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AGREEMENT
BETWEEN
DAVEY TREE SURGERY COMPANY

AND

LOCAL UNION 1245
OF THE INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

City of Santa Clara, CA

Term: March 31st, 2003 through April 1st, 2004

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The Agreement made and entered into this 1st day of April 1, 2003, by and between **Davey Tree Surgery Company**, hereinafter referred to as “Company” and **Local Union 1245 of the International Brotherhood of Electrical Workers, AFL-CIO**, hereinafter referred to as “Union”.

WITNESSETH THAT:

WHEREAS, the parties hereto desire to cooperate in establishing fair and equitable wages, hours and working conditions for the employees hereafter designated, to facilitate the peaceful adjustment of differences that may from time to time arise between them and to promote harmony and efficiency to the end that Company, Union and other interested parties may benefit therefrom.

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE I
RECOGNITION

- 1.1 For the purposes of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment, the Company recognizes the Union as the exclusive representative of all employees of the Employer performing line clearance tree trimming on the property of **City of Santa Clara(Silicon Power)**, but excluding office clerical employees, professional employees, guards, and supervisors, as defined in the LMRA, as AMENDED.
- 1.2 The Company is engaged in rendering service to a public utility, which renders services to the public, and the Union and the Company recognize that there is an obligation on each party for the continuous rendition and availability of such services.
- 1.3 The duties performed by employees of the Company as part of their employment pertain to and are essential in operation of a public utility and the welfare of the public dependent thereon. Accordingly, the Union, its officers, agents, representatives, stewards and members, and all employees covered by this agreement, shall not, in any way, directly or indirectly, instigate, lead, engage in, authorize, cause, assist, encourage, participate in, ratify, or condone any strike, sympathy strike, slow down, work stoppage, or any other interference with or interruption of work at any time of the Company’s operations,

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whether such strike, sympathy strike, slow down, work stoppage, or other interference with or interruption of work: (a) involves a matter subject to resolution pursuant to the grievance and arbitration procedures of this Agreement; or (b) involves a matter specifically referred to or covered in this Agreement; or (c) involves a matter which has been discussed between the Company and the Union; or (d) involves a matter which was within the knowledge or the contemplation of the Company and the Union at the time this Agreement was negotiated or executed. Any failure or refusal to comply with the provisions of Section 1.3 of this Agreement shall be grounds for immediately terminating an employee. In consideration of the Union's commitment, the Company shall not cause any lock out.

- 1.4 Employees who are members of the Union shall perform loyal and efficient work and service, and shall use their influence and best efforts to protect the properties of the Company and its service to the public.
- 1.5 The Company and the Union support the principles of collective bargaining and self-organization and further, shall cooperate in promoting and advancing the mutual welfare of all concerned and in preserving the continuity of service to the public at all times.
- 1.6 Work which has been historically performed by bargaining unit employees will not be sub-contracted by the Company, if such sub-contracting results in the layoff of employees covered by this Agreement.

ARTICLE II

UNION SECURITY AND ACTIVITY

- 2.1 All employees covered by the terms of this Agreement shall be required, as a condition of employment to become a member of the Union and maintain his/her membership in the Union in accordance with its Constitution and Bylaws, from and after the thirty-first (31st) day following the date of their employment, or the effective date of this Agreement, whichever is later.
 - (a) Any employee permanently appointed to any classification out of any bargaining Unit covered by a collective bargaining agreement with Union may withdraw from membership in Union and his/her obligation to pay dues/agency fees shall be suspended for the duration of such period as the individual is working for the

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Company in a permanent job classification not covered by any collective bargaining agreement with Union.

- 2.2 Any employee who is or who becomes a member of Union shall, as a condition of employment, maintain his/her membership in accordance with its' Constitution and Bylaws.
- 2.3. Company shall deduct from their wages and promptly pay over to the proper officers of the Union, the membership dues of the members of the Union as provided in Subsection 2.1 who individually and voluntarily authorize such deductions in writing. Upon written request from the Union, the Company shall within thirty-one (31) calendar days, terminate the employment of any employee who fails to comply with the requirements of this Title.
- 2.4 If any dispute arises under the provisions of this Title, it shall be adjudicated under the grievance procedure provided for in this Agreement.
- 2.5 The Business Manager of the Union and/or their representatives shall have access to the Company's properties during regular working hours for the purpose of transacting Union business. The Union shall furnish the Company with a list of such representatives who shall be furnished with proper identification. The Union shall not abuse this privilege, nor shall the Union interfere with normal work of the Employer.
- 2.6 The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits, or any action taken by the Employer for the purpose of complying with the provisions of this Article II.

ARTICLE III

HOURS AND OVERTIME

- 3.1 The established pay week for the Company is from Sunday, normal starting time to Sunday, normal starting time. The basic workweek shall consist of five (5) workdays of eight (8) hours each and shall begin Monday and run through Friday. An extended workweek shall begin at starting time Monday and continue until the next Monday starting time. The regular hours of work for all employees shall be from 7:00 a.m. to 3:30 p.m. with a meal period of thirty (30) minutes, which normally will be from 12:00 noon to 12:30 p.m.. With the approval of the Company's supervisor, the regular lunch period

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may be advanced or delayed an hour or less when work must necessarily be performed during the regular lunch period. Such a change in the lunch period shall not be deemed to require the payment of overtime.

The regular hours of work may be changed by the Company at the request or direction of the public utility or governmental authorities and by mutual agreement between the Company and the Union. Such a change in the regular hours of work shall not be deemed to require the payment of overtime.

- 3.2 Employees shall report to work at pre-determined assembly points and shall return thereto at the conclusion of the day's work; and the time spent in traveling between such assembly points and the job site shall be considered as time worked.
- 3.3 Overtime is defined as (a) time worked in excess of forty (40) hours in a workweek, (b) time worked in excess of eight (8) hours on a scheduled workday, (c) time worked on a non-workday, except as provided for in Section 4.2, (d) emergency work outside of regular hours of work on a workday, and (e) time worked on a holiday. Overtime shall be computed to the nearest quarter hour. Nothing contained herein shall be construed to require payment of overtime under more than one of the foregoing definitions for a single period of overtime.
- 3.4 (a) Employees who are required to report for emergency work on non-workdays, or outside of their regular hours of work on a scheduled workday or on holidays which they are entitled to have off, shall be paid overtime compensation for the actual work time and for the travel time in connection therewith, but such travel time shall not exceed one-half (1/2) hour.
- (b) Prearranged Overtime: When at the request of the supervisor in charge, an Employee reports for pre-arranged work (1) on workdays outside of his/her regular work hours, he/she shall be paid overtime compensation for actual work time; (2) on non-workdays or on holidays, he/she shall be paid overtime compensation for actual work time. For the purpose of this section, prearranged work is deemed to be work for which advance notice has been given prior to the end of the employee's normal work hours on the preceding day. The meal allowances do not apply when overtime is prearranged for ten (10) hours or less.

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- 3.5 Employees who report for work as provided in Section 3.4 (a) shall be paid a minimum of two (2) hours pay, including travel time, at the overtime rate. Employees who report for work provided under 3.4 (b) shall be paid a minimum of two (2) hours pay, at overtime rates even if work is canceled for any reason. However, Company will not be required to pay overtime rate if the one (1) hour minimum goes into employees regular work hours on regular workdays.
- 3.6 Overtime compensation shall be paid at the rate of one and one-half (1 ½) times the normal hourly wage rate.
- 3.7 Overtime compensation shall be paid at the rate of two (2) times the regular normal hourly wage rate for all hours worked in excess of twelve (12) hours, until the end of the work shift. The end of the work shift is defined as a reasonable period of time off the job. Overtime shall be figured to the nearest quarter hour.

ARTICLE IV INCLEMENT WEATHER

- 4.1 Employees who report for work on a workday or for prearranged work on a workday and are unable to work in the field because of inclement weather or other similar causes, shall be paid for actual time worked, if any, but not less than two (2) hours at the appropriate rates. Employees receiving subsistence as provided for in Section 5.2 shall continue to receive subsistence in addition to the amount provided for under this Section.
- (a) The determination for laying off on an inclement day shall not be at the discretion of the Foreman but that the employees shall work on such days unless specifically notified otherwise by the General Foreman or other authorized Company Supervisor.
- 4.2 Subject to the approval of the General Foreman or Supervisor, those employees who, due to inclement weather or other excused absences were prevented from working forty (40) straight-time hours in a given workweek, may be permitted to work on a non-workday within the same workweek to make-up the number of hours necessary to total (40) straight-time hours for the week. The employee shall be paid a straight time rate for all such hours worked, but not to exceed a standard workday.
- (a) It is intended that when such cases occur, employees who did lay off from work

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because of inclement weather or other excused absences on a regular workday shall not be required to work on the next non-workday, but where agreement is reached between the General Foreman or Supervisor and the employee, the employee shall be allowed to do so. On approved make-up days, if an employee makes a commitment to work, and does not show, the employee's attendance record will reflect an unexcused absence from work.

ARTICLE V EXPENSES

5.1 If Company requires an employee to perform work for more than one (1) hour beyond regular work hours on a workday or non-workday, and each succeeding five (5) hours thereafter, the employee shall be granted a meal allowance of twelve dollars (\$12.00).

(a) Prearranged Work

When an employee is requested to perform prearranged work on non-workdays during regular hours, he shall observe the lunch arrangement, which prevails on his/her workday. If such work continues beyond twelve and one-half (12 1/2) hours, the Company shall provide him/her with the meal allowance in accordance with Section 5.1 hereof.

5.2 Employees who are assigned to temporary work over seventy (70) miles from their regularly assigned workcenter, shall be allowed eighteen dollars (\$18.00) per day as subsistence allowed for each day worked at the temporary workcenter or assembly point. Time spent traveling to such temporary jobs at its beginning and from its conclusion shall be paid for by Company.

5.3 In other than emergency situations, the Company shall give at least forty-eight (48) hours' notice to an employee who is to be sent over seventy miles from their assigned workcenter or assembly point, in order that the employee may have time to prepare for the trip.

5.5 Employees who use their personal automobiles for Company's convenience shall be reimbursed at the current Federal rate. This reimbursement shall cover all cost associated with operating the vehicle, including the cost of insurance.

ARTICLE VI
SENIORITY

- 6.1 Seniority is defined as the length of continuous service with Davey Tree. Continuity of service shall be deemed to be broken when (1) an employee is discharged for cause; (2) no call or no show in three consecutive days; (3) an employee voluntarily terminates employment or voluntarily takes a layoff; (4) an employee has been laid off for more than three (3) consecutive months; or (5) an employee has violated the provisions of Article VII, Section 7.6.
- (a) New employees within the bargaining unit will be probationary employees until they have been employed and actually worked within the bargaining unit for six (6) months (1,040 hours. During probationary period, Company may demote, lay off, discipline or terminate such employees as deemed necessary, within the sole discretion of the Company.
- (b) Any employee entering the Apprentice Climber classification with one (1) year or less of seniority will be subject to a six (6) month classification probationary period. Company may demote layoff or terminate such employees as deemed necessary, within the sole discretion of the Company.
- 6.3 Seniority shall be used as the basis for determining such benefits as transfer rights, protection against demotion and layoff, promotions, and Paid Time Off. Seniority shall mean the time spent in the employment of Davey Tree in the jurisdiction of IBEW 1245.
- 6.4 The continuity of an employee's service shall not be broken by absence for any of the following:
- (a) Induction, enlistment, or active duty in the Armed Forces of the United States, or service in the Merchant Marine, under any Act of Congress which provides that the employee is entitled to re-employment.
- (b) Absence on Union business not requiring a leave of absence.

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- (c) Absence by reason of authorized said leave of absence without pay.
Written request must be sent to the Livermore office.

ARTICLE VII LEAVE OF ABSENCE

- 7.1 Leave of absence, not to exceed six (6) months may be granted, within the discretion of the Company, without pay to regular employees for urgent, substantial reasons, provided adequate arrangements can be made to take care of the employee's duties without undue interference with the normal routine of work. Leave will not be granted if the purpose for which it is requested may lead to the employee's resignation.
- 7.2 A leave shall commence on and include the first workday on which an employee is absent and terminated with and include the workday preceding the day he or she returns to work. The employees shall be restored to employment on the termination of his or her leave of absence. If during an employee's absence on leave a reduction in forces was necessary, the restoration of the employee to active employment would depend upon the application of Article X.
- 7.3 Except as otherwise provided herein, an employee's seniority shall not accrue while he or she is on leave without pay. However, an employee's status as a regular employee shall not be impaired by a leave of absence.
- 7.4 Company shall, at the request of the Union, grant a leave of absence without pay for three (3) years or less to an employee who is appointed or elected to any office or position in the Union and whose services are required by the Union. The maximum combined leave of absence for Union assignments shall not exceed three (3) years.
- 7.5 A leave of absence under the foregoing conditions shall be granted to employees who enter the Armed Forces of the United States, provided, however, that any such leave of absence and the reinstatement of any such employee shall be subject the terms of any Act of Congress which provides for re-employment.
- 7.6 If an employee fails to return immediately on the expiration of his/her leave of absence, or if he/she accepts other employment while on leave, or if he/she makes an application

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for unemployment benefits while on leave, he/she shall thereby forfeit the leave of absence and terminate his/her employment with the Company.

(a) If any employee applies for unemployment compensation at any time other than after layoff or discharge, he/she shall terminate his/her employment with the Company.

7.7 Any employee who is called upon to be absent from duty due to a death in his/her immediately family shall be excused, without loss of regular pay, for a reasonable time, not to exceed two (2) days in order to permit his/her to make arrangements for and to attend the funeral. "Immediate family", as used in this paragraph, means the employee's father, mother, son, daughter, brother, sister, husband, wife, grandmother and grandfather. Upon prior notice the Company may require verification.

ARTICLE VIII

WAGES

8.1 The wages to be paid employees of the Company covered by this Agreement shall be as follows:

Santa Clara

Effective

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*Foreman **

FMA4	17.25
FMA3	16.74
FMA2	15.97
FMA1	15.45

*Climber **

CLA3	15.19
CLA2	14.68
CLA1	14.16

*Apprentice Climber **

ACA4	13.39
ACA3	12.87
ACA2	12.36
ACA1	11.84

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*Laborer **

LAA1

10.30

- * Six month steps shall be granted when the employee has worked at least nine hundred and fifty (950) hours and six (6) months since the last wage increase.

Wage Adjustments:

Effective March 31st, 2003, all wage scales shall be increased by 3.0%.

Effective January 1, 2003, any employee that is between a wage scale will receive a one-time adjustment to the next higher wage step, provided all necessary qualifications are met. In no case will an employee be allowed to move into a higher job classification under this provision.

Working Foreman: An employee who is in charge of a crew of not more than five (5) men, including himself/herself, engaged in line clearance work. (In the application of Article IX, the Company need not consider the application for promotion to this classification from any employee having less than eighteen (18) months experience in the Climber classification.)

- 8.2 All employees shall be placed on an hourly rate of pay and shall be paid on Friday for the period ending and the previous Saturday; provided that the required payrolls reach the office not later than Monday following the close of the payroll period.

Employees shall have their paycheck directly deposited into a bank account, or mailed (using the United States Postal Service regular first-class mail) to them.

If reports are received by Monday, all direct deposits will be placed electronically to the employee's bank no later than Friday (for the prior week's work). Employees will receive their pay stub by mail within seven calendar days from the date of direct deposit.

- 8.3 When an employee is temporarily assigned to work in a classification higher than his/her regular classification for eight (8) hours or more during the day, he/she shall be paid no less than the minimum rate established for such classification for all time worked in the assigned classification.

- 8.4 When Climbers are hired, due consideration shall be given their previous experience in

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work similar to that covered by this Agreement and they shall be credited for the equivalent value of such experience in the Climber's wage schedule, as determined by the Company.

ARTICLE IX
PROMOTION AND TRANSFER

9.1 Employees may file requests, in writing, for promotion to the Working Foreman classification or for a transfer to a new location in their present, classification, with the office of the Company. For other than temporary vacancies, whenever a vacancy occurs, the Company will before filling such vacancy, first give consideration to such requests. A Working Foreman must be able to speak and write in English.

(a) The Company shall give consideration to applications for promotion and transfer to vacancies on the basis of seniority, ability and qualifications.

9.2 Requests for promotion or transfer shall expire at the end of three (3) months from the time of receipt by Company unless the Company has within the three (3) month period, received a request for extension.

9.3 Whenever a temporary vacancy occurs in any job classification, the Company may fill it by appointment. Where the Company deems it to be practical, every effort to fill such vacancies with the most qualified employee in the next lower classification within the workcenter. Temporary vacancies shall be those vacancies caused by the absence of an employee due to industrial injury, leaves of absence, paid time off, and additional jobs which the Company contemplates will be of ninety (90) days' duration or less.

ARTICLE X
DEMOTION AND LAYOFF

10.1 In the event a reduction of forces or a permanent curtailment of operation shall occur, employees shall be laid off in the reverse order of their Company seniority in the area covered by this Agreement in which they are working at the time of the reduction or curtailment, provided that any employee displacing an employee in a lower classification shall have the ability to do the work of that classification.

(a) An employee shall demote or displace under the following rules:

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- (1) No employee may displace another employee who has equal or greater Company seniority than his/her own.
- (2) An employee shall have the right to displace that employee in his/her own classification at the assembly point closest to his/her own who has the least Company seniority or he/she may elect to accept a demotion to a lower classification by applying the above procedure to the classification to which he/she is demoting.
- (3) If the above displacement within his/her own classification or another is not possible or if a demotion is available and the employee does not wish a demotion, he/she shall be given the option to displace in his/her own classification at the assembly point next closest and so on until an election is available or the employee has exhausted his/her possibilities.

If an employee is required to displace outside of his/her current division, he/she may elect to take a voluntary lay-off. During the period of layoff, employee shall maintain his/her accrued seniority, but shall not accrue additional seniority while on lay-off status.

If employee is reinstated within three (3) months, his/her seniority date shall be adjusted to reflect the period of time he/she was in lay-off status. If employee refuses to displace inside of this current division, he/she will be laid off and lose all of his/her seniority.

- (4) If there is no job to which Company can demote an employee under this Section, or if the employee does not effect a displacement under this Section, he/she shall be laid off.
- (5) An employee who has been demoted or displaced under this Section shall have accelerated rights back to that classification from which he/she was demoted and/or to that assembly point from which he/she was displaced.
- (6) An employee laid off under the provision of this Section shall within three (3) months of layoff have preferential rehire rights by Company seniority to a job with the Company before new employees are hired to fill

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job vacancies. It shall be the responsibility of the laid off employee to keep the Company informed of his/her correct address and a telephone number through which he/she can normally be reached. The Company shall be relieved of its responsibility of this section, seven (7) calendar days after a letter is sent the employee's address on file.

(b) A supervisory employee who was not at the time of demotion a member of the collective bargaining unit shall have the right to demote or displace into the bargaining unit as per the provisions of this Article.

10.2 Where the Company deems appropriate, it shall give as much notice as possible of any layoff.

ARTICLE XI

Paid Time Off

11.1 Employee with six (6) months' seniority are entitled to paid days off as follows:

Starting the seventh month up through one year

An employee will be credited with 7.33 hours per month of every month of attendance as per the work attendance requirement defined below. After one (1) year, the employee can use all hours they have credited.

Starting the third year

An employee will be credited with 11.33 hours per month for every month of attendance as per the work attendance requirement.

Starting the tenth year

An employee will be credited with 16.7 hours per month for every month of attendance as per the work attendance requirement.

11.2 Employees will be permitted their choice of paid days off for any reason (vacation, personal, sick days, non-workdays, etc.) on a seniority basis, if it can be done without

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interfering with the work in progress, provided they are arranged for one week in advance. No partial days will be allowed.

- 11.3 Employees who have reached one (1) year or more seniority may cash in at any time any credits they have accrued over three (3) days. An employee may defer their Paid Time Off from one year and add it to their second year. No employee shall be permitted to accrue more than two (2) years of Paid Time Off at any single time. There is no pay out of Paid Time Off for termination due to cause of dishonesty or breaking of Company rule or policy. For an employee with two (2) weeks written notice of quitting, Company will pay out 100% of all Paid Time Off accruals to the end of the last full month worked.
- 11.4 Work Attendance Requirement is defined as an employee working every day the employee is scheduled to work. The only exception will be: Paid Time Off, leaves of less than one (1) week (arranged for a week in advance), lost time of less than one (1) week for the Company's convenience, or sick time with a doctor's certificate (which can and is taken as Paid Time Off if the employee has credit). If an employee is out of Paid Time Off, and has a verifiable doctor's excuse, is ill (not to exceed 30 days), they will not lose their Paid Time Off for that one (1) illness period. Only one (1) month of Paid Time Off can be earned if the illness extends into the second month. This is only allowed one (1) time in a calendar year.
- 11.5 Employees will regard the following six (6) days as non-work days in the basic workweek: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- 11.6 Employees shall use Paid Time Off to compensate themselves for non-work days as described in section 11.5 above, if they fall in the basic workweek.

ARTICLE XII

DISCHARGE & WARNING NOTICES

- 12.1 The Employer shall have the right to discipline or discharge any employee for just cause, but in respect to discharge shall give at least three (3) warning notices to the employee in writing, except that no warning notice needs to be given to an employee before he/she is discharge if the cause of such discharge is:

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1. Dishonesty.
2. Insubordination.
3. Recklessness.
4. Physical assault.
5. Possession of firearms on Company property.
6. Unauthorized passengers in Company vehicle.
7. Being on Company premises, property, or time under the influence or in possession of either alcohol or narcotics.
8. Fighting (provoking and/or assaulting).
9. Gross negligence.
10. Failure to maintain a valid driver's license as required by law for the equipment they are assigned to.

The California Department of Motor Vehicles will be the sole authority on the validity of said Driver's License. If employees should have their driver's license revoked or suspended for any reason whatsoever, employees are required to immediately notify the Company and shall have three (3) months to reinstate the Driver's License, except where the possession of the Driver's License directly affects the job, in which case, an employee will be immediately discharged.

11. After receiving three (3) warning letters within a twelve month period.
12. Unauthorized tree trimming, contracting, or solicitation of any related work deemed to be in competition with Company or contractor.
13. Intentional violation of safety rules.
14. Theft of time.
15. Violation of harassment policies.

This list is not to be considered or construed as being all inclusive.

ARTICLE XIII

SAFETY

- 13.1 The Company and the Union recognize that there is a common interest in safety on the job and agree to cooperate in the development and promotion of this common interest.
- (a) It shall be the responsibility of the employer to ensure the safety of its employees, and compliance by them with the established employers safety rules and standards.
- 13.2 The Company reserves the right to draft reasonable safety rules for employees and to insist on the observance of such rules. A copy of the rules will be furnished to the Union.
- 13.3 Upon request of the Union, the Company shall meet with the Union at such times and places as may mutually be agreed upon. At such meetings, the Union may submit suggestions to the Company concerning the revision and enforcement of safety rules.
- 13.4 The State of California Electrical Safety Orders shall apply when employees are working near energized power lines.
- 13.5 All employees who drive the Employer's equipment shall have and maintain a valid Commercial Driver's License (CDL) which conforms to the Federal and/or State law and possess the necessary skills to drive a standard transmission vehicle. All new employees, shall have 30 days from their date of hire to obtain a (CDL) and shall maintain such license all times. The Employer shall be notified immediately by all employees if his/her driver's license is suspended or revoked. Once the (CDL) has been obtained, then, in the case of future disqualification of an employee, the employee may be assigned other work, if it is available.
- 13.7 All employees shall have and maintain an Approved First Aid and CPR card. The Employer will furnish the instructor and the necessary materials for the course. The course will be conducted on the employee's own time.

ARTICLE XIV

MISCELLANEOUS

- 14.1 The employer shall furnish all necessary tools and equipment. Employees will be responsible for the tools and equipment issued to them, providing the employer provides a safe place for storage.

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- 14.2 Whenever two (2) more employees are assigned to one (1) job, one shall be treated as a Working Foreman and shall receive the wages as set forth in Section 8.1.
- 14.3 Probationary Employees: No seniority shall be considered for an employee until the employee has been with the Company for six (6) consecutive months, but after serving this period, seniority shall be computed from the date hired

ARTICLE XV

GRIEVANCE PROCEDURE

- 15.1 Any grievance which may arise between the Union, or any of its members, and the Company with respect to the interpretation or application of any of the terms of this Agreement and with respect to such matters as the alleged discriminatory or arbitrary discharge or discipline of an individual employee, shall be determined by the procedure set forth in the following sections.
- 15.2 As the initial step in the adjustment of a grievance, it shall be discussed by the Union Shop Steward and the General Foreman. In the absence of a Shop Steward, the grievance shall be taken up by the authorized Union Representative directly with the General Foreman. The purpose of such discussion shall be to reach a satisfactory disposition of the grievance. No grievance or complaint shall be considered unless it has been first presented within six (6) business days of the alleged occurrence thereof, or the date the employee or Union became aware of, or should have become aware of the incident which is the basis for the grievance.
- 15.3 If a grievance is not satisfactorily settled under Section 15.2, it shall be presented to the General Foreman in writing by the Union Representative. The General Foreman shall make his/her reply in writing within ten (10) workdays after receipt to the Union Representative filing the grievance. If the General Foreman either fails or refuses to reply to the grievance within ten (10) days after receipt of the grievance, the merits of the grievance shall be considered as admitted and the demands of the party asserting the grievance shall be granted. The ten (10) day period may be extended by mutual agreement, and such agreement shall not be unreasonably withheld.
- 15.4 If a grievance is not settled satisfactorily under Section 15.3, it shall be presented in writing by the Union to the Company within ten (10) calendar days following receipt of the General Foreman's reply, setting forth the following:

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- a) A statement of the nature of the grievance and the facts upon which it is based.
- b) The Section or Sections of the Agreement, if any, relied upon as being applicable thereto.
- c) The remedy or correction which is desired.

The Company shall reply within seven (7) calendar days after receipt, setting forth the Company's position on the grievance. If the Company fails or refuses to comply with the time limits herein, the merits of the grievance shall be considered as admitted and the demands of the party asserting the grievance shall be granted. The seven (7) day period may be extended by mutual agreement. If the Union fails to present the grievance within seven (7) days, the grievance shall be considered resolved, and the matter closed.

15.5 If a satisfactory settlement cannot be reached under Section 15.4, it shall be referred to a two (2) person Review Committee, such committee to be composed of a Union representative who was not involved in any of the preceding discussions, and any officer of the Company. The Review Committee shall meet within thirty (30) workdays after the date the case is referred to the Committee and shall endeavor to make a decision based upon the record referred to it. It may, at its discretion, return the grievance to the area Supervisor and the Business Representative with a request for further investigation and consideration by them. It may, at its discretion, conduct a hearing on any grievance submitted to it. The Review Committee shall be authorized to make a decision, which shall be final and binding on Company and Union. If the Review Committee agrees on the disposition of a grievance, a statement to that effect shall be signed by both Review Committee members. From the date that the Review Committee cannot resolve a settlement, either party may within twenty-one (21) business days request that the grievance be referred to arbitration.

15.6 When a request to proceed to arbitration is given in accordance with section 15.5, the parties shall select an impartial arbitrator. If they are unable to do so, the grieving party shall request the Federal Mediation and Conciliation Service to supply a panel of seven (7) arbitrators from which the parties shall each strike out one name alternately until only the name of one person remains who shall become the impartial arbitrator to decide the issue. The first strike to be determined by a coin toss. The arbitrator's decision shall be final and binding. The arbitrator shall have no power to amend or modify this Agreement or any written Agreements supplemental hereto or to establish any new terms or

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conditions of the same. The arbitrator's only jurisdiction is strictly limited to application and interpretation of this Agreement and to the facts of the particular grievance and the arguments of the parties pertaining thereto properly before the arbitrator, and his/her decision and award shall be based solely upon the arbitrator's interpretation of the meaning or application of the terms of this Agreement. The Company and the Union shall each bear the expense of its own representatives. The fees and expenses of the arbitrator shall be borne by the losing party, as determined by the arbitrator. The arbitrator may make such retroactive award, or settlement, of any grievance or complaint as the equities of the case may demand, but in no event shall any award be retroactive beyond the date of the latest incident, which gave rise to the grievance.

15.7 Time is of the essence in all of the grievance and arbitration procedures in this Agreement, except that the time limits may be extended by mutual agreement (confirmed in writing) between the Union and the Company on a non-precedential basis. Failure to comply by the grievant or the Union will result in waiver of the alleged grievance and all rights, claims and actions for all purposes. Failure to comply by the Company will result in a forfeiture of the grievance and the upholding of the grievant's position.

ARTICLE XVI GROUP MEDICAL

The Principal Health Plan or an equivalent plan will be offer to any employee having six months of seniority. The Company will pay 60% of the monthly premium.

ARTICLE XVII JURY DUTY

17.1 All non-probationary employees shall be paid wages amounting to the difference between the amount paid them for jury service their basic hourly rate for each day that the employee is required to report in court for jury duty, provide that such day is a day on which the employee would otherwise be scheduled to work. The Company shall be liable hereunder for a maximum of two (2) weeks pay per year. It is understood that on any day the employee is not required to report in court, he/she shall be required to report for work

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as scheduled, with the understanding that if such employee does not report for work on such day, he/she will forfeit any claims to jury service pay for the entire period.

ARTICLE XIX

TERM

- 18.1 This Agreement shall take effect as of March 31st, 2003 and shall continue in full force and effect until midnight April 1st, 2004 and it shall continue thereafter from year to year unless written notice of termination shall be given by either party to the other, sixty (60) days prior to the end of the then current term.
- 18.2 If the Union grants to any other Employer, doing the same type of work covered by this Agreement in any geographical area covered by this Agreement, a contract whose total wages and fringe benefits are less favorable to the employees covered under such an Agreement than are the total wages and fringe benefits which are applicable to employees covered under the instant Agreement, Davey Tree Surgery Company, or its successors or assigns man, at the Employer's option, incorporate into the instant Agreement the total wages and fringe benefits provided for in such other contract. Said incorporation of more favorable terms into the instant Agreement may be done at any time by the Employer informing the Union in writing or said incorporation.
- 18.3 In order to facilitate the operations of this Article, the Union agrees to furnish the Employer upon request with a copy of any collective bargaining agreement between the Union and any other individual, partnership, firm, corporation, or employer which is or hereafter may become effective during the term of this Agreement.
- 18.4 If either party desires to amend this Agreement, it shall give notice thereof to the other party sixty (60) days prior to the end of the then current term, in which event the parties shall commence negotiations on any proposed amendment as soon as practicable after such notice has been given. Failure of the parties to agree on such proposed amendment

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shall not cause termination of the Agreement unless either party has given notice of termination as provided in Section 18.1.

18.5 Any provision of this Agreement which may be in conflict with any Federal or State law, regulation or executive order, shall be suspended and inoperative to the extend of and for the duration of such conflict.

18.6 Notwithstanding the provisions of Section 18.1, either party may forthwith terminate this Agreement in the event that the other breaches its obligations as set forth in Section 8.1, hereof.

IN WITNESS THEREOF, the parties hereto have executed this agreement as of the day and year first above written, acting by and through their duly authorized office.

DAVEY TREE SURGERY CO.

**IBEW LOCAL UNION 1245
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKEERS, AFL-CIO**

By: _____
Howard Bowles
Senior Vice President/General Manager

By: _____
Perry Zimmerman
Business Manager

By: _____
Larry Abernathy
Vice President-Operations

By: _____
E.L. Mallory
President

By: _____
Larry Evans
Operations Manager

By: _____
Raymond S. Thomas
Senior Business Representative

10/18/04