

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

AN ORDINANCE APPROVING AN AGREEMENT WITH LANDESIGN, L.L.C., FOR DESIGN-BUILD SERVICES FOR THE TWIN OAKS PARK CREEK RESTORATION PROJECT.

WHEREAS, after requesting proposals for the 2016 Twin Oaks Park Creek Restoration Design-Build Project (the "Project"), the Board of Trustees received proposals from several qualified entities for the Project; and

WHEREAS, after interviewing prospective contractor's, the Board ranked them and negotiated with their highest ranked bidder, Landesign, L.L.C.; and

WHEREAS, the Board of Trustees wishes to accept the proposal from Landesign, L.L.C.

NOW, THEREFORE, 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 Landesign, L.L.C., a Missouri limited liability company, for the Project.

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 5th day of October, 2016



Russ Fortune, Chairman
Board of Trustees

ATTEST:

First Reading: 10-5-16

Second Reading: 10-5-16

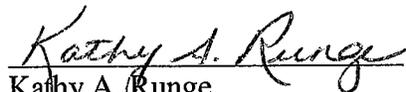

Kathy A. Runge
Village Administrator/Clerk

Exhibit 1

VILLAGE-CONTRACTOR AGREEMENT

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THIS VILLAGE-CONTRACTOR AGREEMENT (this “Agreement” or “Village-Contractor Agreement”), is made and entered into as of this _____ day of October, 2016, by and between Landesign, L.L.C., a Missouri limited liability company having a principal administrative office at 50 Tower Street, Moscow Mills, MO 63362 (the “Contractor”), and the Village of Twin Oaks, a Missouri municipal corporation located in St. Louis County (the “Village”). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

A. In response to the Village’s request for proposals for the 2016 Twin Oaks Park Creek Restoration Design-Build Project (the “Project”), the Contractor has submitted a certain Proposal in accordance with the Bid Documents to perform the Work.

B. After due consideration, the Village has accepted the Bid Proposal of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Work in accordance with the Contract Documents and the Village shall pay the Contractor as hereinafter specified.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the Village and the Contractor hereby agree as follows:

1. **Contract Documents.** The entire agreement between the parties shall consist of this Executed Village-Contractor Agreement and, without limitation, the following documents:

1. Notice to Bidders
2. Instructions to Bidders
3. Bid Form/Bid Proposal (executed by Contractor)
4. Signature of Bidder sheet
5. List of Resources and References (completed by Contractor)
6. List of Proposed Subcontractors and Suppliers (executed by Contractor)
7. Affidavit of Non-Collusion (executed by Contractor)
8. Performance and Maintenance Bond (executed by Contractor and surety)
9. Payment Bond (executed by Contractor and surety)
10. General Conditions/Requirements
11. Applicable Missouri Annual Wage Order
12. Job Special Provisions
13. Bid Bond (if submitted, executed by Contractor and surety)
14. Notice of Award (issued by Village and receipt acknowledged by Contractor)
15. Notice to Proceed (issued by Village and receipt acknowledged by Contractor)

and shall also include any Exhibits to the above documents, any Addenda issued prior to receipt of bid proposals, any duly-issued Modifications, and all other documents contained or specified within the Bid Package dated August 2016, as such may be on file in the office of the Village Clerk of Twin Oaks, Missouri (all of the foregoing collectively referred to as the “Contract Documents” are hereby

incorporated in this Agreement by reference). Unless otherwise stated, to the extent that any terms or provisions within Contractor's Bid Proposal conflicts with the terms or provisions within the Village-Contractor Agreement or General Conditions, such terms and provisions within the Village-Contractor Agreement or General Conditions shall prevail.

2. **The Work/Contract Sum.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract Sum is One Hundred Forty-Four Thousand, Three Hundred Twenty-One Dollars and Fifty-Six Cents (**\$144,321.56**), which includes all compensation to Contractor due for the Work, which shall include all such work within the bid for the Base Work, and additionally Twenty-Four Thousand (**\$24,686.90**) for all such work within the Optional Pump Alternative as set forth in detail on the Contractor's Bid Form/Bid Proposal dated August 25, 2016 incorporated herein by reference. Any additional Work not within the Base Bid and/or the Optional Pump Alternative that is hereinafter approved by the Village in writing pursuant to a Change Order shall be completed for the unit prices set forth in the Contract Documents, if applicable.

3. **Time of Completion.** Contractor shall commence work under this Agreement as set forth in the JOB SPECIAL PROVISIONS and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the Village the sums provided in the Contract Documents.

4. **Guaranty.** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the Village, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the Village that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the Village may use (and the Contractor agrees and consents to such use) the Performance and Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the Village shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

5. **Payment Bond.** If the Contract Sum is in excess of \$50,000 the Contractor shall furnish within five (5) days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents.

6. **Performance and Maintenance Bond.** The Contractor shall also furnish within five (5) days of notification of contract award a satisfactory Performance and Maintenance Bond in the full amount of the Bid based on the bid quantities listed on the Bid Proposal form. The Performance and

Maintenance Bond furnished shall guarantee the faithful performance of the Work and warrant the Work for the guaranty period established in this Village-Contractor Agreement. The submitted Performance and Maintenance Bond shall be substantially in the form of the “Form of Performance and Maintenance Bond” included within the Bid Documents.

7. **Insurance.** The Contractor shall obtain and maintain during the term of the Project and the Village-Contractor Agreement the insurance coverages at least equal to the coverages set forth in this paragraph 7, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the Village.

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$2,734,000 per occurrence \$2,734,000 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$2,734,000 per occurrence \$2,734,000 aggregate
Employer’s Liability	\$2,734,000 bodily injury by accident (each accident) \$2,734,000 bodily injury by disease (each employee) \$2,734,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker’s Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

Before commencing any work, the Contractor shall provide to the Village certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph 7. Each such certificate shall show the Village, and such other governmental agencies as may be required by the Village to be insured by underlying grant or contract relating to the Project, as an additional insured, and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the Village.

The Village may waive any insurance coverages or amounts required by this paragraph 7 when the Village deems such waiver to be in the interest of the public health, safety, and general welfare.

8. **Indemnification.** To the fullest extent permitted by law, the Contractor 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 suit, 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 money damages, or trespass, or any other circumstances, sustained by the Village or others, arising from the Contractor’s breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the Village. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the Village or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

9. **Attorney Fees' and Costs.** The Contractor shall reimburse to the Village any costs and attorneys' fees that the Village may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the Village's enforcement of this Agreement.

10. **Liquidated Damages.** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the prosecution of the Work and the Project will inconvenience the public and increase administrative costs of the Village, the costs of which the Contractor and the Village are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work within the time stipulated in this Agreement, or within such extension of time as may be allowed by the Village in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the Village as liquidated damages, and not as a penalty, the sum equal to **1.5% of the total contract amount** for each calendar day that the Work remains uncompleted after the time allowed for the completion, including approved extensions. In the sole discretion of the Village, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension shall in no way operate as a waiver of the Village of any of rights under this Agreement.

11. **Compliance with Federal, State and Local Law.** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.

12. **Prevailing Wage.** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents and shall be included in the Contract Documents.

13. **Required OSHA Training.** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the Village pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon Village's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the Village shall withhold and retain from the contract all sums and amounts due and owing to the Village as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

15. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. The Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in Exhibit A to this Agreement. The Contractor shall not be required to provide these affidavits to the Village if such affidavits have been previously provided to the Village within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Contractor shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Contractor is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Contractor (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Contractor and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the Village, which shall be available from the Village Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the Village rescinding and voiding any Contract awarded to the Contractor.

16. **Taxes.** The Village is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the Village and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.

17. **Other Representations, Warranties and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor owns sufficient equipment and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the Village for any advertising unless the Contractor receives the prior written consent of the Village.

18. **Amendment; Waiver.** No amendment, modification or waiver of any provision of

this Agreement shall be effective unless in a writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

19. **Choice of Law.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

20. **Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

21. **Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

22. **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

LANDESIGN, L.L.C.

VILLAGE OF TWIN OAKS, MISSOURI

Name

Chairman

Address

Attested

City, State, Zip

Date

