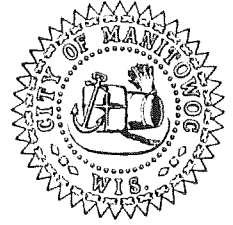


# CITY OF MANITOWOC

WISCONSIN, USA  
www.manitowoc.org



April 26, 2018

18-0441

CONSENT

TO: Mayor and Common Council  
FROM: Board of Public Works  
SUBJECT: AGMT-18-05 Contract with Dave's Tree Services, Inc.

Dear Mayor and Common Council:

At the April 25, 2018 Board of Public Works meeting, the Board met to approve entering into a contract with Dave's Tree Services, Inc. to remove 16 trees at various locations for the City of Manitowoc Parks Department, AGMT-18-05, for a contract sum of \$11,898.00.

"Moved by City Attorney Kathleen McDaniel, seconded by Engineering Division Manager Greg Minikel, and unanimously carried to enter into the contract. Ayes, 5. Nays, none."

Very Truly Yours,

DEBORAH NEUSER  
Secretary Board of Public Works

*Deborah Neuser, CMC, City Clerk*  
CITY HALL · 900 Quay Street · Manitowoc, WI 54220-4543  
Phone (920) 686-6950 · Fax (920) 686-6959 · dneuser@manitowoc.org



CONTRACT

This contract is made and entered into this 25<sup>th</sup> day of April, 2018, by and between Dave's Tree Services, Inc. (hereinafter "Contractor"), located at 6541 Elm Drive, Egg Harbor, WI 54209 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

**WHEREAS**, Dave's Tree Services, Inc. located at 6541 Elm Drive, Egg Harbor, WI 54209 intends to cut and remove 16 trees at various locations within the City of Manitowoc as outlined in "Exhibit A", Dave's Tree Services, Inc. Proposal.

**WHEREAS**, Dave's Tree Services, Inc. has the ability to perform the tree cutting, brush grinding, wood hauled away and flush stumps low to ground as outlined in "Exhibits A".

**NOW, THEREFORE**, in consideration of the mutual covenants and representations of the parties hereinafter set forth, the undersigned parties hereby agree as follows:

1. Recitals. The above recitals are deemed to be true and correct.
2. Scope of Work. The Contractor agrees to perform the following work and/or furnish the following labor and materials in accordance with the terms of this contract:

**All work shall be performed in accordance with the City of Manitowoc's Standard Specifications for Public Works Construction.**

**See listing of tasks for this project. (Attached is "Exhibit A", and it is incorporated into this Contract by reference).**

3. Contract Price. The City agrees to pay to the Contractor for the performance of this contract the sum of **\$11,898.00**.
4. Schedule. Contractor agrees to commence work under this Contract upon its execution and complete performance of this contract in accordance with the City of Manitowoc's Standard Specifications, which are made part of this Contract and are incorporated by reference. The contract completion date shall be **July 1, 2018**
5. Payment Schedule. Requests for payment shall be made to the Director of Public Infrastructure. The Director of Public Infrastructure shall make a recommendation on the payment request and submit the same to the City's Board of Public Works when applicable. Contractor shall be entitled to payment within 30 days following approval by the Director of Public Infrastructure.
6. Assignment and Subcontracting. Contractor shall not be permitted to sign or subcontract any of the work hereunder without the prior written consent of the City.

7. Insurance and Bonding. Prior to commencing work hereunder, Contractor shall provide City, for approval by the City Attorney, a Certificate of Insurance showing proof of General Liability Insurance in amounts not less \$1,000,000.00 per person per occurrence, \$2,000,000.00 in the aggregate, property damage limits of not less than \$500,000.00 per occurrence, and shall carry the statutory amounts for worker's compensation insurance. **Contractor shall include with the Certificate of Insurance two endorsements, one endorsement naming the City of Manitowoc as an additional insured, and a second endorsement giving City thirty (30) days prior notice of non-renewal, modification or cancellation.**
8. Applicable Statutes. Any provisions of the Wisconsin Statutes, Federal Law or local ordinances applicable to the work performed hereunder are deemed to be incorporated by reference and made a part of this contract.
9. Contract Notice. Per Wisconsin State Statutes 62.15, a Class I Notice had been executed and published for this work on April 23, 2018.
10. Other Indebtedness to City. It is understood and agreed by the parties hereto that whenever a contractor is for any reason indebted to the City of Manitowoc, the contractor consents that the City of Manitowoc through its officials shall and may, deduct and retain, any such balance out of the money or monies which may be due or become due to the contractor under this contract.
11. Indemnify. Contractor shall defend, indemnify and hold harmless the City of Manitowoc, its officials, officers, employees, representatives and agents against any and all liability, claims, costs, demands, losses, damages, expenses and attorney fees of any kind on account of any injury, damage, or death to any person or property that may arise directly caused by or resulting from the work performed under this Contract where the injury, damage, or death is caused by negligence or willful misconduct on the part of the Contractor, subcontractor, officers, employees, or agents.
12. Default. In the event of default or breach in the performance of any of the obligations, covenants, representations or duties under the terms of this Contract by either party, the non-defaulting party shall forward written notice to the defaulting party outlining such default. The defaulting party shall cure such default within thirty (30) days of receiving written notice from non-defaulting party, except that the cure period may be extended to a reasonable time to cure any default that cannot reasonably be cured with the thirty (30) day period, provided that the defaulting party has commenced to cure within the thirty (30) day period and diligently pursues a cure at all times thereafter until the default is cured. The defaulting party shall be responsible for the payment to the non-defaulting party of any outstanding fees, charges or expenses that were incurred by the non-defaulting party on behalf of the defaulting party.
13. Permits. None Required.
14. Termination. Either party may terminate this Contract with ten (10) days written notice to the other party.

15. Notice and Demands. A notice, demand or other communication under this Contract by any party to the other party shall be sufficiently given or delivered and deemed delivered as of the date such notice is delivered to the party intended, if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and addressed to or personally delivered to:

**CITY:** City Clerk  
900 Quay Street  
Manitowoc, WI 54220

**CONTRACTOR:** Dave's Tree Services, Inc.  
6541 Elm Drive  
Egg Harbor, WI 54209

Notice and demand given shall be effective only if and when received by the party intended and acknowledged by receipt. The above addresses may be changed at any time by any party by giving written notice in the manner provided above.

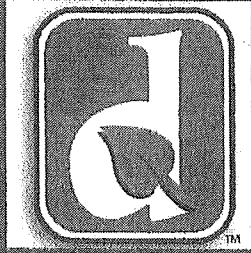
16. Assignment. This Contract is not assignable without prior written consent of City.
17. Severability. If any provision of this Contract is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws.
18. Amendments. This Contract can only be amended or modified in writing and signed by the parties involved.
19. Integration. This Contract represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to matters covered hereunder.
20. Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
21. Choice of Law. This Contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. All actions or proceedings relating directly or indirectly, to this Contract, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Contract hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.
22. Heading. The section titles have been inserted in this Contract primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
23. Remedies Cumulative. All rights and remedies hereunder are cumulative, and not exclusive, and shall be in addition to all other rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy hereunder shall not operate as a waiver thereof, nor excuse future performance. No waiver discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in writing signed by the party so waiving. Any waiver of any

breach shall be a waiver of that breach only and not of any other breach, whether prior to subsequent thereto.

24. Construction. All parties have contributed to the drafting of this Contract. In the event of a controversy, dispute or contest over the meaning, interpretation, validity of enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party whatsoever by virtue of that party having drafted the document or any portion thereof.

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**Dave's Tree Services, Inc**  
Trusted Professionals Since 1967  
www.davestreeserviceinc.com  
6541 Elm Dr.  
Egg Harbor, WI 54209  
920-823-2259  
920-823-2895

EXHIBIT A

March 5, 2018

City of Manitowoc  
Al Rehme- City of Manitowoc Forestry

Dear Mr. Rehme,

These are the estimates that I had put together for the tree removals.

Work along Maritime Drive, on the edge of bluff~~

This includes all the tree work on the bluff that was originally looked at in September 2016 with the exception of the last strip of brush and tree's to the south next to the cement steps going down.

This estimate does not include herbicide treatment on stumps to prevent future growth, that could range anywhere from \$600-\$1100 depending on how many gallons are used.

\$ 28,000

Also, added group of trees to the north of the original tree project~~

\$ 4,200.00

Note - if Dave's Tree Services Inc. were to consider going forward with the project along Maritime Drive, we would highly recommend, that it would be done on a time and material basis.

Estimate for City tree's off of the list that was provided- Contract # WO-18-11~~

Trees are to be cut down, brush ground up, wood haul away, flush stumps low to ground.

#12 \$450  
#13 \$1,200  
#14 \$562  
#15 \$562  
#16 \$225  
#17 \$1,000  
#18 \$975  
#19 \$975  
#20 \$262  
#21 \$187  
#22 \$675  
#23 \$1,200  
#24 \$1,200  
#25 \$1,125  
#26 \$1,000  
#27 \$300  
Total. \$11,898

Due to our busy work load it would be difficult for us to have a set time on when work could be completed, on either project.

Respectfully Submitted,

Todd Burke

President, Dave's Tree Services, Inc

ISA Certified Arborist and Utility Specialist WI-0767AU