

**CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA**

**RESOLUTION NO. 2012-016**

*A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR AND MAYOR TO ENTER INTO CONTRACT NO. 01029 WITH THE STATE OF MINNESOTA, DEPARTMENT OF TRANSPORTATION FOR REIMBURSEMENT OF LANDSCAPE MATERIALS TO BE UTILIZED ALONG STATE HIGHWAY 5*

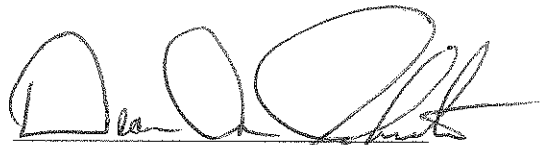
**WHEREAS**, the City of Lake Elmo applied for and was approved to receive a grant through the Mn/DOT Roadside Landscape Partnership Program to landscape within the road right-of-way of State Highway 5;

**NOW THEREFORE BE IT RESOLVED**, that the City of Lake Elmo enter into Agreement No. 01029 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the City of the State's share of the costs of the landscape materials acquisition to be installed along and adjacent to Trunk Highway No. 5 from 100 feet west of Laverne Ave. N. to 300 feet East of 39<sup>th</sup> St. N.

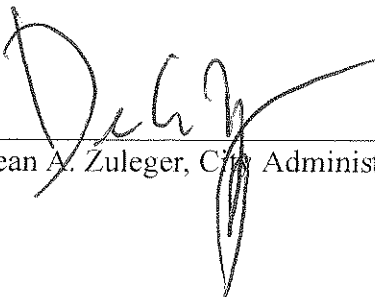
**BE IT FURTHER RESOLVED**, that the Mayor and the City Administrator are authorized to execute the Agreement and any amendments to the Agreement.

**ADOPTED BY** the Lake Elmo City Council on the 17th day of April, 2012.



Dean A. Johnston, Mayor

ATTEST:

  
\_\_\_\_\_  
Dean A. Zuleger, City Administrator

**CERTIFICATION**

I hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the Council of the City of Lake Elmo as a duly authorized meeting thereto held on the 17th day of April, 2012, as shown by the minutes of the meeting in my possession.

Signed:

Sandie Thone  
(Signature)

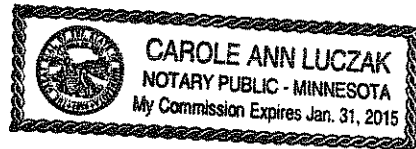
SANDIE THONE  
(Type or Print Name)

CITY CLERK  
(Title)

Subscribed and sworn to before me  
this 17<sup>th</sup> day of April, 2012.

Notary Public Carole Ann Luczak

My Commission Expires Jan. 31, 2015



**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
And  
CITY OF LAKE ELMO  
COOPERATIVE LANDSCAPING  
AGREEMENT**

State Project Number (SP): 8214-969G Original Amount Encumbered  
Trunk Highway Number (TH): 5 [\$18,200.00]

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Lake Elmo acting through its City Council ("City").

**Recitals**

1. The City will perform landscaping along Trunk Highway No. 5 from 400' west of Laverne Ave. N. to 500' east of Lisbon Ave. N within the City limits according to plans, specifications and special provisions designated as the "Lake Elmo Landscaping Plan" and as State Project No. 8214-969G (T.H. 5); and
2. The City requests the State participate in the acquisition costs of the landscape materials and the State is willing to participate in the acquisition costs of said landscaping materials according to the State's "Community Roadside Landscaping Partnership Program"; and
3. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

**Agreement**

**1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits**

- 1.1. *Effective date.* This Agreement will be effective the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. *Expiration date.* This Agreement will expire when all obligations have been satisfactorily fulfilled according to the Community Roadside Landscaping Partnership Program Project Application, on file in the State's Office of Environmental Stewardship and incorporated into this Agreement by reference.
- 1.3. *Survival of terms.* All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 2.2. Right-of-Way, Easements and Permits; 2.3. Maintenance; 6. Liability and Worker Compensation Claims; 8. State Audits; 9. Government Data Practices; 10. Governing Law, Jurisdiction, Venue; and 12. Force Majeure.
- 1.4. *Plans, Specifications, Special Provisions.* Plans, specifications and special provisions designated as the "Lake Elmo Landscaping Plan" and as State Project No. 8214-969G (T.H. 5) are on file in the office of the City and the State's office of Environmental Stewardship and are incorporated into this Agreement by reference. ("Landscape Plans")
- 1.5. *Exhibits.* Exhibit A is attached and incorporated into this Agreement.

**2. Agreement between the Parties**

**2.1. Acquisition and Installation of Landscape Materials**

- A. *Acquisition and Installation.* The City will acquire landscape materials and perform landscaping according to the Landscape Plans.

**B. Documents furnished by the City.** Within 7 days of ordering the landscape materials, the City will submit a copy of the purchase orders to the State's Landscape Partnership Program Coordinator in St. Paul.

**C. Control and Inspection of Landscape Materials**

- i. The landscape materials acquired under this Agreement will be under the control of the City; however the materials will be open to inspection by the State's authorized representatives. The City will give the State's Landscape Partnership Program Coordinator five days notice of its intention to receive delivery of the landscape materials.
- ii. The City must verify that the nursery vendor has a valid nursery certificate as required by the Minnesota Department of Agriculture ("MDA"). Nursery stock originating outside Minnesota must have been certified under all applicable MDA and United States Department of Agriculture ("USDA") quarantines. Certification documents issued by the appropriate regulatory official at origin must accompany all nursery stock shipments, including but not limited to, USDA quarantines for Gypsy Moth, Phytophthora ramorum, Emerald Ash Borer and Black Stem Rust. MDA Japanese Beetle Quarantine nursery stock from Minnesota must be inspected and certified to be free of harmful plant pests, but is not subject to MDA external Japanese Beetle Quarantine.

**D. Protecting and Locating Utilities.** The City will preserve and protect all utilities located on lands covered by this Agreement, without cost to the State. As required by Minnesota Statute 216D, the City will notify Gopher State One Call System ([www.gopherstateonecall.org](http://www.gopherstateonecall.org)) (1-800-252-1166) at least 48 hours before any excavation is done on this project.

**E. Restore Right-of-Way.** Upon completion of the installation of landscape materials and after performing any ongoing maintenance operations, the City will restore all disturbed areas of State right-of-way so as to perpetuate satisfactory drainage, erosion control and aesthetics.

**F. Completion of Acquisition and Installation.** The City will cause the acquisition and installation of the landscape materials to be started and completed according to the time schedule in the Community Roadside Landscaping Partnership Program Project Application. The completion date for the acquisition and installation of the landscape materials may be extended, by an exchange of letters between the appropriate City official and the State's Landscape Partnership Program Coordinator, for unavoidable delays encountered in the performance of the acquisition and installation of the landscape materials.

**G. Compliance with Laws, Ordinances, Regulations.** The City will comply with all Federal, State and Local laws, and all applicable ordinances and regulations in connection with the acquisition and installation of the landscape materials.

**2.2. Right-of-Way, Easements and Permits**

- A. The City is authorized to work on State right-of-way for the purposes of installing and maintaining the landscape materials, including any necessary replacement of landscape materials that fail to survive. All suppliers, contractors or volunteers under the direction of the City, occupying the State's right-of-way must be provided with and wear required reflective clothing.
- B. The City's use of State right-of-way will in no way impair or interfere with the safety or convenience of the traveling public in its use of the highway and any use of State right-of-way under this Agreement will remain subordinate to the right of the State to use the property for highway and transportation purposes. No advertising signs or devices of any form or size will be constructed or be permitted to be constructed or placed upon State right-of-way. This Agreement does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge facility that would become subject to Section 4(f) of the Federal Aid Highway Act of 1968.
- C. The City will obtain all construction permits and any other permits and sanctions that may be required in connection with the installation of the landscape materials without cost to the State.

2.3. *Maintenance by the City.* The City will provide for the maintenance of the landscaping without cost to the State. Maintenance includes, but is not limited to, weeding and pruning, and removal and replacement of all materials that fail to survive. Criteria for maintenance and replacement are shown and described in EXHIBIT "A", Maintenance Responsibilities Plan and Schedule.

### 3. State Cost and Payment by the State

3.1. *Basis of State Cost.* The State's complete share of the costs of the landscaping is the delivered cost of the landscaping materials acquired according to the Landscape Plans.

3.2. *Estimated State Cost and Maximum Obligation.* The estimated cost of the landscape materials acquisition is \$18,200.00. The maximum obligation of the State under this Agreement will not exceed \$20,000.00, unless the maximum obligation is increased by amendment to this Agreement.

3.3. *Conditions of Payment.* The State will pay the City the delivered cost of the landscape materials, not to exceed the maximum obligation, after the following conditions have been met:

A. Encumbrance by the State of the State's total cost share.

B. Execution of this Agreement and transmittal to the City.

C. Receipt by the State's Landscape Partnership Program Coordinator, from the City, of the following:

i. Copies of the purchase orders for the landscape materials, as provided for in Section 2.1.B. of this Agreement.

ii. Written request for payment, accompanied by copies of supplier invoices for the landscape materials acquisition and delivery.

D. Receipt of a memo, from the State's Landscape Partnership Program Coordinator, verifying that the landscaping has been completed and recommending reimbursement.

### 4. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

4.1. The State's Authorized Representative will be:

Name/Title: Todd Carroll, Landscape Partnership Program Coordinator (or successor)  
 Address: 395 John Ireland Boulevard, Mailstop 686, St. Paul, MN 55155  
 Telephone: (651) 366-4617  
 Fax: (651) 366-4769  
 E-Mail: todd.carroll@state.mn.us

4.2. The City's Authorized Representative will be:

Name/Title: Nick Johnson/Interim City Planner (or successor)  
 Address: 3800 Laverne Ave. North, Lake Elmo, MN 55042  
 Telephone: 651-233-5413

### 5. Assignment; Amendments; Waiver; Contract Complete

5.1. *Assignment.* Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

5.2. *Amendments.* Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

5.3. *Waiver.* If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

5.4. *Contract Complete.* This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**6. Liability; Worker Compensation Claims**

Each party is responsible for its own employees for any claims arising under the Workers Compensation Act. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

**7. Nondiscrimination**

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

**8. State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

**9. Government Data Practices**

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either the City or the State.

**10. Governing Law; Jurisdiction; Venue**

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**11. Termination; Suspension**

11.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

11.2. *Termination for Insufficient Funding.* The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available.

11.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

**12. Force Majeure**

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a

party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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**STATE ENCUMBRANCE VERIFICATION**  
Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

**DEPARTMENT OF TRANSPORTATION**

Recommended for Approval:

Signed: \_\_\_\_\_

By: \_\_\_\_\_  
(Landscape Partnership Program Coordinator)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(District Engineer)

SWIFT Purchase Order: \_\_\_\_\_

Approved:

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
(State Design Engineer)

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

Date: \_\_\_\_\_


By:  \_\_\_\_\_

Title: MAYOR

**COMMISSIONER OF ADMINISTRATION**

Date: 4/18/2012

By: \_\_\_\_\_  
(With delegated authority)

By:  \_\_\_\_\_

Date: \_\_\_\_\_

Title: Administrator

Date: 4/18/2012

**INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.**

MUX-5



## EXHIBIT "A"

### Maintenance Responsibilities Plan and Schedule

Table 1a. REQUIRED LANDSCAPE MAINTENANCE ACTIVITIES

MAINTENANCE CONSIDERATION				
PLANT GROUPS	PRUNING		WEED CONTROL	FERTILIZATION See Table 5, Fertilization Schedule
	When To	Type Of		
Evergreen Trees	Anytime - Dry	Corrective and Deadwood Removal	Maintain mulch at 3" minimum around trees in mowed areas, keep weed free.	Yes
Shade Trees	Anytime - Dry*	Training and Corrective		Yes
Ornamental Trees	Winter**	Corrective		Yes
Evergreen Shrubs	Anytime - Dry	Deadwood Removal		Yes
Deciduous Shrubs	Dormant	Corrective and Renewal	Maintain minimum 3" woodchip mulch in a weed free condition until shrub crown closure.	Yes
Vines	Dormant	Deadwood Removal		No
Groundcovers				

\* Do not prune oaks during April, May and June. Do not prune Honeylocust while dormant or when humid or wet.

\*\* Do not prune apples, crabapples or Mountain Ash during April, May and June.

TABLE 1b. REQUIRED LANDSCAPE MAINTENANCE ACTIVITIES

MAINTENANCE CONSIDERATION				
PLANT GROUPS	WATERING	INSECT AND DISEASE CONTROL	RODENT PROTECTION	REMOVALS AND REPLACEMENTS
Evergreen Trees	Yes until established (2 yrs.).	As needed.	Yes - Pine Only	Remove all dead plants.
Shade Trees			Yes	
Ornamental Trees	Supplemental watering may be needed during drought periods (especially during July and August) even after plants are established.	Remove diseased plants that pose threats to adjacent plantings.	Yes	Replace dead or dying plants unless the lost plants do not noticeably compromise the visual appearance or design intent.
Evergreen Shrubs			No*	
Deciduous Shrubs			No*	
Vines			No*	
Groundcovers			No*	

\* Rodent protection is generally not practical for mass shrub plantings, maintaining clean mulched planting areas free of weed growth will reduce problems. Mowed turf in formal planting areas will help reduce rodent problems.

TABLE 2a. CALENDAR OF LANDSCAPE MAINTENANCE

ACTIVITY	January	February	March	April	May	June
Pruning	See Table 1a for Best Time for Specific Species.					
Weed Control:	Planting beds must be kept in a weed free condition.					
Remulch				OXX	XXXX	XO
Herbicide	Must be applied by a licensed Pesticide Applicator.					
Fertilization: Turf Shrubs, Trees				XXXX		
Insect & Disease	Time of control depends on the type of insect or disease and when it is detected.					
Sunscald Protection				Remove wrap*		
Watering	During first and second growing seasons approximately once a week or as needed to maintain adequate but not excessive soil moisture.					
Maintain Rodent Protection	O O O O	O O O O	O O O O	O O O O	O O O O	O O O O
Turf Maintenance Mowing					O O X	XXXX
Mower Damage Prevention				X	XXXX	XXXX
Replanting Evergreen Trees Deciduous Trees Container Plants Turf				OXX OXX XXX O	XXO XXXX XXXX XXXX	XXXO XXOO

X - Optimum Time    O - Less than Optimum Time

\* Undiluted white latex paint is recommended, repaint as necessary until trees reach 4" caliper.

3LE 2b. CALENDAR OF LANDSCAPE MAINTENANCE

ACTIVITY	July	August	September	October	November	December
Pruning	See Table 1a for Best Time for Specific Species.					
Weed Control:	Planting beds must be kept in a weed free condition.					
Remulch	XXXX	XXXX	XXXX	XXXX	OO	XO
Herbicide	Must be applied by a licensed Pesticide Applicator.					
Fertilization: Turf Shrubs, Trees				XXXX XXXX		
Insect & Disease	Time of control depends on the type of insect or disease and when it is detected.					
Sunscald Protection				Apply or maintain paint. Install wrap*.		
Watering	During first and second growing seasons approximately once a week or as needed.					
Maintain Rodent Protection	OOOO	OOOO	XXXX	XXXX	XOOO	OOOO
Lawn Maintenance Mowing	XXXX	XXXX	XXXX	XXOO		
Mower Damage Prevention	XXXX	XXXX	XXXX	XXOO		
Replanting Evergreen Trees Deciduous Trees Container Plants Turf		OX	XXXO			
	OOOO	OOOX	XXXO	OXXX	XO	
	OOOO	OOXX	XXXX	OO		

X - Optimum Time    O - Less than Optimum Time

\* Undiluted white latex paint is recommended, repaint as necessary until trees reach 4" caliper.

TABLE 3. DESCRIPTIONS OF TYPES OF PRUNING

TYPES OF PRUNING	WHEN TO PRUNE	DESCRIPTION
Disease Removal	After Diagnosis	Removal of fungal bacterial growths. Sterilize pruners between cuts.
Deadwood Removal	See Table 1	Removal of dead branches, normally from the interior portion of the crown.
Training	See Table 1	Maintaining the central leaders and acceptable symmetry in evergreen, shade and ornamental trees. Removal of suckers and water sprouts.
Corrective	See Table 1	Removal of storm-damaged, vehicle-damaged or vandalized limbs.
Renewal	See Table 1	Removing all top growth at or near the ground line and remulch. Or removal of 1/3 of the oldest stems at the ground line.

TABLE 4. WEED CONTROL METHODS - INTEGRATED APPROACH

METHOD	CATEGORY		
	TREES	SHRUB BEDS	TURF
Replanting - Filling Voids		X	X
Fertilization	X	X	X
Mulch*	X	X	X
Herbicides	X	X	X
Weed Whip	No	X	

\* Wood chip mulch should be replenished around shade trees and low growing shrubs every 3-5 years. Place mulch to a 4" depth. Mulching will help control weeds, reduce mower damage and conserve moisture.

TABLE 5. FERTILIZATION SCHEDULE

CATEGORY	FREQUENCY	TIME OF APPLICATION	ANALYSIS **	RATE
Mowed Turf	Every 3 Years	April or October	23-0-30	1 lb (N)/1000 sq. ft.
Shrub Beds*	Every 3 Years	October or April	23-0-30	1 lb (N)/1000 sq. ft.
Shade Trees*	Every 3 Years	October or April	23-0-30	.5 lbs/1 Cu. Yd. of soil

Note: Do not fertilize trees and turf during the same season. Offset tree fertilization by one season in order to prevent fertilizer burn on turf.

\* Plants that fix nitrogen, like Silver Buffaloberry, Caragana, Honeylocust, Russian Olive or other legumes, should not be fertilized except under special conditions. Tall shrubs do not need to be fertilized if leaf color remains normal.

\*\* Analysis will be allowed within the following ranges: N (16-24) - P (0) - K (20-30).