

LICENSE AGREEMENT FOR USE OF VILLAGE PARKWAY

This LICENSE AGREEMENT FOR USE OF VILLAGE PARKWAY (the "**Agreement**"), dated as of the Effective Date, is made and entered into between the VILLAGE OF CARPENTERSVILLE, an Illinois Municipal Corporation (the "**Village**") and the individual or entity executing this agreement below as licensee (the "**Licensee**"). The Village and the Licensee are hereinafter sometimes referred to individually as a "**Party**" and together as the "**Parties**". Certain capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in **Section 13** of this Agreement.

RECITALS

- A. The Village owns, operates, and controls, throughout the Village of Carpentersville, Illinois, a network of Parkways.
- B. The Village has removed from its Parkways a substantial number of trees that (a) have died from infestation of the Emerald Ash Borer and other diseases or (b) are susceptible to infestation of the Emerald Ash Borer and other diseases and, therefore, needed to be removed to prevent further infestation, death, or decay.
- C. The Licensee desires a license for the use of certain Parkways owned by the Village for the limited purpose of planting trees on said Parkways to replace those trees that the Village has removed.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of License.** The Village hereby grants to the Licensee a non-exclusive license (the "License") to use the Parkway described in Section 1 of Exhibit A, attached hereto and incorporated by reference herein, for the limited and sole purpose of planting trees in said Parkway according to the terms and limitations of this Agreement and Exhibit A.

2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of three (3) months thereafter, at which time this Agreement shall terminate and the Licensee's right to plant trees shall cease to exist. The Village reserves the right to terminate this Agreement and the License granted hereunder for any reason in its sole and absolute discretion at any time.

3. **Fee.** The Village shall pay to the Licensee a fee of fifty dollars and no cents (\$50.00) for each tree the Licensee plants in accordance with the terms herein, to be paid upon completion of the planting.

4. **Permitted Tree Species.** The Licensee shall select a tree(s) from a permitted tree list identified within Village Code 16.80.080 – Permitted Tree Species. The list will be provided by the Director of Public Works or his/her's designee.

5. **Prohibited Tree.** All trees identified within Village Code 16.80.090 are prohibited.

6. **Location of Planting.** The Licensee shall plant trees only in those Parkways described in Section 1 of Exhibit A and only at such locations that are approved and marked by the Director of Public Works or his designee. Every attempt shall be made to plant trees according to the spacing requirements set forth within Village Code 16.80.070 - Right of Way Landscaping.

7. **Manner of Planting.** The Licensee shall take all reasonable steps to keep the Parkway and Right of Way reasonably clear from obstacles or obstructions during planting activities. The Licensee shall only alter the Parkway to the extent necessary to plant a tree. The Licensee shall not remove or change the location of any existing Facility, tree, or shrubbery. The Licensee shall take all reasonable steps to ensure the Parkway, Right of Way, or any Facilities are not damaged, destroyed, removed, or disconnected in the course of planting, including, but not limited to, (a) contacting JULIE, (b) refraining from all digging until JULIE has located all Facilities in the intended planting area, and (c) refraining from digging where JULIE indicated the existence of Facilities. In the event the Parkway, Right of Way, or any Facilities are damaged, destroyed, removed, or disconnected, the Licensee will cause the affected Parkway, Right of Way, or Facility to be repaired and restored to a condition fully equal to that existing before planting activities were commenced. The Licensee shall take all reasonable efforts to return the Parkway and Right of Way to a neat and presentable condition, including, but not limited to, removing and disposing excess soil, dirt, and debris and removing all Equipment or other articles. Upon completion of the planting, licensee shall be responsible for the watering of the trees.

8. **Title to Trees.** Upon completion, inspection and approval of the tree planting by the Village, the tree shall become part of the parkway and the Village shall assume ownership of the planted tree. Nothing set forth herein shall require the Village to replace any tree planted pursuant to this License Agreement that is not properly planted, may become diseased, dies or constitutes a dangerous condition, and is removed. The Village shall have the sole right to determine, in its discretion, when and if any tree located in the parkway shall be removed.

9. **Assumption of Risk.** The Licensee hereby understands and acknowledges that using Parkways and planting trees are activities that involve risks,

including, but not limited to, risk of property damage and bodily injury, including, but not limited to, permanent disability, paralysis, and death. The Licensee hereby fully assumes full responsibility for all risks that may arise out of or result from using the Village's Parkways and planting trees.

10. **Prerequisite Ability.** The Licensee hereby represents to have the requisite skills, qualifications, physical ability, and training necessary to properly and safely plant a tree.

11. **Release from Liability.** The Licensee hereby agrees to release, waive, discharge, and covenant not to sue the Village and its elected and appointed officials and officers, employees, agents, and representatives from all liability to the Licensee for any loss, liability, damage, or cost, whether to person or property, that may occur due to the presence of any person on a Parkway pursuant to the terms of this Agreement, whether caused by the negligence of the Village or otherwise. The Licensee agrees that this release and waiver is intended to be as broad and inclusive as permitted by the laws of Illinois and that if any portion of the agreement is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.

12. **Indemnification.** The Licensee hereby agrees to defend, indemnify, and hold harmless the Village and its elected and appointed officials and officers, employees, agents and representatives from and against any and all injuries, claims, demands, judgments, liabilities, settlements, taxes, damages, losses, costs, and expenses, including attorney's fees and costs of suit or defense, arising out of, related to, resulting from, or alleged to arise out of or result from the Licensee's use of the Village's Parkway under the terms of this Agreement, including, but not limited to, any negligent, careless, or wrongful acts, omissions, failures to act, or misconduct of the Village or the Village's affiliates, officers, employees, agents, contractors, or subcontractors. Notwithstanding the expiration of the Term or the termination of this Agreement by the Village pursuant to Section 2 of this Agreement, this Section 0 shall survive and remain in full force and effect until the date that is five (5) years after the Effective Date.

13. **Definitions.** For the purposes of this Agreement, the following terms shall have the meaning set forth below:

- a. **"Equipment"** means materials, tools, implements, supplies, and/or other items used to facilitate the planting of trees.
- b. **"Effective Date"** means the date this Agreement is signed by the Licensee.
- c. **"Facility"** means all structures, devices, objects, and materials that do not qualify as Equipment, as defined above, including, but not limited to, track and rails, wires, ducts, fiber optic cable, communications and video cables and wires, antennas, vaults, boxes, equipment

enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, electrical equipment, sidewalks, curbs, drains, and appurtenances thereto, located on, over, above, along, upon, under, across, or within rights-of-way.

- d. "**JULIE**" means the Joint Utility Locating Information for Excavators utility notification program.
- e. "**Right-of-Way**" means any street, alley, other land or waterway, dedicated or commonly used for utility, pedestrian, or vehicular traffic or other similar purposes, including utility easements, in which the Village has the right and authority to authorize, regulate, or permit the location of Facilities other than those of the Village. "Right-of-way" or "Rights-of-way" shall not include any real or personal Village property that is not specifically described in the previous two sentences and shall not include Village buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the Right-of-Way.
- f. "**Parkway**" means any portion of the Right-of-Way not improved by street or sidewalk.

14. **Miscellaneous.**

- a. This Agreement contains the entire agreement between the Parties with respect to the subject matter contained herein and cannot be modified except by a written instrument subsequently executed by both Parties.
- b. This Agreement does not convey to, or create in favor of, the Licensee, any legal or equitable title or property interest, in whole or in part, to or in the Village's Parkway or any other real property. The Licensee further acknowledges that this Agreement is not a lease and merely grants permission to the Licensee to use those parts of the Village's Parkway licensed hereunder, on the terms and conditions herein contained.
- c. This Agreement is not assignable by any Party.
- d. The Licensee acknowledges and agrees that nothing in this Agreement impairs the Village's right to perform any public services on its Parkways, including, but not limited to, the subsequent removal of any and all trees planted by the Licensee, and the Licensee hereby releases the Village from any and all damage, loss, cost, or liability that may result from such public service.

- e. The Parties both represent that each has full right, power, capacity, and authority to execute and deliver this Agreement and to comply with the terms, conditions, and provisions hereof.
- f. No failure of any Party to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof, unless such waiver is set forth in writing and executed by such Party.
- g. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, and performance of this Agreement shall be governed by, the laws of the State of Illinois. Any proceeding initiated over any dispute arising out of or relating to this Agreement shall be initiated in any federal or state court located within the County of Kane in the State of Illinois, and the Parties hereby agree that venue for all such matters shall lie exclusively in those courts.
- h. The subject headings of this Agreement are included for purposes of convenience and reference only and shall not affect the construction or interpretation of any of this Agreement's provisions.
- i. Unless the context otherwise requires, (a) words in the singular or plural include the singular and plural; (b) the feminine or neuter gender shall include the masculine, feminine, and neuter; (c) whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation;" and (d) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean "if."
- j. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect, and (d) in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

**THE VILLAGE OF
CARPENTERSVILLE**

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE

By: _____

Name: _____

Title: _____

Organization: _____

Date: _____