

Instructions for Completing LOC Agreement

1. Insert the name of the “Developer” and “Bank” in the first paragraph. (Planning staff will fill in the information describing the approved plan and Line Item 1 – improvements to be completed and covered by this Agreement.)
2. The Developer will complete the attached Construction Estimate Form detailing the cost breakdown for each improvement.
3. Line Item 3 – Insert the estimated completion date of the project.
4. Signature Lines – The developer and the authorized agent of the bank should sign the Agreement before two witnesses.
5. Letter of Credit – The bank shall attach to the Town’s Agreement form a separate, formal Letter of Credit outlining the terms of the Letter or description of the terms of the escrow account. **PLEASE NOTE:** The expiration date noted in the Bank’s official letter of credit cannot be any sooner than one year (for site plans) OR two years (for subdivisions) from the date specified by the developer as the estimated project completion date.
6. The executed Agreement and attachments should be submitted to the Planning & Zoning Department where they will be reviewed for completeness and forwarded to the Selectboard for signature. Once that is done, copies will be made and distributed to all parties.

*****PLEASE NOTE: COST ESTIMATE FORM MUST BE SIGNED BY PROJECT ENGINEER AND APPROVED BY THE PUBLIC WORKS DIRECTOR BEFORE ITS SUBMITTAL.**

**TOWN OF WILLSTON
LETTER OF CREDIT AGREEMENT**

THIS AGREEMENT, in triplicate, by and among _____
_____, hereinafter referred to as “Developer”, the
TOWN OF WILLISTON, VERMONT, hereinafter referred to as “Municipality”, and _____
_____, hereinafter referred to as “Bank”.

WITNESSETH:

WHEREAS, Developer has received final site plan/subdivision approval from the Municipality’s Planning Commission by Notice of Decision, date _____, which is hereby incorporated in this Agreement by reference, for the development of _____, as depicted on a site/subdivision plan entitled, “_____”, dated _____, by _____ (“Approval”); and

WHEREAS, Developer is required by the Approval, at its expense to complete certain public improvements (“Improvements”); and,

WHEREAS, the parties to this Agreement wish to establish a mechanism to secure the obligations of the Developer as set forth above; and

WHEREAS, the Bank executes this Agreement solely in the capacity of issuer of the Letter of Credit hereinafter specified.

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1. Developer will at its own expense complete the following Improvements in connection with its development:

- | | |
|--------------------------------------|------------------------------------|
| <input type="checkbox"/> Landscaping | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Drainage | <input type="checkbox"/> Other |
| <input type="checkbox"/> Paving | <input type="checkbox"/> Roads |
| <input type="checkbox"/> Curbing | <input type="checkbox"/> Septic |

Note: See attached Construction Estimate Form for associated costs and breakdown of expenses.

2. Developer will convey to the Municipality by properly executed Warranty Deed, free and clear of all encumbrances, the roadways, easements and other Improvements required to be transferred to the Municipality by the Approval prior to the Municipality granting any zoning permits to the Developer.

3. The Developer shall notify the Municipality in writing immediately upon completion of the Improvements, which shall be no later than _____. The Municipality shall within twenty (20) days of receipt of such notice, inspect the Improvements and in turn advise the Developer in writing whether the Improvements are completed to its satisfaction or whether there remains work to be completed. If the Municipality does not notify the Developer of its inspection results within twenty-five (25) days of its receipt of the Developer's notice of completion, the Improvements shall be deemed completed to the satisfaction of the Municipality.

4. Following Town acceptance of final construction there is a three (3) year guarantee period with a ten (10) percent retainage held. The Developer shall repair or replace any faulty or defective work or material which may appear in the Improvements during this period. Completion shall be deemed to be the date of the Municipality's notice to the Developer pursuant to paragraph 3, indicating the Improvements have been completed to its satisfaction, or if the Municipality fails to notify the Developer, as set forth in paragraph 3, the date of completion shall be deemed to be twenty-five (25) days after the

Municipality receives the Developer's notice of completion.

5. For the guaranty of Developer's performance of all requirements set forth in this Agreement, Developer has caused Bank to issue its Irrevocable Letter of Credit in favor of the Municipality, the original of which is attached to the Municipality's copy of this Agreement, and copies of which are attached to the Developer's and Bank's copy.
6. Upon the Developer's default of any obligations under this Agreement, the Municipality shall send to the Developer, by certified mail, return receipt requested, a notice setting forth what items are in default (Notice of Default).
7. Should the developer fail to remedy the items set forth in the Notice of Default within sixty (60) days of the date of said Notice, the Municipality may file a written statement with the Bank indicating that the Developer is in default under the terms of this Agreement. The Municipality's statement shall include a certification that the Municipality has complied with the notice requirements set forth in paragraph "6". Upon receipt of the Municipality's statement, the Bank shall make payments to the Municipality under the Irrevocable Letter of Credit in amounts not to exceed the total certified by the Municipality to be reasonably required to complete the items in default. The Municipality shall, upon sending any statement to the Bank under this paragraph, simultaneously send a copy thereof to the Developer by certified mail, return receipt requested.
8. The Bank shall incur no liability to the Developer on account of making payments to the Municipality, nor shall the Bank be required to inquire into the propriety of any default claim by the Municipality, or into the use of such funds by the Municipality in completing the Improvements.
9. All funds paid to the Municipality pursuant to the Irrevocable Letter of Credit shall be used by the Municipality solely for the purpose of performing obligations in which the Developer is in default under this Agreement. Any work to be performed by the

Municipality may be accomplished in such manner as the Municipality in its discretion deems appropriate.

10. If payments are made by the Bank to the Municipality pursuant to the Irrevocable Letter of Credit, and it shall later develop that a portion of the released monies are surplus to the Municipality's need, such surplus shall be refunded by the Municipality to the Bank to be held and distributed by the Bank pursuant to the terms of the Agreement.
11. The Bank will not refuse or delay to make payments to the Municipality in accordance with the Irrevocable Letter of Credit when proper application is made by the Municipality. The Developer's consent to payments shall not be required and the Developer will not interfere with or hinder the Bank in making payments.
12. This Agreement shall terminate and shall be of no force or effect upon performance of all requirements contemplated hereby and the completion of the warranty period set forth in paragraph "4".
13. Upon request of the Developer, but only at the sole discretion of the Municipality, the Municipality may agree in writing to reduce the amount of the Irrevocable Letter of Credit if the Municipality believes, because of partial completion of the Improvements, that the full amount is no longer necessary to protect its interests.
14. Notwithstanding the provisions of paragraph "13" the amount of the Irrevocable Letter of Credit shall not be reduced to less than 10% of the total amount escrowed until certification to the Bank by the Municipality of the completion of the warranty period set forth in paragraph "4".
15. The Bank may not reduce the amount of, or terminate the Irrevocable Letter of Credit, without first receiving written consent of the Municipality.

16. This agreement shall not only be binding upon the parties hereto, but also their respective heirs, executors, administrators, successors and assigns.

DATED this _____ day of _____ 20_____.

IN THE PRESENCE OF:

(Developer)

By: _____
Its Duly Authorized Agent

Witness

Witness

Town of Williston

By: _____
Its Duly Authorized Agent

Witness

Witness

(Bank)

By: _____
Its Duly Authorized Agent

Witness

Witness

**Town of Williston – Public Works Department
Construction Estimate Form**

Project Name: _____

Project Location: _____

Section: _____ **Phase:** _____ **Roadway Lgth.** _____

Owner's Name/Address: _____

Name & Address of Person Responsible for Preparation of Estimate:

Date: _____ **Project Engineer's Signature:** _____

Town Representative Accepted Estimate: _____

ITEM	EST. QTY	UNIT MEASURE	OF	UNIT PRICE	TOTAL PRICE
Clearing/Grubbing		Lump Sum			
Rough Grading		Lump Sum			
Rock/Ledge Excavation		Cubic Yards			
Fill		Cubic Yards			
<i>Roadway Construction</i>					
Sand Borrow, 703.03		Cubic Yards			
Gravel Base, 704.04		Cubic Yards			
Fine Crushed Gravel, 704.05		Cubic Yards			
Crushed Washed Stone		Cubic Yards			
Stabilization Fabric		Square Yards			
Paving: Base Course, Type I		Tons			
Paving: Top Course, Type III		Tons			
Paving: Driveway Aprons		Tons			
Sidewalks - 3,500 psi		Linear Feet			
Guard Rail		Linear Feet			
Underdrain, 6" Perf. SDR PVC		Linear Feet			
Curbs – 3,500 psi		Linear Feet			
<i>Storm Drainage</i>					
Catch Bains		Each			
Dry Wells		Each			
Pipe,		Linear Feet			
Culverts, 15" Min.		Linear Feet			
Slope Protection		Lump Sum			
Headwalls		Each			

End Sections		Each		
Boring		Linear Feet		
Storm Manhole		Each		
Outlet Structure		Each		
Pond/System		Each		
<i>Water Supply</i>				
Water main		Linear Feet		
Hydrants		Each		
Valves		Each		
Tapping sleeve & Valve		Each		
Curb Stops		Each		
Air Release Valves		Each		
Boring		Linear Feet		
Services		Linear Feet		
<i>Sanitary Sewer</i>				
Sewer main		Linear Feet		
Manhole		Each		
Boring		Linear Feet		
Clean outs		Each		
Pumping Station		Each		
Services		Linear Feet		
<i>Erosion Control</i>				
Silt Fence		Linear Feet		
Demarcation Fence		Linear Feet		
Erosion Matting		Square Yards		
Check Dams		Each		
CB protection		Each		
<i>Traffic Improvements</i>				
Stripping		Lump Sum		
Signs		Lump Sum		
<i>Utilities</i>				
Electric		Lump Sum		
Telephone		Lump Sum		
Gas		Lump Sum		
<i>Miscellaneous</i>				
Fence		Linear Feet		
Landscaping		Lump Sum		
Restoration Seeding/Mulch		Lump Sum		
TOTAL				