



City of Sunfish Lake
City Council Agenda Report

8.c.

TO: Mayor Daniel O’Leary and Members of the Sunfish Lake City Council
FROM: Kori Land, City Attorney
DATE: May 13, 2025
RE: Independent Contractor Agreement for Forester Services

BACKGROUND

The City and Old Tjikko LLC entered into a one-year Independent Contractor Agreement for Forester Services dated January 1, 2024, which expired on December 31, 2024. While we have used the same City Forester for many years, these agreements were required to be approved every year with very few, if any changes.

The City Clerk raised the issue that the Agreement was overdue for renewal, therefore, we used this opportunity to update the Agreement and make some necessary changes.

DISCUSSION

A new Independent Contractor Agreement has been prepared with a few updated terms and conditions and it has been reviewed and accepted by the City Forester. This new Agreement is before you now for your consideration.

Changes from prior Agreements:

- **Contract Term:** The requirement for annual renewal has been removed and this will now be an on-going agreement that can be terminated without cause upon 30 days’ written notice or terminated after failure to cure a default.
- **Services:** The services provided remain the same, except that he will no longer maintain and install fire signs, since this is now managed by the City Engineer.
- **Hourly Rate:** Has been increased for a COLA adjustment to \$73.00 per hour, which will be increased on an annual basis on January 1 each year by 3%.
- **Invoice Payments:** The City’s time to pay invoices once received has been increased to 45 days.
- **The Agreement’s effective date** is retroactive to Jan. 1 and we will owe him back-pay for the increased hourly rate.

RECOMMENDATION

Approve the new Independent Contractor Agreement for Forester Services with Old Tjikko LLC.

ATTACHMENT

Independent Contractor Agreement for Forester Services

INDEPENDENT CONTRACTOR AGREEMENT
FOR FORESTER SERVICES
FOR THE CITY OF SUNFISH LAKE

THIS INDEPENDENT CONTRACTOR AGREEMENT RELATING TO FORESTER SERVICES FOR THE CITY OF SUNFISH LAKE (“Agreement”) is made this ____ day of _____, 2025, by and between Old Tjikko LLC, a Minnesota limited liability Contractor (“Old Tjikko”), and the City of Sunfish Lake, a Minnesota municipal corporation (“City”).

Subject to the conditions and terms of this Agreement and in reliance upon the representations, warranties and covenants of the parties herein contained, the parties hereby agree as follows:

ARTICLE 1
RECITALS

WHEREAS, the City is a statutory city operating under Optional Plan A form of government pursuant to Chapter 412 of Minnesota Statutes. Under Minnesota law, the City Council has the authority to enter into service contracts on behalf of the City.

WHEREAS, the City finds that Old Tjikko is a limited liability company that has the requisite qualifications, skills, background, and experience to perform Forester Services for the City.

WHEREAS, by this Agreement, the City retains Old Tjikko as an independent contractor to perform Forester Services for the City.

ARTICLE 2
DEFINITIONS

The following terms, unless elsewhere defined specifically in this Agreement, shall have the following meanings as set forth below.

2.1 **Contract Term.** “Contract Term” shall mean from the Effective Date until terminated pursuant to 3.10.

2.2 **City.** “City” shall mean the City of Sunfish Lake, a Minnesota municipal corporation.

2.3 **Contractor.** “Contractor” shall mean Old Tjikko LLC, a Minnesota limited liability Company.

2.4 **Effective Date.** “Effective Date” shall mean January 1, 2025.

2.5 **Forester Services.** “Forester Services” shall mean all of the following duties, services, and activities:

- a. Perform all duties, responsibilities, and obligations of the position of City Forester as prescribed by the Council.
- b. Attend City Council meetings as requested by the Council.
- c. Attend Planning Commission meetings as requested by the Council.
- d. Upon request of the City Council, develop a city-wide reforestation program.
- e. Administer a program to control tree disease on a city-wide level, with emphasis on oak wilt; enforce the provisions of Chapter 1103 of the Sunfish Lake City Code relating to diseased trees.
- f. Maintain the forests located within City owned property.
- g. Perform site and building reviews on new developments.
- h. Assist with the control of the tree-hole mosquito; enforce the provisions of Chapter 606 of the Sunfish Lake City Code relating to the tree-hole mosquito control program.
- i. Remove and dispose of animal carcasses along City roadways.
- j. Bring to Council's attention enforcement issues relating to the Sunfish Lake City Code and ordinances affecting the natural environment, with emphasis on those provisions relating to noxious weeds, the tree-hole mosquito control program (Chapter 606 of the City Code), and the diseased tree control program (Chapter 1103 of the City Code).
- k. Provide community education on the natural environment.
- l. Continue the Tree City USA Program.
- m. Serve as Deputy Weed Inspector and provide weed control inspection functions.
- n. Issue burning permits as permitted by the State of Minnesota.
- o. Trim or remove trees and other vegetation on City property, within City right-of-way, and within City easements.
- p. Remove debris from City property and City right-of-way.

ARTICLE 3 **FORESTER SERVICES**

3.1 Use of Forester Services. For the Contract Term, City does hereby retain Contractor as an independent contractor to perform Forester Services.

3.2 Performance of Forester Services. For the Contract Term, Contractor, does hereby agree to provide Forester Services to the City.

3.3 Manner of Performance. Contractor shall be available to perform Forester Services during the Contract Term. Contractor shall devote whatever time is needed to perform the Forester Services. Contractor is responsible for setting its own work schedule and hours such that the Forester Services are performed in a timely and diligent manner. Contractor shall be solely responsible for the manner in which the results are obtained. Contractor shall furnish its own vehicles, equipment, and tools necessary to perform the Forester Services.

3.4 Compensation for Forester Services. City shall pay Contractor for Forester Services in the following amounts:

- a. An hourly rate of \$73.00 per hour, which will be increased on an annual basis on January 1 each year by 3%.
- b. Reimbursement of supplies and materials, with no mark-up in price, which are requested by the City.

Contractor shall bill the City monthly, and the City shall pay Contractor within forty-five (45) days after the invoice is received.

3.5 Employees and Subcontractors. As an independent contractor, Contractor may hire, supervise, and pay employees and/or subcontractors to assist in the performance of the Forester Services. However, Contractor shall remain ultimately responsible for the work, results, and services performed hereunder. Contractor shall be solely responsible for the training, supervision, and instruction of its employees and subcontractors. Contractor shall be solely responsible for the payment of any employees and/or subcontractors it retains in the performance of the Forester Services and shall be solely responsible for all withholding requirements and income taxes with respect to the same, including but not limited to payment of all FICA, social security, Medicare, and other employment-related taxes and withholdings. If Contractor hires employees to assist in the performance of the Forester Services, Contractor shall be solely responsible for providing worker's compensation and unemployment insurance coverage for its employees, as required by law. If Contractor hires employees to assist in the performance of Forester Services, Contractor shall be responsible for obtaining a federal employer identification number from the Internal Revenue Service.

3.6 No Reimbursement for Expenses. As an Independent Contractor, Contractor shall not receive reimbursement for mileage, meals, travel costs, or other business expenses. Contractor shall be solely responsible for furnishing its own vehicles, equipment and tools necessary to perform the Forester Services. To the extent tasks or projects require supplies and materials (such as trees, shrubs and mulch) and to the extent the Council requests that Contractor provide such supplies and materials, the City shall pay Contractor for the supplies and materials at the same price that Contractor purchased such supplies and materials; there shall be no mark-up in price by Contractor above that which Contractor paid for the supplies and materials.

3.7 Status of Independent Contractor. Nothing contained in this Agreement shall be deemed to create an employer-employee relationship between the City and Contractor. At all times, Contractor shall act as an independent contractor and shall exercise independent supervision and control over the means and manner by which it performs the Forester Services.

Contractor shall be responsible for the performance and completion of the Forester Services and shall be solely responsible for the setting of the work hours and schedules necessary to complete the Forester Services. The City does not provide training or instruction to Contractor or its employees and subcontractors. As an independent contractor, Contractor shall not receive any pension or fringe benefits, including but not limited to Public Employee's Retirement Association (PERA) contributions, vacation or sick leave, disability, health, medical or dental insurance, holiday pay, or other benefits. The City shall provide to Contractor an IRS Form 1099 with respect to the consideration paid to Contractor for the Forester Services. Contractor, not the City, is obligated to pay all state and federal taxes on the amounts it receives from the City. Nothing contained in this Agreement shall be deemed to create a joint venture or partnership or joint enterprise between Contractor and the City. Under no circumstances are Contractor's employees, in performing services for the City, to be considered the City's employees or agents. Contractor alone has a responsibility and shall withhold from its employees' salaries or pay, as required by law, all contributions and taxes for all applicable federal, state and local taxes, social security, disability, workman's compensation, unemployment, disability benefits and any other regular expenses involved in the employment of individuals. Further, Contractor alone shall be responsible for any fringe benefits provided to its employees, including, but not limited to, sick leave and holiday, health and liability insurance, and for paying any payroll related taxes or contribution required by law. In the event that the Internal Revenue Service or any state or local government agency or any other applicable entity, determines that Contractor or any employee of Contractor is an employee of the City for purposes of any tax liability, or liability for any other statutory payment, Contractor agrees to indemnify the City from any liability arising thereon and releases the City from all liabilities, costs, and expenses (including, but not limited to reasonable attorney's fees) associated with the defense of such claim(s). To the extent required under applicable law, Contractor shall report as income all compensation received by Contractor pursuant to this Agreement and pay all taxes due on such compensation. Contractor shall indemnify and hold harmless the City and its employees, officers, Council and attorneys from any and all claims, actions, causes of action, demands, liability, losses, costs and expenses (including court costs and reasonable fees of attorneys) arising from any obligation imposed on the City to pay any withholding taxes, social security, unemployment insurance, worker's compensation insurance, disability insurance or similar items, including interest and penalties thereon, in connection with any payments made to Contractor by the City pursuant to this Agreement.

3.8 Indemnification. Contractor agrees to indemnify, defend and hold harmless the City from and against any and all claims, costs, losses, expenses, demands, actions, or causes of actions, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence, willful misconduct, or other fault of Contractor or its employees, agents, or subcontractors in the performance of this Agreement.

3.9 Insurance. During the Contract Period, Contractor shall have the following insurance in full force and effect:

- a. General liability insurance in at least the amount of \$1,500,000 per occurrence. The City shall be named as an additional insured with respect to the General Liability Insurance Policy.
- b. Worker's Compensation Insurance in compliance with State of Minnesota requirements.

Upon execution of this Agreement, Contractor shall provide Certificates of Insurance that evidence that the insurance policies set forth above are in place; such Certificates of Insurance shall be provided to the City Treasurer. During the Contract Term, upon request by the City Treasurer, Contractor shall provide updated Certificates of Insurance that evidence that the insurance policies as set forth above are in effect.

3.10 Termination.

- a. No cause termination. This Agreement may be terminated by either party without cause upon 30 days' written notice to the other. City shall pay for services rendered through the date of termination.
- b. For cause termination. This Agreement may be terminated by either party due to default. In the event of a default, the non-defaulting party shall provide notice of termination and may offer an opportunity to cure or may immediately terminate the Agreement. The City shall pay for services rendered through the date of termination, unless such services are the subject of dispute and the cause for immediate termination.

3.11 Conflict of Interest Policy. Contractor agrees to comply with any conflict of interest policy adopted by the Council from time to time.

ARTICLE 4
MISCELLANEOUS

4.1 Assignment. No party may assign this Agreement without the advance written consent of the other party.

4.2 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Minnesota. Any action arising out of this Agreement shall be venued in Dakota County, Minnesota.

4.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

4.4 Headings. The subject headings of the paragraphs and subparagraphs and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of their provisions.

4.5 Acknowledgement of Reasonableness. The parties agree that the provisions in this Agreement are fair and reasonable.

4.6 Entire Agreement and Amendment. The text herein shall constitute the entire agreement between the parties hereto and shall supersede all prior oral or written agreements. This Agreement shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each party.

4.7 Binding Effect. This Agreement shall be binding upon the parties.

4.8 Waiver. The waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any other or subsequent breach whether like or different in nature.

4.9 Severability. If any provision or portion thereof contained in this Agreement shall be held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first set forth above.

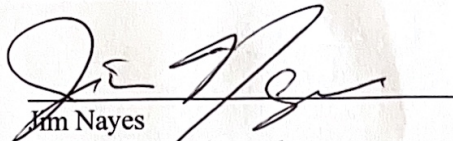
CITY OF SUNFISH LAKE

By: _____
Dan O'Leary
Its Mayor

By: _____
Christy Wilcox
Its City Clerk

OLD TJIKKO LLC

By:


Jim Naves
Its President and Member

5-6-2025