

**LANDSCAPE AND IRRIGATION MAINTENANCE AGREEMENT BY AND BETWEEN HARMONY COMMUNITY
DEVELOPMENT DISTRICT AND THE DAVEY TREE EXPERT COMPANY**

THIS AGREEMENT ("Agreement") is made and entered into this 7th day of July, 2016 by and between:

Harmony Community Development District, a local unit of special-purpose government established pursuant to Chapter 2004-461, Laws of Florida and located in Osceola County, whose address is 610 Sycamore Street, Suite 140, Celebration, Florida 34747 (the "District" or the "Owner"), and

The Davey Tree Expert Company, an Ohio corporation whose address is 309 Campus Street, Celebration, FL 34747 (the "Contractor" and, together with the District, the "Parties").

RECITALS

WHEREAS, the District was established for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure, including but not limited to landscaping and irrigation; and

WHEREAS, the District has a need to retain an independent contractor to provide landscape and irrigation maintenance services for certain lands within and around the District; and

WHEREAS, Contractor submitted a proposal attached hereto as **Exhibit A** and incorporated herein by reference (the "Proposal"), and represents that it is qualified to serve as a landscape and irrigation maintenance contractor and provide such services to the District.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, it is agreed that the Contractor is hereby retained, authorized, and instructed by the District to perform in accordance with the following covenants and conditions, which both the District and the Contractor have agreed upon:

- 1. INCORPORATION OF RECITALS.** The recitals stated above are true and correct and by this reference and incorporated herein as a material part of this Agreement.
- 2. DESCRIPTION OF WORK AND SERVICES.**
 - A.** The District desires that the Contractor provide professional landscape maintenance services within presently accepted standards. Upon all Parties executing this Agreement, the Contractor shall provide the District with the specific as set forth in this Agreement.
 - B.** While providing the services identified in this Agreement, the Contractor shall assign such staff as many be required, and such staff shall be responsible for coordinating, expediting, and controlling all aspects to assure completion of the services.
 - C.** The Contractor shall provide the specific professional services as shown in Paragraph 3 of this Agreement.

- 3. SCOPE OF LANDSCAPE AND IRRIGATION MAINTENANCE SERVICES.** The duties, obligations, and responsibilities of the Contractor are those described in the Services Specifications attached hereto at **Schedules A, B, & C**. Contractor shall solely be responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District.
- 4. MANNER OF CONTRACTOR'S PERFORMANCE.** The Contractor agrees, as an independent contractor, to undertake work and/or perform or have performed such services specified in this Agreement or any addendum executed by the Parties or in any authorized written work order by the District issued in connection with this Agreement and accepted by the Contractor. All work shall be performed in a neat and professional manner reasonably acceptable to the District and shall be in accordance with industry standards. The performance of all services by the Contractor under this Agreement and related to this Agreement shall confirm to any written instructions issued by the District.
- A.** Should any work and/or services be required which are not specified in this Agreement or any addenda, but which are nevertheless necessary for the proper provision of services to the District, such work or services shall be fully performed by the Contractor as if described and delineated in this Agreement.
 - B.** The Contractor agrees that the District shall not be liable for the payment of any work or services unless the District, through an authorized representative of the District, authorizes the Contractor, in writing, to perform such work.
 - C.** The District shall designate in writing a person to act as the District's representative with respect to the services to be performed under this Agreement. The District's representative shall have complete authority to transmit instructions, receive information, interpret and define the District's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the Contractor's services.
 - 1) The District hereby designates the District Manager, or a representative of the District manager, to act as its representative. All references herein, or in the exhibits hereto, to "District Manager" shall mean the District Manager or his or her representative.
 - 2) The Contractor agrees to meet with the District's representative upon request at least one (1) time per month to walk the property to discuss conditions, schedules, and items of concern regarding this Agreement.
 - D.** In the event that time is lost due to heavy rains ("Rain Days"), the Contractor agrees to reschedule its employees and divide their time accordingly to complete all scheduled services during the same week as any Rain Days. The Contractor shall provide services on Saturdays if needed to make up Rain Days, but shall not provide services on Sundays.
 - E.** Contractor shall use all due to protect the property of the District, its residents, and landowners from damage. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.

5. COMPENSATION; TERM.

- A.** As compensation for services described in this Agreement, the District agrees to pay the Contractor twelve (12) monthly payments of \$30,612.50 for a total yearly price of \$367,344.00. We shall commence October 1, 2016 and end September 30, 2017 unless terminated earlier in accordance with Section 13 below. On the contract anniversary date this contract automatically renews from year to year unless cancelled by either party with sixty (60) days written notice received prior to the anniversary date.
- B.** If the district should desire additional work or services, or to add additional lands to be maintained, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the Parties shall agree in writing to an addendum, addenda, or change order(s) to this Agreement. The Contractor shall be compensated for such agreed additional work or services based upon a payment acceptable to the parties and agreed to in writing.
- C.** The District may require, as a condition precedent to making any payment to the Contractor, that all subcontractors, material men, suppliers, or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation. Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.
- D.** The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render monthly invoices to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. These monthly invoices are due and payable within thirty (30) days of receipt by the District. Each monthly invoice will include such supporting information as the District may reasonably require the Contractor to provide.

6. INSURANCE.

- A.** The Contractor or any subcontractor performing the work described in this Agreement shall maintain throughout the term of this Agreement the following insurance:
 - 1)** Worker's Compensation Insurance in accordance with the laws of the State of Florida.
 - 2)** Commercial General Liability Insurance covering the Contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability, with a liability general aggregate limit of \$5,000,000, and covering at least the following hazards:
 - 3)** Employer's Liability Coverage with limits of at least \$1,000,000 per accident or disease.

- i. Independent Contractor Coverage for bodily injury and property damage in connection with subcontractors' operation.

4) Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Contractor of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.

- B. The District, its staff, consultants, agents and supervisors shall be named as an additional insured for the operations of Contractor performed pursuant to the Agreement. The Contractor shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of insurance coverage, as certified, shall not be effective with thirty (30) days prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the State of Florida, and such carrier shall have a Best's Insurance Reports rating of at least A-VII.
- C. If the Contractor fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Contractor shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be requires in connection with the District's obtaining the required insurance.

7. INDEMNIFICATION.

- A. Obligations under this section shall include the payment of all settlements, judgements, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorney fees, and paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.
- B. Contractor agrees to indemnify and hold harmless the District and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage Or other damage of any nature, arising out of, or in connection with, the work to be performed by Contractor. Contractor further agrees the nothing herein shall constitute or be construed as a waiver of the District's limitations contained in section 768.28, Florida Statutes, or any other statute. Any subcontractor retained by the Contractor shall acknowledge in writing such subcontractor's acceptance of the terms of this Section 7.

- 8. **COMPLIANCE WITH GOVERNMENTAL REGULATION.** The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State or Federal, governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services, or fails to comply with any requirements of such agency

within five (5) after receipt of any such notice, order, request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon giving of notice termination.

- 9. LIENS AND CLAIMS.** The Contractor shall promptly and properly pay for all labor employed, materials purchased, and equipment hired by it to perform under this Agreement. The Contractor shall keep the District's property free from any material men's or mechanic's liens and claims or notices in respect to such liens and claims, which arise by reason of the Contractor's performance under this Agreement, and the Contractor shall immediately discharge any such claim or lien. In the event that the Contractor does not pay or satisfy such claim or lien within three (3) business days after the filing of notice thereof, the District, in addition to any and all other remedies available under this Agreement, may terminate this Agreement to be effective immediately upon the giving of notice of termination.
- 10. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE.** A default by either Party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not limited to, the right of damages, injunctive relief and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.
- 11. CUSTOM AND USAGE.** It is hereby agreed, any law, custom, or usage to the contrary notwithstanding, that the District shall have the right at all times to enforce the conditions and agreements contained in this Agreement in strict accordance with the terms of this Agreement, notwithstanding any conduct or custom on the part of the District in refraining from so doing; and further that the failure of the District at any time or times to strictly enforce its right under this Agreement shall not be construed as having created a custom in any way or manner contrary to the specific conditions and agreements of this Agreement, or having in any way modified or waived the same.
- 12. TERMINATION.** The Contractor agrees that the District may terminate this Agreement immediately with cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days written notice of termination without cause. Contractor shall have the right to terminate this Agreement upon sixty (60) days written notice to the District. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all work and/or services rendered up until the effective termination of this Agreement, subject to whatever claims or offsets the District may have against the Contractor.
- 13. PERMITS AND LICENSE.** All permits and licenses required by any governmental agency directly for the District shall be obtained and paid for by the District. All other permits or licenses necessary for the Contractor to perform under this agreement shall be obtained and paid for by the Contractor.
- 14. ASSIGNMENT.** Neither the District nor the Contractor may assign this Agreement without the prior written approval of the other.
- 15. INDEPENDENT CONTRACTOR STATUS.** In all matters relating to this Agreement, the Contractor shall be acting as an independent contractor. Neither the Contractor nor employees of the Contractor, if there are any, are employees of the District under the meaning or application of

any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Contractor shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Contractor shall have no authority to represent the District as an agent, employee, or in any other capacity, unless otherwise set forth in this Agreement.

- 16. HEADINGS FOR CONVENIENCE ONLY.** The descriptive headings this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any provisions of this Agreement.
- 17. ENFORCEMENT OF AGREEMENT.** In the event that either the District or the Contractor is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorney's fees, paralegal fees and costs for trial, alternative dispute resolution, or appellate proceedings.
- 18. AGREEMENT.** This instrument shall constitute the final and complete expression of this Agreement between the District and the Contractor relating to the subject matter of this Agreement. Should the provisions of **Exhibit A** conflict with the express of this Agreement, the terms of this Agreement shall supersede the terms of **Exhibit A**.
- 19. AMENDMENTS.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by the Parties.
- 20. AUTHORIZATION.** The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.
- 21. NOTICES.** All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

A. If to the District: Harmony Community Development District
610 Sycamore Street, Suite 140
Celebration, Florida 34747

With a copy to: Harmony Development Company, LLC
3500 Harmony Square Drive W
Harmony, Florida 34773

B. If to the Contractor Davey Commercial Grounds Management, a division of
The Davey Tree Expert Company
309 Campus Street
Celebration, FL 34747
Attn: Rick Mansfield

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays

recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addresses of any change in name or address to which Notices shall be sent by providing the same five (5) days written notice to the parties and addresses set forth herein.

- 22. THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successor and assigns.
- 23. CONTROLLING LAW; VENUE.** This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida. Venue for any dispute shall be in a court of appropriate jurisdiction in Osceola, County, Florida.
- 24. EFFECTIVE DATE.** This Agreement shall be effective on October 1, 2016 and shall remain in effect until September 30, 2020, unless renewed or terminated in accordance with the provisions of this Agreement.
- 25. PUBLIC RECORDS.** The Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and shall be treated as such in accordance with Florida law.
- 26. SEVERABILITY.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.
- 27. ARM'S LENGTH TRANSACTION.** This agreement has been negotiated fully between the Parties as an arm's length transaction. The Parties participate fully in the preparation of this Agreement with the assistance of their respective counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the parties are each deemed to have drafted, chosen, and selected the language, and any doubtful language will not be interpreted or construed against any party.
- 28. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument.
- 29. FORCE MAJEURE.** Each party shall be excused from performance under this Agreement and shall have no liability to any other party for any period it is prevented from performing any of its obligations, in whole or in part, as a result of delay caused by the other party or by an act of God, terrorism, civil disturbance, acts of the Government in either its sovereign or contractual capacity, natural disasters, or any condition beyond Contractor's control.

IN WITNESS WHEREOF, the parties execute this agreement the day and year first written above.

ATTEST:

HARMONY COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

THE DAVEY TREE EXPERT COMPANY, an Ohio Corporation

By: _____

By: _____
Its: _____

Exhibit A: Contractor's Proposal