



CITY OF PORTLAND
Planning & Urban Development

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 (excel format) can be downloaded from the city's website here: <http://portlandmaine.gov/costestimate> 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. *(The Cost Estimate Form can also be used during the construction phase to submit reductions of fully completed site work items)*

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 4.

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 5.

F. Administrative Process for Submitting Performance Guarantee

- **Step 1 – Submit a Cost Estimate for Review**
Submit completed cost estimate form to the Planning Division for review and approval. Once approved, use this total amount as the performance guarantee amount in Step 2.
- **Step 2 – Drafting a Performance Guarantee**
Complete a draft of 1 of the 3 attached performance guarantee templates, inputting project specific information (Reference Guide for Drafting for help) into blank and bracketed areas, and submit to the Planning Division for final approval. Submit a draft to **planning@portlandmaine.gov** to ensure fields are correctly entered. 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 (Include Attachment 6 form) 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 Jodie Keene at **jkeene@portlandmaine.gov**
After the cost estimate is approved, all Performance Guarantees and Infrastructure Contributions can be submitted by mail to: **City of Portland Planning Division, 389 Congress Street, 4th Floor, Portland, ME 04101**. Please call our office with any questions: 207-874-8632

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

Cost Estimate of Improvements Form

Please visit the city's website to download and complete the electronic Cost Estimate spreadsheet:

<http://portlandmaine.gov/costestimate>

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 inspection of completed site improvements; or
4. the Applicant has failed to provide the City with civil as-built drawings at the time of project completion.

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 is later (“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, up to thirty (30) days before or sixty (60) days after its expiration, 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 thirty (30) days after Applicant notifies the City for a Defect Inspection (“Termination Date”). The Applicant may notify the City for a Defect Inspection no sooner than one (1) year from the date the Defect Letter of Credit was created.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit or the Defect Letter of Credit by presentation of a sight draft 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 plan]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

[Insert: SITE PLAN and/or SUBDIVISION]
PERFORMANCE GUARANTEE
ESCROW ACCOUNT WITH FINANCIAL INSTITUTION
[Insert: ACCOUNT NUMBER]

[Insert: 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 [Insert: Name of Bank/Credit Union] 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: Approval 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: Name of Applicant].

[Insert: Name of Bank/Credit Union] 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: Approval 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 inspection of completed site improvements; or
4. the Applicant has failed to provide the City with civil as-built drawings at the time of project completion.

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 is later (“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, up to thirty (30) days before or sixty (60) days after its expiration, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank’s offices located at **[Insert: Address of Financial Institution]** stating that:

this drawing results from notification that the Bank has elected not to renew its Escrow Account No. **[Insert: ACCOUNT NUMBER]**.

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: Approval Date]** as required by City Code §14-501, 530 and shall automatically expire thirty (30) days after Applicant notifies the City for a Defect Inspection (“Termination Date”). The Applicant may notify the City for a Defect Inspection no sooner than one (1) year from the date the Defect Letter of Credit was created.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Defect Guarantee by presentation of a sight draft at Bank’s offices located at **[Insert: Address of Financial Institution]**, 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 plan]**.

Date: _____

By: _____

[Insert: Name]

[Insert: Title]

Its Duly Authorized Agent

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

By: _____

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 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 thirty (30) days after Applicant notifies the City for a Defect Inspection (“Termination Date”). The Applicant may notify the City for a Defect Inspection no sooner than one (1) year from the date the Defect Letter of Credit was created.

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: _____
Administrative Officer

Date: _____

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

Distribution

1. The account number will be completed by Planning Staff.
2. The Agreement will be executed with one original signed by the Applicant.
3. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office.
4. ****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 is later (“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	71000000 236020	24					\$
Infrastructure #2	71000000 236020	24					\$
Infrastructure #3	71000000 236020	24					\$

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Amount
Infrastructure (Tree Fund)	2423300 3410000	3319PR0045		\$
Watershed (Nason's Brook)	2423100 341000	31Watershd-Watershed-NasonsBrk		\$
Watershed (Fallbrook)	25731000 327100	31Watershd-Watershed-FallBrook		\$
Watershed (Capisic Brook)	25731000 327100	31Watershd-Watershed-CapisicBrk		\$
Watershed (Dole Brook)	25731000 327100	31Watershd-Watershed-DoleBrook		\$

	Total Amount:	\$
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* 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.