

## PERSONAL SERVICES AGREEMENT

<b>Contractor</b>	<b>The Davey Tree Expert Company</b>
<b>Consideration</b>	<b>\$206,980.00</b>
<b>Effective Date</b>	October 1, 2023
<b>Completion Date</b>	October 1, 2026
<b>Project/Services</b>	<i>The Dalles Downtown Tree Project</i>

This PERSONAL SERVICES AGREEMENT (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**) and The Davey Tree Expert Company, an Ohio business corporation (**Contractor**), for Contractor's provision of solicited personal services for *The Dalles Downtown Tree Project*.

**WHEREAS**, the City requires performance of certain personal services described in the solicitation for *The Dalles Downtown Tree Project*, attached to and made part of this Agreement as **Exhibit A**; and

**WHEREAS**, Contractor desires to perform those certain personal services pursuant to the compensation and conditions set forth herein.

**NOW, THEREFORE**, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

### A. Contractor's Duties

1. Scope of Services. Contractor agrees, at its expense, to furnish all labor, equipment, materials, expertise, tools, supplies, insurance, licenses, reference and background data and information, including subconsultants approved under this Agreement, and provide any equipment necessary to perform all tasks described in **Exhibit A** and Contractor's proposal, attached to and made part of this Agreement as **Exhibit B** (jointly, **Work**). The Parties agree the Work shall be interpreted broadly to the City's benefit: Contractor agrees to perform all subordinate tasks not explicitly referenced in **Exhibits A and B** but necessary to fully and effectively perform those specifically listed tasks.
2. Insurance and Indemnity.
  - a. Insurance. Contractor agrees, at its expense, to carry and maintain in effect throughout the Contract Term, at least, statutory **Workers' Compensation** coverage, **Comprehensive General Liability** insurance in the amount of \$1,000,000 (per occurrence) and \$2,000,000 (in aggregate), and **Commercial Automobile Liability** insurance (including coverage for all owned, hired, and non-owned vehicles) with a combined single limit per occurrence of \$1,000,000.
  - b. Certificates. Contractor agrees to provide the City with certificates of insurance naming the *City of The Dalles* as an additional insured prior to commencement of the Work performed under this Agreement and to further provide the City 30



days' notice before cancelling any insurance policy contemplated by this Agreement.

- c. Workers' Compensation. Contractor agrees it is solely responsible for maintaining proper and adequate Workers' Compensation coverage. If Contractor's insurance does not cover each and every subconsultant, certificates of insurance issued on policies covering each and every subconsultant shall be filed with the City prior to commencement of the Work, including any subcontract operations. Contractor shall provide the City with evidence it is either a *self-insured employer* or a *carrier-insured employer* for Workers' Compensation pursuant to ORS Chapter 656 prior to commencing any Work.
- d. Indemnity. Contractor agrees to indemnify, defend, and hold harmless the City, its officers, agents, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands for Contractor's (including Contractor's officers, agents, employees, and subconsultants) acts or omissions in the performance of this Agreement.

### 3. Payments.

- a. Prompt Payments. Contractor agrees to promptly pay as due all persons supplying labor or materials for the prosecution of services or Work arising from this Agreement: if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor (including subconsultants), the City may pay such a claim and charge the amount of its payment against funds actually or expectedly due from Contractor. The Parties agree payment of any claim in this manner shall not relieve Contractor or its surety from any obligations with respect to any unpaid claims.
- b. Industrial Accident Fund. Contractor agrees to pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractors incurred in the performance of this Agreement.
- c. Labor Hours. Contractor agrees to pay all employees at least time and half pay for all overtime worked in excess of 40 hours in any one work week, except for excluded individuals pursuant to ORS 653.010 to 653.261 or 29 U.S.C. 201 to 209.
- d. Medical Care. Contractor agrees to promptly pay as due all persons, co-partnerships, associations, or corporations furnishing medical, surgical, hospital care, or other needed care and attention incident to sickness or injury to Contractor's employees, or all sums which Contractor agrees to pay for such services, and all moneys and sums which Contractor collected or deducted from the wages of its employees pursuant to any law or contract for the purpose of providing or paying for such service.
- e. No Liens. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on account of any Work (including labor or materials) furnished under this Agreement.





- f. Employee Withholdings. Contractor agrees to pay to the Oregon Department of Revenue all sums withheld from its employees pursuant to ORS 316.167.

## **B. City's Duties**

### **1. Compensation.**

- a. Total. The City agrees to compensate Contractor for the Work in an amount not to exceed **\$206,980.00** to be paid by check.
- b. Progress Payments. The City agrees to make payment upon Contractor's completion of the Work and delivery of an invoice detailing the Work, subject to the City's approval and no more frequently than monthly. Payment shall be made only for Work actually completed as of the invoice date.
- c. Satisfaction. Contractor agrees the City's payment of an invoice releases the City from any further obligation to compensate Contractor for the Work (including expenses) incurred as of the invoice date. The Parties agree payment shall not be considered acceptance or approval of the Work or waiver of any defects therein.
- d. Public Budgeting. The City certifies sufficient funds are available and authorized for expenditure to finance the costs of this Agreement during the current fiscal year. The Parties agree appropriations for future fiscal years are subject to budget approval by the City Council.

## **C. General Conditions**

1. Time. The Parties agree time is of the essence to this Agreement's performance: Contractor's prosecution of the Work shall begin without undue delay on or after the Effective Date and shall be completed before or on the Completion Date.
2. Termination. This Agreement's term expires naturally upon the Parties' full performance or on the Completion Date (whichever first) unless sooner modified pursuant to this Agreement. The Parties agree the City may terminate this Agreement with seven (7) days' notice and Contractor may terminate this Agreement with thirty (30) days' notice, both without penalty. The City agrees to compensate Contractor for all approved services rendered prorated to the date the City notices its intent to terminate.
3. Tax Currency. Contractor agrees (and by executing this Agreement, certifies under penalty of perjury) it is, to the best of its knowledge, not in violation of any tax laws described in ORS 305.380.
4. Full Integration/Modification. This Agreement contains the Parties' entire understanding and intent and supersedes all prior negotiations, representations, or other written or oral agreements on this matter. The Parties agree this Agreement may only be modified by a written instrument duly executed by the Parties.



5. Independent Contractor. The Parties agree Contractor is an *independent contractor* as defined by ORS 670.600(2) and as interpreted by regulations promulgated by the Oregon Bureau of Labor and Industries. Neither the terms of this Agreement nor the course of its performance by the Parties shall be construed as implicating an employer-employee relationship. Contractor expressly warrants its exclusive agency free from City direction and control over the means and manner of completing the Work.
6. Assignment/Delegation. The Parties agree no Party shall assign or transfer an interest or duty under this Agreement without the other Party's written consent and any attempted assignment or delegation without written consent shall be invalid.
7. Subconsultants. Contractor agrees to provide the City with a list of proposed subconsultants before awarding any subcontract connected with the Work or this Agreement and shall not retain any subconsultant the City reasonably objects to as incompetent or unfit. Contractor agrees it is as fully responsible to the City for its subconsultants' and employees' (whether directly or indirectly employed) negligent acts and omissions as it is for its employees' negligent acts and omissions. The Parties agree nothing in this Agreement is intended to or shall create any contractual privity between the City and any subconsultant.
8. Enforceability. The Parties agree all disputes connected with this Agreement or its performance shall be heard in the Circuit Court of the State of Oregon for the County of Wasco and any resolutions shall be construed under the laws of the State of Oregon. If any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.
9. Waiver. The Parties agree a Party's failure to insist upon strict adherence to a provision of this Agreement on any occasion shall not be considered a waiver of the Party's rights or deprive the Party of the right to thereafter insist upon strict adherence to the provision or any other provision of this Agreement.

***Continues on next.***



10. Notices. All notices required or permitted to be given under this Agreement shall be deemed given and received two (2) days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, and addressed:

*To the City:* City Manager  
City of The Dalles  
313 Court Street  
The Dalles, OR 97058

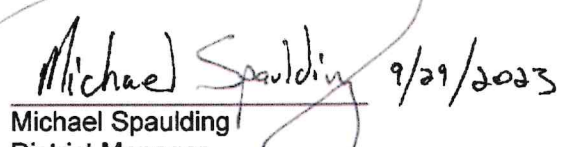
*To Contractor:* Michael Spaulding  
District Manager  
5838 NE Columbia Blvd.  
Portland, OR 97218-1251

**IN WITNESS WHEREOF**, the Parties duly execute this **PERSONAL SERVICES AGREEMENT** this 29 day of September, 2023.

**CITY OF THE DALLES**

  
Matthew B. Klebes  
City Manager

**CONTRACTOR**

  
Michael Spaulding  
District Manager

**ATTEST:**

  
Amie Ell  
City Clerk





Client	9/5/2023
The Dalles Downtown Tree Project Joshua Chandler 313 Court St The Dalles, OR 97058-2111	Proposal #: 20031894-1693504514 Account #: Home: (541) 296-5481 ext. 1121 Email: jchandler@ci.the-dalles.or.us

Tree Care	Service Period	Price	Tax	Total
<input type="checkbox"/> Tree Removal	Fall	\$19,200.00		\$19,200.00
City to assist with No parking set ups for smooth and safe project management with Davey arborist-				
-62 dead/dying street trees to be removed to grade.				
-Trees to be flagged and marked.				
-Low cut stumps level to grade.				
-Site locations with Cement to have Cement excavated with jackhammer prior to planting.				
Haul all resulting wood and debris				
<input type="checkbox"/> Tree Pruning	Late Winter	\$31,000.00		\$31,000.00
Coordination with city for larger trees and No parking signs/permitting to be set up for project efficiency.				
Annual pruning of 132 street trees designated by the city project map.				
-Newly planted trees to be fine pruned for proper structure. (hand snips, orchard ladder)				
-Established larger trees to be trimmed for crown clean of obvious hazardous dead wood, structure prune, elevation of 12ft-15ft over streets, 10ft over sidewalks, and 4-8ft building clearance. (Lift truck)				
Haul all resulting wood and debris.				

Landscape	Service Period	Price	Tax	Total
<input type="checkbox"/> Bio Root Installation	Spring	\$6,830.00		\$6,830.00
Root barrier installation to protect from root expansion and sidewalk heaving. 68 site locations of newly planted trees.				

Fertilization/SoilCare	Service Period	Price	Tax	Total
<input type="checkbox"/> Deep Root Fert w/ArborGreenPRO (1yr) (*)	Late Spring	\$8,650.00		\$8,650.00
Deep root fertilization fo132 street trees identified in RFP map. To be done after install to boost health, encourage root establishment and fertilize with Arborgreen pro slow time release fertilizer. This is to be done on an annual basis for a minimum of 3 years beginning in Spring of 2024.				

Other Services	Service Period	Price	Tax	Total
<input type="checkbox"/> OTHER - Tree Planting and Nursery	Spring	\$68,000.00		\$68,000.00
Sub contractors for this work Living color landscapes. <a href="http://www.livingcolornursery.com/">http://www.livingcolornursery.com/</a> Trevor is in charge of this project but to be overseen by Michael Spaulding and Isabelle Christmann				

Living Color Landscape proposes the following:

To be installed spring of 2024  
-24" x 3' x 3' Tree wells  
-Demo  
-Imported soils  
-Install 24" rootbarrier- Provided by Davey





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Service Period	Price	Tax	Total
-2- 4" perf pipe tubes per tree			
Trees- TBD			
1"-1.5"			
68			
Parrotia persica			
Carpinus			
Acer Campestre			
3 year warranty- Davey holds the responsibility for trees			
NOT A prevailing wage project			

- To be planted in designated planters.
- Soil testing for select new sites and select established tree wells. a total of 6 sites to be tested 3 of each. Davey to manage and sent off for professional lab results.
- Soil excavation and replacement of new soils for best success at each planting site. 3ftx3ftx2ft.
- 4inch water wells/perforation tubes to be installed for permanent ability to deep root water.
- Proper planting procedures to be managed by project arborist.
- Root barrier to be installed at this time (separate quote attached for pricing for root barrier)

Irrigation	Service Period	Price	Tax	Total
<input type="checkbox"/> Drought Relief Watering (*)	June	\$3,500.00		\$3,500.00
Drought relief watering for 132 street trees, deep root watering and perforation tubes filled.				
<input type="checkbox"/> Drought Relief Watering (*)	Early July	\$3,500.00		\$3,500.00
Drought relief watering for 132 street trees, deep root watering and perforation tubes filled.				
<input type="checkbox"/> Drought Relief Watering (*)	Late July	\$3,500.00		\$3,500.00
Drought relief watering for 132 street trees, deep root watering and Gator bag fill.				
<input type="checkbox"/> Drought Relief Watering (*)	Early August	\$3,500.00		\$3,500.00
Drought relief watering for 132 street trees, deep root watering and perforation tubes filled.				
<input type="checkbox"/> Drought Relief Watering (*)	Late August	\$3,500.00		\$3,500.00
Drought relief watering for 132 street trees, deep root watering and perforation tubes filled.				

(\*) Please note these services automatically renew annually. By signing you agree to the terms appended to this form.

☐ Yes, please schedule the services marked above.



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**ACCEPTANCE OF PROPOSAL:** The above prices and conditions are hereby accepted. You are authorized to do this work as specified. I am familiar with and agree to the terms and conditions appended to this form. All deletions have been noted. I understand that once accepted, this proposal constitutes a binding contract. This proposal may be withdrawn if not accepted within 30 days.



*Michael Spaulding*

Michael Spaulding

Authorization

Date



**AUTOMATIC RENEWAL OF SERVICES:** Evergreen, or automatic renewal, is applicable to those services indicated in the contract. Except in New York, California and Connecticut, by signing, I agree that next year and continuing every year thereafter, the company will automatically perform and I will pay for the services outlined in this contract without the need for further action or confirmation on my part. The company will send me a reminder notification each year which will include any price changes. The company will make suggested service/treatment changes which I can receive by notifying the company to perform these services. If I add, change or cancel any contracted services, it is my responsibility to inform the company of these changes or cancellation in writing prior to the scheduled service being performed.

### Client Guarantee

We use quality products that are administered by trained personnel. We guarantee to deliver what we have contracted to deliver. If we do not, we will work with you until you are satisfied, or you will not be charged for the disputed item. Our Client Care Guarantee demonstrates our commitment to creating lifelong client relationships.

### Tree Care

**PRUNING:** Performed by trained arborists using industry and Tree Care Industry Association (TCIA) approved methods.

**TREE REMOVAL:** Removal to within 6" of ground level and cleanup of debris.

**STUMP REMOVAL:** Mechanical grinding of the visible tree stump to at or just below ground level. Stump area will be backfilled with stump chips and a mound of remaining chips will be left on site unless otherwise stated in the contract. Chip removal, grading and soil backfill are available.

**CLEAN-UP:** Logs, brush, and leaves, and twigs large enough to rake are removed. Sawdust and other small debris will not be removed.

**CABLING/BRACING:** Cabling and bracing of trees is intended to reduce damage potential. It does not permanently remedy structural weaknesses, is not a guarantee against failure and requires periodic inspection.

### Tree and Shrub Fertilization/SoilCare

Your arborist will assess your property's overall soil conditions either through physical assessment or through soil testing and will recommend a soil management program to help the soil become a better medium to enable healthy plants to thrive or unhealthy plants to regain their vitality. SoilCare programs will include fertilizers, organic humates, fish emulsions and other organic soil conditioners.

Our advanced formula, Arbor Green PRO, works with nature to fertilize without burning delicate roots, building stronger root systems and healthier foliage. It contains no chlorides or nitrates. It is hydraulically injected into the root zone and the nutrients are gradually released over time. Research and experience shows the dramatic benefits Arbor Green PRO provides: greater resistance to insects and diseases, greater tolerance to drought stress, increased vitality, and healthier foliage.

### Tree and Shrub Plant Health Care

**PRESCRIPTION PEST MANAGEMENT:** Customized treatments to manage disease and insect problems specific to plant variety and area conditions. Due to the short term residual of available pesticides, repeat applications may be required.

**INSECT MANAGEMENT:** Inspection and treatment visits are scheduled at the proper time to achieve management of destructive pests. Pesticides are applied to label specifications.

**DISEASE MANAGEMENT:** Specific treatments designed to manage particular disease problems. Whether preventative or curative, the material used, the plant variety being treated, and the environmental conditions all dictate what treatment is needed.

EPA approved materials will be applied in accordance with State and Federal regulations.

### Other Terms and Contract Conditions

**INSURANCE:** Our employees are covered by Worker's Compensation. The company is insured for personal injury and property damage liability. Proof of insurance can be verified by requesting a copy of our Certificate of Insurance.

**WORKING WITH LIVING THINGS:** As trees and other plant life are living, changing organisms affected by factors beyond our control, no guarantee on tree, plant or general landscape safety, health or condition is expressed or implied and is disclaimed in this contract unless that guarantee is specifically stated in writing by the company. Arborists cannot detect or anticipate every condition or event that could possibly lead to the structural failure of a tree or guarantee that a tree will be healthy or safe under all circumstances. Trees can be managed but not controlled. When elevated risk conditions in trees are observed and identified by our representatives and a contract has been signed to proceed with the remedial work we have recommended, we will make a reasonable effort to proceed with the job promptly. However, we will not assume liability for any accident, damage or injury that may occur on the ground or to any other object or structure prior to us beginning the work. Site inspections do not include internal or structural considerations unless so noted. Unless otherwise specified, tree assessment will not include investigations to determine a tree's structural integrity or stability. We may recommend a Risk Assessment be conducted for an additional charge.

**TREE CARE STANDARDS:** All work is to be performed in accordance with current American National Standards Institute (ANSI) Standard Practices for Tree Care Operations.

**OWNERSHIP OF TREES/PROPERTY:** Acceptance constitutes a representation and warranty that the trees and property referenced in this quote are either owned by the signee or that written permission has been received to work on trees which are not on the signee's property.

**TIME & MATERIAL (T&M):** Jobs performed on a T&M basis will be billed for the time on the job (not including lunch break), travel to and from the job, and materials used.

**BILLING & SALES TAX:** All amounts deposited with us will either be credited to your account or applied against any amounts currently due. Our invoices are due net 30 days from invoice date. Services may be delayed or cancelled due to outstanding account balances. Sales tax will be added as per local jurisdiction.

Clients claiming any tax exempt status must submit a copy of their official exempt status form including their exemption number in order to waive the sales or capital improvement tax.

**PAYMENT:** We accept checks and credit cards. Credit card payments may be made online at our web site. Paying by check authorizes us to send the information from your check to your bank for payment.

**UNDERGROUND PROPERTY:** We are not responsible for any underground property unless we have been informed by you or the appropriate underground location agency.

**SCHEDULING:** Job scheduling is dependent upon weather conditions and work loads.