

## AGREEMENT

**THIS AGREEMENT**, made on the 3<sup>RD</sup> day of APRIL, 2013, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government existing pursuant to KRS Chapter 67A, hereinafter called "LFUCG" and **DAVEY RESOURCE GROUP, A DIVISION OF THE DAVEY TREE EXPERT COMPANY**, located at 11018 Harrison Way, Walton, Kentucky 41094" hereinafter called "CONSULTANT."

**WHEREAS**, LFUCG issued a request for proposals for performing a urban tree canopy assessment and planting plan for the urban service area of Fayette County (RFP #5-2013); and

**WHEREAS**, CONSULTANT responded to RFP #5-2013 and LFUCG has determined that CONSULTANT is the successful bidder;

**NOW, THEREFORE**, LFUCG and CONSULTANT, in consideration of their mutual covenants herein **AGREE** in respect to the performance of a urban tree canopy assessment and planting plan and the payment for those services by LFUCG as set forth below.

**WITNESSETH:** That CONSULTANT and the LFUCG in consideration of \$42,300 quoted in the proposal by the CONSULTANT, dated March, 2013, hereby agree to commence and complete the scope of services described as follows:

### **1.0 SCOPE OF WORK**

CONSULTANT shall perform an urban tree canopy assessment and prepare a planting plan for the urban service area as outlined in Exhibit "A" (the "RFP") and the CONSULTANT'S response, which is attached hereto as Exhibit "B" (the "response"). All of the terms and provisions of the RFP, including but not limited to the General Conditions and the Risk Management Provisions, and the Response are attached hereto and incorporated herein by reference as if fully stated. To the extent of any conflict between or among the documents, the terms of this Agreement shall take precedence, followed by the RFP and the Response. CONSULTANT will also provide monthly reports of all activities to LFUCG PROJECT MANAGER. Reports may be submitted electronically.

### **2.0 INCORPORATED DOCUMENTS**

Exhibit A – The "RFP" document titled "RFP #5-2013 Urban Tree Canopy Assessment and Planting Plan" including the General Conditions and the Risk Management Provisions.

Exhibit B – The “response” document titled “Davey Resource Group RFP5-2013”.

### **3.0 PERIOD OF SERVICE**

The time period of service authorized by the LFUCG for the proper execution of the Work by the Contract, in full, is hereby fixed as three hundred sixty five days (365) from the date specified in the Notice to Proceed.

### **4.0 INDEMNIFICATION CLAUSE**

CONSULTANT shall defend, indemnify, and hold harmless LFUCG from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and attorney’s fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from or by: (a) CONSULTANT’s negligent acts or intentional misconduct, or errors or omissions, in connection with the performance of this contract, (b) CONSULTANT’s performance or breach of the contract provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use, and not caused by LFUCG, or (c) the condition of any premises, equipment or other property being used or operated by the CONSULTANT in connection with the performance of this contract. In the event LFUCG is alleged to be liable based upon the actions or inactions of CONSULTANT, CONSULTANT shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys’ fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this contract.

### **5.0 PAYMENTS TO CONSULTANT**

Payment for services under this agreement will be made on time and expense basis subject to the following requirements:

- a. All invoices shall reflect the worked performed in accordance RFP#5-2013 and the corresponding amount due based on the budget allotted for each task.

#### **5.1.1 Time of Payment**

CONSULTANT shall submit monthly statements for work completed. Owner shall respond to CONSULTANT's monthly statements within thirty (30) days, either denying payment or making payments

## **6.0 Optional Tasks and Services**

LFUCG may desire to have CONSULTANT perform work or render services in connection with this Project other than provided by the expressed intent of this Agreement. Such work shall be considered as "Optional Task and Services," subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until written authorization is given by LFUCG. This work shall be considered as "Optional Work & Tasks" and shall be paid on a lump sum basis by task in accordance with quotes provided by CONSULTANT in response to RFP#5-2013.

## **7.0 GENERAL CONSIDERATIONS**

### **7.1 Termination**

The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

LFUCG reserves the right to terminate the Agreement at any time upon seven (7) days written notice to the CONSULTANT.

### **7.2 Ownership and Reuse of Documents**

All documents, prepared by CONSULTANT pursuant to this Agreement shall be delivered to and become the property of the LFUCG. LFUCG shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to CONSULTANT.

### **7.3 Incorporation of Bid Documents**

All bid documents related to RFP #5-2013, including the Advertisement for Bids, Information to Bidders, CONSULTANT's Response to LFUCG's Invitation to Bid, General and Special Conditions, Basis for Payment, Form of Proposal, Certificates of Insurance, Addenda and any other document(s) related to the bid be and hereby are incorporated herein as if fully set forth herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract as of the date and year above written.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

ATTEST:

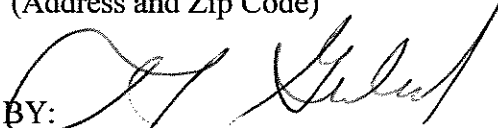
\_\_\_\_\_  
Clerk of the Urban County Council

BY: \_\_\_\_\_  
Jim Gray  
MAYOR

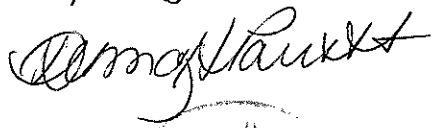
DAVEY RESOURCE GROUP

11018 Harrison Way, Walton, KY 41094  
(Address and Zip Code)

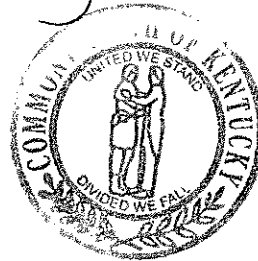
\_\_\_\_\_  
(Secretary)

BY:   
ITS: Jennifer Gulick  
Senior Project Developer/Sales Coordinator

\_\_\_\_\_  
(Witness)

4-3-13  
 #406344

NOTARIES PUBLIC ONLY 09-A18043011G 00217865 DOR



DEBORAH H. PARROTT  
Notary Public, Kentucky  
State At Large  
My Commission Expires  
November 10, 2013