

## **LANDSCAPE STRUCTURES 2010 EXPANSION AND TIF AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_day of July, 2010 (the “Agreement”) by and between the City of Delano, a Minnesota municipal corporation (“Delano”); and Landscape Structures, Inc., a Minnesota corporation (“Developer”).

**WHEREAS**, Developer is the owner of a parcel of property within the City of Delano consisting of approximately 4.31 acres and legally described on Exhibit A (the “Property”); and,

**WHEREAS**, Developer intends to construct on the Property a 30,000 square foot expansion of its business, including an additional 20,000 square feet of manufacturing facility (the “Project”); and,

**WHEREAS**, Delano intends to adopt a tax increment financing plan for tax increment financing (economic development) District No. 10 within Development District No. 4 relating to the Project, for the purpose of “pay-as-you-go” tax increment financing assistance to Developer, as well as for other tax increment financing-eligible purposes (the “TIF Plan”); and,

**WHEREAS**, Developer requested site and building plan review and approval of a conditional use permit for fill on the Property.

**NOW, THEREFORE**, in consideration of the City adopting Resolution No. R-10-\_\_\_\_ for site, building plan and conditional permit review and approval and Resolution No. R-10-\_\_\_\_ approving the TIF Plan, Developer covenants and agrees as follows:

1. PLANS. Subject to such changes and modifications as provided herein, Developer shall develop, construct upon and maintain the Property in accordance with the following Exhibits:

Exhibit B - Certificate of Survey and Site Plan.

Exhibit C - Resolution R-10-\_\_\_\_, approving the site and building plan and conditional use permit.

Exhibit D - Grading, drainage, storm water, utility, landscape plans and specifications.

Exhibit E - Floor plan and building elevations.

Exhibit F - The City Planner's report dated July 7, 2010 and the City Engineers' report dated July \_\_\_\_, 2010.

The terms and requirements contained in Exhibits B through F are hereafter referred to as the "Development Work."

2. RIGHT TO PROCEED. Developer shall not obtain a grading or building permit, grade or otherwise disturb the earth, remove trees, develop, construct upon or maintain the Property in any manner until all of the following conditions have been satisfied:

- a. This Agreement has been executed by both parties and recorded with the Wright County Recorder's Office.
- b. Delano has received from Developer all Infrastructure Fees identified in Section 4 herein.
- c. Delano has received the park dedication fee required by Section 7 herein.
- d. Developer is current in its reimbursement to Delano for all out-of-pocket costs incurred by Delano as specified in Section 9 herein.

- e. The TIF Plan has been approved and continues in full force and effect; and the Project in all respects constitutes a qualifying project pursuant to the TIF Plan.
- f. The City Clerk has issued a written letter stating that all requirements of Subsections 2a through e of this Agreement have been satisfied.

3. COMPLETION DATES. Developer shall complete all of the Development Work and obtain Delano's approval thereof no later than June 30, 2011.

4. INFRASTRUCTURE FEES. Developer shall pay trunk sanitary sewer fees in the amount of \$13,637, trunk water charges in the amount of \$10,879, SAC charges in the amount of \$22,935, WAC charges in the amount of \$10,846, sewer connection fee in the amount of \$570, storm water charges in the amount of \$5,219, and all applicable inspection fees, water meter charges and electric hook-up charges (the "Infrastructure Fees"). All such fees and charges shall be paid at the rate applicable at the time paid.

5. TAX INCREMENT FINANCING ASSISTANCE. Delano shall make tax increment financing assistance ("TIF") available to Developer, on a "pay-as-you-go" basis, in an amount up to and not to exceed \$135,000.00, to reimburse Developer for Infrastructure, Park, and Building Permit Fees first paid by Developer prior to commencement of work on the Project. The amount of the TIF reimbursement available to Developer in any calendar year shall not exceed 90% of the "net tax increment" (as that term is defined in the TIF Plan) actually received by Delano in any such year, commencing with the year 2012 and ending in 2020 (the "Qualifying Period"), and in no event shall the total cumulative amount reimbursed to Developer for the entire Qualifying Period exceed \$135,000.00, plus 6% interest on that portion of the \$135,000.00 that

remains unreimbursed from time to time during the Qualifying Period. In the event the total amount of TIF reimbursement received by Developer at the end of the Qualifying Period is less than \$135,000.00 plus the 6% interest as specified herein, Delano shall have no further obligation to provide reimbursement to Developer, so long as Delano has made TIF reimbursements to Developer at the required rate of 90% of “net tax increment” in each calendar year of the Qualifying Period. In no event, however, shall Delano provide any TIF reimbursement to Developer, unless the following conditions precedent are satisfied:

- a. Developer has paid and not contested all Infrastructure Fees identified in Section 4 of this Agreement and the Park Fee identified in Section 7 of this Agreement.
- b. The TIF Plan has been approved and remains in full force and effect for the Qualifying Period, and the TIF Plan has not been challenged for validity in any respect by any person, entity or the State of Minnesota.
- c. For each year during the Qualifying Period, Delano has actually received “net tax increment,” and Developer has waived its right to appeal or otherwise contest the payment of any portion of its property taxes that include the net tax increment amount.
- d. There has not been an “Event of Default” under this Agreement as defined in Section 11 herein.

In addition to the Developer TIF reimbursement referred to herein, Delano reserves the right, pursuant to the TIF Plan, to use net tax increments for other TIF-eligible improvements, expenses and administrative costs.

6. BUSINESS SUBSIDIES ACT. Financial assistance of less than \$150,000.00 is not a business subsidy pursuant to Minnesota Statutes §116J.993, Subd. 3. The Project meets the criteria set forth in Minnesota Statute §116J.993, Subd. 3 and

Delano therefore finds that the financial assistance provided for herein is not a Business Subsidy under the Business Subsidy Act.

7. PARK REQUIREMENTS. Developer shall satisfy park dedication requirements for the Property by paying to Delano a park dedication fee in the amount of \$15,744.

8. ADDITIONAL REQUIREMENTS. During or at the conclusion of the Development Work, conditions may exist which make it appropriate to require additional grading, erosion control, drainage, storm sewer, sanitary sewer, and water requirements on the Property. If Delano determines, in its sole discretion, that such additional requirements are appropriate, Developer shall forthwith proceed to implement such additional requirements at Developer's sole cost.

9. RESPONSIBILITY FOR COSTS. Except as otherwise specified herein, Developer shall pay all costs incurred by it or Delano in conjunction with the development of the Property, including, but not limited to, legal, planning, engineering, design, development, construction, easement and inspection expenses incurred in connection with (i) drafting, review, approval, and implementation of the CUP, site plan, building plan, and any other reviews and approvals by Delano and any other reviewing authority; (ii) the Development Work; (iii) the Property; (iv) the preparation and review of this Agreement and other documents referred to in this Agreement or related to the Development Work; and (v) enforcing the terms of this Agreement. Developer shall pay in full all bills submitted to it by Delano, in accordance with this Agreement, within 30 days after receipt.

10. INDEMNIFICATION. Developer shall defend, indemnify, release and hold harmless Delano, its elected officials, officers, employees, planners, engineers, attorneys and agents (the “Indemnitees”) from all claims, lawsuits, administrative actions, judgments, settlements, injunctions, restraining orders, fines, penalties, and all expenses and damages incurred as a result of, related to, or arising from the Development Work, the Property, the TIF Plan, TIF Assistance, this Agreement, and the reviews, approvals, denials, acts and failures to act that are related thereto. Developer shall defend, indemnify, release, and hold harmless the Indemnitees from all costs, damages, and expenses of every kind, including attorney and expert fees and costs, which the Indemnitees may pay or incur as a result of or related to such claims, lawsuits, administrative actions, judgments, settlements, injunctions, restraining order, fines, penalties, and other expenses and damages.

11. DEVELOPER’S DEFAULT. The following shall be “Events of Default” under this Agreement.

- (i) Failure by Developer to comply with or perform any terms, conditions, undertakings, obligations or agreements on its part to be complied with or performed pursuant to this Agreement.
- (ii) If any representation made by Developer in this Agreement is inaccurate, either when made or at a later date.
- (iii) Failure by Developer to pay when due the payments required to be paid or secured under any provision of the Agreement.

12. ADDITIONAL PARKING REQUIREMENTS. Developer shall provide a revised site plan for review and approval by the City Planner, showing 78 parking stalls, 32 of which shall be constructed and striped at this time. If on-site parking demand exceeds the 32 stall parking supply, as determined in the sole discretion of the City

Planner, Developer shall construct and stripe such additional parking stalls as directed by the City Planner, within 90 days of written notice from the City Planner. Developer shall notify the City Planner of any change in building occupancy, employee count, or other factors that may affect parking capacity. No parking shall be allowed on Industrial Boulevard, driveways, landscaped areas or unstriped parking areas.

13. ADDITIONAL REQUIREMENTS REGARDING SITE ACCESS.

Developer shall submit to the City Engineer for review and approval Developer's plans for a 42-foot wide curb cut. Developer shall submit for City Planner approval a joint access easement sufficient for the planned access at the rear of the building, and the approved easement shall thereafter be recorded. Design, construction and maintenance of the proposed driveway at the rear of the building shall be reviewed and approved by the City Engineer, which review shall include but not be limited to any adverse impacts on Delano's existing public drainage and utility easement. Developer shall obtain approval from the gas pipeline utility for that portion of the driveway that overlaps with gas pipeline easement No. 35917. The driveway on Developer's lot shall be paved and the western gravel drive narrowed or divided to reduce the gravel service.

14. ADDITIONAL UTILITY, GRADING, DRAINAGE AND LIGHTING REQUIREMENTS.

The City Engineer shall review and approve all utility, grading, drainage and lighting improvements. All exterior light fixtures must be 90 degree cut-off design. Light poles shall be less than 30 feet in height. Mechanical equipment outside the building shall be screened or painted to match the building, and trash receptacles shall be stored within the building. The applicant shall provide separate water connections for potable water and fire protection.

15. MISCELLANEOUS. Delano has made no oral promises or representations upon which Developer has relied in executing this Agreement. No action or inaction of Delano shall constitute a waiver, release, or amendment of the provisions of this Agreement. To be binding, amendments, releases, or waivers shall be in writing, signed by the parties and approved by formal action of the Delano City Council. There are no third-party beneficiaries of the Agreement. This Agreement is non-assignable by Developer. Developer shall not convey any interest in the Agreement without formal approval of the Delano City Council. This Agreement shall be binding upon the parties, their heirs, successors, and assigns, and any person or entity now or in the future who holds any interest in the Property.

16. NOTICES. Required notices to Developer shall be in writing, and shall be either hand delivered, mailed by certified mail, or sent by facsimile to Developer, its employees or agents at the following address:\_\_\_\_\_. Notices to Delano shall be in writing and shall be either hand delivered, mailed by certified mail, or sent by facsimile to the Delano City Administrator at the following address: City of Delano, City Hall, 234 2<sup>nd</sup> Street North, Delano, Minnesota 55328, Attention: City Administrator.

Dated:\_\_\_\_\_, 2010

CITY OF DELANO

By\_\_\_\_\_   
 Joe McDonald, Mayor

By\_\_\_\_\_   
 Phil Kern, City Administrator

Dated:\_\_\_\_\_, 2010

LANDSCAPE STRUCTURES, INC.

