

INTRODUCED BY: Trustees Fortune, Graves, Whitmore, Eisenhauer and Stoeckl

**AN ORDINANCE APPROVING AN AGREEMENT FOR URBAN FOREST MANAGEMENT SERVICES WITHIN THE VILLAGE OF TWIN OAKS.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF TWIN OAKS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Trustees hereby approves, and the Chairman is hereby authorized to execute, a contract substantially in the form "Exhibit 1" attached hereto and incorporated herein, on behalf of the Village of Twin Oaks with The Davey Tree Expert Company, an Ohio Corporation ("Davey"), whereby Davey, by and through its Davey Resource Group division will perform urban forest management services within the Village under the terms set forth in Exhibit 1.

**Section 2.** This ordinance having been read by title or in full two times prior to passage, shall be in full force and effect from and after its passage and after being duly signed by the Chairman of the Board of Trustees and attested by the Village Clerk.

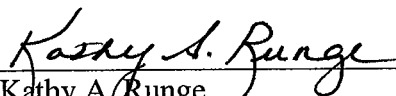
PASSED and APPROVED this 21<sup>st</sup> day of September, 2016.

PASSED and APPROVED this 21<sup>st</sup> day of September, 2016.



Russ Fortune, Chairman  
Board of Trustees

ATTEST:

  
Kathy A. Runge  
Village Administrator/Clerk

First Reading: 9-21-16

Second Reading: 9-21-16

## Exhibit 1

### **Village of Twin Oaks, Missouri CONSULTANT SERVICES CONTRACT**

THIS AGREEMENT, made and effective as of September \_\_\_\_, 2016, by and between the **Village of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "Village," and **The Davey Tree Expert Company**, an Ohio Corporation, by and through its **Davey Resource Group division**, hereinafter collectively referred to as "Consultant," with a business mailing address of **1909 Park Ave., St. Louis, MO 63104**;

WHEREAS, the CONSULTANT provided the Village with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for certain consulting services with regard to the management of the Village's urban forest (the "Proposal"), and the Village wishes to engage the Consultant as provider of those services to the Village, in accordance with the terms of this Agreement;

WITNESSETH: That the parties hereto for the considerations hereinafter set forth agree as follows:

#### **I. SCOPE OF SERVICES**

Consultant's services are necessary for the following Project of Village: *Urban Forest Management*.

Except as expressly specified herein, Consultant hereby agrees to provide all of the expertise, supplies, supervision, labor, skill, materials, equipment, and apparatus to perform all the services and do all the things necessary for the proper execution of the services which are generally described as urban forest management including, but not limited to, tree inventories, tree benefit assessments, tree risk assessments, urban forest management plans, tree management software, training and education, tree preservation planning, and tree maintenance and as more particularly described in the Proposal attached **Exhibit A**, incorporated herein (the "Services").

The Services shall be provided by the Consultant in accordance with all the provisions of the Contract and the attached **Village of Twin Oaks General Conditions** which are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment, including the Proposal attached hereto as **Exhibit A**. If there is any conflict between the Village's General Conditions (attached hereto and incorporated herein by reference) and the Proposal attached as **Exhibit A**, this Agreement and its General Conditions shall prevail.

#### **II. COMPENSATION**

**A. Basic Compensation.** The Village hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

such amount as is set forth on the Proposal.

**B. Additional Compensation.** Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If Village directs in writing additional services not included in this Agreement, Consultant shall be paid as follows:

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**[inapplicable if left blank]**

### III. TIME AND MANNER OF PAYMENTS

The Village shall pay Consultant in accordance with the terms set forth in the "Budget and Fees" Section of the proposal attached to this agreement as **Exhibit A**.

### IV. CONTRACT SCHEDULE

Time is of the essence.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

**THE DAVEY TREE EXPERT COMPANY**

**VILLAGE OF TWIN OAKS**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Village Administrator/Clerk

**GENERAL CONDITIONS  
VILLAGE OF TWIN OAKS  
CONSULTANT SERVICES AGREEMENT**

**Independent Contractor.** The Consultant shall be and operate as an independent contractor in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the Village in any respect.

**Compliance with Laws.** The Consultant shall comply with all applicable Village ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. Specifically, Consultant shall comply with the following state law requirements:

- *Work Authorization Program.* If the Contract is for services expected to cost more than \$5,000.00, the Consultant shall comply with Section 285.530 RSMo., pertaining to enrollment and participation in a federal work authorization program (as defined therein) and shall provide verification through an affidavit (attached as **Exhibit B**) that the Consultant (1) does not knowingly employ any person who is an unauthorized alien in connection with the Contract and (2) is enrolled in a federal work authorization program and provide documentary proof thereof. The affidavit shall contain the notarized signature of the registered agent, legal representative or corporate officer of the business entity including but not limited to the human resources director or their equivalent.
- *Proof of Lawful Presence.* Section 208.009 RSMo., requires that all applicants *at the time of application* for any contract provided by a local government provide "affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States." Consultant's affirmative proof must be established through (i) a Missouri driver's license, (ii) any "documentary evidence recognized by the department of revenue when processing an application for a driver's license," or (iii) "any document issued by the federal government that confirms an alien's lawful presence in the United States." §208.009.3

**Subcontracts.** The Consultant shall not subcontract any of the Services to be performed by it hereunder without the express written consent of the Village. In addition, this Contract shall not be assigned by the Consultant.

**Indemnification.** To the fullest extent permitted by law, the Consultant agrees to defend with counsel selected by the Village, and indemnify and hold harmless the Village, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the Village or others, arising from Consultant's breach of the Contract or out of services and operations performed hereunder by the Consultant, including the Village's reliance on or use of the services or products provided by the Consultant under the terms of this agreement. The Consultant shall not be liable for any loss or damage attributable solely to the negligence of the Village. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance in amounts specified herein and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

**Insurance.** Consultant shall furnish the Village the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the Village in the request for proposals, if any, otherwise in the amounts stated on **Exhibit A**, but unless otherwise provided shall be no less than the maximum amounts of liability set forth in Chapter 537.610 RSMo., applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the Village. The Village and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Consultant's work, as determined by the Village, shall be named as additional insured.

In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to Village as indicated in the request for proposals, if any, otherwise as stated on attached **Exhibit A**. The Village and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed a waiver of the Village's sovereign immunity relative to any claim against the Village.

**Nondisclosure.** The Consultant agrees that it will not divulge to third parties without the written consent of the Village any information obtained from or through the Village in connection with the performance of this Contract.

**Changes.** No change in this Contract shall be made except in writing prior to the change in Services or terms being performed. The Consultant shall make any and all changes in the Services without invalidating this Contract when specifically ordered to do so in writing by the Village. Consultant, prior to the commencement of such changed or revised Services, shall submit promptly to the Village, a written cost or credit proposal for such revised Services. If the Village and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the Village, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Services. **No work or change shall be undertaken or compensated for without prior written authorization from the Village.**

**Termination.** The Village shall have the right to terminate the Contract at any time for any reason by giving the Consultant written notice to such effect. The Village shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Contract an amount equal to the cost of all Services performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract Price. The Consultant shall submit to the Village its statement for the aforesaid amount, in such reasonable detail as the Village shall request, within thirty (30) days after such date of termination. The Village shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the Village is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the Village's then current fiscal year at the discretion of the Village. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the Village to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**Accounting.** During the period of this Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The Village shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

**Other Consultants.** The Village reserves the right to employ other consultants in connection with the Services.

**Request for Proposals.** If the Village issued a request for proposals in connection with the Services, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Consultant Services Contract or proposal of the Consultant, the requirements of the Village's Request for Proposal and this executed Contract shall control and supersede unless a change thereto is specifically stated in this Contract.

**Project Records and Work Product.** The Consultant shall provide the Village with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The Village shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Consultant created in performance of or relating to this Contract. Consultant agrees to take all steps reasonably requested by the Village to evidence, maintain, and defend the Village's ownership rights in the Work Product.

**Site Operations.** Where appropriate, the Village will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests and evaluations in connection with the Services.

**Personnel.** The Services shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Services without the express written approval of the Village.

**Representations.** Consultant agrees that it has not relied on any representations or warranties of the Village, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

**Other Special Provisions.** The special provisions set forth on **Exhibit A** are incorporated herein by reference, and made a part hereof.

**EXHIBIT A**  
**Proposal**



**Proposed Urban Forest Management Tasks and Pricing**

The following tasks are offered for your consideration as services that the Urban Forestry Consortium can provide the Village of Twin Oaks to support the urban forest management program and assist Village staff with program responsibilities. Other services can be offered as well depending on the needs of the Village. In partnership with the Davey Tree Expert Company, the Urban Forestry Consortium can provide this professional assistance on a time and materials and not-to-exceed basis, and will perform all duties in an efficient manner.

*Task One: Village-Wide Maintenance Recommendations*

- A. Visit, assess, and recommend maintenance for tree(s) per resident's request.
- B. Provide follow-up bid proposals for requested services.
- C. Manage and monitor pruning/removal/treatment contractors to verify work is completed to specification and scope of work.
- D. Develop emerald ash borer (EAB) strategy and assist with implementation.
- E. Conduct a Level 2 assessment of trees identified as a potential risks.
- F. Conduct an annual Level 1 assessment of trees in defined neighborhood(s) to quickly identify high-risk trees that need maintenance.
- G. Update inventory in TreeKeeper as trees are assessed, per activities described above.

*Task Two: Village-Wide Replacement Planting Recommendations*

- A. Identify and organize potential sites for spring and fall plantings based on resident requests and/or inventory results.
  - a. Large, medium, or small site assessment and marking of planting sites.
  - b. Species selection.
- B. Monitor planting contractors to verify work is completed to specification and scope of work; follow up with warranty inspections.
- C. Update inventory after trees are planted.

*Task Three: Miscellaneous Consulting Services*

- A. Write grants, complete required forms, assemble required attachments, and present the completed grant application package to the Village for authorized signature and submission. Coordination between Urban Forestry Consortium and the Village will be essential to understanding project scope, budget, timeline, and various required information.
- B. Conduct tree planting or pruning workshops for Village staff or volunteer groups.
- C. Present public education seminars.
- D. Attend Village meetings and/or provide reports as needed.
- E. Assist with Tree City USA application.

- F. Provide tree risk assessments as needed.
- G. Provide tree valuations as needed.
- H. Provide tree preservation and consulting during construction.

*Contact Information*

Urban Forestry Consortium Manager: Meridith Perkins  
 Phone: 314.452.4268  
 Email: meridith.perkins@davey.com  
 Address: 1909 Park Ave., St. Louis, MO 63104

Village of Twin Oaks: \_\_\_\_\_  
 Primary Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Address: \_\_\_\_\_

*Budget and Fees*

Total 2016 contract shall not exceed \$\_\_\_\_\_.

- Tasks will be assigned to the Urban Forestry Consortium by the Village of Twin Oaks; task completion time and deliverables will be mutually agreed upon at the time of the assignment(s).
- The Village will be billed on a monthly basis for field and/or office time.
- Time is billed at \$90.00/hour per arborist. Travel will not be expensed to the Village.
- Urban foresters are ISA Certified Arborists and Tree Risk Assessment Qualified.

*Authorization*

The specification of deliverables as set forth in this document has been agreed upon and accepted by the following authorized representatives of the Village of Twin Oaks, MO and Urban Forestry Consortium, a division of The Davey Tree Expert Company.

***Davey Representative***

***Client Representative***

\_\_\_\_\_  
 Signature  
  
 Meridith McAvoy Perkins  
 Printed Name  
  
 Urban Forestry Consortium  
 Manager  
 \_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Printed Name  
  
 \_\_\_\_\_  
 Title

