

MAR 15 2010

ORDINANCE NO. 2771

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO
EMPLOY ALL TYPE TREE SERVICE, INC. OF
WATERLOO, ILLINOIS TO PERFORM LIMB REMOVAL
SERVICES IN THE CITY OF COLUMBIA, ILLINOIS**

J. Ronald Colyer
City Clerk

WHEREAS, the City Council of the City of Columbia, Illinois (the "City") accepted the bid and awarded the contract to All Type Tree Service, Inc of Waterloo, Illinois (the "Company") at a regular meeting of the City Council held March 15, 2010 to perform limb removal services in the City.

WHEREAS, the Notice of Award will be given to the Company by the City after March 15, 2010 and the Company will execute and deliver to the City an Agreement to employ the Company to perform the work involved and the Company will provide the City with the required certificate of comprehensive liability insurance which names the City as an additional insured, all of which are in due and proper form; and,

WHEREAS, it is necessary and appropriate that the City make and enter into the Agreement to employ the Company to provide the materials and to do and perform the work involved with limb removal services aforesaid.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The Mayor is hereby authorized and directed to make and enter into the Agreement dated March 15, 2010 to employ the Company to perform the limb removal services described above (which is more particularly described in the employment Agreement), in the form attached hereto, in at least three (3) counterparts; and, the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

Section 3. The City Engineer, Ronald J. Williams, P.E., is directed to deliver to the Company the Company's copy of the Agreement for execution and to proceed with the preconstruction conference, if any, and the performance of the work involved.

Section 4. This Ordinance shall be in full force and effect, from and after its passage, as provided by law.

Alderman Hejna moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Oberkfell, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Row, Hejna, Oberkfell and Roessler.

NAYS: Alderman Stumpf.

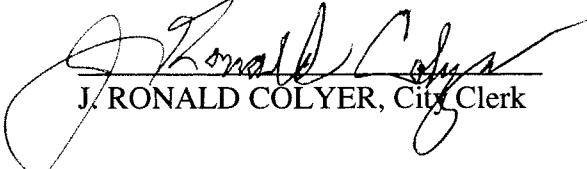
ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 15th day of March, 2010.


KEVIN B. HUTCHINSON, Mayor

ATTEST:


J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2771, entitled:

**"AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO
EMPLOY ALL TYPE TREE SERVICE, INC. OF
WATERLOO, ILLINOIS TO PERFORM LIMB REMOVAL
SERVICES IN THE CITY OF COLUMBIA, ILLINOIS"**

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois City Council held on the 15th day of March 2010.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 15th day of March, 2010.

J. Ronald Colyer
J. RONALD COLYER, City Clerk

(SEAL)

**CITY OF COLUMBIA, ILLINOIS
LIMB REMOVAL SERVICES AGREEMENT**

This Agreement, is made and entered into this 15th day of March, 2010, by and between the City of Columbia, Illinois, a municipal corporation and body both corporate and politic created and existing under and by virtue of the laws of the State of Illinois with City Hall located at 208 South Rapp Avenue, Columbia, Illinois (the "City" or "Columbia") and All Type Tree Service, Inc., with offices located at 3330 Keim Road, City of Waterloo, State of Illinois, (the "Company"), WITNESSETH:

WHEREAS, the City intends to employ the Company to do and perform the limb removal services hereinafter described and the Company has agreed to the employment by the City on the terms set forth in this Agreement.

Now, therefore, in consideration of the premises and the mutual representations, covenants, and agreements contained in this Agreement, the City hereby employs the Company and the Company hereby agrees to the employment by the City for the limb removal services involved herein, on the following terms:

(1) Limb Removal Services. The Company agrees to perform the limb removal services for the City that is described in the documents attached to this Agreement as exhibits, including providing all necessary labor and services, facilities, materials, tools and equipment, and obtaining necessary licenses, permits, all royalties required for performance of the work involved, without regard to whether the same be specifically identified in the contract documents, where the same are reasonably required to be supplied in order to perform and complete the specifically described scope of work described in the contract documents. The contract documents shall consist of the following, in descending order of priority.

- 1.1 this Agreement
- 1.2 Bid Proposal

(2) Payment. Payment to Company shall be made per the specifications in the bid proposal.

(3) Term of Agreement. This agreement shall be in force from the date of execution by both parties until December 31, 2011.

(3) Compliance with Laws. Company shall perform the work in accordance with all applicable Federal, State, and local laws, ordinances, and regulations.

(4) Scope of Work Changes.

(A) Should the City request services and/or materials to be provided to or for the City in the performance of this Agreement which are not included in this agreement or bid proposal, and which are in addition thereto, to the extent that the same results in an

increase in cost to the Company the parties shall make and enter into an amendment of this Agreement which provides for the description of the scope of the additional work, the price the City will pay for the same and the terms for the performance of the new and additional work involved, which written amendment of the Agreement will be signed by the parties and attached to this Agreement as an addendum or amendment.

(B) Should performance of the Agreement, or any mutually agreed upon amendment thereto, become impossible to perform within the time required by the contract documents due to the occurrence of an event or events beyond the control of the Company, and not owing to the fault or neglect of the Company, the Company may apply to the City, in writing, for an extension of the work schedule applicable thereto, and if applicable, may request additional compensation from the City caused by the unavoidable delay of performance. The written request to the City shall be made as soon as practicable, but in all events within five (5) working days, after the Company becomes aware of the occurrence of an event causing the delay of performance. While the City shall be under no obligation to incur and pay the additional costs for performance, the parties shall attempt to agree on a written amendment to the Agreement to allow and provide for the additional time for completion of the work involved, and, if applicable, additional compensation for costs of the Company necessary to be incurred due to impossibility of performance within the time allowed by this Agreement. If the parties are unable to agree upon an extension of time for performance of the Agreement, either party may request arbitration of the dispute with the USA&M Midwest, Inc. which currently has its corporate offices at 720 Olive Street, Suite 2020, St. Louis, Missouri 63101. The cost of the arbitration shall be shared equally by the parties and the decision of the arbitrator shall be binding upon both parties and be enforceable by a court of competent jurisdiction.

(5) Performance. All services shall be performed with reasonable skill, care, and diligence.

(6) Employment of Subcontractors. Any and all subcontractors proposed to be used by the Company to perform the City limb removal services must be pre-approved by the City.

(7) Labor. If the Company cannot provide suitable personnel for performance of the work which are acceptable to the City, the City shall have the right to rescind this Agreement on five (5) days prior written notice to the Company. In the event of the rescission of the Agreement by the City, neither of the parties shall be under any further obligation to the other party and the Agreement shall be of no further force and effect.

(8) Termination for Default. Either party may terminate this Agreement for the default of performance by the other party, following thirty (30) days prior written notice of default and opportunity to cure the default, provided the default is not owing to the fault or neglect of the party seeking termination. The party receiving such termination notice shall not be subject to termination of the Agreement if that party commences to cure the default within seven (7) days of receiving said notice and cures the default within the thirty (30) day grace period aforesaid. In the event there is no Performance Guarantee required of the

Company by the Agreement, should the City terminate this Agreement pursuant to this paragraph of the Agreement and due to the Company's default of performance of the Agreement, the Company shall be liable to reimburse the City for all additional costs and expenses the City incurs in obtaining another Company or Companies to complete the performance of the defaulting Company's obligations under this Agreement. If the City has a Performance Guarantee pursuant to this Agreement, in lieu of terminating the contract, the City may seek enforcement of the Performance Guarantee to obtain completion of the work involved in the limb removal services.

(9) Limitation of Liability. Neither party shall be liable for incidental, consequential, or special damages to the other party.

(10) Indemnification. The Company agrees to indemnify and hold the City harmless, safe and free, including its officials and employees, from and against any and all claims, demands, actions, suits, causes of action, damages, and expenses (including reasonable attorneys' fees) for personal injury to or death of persons and damage to the City's property or facilities or the property of any other person or party due to the fault of the Company and/or the Company's agents, employees, and subcontractors.

(11) Binding Effect. All of the covenants, terms, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. In the event an individual is a party to the Agreement, the same shall be binding upon and shall inure to the benefit of said individual party, their heirs, executors, administrators, other legal representatives, successors in interest, and assigns.

(12) Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party.

(13) Liability Insurance. The Company shall maintain the following minimum limits of liability insurance coverage, with one or more qualified and rated insurance carriers acceptable to the City, with regard to the performance of this Agreement;

<u>Type of Coverage</u>	<u>Limits of Coverage</u>
Comprehensive General Liability	
Bodily Injury	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage	\$500,000 each occurrence Or \$1,000,000 combined single limit \$1,000,000 aggregate limit

The City shall be named as an additional insured on the liability insurance policy or policies, by special endorsement. The liability insurance policy or policies involved shall provide that the same may not be canceled without the City receiving at least thirty (30) days prior written notice of cancellation.

(14) Notices. Any notice required pursuant to this Agreement shall be mailed to the party entitled to the notice at their address set forth above, or at such other address as they shall, from time to time, advise the other party in writing.

(15) Governing Law. The laws of the State of Illinois shall govern this Agreement.

(16) Entire Agreement. This Agreement, including the bid proposal attached hereto and by reference made part hereof, constitute the entire Agreement between the parties hereto with regard to the limb removal services involved herein. All prior negotiations between the parties have been merged in this Agreement. Parol evidence will not be admissible in a court of competent jurisdiction in a proceeding to terminate or enforce performance of this Agreement to alter, add to or change any of the terms of this written Agreement.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement to take effect on the date first above written.

COMPANY:

All Type Tree Service, Inc.
3330 Keim Road
Waterloo, IL 62298

CITY:

City of Columbia, Illinois
208 South Rapp Avenue
Columbia, IL 62236

Signature

BY: _____
Kevin B. Hutchinson, Mayor

Printed Name

ATTEST:

Title

City Clerk

(SEAL)