



## **INDEPENDENT CONTRACTOR AGREEMENT**

**THIS INDEPENDENT CONTRACTOR AGREEMENT** ("Contract") is entered into on this \_\_\_\_\_ day of March, 2017, by and between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter the "Village"), and Everest Snow Management, Inc., an Illinois corporation (hereafter the "Contractor").

**WHEREAS**, Contractor submitted a Proposal dated February 17, 2017, a copy of which is attached hereto and incorporated herein by reference, to provide tree watering (hereinafter referred to as the "Work") for the Village Parkway Tree Watering Program (hereinafter referred to as the "Project") pursuant to the Village's Request for Proposals dated February 1, 2017, incorporated herein by reference as though fully set forth; 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**, Contractor shall perform the Work pursuant to the terms and conditions of this Contract.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises contained in this Contract, 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 Work for the Project in accordance with its Proposal for a price not to exceed a total cost of \$50,000.00 ("Contract Price"). The Contractor shall complete the Work in accordance with any applicable manufacturers' warranties and in accordance with its Proposal, the Village's Request for Proposals, and this Contract, all of which together shall constitute the "Contract Documents." The Contractor acknowledges that it has inspected the site(s) where the Work is to be performed and that it is fully familiar with all of the conditions at the site(s), and further that its Proposal 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 the Work in a good and workmanlike manner in accordance with the Contract Documents, and that the Work shall be free from defects. Contractor shall achieve completion of all work required pursuant to the Contract Documents by December 31, 2017 ("Contract Time"). The Contract Time is of the essence. In the event the Contractor fails to complete the Work 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 Work 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(s).

### **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 Contract who shall have the power and authority to make or grant or do all things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Contractor and with the effect of binding Contractor. The Village is entitled to rely on the full power and authority of the person executing this Contract on behalf of the Contractor as having been properly and legally given by Contractor. The Contractor shall have the right to change its designated representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 12 of this Agreement.

The Village's Forestry Superintendent shall be deemed the Village's authorized representative for purposes of this Agreement, unless applicable law requires action by the Corporate Authorities, and shall have the power and authority to make or grant or do those things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by this Contract. The Contractor is entitled to rely on the full power and authority of the person executing this Agreement on behalf of the Village as having been properly and legally given by the Village. The Village shall have the right to change its authorized representative by providing the Contractor with written notice of such change which notice shall be sent in accordance with Section 12 of this Agreement.

### **4. TERM OF CONTRACT**

The Contractor shall perform the Work pursuant to this Contract beginning on the effective date as defined herein and ending on the date that the Work is completed as determined by the Village. The Contractor shall invoice the Village for the Work provided pursuant to this Contract at the rates set forth in its Proposal. The term of this

Contract may be extended in writing for additional periods of time pursuant to the consent of the parties.

## **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) The Contractor's sworn statement;
- (ii) The 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 Contractor has fully performed the work and the work has been approved by the Village and submission of required waivers and paperwork by the 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 Contract. The Village may apply any money withheld or due the 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 Contract 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 Contract when it determines the same to be in its best interests by giving fourteen (14) days' written notice to 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 Contract. 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 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 fifteen 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) **Workers' Compensation:**

i. Workers' 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, Contractor shall require each subcontractor similarly to provide workers' 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 \$5,000,000.00

(E) The Village, its officers, officials, 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, officials, employees, agents, and volunteers.

(F) The Contractor understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village, its officers, officials, employees, agents and volunteers as herein provided. The Contractor waives and shall have its insurers waive, its rights of subrogation against the Village, its officers, officials, employees, agents and volunteers.

**10. GUARANTY**

The Contractor warrants and guarantees that its Work provided for the Project to be performed under this Contract, 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 Contract; and shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Contract. 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 Contract 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 Contract as required by law.

**12. NOTICES**

Any notice required to be given by this Contract shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by personal service, or by email or facsimile transmission 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:**

Village Manager  
Village of Oak Park  
123 Madison St.  
Oak Park, Illinois 60302-4272  
708-358-5770  
Email: [villagemanager@oak-park.us](mailto:villagemanager@oak-park.us)  
Fax: 708-358-5101

**To the Contractor:**

David Cook  
Everest Snow Management, Inc.  
7707 W. 96<sup>th</sup> Pl.  
Hickory Hills, IL 60457  
708-237-0300  
Email: [david.cook@everestsnow.com](mailto:david.cook@everestsnow.com)  
Fax: 708-237-1300

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.

Notice by facsimile or email transmission shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event facsimile or email notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

**13. AUTHORITY TO EXECUTE**

The individuals executing this Contract on behalf of 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 Contract.

**14. EFFECTIVE DATE**

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

**15. ENTIRE CONTRACT; APPROVAL OF SUBCONTRACTORS**

This Contract, including the documents incorporated by reference herein, sets forth the entire Contract between the parties with respect to the accomplishment of the Work. No right or interest in this Contract 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 Contract 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**

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. GOVERNING LAW AND VENUE**

This Contract 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.

**18. AMENDMENTS AND MODIFICATIONS**

This Contract 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.

**19. 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



Contract shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**20. CONFLICT**

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

**21. HEADINGS AND TITLES**

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

**22. COOPERATION OF THE PARTIES**

The Village and Contractor shall cooperate in the provision of the Work to be provided by Contractor pursuant to this Contract 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 responsive documents to the Village pursuant to a FOIA request at no cost to the Village.

**23. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES**

This Contract may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Contract. A facsimile or pdf copy of this Agreement and any signature(s) thereon will be considered for all purposes as an original.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -  
SIGNATURE PAGE FOLLOWS]**

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

**VILLAGE OF OAK PARK**

**EVEREST SNOW MANAGEMENT, INC.**

\_\_\_\_\_  
By: Cara Pavlicek  
Its: Village Manager

\_\_\_\_\_  
By:  
Its:

Date: \_\_\_\_\_, 2017

Date: \_\_\_\_\_, 2017

**ATTEST**

**ATTEST**

\_\_\_\_\_  
By: Teresa Powell  
Its: Village Clerk

\_\_\_\_\_  
By:  
Its:

Date: \_\_\_\_\_, 2017

Date: \_\_\_\_\_, 2017