland, ME 04103

RE: Staff Review Comments for 19 Libby Street – Reed School Redevelopment (2017-234) –  
Planning Authority Review

Project Name:	Reed School Redevelopment	Project ID:	(2017-234)
Project Address:	19 Libby Street	CBL:	338-K-004
Applicant:	Michael Lyne		
Planner:	Matthew Grooms		

Dear Mr. Lyne and Mr. Greer,

Thank you for submitting a Level I Site Alteration application for the expansion of the existing parking area and installation of various additional site improvements including a fenced in playground and new stormwater filter system on property located at 19 Libby Street within the R-3 Residential Zone. This project is being reviewed as a preliminary plan subject to the following applicable Land Use Code provisions:

- Site Plan Ordinance, Article V
- Division 4, R-3 Residential Zone
- Division 20, Off-Street Parking Standards

## Final Plan for Planning Board Review: Staff Review Comments

### I. Site Design Standards

1. The applicant shall provide additional information regarding the proposed playground. Will this feature include pervious or impervious surface? Will neighborhood residents have access to the playground when the school is not in session?
2. The proposed site plan provides significantly more parking (75 spaces) than is required under Division 20, Off-Street Parking Standards. In regards to schools, The city's off-street parking standards require one (1) parking space per room utilized for instruction, which per the provided floor plan would equate to ten (10) required parking spaces. The proposed residential portion would require parking at a rate of two (2) parking spaces per unit, for a total requirement of twenty-six (26) parking spaces, including the sixteen (16)

for residential uses. The applicant's trip generation report appears to indicate an am peak trip generation of 75 trips, though not all of these trips correspond to required parking. Per Section 14-526(a)(4)(a)(iii), the applicant is required to provide a written justification for parking in excess of 10% beyond the required amount.

3. Will this project include any new site lighting? If so, lighting details and associated photometric plan should be provided.
4. How will on-site waste be managed? If exterior dumpster(s) are proposed, please identify location(s) and means of screening in compliance with the site plan ordinance.
5. Please note, this project is required to meet the city's parking lot landscaping standards, listed under Section 14-526(b)(2)(b)(ii). An updated landscaping plan demonstrating compliance with these standards shall be provided.
6. Evidence of Right, Title & Interest shall be provided.
7. The applicant shall provide a zoning assessment indicating compliance with applicable zoning standards under Division 4 (R-3 Residential) and Division 20 (Off-Street Parking Standards).

#### Proposed Conditions from Internal Discussion (12/01/2017)

1. Applicant shall review entire site for ADA compliance and repair broken asphalt as needed to entire compliance.
2. ADA compliant entrance will be the entrance by the parking lot, which serves as the main entrance generally. ADA compliant access to that entrance shall be provided by:
  - a. Repairing the sidewalk on Homestead in front of the building as needed;
  - b. Providing a dedicated walkway from Homestead to the parking lot by either limiting vehicle access on the driveway to Homestead to emergency access only, or by providing a parallel walkway; and
  - c. Providing physical separation between the parking lot and the walkway around the lot via provision of curb stops, curbing, or other similar method.
3. A separated walkway shall be provided from the parking lot to Libby Street, either along the driveway or across the green space.
4. Applicant agrees to work with staff and METRO to resolve the best locations of bus stops along Forest Avenue to serve the site.
5. Landscaping shall be added to the site based on the additional parking area provided, but the existing parking area shall be grandfathered;
6. Applicant shall repair the fence along the property boundary as needed.
7. The City will look at the potential to complete the missing piece of sidewalk along Homestead Avenue just west of the site and asks for the applicant's support as necessary.

#### **Additional Submittals Required:**

Please upload the digital plans and documents to address staff comments. Upon receipt of the revised material, the City of Portland will review the additional plans and information for conformance with applicable ordinances. Please be aware that an application expires within 120 days of the date upon which this written request for additional information was made and only *one set of revised plans* may be submitted for review. This is an Administrative Authorization and the Planning Authority will either approve, approve with conditions, or deny the final site plan.

If you have any questions, feel free to contact me at (207) 874-8725 or by email at mgrooms@portlandmaine.gov.

Sincerely,  
Matthew Grooms  
Planner

**Electronic Distribution:**

Tuck O'Brien, Planning Division Director  
Barbara Barhydt, Development Review Services  
Manager  
Jennifer Thompson, Associate Corporation  
Counsel  
Anne Machado, Zoning Administrator

Captain Keith Gautreau, Fire  
Keith Gray, DPW  
Jeff Tarling, City Arborist  
Tom Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard & Curran



## MEMORANDUM



**TO:** Matt Grooms, Planner  
**FROM:** Lauren Swett, P.E. and Amy LeBel, E.I.T.  
**DATE:** November 20, 2017  
**RE:** 19 Libby Street Peer Review, Level I Site Alteration

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Woodard & Curran has reviewed the Level I Site Alteration Development Review Application for the proposed Reed School Redevelopment project located at 19 Libby Street in Portland, Maine. The project involves demolition of the building addition, expansion of the parking lot, installation of a playground area and installation of a stormwater filter.

### Documents Reviewed by Woodard & Curran

- Level I Site Alteration Narrative and supporting documents, dated October 2, 2017, prepared by Pinkham & Greer Civil Engineers, on behalf of Developer's Collaborative.
- Engineering Plans, Sheets C1.0 - C1.1, C2.1, C3.0 - 3.1, dated October 2, 2017, prepared by Pinkham & Greer Civil Engineers, on behalf of Developer's Collaborative.
- Boundary Survey, dated August 23, 2017, prepared by Maine Survey Consultants, Inc., on behalf of Developer's Collaborative.
- Architectural Drawings, dated December 7, 2016, prepared by Archetype Architects, on behalf of Developer's Collaborative.

### Comments

- 1) In accordance with Section 5 of the City of Portland Technical Manual, a Level I development project is required to submit a stormwater management plan pursuant to the regulations of MaineDEP Chapter 500 Stormwater Management Rules, including conformance with the Basic, General, and Flooding Standards. We offer the following comments:
  - a) *Basic Standard:* Plans, notes, and details have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in accordance with Appendix A, B, & C of MaineDEP Chapter 500. The following comments should be addressed:
    - It appears that there may be a line-type issue for erosion control berm and silt fence on the erosion control plan. Clarify where the erosion control berm and silt fence are to be located.
  - b) *General Standard:* The project will result in an increase in impervious area of 7,429 square feet. The project is required to include stormwater management features for stormwater quality control. An infiltration soil filter is proposed. The following comments should be addressed:
    - Provide BMP sizing calculations for the infiltration soil filter.
    - Per Chapter 6 of the Maine Stormwater BMP Manual, pretreatment devices such as grassed swales, underdrained swales, filter strips, and sediment traps should be provided to minimize the discharge of sediment to an infiltration system. Provide a pre-treatment to collect sediment from paved area prior to entering soil filter and provide sizing calculations.
    - The only outlet to the stormwater system is exfiltration. An emergency spillway should be provided.
    - The grading at the southwest end of the stormwater system is not complete. A new "14" contour needs to be shown to provide continuous grading around the filter area, and a berm to protect the adjacent paved driveway. This will result in additional impact to existing vegetation in this area.
  - c) *Flooding Standard:* The project will result in an increase in impervious area of greater than 1,000 SF. As such, the project is required to include stormwater management features to control the rate or quantity of stormwater runoff from the site. The following comments should be addressed:



- The Applicant has noted that there will be no change in peak flow, but no calculations verifying this have been provided. Pre- and Post-development watershed maps and models should be provided.
- d) *Urban Impaired Stream Standard:* The project is located within the Capisic Brook Watershed, which is identified as an Urban Impaired Stream by the Maine DEP. Section 5 of the City of Portland Technical Manual requires that all development within the Capisic watershed, except single and two family homes, comply with the Urban Impaired Stream Standard pursuant to MaineDEP Chapter 500 Rules. Please provide calculations for the Compensation Fee or Mitigation Credit per the tables provided in Chapter 500 Rules and other associated Maine DEP regulations.
- 2) The plans should identify what the proposed ground cover is for the fenced playground area.
- 3) Snow storage areas should be provided, or a snow management plan should be described.



Matthew Grooms <mgrooms@portlandmaine.gov>

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## Re: Reed School Preliminary Comments, PEZ 2017.234

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**Bruce Hyman** <bhyman@portlandmaine.gov>

Tue, Nov 21, 2017 at 1:51 PM

To: Matthew Grooms <mgrooms@portlandmaine.gov>

Cc: "Swett, Lauren" <lszett@woodardcurran.com>, Jeff Tarling <jst@portlandmaine.gov>, Keith Gray <kgray@portlandmaine.gov>, Robert Thompson <rmt@portlandmaine.gov>

Good afternoon, Matt,

Below are my preliminary comments related to the Level 1 Site Alteration Application for the Reed School:

- The applicant should document the condition and ADA-compliance of all existing sidewalks and driveways within the public right of way and walkways and stairs internal to the site - several walkways appear to be in fair to poor condition. For instance, the site plan shows no reconstruction of the concrete walk internal to the site to the main building entrance from Homestead Ave despite its apparent poor condition (via Google Streetview).
- The site plan shows no pedestrian route from Libby Ave into the site and to building entrances, except presumably within the parking lot.
- The plan shows no sidewalk along Libby Street and the applicant does not request a waiver of the sidewalk requirement using the criteria for such a waiver.
- The parking lot layout from a traffic operations perspective appears acceptable. The applicant should document the number of spaces for handicapped parking, compact spaces and general parking required or allowed per the ordinance and/or a parking demand analysis and compare those figures to the supply of each type provided.
- The proposed 5' walkway along the perimeter of the parking lot is have some physical separation from the parking stalls (curb stops, raised curb, grassed/treed area, e.g.) to prevent encroachment of vehicles into the walkway. The width of this walkway may need to be expanded depending upon the means of separation selected; separation by paint only is not acceptable.
- The traffic memo appears to cover traffic issues acceptably but additional comments may be made.

I don't have any other comments at this time. Please don't hesitate to contact me if you or the applicant has any questions on the above.

Bruce

## CHAPTER 32 STORM WATER

**Art. I. Prohibited Discharges, §§ 32-1--32-15**

**Art. II. Prohibited Discharges, §§ 32-16--32-35**

**Art. III. Post-Construction Stormwater Management, §§32-36--32-40**

### ARTICLE I. IN GENERAL

#### Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

*Applicant.* "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

*Best management practices ("BMP").* "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*Clean Water Act.* "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

*Discharge.* "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

*Enforcement authority.* "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

*Exempt person or discharge.* "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine

department of transportation and the Maine turnpike authority municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

*Municipality.* "Municipality" means the city of Portland.

*Municipal separate storm sewer system, or MS4.* "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

*National pollutant discharge elimination system (NPDES) storm water discharge permit.* "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-storm water discharge.* "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

*Person.* "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

*Pollutant.* "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

*Post-construction stormwater management plan.* "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and

*Premises.* "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

*Qualified post-construction stormwater inspector.* "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

*Regulated small MS4.* "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

*Small municipal separate storm sewer system, or small MS4.* "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

*Storm drainage system.* "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

*Storm water.* "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

*Urbanized area ("UA").* "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-2.       Reserved.**  
**Sec. 32-3.       Reserved.**

<b>Sec. 32-4.</b>	<b>Reserved.</b>
<b>Sec. 32-5.</b>	<b>Reserved.</b>
<b>Sec. 32-6.</b>	<b>Reserved.</b>
<b>Sec. 32-7.</b>	<b>Reserved.</b>
<b>Sec. 32-8.</b>	<b>Reserved.</b>
<b>Sec. 32-9.</b>	<b>Reserved.</b>
<b>Sec. 32-10.</b>	<b>Reserved.</b>
<b>Sec. 32-11.</b>	<b>Reserved.</b>
<b>Sec. 32-12.</b>	<b>Reserved.</b>
<b>Sec. 32-13.</b>	<b>Reserved.</b>
<b>Sec. 32-14.</b>	<b>Reserved.</b>
<b>Sec. 32-15.</b>	<b>Reserved.</b>

## **ARTICLE II. PROHIBITED DISCHARGES**

### **Sec. 32-16. Applicability.**

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

### **Sec. 32-17. Responsibility for administration.**

The department of public works is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09; Ord. 108-15/16, 11/16/2015)

### **Sec. 32-18. Prohibition of non-storm water discharges.**

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing

drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-19. Suspension of access to the city's small MS4.**

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-20. Monitoring of discharges.**

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm



drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

### **Sec. 32-21. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
  - (2) The cessation of discharges, practices, or operations in violation of this article.
  - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
  - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines,

penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into

waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-22. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-37. Post-construction stormwater management plan approval.**

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management

practices ("BMPs") for that development project.  
(Ord. No. 35-09/10, 9-17-09)

**Sec. 32-38. Post-construction stormwater management plan compliance.**

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public works ("DPW") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPW in a form provided by DPW, certifying that the person has inspected the BMP(s) and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file an annual certification under this section shall include with the annual certification a filing fee established by DPW to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater

management plan, DPW may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

(Ord. No. 35-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015)

**Sec. 32-39. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPW may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPW believes that a person has violated this article or the post-construction stormwater management plan, DPW may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
  - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
  - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
  - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a

separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPW. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015)

#### **Sec. 32-40. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or

circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.  
(Ord. No. 35-09/10, 8-17-09)



Jeff Levine, AICP

Director, Planning &amp; 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](mailto:jdealaman@portlandmaine.gov)

After the cost estimate is approved, all subsequent paperwork can be submitted by mail to 389 Congress Street, 4<sup>th</sup> 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)**

	<b>PUBLIC</b>	<b>PRIVATE</b>	<b>TOTAL</b>
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 30<sup>th</sup> and April 15<sup>th</sup>. 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 30<sup>th</sup> and April 15<sup>th</sup>. 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 year 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. 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 improvements]**.

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.

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**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 30<sup>th</sup> and April 15<sup>th</sup>. 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**

<b>Application ID:</b>		<b>Planner:</b>	
<b>Project Name:</b>		<b>Date of Form:</b>	
<b>Project Address:</b>			
<b>Applicant's Name:</b>			
<b>Applicant's Address:</b>			
<b>Project Description:</b>			

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						\$
Infrastructure #3	710-0000-236-98-00						\$
TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:				Amount
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					\$
						<b>Total Amount:</b>	\$

\* 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

**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