

LANDSCAPING AND TREE REPLACEMENT 2017



PLANNING DIVISION STAFF CONTACT:

Angie Perera, 952-949-8413 or aperera@edenprairie.org

SUBMISSION REQUIREMENTS

1. Approved Landscape/Tree Replacement Plans (one 36" x 24"; & two - 11" x 17")
2. Landscaping/Tree Replacement Project Information Form (complete form A-1)
3. Landscape/Tree Replacement Agreement & Surety Forms (one signed & executed copy of either the Letter of Credit forms B1-B6, OR the Escrow Fund forms C1-C8)
4. Contractor's estimate of required landscape (2017 estimated tree cost is \$125.00 per inch)

LANDSCAPING / TREE REPLACEMENT REQUIREMENTS

- In every case where landscaping is required by City Code or by an approval granted by the City (i.e. Development Agreement), for building or structure constructed on the property, the applicant shall submit a landscape plan prepared in accordance with City Code Chapter 11.
- In every case where tree replacement is required by or an approval granted by the City, for land alteration on the property, the applicant shall submit a tree replacement plan prepared in accordance with City Code Chapter 11, Section 11.55.
- No building permit/land alteration permit shall be issued until a surety is provided. The surety shall be no less than one and one-half (1½) times and no more than two (2) times the amount estimated by the City as the cost of completing said landscaping/tree replacement.
- The surety must cover two complete growing seasons or one full calendar year subsequent to the completion and must be conditioned upon complete and satisfactory implementation of the approved landscape/tree replacement plan.
- All trees shall be balled and burlapped, staked and guyed accordance with National Nurseryman's standards. All shrubs shall be potted.

IMPORTANT STEPS & FOLLOW-UP REQUIRED

FOR THE LANDSCAPE / TREE REPLACEMENT & RELEASE OF SURETY

- **Step 1** - Once the approved landscaping plan/tree replacement has been installed, the proponent shall contact the City in writing indicating completion of the landscaping plan and requesting city staff to conduct a landscape inspection. If city staff determines the landscape is not satisfactory upon the first inspection then subsequent inspections may be required.
- **Step 2** – After a satisfactory inspection of the landscaping/tree replacement has been conducted, the surety is maintained for a period of two full growing seasons, or one full calendar year subsequent to the completion of the landscaping and satisfactory approval by city staff.
- **Step 3** - A final inspection is conducted by city staff at the end of the review period to verify that all plant materials are in a healthy and growing condition prior to the release of the surety. If any plant material is found to be dead, dying, or missing according to the approved plan, the surety shall remain in place until all corrective action has taken place and found to be satisfactory to the City.
- **After the surety has been released, the property owner will be responsible for maintaining all trees, landscape, and plant materials on the property as required per City Code.**

**LANDSCAPE / TREE REPLACEMENT
PROJECT INFORMATION FORM**

PROJECT NAME: _____

PROJECT ADDRESS: _____

PROPERTY OWNER'S NAME: _____

PROPERTY OWNER'S ADDRESS: _____

PROPERTY OWNER'S PHONE NUMBER: _____

PROPERTY OWNER'S E-MAIL: _____

LANDSCAPING / TREE REPLACEMENT AGREEMENT & SURETY FORMS

There are two types of sureties: 1) a Letter of Credit; and 2) an Escrow Fund.

- For a Letter of Credit, complete and submit forms A-1 and forms B1-B6.
- For an Escrow Fund, complete and submit forms A-1 and forms C1-C8.

Check one of the following: **LETTER OF CREDIT** **ESCROW FUND**

SECURITY AGENCY: _____

SECURITY AGENCY ADDRESS: _____

SECURITY AGENCY PHONE NUMBER: _____

SECURITY ACCOUNT #: _____

SECURITY AMOUNT: _____

DATE: _____

CONTACT INFORMATION FOR SURETY RETURN:

NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

E-MAIL: _____

LANDSCAPE / TREE REPLACEMENT AGREEMENT
CITY OF EDEN PRAIRIE
(LETTER OF CREDIT)

This Agreement made and entered into this ____ day of _____, 20____
by and between the City of Eden Prairie (“City”) and _____
 (“Developer”).

WHEREAS, the City has approved certain development of and improvements upon certain land owned by Developer, more fully described in the Development Agreement, Exhibit A attached hereto and made a part hereof (the “Development Agreement”), including and involving grading, landscaping, and mechanical equipment screening, which may include the planting of trees, shrubs and other vegetation (“landscaping”), all of which is more fully described in the landscape plan dated _____, prepared by _____, and stamp dated _____ a copy of which, entitled “Exhibit B”, is attached hereto, made a part hereof and made a part hereof (the “Plan”), and

WHEREAS, the parties hereto desire that the landscaping be completed by Developer in a timely and professional manner, and

WHEREAS, Developer has arranged for the _____ (the “Bank”) to provide to City its irrevocable and unconditional Letter of Credit (“Letter of Credit”) in the amount of \$_____ for the purpose of securing performance of Developer’s obligations hereunder and guaranteeing the completion of the landscaping pursuant to Section ____ of the Development Agreement and the Plan.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Developer shall perform and complete the landscaping in accordance with the Development Agreement and the Plan and City Code on or before _____, 20 __.

2. Developer covenants and warrants that all landscaping work will be performed in a good and workmanlike manner and all materials will be of good quality and all trees, shrubs and other vegetation will be of good quality and healthy at the time they are planted. Developer further covenants and warrants that any such trees, shrubs or other vegetation which are diseased or dead at the end of the first year beginning after the last tree, shrub or other vegetation is planted, shall be replanted or replaced during the fall or spring immediately following the end of such first year, whichever shall be appropriate as determined by the City.

3. If at any time Developer has not performed its obligations hereunder, including but not limited to its obligation to landscape in accordance with the plan and City Code, or to replant trees, shrubs or other vegetation within the times required, the City, its agents, employees and contractors shall have the right, but not the obligation, to enter upon the land to complete the landscaping in accordance with the Plan and to replant trees, shrubs or vegetation.

4. Developer shall indemnify and hold harmless the City for all of its costs and expenses including those of its own employees, which it may incur to complete the landscaping or replant trees, shrubs or vegetation, as well as all of City's costs and expenses in enforcing this agreement, including its attorneys' fees and costs.

5. In order to secure the performance of its obligations hereunder Developer shall provide to City contemporaneously with the execution hereof the Letter of Credit. Upon commencement of, or in anticipation of commencement of the completion of the landscaping or the replanting of trees, shrubs or other vegetation by City, City shall have the right to draw upon the Letter of Credit for all costs and expenses, including those of its own employees, which it has incurred or may incur to complete the landscaping or replant trees, shrubs or vegetation, as well

as all of City's costs and expenses in enforcing this Agreement, including its attorneys' fees and costs.

6. Upon completion of the landscaping and the replanting of trees, shrubs or other vegetation within the times required and upon expiration of the year described in paragraph 2 herein and after reimbursement for any of its costs and expenses to which it is entitled hereunder, City upon request of developer shall release its interest in the Letter of Credit.

CITY OF EDEN PRAIRIE

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

THIS IS TO CERTIFY, that on this ____ day of _____, 20____, before me, a Notary Public, personally appeared _____ and known to me to be the City Manager of the City of Eden Prairie, executing the above instrument and acknowledged the said instrument to be the free and voluntary act and deed of said City for the uses and purposed herein mentioned, and also stated that they were authorized to execute the same and the seal affixed is the Corporate Seal of said City.

Notary Public, Hennepin County, MN
My Commission expires _____

_____, **Developer**

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this _____ day of _____, 20 ____, before me, a Notary Public within and for said County, personally appeared _____ duly sworn, did say that they are respectively the Owners in the aforementioned Agreement and acknowledge said instrument to be their act and deed.

Notary Public, Hennepin County, MN
My Commission expires _____

STANDBY IRREVOCABLE LETTER OF CREDIT

Credit No. _____

[Date] _____

TO: City of Eden Prairie

By order of our client [**name and address of client**] we hereby issue our standby irrevocable Letter of Credit for the account of the [**insert name of client**] for an amount or amounts not to exceed in the aggregate U.S. Dollars \$ _____ (_____ Thousand and No/100 U.S. Dollars) effective immediately and expiring at our [**insert address of office**] on [**insert date**] relative to our client's performance under that certain contract entitled [**insert name of contract/development agreement, etc**] dated [**insert date of contract**].

Funds under this Letter of Credit are available against your sight draft(s) on us, for all or part of this Letter of Credit, mentioning thereon our Credit No._____. Each such draft must be accompanied by your signed written statement to the effect that [name of client] has failed to comply with the terms and conditions of the above mentioned contract.

Presentation will also be deemed made upon our receipt of your telecopier transmission to us at (FAX NUMBER [**insert fax number**]_____) of a facsimile of the appropriate sight draft and written statement completed and signed, together with your telephone advice to us at (TELEPHONE NUMBER [**insert telephone number**]_____) or such other number as we shall specify to you in writing) of your sending the above-described telecopier transmission. Failure to make the telephone advice will not impair the validity of the presentation. If presentations are made by facsimile the original documents are not required.

In the event that at least thirty (30) days prior to the expiry date listed above, this Letter of Credit is not extended for a period of at least one year or has not been replaced with a substitute Letter of Credit acceptable to you, this Letter of Credit is also payable to you upon presentation to us of your written statement mentioning thereon our Credit No.[**insert number**]____ and stating "Letter of Credit No. [**insert number**]_____ has not been extended for a period of at least one year from the present expiration date and has not been replaced with a substitute Letter of Credit acceptable to us."

This letter of credit shall automatically extend for successive one-year terms unless at least forty-five days prior to the next annual extension date of [**insert day and month of renewal**]_____ of such year, we deliver written notice by registered mail or overnight courier to the City that we intend not to extend the letter of credit for any additional period. If such notice is delivered and the letter of credit has not been replaced with a substitute letter of credit acceptable to you by the date of said notice, this letter of credit is also payable to you upon presentation to us of your written statement mentioning thereon our Letter of Credit No. [**insert number**]_____ and stating "Notice of Modification, Cancellation or Non-Extension of Letter of Credit No. [**insert number**]_____has been received and the letter of credit has not been replaced with a substitute letter of credit acceptable to us.

If we receive your sight draft(s) and statement(s) as mentioned above, here at our address **[insert address]**, on or before the expiry date of this Letter of Credit, we will promptly honor the same. If an interruption of our business occurred as a result of an Act of God, riots, civil commotion, insurrections, wars or any other causes beyond our control, as described in Article 36 of the Uniform Customs and Practices for Documentary Credits, UCP600 2007 which prevented us from accepting and/or paying you on this Letter of Credit, we undertake upon resumption of our business to accept drafts and pay on this Letter of Credit provided your draft is presented prior or during our business interruption or no later than thirty (30) days following resumption of our business.

This Credit is subject to the Uniform Customs and Practices for Documentary Credits, UCP600 2007.

Very Truly Yours,

[Signature of Issuer]

**LANDSCAPE / TREE REPLACEMENT AGREEMENT
CITY OF EDEN PRAIRIE
(ESCROW FUND)**

This Agreement made and entered into this ___ day of _____, 20__ by and between the City of Eden Prairie (“City”) and _____ (“Developer”).

WHEREAS, the City has approved certain development of and improvements upon certain land owned by Developer, more fully described in the Development Agreement, Exhibit A attached hereto and made a part hereof, including and involving grading, landscaping, and mechanical equipment screening, which may include the planting of trees, shrubs and other vegetation (“landscaping”), all of which is more fully described in the landscape plan dated _____, prepared by _____, and stamp dated _____ a copy of which, entitled “Exhibit B”, is attached hereto and made a part hereof (the “Plan”), and

WHEREAS, the parties hereto desire that the landscaping be completed by Developer in a timely and professional manner, and

WHEREAS, Developer has arranged to provide to City a fund to be held in escrow (“Escrow Fund”) by _____ (“Escrow Agent”) in the amount of \$_____ for the purpose of securing performance of Developer’s obligations hereunder and guaranteeing the completion of the landscaping in accordance with Section ___ of the Development Agreement and the Plan pursuant to an Agreement among the City, Developer, and Escrow Agent (“Escrow Agreement”).

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Developer shall perform and complete the landscaping in accordance with the Development Agreement, the Plan and City Code on or before _____, 20__.

2. Developer covenants and warrants that all landscaping work will be performed in a good and workmanlike manner and all materials will be of good quality and all trees, shrubs and other vegetation will be of good quality and healthy at the time they are planted. Developer further covenants and warrants that any such trees, shrubs or other vegetation which are diseased or dead at the end of the first year beginning after the last tree, shrub or other vegetation is planted, shall be replanted or replaced during the fall or spring immediately following the end of such first year, whichever shall be appropriate as determined by the City.

3. If at any time Developer has not performed its obligation hereunder, including but not limited to its obligation to landscape in accordance with the plan and City Code, or to replant trees, shrubs or other vegetation within the times required, the City, its agents, employees and contractors shall have the right, but not obligation upon 10 days notice, to enter upon the land to complete the landscaping in accordance with the Plan and to replant trees, shrubs or vegetation.

4. Developer shall indemnify and hold harmless the City for all of its costs and expenses including those of its own employees, which it may incur to complete the landscaping or replant trees, shrubs or vegetation, as well as all of City's costs and expenses in enforcing this agreement, including its attorneys' fees and costs.

5. In order to secure the performance of its obligations hereunder Developer shall provide to City contemporaneously with the execution hereof the Escrow Fund and the Escrow Agreement executed by the City, Developer, and Escrow Agent. Upon commencement of, or in anticipation of commencement of the completion of the landscaping or the replanting of trees, shrubs or other vegetation by City, City shall notify Developer of the costs incurred and if Developer fails to pay such amount within 10 days of such notification, then the City shall have the right to draw upon

the Escrow fund for all costs and expenses, including those of its own employees, which it has incurred to complete the landscaping or replant trees, shrubs or vegetation, as well as all of City's costs and expenses in enforcing this Agreement, including its attorneys' fees and costs. The City agrees not to draw on the Escrow Fund except as set forth in this paragraph.

6. Upon completion of the landscaping and the replanting of trees, shrubs or other vegetation within the times required and upon expiration of the year described in paragraph 2 herein and after reimbursement for any of its costs and expenses to which it is entitled hereunder, City upon request of developer shall release its interest in the Escrow Fund.

CITY OF EDEN PRAIRIE, Escrow Agent

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

THIS IS TO CERTIFY, that on this ____ day of _____, 20____, before me, a Notary Public, personally appeared _____ and known to me to be the City Manager of the City of Eden Prairie, executing the above instrument and acknowledged the said instrument to be the free and voluntary act and deed of said City for the uses and purposed herein mentioned, and also stated that they were authorized to execute the same and the seal affixed is the Corporate Seal of said City.

Notary Public, Hennepin County, MN
My Commission expires _____

_____, **Developer**

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this _____ day of _____, 20 ____, before me, a Notary Public within and for said County, personally appeared _____ duly sworn, did say that they are respectively the Owners in the aforementioned Agreement and acknowledge said instrument to be their act and deed.

Notary Public, Hennepin County, MN
My Commission expires _____

**ESCROW AGREEMENT
CITY OF EDEN PRAIRIE
(ESCROW FUND)**

This Agreement made and entered into this ____ day of _____, 20__ by and between the City of Eden Prairie (“City”), _____ (“Developer”), and _____ (“Escrow Agent”).

WHEREAS, the City and Developer have entered into an Agreement entitled, “Landscape Agreement, City of Eden Prairie (Escrow Fund)” this _____ day of _____, 20__ , (“Landscape Agreement”) and

WHEREAS, Developer has deposited in an interest bearing account with Escrow Agent the amount of \$_____, which is hereafter called the “Escrow Fund” for the purpose of securing the obligations of Developer under the Landscape Agreement.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Escrow Agent shall hold the Escrow Fund or such portion thereof as may remain with Escrow Agent from time to time until City shall notify Escrow Agent in writing that City has no further interest in the Escrow Fund. Upon receipt of such notice Escrow Agent shall with reasonable promptness pay the balance remaining in the Escrow Fund, if any, to Developer.

2. Escrow Agent shall pay over to City so much of the Escrow Fund as City shall from time to time request in writing from Escrow Agent.

3. Escrow Agent. In order to induce Escrow Agent to hold, invest and disburse the Escrow Fund as required by this Agreement, Developer and City do hereby agree that:

(a) Escrow Agent is acting as a depository only and Escrow Agent shall not be liable for loss or damage resulting from:

- (i) any good faith act or forbearance of Escrow Agent;
- (ii) any default, error, action or omission of any part, other than Escrow Agent;
- (iii) the expiration of any time limit or other delay which is not caused by the failure of Escrow Agent to comply with the terms of this Agreement, and in no event where such time limit is not disclosed in this Agreement or another writing delivered to the Escrow Agent;
- (iv) the lack of authenticity of any writing delivered to Escrow Agent or of any signature thereto, or the lack of authority of the signatory to sign such writing, unless Escrow Agent was or reasonably should have been aware of the same;
- (v) Escrow Agent's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;
- (vi) Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding;
- (vii) any loss or damage which arises after the Escrow Fund has been disbursed in accordance with the terms of this Agreement.

b. If Escrow Agent is made a party to any judicial, nonjudicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance and/or negligence of Escrow Agent in performing its duties hereunder the party/parties whose alleged acts are a basis for such proceedings shall indemnify, save and hold

_____, **Developer**

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this _____ day of _____, 20 ____, before me, a Notary Public within and for said County, personally appeared _____ duly sworn, did say that they are respectively the Owners in the aforementioned Agreement and acknowledge said instrument to be their act and deed.

Notary Public, Hennepin County, MN
My Commission expires _____