

Town of Gorham

**PERFORMANCE GUARANTEE**

**Packet**

# Town of Gorham

**MUNICIPAL CENTER**  
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GORHAM, ME 04038

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## ESTABLISHING A PERFORMANCE GUARANTEE

The steps for establishing or setting up a performance guarantee with the Town of Gorham are listed below. All proposed guarantees must be established through the Planning Office and approved by the Town Manager and the Town Attorney before they are finalized.

**STEP ONE** The applicant must submit an itemized list of the work that is to be secured by the Performance Guarantee to the Compliance Officer. This list must contain an estimated cost for each of the work elements on the list, and must cover all approved public and quasi-public improvements including but not limited to the construction of the road, the fire pond, the installation of public sewer and public water, roadway monumentation, and the installation of street trees and required landscaping. It also must indicate the date by which all of the improvements will be completed.

**STEP TWO** The Compliance Officer will refer the list of improvements to the Town Engineer who will review the proposed scope of work and cost estimates. Once the description of the work to be done and its value has been reviewed by the Town Engineer, the Town Planner will advise the applicant of any requested changes and the approved amount.

**STEP THREE** The applicant can then take the approved cost estimate to a local bank or other lending institution of his/her choice and arrange for a performance guarantee to be "Drafted." The required performance guarantees can take one of several forms:

1. A Letter of Credit from a bank or financial institution that contains all of the items listed on the attached checklist;
2. A Bond from a company licensed to do business in Maine; or
3. A Cash deposit via a certified bank check/treasurers check that is held in an escrow account by the Town of Gorham

**STEP FOUR** The proposed form of the performance guarantee is submitted to the Town Planner by the applicant. The Planner will forward it to the Town Attorney and the Town Manager for review and advise the applicant if any revisions are necessary.

**STEP FIVE** Once the Town Attorney and the Town Manager have given their final approvals, the Town Planner will notify the applicant who can then ask the lending institution to finalize the performance guarantee and provide the final guarantee to the Town Planner.

If you have any questions, please contact the Town Planner at 207-222-1620.

**Town of Gorham**  
*MODEL*

**IRREVOCABLE LETTER OF CREDIT**

[Date]

David O. Cole  
Town Manager  
Town of Gorham  
270 Main Street  
Gorham, ME 04038

Dear Mr. Cole:

RE: [Name of applicant developer] for [name of development project] at [address], Gorham, ME

This letter shall constitute an irrevocable letter of credit verifying that this lending institution *[insert name of lending institution]* (the "Lender") has on account and available a sum or sums not less than *[insert amount]* for the account of *[insert name of developer]* (the "Developer") to be paid to the Town of Gorham upon receipt at the Lender's office at *[insert address of local branch or office or of local confirming bank for presentment of the draft]* of your written statement(s), signed by the Town Manager that payment is due based upon the Developer's default or failure to construct or install in a timely and satisfactory manner (including inspection and approval by the Town Engineer) the improvements listed below on or before the completion date of *[insert construction completion date, which date shall be no more than two (2) years after the date of this irrevocable letter of credit]*.

*[List improvements and amount stated for each improvement here or on a separate sheet]*

This obligation, however, shall be reduced by the amounts stated for each of the above-listed improvements upon receipt of written certification from the Town Engineer that the corresponding improvements have been satisfactorily completed, inspected and approved by the Town prior to notice in writing by the Town of any such default or failure by the developer.

In the event that the Lender refuses to honor the Town's draft, the Lender shall provide the Town with written reasons for the dishonor and shall notify the Town of the dishonor within three (3) working days of presentation of the draft, and subsequently shall permit the Town to present a revised draft or drafts hereunder.

In the event that the developer has failed to perform or is in default in timely and satisfactory completion of the improvements referred to above, any funds collected by the Town of Gorham under this obligation shall be used towards completion of said improvements or reasonable restoration of the site.

We hereby agree with the Town of Gorham, its successors and assigns, acting in compliance with the terms of this obligation, that the same shall be duly honored upon notice duly given on or before the termination date of *[insert a date that is at least sixty to ninety days later than the construction completion date]*.

Very truly yours,

*[Authorized official's signature and title]*

**IRREVOCABLE LETTER OF CREDIT  
Check List**

**A proposed Irrevocable Letter of Credit should contain the following:**

- \_\_\_ 1. A specific date by which the improvements secured by the Letter of Credit will be completed.
- \_\_\_ 2. **The expiration date of the Letter of Credit should be set between sixty and ninety days following the date set for the completion of the improvements.**
- \_\_\_ 3. The letter must specify the improvements that are secured by the Letter of Credit. An itemized list of improvements and their cost should be incorporated into the document and must include the 25% retainage.
- \_\_\_ 4. The letter must specify how partial drawings on the Letter of Credit are to be made.
- \_\_\_ 5. The letter must state that the Town may alternatively use funds drawn on the Letter of Credit to restore a subdivision trust.
- \_\_\_ 6. The letter must provide a procedure for resubmission of a sight draft if it should be dishonored by the lender.
- \_\_\_ 7. The letter must state that it shall be the responsibility of the developer and lender to initiate an extension of the Letter of Credit, prior to the expiration date if the improvements cannot be completed by the specified date. (failure to notify may cause the Town of draw the Letter of Credit in order to protect the Town's interest.)
- \_\_\_ 8. **All Letters of Credit must be reviewed and approved by the Town Attorney, prior to finalization by the lending authority.**
- \_\_\_ 9. When it becomes necessary to extend a Letter of Credit, a new Letter is required.

**NOTE:** THE ORIGINAL LETTER OF CREDIT REMAINS WITH THE TOWN OF GORHAM UNTIL THE IMPROVEMENTS ARE COMPLETED AND THE LETTER IS RELEASED BY THE TOWN.

## SAMPLE Schedule of Values

No	Description	LOC Allocation	To be Retained	% Complete	To be Released
1	Install erosion control measures	\$2,000.00	\$0.00	0.00	\$0.00
2	Clear & grub roadway	\$9,187.50	\$0.00	0.00	\$0.00
3	Ledge removal	\$44,000.00	\$0.00	.00	\$0.00
4	Subbase prep, cut/fills	\$20,694.00	\$0.00	0.00	\$0.00
5	Storm drain lines & catch basins	\$71,300.62	\$0.00	0.00	\$0.00
6	Sewer & lot services	\$48,508.55	\$0.00	0.00	\$0.00
7	Water main, valves, hydrants,&lot serv.	\$48,151.64	\$0.00	0.00	\$0.00
8	Primary/secondary power, tele., CATV	\$15,391.00	\$0.00	0.00	\$0.00
9	Gravel base-roadway	\$35,765.00	\$0.00	0.00	\$0.00
10	Driveway aprons	\$10,154.00	\$0.00	0.00	\$0.00
11	Loam & seed	\$15,516.00	\$0.00	0.00	\$0.00
12	Pavement, curbs	\$43,685.00	\$0.00	0.00	\$0.00
13	Street lights	\$500.00	\$0.00	0.00	\$0.00
14	Monumentation	\$3,000	\$0.00	0.00	\$0.00
15	Landscaping	\$25,000	\$0.00	0.00	\$0.00
16	Street Trees	\$100,000	\$0.00	0.00	\$0.00
17	Sidewalks	\$10,000	\$0.00	0.00	\$0.00
18	Clean up&site restoration @1% of total	\$5,000	\$0.00	0.00	\$0.00
19	QA/QC testing	\$2,500	0.00	0.00	0.00
20	Record Drawings	\$1,500	0.00	0.00	0.00
<b>Sub Total</b>		<b>\$511,853.31</b>	<b>\$0.00</b>		<b>\$0.00</b>
22	<b>Retainage 25%</b>	\$127,963.33	0.00		0.00
<b>TOTAL</b>		<b>\$639,816.64</b>	<b>\$0.00</b>		<b>\$0.00</b>

\*\*The Town Engineer must approve all schedules of values. For quickest service please submit values to the Compliance Officer in an Excel format.