

**AGENDA
STORMWATER UTILITY
COMMITTEE**

**MONDAY, APRIL 15, 2013
ROOM 202
5:00 P.M.**

***Patrick Juliana, Chairman
Scott N. Gordon, Vice Chairman
Steve Bostrom***

***Eric Haugaard
Jan Michalski
G. John Ruffolo***

- A-1 Approval of minutes of regular meeting held on April 1, 2013.
- B-1 Award of Professional Service Contract for Project 13-1134 Prune Trees in Lawn Park Area to Trees-B-Gone (Kenosha, Wisconsin) in the amount of \$73,600.00. *(Park Commission approved 4-0) (deferred at the 4/1/13 meeting)*
- C-1 Award of Contract for Project 13-1208 Sidewalk & Curb/Gutter Program (Citywide Locations) to A.W. Oakes & Son (Racine, Wisconsin) in the amount of \$662,000.00 (\$82,000.00 storm sewer funds). **(All Districts)**
- C-2 By Alderperson Bogdala, Co-Sponsors: Alderperson Bostrom and Alderperson Schwartz – Resolution to Develop a Partnership between the City of Kenosha, Bird City of Wisconsin, the Kenosha Stormwater Utility, and the Kenosha Museums for the Purpose of Developing an Educational Program Designed to Educate the Public on Combating Issues with Urban Waterfowl. *(Park Commission approved 4-0)*
- C-3 Disbursements for the month of March 2013.

INFORMATIONAL: Project Status Report

CITIZENS COMMENTS RELATED ONLY TO JURISDICTION OF STORMWATER UTILITY COMMITTEE

ALDERMAN COMMENTS

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

STORMWATER UTILITY COMMITTEE
- MINUTES -

MONDAY, APRIL 1, 2013
5:00 P.M.

Patrick Juliana, Chairman
Scott N. Gordon, Vice Chairman
Steve Bostrom

Eric Haugaard
Jan Michalski
G. John Ruffolo

The regular meeting of the Stormwater Utility Committee was held on Monday, April 1, 2013 in Room 202 of the Municipal Building. The following members were present: Chairman Patrick Juliana, Vice Chairman Scott N. Gordon, Aldermen Steve Bostrom, Eric Haugaard, and Jan Michalski. Alderman G. John Ruffolo was absent. The meeting was called to order at 6:05 pm. Staff members in attendance were Mike Lemens and Shelly Billingsley.

- A-1 Approval of minutes of regular meeting held on April 1, 2013.
*It was moved by Alderman Haugaard, seconded by Alderman Michalski to approve.
Motion passed 5-0.*
- C-1 Award of Professional Service Contract for Project 13-1134 Prune Trees in Lawn Park Area to Trees-B-Gone (Kenosha, Wisconsin) in the amount of \$73,600.00.
*(Park Commission approved 4-0)
It was moved by Alderman Bostrom, seconded by Alderman Haugaard to defer for two weeks. Motion passed 5-0.*
- C-2 Award of Contract for Project 11-1025 122nd Avenue Reconstruction (122nd Avenue - 71st Street to 74th Street) to A.W. Oakes & Son (Racine, Wisconsin) in the amount of \$695,700.00 (\$64,400.00 stormwater utility funds). **(District 16)**
*It was moved by Alderman Haugaard, seconded by Alderman Gordon to approve.
Motion passed 5-0.*

INFORMATIONAL: Project Status Report

ADJOURNMENT - There being no further business to come before the Stormwater Utility Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 6:08 pm.



B-1

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
CATHY AUSTIN, P.E.
ASSISTANT CITY ENGINEER
BILL KNUITSEN
SOIL EROSION SPECIALIST

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

DEPARTMENT OF STORMWATER UTILITY
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

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March 21, 2013

To: Patrick Juliana, Chairman, Stormwater Utility Committee
Michael J. Orth, Chairman, Park Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works/City Engineer

Subject: **Professional Service Contract to Prune Trees in Lawn Park Areas Project #13-1134**

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received three proposals to complete the 2013 contract to prune trees in lawn park areas. Staff has reviewed the proposals and has chosen Trees-B-Gone, Kenosha, Wisconsin, based on their references, experience and standard quote rates.

Contractor	Proposal Amount
Trees-B-Gone, Kenosha, WI	\$64,040.00
Trees "R" Us, Inc., Wauconda, IL	\$66,425.00
The Doctors of Landscaping, Kenosha, WI	\$225,000.00

The 2013 tree pruning contract includes pruning approximately 4,500 trees within the public right-of-way in the following area, within the City limits east of 39th Avenue and north of 60th Street including 60th Street.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Trees-B-Gone, Kenosha, Wisconsin for \$73,600.00 to include their quote of \$64,040.00 and \$9,560.00 of contingency and authorize the Director to execute the contract. The funding for this work will be paid for out of the Stormwater Utility account number 501-09-50106-219.

SAB/kjb

2013 CONTRACT TO PRUNE TREES

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation
[Through Its Department of Public Works]**

And

**Trees-B-Gone, LLC
a Wisconsin Limited Liability Company**

TOTAL CONTRACT AWARD NOT TO EXCEED \$73,600

CONTRACT AMOUNT: \$64,040

**COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF
KENOSHA: NOT TO EXCEED \$9,560**

THIS AGREEMENT, Made and entered into by and between the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, duly organized and existing under the laws of the State of Wisconsin, through its Department of Public Works, hereinafter referred to as "**CITY**", and Trees-B-Gone, LLC, a Wisconsin limited liability company, located at 8418 38th Street, Somers, Wisconsin, 53171 hereinafter referred to as "**CONTRACTOR**".

W I T N E S S E T H:

WHEREAS, CONTRACTOR has submitted to **CITY** a written Proposal to provide maintenance pruning work to lawn park area and public right-of-way trees located on all City streets and avenues East of 39th Avenue and North of 60th Street including 60th Street within the City of Kenosha, according to the Specifications and Special Conditions contained in the Request for Proposal; and,

WHEREAS, the **CITY** has accepted the Proposal, effective upon **CONTRACTOR** entering into and abiding by the terms and conditions of this Contract; and,

WHEREAS, the parties understand that this Contract is not a public construction contract under Wisconsin Law.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged, **CITY** and **CONTRACTOR** agree as follows:

1. DEFINITIONS.

- a. "CONTRACT"** means this executed Contract to Prune Trees. The following documents comprise the complete Contract: Request for Proposal, Proposal, Executed Contract, Specifications and Special Conditions, Certificates of Insurance, Affidavit of Organization and Authority and Careful Inspection of Site and Preparation of Proposal, List of Subcontractors and Major Suppliers, Determination of City Representative in Charge of Project, Change Orders, Affidavit Respecting Construction Lien Waivers/Releases, Contract notices and such other documents as are referenced herein. Any of such documents which are not physically attached to this Contract are on file in the

Department of Public Works and Park Division, and are incorporated into this Contract by reference.

b. **“CONTRACTOR”** shall mean **Trees-B-Gone, LLC**, and any subcontractors approved by the **CITY**.

c. **“FORESTER”** shall mean the Forester of the City of Kenosha within the Park Division, and includes designees.

d. **“OVERPAYMENT”** means any money **CONTRACTOR** received which the **CONTRACTOR** was not entitled to receive under this Contract, including, but not limited to, excess payment made in error and payment for defective and/or rejected Work which was not redone or replaced and accepted by **CITY**.

e. **“WORK”** means any contractual endeavor undertaken by **CONTRACTOR**, or its approved subcontractors, to fulfill the terms of this Contract, including, but not limited to, the providing of labor, service, materials, the oversight of approved subcontractors, and the disposal and dumping of materials and debris arising out of the endeavor.

f. **“WORKING DAY”** means a calendar day, excluding weekends and legal holidays.

2. WORK TO BE PERFORMED BY CONTRACTOR. The **CONTRACTOR**, for the sum of Sixty-Four Thousand Forty (\$64,040.00), will perform and complete, or will cause to be performed and completed, all Work in a good and workmanlike manner, and will do so in accordance with and subject to the provisions of this Contract. In addition, **CONTRACTOR** will perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal not to exceed an additional Nine Thousand Five Hundred Sixty (\$9,560.00). In the event of a conflict between the Request for Proposal, the Proposal and this Contract, the terms and conditions of the Contract shall control and supersede the other documents. The Work comprises providing maintenance pruning to all lawn park areas and right-of-way trees on all City streets and avenues located East of 39th Avenue and North of 60th Street including 60th Street within the City of Kenosha, in accordance with the Specifications and Special Conditions in Exhibit “A”, which Exhibit is attached hereto and incorporated herein by reference. The Specifications and Special Conditions will control and supersede an inconsistent provision in this Contract.

3. COMMENCEMENT AND DILIGENT PROSECUTION OF WORK. The **CONTRACTOR** will commence work within five (5) working days following execution of Contract and Notice to Proceed, and will prosecute Work diligently until fully complete in accordance with this Contract. The **CONTRACTOR** shall complete the Work within the Contract term.

The **CONTRACTOR** shall fully prune all the required trees within at least one block in the target area per week until this Contract is terminated.

The **CONTRACTOR**, in the event of a dispute respecting quantity or quality of the Work, shall not refuse to perform the Work and shall not delay the performance of the Work pending the resolution of said dispute.

The **CONTRACTOR** has the duty of requesting an extension of time to complete the Work from the **FORESTER**, in writing, prior to the time for Contract completion, where the progress of the Work was delayed, such that the Work will not be completed on time, and the **CONTRACTOR** was not responsible for such delay. Should the **FORESTER** grant an extension, the **CONTRACTOR** will not be liable for liquidated damages arising out of the delay. Should the **FORESTER** determine that the Work will not be completed on schedule through normal methods and where no request for an extension has been requested, or if requested, such request was not justified, the **FORESTER** shall

provide the **CONTRACTOR** with written notice requiring the **CONTRACTOR** to take such extraordinary measures as may be required to complete the Work on time, or as close to on time as possible. The failure of the **CONTRACTOR** to take such extraordinary measures shall be grounds for the **CITY** to suspend the Work by the **CONTRACTOR** and take such other measures as will assure completion of the Work within the Contract time, or if that is impossible, within a reasonable time. However, nothing contained herein shall prevent the **FORESTER** from stopping the **CONTRACTOR** from proceeding with the Work beyond the time set for the completion date where the completion date was not extended.

4. CONTRACT TERM. The term of this Contract shall be from the date of execution until each of the following:

- a. Respecting the Work, until completion and acceptance, or December 31, 2013, whichever is earlier.
- b. Respecting the warranty, until expiration of warranty term.
- c. Respecting the Indemnity and Hold Harmless Agreement and Liability Insurance, until claims filed, if any, are resolved, or expiration of the Statute of Limitations where no claims were filed.

5. TERMINATION FOR CAUSE. In the event either party should fail to fulfill in a timely manner its obligation under this Contract, the non-breaching party shall have the right to terminate this Contract by giving a ten (10) day written notice to the breaching party of such breach and specifying the date of the termination, if the breaching party has not timely rectified and remedied the purported breach to the satisfaction of the party that gave notice of the breach.

The **CONTRACTOR** shall perform no new or additional Work upon receipt of a notice of termination without the advance, written permission of the **FORESTER**, except as necessary to cure the default, but not beyond the ten (10) day period to cure.

6. FORESTER'S DECISION FINAL. Should any dispute arise at any time between the **CONTRACTOR** and the **CITY** as to the true meaning or requirements of this Contract, or as to the manner of execution of the Work, or as to the quality of Work executed, or as to the quality or quantity of materials used, or as to the timely completion of the Work, the decision of the **FORESTER** shall be final and conclusive, until and unless set aside by a Court of Law.

The **CONTRACTOR** agrees that should any decision of the **FORESTER** be challenged in Court, the Court may only set aside a decision of the **FORESTER** if it is wholly arbitrary and capricious and/or made in complete disregard of undisputed facts.

7. METHODS, LABOR, EQUIPMENT, MATERIALS AND SUPPLIES. The **CONTRACTOR** shall select such methods and equipment for the performance of all operations connected with the Work and will assure professional quality of Work and a rate of progress which will assure the timely completion of the Work. The **CONTRACTOR** is responsible for furnishing all labor, equipment, material and supplies required to perform the Work.

8. SUSPENSION OF WORK BY CITY. The **FORESTER** shall have authority to suspend the Work where he/she believes that the **CONTRACTOR** is not performing the Work in accordance with this Contract. The **CONTRACTOR** shall have no right to additional compensation for delay or a right to an extension of time to complete the Work where the Work is suspended by the **FORESTER**.

9. INJUNCTIONS. Should a preliminary or temporary injunction suspend the Work for a period of time, the deadline for completion of the Work shall be extended by such time as the preliminary or

temporary injunction was in effect. In the event a permanent injunction or Court order or judgment prohibits the Work, this Contract shall be null and void as of the date such injunction or Court Order or judgment becomes final, although the **CONTRACTOR** shall be entitled to reasonable compensation for the Work performed to that date. In the event a permanent injunction, Court order or judgment reduces the scope of the Work, this contract shall be deemed modified in accordance therewith and compensation of the **CONTRACTOR** shall be proportionately reduced to reflect the decrease in the scope of the Work.

10. CHANGE ORDERS FOR ADDITIONAL WORK, ADJUSTMENT IN PRICE. The **CONTRACTOR** does not have the discretion to refuse to comply with a Change Order to increase the scope of the Work identified in the **CITY** Request for Proposal. Increases in the scope of the Work shall result in a determination of the **CONTRACTOR'S** additional compensation based upon good faith negotiation, with the Contract as a guideline. Change Orders must be approved by the **FORESTER** on behalf of the **CITY**, and by the **CONTRACTOR**, and upon approval and execution, shall be considered a Contract amendment, to be kept on file in the **CITY** Department of Public Works and Park Division, and incorporated into this Contract by reference. Should the **CONTRACTOR** refuse to sign a Change Order under circumstances where there is no discretion to do so, said Change Order will be in full force and effect without said signature, provided the **FORESTER** attaches thereto a written report so indicating.

11. WAIVER OF RIGHTS. No failure to exercise, or delay in exercising, any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or remedy preclude any other further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. SUBCONTRACTORS, MAJOR SUPPLIERS, AND DUMPING OR DISPOSAL SITES. The **CONTRACTOR** will only use subcontractors, major suppliers and dumping or disposal sites, which are listed in this Contract. Any changes in subcontractors, major suppliers and dumping or disposal sites must be approved by the **FORESTER**. The **CONTRACTOR** is responsible for the Work of subcontractors and for delays in the Work occasioned thereby. The **CONTRACTOR** has a duty to remove and replace subcontractors whose involvement in the Work will result in a breach of this Contract.

13. CONTROL AND PROTECTION OF WORK SITE. The **CONTRACTOR** shall be responsible for the control and protection of the work site from commencement of the Work until the Work is completed.

14. WARRANTY. The **CONTRACTOR** will replace any Work which is defective or not in conformity with this Contract at no cost to the **CITY** for a period of one (1) year after final acceptance of the Work by the **CITY**.

15. CITY COOPERATION. The **CITY** will reasonably cooperate with the **CONTRACTOR** to facilitate the **CONTRACTOR'S** performance of the Work. The **CITY** will physically mark trees to be removed and notify the **CONTRACTOR** of the nature of the markings. The **CONTRACTOR** will provide reasonable notice to the **CITY** when the assistance thereof is requested. However, the **CITY** has no obligation to supervise or perform any part of the Work.

16. GOVERNMENTAL PERMITS AND APPROVALS. The **CONTRACTOR** is authorized to perform the work under this Contract without obtaining a separate permit from the **FORESTER** or a Street Obstruction Permit.

17. LAWS, RULES AND REGULATIONS. The **CONTRACTOR** shall comply with all Federal, State and local laws, rules and regulations applicable to the performance of this Contract and the Work. This Contract shall be deemed made in and construed under the laws of the State of Wisconsin.

18. CONTRACTOR'S EMPLOYEES AND ON-SITE REPRESENTATIVES. Although the **CONTRACTOR** performs the Work as an independent Contractor, the **FORESTER** shall have the right to request the **CONTRACTOR** to remove and replace any of **CONTRACTOR'S** employees involved in the Work when said employee does not furnish quality workmanship or is uncooperative with or disrespectful to any **CITY** personnel associated with the Work. The **CONTRACTOR** will comply with any reasonable request.

The **CONTRACTOR**, at all times when the Work is being performed, shall assign an employee or agent on the work site to be the person to whom the **FORESTER** may furnish instructions or orders, or make inquiries of at all times when the Work is being performed. The name of such employee or agent shall be submitted to the **FORESTER** in writing, upon commencement of the Work.

19. SANITATION AND HEALTH. The **CONTRACTOR** has the obligation of arranging for drinking water and sanitary conveniences for employees, subcontractors, suppliers, and agents thereof and for taking work site precautions as will deter the spread of infectious diseases. The **CONTRACTOR** shall not use materials in such manner as to pose a health hazard. The **CONTRACTOR** shall obey all lawful orders received from a County Health Department Sanitarian, or from any duly authorized employee of any Federal or State agency having jurisdiction over employee or public health, safety or welfare.

20. INSPECTION. The **CITY** has the right, at its cost and expense, to assign or retain inspectors to determine that the Work is performed in conformance with this Contract. Only the **FORESTER**, can reject the Work. The use of inspectors by the **CITY** shall not relieve the **CONTRACTOR** of the duty of making its own inspections and of itself rejecting improper or defective Work, by its employees, subcontractors, suppliers and agents. The failure of a **CITY** inspector to notice or reject improper or defective Work shall not waive any rights of the **FORESTER** to have the **CONTRACTOR** take corrective action at the **CONTRACTOR'S** cost and expense to remedy such deficiencies or defects when discovered. The use of **CITY** inspectors shall not relieve the **CONTRACTOR** of its duty to maintain a safe workplace.

21. WORKMANSHIP. Workmanship shall conform to the best standard practice of a given trade in Southeastern Wisconsin. Equipment, procedures and materials used must be suitable to and compatible with the nature of the Work, the work site and prevailing year round weather conditions that affect the Work and the Work site.

22. UTILITIES. The **CONTRACTOR** has the obligation of contacting Digger's Hotline to obtain utility locations, clearances, hookups, or cutoffs prior to any stump removal.

23. CLEANUP. The **CONTRACTOR** shall at all times keep all areas related to the Work, including all right-of-ways, streets, highways, alleys and private or public property adjacent to the work site, in a clean and sanitary condition, free from any rubbish, debris, surplus or waste materials that have accumulated as a result of the Work.

Within twenty-four (24) hours after the completion of the Pruning Process, the **CONTRACTOR** shall remove all surplus materials, tools, equipment or plants, leaving the work site and the sites of easements and areas related to the Work, unobstructed, clean and sanitary, ready for their intended use and in as safe a condition as their nature will reasonably permit. Should the **CONTRACTOR** neglect any such duty, the **FORESTER** may cause any such Work to be performed at the **CONTRACTOR'S** cost and expense.

24. PAYMENT OF EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS. The **CONTRACTOR** shall promptly pay all employees, subcontractors and suppliers for all work, labor, services, supplies, or materials which they may directly or indirectly furnish in the fulfillment of this Contract and the **CONTRACTOR** shall secure, as soon as possible, a waiver of liens or the release of any and all liens which may attach as a result of the Work. The **CONTRACTOR**, as a condition of payment, shall execute an Affidavit Respecting Construction Lien Waivers/Releases and file such document with **CITY** Director of Public Works.

25. LIQUIDATED DAMAGES FOR DELAYS IN CONTRACT COMPLETION. In the event that the **CONTRACTOR** fails to fully and completely perform the Work within the Contract term, the **CONTRACTOR** shall pay to the **CITY** for such default the sum of One Hundred Dollars (\$100.00) per day, for each and every day's delay in the fulfillment of this Contract provision. This sum shall be considered and treated not as a penalty, but as fixed, agreed and liquidated damages due the **CITY** from the **CONTRACTOR**.

26 RIGHTS OF CITY UPON CONTRACTOR DEFAULT. The **CONTRACTOR** recognizes the right of the **CITY** to suspend the Work, to order the revision of nonconforming Work, to re-let all or part of the Work or to itself perform the Work as may be required to ensure the timely completion of the Work or to replace improper or defective Work, as determined necessary by the **FORESTER**. No provision of this Paragraph 26 may be construed to relieve the **CONTRACTOR** of its obligations under this Contract.

27 OVERPAYMENTS AND SETOFFS UNRELATED TO CONTRACT. The **CONTRACTOR** will promptly, upon receipt of written demand from the **CITY** Director of Public Works, refund any overpayments received thereby. Should the **CONTRACTOR** not comply with said request within thirty (30) days of receipt of written notice, the **CONTRACTOR** shall pay the **CITY** interest for said amount at the rate of one and one-half percent (1.5%) per month on the unpaid balance, until paid in full. Should the **CONTRACTOR** owe the **CITY** any money which is lawfully due and payable on any account receivable or on any personal property tax, forfeiture or fee, whether or not related to the Work under this Contract, the **CONTRACTOR** authorizes the **CITY** to deduct said amount from any payment due the **CONTRACTOR** hereunder.

28. SAFETY PRECAUTIONS. The **CONTRACTOR'S** Work shall conform to the most recent revision of the American National Standards Institute Standard Z-133.1 (Safety Requirements for Pruning, Trimming, Repairing, Maintaining, and Removing Trees and for Cutting Brush).

The **CONTRACTOR**, during the performance of the Work, shall assume control of the work site and put up and properly maintain, at the **CONTRACTOR'S** cost and expense, adequate barriers, warning signs, lights and such other devices and take such measures as will make the work site as safe as the nature of the premises will reasonably permit to protect frequenters as well as persons using abutting private or public property, from any and all dangers associated with the Work, during both day and night hours. The **FORESTER** may order the **CONTRACTOR**, by a time or date, to take designated safety measures and the failure of the **CONTRACTOR** to promptly obey said order shall result in liquidated damages of Five Hundred Dollars (\$500.00) per day for each day said order is not complied with. The **CONTRACTOR** shall be fully responsible for making the work site as

safe as its nature will reasonably permit and may not rely upon any inspections, instructions or orders of the **FORESTER** or the **CITY** inspectors or lack thereof, in this regard. The **CONTRACTOR** has an obligation to check warning and safety devices on a daily basis.

29. PAYMENT – ACCEPTANCE OF WORK. Payment shall be made by the **CITY** on a monthly basis upon submission of an invoice for completed Work to the **CITY** Director of Public Works, within fifteen (15) days after the **FORESTER** executed a document accepting the Work as being performed in accordance with this Contract, subject to the following.

a. The **CITY** may withhold payment if the **CONTRACTOR** is not in compliance with any order issued by the **FORESTER**. Payment will be reduced by the amount of any claim which the **CITY** may have against the **CONTRACTOR** for improper, defective, or rejected Work, liquidated damages due to delay in the schedule of time for the Work completion, or in taking safety precautions, by the amount of setoffs authorized by this Contract, or for any other primary liability of the **CONTRACTOR** which the **CITY** could be secondarily liable for, which secondary liability was not assumed by **CITY** under this Contract.

b. Work shall not be accepted by the **FORESTER** until all employees, subcontractors and suppliers have been fully paid for all work, labor, services, supplies or materials provided thereby, and affidavits, lien waivers or releases have been procured and filed with the **CITY** Director of Public Works.

30. INDEPENDENT CONTRACTORS, WORKERS AND UNEMPLOYMENT COMPENSATION. The **CONTRACTOR** acknowledges that it is an independent contractor and that its employees and agents are not the employees of the **CITY** for purposes of Workers' and Unemployment Compensation or any other purpose. The **CONTRACTOR** shall be responsible for Worker's and Unemployment Compensation with respect to its employees.

31. PROHIBITIONS AS TO ASSIGNMENT, SUBCONTRACTING AND JOINT VENTURES. The **CONTRACTOR** may not assign this Contract, enter into a joint enterprise or sublet any Work without the express written approval of the **FORESTER** and the **CITY** is not liable for any cost and expenses arising therefrom. Listed subcontractors, major suppliers, and dumping and disposal sites are exempt from this prohibition. An unlawful assignment, joint enterprise or subletting shall render this Contract voidable by the **FORESTER** as of the date thereof, and the **CITY** will not be obligated to pay to the **CONTRACTOR** any money for any Work performed by an unauthorized party. If this contract is voided, the **CONTRACTOR** will continue to be responsible for maintaining the safety of the work site until relieved of this obligation by the **FORESTER** or until another contractor take possession of the work site. The **CONTRACTOR** will be responsible for any cost, loss, expense, attorney fees, or damages the **CITY** may incur in enforcing this provision.

32. INDEMNITY AND HOLD HARMLESS AGREEMENT. The **CONTRACTOR** agrees that it will defend, indemnify and hold harmless the **CITY** and its officers, agents, employees and representatives, from and against any and all liability, loss, charges, damages, claims, judgments, costs, expenses or attorney fees, which they may hereafter sustain, incur or be required to pay as a result of any action taken or not taken by the **CITY** or its officers, agents, employees or representatives to supervise or oversee the adequacy of safety precautions taken by the **CONTRACTOR** or as a result of the willful or negligent act or omission of the **CONTRACTOR** and its subcontractors, suppliers, assigns, employees, officers, agents or representatives, or resulting from the **CONTRACTOR'S** failure to perform or observe any of the terms, covenants and conditions of this Contract, should any person or party, as a result thereof, suffer or sustain personal injury, death or property loss or damage, or a violation of any other right protected by law.

33. INSURANCE. The **CONTRACTOR** prior to performing the Work and during the Contract term, shall carry the insurance policies in the following minimum limits, which shall be written and enforceable in accordance with the laws of the State of Wisconsin.

- Commercial General Liability: General Aggregate – One Million (\$1,000,000.00) Dollars; each occurrence – One Million (\$1,000,000.00) Dollars.
- Automobile Liability :
 - Bodily Injury per Person – One Million (\$1,000,000.00) Dollars;
 - Bodily Injury per Accident – One Million (\$1,000,000.00) Dollars;
 - Property Damage – Two Hundred Thousand (\$200,000.00) Dollars; OR a combined single limit of One Million (\$1,000,000.00) Dollars.
- Worker’s Compensation: Statutory limits.

Said insurance coverage shall be verified by a Certificate of Insurance issued to the **CITY**, which shall provide that should any of the described policies be cancelled or terminated before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the **CITY**.

34. COOPERATION. The **CONTRACTOR** shall permit **CITY** employees and representatives to have reasonable access to the work site at all times.

35. SEVERABILITY. It is mutually agreed that in case any provisions of this Contract is determined by a Court of Law to be unconstitutional, illegal or unenforceable, then it is the intention of the parties that all other provisions of this Contract shall remain in full force and effect.

36. NONDISCRIMINATION. In the performance of the Work under this Contract, the **CONTRACTOR** agrees not to discriminate against any employee or applicant for employment contrary to any Federal, State or local law, rule or regulation, because of race, religion, marital status, age, creed, color, sex, handicap, national origin, or ancestry, sexual orientation, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, political beliefs, or student status. The Work is to be performed in accordance with the Federal Americans With Disabilities Act.

37. NO THIRD PARTY BENEFICIARIES. This Contract is intended to be solely for the benefit of the parties hereto.

38. FULL AGREEMENT – MODIFICATION. This Contract shall be the full and complete agreement and understanding of the parties and shall supersede all oral or written statements or documents, inconsistent herewith. This Contract can be modified, in writing, by the mutual agreement of the parties, said amendment to be attached and incorporated herein, it being expressly understood that the **CITY** Director of Public Works must approve any amendment of this Contract.

39. NOTICES. Notices required by or relevant to this Contract shall be furnished by the **CONTRACTOR** to the **CITY** by personal service or by certified mail with return receipt, sent or delivered to the **FORESTER**, Director of Public Works and the City Clerk at the Municipal Building, 625 – 52nd Street, Kenosha, Wisconsin 53140, with a copy to the City Attorney at the foregoing address.

Notices required by or relevant to this Contract shall be furnished by the **CITY** to the **CONTRACTOR** by personal service or by certified mail with return receipt sent or delivered to:

TREES-B-GONE, LLC
8418 38th STREET, SOMERS, WISCONSIN 53171

40. EXECUTION AUTHORITY. The **CITY** and the **CONTRACTOR** each certify that they have authority under their respective organizational structure and governing laws to execute this Contract.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Contract on the dates given below.

**CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation**

BY: _____
MICHAEL M. LEMENS, Director,
Department of Public Works
Date: _____

BY: _____
DIRK NELSON, City Forester
Date: _____

STATE OF WISCONSIN)

:SS.

COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2013 **MICHAEL M. LEMENS, Director of Public Works**, and **DIRK NELSON, City Forester**, of the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such Mayor and City Clerk/Treasurer of said City, and acknowledged that they executed the foregoing instrument as such officers as the agreement of said City, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

TREES-B-GONE, LLC
A Wisconsin Limited Liability Company

BY: _____
Kathryn Burbach, Member

Date: _____

STATE OF WISCONSIN)

:SS.

COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2013, **Kathryn Burbach**, of **TREES-B-GONE, LLC**, a Wisconsin limited liability company, to me known to be such Member of said company, and acknowledged to me that she executed the foregoing instrument as such officer as the agreement of said limited liability company, by its authority.

Notary Public, Kenosha County, WI.

My Commission expires/is: _____

C-1



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 10, 2013

To: Eric J. Haugaard, Chairman, Public Works Committee
Patrick A. Juliana, Chairman, Stormwater Utility Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works /City Engineer

Subject: Project: 13-1208 Sidewalk & Curb/Gutter Program
Location: Citywide

The Department of Public Works, Engineering Division has opened bids for the above referenced project. Engineer's Estimate was \$585,000. Budget amount for sidewalk in CIP Line Item IN-93-004 is \$700,000 and budget amount for curb and gutter replacement in CIP Line Item SW-93-005 is \$95,000.

This project consists of hazardous sidewalk, driveway approach and curb/gutter repair, installation of new sidewalk, installation of handicapped ramps, excavation and landscaping.

Following is the list of bidders:

Contractor	Sidewalk Base Bid	Curb & Gutter Base Bid	Total Bid
A.W. Oakes & Son, Racine, WI	\$505,282.50	\$72,425.00	\$577,707.50
Marvin Gleason Contractor, Franksville, WI	\$581,131.25	\$89,877.50	\$671,008.75

Annually the sidewalk and curb/gutter contract is a "quantities and unit cost" contract, meaning that the quantities and locations of work are adjusted in accordance with available funding.

It is recommended that this contract be awarded to A.W. Oakes & Son, Racine, Wisconsin, for the sidewalk bid amount of \$505,282.50 plus \$74,717.50 for additional quantities for a total award of \$580,000.00 from CIP Line Item IN-93-004; also curb and gutter bid amount of \$72,425.00 plus \$9,575.00 for additional quantities for a total award of \$82,000.00 from CIP Line Item SW-93-005, for total award amount of \$662,000.00.

SAB/kjb

RESOLUTION _____

**SPONSOR: ALDERPERSON DAVID F. BOGDALA
CO-SPONSOR: ALDERPERSON STEVE BOSTROM
CO-SPONSOR: ALDERPERSON CHRIS SCHWARTZ**

TO DEVELOP A PARTNERSHIP BETWEEN THE CITY OF KENOSHA, BIRD CITY OF WISCONSIN, THE KENOSHA STORMWATER UTILITY, AND THE KENOSHA MUSEUMS FOR THE PURPOSE OF DEVELOPING AN EDUCATIONAL PROGRAM DESIGNED TO EDUCATE THE PUBLIC ON COMBATING ISSUES WITH URBAN WATERFOWL

WHEREAS, increasing urban and suburban development in the U.S. has resulted in the creation of ideal goose habitat conditions- park like open areas with short grass adjacent to small bodies of water. These habitat conditions have in turn enticed rapidly growing numbers of locally breeding geese to live year round on golf courses, parks, airports and other public and private property; and

WHEREAS, Urban flocks of Canada geese, ducks, or other types of waterfowl are thriving in large part because of the landscape changes brought on by human development, and,

WHEREAS, Waterfowl numbers continue to increase, concerns have been raised regarding the negative impact waterfowl may have on water quality and disease transmission; and

WHEREAS, Waterfowl excrement in heavy concentrations can over fertilize lawns, contribute to excessive algae growth in lakes that can result in fish kills, and potentially contaminate municipal water supplies; and

WHEREAS, there are varied methods to prevent conflicts or remedy existing problems, such as the use of trained hazing dogs, placing ‘No Feeding Birds’ signs in designated locations, and visual deterrents including but not limited to: balloons, scarecrows, flags, and arrays of Mylar tape; and

WHEREAS, recommendations from Bird City Wisconsin include their primary suggestion of undertaking some landscaping changes, or “habitat modification in an around waterfowl natural habitats; and

NOW THEREFORE BE IT RESOLVED, the Common Council is seeking to Develop a partnership among local Bird City Wisconsin participants, the City of Kenosha, the Kenosha Stormwater Utility, and the Kenosha Museums for the purpose of developing a program designed to educate the public on this issue and to identify truly sustainable, long-term solutions to combat the issues surrounding urban waterfowl; and

BE IT FURTHER RESOLVED, the Common Council does direct City Administration to begin placing ‘No Feeding Birds’ signs in designated parks along the City of Kenosha Lakefront in cooperation and agreement with the City of Kenosha Parks Commission.

Adopted this _____ day of _____, 2013.

ATTEST:

Deb Salas, City Clerk/Treasurer

APPROVED: _____, Mayor

Keith G. Bosman

Passed:

Published:

Drafted By:

Alderman David F. Bogdala

RT DATE FOR SUMMARY: 3/01/13 END DATE FOR SUMMARY: 3/31/13

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
126284	3/01	HWY C SERVICE	501-09-50105-369-000	POLE PRUNER	571.96
			501-09-50106-344-000	02/13-PA SERVICE/PAR	126.21
			501-09-50106-341-000	02/13-PA SERVICE/PAR	51.56
				..... TOTAL	749.73
126311	3/01	HOLLAND SUPPLY, INC.	501-09-50104-344-000	02/13-ST HYDRAULIC F	222.30
126318	3/01	MANDLIK & RHODES INFORMATION	501-09-50102-219-000	02/13 YW COUPON PRG	658.91
			501-09-50102-219-000	02/13 YW COUPON PRG	445.28
				..... TOTAL	1,104.19
126324	3/01	US CELLULAR	501-09-50103-226-000	1-2/13 SW-CELL AIRTM	54.58
126328	3/01	VERIZON WIRELESS	501-09-50101-226-000	02/13 SERVICES	24.29
126354	3/01	FLANNERY FIRE PROTECTION INC	501-09-50105-246-000	02/13 SW INSPECTION	101.00
126397	3/06	BUMPER TO BUMPER	501-09-50104-344-000	01/13-SW PARTS/MATER	316.33
			501-09-50105-344-000	01/13-SW PARTS/MATER	38.28
				..... TOTAL	354.61
126410	3/06	NAPA AUTO PARTS CO.	501-09-50105-344-000	01/13 SW-PARTS/FLTR	138.29
			501-09-50104-344-000	01/13 SW-PARTS/FLTR	119.64
			501-09-50105-235-000	01/13 SW-PARTS/FLTR	90.01
			501-09-50104-389-000	01/13 SW-PARTS/FLTR	44.10
				..... TOTAL	392.04
126411	3/06	JAMES IMAGING SYSTEMS, INC.	501-09-50101-232-000	02/13 PW-COPIER CHGS	115.59
			501-09-50105-232-000	01/13 ST-OVERAGES	34.42
			501-09-50105-232-000	02/13 ST-COPIER SERV	20.78
				..... TOTAL	170.79
126423	3/06	C & H DISTRIBUTORS, INC	501-09-50105-369-000	FIRE-SAFE CABINETS	3,100.00
			501-09-50105-369-000	FIRE-SAFE CABINETS	179.85
				..... TOTAL	3,279.85
126425	3/06	MARTIN PETERSEN COMPANY, INC.	501-09-50105-241-000	01/13 ST-HVAC, PLUMB	117.50
126514	3/08	COMSYS, INCORPORATED	501-09-50101-215-000	3/8-4/7/13 SERVICE	9,896.40

START DATE FOR SUMMARY: 3/01/13 END DATE FOR SUMMARY: 3/31/13

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
126518	3/08	TRAFFIC & PARKING CONTROL CO	501-09-50105-372-000	02/13-SW TRAFFIC SIG	175.84
126521	3/08	CRETEX MATERIALS INC	501-09-50105-354-000	02/13 SW TORPEDO SAN	197.62
126524	3/08	ZARNOTH BRUSH WORKS, INC.	501-09-50104-344-000	02/13-SW SWEEPER PAR	1,791.80
126565	3/08	MENARDS (KENOSHA)	501-09-50105-344-000	02/13 SW MERCHANDISE	77.79
126596	3/13	ACE HARDWARE	501-09-50105-361-000	02/13 SW MERCHANDISE	47.52
126617	3/13	TDS METROCOM	501-09-50101-227-000	03/13 MAIN LINES	133.89
			501-09-50101-225-000	03/13 MAIN CALLS	15.62
				..... TOTAL	149.51
126618	3/13	OFFICEMAX	501-09-50101-311-000	02/13 SW #2435 OFFC	204.83
126623	3/13	STARFIRE SYSTEMS, INC.	501-09-50105-219-000	SPRINKLER MONITORING	320.00
126628	3/13	O'LEARY'S CONTRACTORS	501-09-50105-369-000	CUT & BREAK SAW	2,570.00
126629	3/13	JAMES IMAGING SYSTEMS, INC.	501-09-50101-232-000	03/13 PW-COPIER CHG	115.59
			501-09-50101-232-000	02/13 PW-OVERAGES	75.02
			501-09-50105-232-000	03/13 ST-COPIER MNT	20.78
				..... TOTAL	211.39
126643	3/13	MARTIN PETERSEN COMPANY, INC.	501-09-50105-241-000	02/13 ST HVAC, PLUMB	758.23
126652	3/13	SHERWIN INDUSTRIES	501-09-50105-355-000	02/13 COLD PATCH PRO	2,287.26
126682	3/15	MINNESOTA LIFE INSURANCE	501-09-50103-156-000	04/13 PREMIUM	24.70
			501-09-50101-156-000	04/13 PREMIUM	22.39
				..... TOTAL	47.09
126726	3/15	FASTENAL COMPANY	501-09-50105-344-000	02/13 SW TOOLS/MATER	282.78
126742	3/15	MENARDS (KENOSHA)	501-09-50105-344-000	02/19 SW MERCHANDISE	74.69
			501-09-50105-344-000	02/13 SW MERCHANDISE	9.18
				..... TOTAL	83.87
126795	3/20	A & B PRO HARDWARE	501-09-50104-389-000	02/13 ST-SUPPL/SERV	4.90

START DATE FOR SUMMARY: 3/01/13 END DATE FOR SUMMARY: 3/31/13

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
126817	3/20	LOWE'S	501-09-50105-385-000	02/13-SW MERCHANDISE	292.57
			501-09-50105-357-000	02/13-SW MERCHANDISE	71.20
			501-09-50105-344-000	02/13-SW MERCHANDISE	66.45
			501-09-50105-361-000	02/13-SW MERCHANDISE	19.98
				..... TOTAL	450.20
126819	3/20	OFFICEMAX	501-09-50101-311-000	02/13-SW#2442 OFFICE	113.57
126832	3/20	VERIZON WIRELESS	501-09-50101-226-000	03/13 PHONE SERVICE	24.73
126843	3/20	MENARDS (KENOSHA)	501-09-50105-344-000	02/13-ST MERCHANDISE	135.52
126880	3/22	BUMPER TO BUMPER	501-09-50104-344-000	02/13 SW PARTS, MATE	119.90
			501-09-50105-344-000	02/13 SW PARTS, MATE	53.58
			501-09-50104-389-000	02/13 SW PARTS, MATE	33.98
				..... TOTAL	207.46
126905	3/22	T-MOBILE	501-09-50103-226-000	02/8-3/7-SW WIRELESS	42.19
126910	3/22	MANDLIK & RHODES INFORMATION	501-09-50102-219-000	02/13 YW ADMIN FEE	350.00
			501-09-50102-219-000	03/13 COUPON SETUP	150.00
			501-09-50102-219-000	03/13 YW COUPON PRG	55.04
			501-09-50102-219-000	03/13 YW COUPON PRG	3.07
				..... TOTAL	558.11
126941	3/22	MORBARK INC	501-09-50106-344-000	02/13 BLADE SHARPENI	120.26
127027	3/28	NAPA AUTO PARTS CO.	501-09-50105-367-000	02/13 SW PARTS/FILTE	18.97
127035	3/28	WASTE MANAGEMENT OF WI	501-09-50104-253-000	03/13 36.30 TONS	853.05
			501-09-50104-253-000	03/13 WDNR TONNAGE	471.90
			501-09-50104-253-000	03/13 FUEL SURCHARGE	74.38
			501-09-50104-253-000	03/13 ENVIRO SURCHG	24.00
				..... TOTAL	1,423.33
127103	3/28	BILLINGSLEY, SHELLY	501-09-50101-261-000	03/13 107 MILES	60.46
127107	3/28	AUSTIN, CATHY	501-09-50101-261-000	3/4-6/13 NEENAH	184.00
			501-09-50101-263-000	3/4-6/13 NEENAH	157.07
				..... TOTAL	341.07

GRAND TOTAL FOR PERIOD ***** 29,173.58

April 11, 2013

TO: Michael M. Lemens
Director of Public Works / Stormwater Utility

FROM: Shelly Billingsley
Deputy Director of Public Works / City Engineer



SUBJECT: Stormwater Utility Project Status Report

- Project #09-1121 - Forest Park Evaluation** – Staff has sent final comments to Strand for storm sewer section of report. (1)
- Project #10-1126 Wetland Mitigation Bank** - [Wetlands and Waterways Consulting LLC] Staff is working with the DNR regarding comments with the recent submittal. (16)
- Project #10-1131 River Crossing Swale Restoration** – [Applied Ecological Services] Applied Ecological Services has begun the treatment of the invasive and non-native species. Future maintenance will be completed next spring. (17)
- Project #11-1128 Multi-Plate Pipe Storm Sewer Inspection and Evaluation** – [Ruekert-Mielke] Staff is currently reviewing a draft report. (2 and 7)
- Project #11-1125 Pennoyer Beach Outfall Stormwater Infiltration Basin (GLRI Grant)** – Punchlist items remain (1 and 6)
- Project #11-1135 Stormwater Management Plan Development** – Contract has been executed work has begun. Staff continues to work through City watershed by watershed. (City wide)
- Project #11-1137 Pike River Monitoring (WI Coastal Management Grant)** – The City of Racine has begun monitoring. Staff will be receiving the draft report soon. (1 and 4)
- Project #12-1111 Misc. Storm Sewer – Sump Pump Connections** – Staff is continuing to monitor abatement of sump pumps. (12)
- Project #12-1136 Pike River Monitoring (Fund for Lake Michigan Grant)** – The City of Racine has begun monitoring. Staff will be receiving the draft report soon. (1 and 4)
- Project #12-1140 Detention Basin Certifications** – [Clark Dietz] – The City has contracted Clark Dietz to perform soundings on the city owned detention basins and the basins which we have functional maintenance on through maintenance agreements. (City wide)
- Project #12-1420 Shagbark Trail Development** – [SAA] Design works has been started by SAA as outlined in the Stewardship Grant. Construction is scheduled for Spring. (10)
- Project #11-1025 122nd Avenue – 71st Street to 74th Street (Storm Sewer Only)** – Bids have been received. (16)
- Project #13-1131 - Sidewalk and Curb and Gutter Program** – Bids have been received. (Public Works funding sidewalk) (Citywide)
- Project #13-1134 – Tree Pruning** - Bids have been received. (Citywide)

Design Work- Staff is working on the following projects:

Sump Pump Priorities, SWPPP Updates, Website Design, GPS Data Forms, Storm Sewer Investigation for Roadway Projects, Permit Compliance, SWU Reporting, Pollution Prevention Structures, Stormwater Management Facility Inspections, Miscellaneous Storm Sewer projects for contractor and SWU crews, Yardwaste coupons, 60th Street from 39th Avenue to 30th Avenue Storm Sewer Repairs, 56th Street from Sheridan Road to 13th Avenue Storm Sewer Repairs, Public Works Projects, Park Projects, and Library Projects.