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**AGREEMENT BETWEEN HARMONY COMMUNITY DEVELOPMENT DISTRICT AND  
THE DAVEY TREE EXPERT COMPANY FOR LANDSCAPE MULCHING SERVICES**

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THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between The Davey Tree Expert Company (the “Contractor”), whose address is 309 Campus Street, Celebration, FL 34747, and the Harmony Community Development District (the “District”), care of the District Manager, whose address is 313 Campus Street, Celebration, Florida 34747 (hereinafter referred to collectively as the “Parties”).

**SECTION I**

**Purpose of Agreement**

The purpose of this Agreement between Contractor and the District, is for the Parties to enter into an agreement for annual landscape mulching services within the District.

**SECTION II**

**Qualifications of Contractor**

Contractor warrants and represents that it is qualified to fulfill consulting duties set forth below.

**SECTION III**

**Consideration**

1. That which induced the Parties to enter into this Agreement, in addition to the provisions of Sections I-III, which provisions are dispositive, is the fee for Contractor and the services to be received by the District, both constituting good, valuable, adequate and sufficient consideration.

2. In consideration of this Agreement and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to all of the provisions of this Agreement.

## SECTION IV

### Duties

1. The duties, obligations, and responsibilities of Contractor are as follows:
  - a. Pine nugget bark mulch shall be installed one time a year between November 1<sup>st</sup> and January 31<sup>st</sup> at a minimum depth of two (2) inches in all plant beds and tree rings. Landscape beds beneath natural pine stands shall be mulched with pine straw at a minimum depth of two (2) inches.
  - b. At no time shall mulch material be allowed to build up against the tree or plant material base. Mulch shall be maintained at a minimum distance of two (2) inches from the plant base.
  - c. Mulch in excess of two (2) inches shall be removed from the planting areas.
  - d. All privacy berms shall be mulched one (1) time per year in March with premium pine nugget bark mulch.
  - e. Playground areas shall be mulched annually during the month of January. Six (6) inches of mulch is required to be added to the existing mulch using an EWF mulch that meets the specifications in ASTM F2075: *Standard Specifications for Engineered Wood Fiber* and tested to and comply with ASTM F1292.
  - f. The duties, obligations, and responsibilities of Contractor as noted herein are subject to the following playground areas:
    - i. Lake Shore Park
    - ii. Dog park swing and play area
    - iii. Green neighborhood play area
    - iv. Rosewood swing
2. All decisions concerning compliance with the terms of this Agreement and operations under this Agreement are specifically delegated and assigned to the District Manager or her or his designee. Contractor shall relay any questions to the Field Manager.

3. Subject to the approval of the District Manager, Contractor shall:
  - a. Be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are fulfilled to the satisfaction of the District Manager.
  - b. Be responsible for immediately notifying the District, through the Field Manager, of any and all issues, damage, and/or decline directly related to Contractor's scope of work.
4. Additional duties may be specified by the District Manager or its designee.

#### **SECTION V**

##### **Duties of District**

District shall pay to Contractor, without reduction or set-off, an annual fee equal to that amount set forth below in Section VI.

#### **SECTION VI**

##### **Compensation**

1. The District agrees to compensate Contractor a fee of \$58,625.50 annually for services set forth herein.
2. Payment shall be made by the District in accordance with the Local Government Prompt Payment Act prescribed in Chapter 218, *Florida Statutes*. If payment in full is not timely made, then interest shall accrue on such unpaid amounts from the date payment was to be made at a rate of lesser of 18% per annum or the highest rate allowed under applicable law.
3. Should the District opt to extend this agreement pursuant to Section VIII below, a two percent (2%) increase will be added annually to the total amount of compensation detailed above to adjust for market prices.

#### **SECTION VII**

##### **Contractual Relationship**

1. Nothing herein shall be construed as creating the relationship of employer or employee between the District/District Manager and Contractor. The District is interested only in the results to be achieved, and the conduct and control of the work to be performed will lie solely with Contractor.

2. Neither the District nor the District Manager shall be subject to any obligations or liabilities of Contractor incurred in the performance of the contract.

3. Contractor is an independent contractor and nothing contained herein shall constitute or designate Contractor as an employee of the District or the District Manager.

4. Nothing herein shall be construed as to creating an agency relationship between the District and Contractor or the District Manager and Contractor.

#### **SECTION VIII**

##### **Term**

This Agreement shall commence on October 1, 2016 and will continue through September 30, 2017, unless terminated earlier in accordance with the provisions of the agreement. At the end of the term set forth above, the District shall have the option, in its sole and absolute discretion, of extending this agreement for up to two additional one year (12 month periods).

#### **SECTION IX**

##### **Insurance**

Contractor shall maintain throughout the term of this Agreement the following insurance:

- a. Workers' Compensation Insurance in accordance with the laws of the State of Florida.
- b. Commercial General Liability Insurance covering Contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 (one million dollars) combined single limit bodily injury and property damage liability with the District named as an additional insured, and covering at least the following hazards:
  - (i) Independent Contractors Coverage for bodily injury and property damage in connection with subcontractors' operation;
  - (ii) The District shall be named as additional insured.
- c. Employer's Liability Coverage with limits of at least \$300,000 (three hundred thousand dollars) per accident or incident.

- d. Professional Liability Insurance with limits of \$1,000,000 (one million dollars).
- e. Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 (one million dollars) 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.

### **SECTION X**

#### **Authorization**

The execution of this Agreement has been duly authorized by the appropriate body or official of the District and Consultant, both the District and Contractor have complied with all the requirements of law, and both the District and Contractor have full power and authority to comply with the terms and provisions of this Agreement.

### **SECTION XI**

#### **Assignment of Contract**

1. No right or interest in this Agreement, or further formal contract, shall be assigned or delegated by Contractor without the written permission of the District.
2. Any attempted assignment or delegation by Contractor shall be void wholly, and ineffective totally, for all purposes, unless made in the conformity with this Section.

### **SECTION XII**

#### **Waiver**

No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by the aggrieved.

### **SECTION XIII**

#### **Termination**

The performance of Services may be terminated in whole or in part by the District Manager in accordance with this provision and may be revised by the Board.

## **SECTION XIV**

### **Modifications and Recordings**

This Agreement can be modified or rescinded only by a writing signed by both Parties to the Agreement or their duly authorized agents.

## **SECTION XV**

### **Payment for Services Procedure**

1. Contractor shall deliver to the District Manager an Application for Payment in such form and with such detail as the District Manager requires.
2. The District Manager on behalf of the District shall pay Contractor its fee plus additional fees in connection with Work Authorizations, if any.
3. The District, through its Manager, reserves the right to require itemized documentation to verify the amount owed as prescribed in the Application for Payment. If documentation is required to verify Contractor's Application for Payment, then payment by the District Manager on behalf of the District will take place on the 30th day of the calendar month in which both the Application for Payment and the itemized documentation are received by the District through its Manager.
4. Any change orders are discouraged and subject to District Board approval and any District change order policy.

## **SECTION XVI**

### **Adjustment of Services**

1. The District reserves the right to reduce any portion of Contractor's Scope of Services, or amend any work Authorization, as agreed upon by this Agreement.
2. In such event that an adjustment is deemed necessary, the District shall be entitled to a fee reduction proportionate to the negotiated Total Fee determined within this Agreement.

## **SECTION XVII**

### **Advertising**

1. Contractor, by virtue of this Agreement, shall acquire no right to use, and shall not use, the name of the District or the name of "Harmony" (either alone or in conjunction with or as part of any other word, mark or name) in any advertising, publicity or promotion.
2. This advertising restriction shall include, but is not limited to, the express or implied endorsement by the District of Contractor's services.
3. This advertising prohibition shall extend to any use of "Harmony," or the District, in any other manner whatsoever, whether specifically mentioned above or not.

## **SECTION XVIII**

### **Waiver**

Any failure by the District and the District Manager to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and the District reserves the right and privilege to subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

## **SECTION XIX**

### **Final Payment**

1. Contractor's acceptance of the final payment under this Agreement, or the acceptance of the final payment upon early termination hereof, shall constitute a full and complete release of the District and District Manager from any and all claims of Contractor.
2. The claims upon which the District is released includes, but may not be limited by, any demands and causes of action whatsoever which Contractor may have against the District in any way related to the subject matter of this Agreement.
3. Neither the District's nor District Manager's review, approval, acceptance of payment, nor lack of payment for any of the Services required under this Agreement shall be construed as a waiver of any rights, under this Agreement or act as a waiver to any cause of action arising out of the performance of this Agreement.

4. Contractor shall be and remain liable to the District in accordance with law for all damages to the District caused by Contractor's performance, or lack of performance, of any of the Services furnished, or agreed upon, pursuant to this Agreement.

## **SECTION XX**

### **Enforcement of Agreement**

In the event that either the District or Contractor is required to enforce this Agreement by court proceedings or otherwise, the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

## **SECTION XXI**

### **Miscellaneous Provisions**

1. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be assigned, amended, modified or rescinded, unless otherwise provided in this Agreement, except in writing and signed by the Parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision is found to be invalid or alter substantially the benefits of the Agreement for either of the Parties.

2. The rights and remedies of the District provided for under this Agreement are in addition to any other rights and remedies provided by law.

3. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

4. Written notices required to be given under this Agreement shall be deemed given when received by the District through personal delivery, courier service, or certified mail delivered to all of the following addresses:

Harmony Community Development District  
Attention: Gary Moyer, District Manager  
313 Campus Street  
Celebration, Florida 34747



Young, van Assenderp & Qualls, P.A.  
216 South Monroe St.  
Tallahassee, Florida 32301  
ATTN: Timothy R. Qualls

5. Written notices required to be given under this Agreement shall be deemed given when received by Consultant through personal delivery, courier service, or certified mail delivered to all of the following addresses:

Davey Commercial Grounds Management, a  
division of The Davey Tree Expert Company  
309 Campus Street  
Celebration, Florida 34747  
ATTN: Rick Mansfield

*(Remainder of Page Intentionally Left Blank)*

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

ATTEST:

**HARMONY COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Secretary/Assistant Secretary

\_\_\_\_\_  
Chairperson, Board of Supervisors

**THE DAVEY TREE EXPERT COMPANY**, an Ohio Corporation

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

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

As authorized for execution by the Board of Supervisors of the Harmony Community Development District at its September, 2016 regular meeting.