

Project Name: _____



Development Project Security Workbook

**Town of Derry
Planning Department**

April 2005

Revised November 05, 2014

14 Manning Street
Derry, NH 03038
Office: (603) 432-6144
Fax: (603) 432-6130

Table of Contents

Page No.

I Introduction

II Construction Escrow Required

III Establishing Construction Escrow

IV Maintenance of Escrow

V Request for Escrow Release

VI Engineering Inspections

Attachments:

- A. Sample Letter of Credit
- B. Project Improvement Guarantee Summary Sheet
- C. IRS Form W-9
- D. Improvement Guarantee Escrow Release Forms
- E. Improvement Guarantee Worksheet
- F. Site Work Costs

I INTRODUCTION

- A. This booklet is intended to provide the information necessary for establishing and processing project financial security for development work in the Town of Derry. Derry Administrative Staff have assembled this document in order to simplify establishing and processing security requests and releases.

The package is divided into separate sections and includes samples of all forms necessary for establishment of project security or escrow.

Overall, these guidelines have been established in order to provide proper direction to the owner/applicant/developer relative to the development and processing of project development security.

Any questions regarding the content of this workbook should be directed to the Derry Planning Department.

For the purposes of this document, the term “Town’s Engineer” refers to the Director of Public Works of the Derry Department of Public Works or his/her designee unless otherwise delegated by a vote of the Derry Planning Board.

II CONSTRUCTION ESCROW REQUIRED

A. The following documents are relative to establishing initial project security:

- Project Improvement Guarantee Summary Sheet
- IRS Form W-9
- Improvement Guarantee Worksheet
- Site Work Costs

B. Upon Planning Board approval of the project, in accordance with Articles VI and XII of the Town of Derry Land Development Control Regulations (LDCRs), and the Town of Derry Administrative Regulation #47, the developer and his agent must establish escrow for all estimated costs associated with the construction work and public improvements to be performed by the project. The time limit for establishing the construction escrow shall be in accordance with the Planning Board's approval. These public improvements typically include, but are not limited to, the following:

- Construction of Public Streets
- Off-site Improvements to Public Facilities
- Erosion Control
- Site Restoration & Stabilization
- Loam & Seed
- Landscaping
- Drainage & Associated Structures
- Survey Markers
- Safety Issues (lights, guardrails)
- Fire Cisterns/Fire Ponds
- Any municipal or other public sewer improvements,
- Any municipal or other public water system improvements
- Construction Inspection Services including engineering and construction administration services
- As-built drawings

Should there be questions regarding any public improvements that require security on a project, the developer, or his agent, should contact the Derry Planning Director for clarification.

TYPES OF ESCROWS ALLOWED

ITEM	TYPE OF SECURITY REQUIRED
As-Built Drawings	Cash or Irrevocable Letter of Credit
Site Development	Cash or Irrevocable Letter of Credit
Work within Public Right of Way	Cash or Irrevocable Letter of Credit
Off-Site Improvements	Cash or Irrevocable Letter of Credit
Special Conditions	Cash or Irrevocable Letter of Credit
Site Restoration	Cash or Irrevocable Letter of Credit

All letters of credit submitted to the Town of Derry must be on official bank letterhead and they must contain signatures from the developer, as well as the bank's representative. Photocopied or faxed letters of credits will not be accepted. A sample letter of credit is enclosed in this package.

The following forms of escrow are acceptable to assure the completion of the required improvements:

1. Cash to be deposited with the town in an individual account.
2. A letter of credit drawn on a federally insured bank, chartered under the laws of New Hampshire or the federal government with a branch within the state of New Hampshire. Prior to acceptance of the letter of credit or any renewal, the Treasurer or his/her designee of the Town of Derry shall determine whether the issuer of the letter of credit is sufficiently solvent and an acceptable credit risk.

The letter of credit shall be in a form acceptable to the Treasurer or his/her designee and in an amount approved by the Planning Board as recommended by the Town's Engineer.

III ESTABLISHING CONSTRUCTION ESCROW

A. The following steps shall be followed to establish project security value:

1. Using the itemized list on the Improvement Guarantee Worksheet, an estimated quantity shall be established by the developer/applicant for all items necessary to construct the project. All landscaping must be itemized on a separate sheet of paper. Quantities shall be reviewed and subject to revision by the Town's Engineer.
2. After the quantities have been established, prices from the Town's approved Site Work Costs sheet are entered as unit prices for each item. Unit prices as shown in Attachment F are calculated by the Town's Engineer based on prevailing industry costs, qualified bid prices and/or actual vendor/contractor unit pricing. Escalation factors shall be no more than 10% and represent projected construction cost increases over the term of the security. Unit prices shall be reviewed by the Town's Engineer no less than annually and may be adjusted by the Planning Board at their discretion.
3. Based on quantity and unit price, a total project value is established. After calculating the project value, engineering and contingencies (20% of construction costs), an escalation factor (up to 10%) may be applied to establish the total project escrow amount.
4. The Town's Engineer and Planning Director will then review the escrow and advise the developer of any cost revisions needed. Prior to the issuance of any Letter of Credit, a draft of the Letter of Credit (if of a different format than Attachment A) shall be submitted to the Planning Department. A copy of the draft letter of credit will be presented to the Finance Department for approval of the language and credit quality in accordance with Administrative Regulation 47.
5. Included in the final escrow package is the agreed upon escrow guarantee worksheet with summary sheet, W-9 and the letter of credit or cash escrow.

Upon approval of escrow amounts and the form of security, the entire package is presented to the Planning Department and reviewed by the Department of Public Works. The complete escrow package shall then be forwarded to the Planning Board for approval. Planning Board meetings are typically conducted on the first and third Wednesday of every month. All escrow requests must be submitted to the Planning Department ten (10) days prior to the meeting for processing.

IV MAINTENANCE OF CONSTRUCTION ESCROW

- A. Article VI Section 170-35 and Article XII Section 170-70 of the LDCRs states that performance guarantees are “conditioned on the completion of (such) improvements within two (2) years of the date of the performance guarantee”. Projects which are projected to extend beyond two years may be required, after the initial two year period, to post additional security as required by the Planning Board to account for escalated construction costs of remaining improvements as a condition of the Planning Board’s approval of any project completion extension.
- B. Project Completion extension requests shall be received by the Planning Department no less than sixty (60) days prior to the Planning Board’s approved completion date. The applicant/developer is responsible to ensure that escrow is maintained for the duration of the project until released in full by the Planning Board. Any renewals of Letters of Credit shall also be submitted to the Planning Department no less than sixty (60) days prior to its expiration.
- C. Upon receipt of a developer/applicant’s request for a project completion extension or Letter of Credit renewal, the Planning Department and the Town’s Engineer shall review the project status and remaining security with the Planning Board who will approve or deny the request/renewal.
- D. Upon request of the developer/applicant, the Town’s Engineer and Planning Director may recommend an extension provided the Town’s engineer has determined that adequate security is retained by the Town to complete all remaining improvements.
- E. In the event that the Planning Board denies a project extension request or a developer/applicant fails to provide adequate security, including escalations and/or renewals, the Planning Board may schedule a public hearing to take action on the escrow. The public hearing will be scheduled prior to the expiration of the security or the approved project completion date, after due notice to the applicant/developer or in the case of a Letter of Credit, notice to the responsible financial institution. The purpose of the public hearing shall be to:
 - 1. Draft the remaining security. Such drafts shall be in accordance with the Town of Derry Administrative Regulation 47. Once drafted the Planning Board, after consultation with the Town’s Engineer and Planning Director, shall determine what project improvements shall be completed; or
 - 2. Revoke the Plan approval in accordance with NHRSA 676:4-a; or
 - 3. Record a Notice of Inadequate Security upon the lots of record affected by the incompleteness at the Rockingham County Registry of Deeds.

The Planning Board may elect any one or a combination of the above options.

V REQUEST FOR ESCROW RELEASE

- A. The following steps shall be followed when requesting an escrow release:
1. Using the Improvement Guarantee Escrow Release Form, the Developer shall indicate an estimated value complete for each item being requested for release.
 2. The form shall also indicate the total value of remaining work.
 3. This form shall be presented along with a cover letter to the Planning Department and reviewed by the Town's Engineer.
 4. The Escrow Release Form will be reviewed and then forwarded to the Planning Board with the recommendation of the Town's Engineer and Planning Director.
- B. All outstanding engineering inspection fees must be paid in full prior to the processing of any applicable escrow releases.
- C. The escrow release package must be presented to the Planning Department ten (10) calendar days prior to the Planning Board meeting at which the request is to be considered.
- D. It should be noted that all landscaping and loam and seed escrow funds may be held for a period of one (1) year after installation. This is done so that the Town of Derry can ensure that all vegetation (landscaping, grass seed) will survive for that one year period.
- E. Prior to, and as a condition of, any escrow release, the Town's Engineer shall stipulate the adequacy of remaining security to complete all remaining improvements.

VI ENGINEERING INSPECTIONS

- A. All construction projects secured by escrow are subject to inspections by the Town's Engineer and shall be in accordance with the Town of Derry Subdivision & Site Plan Construction Monitoring Procedures & Checklist dated January 2011 or latest revision thereto. The cost for these inspections will be invoiced to the developer of record on a monthly basis. The inspections are billed at a rate of \$75.00 per hour and due upon receipt. Mileage reimbursement is charged at the IRS travel rate at the time of service. Any failure to pay for these inspections may result in a hold on any release of the construction escrow. The Town's Engineer will, only at the request of the Developer, calculate an *approximate* fee schedule for the engineering inspections. Such fee schedules may, at the discretion of the Planning Board, be included in the required project escrow amount.
- B. As deemed necessary by the Town's Engineer, third party engineering services may be contracted by the Town at the cost of the developer/applicant to ensure compliance with the approved plans. Charges for such services shall be submitted to the applicant/developer for direct payment.

ATTACHMENTS

- A. Sample Letter of Credit
- B. Project Improvement Guarantee Summary Sheet
- C. IRS Form W-9
- D. Improvement Guarantee Escrow Release Forms
- E. Improvement Guarantee Worksheet
- F. Site Work Costs

SAMPLE LETTER OF CREDIT

Date _____

Town of Derry – Public Works Dept
14 Manning Street
Derry, New Hampshire 03038

RE: Subdivision/Site Plan
Location

Irrevocable Letter of Credit # _____ Expiration Date: _____

Dear Town Officials:

By this document, the _____ Bank (hereinafter “Issuer”) hereby issues an irrevocable letter of credit in the amount of \$ _____ to the Town of Derry on behalf of _____ (hereinafter “Developer”). This irrevocable letter of credit is issued to guarantee completion of all improvements required by the Derry Planning Board and the Town of Derry Land Development control Regulations in conjunction with a Subdivision/Site Plan _____ dated _____, prepared by _____ and approved by the Derry Planning Board on _____ (date).

It is understood that the improvements guaranteed by this irrevocable letter of credit include, but are not limited to, the following:

General improvements as described in escrow worksheet.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current expiration date hereof, or any future expiration date, unless at least sixty (60) days prior to expiration, the Issuer notifies the Town of Derry Treasurer, Planning Director and Director of Public Works, by courier or certified mail that the Issuer elects not to consider this Letter of Credit renewed for any such additional period. Upon receipt by the Town of such notice the Issuer is not renewing the term of this Irrevocable Standby Letter of Credit, the Town may draw hereunder at any time on or before the expiration date up to an amount not exceeding the available amount of this Irrevocable Standby Letter of Credit by means of the Town’s drafts on the Issuer at sight.

Demand for payment under this Letter of Credit may be made prior to its expiration at any time during the Issuer’s business hours on a day which the Issuer’s main office is open to the public for the purpose of carrying on substantially all of its banking functions (“Business Day”). Any demand for payment as authorized by the Town of Derry Planning Board and all other communications to the Issuer relative to this Letter of Credit shall be in writing and addressed and presented to _____ (Bank name,

address). The funds so forwarded to the Town Treasurer shall be used exclusively for the purpose of completing the improvements, which are guaranteed by this letter of credit. Any funds not needed by the Town to complete improvements required by the Subdivision/Site Plan referred to above shall be returned to the Issuer.

(Signature of Bank Official) (Dated)

I have read this letter of credit and agree to its terms.

(Signature of Developer) (Dated)

TOWN OF DERRY

IMPROVEMENT GUARANTEE SUMMARY SHEET

CONSTRUCTION ESCROW

Map No. _____ Parcel No. _____ Project Name: _____

STREET NAME

AMOUNT

TOTAL: _____

APPROVED FOR AMOUNT BY: _____

DEVELOPER'S SIGNATURE

DATE

The undersigned agrees to perform the work set forth on the attached worksheet in accordance with the plans and specifications submitted therewith and in accordance with the specifications and the laws and regulations of the Town of Derry, NH all within two years from the date approved by the Planning Board. The Planning Board may grant extensions beyond two years at the request of the applicant/developer provided such request is made no later than sixty (60) days prior to the approved project completion date and subject to the developer/applicant posting of any additional security recommended by the Town's Engineer.

The undersigned agrees that, prior to final release, all required warranty deeds, and any associated bounds certification shall be submitted, and all costs incurred by the Town of Derry, NH, for construction inspections shall be reimbursed to the Town.

If the Planning Board finds that the developer has not installed improvements satisfactorily or has not completed these improvements within the approved time for completion, or has not maintained those improvements in a satisfactory condition, the Board may provide notice to the developer and take such further action or make such use of the escrow, as may be appropriate in the judgment of the Board, to complete the improvements.

Company Name

Authorized Signature

Date

Address

Print Name

Tax I.D Number

Telephone Number

APPROVED BY THE PLANNING DEPARTMENT

Planning Director

APPROVED BY THE PUBLIC WORKS:

Public Works Director

Engineering Department

APPROVED BY THE FINANCE DEPARTMENT:

Treasurer or his/her designee

APPROVED BY THE PLANNING
BOARD:

Chairman

Secretary

TOWN OF DERRY ESCROW RELEASE FORM

Date: _____

Project: _____ Parcel ID No.: _____

Location: _____

Letter of Credit Information:

Date Letter of Credit Established: _____

Name of Bank Issuing Letter of Credit: _____

Letter of Credit Number: _____

Present Amount Retained

\$ _____

Release #

New Work Value Subtotal: \$ _____

Engineering/Contingency (20%) : \$ _____

SUBTOTAL : \$ _____

Escalation (8%) : \$ _____

Amount to Retain : \$ _____

AMOUNT TO RELEASE : \$ _____

Approved by:

Michael Fowler, P.E., Public Works Director

Date: _____

Engineer, Public Works Department

Date: _____

George Sioras, Planning Director

Date: _____

Robert Mackey, Code Enforcement

Date: _____

Planning Board Chairperson

Date: _____

Planning Board Secretary

Date: _____

The parties below reviewed this document at a pre-construction meeting held on _____ relating to the construction of _____.

_____ Town of Derry	_____ Date
------------------------	---------------

_____ Developer	_____ Date
--------------------	---------------

_____ Developer's Contractor	_____ Date
---------------------------------	---------------

_____ Developer's Engineer	_____ Date
-------------------------------	---------------