

AGENDA
BOARD OF PARK COMMISSIONERS
Kenosha Municipal Building - Room 204
Monday, September 14, 2015 - 5:00 pm

Chairman:	Scott N. Gordon	Vice Chairman:	Keith W. Rosenberg
Commissioner:	Kurt Wicklund	Commissioner:	Rocco J. LaMacchia, Sr.
Commissioner:	Jack Rose		

Call to Order
Roll Call

Approval of the minutes of the meetings held on August 31, 2015 and September 9, 2015.

1. Request from David Robinson & Kerri Sherwood to use Southport Park Beach for their Wedding Bonfire on Saturday, October 10, 2015. *(District 12)*
2. Change Order for Project 14-1417 Parkway Tree Removal Phase II *(Contract Deadline Only)*. *(All Districts)* *(Also referred to Public Works)*
3. Change Order for Project 15-1417 Parkway Tree Removal *(Contract Changes Only)*. *(All Districts)* *(Also referred to Public Works)*
4. Award of Professional Service Contract for Project 15-1417 Parkway Tree Removal Phase II to Asplundh Tree Expert Co. *(Schofield, Wisconsin)* in the amount of \$75,000. *(Also referred to Public Works)*

INFORMATIONAL ITEMS:

1. Project Status Report

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS/OTHER BUSINESS PERTAINING TO
PARKS COMMISSION MATTERS AS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4052 BEFORE 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.

BOARD OF PARK COMMISSIONERS
Minutes of Meeting held Monday, August 31, 2015

A meeting of the Board of Park Commissioners was held on Monday, August 31, 2015 in Room 204 of the Kenosha Municipal Building. The meeting was called to order at 5:00 pm by Chairman Gordon.

At roll call, the following members were present: Commissioners Wicklund, Rose, LaMacchia and Rosenberg. Staff members in attendance were: Cathy Austin, Assistant City Engineer; Jeff Warnock, Superintendent of Parks; Police Inspector Lewis Lindquist; Alderperson David Bogdala; Alderperson Curt Wilson; Mayor Keith Bosman; and Alderperson Jan Michalski.

It was moved by Commissioner LaMacchia, seconded by Commissioner Rose, to approve the minutes from the meetings held on August 3, 2015, August 10, 2015 and August 17, 2015. Motion carried unanimously.

1. Request from Courtney Van Laten for a Wedding Ceremony and Reception at the Southport Beach House on Saturday, August 20, 2016 to:
 - a. Extend the closing hours to midnight (*12:00am*)
 - b. Extend the Beer/Wine Permit to 11:30pm
 - c. Extend the Music Permit to 11:30pm (*District 12*)

Staff: Jeff Warnock spoke.

It was moved by Commissioner LaMacchia, seconded by Commissioner Rose to approve. Motion carried unanimously.

2. Request from St. Joseph Catholic Academy to use Pennoyer Park to host their Annual Homecoming Bonfire on Friday, September 18, 2015 from 6pm – 10pm. (*District 1*)
Chairman Gordon abstained and passed the gavel.

Staff: Jeff Warnock spoke.

It was moved by Commissioner LaMacchia, seconded by Commissioner Rose to approve. Motion carried 4-0-1 (with Chairman Gordon abstaining).

3. Request from the Kenosha Achievement Center for the use of Petzke Park on Saturday, October 3, 2015 for the:
 - a. Grand Opening Celebration of the Dream Playground
 - b. Selling of food
 - c. Selling of fermented malt beverages
 - d. Use of amplified music. (*District 1*)

Chairman Gordon abstained and passed the gavel.

Staff: Jeff Warnock spoke.

Public Hearing: Tammy Conforti spoke.

It was moved by Commissioner Rose, seconded by Commissioner LaMacchia to approve. Motion carried 4-0-1 (with Chairman Gordon abstaining).

4. Request from the Mary Lou & Arthur F. Mahone Fund for the use of the Lincoln Park Flower Garden on Thursdays, September 10th, 17th and 24th for the:
 - a. Lincoln Park Live Musical Event
 - b. Selling of fermented malt beverages
 - c. Use of amplified music (*District 12*)

Public Hearing: Don Gillespie, Board Member on the Mahone Fund Board of Directors, spoke.

Staff: Jeff Warnock spoke.

It was moved by Commissioner Rose, seconded by Commissioner LaMacchia to approve. Motion carried 5-0.

5. Ordinance by Alderperson David F. Bogdala - To Repeal and Recreate Section 6.05 (*of the Code of General Ordinances*) Entitled "Permits" Relating to Permit Requirements for use of City Parks. (*Oral referral from Council 6/1/15*) (*Deferred from the meeting on 7/13/15*)
Public Hearing: Alderperson David Bogdala and Greg Kishline spoke.
Staff: Mayor Keith Bosman spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Rose to approve.
Motion carried 3-2 (with Chairman Gordon and Commissioner Wicklund voting nay).
6. Correction to Acceptance of Project 14-1428 Washington Park Trail Improvements (*1901 Washington Road, which has been satisfactorily completed*) by Janke General Contractors (*Athens, Wisconsin*) in the amount of \$94,243.69. (*District 6*) (*Also referred to Public Works*)
Staff: Cathy Austin spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Rose to approve.
Motion carried unanimously.
7. Approval of Driveway Easement and Agreement By and Between the City (*of Kenosha, Wisconsin*) and Dale L. Pfaff for the Benefit of Property Located at 3919 55th Avenue. (*Pfaff*) (*District 16*) (*CP-Approved-Ayes 8:Noes 0*)
Staff: Cathy Austin spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Rose to approve.
Motion carried unanimously.
8. Change Order (*Contract Deadline Only*) for Project 15-1423 Anderson Park Paths (*8730 22nd Avenue*). (*District 9*) (*Also referred to Public Works*)
Staff: Cathy Austin spoke.
It was moved by Commissioner Rosenberg, seconded by Commissioner LaMacchia to approve. Motion carried unanimously.

INFORMATIONAL ITEMS:

1. Project Status Report – Cathy Austin spoke.
2. Dream Playground - Cathy Austin spoke.
3. Velodrome Status Update – Cathy Austin spoke.
4. Anderson Park and KASL – Cathy Austin spoke. Jeff Warnock answered a question by Commissioner LaMacchia. It was moved by Commissioner Rose, seconded by Commissioner LaMacchia to open up to a public hearing. Public Hearing: Alderperson David Bogdala; Jeff Koessl, Vice President of Soccer League; Greg Kishline; Ernie Englund; and Patrick Brinkman spoke. The public hearing is closed. Staff: Inspector Lewis Lindquist and Mayor Keith Bosman spoke.

SUPERINTENDENT COMMENTS: Jeff Warnock spoke about how pickle ball is picking up and they actually have leagues that want to start. We have courts at Pennoyer & Gangler Park. The east tennis court at Roosevelt Park is being turned into pickle ball court. A league that wants to come but will be talked about later on down the road. The basketball courts are being resurfaced and line have been painted at Petretti Park. The tees and baskets are being worked on, on the Disc Golf at Lincoln Park.

CITIZEN COMMENTS: Tammy Conforti thanked the Alderpersons who committed for 4, 6, 8, or 12 hour days, all of the City Attorney's office put in a shift, and the City Staff for the help and support on the Dream Playground. She also gave an update on the playground. Roger Koessl (President of the KASL Board) spoke about the parking at KASL with the Pleasant Prairie side and the rest of the parking. Patrick Brinkman (Referee for Adult Leagues) spoke about the parking issues at KASL.

ALDERMAN COMMENTS: Commissioner LaMacchia mentioned that his wife and him worked on the Dream Playground and thanked Tammy for letting them help. Commissioner Rose commented on the Inaugural Event-Ride Across Wisconsin and thanked the Kenosha Police Department. Chairman Gordon spoke about the Dream Playground and thanked people for showing and how the staff has made it real smooth process. The Dream Playground is on schedule as well.

ADJOURNMENT - There being no further business to come before the Board of Park Commissioners, it was moved, seconded and unanimously carried to adjourn at 6:12 pm.

BOARD OF PARK COMMISSIONERS
Minutes of Meeting held Wednesday, September 9, 2015

A special meeting of the Board of Park Commissioners was held on Wednesday, September 9, 2015 in Room 202 of the Kenosha Municipal Building. The meeting was called to order at 6:55 pm by Chairman Gordon.

At roll call, the following members were present: Commissioners Wicklund, Rose, LaMacchia and Rosenberg. Staff members in attendance was Shelly Billingsley, Acting Director of Public Works/City Engineer.

1. Request from the Kenosha Achievement Center to change the date from Saturday, October 3, 2015 to Saturday, October 10, 2015 for the Grand Opening Celebration, selling of food, selling of fermented malt beverages and use of amplified music at Petzke Park. (*District 1*)
It was moved by Commissioner LaMacchia, seconded by Commissioner Rose to approve.
Chairman Gordon passed the gavel.
Motion to approved carried 4-0-1 (with Chairman Gordon abstaining).

ADJOURNMENT - There being no further business to come before the Board of Park Commissioners, it was moved, seconded and unanimously carried to adjourn at 6:56 pm.



September 9, 2015

TO: Scott N. Gordon, Chairman
Board of Park Commissioners

FROM: Jeff Warnock, Park Superintendent *JW*

SUBJECT: Request from David Robinson & Kerri Sherwood to use Southport Park Beach for their Wedding Bonfire on Saturday, October 10, 2015. *(District 12)*

BACKGROUND/ANALYSIS

A request has been received from David Robinson & Kerri Sherwood to hold a bonfire on Southport Park Beach. The event is to celebrate their Wedding and it would take place on Saturday, October 10, 2015 from 7pm to 10pm.

RECOMMENDATION

To approve the request with the stipulation that Mr. Robinson and Ms. Sherwood receive a permit from the Fire Department.

JW/dm

8/22/14 will be having bonfire on beach + will notify fire dept - LD

CITY OF KENOSHA - DEPARTMENT OF PUBLIC WORKS PARK USE AGREEMENT (PICNICS, WEDDINGS & BUILDING RENTALS)

625 - 52nd Street
Room 305
Kenosha, Wisconsin 53140
OFFICE HOURS 8 AM - 4:30 PM MONDAY - FRIDAY

Phone: 653-4080
Fax: 653-4056

Make check payable to "City of Kenosha."

of \$250.00				OFFICE USE ONLY	
Rental Fees: 350	Beer: 25	Deposit: 300	Total Due: 675 + 250 = \$925		
Receipt #: 108976	By: LD / DM	Zimbra: <input checked="" type="checkbox"/>	Park Calendar: <input checked="" type="checkbox"/>		
Access Database: 171080	Date Paid & Permit Issued: 8/22/14 / 8/31/15				

INSTRUCTIONS:

- Please Print (blue or black ink)

Permittee Name: DAVID ROBINSON & KERRI SHERWOOD
Person authorized to sign this agreement on behalf of the organization.

Organization Name: _____

Address: 400-69 ST City: KENOSHA State: WI Zip: 53143

Daytime Phone: (206)853-8289 Alternate Phone: (262) 496-9897

FACILITY REQUESTED: SOUTHPORT BEACH HOUSE

Event Date: SATURDAY, OCTOBER 10, 2015

Nature of Event: POST-WEDDING PARTY
(Be specific on what type of event - i.e., 16th birthday party, graduation, baby/bridal shower, wedding reception, etc.)

Attendance: @ 100 (Number of people) Time requested: From 12:00 P.M. to 10 P.M.
(INCLUDES SETUP AND TAKE DOWN)

Added 8:00-10:00 am 2 hrs

PLEASE NOTE: PARK FACILITIES CLOSE AT 10 PM

Beer Permit (For Consumption Only - No Selling; MUST BE 21 OR OLDER) YES (Yes or No)
The above-named assumes responsibility for exercising control over attendees behavior at the event.
This person or designee must be present for the duration of the event.

Do you plan to have a DJ? NOT SURE YET (Yes or No)
Allowed only at Alford, Washington picnic shelters and Southport Beach House and Oribiletti Center.

Do you plan to have a Band? NOT SURE YET (Yes or No)
Allowed only at Southport Beach House and Oribiletti Center.

Do you plan to place any tents/bouncy houses in the park area? NO (Yes or No)
If yes, you must contact Diggers Hotline (1-800-242-8511) no later than three **(3) business** days prior to the event.

RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS - LIMITATIONS

The Department of Public Works, although responsible for the general maintenance of City parks, will not inspect the park area to be used immediately prior to the use to determine the suitability and safety of the use. In addition, it will not supervise such use.



THE CITY OF
KENOSHA
PUBLIC WORKS

September 2, 2015

David Robinson & Kerri Sherwood
400 69th St
Kenosha, WI 53143

RE: The usage of the Southport Park Beach for your Wedding Bonfire on Saturday,
October 10, 2015.

To whom it may concern:

Your request to use the Southport Park Beach for your Wedding Bonfire on Saturday, October
10, 2015 will be reviewed by the Board of Parks Commission. The meeting is scheduled for:

Monday, September 14, 2015
5:00 p.m.
Room 204
Kenosha Municipal Building, 625-52nd Street

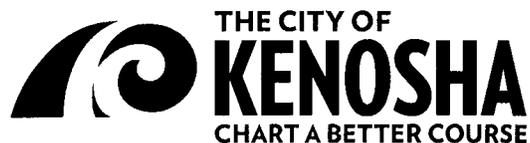
You and/or your representative are required to appear.

If you have any questions, you may contact the Department of Public Works at 262-653-4050.

Sincerely,

Diane S. Miles
Secretary of the Parks Commission

cc: Board of Parks Commission
Shelly Billingsley, Acting Director of Public Works – w/a
Jeff Warnock, Superintendent of Parks – w/a



SHELLY BILLINGSLEY, MBA, PE
Acting Director of Public Works
City Engineer

September 11, 2015

To: Scott Gordon, Chairman
Parks Commission

Eric Haugaard, Chairman
Public Works Committee

From: Shelly Billingsley, P.E.
Acting Director of Public Works

Subject: Change Order (Contract Deadline Only) for Project 14-1417 Parkway Tree Removal
Phase II.

BACKGROUND/ANALYSIS

Staff has been working with Legal and the Contractor to get this project completed as soon as possible. Through these discussions it is being proposed that the contract be extended until December 18, 2015. The contractor is also required to call the Park Field Supervisor daily to report location and status.

RECOMMENDATION

Approve the change order amending the contract deadline.

THE CITY OF KENOSHA

CHANGE ORDER

Project Name: Tree Removal Phase II
Project Number: 14-1417
C.I.P. Line Item: PK-93-004
Purchase Order #: 14-1139
Contractor: Droprite Tree & Landscape, LLC
Park Commission Action: **9/14/15**
Public Works Committee Action: **9/21/15**
Finance Committee: **N/A**
Date of Common Council Action: **9/21/15**

City and contractor agree that the above contract is amended to specify that contract completion deadline will be extended 352 days. The project will be completed no later than **December 18, 2015**. The Contractor shall be responsible for calling the Park Field Supervisor daily to report location and status.

This change order is approved by:

CONTRACTOR

Daniel Tessmann

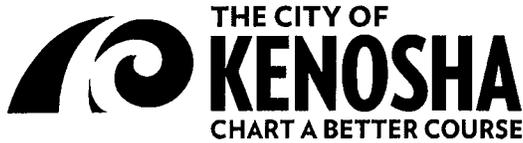
Droprite Tree

CITY OF KENOSHA, MAYOR

DATE

9/3/15

DATE



SHELLY BILLINGSLEY, MBA, PE
Acting Director of Public Works
City Engineer

September 11, 2015

To: Scott Gordon, Chairman
Parks Commission

Eric Haugaard, Chairman
Public Works Committee

From: Shelly Billingsley, P.E.
Acting Director of Public Works

Subject: Change Order (Contract Deadline Only) for Project 15-1417 Parkway Tree Removal.

BACKGROUND/ANALYSIS

Staff has been working with Legal and the Contractor to get this project completed as soon as possible. Through these discussions it is being proposed that the contract be extended until April 30, 2015, the contractor shall remove at least twenty (20) trees per month and cleanup must be completed within two (2) hours of removal unless authorized by City Forester to extend to 24 hours when needed (emergency or unforeseen conditions).

RECOMMENDATION

Approve the change order amending the contract deadline, adjusting the tree removal limit to at least 20 trees per month (unless unforeseen conditions arise) and cleanup must be completed within two (2) hours of removal unless authorized by City Forester to extend to 24 hours when needed.

THE CITY OF KENOSHA

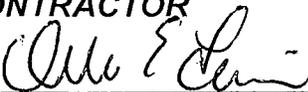
CHANGE ORDER

Project Name: 2015 Parkway Tree Removal
Project Number: 15-1417
C.I.P. Line Item: PK-93-004
Purchase Order #: Not assigned yet
Contractor: Affordable Tree Care, LLC
Park Commission Action: **9/14/15**
Public Works Committee Action: **9/21/15**
Finance Committee: **9/21/15**
Date of Common Council Action: **9/21/15**

City and contractor agree to the following that the above contract is amended to specify that: contract completion deadline will be extended 120 days. The project will be completed no later than **April 30, 2016**; the contractor shall remove at least twenty (20) trees per month; cleanup must be completed within two (2) hours of removal unless authorized by City Forester to extend to 24 hours when needed.

This change order is approved by:

CONTRACTOR



CITY OF KENOSHA, MAYOR

DATE

9/9/15

DATE

2015 CONTRACT TO REMOVE TREES

By And Between

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

And

**"AFFORDABLE" TREE CARE LLC
a Wisconsin Limited Liability Company**

TOTAL CONTRACT AWARD NOT TO EXCEED \$65,000.00

CONTRACT AMOUNT: \$61,662.50

**COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF KENOSHA:
NOT TO EXCEED \$3,337.50**

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 the "**CITY**", and "**AFFORDABLE**" **TREE CARE LLC**, a Wisconsin limited liability company, located at 3201 County Road H, Sturtevant, WI 53177, hereinafter referred to as the "**CONTRACTOR**".

W I T N E S S E T H:

WHEREAS, the **CONTRACTOR** has submitted to the **CITY** a written Proposal to remove trees according to the Specifications and Special Conditions contained in the Request for Proposal; and,

WHEREAS, the **CITY** has accepted the Proposal effective upon the **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, the **CITY** and the **CONTRACTOR** agree as follows:

1. DEFINITIONS.

a. "**CONTRACT**" means this executed Contract to Remove 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 **"AFFORDABLE" TREE CARE LLC**, and any subcontractors approved by the **CITY**.
 - c. **"FORESTER"** shall mean the Forester of the City of Kenosha within the Park Division, including designees.
 - d. **"OVERPAYMENT"** means any money the **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 the **CITY**.
 - e. **"REMOVAL PROCESS"** means the systematic removal of the tree, commencing with the first cut or break by the **CONTRACTOR**, and including the trunk, stump, wood shavings, stump grinding debris, basal sprouts, brush, vines, weeds, and debris removal within five feet (5') from outside of the trunk.
 - f. **"RESTORATION"** means repair of areas disturbed by the **CONTRACTOR'S** Work, including topsoil and seed, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.
 - g. **"STUMPING"** means either removal of a stump or grinding of a stump, as appropriate.
 - h. **"WORK"** means any contractual endeavor undertaken by the **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.
 - i. **"WORKING DAY"** means a calendar day, excluding weekends and legal holidays.
2. **WORK TO BE PERFORMED BY THE CONTRACTOR.** The **CONTRACTOR**, for the sum of Sixty One Thousand Six Hundred Fifty-Two Dollars and Fifty Cents (\$61,652.50), 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, the **CONTRACTOR** will perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal not to exceed an additional Three Thousand Three Hundred Forty-Seven Dollars and Fifty Cents (\$3,347.50). In the event of a conflict between the Request for Proposal, the Proposal and this Contract, the terms and conditions of this Contract shall control and supersede the other documents. The Work comprises the removing of the trees specified in Exhibit "A" in accordance with the Specifications and Special Conditions in Exhibit "B", which Exhibits are 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 THE WORK.** The **CONTRACTOR** will commence the work within five (5) working days following execution of this Contract and Notice to Proceed, and will prosecute the Work diligently until fully complete in accordance with this Contract. The **CONTRACTOR** shall complete the Work within the Contract Term.

The **CONTRACTOR** shall fully remove at least **twenty (20) trees per month** until this Contract is terminated. **Unless prior approval is obtained from the City for unforeseen conditions.**

The **CONTRACTOR** shall complete the Removal Process and with respect to each tree within five (5) working days of the start of the Removal Process, time being of the essence, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

The **CONTRACTOR** shall complete stump grinding of those stumps designated by the Park Division within ten (10) calendar days of tree removal, time being of the essence, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

The **CONTRACTOR** shall complete Restoration of areas disturbed by the **CONTRACTOR'S** Work, including topsoil and seeding, within five (5) calendar days of stump removal, time being of the essence, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

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 **April 30, 2016**, whichever is earlier.
 - b. Respecting the Warranty, until expiration of the 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 obligations 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 the 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 as will assure professional quality of the 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 THE 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 of 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 the **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 rights-of-way, easements, streets, highways, alleys and private or public property adjacent to the work site, in a clean and sanitary condition, free from any rubbish, debris, wood shavings, stump grinding debris, surplus or waste materials that have accumulated as a result of the Work.
- Within two (2) hours after the completion of the Removal Process and Stumping of a specified tree, the **CONTRACTOR** shall remove all rubbish, debris, wood shavings, stump grinding debris, 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 the **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 Three Hundred Dollars (\$300.00) 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 THE 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 THE 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** for which the **CITY** could be secondarily liable, which secondary liability was not assumed by the **CITY** under this Contract.

b. In the event the **CONTRACTOR** fails to complete the Removal Process, Stumping, and Restoration with respect to each tree within the time specified and in the manner provided in the Specifications and Special Conditions attached as Exhibit B and this Contract, no payment with respect to any such tree shall be made by the **CITY**. In addition, in the event the **CONTRACTOR** fails to complete the Removal Process, Stumping, and Restoration with respect to each tree as provided in this paragraph, the **CITY** may cause such Work to be performed and deduct the cost of such Work and all administrative costs associated with performing such Work from any payment due the **CONTRACTOR** under this Contract. The provisions of this paragraph shall be in addition to all other remedies available to the **CITY** under this Contract.

c. 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 Worker's 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 excepted 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 takes 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:

- \$1,000,000 Each occurrence
- \$2,000,000 General Aggregate

Automobile Liability: (owned, non-owned, leased)

- \$1,000,000 Bodily Injury (per person)
- \$1,000,000 Bodily Injury (per accident)
- \$200,000 Property Damage (per accident)

OR

- \$1,000,000 Combined Single Limit (each accident)

Umbrella Liability:

- \$2,000,000 Each Occurrence
- \$2,000,000 Aggregate

Workers Compensation:

- Statutory Limits
- \$100,000 Employer Liability, Each Accident
- \$100,000 Employer Liability, Disease, Each Employee
- \$500,000 Employer Liability, Disease, Policy Limit

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**.

The **CITY** shall be named as an additional insured with respect the insurance coverages listed above and the **CITY** shall be provided with an additional insured endorsement certifying that the **CITY** is an additional insured with respect the insurance coverages listed above.

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 provision 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:

**"AFFORDABLE" TREE CARE LLC
3201 County Road H
Sturtevant, WI 53177**

- 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

Agreement on the dates below given.

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

BY: _____
KEITH G. BOSMAN
Mayor

Date: _____

BY: _____
DEBRA L. SALAS
City Clerk/Treasurer

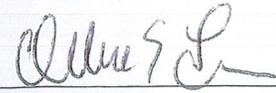
Date: _____

**STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)**

Personally came before me this _____ day of _____, 2015, Keith G. Bosman, Mayor, and Debra Salas, City Clerk/Treasurer of the City of Kenosha, Wisconsin, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

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

"AFFORDABLE" TREE CARE LLC
A Wisconsin Limited Liability Company

BY: 
DEBRA LEIN
Manager

Date: 9/9/15

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this 9th day of September, 2015, Debra Lein, Manager, of "Affordable" Tree Care LLC, a Wisconsin limited liability company, to me known to be such Manager 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: 3/15/19

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney

CITY OF KENOSHA, WISCONSIN
PARK DIVISION

TREE REMOVAL
CONTRACT SPECIFICATIONS AND SPECIAL CONDITIONS

Project No. 15-1417

WORK TO BE PERFORMED. Work will consist of tree removal – severing and lowering portions of trees that prevent all damage to property, including turf, sidewalks, utilities, vehicles, persons and the like. This includes removing stumps and debris from the site and the proper disposal thereof.

LOCATION OF WORK. Work will consist of tree removal on public right-of-ways, City-wide, per the attached list, which is incorporated herein by reference.

SUPERVISION. Contractor shall consult the Kenosha Park Division concerning details and scheduling of all work. Contractor must have a responsible person in charge of work at all times to whom the Park Division may issue directives, who shall accept and act upon such directives. A name, phone number and address must be made available to the Park Division of Contractor's responsible person(s).

INSPECTIONS. The contractor shall call the City Forester (cell phone number to be distributed at pre-construction meeting) 7:00 A.M. and 8:00 A.M. of each day work will be performed to inform the Kenosha Park Division of locations for that day's work. The Kenosha Park Division may conduct inspections of Contractor's work at any time without notification.

PUBLIC RELATIONS. The Kenosha Park Division has notified abutting property owners of anticipated work using the "Work Notification Form" and /or the "Hazard Tree Removal Notification" letter.

The Park Division will provide a supply of informative leaflets at no cost to Contractor. The Contractor shall distribute the leaflets to the property owner where work is occurring, and to each abutting property owner. Contractor shall answer any questions from citizens concerning the project. Anyone asking a question that the Contractor cannot answer shall be referred to the Park Division at (262) 653-4080.

SAFETY. Work shall conform to the most recent revision of American National Standards Institute Standard Z-133.1(Safety Requirements for Pruning, Trimming, Repairing, Maintaining, Removing Trees and for Cutting Brush). A copy of these standards is on file at the office of the Kenosha Park Division and is made a part of the Contract by this reference. **Contractor is responsible for contacting Digger's Hotline** (1-800-242-8511) and making sure the sites are marked prior to any stump removal.

REMOVAL. Only trees designated by the Park Division on designated work orders are to be removed. Trees are to be topped before removal, unless conditions allow felling, and removed at a maximum stump height of four (4") inches above the highest surrounding grade. No trees shall be felled onto sidewalks, traffic signs, hydrants or other infrastructure. **Removal includes: stump removal, removal of basal sprouts, brush, vines and weeds associated to be removed as designated by City Forester.** Cleanup must be completed within two (2) hours of removal **unless**

authorized by City Forester to extend to 24 hours when needed. Shavings are not allowed to be left on site, and must be cleaned so the site is left in a condition at least as clean as pre-work conditions. Tree parts dropped or lowered from trees are to be kept off private property as much as possible. For trees marked for removal that extend through power and/or telephone and/or cable television wires, it will be the Contractor's responsibility to notify the responsible utilities prior to removal and make any necessary arrangements. Contractor is responsible for the hauling and disposal of all waste wood harvested during removal operations.

Once the removal process has begun for any said tree, the tree must be removed down to and including the stem, within **five (5) working days of start**. Any exception to this must be approved by the City Forester. The Kenosha Park Division may prioritize removals at its discretion. The Contractor shall be given twenty-four (24) hours advance notification of such action.

STUMP GRINDING. Only stumps designated by the Park Division on designated work orders are to be ground. Stumps and all exposed roots are to be ground out to a depth of twelve (12") inches below surface of soils and **shall extend as far as is necessary between the sidewalk and curb to provide a uniform and level surface throughout the lawn park area**. Contractor is responsible for the hauling and deposit of all grinding debris. Cleanup must be completed within two (2) hours of grinding. The site is to be left in a condition at least as clean as pre-work conditions. Grinding debris is to be kept off private property, streets and sidewalks as much as possible. Contractor is responsible for contacting Digger's Hotline (1-800-242-8511) and making sure the sites are marked prior to any stump grinding. **Stumps must be ground within 10 calendar days of tree removal, unless written permission is granted by the City Forester or his designee.**

TOPSOIL AND SEED. The contractor shall repair disturbed lawn areas adjacent to construction by placing and compacting of topsoil to the depth of grinding and mounded over stump hole to a height of two (2) inches above curb or sidewalk height.

Top soil material shall consist of loam, sandy loam, silt loam, silty clay loam or clay loam humus-bearing soils adapted to sustain plant life, and ensure this topsoil is in the Ph range of 6.0 to 7.0. Topsoil shall be compacted.

Topsoil shall be placed to a minimum depth of 2-4 inches and shall not be placed over any debris or material as described. All disturbed area needing more than 4 inches of topsoil shall be placed in lifts and thoroughly compacted so that there are no excessive settlement areas after contract is completed. The finished topsoil elevation shall be to a height of two (2") inches above curb or sidewalk height after thorough compaction.

Seeding shall consist of a type 40 mixture which shall include a blend of 35% Kentucky bluegrass, 20% red fescue, 20% hard fescue, and 25% improved fine perennial ryegrass. This mixture shall be uniformly distributed at a rate of 2 lbs. per 1000 square feet.

Construction limits shall be considered areas within 18 inches any area disturbed by the Contractor's operations.

Restoration of areas within construction limits shall be included in the unit bid price of topsoil and seed per tree. Topsoil and restoration shall be completed within 5 calendar days of the stump removal.

TRAFFIC CONTROL. Traffic control shall be the total responsibility of Contractor and must be coordinated with the Public Safety Dispatcher (262-656-1234). Contractor shall be responsible for posting the streets where work is to be performed twenty-four (24) hours prior to the work's commencement. If it becomes necessary to tow parked vehicles, the Contractor shall coordinate towing with the Park Division.

COORDINATION OF WORK. Separate crews may work on separate streets if the streets are close to one another. Each crew must complete work on each particular block before moving to another block unless the Park Division gives permission to do otherwise.

EVIDENCE. In all situations involving injury or property damage, Contractor shall not perform further work until photography, police reports and other evidence-gathering activities are completed. The Kenosha Park Division will supply guidelines for this situation. The Contractor shall not make any statements to anyone about which party might be liable for damages or injuries, or what caused any tree to break apart, fall, etc. All such questions shall be directed to the Kenosha Park Division at 262-653-4080.

PAYMENTS. Payments will be made on a monthly basis unless otherwise agreed upon between the parties. Payments will be made within fifteen (15) working days after City receives an invoice or application for payment with adequate cost breakdown to certify payment due. Payments will be on a per tree basis. Stump removal and cleanup must be completed.

ASSIGNMENT AND SUBCONTRACTING. No contract shall be assigned or subcontracted without the written consent of the Kenosha Park Division. In no case will consent relieve the Contractor from the Contractor's contractual obligation, nor will it change the terms of the contract. Any assignee or subcontractor approved by the Kenosha Park Division shall be required to submit Certificates of Insurance as per the Contract requirements prior to any removals.

The City of Kenosha, Wisconsin, Department of Public Works will receive proposals to remove trees described in the Contract Specifications and Special Conditions, subject to the following procedure and requirements.



SHELLY BILLINGSLEY, MBA, PE
Acting Director of Public Works
City Engineer

September 10, 2015

To: Eric J. Haugaard, Chairman, Public Works Committee
Scott N. Gordon, Chairman, Park Commission

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

Subject: **Professional Service Contract for Parkway Tree Removal
Project #15-1417 Phase II**

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received two proposals for the Phase II Parkway Tree Removal Contract for 2015. Staff has reviewed the proposals and has chosen Asplundh Tree Expert Company, based on their references, experience and standard quoted rates.

Contractor	Proposal Amount
Asplundh Tree Expert Co., Schofield, WI	\$72,544.50
Lakeside Tree Care, Kenosha, WI	\$97,018.00

The 2015 tree removal list contract includes removing approximately 196 trees.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Asplundh Tree Expert Company (Schofield, Wisconsin) for \$75,000.00 to include their quote of \$72,544.50 with \$2,455.50 of contingency. The funding for this work will be paid for out of CIP PK-93-004 Reforestation/Tree & Stump Removal.

SAB/kjb

2015 CONTRACT TO REMOVE TREES

By And Between

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

And

**ASPLUNDH TREE EXPERT COMPANY
a Pennsylvania Corporation**

TOTAL CONTRACT AWARD NOT TO EXCEED \$75,000.00

CONTRACT AMOUNT: \$72,544.50

**COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF KENOSHA:
NOT TO EXCEED \$2,455.50**

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 the “**CITY**”, and **ASPLUNDH TREE EXPERT COMPANY, a Pennsylvania Corporation**, with offices located at 5907 Municipal Street, Schofield, Wisconsin, 54476, hereinafter referred to as the “**CONTRACTOR**”.

W I T N E S S E T H:

WHEREAS, the **CONTRACTOR** has submitted to the **CITY** a written Proposal to remove trees according to the Specifications and Special Conditions contained in the Request for Proposal; and,

WHEREAS, the **CITY** has accepted the Proposal effective upon the **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, the **CITY** and the **CONTRACTOR** agree as follows:

1. DEFINITIONS.

a. “**CONTRACT**” means this executed Contract to Remove 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 **ASPLUNDH TREE EXPERT COMPANY** and any subcontractors approved by the **CITY**.

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

d. **“OVERPAYMENT”** means any money the **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 the **CITY**.

e. **“REMOVAL PROCESS”** means the systematic removal of the tree, commencing with the first cut or break by the **CONTRACTOR**, and including the trunk, stump, wood shavings, stump grinding debris, basal sprouts, brush, vines, weeds, and debris removal within five feet (5') from outside of the trunk.

f. **“RESTORATION”** means repair of areas disturbed by the **CONTRACTOR'S** Work, including topsoil and seed, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

g. **“STUMPING”** means either removal of a stump or grinding of a stump, as appropriate.

h. **“WORK”** means any contractual endeavor undertaken by the **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.

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

2. **WORK TO BE PERFORMED BY THE CONTRACTOR.** The **CONTRACTOR**, for the sum of Seventy Two Thousand five hundred forty four dollars and fifty cents (\$72,544.50), 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, the **CONTRACTOR** will perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal not to exceed an additional Two Thousand four hundred fifty five dollars and fifty cents (\$2,455.50). In the event of a conflict between the Request for Proposal, the Proposal and this Contract, the terms and conditions of this Contract shall control and supersede the other documents. The Work comprises the removing of the trees specified in Exhibit “A” in accordance with the Specifications and Special Conditions in Exhibit “B”, which Exhibits are 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 THE WORK.** The **CONTRACTOR** will commence the work within five (5) working days following execution of this Contract and Notice to Proceed, and will prosecute the Work diligently until fully complete in accordance with this Contract. The **CONTRACTOR** shall complete the Work within the Contract Term.

The **CONTRACTOR** shall fully remove at least five (5) trees per week until this Contract is terminated.

The **CONTRACTOR** shall complete the Removal Process and with respect to each tree within five (5) working days of the start of the Removal Process, time being of the essence, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

The **CONTRACTOR** shall complete stump grinding of those stumps designated by the Park Division within ten (10) calendar days of tree removal, time being of the essence, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

The **CONTRACTOR** shall complete Restoration of areas disturbed by the **CONTRACTOR'S** Work, including topsoil and seeding, within five (5) calendar days of stump removal, time being of the essence, in accordance with the Specifications and Special Conditions attached as Exhibit B and this Contract.

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 April 22, 2016, whichever is earlier.
 - b. Respecting the Warranty, until expiration of the 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 obligations 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 the 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 as will assure professional quality of the 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 THE 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 of 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 the **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 rights-of-way, easements, streets, highways, alleys and private or public property adjacent to the work site, in a clean and sanitary condition, free from any rubbish, debris, wood shavings, stump grinding debris, surplus or waste materials that have accumulated as a result of the Work.

Within two (2) hours after the completion of the Removal Process and Stumping of a specified tree, the **CONTRACTOR** shall remove all rubbish, debris, wood shavings, stump grinding debris, 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 the **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 Three Hundred Dollars (\$300.00) 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 THE 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 THE 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** for which the **CITY** could be secondarily liable, which secondary liability was not assumed by the **CITY** under this Contract.

b. In the event the **CONTRACTOR** fails to complete the Removal Process, Stumping, and Restoration with respect to each tree within the time specified and in the manner provided in the Specifications and Special Conditions attached as Exhibit B and this Contract, no payment with respect to any such tree shall be made by the **CITY**. In addition, in the event the **CONTRACTOR** fails to complete the Removal Process, Stumping, and Restoration with respect to each tree as provided in this paragraph, the **CITY** may cause such Work to be performed and deduct the cost of such Work and all administrative costs associated with performing such Work from any payment due the **CONTRACTOR** under this Contract. The provisions of this paragraph shall be in addition to all other remedies available to the **CITY** under this Contract.

c. 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 Worker's 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 excepted 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 takes 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:

- \$1,000,000 Each occurrence
- \$2,000,000 General Aggregate

Automobile Liability: (owned, non-owned, leased)

- \$1,000,000 Bodily Injury (per person)
- \$1,000,000 Bodily Injury (per accident)
- \$200,000 Property Damage (per accident)

OR

- \$1,000,000 Combined Single Limit (each accident)

Umbrella Liability:

- \$2,000,000 Each Occurrence
- \$2,000,000 Aggregate

Workers Compensation:

- Statutory Limits
- \$100,000 Employer Liability, Each Accident
- \$100,000 Employer Liability, Disease, Each Employee
- \$500,000 Employer Liability, Disease, Policy Limit

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**.

The **CITY** shall be named as an additional insured with respect the insurance coverages listed above and the **CITY** shall be provided with an additional insured endorsement certifying that the **CITY** is an additional insured with respect the insurance coverages listed above.

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 provision 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:

ASPLUNDH TREE EXPERT COMPANY
5907 MUNICIPAL STREET, SCHOFIELD, WI 54476

- 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 Wisconsin Municipal Corporation

BY: _____
KEITH G. BOSMAN
Mayor

Date: _____

BY: _____
DEBRA L. SALAS
City Clerk/Treasurer

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2015, Keith G. Bosman, Mayor, and Debra Salas, City Clerk/Treasurer of the City of Kenosha, Wisconsin, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

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

ASPLUNDH TREE EXPERT COMPANY
A Pennsylvania Corporation

BY: _____
JOSEPH B SCHNEIDER
Vice President

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2015, Joseph B. Schneider, Vice President, of ASPLUNDH TREE EXPERT CO., a Pennsylvania Corporation, to me known to be such Vice President of said company, and acknowledged to me that he executed the foregoing instrument as such officer as the agreement of said corporation, by its authority.

Notary Public, _____ City, _____ State.

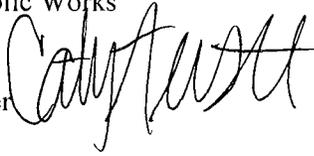
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney

September 11, 2015

TO: Shelly Billingsley, P.E.
Acting Director of Public Works

FROM: Cathy Austin, P.E.
Assistant City Engineer



Informational #1

SUBJECT: Project Status Report

- Project # 08-1443 Bike and Pedestrian Connections** - Plans have begun but a major focus on bike paths has been to complete the Bike Path crossing at Washington Road and the extension through Nash Park. Once these projects have been bid, design will be completed on this third phase. (Citywide)
- Project #11-1417 Strawberry Park Trail and Shelter (DNR Stewardship Grant)** [SAA Design Group] -- Project has been awarded and construction has begun. Shelter is anticipated to be delivered in late September / early October. (16)
- Project #12-1415 / 13-1415 / 14-1415 / 15-1415 CORP Implementations** -- Continuing. (Citywide)
- Project #12-1430 Alford Park Warehouse Demolition** -- [Earth Construction] Project close-out documents were sent to contractor. (1).
- Project #13-1413 - Petzke Park Phase II** [SAA Design Group] Construction began in April and is on schedule to be complete by the end of September (weather dependent). (1)
- Project #13-1414 - Washington Park Velodrome** [SAA Design Group] -- Construction began in May and substantial completion is anticipated to be complete by mid-October, weather dependent. Concrete pours along turns 3 and 4 are in process. Contractor is also continuing to grade the rest of the track. (6)
- Project #14-1120 - Eichelman Beach - Nutrient Improvements** -- Construction has been complete and close out documents have been sent out. (2)
- Project #14-1141 - Southport Park Shoreline Repair Phase 1** -- [Redbarn Design and Engineering] Revetment wall has been completed. Restoration and punch-list items remain. (12)
- Project #14-1417 - Tree Removal** -- Contract nearing completion. Phase 2 tree removal may have a change order pending for completion date. Still in discussion with Contractor and Legal. (City wide)
- Project #14-1418 - Tree Planting** -- Contract nearing completion. (City wide)
- Project #14-1421 - Simmons Island Phase 1B** -- [SAA Design Group] Project has been put on hold due to budget. Plans for grading the playground area are being designed. (2)
- Project #14-1426 Petzke Park - Dream Playground** [SAA Design Group] -- Installation of the brick pavers and poured in place rubber surfacing will begin September 14th and will be complete prior to the Grand Opening on October 10th. (1)
- Project #14-1428 - Washington Park Trail Improvements** - Construction has been complete and close out documents have been sent out. (6)
- Project #15-1417 - Tree Removal** -- Project has been awarded by Committee; contract has change order on agenda after discussions with Contractor and Legal. (City Wide)
- Project #15-1419 - Park Division West Garage Roof Replacement** -- Work is anticipated to begin in September.(12)
- Project #15-1423 - Anderson Park Paths** -- Project is anticipated to begin the beginning of September due to soccer tournaments, however due to wet weather conditions they have not been able to start. (9)

Design Work- Misc. Park projects and finishing 2012, 2013, 2014 and 2015 CORP projects.