

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is entered into on the 18 day of December 2014, by and between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter the "Village"), and Davis Tree Care and Landscape, Incorporated (hereafter the "Contractor").

WHEREAS, the Contractor submitted a Proposal to prune Village Owned parkway trees for 2015 (hereinafter referred to as the "Project"), pursuant to the Village's Request for Proposals, attached hereto and incorporated herein by reference; and

WHEREAS, the Contractor represented in said Proposal that it has the necessary personnel, experience, and competence to promptly complete the Project and the work required hereunder (hereinafter referred to as the "Work"); and

WHEREAS, the Contractor's Proposal is attached hereto and incorporated herein by reference into this Contract; and

WHEREAS, it is the intent of the Village and Contractor that the Contractor shall perform the Work pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, and other good and valuable consideration received and to be received, it is mutually agreed by and between the parties as follows:

1. RECITALS INCORPORATED

The above recitals are incorporated herein as though fully set forth.

2. SCOPE OF WORK

The Contractor shall perform the Project in accordance with its Proposal for the price of \$160,000.00 ("Contract Price"), complete the Project in accordance with any applicable manufacturers' warranties and in accordance with the Village's Request for Proposals, the Contractor's Proposal and this Contract, all of which, together shall constitute the Contract Documents. The Contractor acknowledges that it has inspected the sites where the work is to be performed and that it is fully familiar with all of the conditions at the sites, and further that its bid has adequately taken into consideration all of the conditions at the sites. The Contractor hereby represents and warrants that it has the skill and experience necessary to complete this project in a good and workmanlike manner. The Contractor further represents and warrants that the Project will be completed in a good and workmanlike manner in accordance with the Contract Documents, and that the Project will be free from defects. The Contractor shall achieve completion of all work required pursuant to the Contract Documents on or before December 31, 2015 ("Contract Time"). The Contract Time is of the essence. In the event the Contractor fails to complete the Project on or before said date, the Village shall be entitled to liquidated damages in the amount of

\$500.00 per day for each day the work remains uncompleted beyond the completion date set forth above. This amount is not a penalty, and the parties agree to said amount given the difficulties associated with determining or calculating damages to the Village in the event the Project is not completed on time. The Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time based upon conditions found at, or in the vicinity of, the site.

3. DESIGNATED REPRESENTATIVES

The Contractor shall designate in writing a person to act as its designated representative with respect to the Work to be performed under this Agreement. Such person shall have complete authority to transmit and receive instructions and information, interpret and define the Contractor's policies and decisions with respect to the Work governed by this Agreement. The Village's Forestry Superintendent shall have complete authority to transmit and receive instructions and information, interpret and define the Village's policies and decisions with respect to the Work governed by this Agreement, or such other person as designated in writing by the Village Manager.

4. TERM OF CONTRACT

The Contractor shall perform the Project pursuant to this Agreement beginning on the effective date as defined herein and ending on the date that the Project is completed as determined by the Village. The Contractor shall invoice the Village for the Work provided pursuant to this Agreement at the rates set forth in its Proposal. The term of this Agreement may be extended in writing for additional periods of time pursuant to the consent of the parties.

A. Contract Term

The initial contract term shall be from the date of award to December 31, 2015. The Village of Oak Park has the right to renew the contract on an annual basis for two (2) optional one year terms (January 1 to December 31). The Bidder shall begin performing the services within fourteen (14) days of a notice to proceed from the Forestry Superintendent or his designee.

B. Contract Renewal

The Village will have the right to renew the contract for two additional one year terms with all terms and conditions, other than price, remaining the same. The Village will allow the Bidder to increase or decrease the contract price for each annual renewal provided that the annual price adjustment shall equal the change in the latest published Index (as defined below) as compared to the Index for the previous year. The Index shall be the United States Department of Labor, Bureau of Labor Statistics, (US DOL/BLS) Revised Consumer Price Index for all Urban Wage Earners for Chicago, Illinois - Gary, Indiana - Kenosha, Wisconsin (all items, 1982-1984 = 100). However, the

maximum increase in cost shall be capped at five percent (5%) of the previous year's cost.

The Bidder must propose an annual cost adjustment pursuant to the terms of this section with supporting documentation in writing to the Village sixty (60) days before the expiration of the applicable term. If the Village rejects the proposed price change, it will have the option not to renew the contract.

C. Recertification

If the Village renews the contract for an additional one year term, the Bidder will provide the Village with a renewed certification in the form in Section V indicating that it continues to be eligible to contract with units of local government. If a contractor or subcontractor is not able to certify that it continues to meet all requirements, it shall provide a detailed explanation of the circumstances leading to the change in certification status.

5. PAYMENT SCHEDULE

The Contractor shall, as a condition precedent to its right to receive any payment, submit to the Village an application for payment and such receipts, vouchers, and other documents as may be necessary to establish the Contractor's payment for all labor and material and the absence of any interest whether in the nature of a lien or otherwise of any party in any property, work, or fund with respect to the Work performed hereunder. Such documents shall include, where relevant, the following forms, copies of which are attached hereto:

- (i) Contractor's sworn statement;
- (ii) Contractor's partial or final waiver of lien;
- (iii) Subcontractor's sworn statement(s); and
- (iv) Subcontractor's partial or final waiver of lien.

Payment by the Village shall be conditioned upon an inspection by the Village of the work completed and submission of required waivers by the Contractor. Payment by the Village shall in no way constitute a waiver of, or relieve the Contractor from, any defects in the work. All payments shall be made in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* Final payment for any Work performed by the Contractor pursuant to an invoice by the Contractor shall be made by the Village to the Contractor when the Contractor has fully performed the work and the work has been approved by the Village and submission of required waivers and paperwork by Contractor. Approval of the work and issuance of the final payment by the Village shall not constitute a waiver of, or release the Contractor from, any defects in the work.

The Village shall have the right to withhold from any payment due hereunder such amount as may reasonably appear necessary to compensate the Village for any actual or prospective loss due to Work which is defective or does not conform to the Contract

Documents; damage for which the Contractor is liable hereunder; liens or claims of liens; claims of third parties, subcontractors, or material men; or any failure of the Contractor to perform any of its obligations under this Agreement. The Village may apply any money withheld or due Contractor hereunder to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, and attorney's fees incurred, suffered, or sustained by the Village and chargeable to the Contractor.

6. TERMINATION

The Village may terminate this Agreement for cause, which includes but is not necessarily limited to, the Contractor's failure to perform the work pursuant to this Contract. The Village shall provide the Contractor with five (5) days' written notice of a termination for cause pursuant to the provisions of Section 12 below. The Village may also terminate this Agreement when it determines the same to be in its best interests by giving fourteen (14) days' written notice to the Contractor pursuant to the provisions of Section 12 below. In such event, the Village shall pay to the Contractor all amounts due for the work performed up to the date of termination.

7. COMPLIANCE WITH APPLICABLE LAWS

The Contractor shall comply with all applicable laws, regulations, and rules promulgated by any federal, state, county, municipal and/or other governmental unit or regulatory body now in effect during the performance of the work. By way of example only and not as a limitation, the following are included within the scope of the laws, regulations and rules with which the Contractor must comply: all forms of Workers Compensation Laws, all terms of the equal employment opportunity rules and regulations of the Illinois Department of Human Rights, statutes relating to contracts let by units of government, and all applicable civil rights and anti-discrimination laws and regulations.

8. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall waive any right of contribution against the Village and shall indemnify and hold harmless the Village and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including, but not limited to, legal fees (attorney's and paralegal's fees, expert fees and court costs) arising out of or resulting from the performance of the Contractor's Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, other than the work itself, including the loss of use resulting therefrom, or is attributable to misuse or improper use of trademark or copyright-protected material or otherwise protected intellectual property, to the extent it is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which the Village would otherwise have. The Contractor shall

similarly protect, indemnify and hold and save harmless, the Village, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees incurred by reason of the Contractor's breach of any of its obligations under, or the Contractor's default of, any provisions of this Contract. The indemnification obligations under this Section 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 Workers' Compensation or Disability Benefit Acts or Employee Benefit Acts.

9. INSURANCE

The Contractor shall, at the Contractor's expense, secure and maintain in effect throughout the duration of this Contract, insurance of the following kinds and limits set forth in this Section. The Contractor shall furnish "Certificates of Insurance" to the Village before beginning Work on the Project pursuant to this Agreement. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of at least A:VII according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless thirty (30) days prior written notice is given to the Village. This provision shall also be stated on each Certificate of Insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail thirty (30) days written notice to the certificate holder named to the left."

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

(A) **Commercial General Liability:**

i. Coverage to include Broad Form Property Damage, Contractual and Personal Injury.

ii. Limits:

General Aggregate	\$ 2,000,000.00
Each Occurrence	\$ 1,000,000.00
Personal Injury	\$ 1,000,000.00

iii. Coverage for all claims arising out of the Contractor's operations or premises and anyone directly or indirectly employed by the Contractor.

(B) **Worker's Compensation:**

i. Worker's compensation insurance shall be provided in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who perform the Work pursuant to this Contract, and if work is subcontracted pursuant to the provisions of this Contract, the Contractor shall require each subcontractor similarly to provide worker's compensation insurance. In case employees engaged in hazardous work under this

Contract are not protected under the Workers' Compensation Act, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(C) **Comprehensive Automobile Liability:**

i. Comprehensive Automobile Liability coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage.

ii. Limits:
Combined Single Limit \$1,000,000.00

(D) **Umbrella:**

i. Limits:
Each Occurrence/Aggregate \$ 2,000,000.00

(E) The Village, its officers, employees, agents and volunteers shall be named as additional insureds on all insurance policies set forth herein except Workers' Compensation. The Contractor shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village, its officers, employees, agents, and volunteers.

The Contractor understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village, its officers, employees, agents and volunteers as herein provided.

10. GUARANTY

The Contractor warrants and guarantees that its Work provided for the Project to be performed under this Agreement, and all workmanship, materials, equipment, and supplies performed, furnished, used, or installed under this Contract, performed, furnished, used, or installed under this Contract, shall be free from defects and flaws in workmanship or design; shall strictly conform to the requirements of this Agreement; and shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Agreement. The Contractor further warrants and guarantees that the strength of all parts of all manufactured materials, equipment, and supplies shall be adequate and as specified and that the performance requirements of this Agreement shall be fulfilled.

The Contractor shall, at no expense to the Village, correct any failure to fulfill the above guaranty that may appear at any time. In any event, the guaranty herein expressed

shall not be sole and exclusive, and is additional to any other guaranty or warranty expressed or implied.

11. AFFIDAVIT OR CERTIFICATE

The Contractor shall furnish any affidavit or certificate in connection with the work covered by this Agreement as required by law.

12. NOTICES

Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by email or personal service to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this Section:

To the Village:

Forestry Superintendent
Public Works Department
Village of Oak Park
201 South Boulevard
Oak Park, Illinois 60302-4272
Email: rsproule@oak-park.us

To the Contractor:

Robert Davis
President
Davis Tree Care, Inc.
7741 Monroe
Forest Park, IL 60130
Email: _____

Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

13. AUTHORITY TO EXECUTE

The individuals executing this Agreement on behalf of the Contractor and the Village represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

14. EFFECTIVE DATE

The effective date of this Agreement as reflected above and below shall be the date that the Village Manager executes this Agreement on behalf of the Village.

15. ENTIRE CONTRACT; APPROVAL OF SUBCONTRACTORS

This Agreement, including the documents incorporated by reference herein, sets forth the entire Agreement of the parties with respect to the accomplishment of the Work. No right or interest in this Agreement shall be assigned, in whole or in part, by either party without the prior written consent of the other party. The Village reserves the right to approve the use of subcontractors to complete any portion of the Work and to approve any applicable contract between the Contractor and a proposed subcontractor

to perform any of the Work. This Agreement shall be binding upon the parties and upon their respective heirs, executors, administrators, personal representatives, successors, and assigns, except as herein provided.

16. INDEPENDENT CONTRACTOR

The Contractor shall have the full control of the ways and means of performing the work referred to above and that the Contractor and its employees, representatives or subcontractors are not employees of the Village, it being specifically agreed that the Contractor bears the relationship of an independent contractor to the Village. The Contractor shall solely be responsible for the payment of all salaries, benefits and costs of supplying personnel for the Work.

17. CONTRACT BOND

The Contractor, before commencing the work on the Project, shall furnish a Contract Bond. The Contract Bond shall be in an amount equal to twenty five thousand dollars (\$25,000.00) as security for the faithful performance of its obligations pursuant to the Contract Documents and as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such bond shall be on standard AIA Documents, shall be issued by a surety satisfactory to the Village, and shall name the Village as a primary co-obligee. The Contract Bond shall become a part of the Contract Documents. The failure of Contractor to supply the required Contract Bond within ten (10) days after the Notice of Award or within such extended period as the Village may grant if the Contract Bond does not meet its approval shall constitute a default, and the Village may either award the Contract to the next lowest responsible proposer or re-advertise for proposals. A charge against the defaulting Bidder may be made for the difference between the amount of the Contractor's Proposal and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guarantee.

19. GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any action pursuant to this Contract shall be in the Circuit Court of Cook County, Illinois.

20. AMENDMENTS AND MODIFICATIONS

This Agreement may be modified or amended from time-to-time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representative of the Village and the authorized representative of the Contractor.

21. NON-WAIVER OF RIGHTS

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

22. CONFLICT

In case of a conflict between any provision(s) of the Village's Request for Proposals or the Contractor's Proposal and this Agreement, this Agreement and the Village's Request for Proposals shall control to the extent of such conflict.

23. HEADINGS AND TITLES

The headings and titles provided in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

24. COOPERATION OF THE PARTIES

The Village and the Contractor shall cooperate in the provision of the Work to be provided by Contractor pursuant to this Agreement and in compliance with applicable laws, including, but not limited to, the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* ("FOIA"), and the provision of any documents and information pursuant to a FOIA request. The Contractor shall provide any and all documents to the Village pursuant to a FOIA request at no cost to the Village.

25. COUNTERPARTS

This Agreement shall be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the days and dates set forth below.

VILLAGE OF OAK PARK

DAVIS TREE CARE AND LANDSCAPE,
INCORPORATED

Cara Pavlicek
By: Cara Pavlicek
Its: Village Manager

Robert D. Davis
By [Print Name]: Robert D. Davis
Its: President/Owner

Date: 12/12, 2014

Date: 12/29, 2014

ATTEST:

ATTEST:

Teresa Powell
By: Teresa Powell
Its: Village Clerk

Robert B. Clements
By [Print Name]: Robert B. Clements
Its: Notary

Date: 12/12, 2014

Date: 12/10, 2014

REVIEWED AND APPROVED
AS TO FORM

Paul L. Stephan
DEC 08 2014
LAW DEPARTMENT

