

City of Eden Prairie

City Offices

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www.edenprairie.org



To: Project Developer/Owner
From: Planning Division
Subject: **Landscape Surety Requirements and Forms**

City Code requires that **prior to any building permit issuance** all landscaping projects must be covered by a surety guaranteeing the installation of the approved landscaping plan and to cover the necessary review period. The amount of the surety must be no less than **150%** of the estimated cost of completing the approved plan.

The enclosed surety packet includes:

- **Landscaping Project Information Form**
- **Landscape Agreement** (whichever is applicable)
 - A. Performance Bond
 - B. Letter of Credit
 - C. Escrow Fund
- **Surety Form** (whichever is applicable)
 - A. Performance Bond Form
 - B. Letter of Credit Form
 - C. Escrow Agreement Form

The type of surety you desire to use corresponds to the letter of the alphabet indicated above, and is also shown in the upper right corner of the applicable document. **Both the Landscape Agreement and Surety Form must be properly executed and submitted.**

RELEASE OF THE LANDSCAPE SURETY

1. Once the approved landscaping plan has been completed, the proponent shall contact the City in writing indicating completion of the landscaping plan and requesting the City to perform a first inspection.
2. After a satisfactory first inspection of the landscaping, the surety is maintained for a period of two full growing seasons, or one full calendar year subsequent to the completion of the landscaping.
3. A final inspection is conducted at the end of the review period to verify that all plant material is in a healthy and growing condition prior to 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.

LANDSCAPE/SCREENING APPROVAL
INFORMATION FORM

PROJECT NAME: _____

PROJECT ADDRESS: _____

OWNER: _____

OWNER'S ADDRESS: _____

Check One:

LETTER OF CREDIT PERFORMANCE BOND LETTER OF ESCROW

SECURITY AGENCY: _____

SECURITY AGENCY ADDRESS: _____

SECURITY ACCOUNT #: _____

SECURITY AMOUNT: _____

DATE: _____

THE PROPONENT SHALL COMPLETE **ONE** OF THE FOLLOWING THREE FORMS:

A. LANDSCAPE AGREEMENT (SURETY BOND) & LANDSCAPE PERFORMANCE BOND

B. LANDSCAPE AGREEMENT (LETTER OF CREDIT) & IRREVOCABLE LETTER OF CREDIT

C. LANDSCAPE AGREEMENT (ESCROW FUND) & ESCROW AGREEMENT

LANDSCAPE AGREEMENT
CITY OF EDEN PRAIRIE
(SURETY BOND)

This agreement made and entered into this ____ day of _____, 20__,
by and between _____ hereafter
referred to as “Developer”, and the City of Eden Prairie hereafter referred to as “City”.

WHEREAS, the City has approved certain development of and improvements upon
certain land owned by Developer more fully described in Exhibit ___ 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 ___”, is attached hereto, made a part hereof and incorporated herein by reference (the
“Plan”), and

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

WHEREAS, Developer is providing to City a surety bond in the amount of
\$ _____ for the purpose of securing performance of Developer’s obligations
hereunder and guaranteeing the completion of the landscaping.

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 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 the 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 a bond in the amount of \$_____ issued by a surety licensed to do business in the State of Minnesota, which bond shall guarantee to City the performance of Developer's obligations hereunder and which shall be in such form and contain such further provisions as shall be acceptable or required by City.

CITY OF EDEN PRAIRIE

By _____

Its _____

_____, Developer

By _____

Its _____

CITY OF EDEN PRAIRIE
LANDSCAPE PERFORMANCE BOND

CONTRACT BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS that we, _____
as Principal, and _____, a corporation organized under the laws
of the State of _____ and duly authorized to transact business in
the State of Minnesota as Surety, are held and firmly bound unto THE CITY OF EDEN
PRAIRIE, a public corporation, hereinafter Obligee, in the sum of _____ DOLLARS,
for the payment whereof well and truly to be made, the principal and the Surety bind themselves,
their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by
these presents.

SIGNED, sealed, and dated this ____ day of _____, 20__.

WHEREAS the Principal and the Obligee have entered into a landscape Agreement,
dated the ____ day of _____, 20__, for landscaping, which agreement is by
reference made a part hereof, as if fully set forth.

NOW, THEREFORE, the condition of this obligation is such that if the principal shall
indemnify the Obligee for all loss that the Obligee may sustain by reason of the Principal's
failure to comply with any of the terms of said agreement, then this obligation shall be void;
otherwise it shall remain in force.

By _____
Principal

By _____
Attorney-in-fact

LANDSCAPE 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 Exhibit ____ 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 ____”, is attached hereto, made a part hereof and incorporated herein by reference (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.

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 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 _____

_____, Developer

By _____

Its _____

STANDBY IRREVOCABLE LETTER OF CREDIT**Letter of Credit No.** _____**Date:** _____*[Beneficiary] [address]*

We hereby establish our irrevocable standby letter of credit no. _____ in your favor for the account of *[specify applicant]* in the amount of US\$ _____, to expire at __: __ pm on *[expiration date]* available by payment of your draft(s) at sight on us when accompanied by the following document:

A written and dated statement on the beneficiary's letterhead signed by one purporting to be an officer of the beneficiary indicating name and title of the signer with the following wording:

"I do hereby certify that there has been a default under *[specify agreement]* dated ____ by and between *[beneficiary]* and *[applicant]*. Accordingly, US\$ __ is now due and payable to *[beneficiary]*."

This irrevocable standby letter of credit no. _____ shall automatically renew on its expiration date and on each subsequent renewal expiration date for a period of *[specify renewal period]* unless we give you written notice of intent not to renew no later than forty-five (45) days prior to the expiration date. In the event we give you notice of intent not to renew this standby letter of credit is also available by payment of your draft at sight on us when accompanied by the following document:

A written and dated statement on the beneficiary's letterhead signed by one purporting to be an officer of the beneficiary indicating name and title of the signer with the following wording:

"I do hereby certify that *[beneficiary]* has received your notice of intent not to renew letter of credit no. _____. Accordingly, US\$ _____ is now due and payable to *[beneficiary]*."

Partial drawings and multiple presentations permitted. In the case of a partial drawing, this standby letter of credit will remain in effect for the undrawn balance.

Each draft under this standby letter of credit must be marked as "drawn under *[issuing bank's name]* standby letter of credit no. "

Except so far as otherwise expressly stated this standby letter of credit is subject to the International Standby Practices, International Chamber of Commerce (1998 version), and the laws of the State of Minnesota.

We hereby engage with you that all drafts under and in compliance with this standby letter of credit will be duly honored upon presentation to *[issuer]* at our office located at on or before the expiration date.

[Issuer]

By

Its

**LANDSCAPE 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 Exhibit ____ 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____”, is attached hereto, made a part hereof and incorporated herein by reference (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, evidenced by 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 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

By _____

Its _____

_____, Developer

By _____

Its _____

**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 together with interest to be earned thereon 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:

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(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

Escrow Agent harmless from the expenses, costs and reasonable attorneys' fees incurred by
Escrow Agent in responding to such action, hearing or process.

CITY OF EDEN PRAIRIE

By _____

Its _____

_____, Developer

By _____

Its _____

_____, 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 _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of a Corporation organized under the laws of _____ and a Minnesota corporation, on behalf thereof.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of a Corporation organized under the laws of _____ and a Minnesota corporation, on behalf thereof.

Notary Public