

**Village of Homer Glen
Spring 2016
Tree Planting
Agreement**

This agreement ("Agreement") is made as of this 13th day of April, 2016 by and between the Village of Homer Glen ("Village") and the Landscape Supply Inc. ("Contractor").

In consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt of sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Description of Work** – The Village and the Contractor agree that the Contractor shall perform the work ("Work") consisting of the planting of trees in accordance with the Project Specifications, Exhibit 'C' for the "Village of Homer Glen Public Parkway Tree Planting Program Spring 2016" which is incorporated herein by reference and made a part hereof.
2. **Commencement** - The date of commencement of Work by the Contractor shall be not more than ten (10) business days after the date of this Agreement. The Contractor shall achieve completion of all of the Work within 30 days of the commencement of the Work. Extensions of time will be granted for delays caused by weather, preventing execution of the work.
3. **Work Standards, Permits & Licenses** – The Contractor shall perform the Work in a good and workmanlike manner, 'according to standard industry practices and in accordance with all applicable codes and ordinances and the specifications set forth in the Project Specifications, Exhibit 'C'. Unless otherwise noted, the Contractor shall be responsible for complying with all applicable laws, obtaining any required permits and licenses, and posting any required notices. The Village is not responsible for errors in the Contractor's bids, takeoffs, etc.
4. **Contract Pricing** - The total contract price to be paid by the Village to the Contractor for completing the Work is Twenty-five Thousand Two Hundred Seventy-nine dollars and forty cents (\$25,279.40) ("Total Contract Price"). The cost of the Work shall not exceed the Total Contract Price without an authorized Change Order(s).
5. **Change Orders** – There shall be no Change Orders without the prior written approval of the Village.
6. **Payment** – The Village shall pay the Total Contract Price in a minimum of two (2) installments upon completion of the Work and subject to a site inspection and final approval of the Work by the Village. In order to ensure sufficient time for the payment to be processed, invoices must be submitted for payment no later than 12:00 p.m. on the fifteenth (15th) day of each month.

7. **Inspection of Project Site** – The Contractor acknowledges and confirms that it has visited and examined the site where the Work will be performed, examined all physical and other conditions affecting the Work and is fully familiar with all of the conditions at the site. The Contractor represents and warrants to the Village that it has: (1) thoroughly examined the location of the Work to be performed, is familiar with local conditions, and has read and thoroughly understands the 'project criteria as they relate to the physical conditions prevalent or likely to be encountered in the performance of the Work; (2) examined the nature, location and character of the general area in which the site of the Work is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) examined the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner and within the cost and time frame required by Agreement.
8. **Safety & Rules** – The Contractor shall conduct the Work in safe manner in compliance with all applicable safety laws, rules and regulations, including the rules in **Exhibit "A"** attached hereto and incorporated herein by reference. The Contractor shall immediately notify the Village in writing of any injury to the Contractor's employees or agents. If the acts or omissions of the Contractor or its employees result in a citation or fine against the Village, the Contractor will be liable to the Village for the fine as well as the Village's costs of correcting the violation.
9. **Insurance** – Prior to commencing any Work, and at all times during the Work, the Contractor shall be obligated to maintain the insurance policies as described in **Exhibit "B"** attached hereto and incorporated herein by reference.
10. **Replacement Guaranty** – The guaranty for each planted tree shall be for one full year after the planting date, and the Contractor shall replace any tree that fails to thrive, or dies, within that year at the Contractor's expense. The replacement tree shall be of the same size, species and quality of the tree it is replacing. The replacement tree shall be guaranteed, by the Contractor, for one year after the date which it is planted. **The tree to be replaced must be present at the time of its replacement planting.**
11. **Bonds** – Prior to commencing the Work the Contractor shall provide the Village with a performance bond and a payment bond in accordance with the Public Construction Bond Act, 30 ILCS 550/6.01 *et seq.*
12. **Subcontractors and Suppliers** – The Contractor shall not hire any other contractor to perform any portion of the Work without the prior written approval of the Village which may be withheld by the Village in its sole discretion.
13. **Breach of Contract; Remedies** – In the event of a breach of this Agreement by the Contractor, the Village shall be entitled to retain all sums due to the Contractor and to hire others to complete the Work and shall apply any sums retained against such reasonable costs of completion and/or the costs of satisfying the warranty provided by this Agreement. This remedy is non-exclusive and in addition to all other available remedies, either expressed or implied. No right or remedy of the Village shall be deemed to have been waived unless waived in writing by the Village. Nothing in this

Agreement or any other document shall be interpreted in a manner that would shorten any statute of limitations or statute of repose or alter any statute of limitations or statute of repose accrual period affecting any claim that the Village may have against the Contractor.

14. **Tax Withholding** - The Contractor is responsible for withholding income, payroll and unemployment taxes for the Contractor's employees and issuing any required 1099 and W2 forms.
15. **Indemnification** - The Contractor agrees to the fullest extent permitted by law to indemnify, defend and hold harmless the Village, its officials, employees and agents for and against all losses, costs, expenses liabilities, claims, or demands whatsoever resulting from, related to, or arising out of, directly or indirectly, the performance of the Work under this Agreement, provided the Contractor's obligation under this paragraph shall not be applicable to any liability caused by the sole negligence of the Village.
16. **Termination** - The Village reserves the right at any time and in its absolute discretion to terminate the services of the Contractor by giving written notice to the Contractor. In such event, the Contractor shall be entitled to, and the Village shall reimburse the Contractor for, an equitable portion of the Contractor's fee based on the portion of the Work completed prior to the effective date of termination.
17. **Entire Agreement; Conflicting Terms** - This Agreement, the exhibits attached hereto, the plans and specifications, and any subsequent Change Order(s) shall constitute the entire Agreement between the parties, and there are no other agreements, oral or written, by and between the parties. Any modification or amendment of this Agreement must be in writing signed by both parties. Any term of any quotation, specification, document or other communication from the Contractor that differs in any way from this Agreement, irrespective of materiality, shall be excluded from this Agreement.
18. **Governing Law; Venue** - This Agreement shall be governed by the laws of Illinois. Venue for any suit arising in connection with this Agreement shall in the Circuit Court of Will County, Illinois.
19. **Notices** - All notices, demands, requests and other communications necessary or desirable to be served under this Agreement shall be in writing and shall be either personally delivered or delivered to the Party or the Party's attorney by (1) email, (2) facsimile transmission, (3) prepaid same-day or overnight delivery service (such as Federal Express or UPS), with proof of delivery requested, or (4) United States registered or certified mail, return receipt requested, postage prepaid, in each case addressed as follows:

To the Village:

Attn: Village Manager
Village of Homer Glen
14933 S Founders Crossing
Homer Glen, IL 60491
Phone: 708-301-0632
Fax: 708-301-8407
Email: hkokodynsky@homerglen.org

To the Contractor: Carolyn M. Yorkman
President
Landscape Supply Inc.
P.O. Box 666
Frankfort, IL 60423-0666
Phone: 815-469-4125
Email: LandscapeSupplyandNursery@AOL.com

or such other address or addresses or to such other party when any party entitled to receive notice hereunder may designate for itself from time to time in a written notice served upon the other parties hereto in accordance herewith. Any notice sent as hereinabove provided shall be deemed to have been received (i) on the date it is personally delivered, if delivered in person, (ii) on the date it is electronically transmitted if delivered by facsimile transmission, (iii) on the first business day after the date it is deposited with the overnight courier service, if delivered by overnight courier service, or (iv) on the third (3rd) business day following the postmark date which it bears, if delivered by United States registered or certified mail, return receipt requested, postage prepaid.

20. Miscellaneous - The provisions which follow shall apply generally to the obligations of the parties under this Agreement:

This Agreement may not be amended except pursuant to a written instrument signed by both parties.

- a. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.
- b. This Agreement is binding upon the successors and assigns of the Parties.
- c. The waiver by either party of any breach or violation of any provision of this agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.
- d. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.
- e. This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties

herein.

- f. This Agreement creates no rights, title or interest in any person or entity whatsoever (whether under a third party beneficiary theory or otherwise) other than the Parties.
- g. This Agreement may be executed in counterparts. Facsimile signatures shall be sufficient.
- h. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties. The Parties shall each be solely responsible for the conduct of their respective officers, employees and agents in connection with the performance of their obligations under this Agreement.

NOW THEREFORE, the Contractor and the Village, intending to be legally bound, have executed this Agreement as of the date set forth above.

Landscape Supply, Inc.

Village of Homer Glen

By: 
Title: President

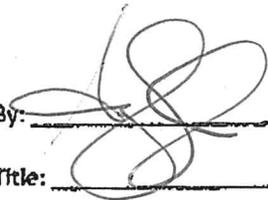
By: 
Title: _____

EXHIBIT "A"

Work Rules

1. **Safety Equipment** - The Contractor will provide its employees with all appropriate and approved safety equipment during the execution of the Work.
2. **Utility Lines** - The Contractor is responsible for knowing the location of all overhead power lines or underground utilities on the job site and preventing damage to such utility lines.
3. **Hours** - Regular working hours at the job site will be between as allowed by ordinance. Any Work at the job site at other times must be approved in advance by the Village.
4. **Waste & Debris** - The Contractor is required to clean work debris from the job site on a daily basis and leave the job site in a clean and neat condition. All trash and waste such as lunch scraps, drinking cups, etc. must also be disposed of properly.
5. **Storage** - Materials, equipment and supplies when not in use must be stored neatly, securely, and safely. The Village is not responsible for theft or damage to materials, equipment and supplies located on or near the job site.
6. **Vehicles** - The Village is not responsible for damage to the Contractor's vehicles.
7. **Personal Conduct** - Unprofessional conduct such as horseplay, wrestling, fighting, gambling, etc. is not permitted.
8. **Alcohol & Drugs** - No person under the influence of intoxicants or narcotics shall be allowed at the job site; nor shall any person have in his or her possession any intoxicants or narcotics.
9. **Firearms** - Firearms may not be brought to the job site or stored in a vehicle driven to the job site.
10. **OSHA** - The Contractor agrees to comply with the requirements of the Occupational Safety and Health Act.
11. **MSDS** - The Contractor shall have in his possession at all times any applicable MSDS (Material Safety Data Sheets) and shall provide the Village with copies thereof.
12. **Hazardous Substances** - The Contractor shall store any paint, solvents, gasoline, oil, or other flammables in an area presenting the least hazard to the area where the Work is being performed. Under no circumstances shall solvents, oils, or grease be disposed of at or on the job site or emptied into any sewer, drain or drainage ditch.
13. **Fire Safety** - The Contractor will take all prudent actions to prevent fire or explosion hazards that could result during the execution of the Work. Oily rags and other highly flammable waste must be disposed of separately by the Contractor.
14. **Employee Training** - The Contractor agrees that the Contractor's employees and agents will be made aware of these and any other applicable rules and be disciplined if they fail to comply with the same.

EXHIBIT "B"

Insurance Requirements

A. Insurance Requirements - The Contractor shall purchase and maintain in effect during the term of this Agreement the following types of insurance:

1. Workers' Compensation Insurance complying with all state statutory requirements and coverage limits, which names the Owner as an Alternative Employer and waives any and all rights of subrogation against the Owner;
2. General Liability Insurance protecting against all claims for damages due to bodily injury (including death), personal injury, or "damage to" property, alleged to have been caused by defective materials furnished to or negligent work or services performed by the Contractor or any employee of the Contractor with coverage of not less than \$2,000,000 per occurrence, combined single limit.
3. Business Automobile Liability Insurance with coverage of not less \$2,000,000 per accident.

B. Certificates of Insurance - Prior to starting the Work, the Contractor shall deliver to The Owner, Certificates of Insurance evidencing the General Liability and Automobile Liability coverages required above. These certificates shall expressly state that: "The Village is named as an additional insured for the full limits of the coverage (primary and excess) currently in place and all rights of subrogation against the foregoing parties have been waived "These Certificates shall also contain a provision that the subject policies shall not be cancelable without at least thirty (30) days' prior written notice delivered by the insurer to the Owner. All insurance required under this Agreement shall be occurrence-based. The Contractor shall also deliver to the Village sufficient evidence of the required Workers' Compensation coverage.

C. Waiver of Subrogation - The Contractor waives any and all claims for recovery from the Village and/or the Village's officers, agents or employees for loss or damage to, or related to, the Project, the Work, or any associated materials or equipment, which loss or damage is covered by the provisions of any insurance policy carried, or required to be carried, by the Contractor under this Agreement.

EXHIBIT "C"

PROJECT SPECIFICATIONS

This shall be a unit price contract and shall include all work mentioned in the Project's Specifications and any other work, not specifically mentioned, that is necessary for planting the trees in a good workmanship like manner. Any conflicts or omissions in the Specifications are to be brought to the attention of the Village and its decisions in resolving these matters shall be final. The Contractor shall in no way take advantage of any conflicts or omissions should they occur, and it shall be their responsibility to bring any of them to the attention of the Village so that they can be properly resolved.

The Contractor shall be paid for actual quantities, in place, as agreed upon by the Village and Contractor. Any work shown on the drawing or described in the Specifications for which there is not a bid item shall be considered incidental to the Contract.

The Contractor shall contact JULIE 1-800-892-0123 (or verify with the Village that JULIE has been contacted), minimum of 48 hours prior to start of planting trees.

1. Location

The planting of trees will be restricted to the public parkways and properties within the boundaries of the Village of Homer Glen, Illinois. The locations will be marked and confirmed by the Village.

2. Tree Planting

A. The process of planting is to follow the *International Society of Arboriculture Best Management Practices: Tree Planting (2005)*, and the *ANSI A300 (Part 6) – 2012 Planting and Transplanting*.

B. Trees are to be covered during transport and care is to be taken to avoid branch damage.

C. The excavated hole will be twelve inches larger in diameter than the balled tree that will be planted in that hole. The whole depth shall only be as deep as the tree ball.

D. The rootball is placed in the hole such that the root flare is planted at ground level or one inch above.

E. Once at proper depth and orientation, the backfill soil is firmly tamped around the rootball.

F. A two to three inch thick mulch layer will be spread around the base of the new tree to cover the excavation area (36 inches in diameter). Mulch should not be more than 3 inches deep and must be kept 4-6 inches away from the trunk. The Contractor shall insure that the trees are set in the hole, placed straight and at the proper depth.

G. Twine and visible burlap must be removed past the shoulder of the ball by the planting crew at planting.

H. All rocks, and stones excavated from the planting site shall be discarded as unsuitable surplus materials. Rocks and stones shall not be used as a backfill. It will be the responsibility of the contractor to remove any and all unsuitable backfill material and excess soil from the Village.

I. All phases of the tree planting will be inspected by Village staff and/or arborist.

3. Tree Selection and Quantities

The public parkway trees are to be individually selected by the Village, from the supplying nurseries. All supplying nurseries are to be Illinois Department of Agriculture Certified nurseries and all nursery stock adheres to the *ANSI z60.1-2004 American Standard for Nursery Stock*. Village staff shall walk through the nurseries and attach field tags to the appropriate trees. The selected trees shall have a caliper of 2.5 inches

(measurement of diameter at a point six inches above ground).

Nothing herein contained shall be construed as an obligation of the Village of Homer Glen to order or pay for any quantity other than the amount determined by the Village Manager.

4. Substitute Material

No substitution without approval from the Village will be allowed.

5. Equipment

The contractor is to supply all necessary tools, vehicles, and equipment needed for planting. The Village of Homer Glen shall not be responsible for providing any manpower nor materials for accomplishing the work as stipulated in this document.

6. Utilities

It shall be the sole responsibility of the contractor to notify J.U.L.I.E. at least 48 hours prior to commencement of tree planting operations to ensure that locations for underground utilities are provided. Payment for the repair of damage to any utilities as a result of failing to make proper notification will be solely the responsibility of the contractor.

7. Completion Time

The Contractor shall complete the planting of said trees in the parkways of the Village of Homer Glen by May 31, 2016 or within thirty (30) days from the date of direction to start from the Village of Homer Glen.

8. Tree Quality

Trees selected for planting in the Village of Homer Glen shall be healthy, free of insects and disease, and shall be of good straight form. Selected trees shall also be free of bark bruises, and scrapes on the trunk or limbs, before and after planting. Selected trees shall have a straight trunk with limbs not lower than four feet above ground.

All trees selected for planting in the Village of Homer Glen shall be of the tree form of the species.

9. Sub-Contractors – Assignment of Work

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract with the Village or their right, title, or interest therein, or their power to execute such contract, to any other person, firm or corporation, without the previous written consent of the Village Manager of Homer Glen, but in no case shall consent relieve the Contractor from their obligations or change the terms of the contract.

10. Safety

The Contractor shall insure that all its employees or agents shall abide by all general safety regulations and standards of the industry and in accordance with all applicable federal, state, and local regulations.

The Contractor shall comply with all federal, state and local laws with regards to the background checks. For security purposes, all staff assigned to Village of Homer Glen premises must be bonded and insured.

In accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Nothing contained in the insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from their operations under this Contract. **THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR JOB SITE SAFETY.**

11. Damages

The Contractor shall assume full responsibility for the actions of its employees or agents and shall repair or replace any damaged item or area of the Village properties caused by the actions of its employees or agents, unless said damage occurred under circumstances beyond their reasonable control as determined by the Village.

Repair of all damages including but not limited to sidewalks, bike paths, walking paths, driveways, curbs, streets, fire hydrants, buffalo boxes, lawn sprinkler systems, street and traffic signs, light standards, other structures, lawns or other trees occurring during the operations of this Planting Contract shall be accomplished at the Contractor's expense. Repairs or replacements shall be accomplished as soon as possible after the date damage occurred.

Any damage to the property caused by the Contractor's operations shall be resolved within ten (10) days after damage occurs to the satisfaction of the Village. The Contractor shall inform the Village of any damage caused by the Contractor's operation on the day such damage occurs. Should the damage not be rectified within the time frame agreed upon or to the satisfaction of the Village, the Village reserves the right to repair or replace that which was damaged or assess the Contractor such cost as may be reasonable and related to damage caused by the Contractor, and deduct these costs from any payment due the Contractor.

12. Trespass on Land.

The Contractor shall confine their operations and storage of materials and equipment to the job site public right-of-way, easements or public parks. The Contractor shall exercise extreme caution so as not to trespass upon private property of third parties not involved in the contract.

13. Traffic Control and Protection.

The Contractor shall provide adequate traffic control for work area protection in compliance with the Federal Highway Administration Manual on Uniform Traffic Control Devices for Streets and Highways, the State of Illinois Vehicle Code, the Illinois Department of Transportation Highway Standards, and the Illinois Department of Transportation Handbook of Traffic Engineering Practice for Small Cities. Traffic Control and Protection will not be paid for separately, but the costs shall be considered as included in the cost of the Contract and no additional compensation will be allowed. Work shall not begin until traffic control and protection has been placed by the contractor.

14. Protection of Existing Facilities

The Contractor shall make provisions so far as practicable at all cross streets, sidewalks, and bike/walk trails for the free passage of bike and foot passengers. Neither the materials nor equipment used in the installation of the work shall be so placed as to prevent free access to all fire hydrants, water valves, gas valves, man holes, in the vicinity. The contractor shall keep the various work sites and adjacent premises as free from material, debris and rubbish as is practicable, and shall remove same from any portion of the site.

Existing facilities, including grounds, structures, landscaping and so forth shall be protected by the contractor. Any damage to existing facilities shall be reported to the Village and shall be repaired promptly by the vendor when ordered to do so by the Village at no cost to the Village. All repairs of damage to existing facilities shall be made to the satisfaction of the Village. Failure to repair damage shall be just cause for withholding payment for work, which becomes due without penalty.

15. Accessibility of Contractor

Contractor shall supply cell phone numbers, daytime office numbers, and e-mail contact information of supervisors handling this job. The Contractor shall return all calls within one hour of the Village placing the call. On-site response time for complaints must be made within 24 hours of the initial call being made by the Village. The Contractor must assign an English speaking crew leader to monitor all work being performed within the Village. Failure to comply with the accessibility requirements shall be deemed as substandard work and will be subject to the same penalties.

16. Compliance with All Laws

The Contractor shall comply with all applicable federal, state, and local laws, regulations and ordinances.

The Contractor shall obtain, at their own expense, all permits and licenses required by Federal, State, or local law or ordinance, rule or regulation and maintain same full force and effect.

17. Termination

It is agreed that if the Contractor is declared bankrupt, either voluntarily or involuntarily, then this agreement shall terminate effective on the day and at the time the bankruptcy petition is filed, subject however, to the Village's rights to recover for any breach under such Contract.

If the Contractor fails to meet the terms outlined in this agreement, the Village may, but need not be required to, take the following actions:

Notify the Contractor in writing of its default under the agreement and that this agreement will be terminated unless the Contractor shall perform to the satisfaction of the Village within five (5) days of the date of the aforesaid notice was mailed by the Village. In the event the default has not occurred, the Village may terminate this agreement and the Village's obligation and the Contractor's rights hereunder shall cease and be of further force and effect.

The Village shall have the right to contract with another party to provide such services should the Contractor not perform as specified in this agreement, and any expenses incurred in excess of the existing rates herein specified shall be assessed to and paid by the Contractor. In addition, the Contractor shall pay to the Village all its expenses including, but not limited to, attorney's fees arising out of or in connection with or otherwise resulting from such failure of performance on the part of the Contractor. Any and all rights of the Village shall be cumulative.