

PERMITTING GUIDELINE TO CHAPTER 46, DESIGN AND CONSTRUCTION STANDARDS, OF AUBURN ORDINANCES

Prior to the issuance of a sitework permit:

- A) A **cost estimate** for all site work (excluding structures permitted by the Building Inspections Division) shall be provided to Engineering from which the amount of the performance bond will be determined.
- B) A complete set of **approved plans on mylar** shall be provided to Engineering.
- C) A **performance bond, irrevocable letter of credit, or escrow** shall be posted in an amount to be based on the City Engineer's cost estimate. Appropriate language will be provided.
- D) An **inspection fee** equal to 2% of the City Engineer's cost estimate shall be paid to the City.
- E) **Written notice** shall be submitted to Engineering.
The notice shall include:
 - 1) Type of improvement(s)
 - 2) Description of and amount of work to be completed
 - 3) Starting date
 - 4) Duration of construction
 - 5) Construction schedule
- F) Within 15 days of receipt of the plans, bond, inspection fee, and written notice, a written Notice to Proceed (sitework permit) shall be issued.
- G) Upon project completion and as a condition of the release of the performance bond:
 - 1) an accurate set of **as-built plans in digital format** (.dwg and/or .dxf) shall be provided, and
 - 2) a **defect bond** equal to 10% of the amount of the performance bond shall be provided. The term for the defect bond shall be one year plus one month, and it is permissible to include defect bond language and provisions in the performance bond.

A copy of Chapter 46 - Design and Construction Standards Ordinance is available in the Engineering Office, 60 Court St, Auburn, ME 04210 for \$5.00.

(**Please note** that Chapter 60, Zoning Ordinance and Chapter 46 require that **revisions** of an approved plan **must be** received and **approved** by the City **before implementation**.)

CITY OF AUBURN
SITE WORK COST ESTIMATE FOR PERFORMANCE BOND AND INSPECTION FEE

Project Name: _____ P.I.D. # _____
 Project Owner: _____ Phone: _____
 Address: _____ E-Mail: _____
 Project Address: _____ Tax Map/Lot # _____

Owners representative/ Authorized contact person:
 Name: _____ Phone: _____
 Firm's Name: _____ E-Mail: _____
 Address: _____

| Description | Quantity | Units | Unit Price | Owner's Estimate | City Engineer's Estimate |
|---------------------------------|----------|----------|------------|------------------|--------------------------|
| Clearing & Grubbing | _____ | acres | _____ | _____ | \$0.00 |
| Excavation | _____ | cu. yds. | _____ | _____ | \$0.00 |
| Sewer Lines | _____ | L.F. | _____ | _____ | \$0.00 |
| Water Lines | _____ | L.F. | _____ | _____ | \$0.00 |
| Hydrants | _____ | ea | _____ | _____ | \$0.00 |
| Stormwater management | _____ | L.F. | _____ | _____ | \$0.00 |
| M.H & C.B | _____ | ea | _____ | _____ | \$0.00 |
| Gravel, Streets & Drives | _____ | cu. yds. | _____ | _____ | \$0.00 |
| Paving, Streets & Drives | _____ | Tons | _____ | _____ | \$0.00 |
| Gravel, Sidewalks & walkways | _____ | cu. yds. | _____ | _____ | \$0.00 |
| Paving, Sidewalks & walkways | _____ | Tons | _____ | _____ | \$0.00 |
| Curbing, Granite | _____ | L.F. | _____ | _____ | \$0.00 |
| Curbing, Bituminous | _____ | L.F. | _____ | _____ | \$0.00 |
| Electrical & Lighting | _____ | L.F. | _____ | _____ | \$0.00 |
| Parking Gravel | _____ | cu. yds. | _____ | _____ | \$0.00 |
| Parking Paving | _____ | Tons | _____ | _____ | \$0.00 |
| Grading & Landscaping | _____ | sq. yds | _____ | _____ | \$0.00 |
| Erosion & Sedimentation Control | _____ | L.F. | _____ | _____ | \$0.00 |
| Other | _____ | _____ | _____ | _____ | \$0.00 |
| Total: | | | | \$0.00 | \$0.00 |

Amount estimated pursuant to Chapter 46 \$0.00

Estimate Approved by: _____, City Engineer Date: _____

Amount approved pursuant to Chapter 46 \$0.00

Estimate Approved by: _____, City Manager Date: _____

| | |
|--------------------------|------|
| Performance Bond Total | \$0 |
| City Engineer's Estimate | \$0 |
| 2% of Approved Estimate | 0.02 |
| Inspection Fee | \$0 |

**Minimum Inspection Fee- \$200.00

COMPLETE & RETURN TO:
 DAN GOYETTE
 CITY OF AUBURN
 ENGINEERING DIVISION
 60 COURT STREET
 AUBURN, ME 04210
 PHONE 333-6601 X 1134 - FAX 333-6625

PERFORMANCE BOND

Bond # _____

Project _____

KNOW ALL MEN, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto the CITY OF AUBURN, Auburn, Maine, as Obligee, in the sum of \$ _____ for the payment whereof said Principal and Surety bind themselves firmly by these presents.

The Principal does hereby guarantee to complete the construction of all site improvements, excluding structures as to which permits have been issued by the Building Inspector, in conformance with the plans as approved by the Auburn Planning Board on _____, and all applicable requirements of Auburn ordinances.

The conditions of this obligation are that if the Principal shall faithfully complete said construction in the manner aforesaid with two (2) years from the date a notice to proceed is issued to the contractor by the Engineering Division of the Auburn Public Works Department, and indemnify and save harmless the Obligee from all loss, cost or damage which it may suffer by reason of any failure to do so, and provide to the City of Auburn within said two-year period a ten percent (10%) defect guarantee insuring for a period of one (1) year and thirty (30) days the workmanship and the durability of all materials used and provide to the Engineering Division a satisfactory set of **as-built** plans, then this obligation shall be void; otherwise to remain in full force and effect. The defect guarantee shall be in the form of exhibit A attached hereto. The date on which default in performance of the obligations secured by this bond will occur may be extended by written agreement of the parties.

Whenever the Principal is declared in default by the Obligee of its obligations hereunder:

1. The Surety may promptly remedy the default, or
2. The Obligee may, after reasonable notice to the Surety, or the Surety may, upon demand by the Obligee, arrange for the performance of the Principal's obligations hereunder.

No suit shall be brought on this bond more than thirty (30) days after the expiration of one (1) year from the date of completion and acceptance of the work.

SIGNED, SEALED AND DATED THIS _____ DAY OF _____, 20____.

(Name of Principal)

Witness

By: _____

(Name of Surety)

Witness

By: _____

Attorney-in Fact

IRREVOCABLE LETTER OF CREDIT

Date: _____

City of Auburn
Engineering Division
60 Court St.
Auburn, ME 04210

Re: _____

Irrevocable Letter of Credit No.: _____

Dear City Engineer;

_____ hereby issues its Irrevocable Letter of Credit for the account of _____ (hereinafter referred to as the "Developer") in the name of the City of Auburn in the aggregate amount of \$ _____.

The City of Auburn may draw on this Letter of Credit by presentation of a sight draft at the offices of the undersigned located at _____. Said draft shall be accompanied by an affidavit stating that the Developer has failed to complete by _____* the construction of all site improvements, excluding structures as to which permits have been issued by the Building Inspector, pursuant to Auburn's ordinances and in conformance with plans approved by the Auburn Planning Board on _____. The Developer's commencement of development shall not be a condition precedent to the City of Auburn's ability to draw on this Letter of Credit.

Upon project completion and written approval by the City of Auburn and when the Developer has provided to the Engineering Division a satisfactory set of as-built plans, ninety percent (90%) of the original amount of the Letter of Credit shall be released. The remaining ten percent (10%) shall be retained for a period of one (1) additional year and thirty (30) days to insure the quality of the workmanship and durability of all materials used all as determined by the City Engineer. This Letter of Credit will automatically expire on _____**.

We engage with you that drafts drawn under and in compliance with the terms of this credit will be duly honored. However, other than the payment of monies as authorized hereunder, the undersigned will not guarantee the performance of the Developer to the City of Auburn.

Very truly yours,

* Completion date (any date between April 15 and November 30)

** Expiration date (completion date plus 13 months)

ESCROW AGREEMENT

AGREEMENT made this _____ day of _____, 20____, by and between _____, with a place of business at _____ in _____, Maine (the "Developer") and the CITY OF AUBURN, MAINE, a body politic and corporate (the "City"); and _____, (the "Escrow Agent").

WHEREAS, the Developer is undertaking to construct _____, at _____ in the City for the purposes of _____; and

WHEREAS, pursuant to the City's ordinances, the Developer is required to provide a performance bond and a defect bond satisfactory to the City to ensure the construction to be completed within twenty-four (24) months from the date above is in conformance with the plans approved by the Auburn Planning Board on _____, 20____, and to ensure the workmanship and durability of all materials used in said construction that may become defective within one (1) year and thirty (30) days from completion and acceptance by the City, respectively; and

WHEREAS, the parties have agreed that the obligations set forth in this Escrow Agreement shall be substituted for those which would be otherwise imposed by the performance and defect bonds; and

WHEREAS, _____, has agreed to serve as Escrow Agent in accordance with the terms of this Agreement;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto agree as follows:

1. Escrow Funds. The Developer shall deposit the sum of \$ _____ (the "Escrow Funds") with the Escrow Agent upon the execution of this Agreement. The Escrow Agent shall hold the Escrow Funds in a bank account or other interest-bearing investment which has been approved under state law for savings banks, subject to their terms contained herein.

2. Payment of Escrow Funds. If during the term of this Agreement, the City provides the Escrow Agent with a written request for the Escrow Funds, together with

an affidavit executed by a duly authorized official of the City stating that the Developer has failed to construct site improvements in accordance with the approved plans or to correct defects as required by the City's ordinances in a timely manner, then the Escrow Agent shall deliver the Escrow Funds to the City, and the rights and obligations of all of the parties hereto shall thereby immediately cease. The City shall expend as much of the Escrow Funds as are necessary to complete the site improvements in accordance with the plans and with City ordinances and will, after receiving a satisfactory set of the **as-built** plans, pay any balance remaining to the Developer less the 10% retainage provided for in paragraph 3. The payment of the Escrow Funds to the City by the Escrow Agent shall in no way affect the Developer's right to challenge the City's entitlement to the Escrow Funds in a court of proper jurisdiction.

3. Term. Unless released earlier as provided in paragraph 2 above, the Escrow Agent shall pay the Escrow Funds to the Developer when the City Engineer acknowledges in writing that the site improvements have been completed in accordance with the plans and City ordinances and the Developer has provided the Engineering Division with satisfactory set of **as-built** plans, except for a 10% retainage. The 10% retainage shall be held to guarantee correction of any defects in the materials or workmanship as determined by the City Engineer within one (1) year and thirty (30) days after acceptance of the improvements. One (1) year and thirty (30) days from the date of said completion and City acceptance, this Agreement shall terminate and all remaining Escrow Funds shall be paid to the Developer.

4. Liability of Escrow Agent. The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in acting on any instrument or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so. The Escrow Agent shall have no responsibility for verifying the contents of any writing contemplated herein and may rely without liability upon the contents thereof. The Escrow Agent shall not be liable for any obligation taken or omitted by it in good faith

and believed by it to be authorized hereby, and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind, unless caused by willful misconduct or gross negligence. The Developer and the City agree jointly and severally to indemnify the Escrow Agent and hold it harmless from and against any and all liabilities incurred by it hereunder.

5. Resignation of Escrow Agent. The Escrow Agent may resign at any time by giving written notice thereof to the Developer and the City. Upon such notice, a successor Escrow Agent shall be appointed by the parties hereto. If the parties are unable to agree upon a successor Escrow Agent within ten (10) days after such notice, either party may petition the Androscoggin County Superior Court to name a Escrow Agent or, alternatively, the parties may submit the matter to resolution through the American Arbitration Association. The successor Escrow Agent may include any bank or trust company with a place of business in Androscoggin County. The resigning Escrow Agent shall continue to serve until his successor accepts the appointment and receives the Escrow Funds. The Developer and the City shall have the right at any time upon their unanimous consent to substitute a new Escrow Agent or Agents by giving written notice thereof to the Escrow Agent or Agents then acting.

6. Dispute. It is understood and agreed that if any dispute arises with respect to the delivery and/or ownership or right of possession of the Escrow Funds, or the facts upon which determinations are based, or the duties of the Escrow Agent hereunder, the Escrow Agent is authorized and directed to retain in it possession without liability to anyone all or any part of the Escrow Funds until such dispute shall have been settled, either by mutual agreement of the Developer and the City (evidenced by appropriate instruction in writing to the Escrow Agent, signed by the Developer and the City) or by binding arbitration, or by a final order, decree or judgment of a court of competent jurisdiction (the time for appeal having expired and no appeal having been perfected), but the Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the day and year first above written.

WITNESS:

DEVELOPER

_____ By: _____

CITY OF AUBURN

_____ By: _____

City Manager

ESCROW AGENT

_____ By: _____

IRREVOCABLE DEFECT LETTER OF CREDIT

Date: _____

City Of Auburn
Engineering Division
60 Court St.
Auburn, ME 04210

RE: _____
Irrevocable Letter of Credit No.: _____

Dear City Engineer:

_____ hereby issues its Irrevocable Letter of Credit for the account of _____ as developer, hereinafter referred to as the Developer, in the name of the City of Auburn in the aggregate amount of _____ (\$).

The purpose of this Defect Letter of Credit is to insure the workmanship and durability of all materials used which may become defective within one year as determined by the City Engineer. The City of Auburn may draw on the Letter of Credit by presentation of a sight draft at _____ offices located at _____. Said draft shall be accompanied by an affidavit stating that the Developer has failed to correct defects by _____, pursuant to Auburn's ordinances and in conformance with the plans as approved by the Auburn Planning Board on _____.

This Letter of Credit will automatically expire on _____.

We engage with you that drafts drawn under and in compliance with the terms of this credit will be duly honored. However, other than the payment of monies as authorized hereunder, _____ shall not guarantee the performance of the Developer to the City of Auburn.

Very Truly Yours,

** Completion date = expiration date minus one month
*** Expiration date = 13 months from issue date
Issue date = any date between May 15 and November 30

Bond # _____

Location _____

Exhibit A

DEFECT BOND

KNOW ALL MEN, that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the CITY OF AUBURN, Auburn, Maine, as Obligee, in the sum of \$ _____ for the payment whereof said Principal and Surety bind themselves firmly by these presents.

The Principal does hereby guarantee that the workmanship and durability of all materials used to construct the site improvements described in the attached performance bond shall be in conformance with the plans as approved by the Auburn Planning Board on _____ as determined by the City Engineer and all applicable requirements of Auburn ordinances.

The conditions of this obligation are such that the Principal shall faithfully perform all corrective work as required within thirty (30) days after the expiration of one (1) year from this date and indemnify and save harmless the Obligee from all loss, cost or damage which it may suffer by reason of the failure to do so. If the Principal is declared in default of its obligations hereunder:

1. The Surety may promptly remedy the default, or
2. The Obligee may, after reasonable notice to the Surety, or the Surety may, upon demand by the Obligee, arrange for the performance of the Principal's obligations hereunder.

One (1) year and thirty (30) days from the date hereof this obligation shall be void, unless notice of a defect covered by the bond has been given to the surety in writing within that period; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATE THIS _____ DAY OF _____, 20____.

(Name of Principal)

By: _____

Witness

(Name of Surety)

By: _____

Witness

Attorney-in-Fact