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16-0112

CONTRACT

This contract is made and entered into this 25th day of January, 2016, by and between Dave's Tree Service, 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 Service, Inc. located at 6541 Elm Drive, Egg Harbor, WI 54209 intends to cut and remove approximately 10 trees and stumps at various locations within the area of the 2016 Sidewalk Remove and Replace Program as outlined in "Exhibit A", Dave's Tree Service, Inc. Proposal and City of Manitowoc's Special Provisions and Conditions; and in Exhibit "B" The map showing the general area for the tree removals.

WHEREAS, Dave's Tree Service, Inc. has the ability to perform the required tree cutting and removal as outlined in "Exhibits A and B".

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 B", 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 **\$18,472.50**.
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 **April 15, 2016**.
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 January 15, 2016.
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 Contact 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 Service, 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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IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

SOLE PROPRIETORSHIP OR PARTNERSHIP

CORPORATION

Name of Proprietor or Partnership

Dave's Tree Services Inc
Name of Corporation

(Seal)
Sole Proprietor or Partner

By: Todd Burke Pres (Seal)
Todd Burke, President

(Seal)
Partner

Attest: [Signature]
Stefanie Burke, Secretary/Treasurer

(Seal)
Partner

CORPORATE SEAL

CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Attest: _____
Jennifer Hudon, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this _____ day of _____, _____, the above named Justin M. Nickels and Jennifer Hudon, known to me to be the Mayor and City Clerk/Deputy Treasurer of the City of Manitowoc and acknowledge they executed the foregoing instrument.

Notary Public Manitowoc County, WI
My commission (expires)(is) _____.

STATE OF WISCONSIN)
) ss.
DOOR COUNTY)

Personally came before me, this 25 day of Jan, 2016, the above named Todd Burke, President and Stefanie Burke, Secretary/Treasurer for Dave's Tree Service, Inc, and acknowledge they executed the foregoing instrument.

**LORRAINE ENIGL
Notary Public
State of Wisconsin**

[Signature]
Lorraine Enigl
Notary Public Door County, WI
My commission (expires)(is) 9-13-19.

"EXHIBIT A"

JAN - 7 2016

PROPOSAL

FOR

2016 TREE AND STUMP REMOVAL

CITY OF MANITOWOC

ITEM NO.	ITEM DESCRIPTION	ESTIMATED # OF REMOVALS	UNITS	BID PER INCH DIA.	UNIT PRICE
1.	Remove Trees 20"-30" Diameter	7	ID	37.61	6656.97
2.	Remove Trees Greater Than 30" Diameter	7	ID	37.61	9064.01
3.	Stump Removal 20"-30" Diameter	9	ID	5.93	1322.39
4.	Stump Removal Greater Than 30" Diameter	7	ID	5.93	1429.13
TOTAL FOR PROPOSAL					\$ 18,472.50

The undersigned contractor agrees to all terms and conditions of the preceding specifications for the tree and stump removal project and shall furnish all insurance documents as stipulated.

Company Name Dave's Tree Services, Inc.

Authorized Signature Loce Burke Per.

Date: 1-6-2016

SPECIAL PROVISIONS AND CONDITIONS

INTENT AND SCOPE

This project consists of removing trees and stumps of various species at the locations listed within this document or as directed by the City Forester and Director of Public Infrastructure or their representative(s).

All work shall be performed according to the plans and specifications, and to the satisfaction of the City.

The City of Manitowoc reserves the right to add or delete trees from this project.

The contractor shall examine the site locations and inform themselves of all the conditions and obstacles that may be encountered when performing the work.

All work shall be performed in accordance with the City of Manitowoc's Standard Specifications for Public Works Construction and can be found on the City's website at www.manitowoc.org/Departments/Engineering/Standard Specifications.

QUALIFICATIONS AND CERTIFICATIONS

The Contractor shall have a minimum of one "Certified Arborist" or "Certified Tree Worker" as recognized by the International Society of Arboriculture on the job site at all times.

The Contractor shall be certified to remove trees and branches where utility and communication lines run through or in close vicinity of a tree being removed.

All work shall be performed in accordance with OSHA standards and other applicable regulations.

INSURANCE REQUIREMENTS

The Contractor shall furnish sufficient liability insurance as required by the City of Manitowoc Standard Specifications which is included by reference and can be found on the City's webpage at www.manitowoc.org or can be viewed at the City Engineering Office located at City Hall, 900 Quay Street, Manitowoc, WI 54220. The Contractor will also be required to furnish the City of Manitowoc with 2 additional endorsements, one for listing the City of Manitowoc as an additional insured and the second one for a 30-day notice of policy changes or cancellations.

STARTING AND COMPLETION DATES

No work shall start prior to the full execution of this Contract and/or prior to receiving the "Notice to Proceed" from the City.

All work shall be completed on or before **April 15, 2016**.

Failure to meet the Completion Date listed above may result in the assessment of Liquidated Damages for Late Work.

LIQUIDATED DAMAGES

For every calendar day of delay in the completion of the Work beyond the time specified, unless extended by written agreement, there shall be deducted from the amount due under this Contract as fixed, agreed and liquidated damages, the sum of **One-Hundred Dollars (\$100)**.

This sum shall be considered and treated not as a penalty but as fixed, agreed and liquidated damages due the Owner from the Contractor by reason of inconvenience to the public and other items which have caused an expenditure of public funds resulting from the failure to complete the work within the time specified in the contract.

WORK BY OTHERS

The City of Manitowoc Department of Public Infrastructure shall be responsible to furnish and install the topsoil and seeding.

TRAFFIC CONTROL

The Contractor shall be responsible for traffic control, including furnishing, installing, and maintaining all barricades, signs, cones, flags, etc. required to protect the safety of the traveling public, in accordance with the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) and its supplements. It is anticipated the **Work shall be done under traffic. No obstruction to vehicular or pedestrian traffic shall remain after the end of the daily work period.**

If the work cannot be done safely under traffic, the Contractor may request a street closure with permission granted by the Director of Public Infrastructure prior to work commencing at a specific location.

The cost of barricading, signing, cones, flagging, street closure, etc. (traffic control) shall be considered incidental to the project and no compensation will be allowed.

TREE REMOVALS

All work shall be completed as per Section 700 of the City of Manitowoc's Standard Specifications for Public Works Construction.

The trees to be removed are of various diameters and located in the terrace areas of the City's Public Right-Of-Way.

The tree's diameter at breast height (DBH) measurement will be made at 4.5 feet above grade.

The Contractor shall be permitted to utilize the sidewalk area as necessary. Any damage to sidewalks, curbing and street surface shall be repaired by the Contractor at his expense. Any trees

or plantings on public or private property that are damaged shall be repaired or replaced at the Contractor's expense.

STUMP REMOVALS

All work shall be completed as per Section 700 of the City of Manitowoc's Standard Specifications for Public Works Construction.

The Contractor shall be responsible for contacting Digger's Hotline prior to any stump removals.

The stumps to be removed are of various diameters and located in the terrace areas of the City's Public Right-Of-Way. Diameter measurements, as measured by the City and noted under Tree and Stump locations, are based on the original diameter of the tree measured at DBH.

Stump removal will include grinding the tree stump and buttress roots to a point 18" below grade. Additionally, the contractor shall remove all surface and adjacent subsurface roots as may be necessary to eliminate mounds in the terrace area adjacent to the stump. The terrace area shall match the existing contour and grade. Stump removal will also include the disposal of all wood chips or ground material produced in the grinding process.

The Contractor will be permitted to utilize the sidewalk area as necessary. Any damage to sidewalks, curbing and street surface shall be repaired by the Contractor at his expense. Any trees or plantings on public or private property that are damaged shall be repaired or replaced at the Contractor's expense.

The Contractor shall be responsible for furnishing and installing granular material (sand) to fill the hole that is left after the grinding of the stump. The sand shall be filled and compacted in place so that it is level with the existing ground elevation/grade.

NOTIFICATION OF DAILY WORK

The Contractor shall be responsible for notifying the Engineering Department between 7:30 a.m. and 8:30 a.m. daily to report the location where the crew(s) will be working. The Contractor shall call between 7:30 a.m. and 4:30 p.m. to report the next day's schedule. The Engineering Department phone number is (920) 686-6910.

WORK HOURS AND CONDITIONS

Hours of work shall be at the discretion of the Contractor. However, no work shall start before 7:30 a.m. and be completed by 4:30 p.m. each day. No work shall be performed on Sundays and holidays.

The Contractor shall plan his operation so snowy/winter weather does not hamper the tree or stump removal operation and affect the City's snow plowing or removal operation on a daily basis.

TREE AND STUMP LOCATIONS

The project is generally located in the northeast part of the City. The following list is the location and size of the tree proposed in this project. The Engineer has marked the trees with a **Pink Dot** located on the street side of the tree. Any tree dotted in a similar manner and is not on the list provided should be brought to the attention of the City Forester or the City Engineering Department.

Tree Removals:

846 N. 8th Street – 27” diameter tree.
950 N. 8th Street – 25” diameter tree.
956 N. 8th Street. 32” diameter tree on N. 8th & a 37” diameter tree on Pine St.
1004 N. 8th Street – 34” diameter tree.
627 N. 9th Street – 33” diameter tree.
801 N. 9th Street – 32” and 36” diameter trees.
855 N. 9th Street – 37” diameter tree by driveway.
635 N. 10th Street – 22” on St Clair & 24” diameter tree on N. 10th = (second tree from corner).
621 N. 10th Street – 20” diameter tree.
826 N. 10th Street – 30” diameter tree
1015 Huron Street – 29” diameter tree.

Total of 418 Inch-Diameter.

Stump Removals:

Includes all the tree removals listed above plus the additional stumps listed below:

801 N. 9th Street – 28” stump between the 2 trees being removed.
621 N. 10th Street – 24” stump just north of the tree being removed.

Total of 464 Inch-Diameter.

AFFECTED PROPERTIES

Any questions from abutting property owners regarding the removals shall be directed to the City Park’s Department at (920) 686-3580 or the City Engineering Department at (920) 686-6910.

If the Contractor makes arrangements with the adjacent property owner to cut and leave the wood, the wood shall be placed on the property owner’s side of the sidewalk. The wood shall not cause any vision concerns with pedestrians or vehicles using City’s Right- of-Way.

No debris or logs shall be given to property owners that may have an indication the Emerald Ash Borer is present.

CUT WOOD

If the abutting property owners do not request the wood from the trees being cut, the contractor shall deliver the cut up sections to the Parks Shop at 1105 Fleetwood Drive. The contractor shall coordinate this with personal from the Parks Department. The Contractor shall be responsible for loading, hauling, unloading and stockpiling all of the wood.

Any branches smaller than 5 inches in diameter shall become the property of the contractor to do as he wishes. There is a County site located on Basswood Road that does except tree removal material.

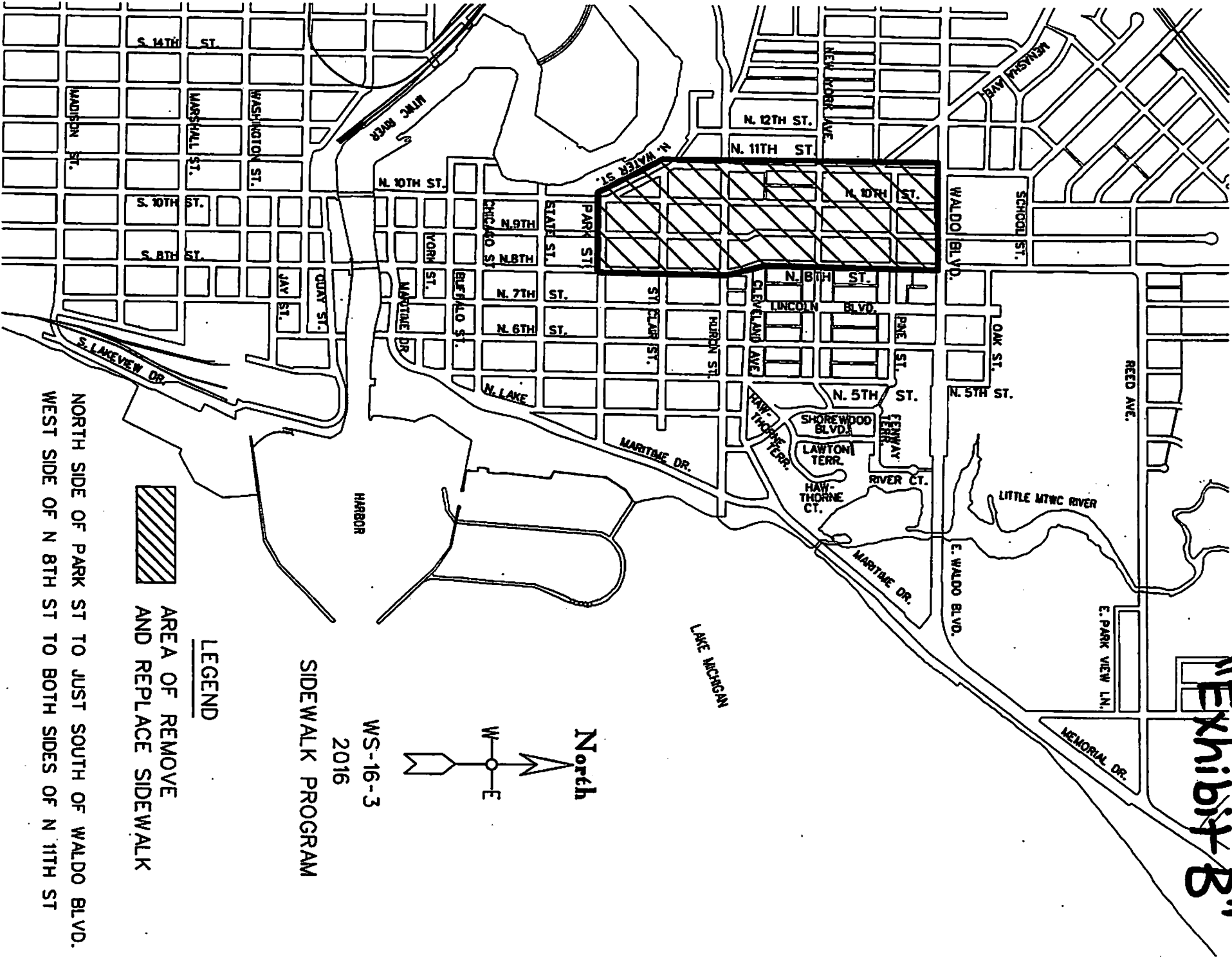
No debris or logs shall be delivered to the Parks Shop that may have an indication the Emerald Ash Borer is present. The City will provide an alternate site if this scenario does occur.

CLEAN-UP AND WORKMANSHIP

Clean up shall be on a daily basis. No debris or logs shall remain on site at the end of the work day. Streets, lawns and sidewalks shall be cleaned up in a neat and orderly manner.

Workmanship shall be to the highest caliber and the workers insure the least amount of disturbance to the site and the general public.

Exhibit B



AREA OF REMOVE
AND REPLACE SIDEWALK

LEGEND

NORTH SIDE OF PARK ST TO JUST SOUTH OF WALDO BLVD.
WEST SIDE OF N 8TH ST TO BOTH SIDES OF N 11TH ST

SIDEWALK PROGRAM

WS-16-3
2016

