



State of Vermont
Agency of Transportation
Finance & Administration
Contract Administration
One National Life Drive
Montpelier, VT 05633-5001

[phone] 802-828-2641

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<http://vtranscontracts.vermont.gov/>

April 21, 2015

Missy Ross, Clerk
Town of Hinesburg
10632 VT Route 116
Hinesburg VT 05461

RE: HINESBURG MEMORIAL PARK TREES

Dear Ms. Ross:

Enclosed, please find the Maintenance Agreement for the above referenced project.

We respectfully request that you have the Agreement signed by the proper authorities and witnessed where required.

Please do not date page one of the Agreement. This will be accomplished by our office after the Agreement has been signed by the Secretary of Transportation.

Once the Agreement is fully executed a copy shall be returned to you for your records.

Should you have any questions or concerns, please contact me at 802-828-2643.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Winter".

Jon Winter
Special Agreements Administrator

Enclosure



Street Tree Maintenance Agreement
Between
The State of Vermont, Agency of Transportation
And
The Town of Hinesburg
Regarding the Planting of Street Trees in Memorial Park
Within the Vermont Route 116 Right of Way

I. Definitions

- a. Town – the Town of Hinesburg.
- b. State – the State of Vermont Acting through its Agency of Transportation (VTrans).
- c. Park – Memorial Park in Hinesburg.
- d. Trees – the trees to be planted within the Vermont Route 116 right of way within the Park.
- e. Permit – the permit the Town must obtain from VTrans pursuant to 19 V.S.A. § 1111 prior to planting and maintaining Trees within the Vermont Route 116 right-of-way.
- f. Parties – the State and the Town.

II. Permits – The Town must apply for and obtain a Permit to plant and maintain Trees within the State’s Vermont Route 116 right of way in the Park. When filing the Permit application, the Town shall provide a detailed map showing the proposed location and number of Trees, the type and branch height of the Trees, and a plan for maintenance of the Trees.

III. Conditions

- a. The Town shall plant all Trees at least 20 feet from the edge of the paved portion of the traveled way.
- b. The Town shall be responsible for all regular and special maintenance of the Trees. Special maintenance shall include but not necessarily be limited to annual pruning by a certified arborist to promote a strong central leader with strong branch unions.
- c. If the State finds that the Town has violated the terms and conditions of the Permit, the State shall inform the Town in writing of the alleged violation and potential remedies. The State shall provide the Town with the opportunity to remedy any alleged violation within 30 days of issuance of written notice by the State. The State may issue written notice electronically. If the Town fails to cure within 30 days after written notice of an alleged violation, the State may use all legal remedies to restrain the Town’s alleged violations and to collect civil penalties.
- d. The Town acknowledges that the State, after finding that the Town has violated the terms and conditions of the Permit, may pursue remedies of its own should the Town fail to act as prescribed or otherwise agreed. Those remedies include, but shall not be limited to: trimming, pruning, removal, and/or charging the Town for the expenses associated with maintenance or removal.

- e. The State may at any time take unilateral action or institute legal proceedings to remedy a safety issue notwithstanding the notice and cure period provided by this Agreement.
- f. The State shall provide the Town with at least 30 days' written notice before the State removes any Trees to widen the traveled portion of the right of way or for any other purpose, including without limitation, improvements to slope, drainage, signage, or pedestrian or bicycle travel. The State, within its sole discretion, may remove any and all Trees from its right of way or alter any and all Trees in the right of way for any purpose.
- g. This Agreement shall terminate in the event the Town takes over the section of Vermont Route 116 in question as a Class 1 Town Highway.
- h. All Trees shall be "Princeton" American Elms.
- i. Trees with a caliper between 2 inches and 2.5 inches shall be the primary choice for planting, with a minimum branch height between 5 feet and 5.5 feet from ground level.
- j. The planting locations, as indicated on the Permit application, shall be staked out and examined and approved by the State prior to planting.
- k. The Town currently mows and maintains the Park, and shall continue to do so.
- l. The Town shall provide flaggers or other traffic control measures in conformity with the Manual on Uniform Traffic Control Devices (MUTCD) should they be required during planting or maintenance.
- m. The Town shall assign an existing or new committee with the responsibility of stewardship of the Trees, working in conjunction with the Town Tree Warden.
- n. This Agreement represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- o. This Agreement may be modified only by a written amendment signed by the authorized representatives of both Parties.
- p. The Town shall act in an independent capacity and not as officers or employees of the State. The Town shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Town or of any agent or contractor of the Town. The State shall notify the Town in the event of any such claim or suit, and the Town shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. After a final judgment or settlement the Town may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Town shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Town, its agents, or contractors. The Town shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Town or its agents or contractors.

IV. Signatures

Dated at Hinesburg, Vermont this ____ day of _____, 2015.

Town of Hinesburg:

By: _____
Trevor Lashua, Town Administrator,
Authorized Agent

Dated at Montpelier, Vermont this ____ day of _____, 2015.

State of Vermont, Agency of Transportation:

By: _____
Susan M. Minter, Secretary,
Authorized Agent

Approved as to Form:

W. W. White 4/17/15
Assistant Attorney General (Date)