

AGENDA
BOARD OF PARK COMMISSIONERS
Monday, March 14, 2011
Kenosha Municipal Building Room 202
5:00 pm

Chairman: Michael J. Orth
Vice Chair: Rocco J. LaMacchia, Sr.
Commissioners: Jesse L. Downing
Anthony Kennedy
Lawrence Green

Call to Order
Roll Call

A. APPROVAL OF MINUTES

A-1. Approval of minutes of regular meeting held on February 28, 2011 and the special meeting held on March 7, 2011.

B. DEFERRED

B-1. Approval of Lease By and Between the City of Kenosha, Wisconsin (A Municipal Corporation) and Harris Golf Cars (An Iowa Corporation). *(Deferred from the special meeting held on Monday, March 7, 2011)*

C. REFERRED TO COMMISSION

C-1. Request from KUSD to place signs on the backstop at Anderson Park Diamond #2. *(District 9)*

C-2. Request from Eric Olson to place signs at Simmons Stadium. *(District 3)*

C-3. Award the Professional Service Contract for Parkway Tree Removal Project #11-1410 to Droprite Tree & Landscape, LLC, Somers, Wisconsin in the amount of \$97,695.00. *(Also referred to Public Works Committee)*

C-4. Award the Professional Service Contract for Parkway Tree Pruning Project #11-1411 to Trees "R" Us, Inc, Wauconda, Illinois in the amount of \$76,000.00. *(Also referred to Stormwater Utility Committee)*

C-5. Award the Professional Service Contract for Parkway Tree Planting Project #11-1412 to Paul Swartz Nursery & Garden Shop, Inc, Burlington, Wisconsin in the amount of \$33,975.00.

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS

OTHER BUSINESS 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.

CITY OF KENOSHA – BOARD OF PARK COMMISSIONERS
Meeting Minutes – February 28, 2011

A meeting of the Board of Park Commissioners was held on Monday, February 28, 2011, at the Kenosha Municipal Building in Room 202. The meeting was called to order at 5:00 pm. The following members were present: Chairman Orth, Commissioners LaMacchia, Downing, and Green. Commissioner Kennedy arrived after minutes were approved. Staff members in attendance were Jeff Warnock, Shelly Billingsley, and Kevin Risch.

It was moved by Commissioner Green, seconded by Commissioner LaMacchia, to approve the minutes from the meeting held on Monday, February 14, 2011. Motion passed 4-0.

- C-1. Request from KUSD for full sponsorship for their event (Back to School) on September 10, 2011, in Harbor Park. *(District 2)*
Public Hearing: Patricia Demos, 131 43rd Avenue, Somers, WI was present and informed the commission that KUSD was not asking for sponsorship.
No action necessary.
- C-2. Request from World Congress of Poets for the following:
a. Approval to hold their events at the Bandshell in Pennoyer Park, on August 30, 2011 and Wolfenbittel Park, on August 31, 2011. *(District 1 & 2)*
b. Approval for full sponsorship.
It was moved by Commissioner Downing, seconded by Commissioner LaMacchia, to approve C-a. Motion passed 5-0. It was moved by Commissioner Kennedy, seconded by Commissioner Downing, to approve C-b a one time only at 50% sponsorship. Motion passed 5-0
- C-3. Request from Armitage Academy for full sponsorship for a classroom study to be held on April 14, 2011 at the Southport Beach House. *(District 3)*
It was moved by Commissioner Kennedy, seconded by Commissioner Green, to approve with no sponsorship. Motion passed 5-0.
- C-4. Award of Contract for Project 10-1412 Southport Beach House ADA Ramp (7825 First Avenue) to Camosy Construction, Kenosha WI, in the amount of \$27,000.00. *(District 3)*
Staff/Commissioners: Commissioner Kennedy asked if this was budgeted for \$120,000.00 will the \$97,000.00 stay in the parks budget or can it be used any where. Shelly, Kevin, and Chairman Orth explained that it would stay in the parks budget.
It was moved by Commissioner Downing, seconded by Commissioner LaMacchia, to approve. Motion passed 5-0.

INFORMATIONAL ITEMS:

1. Peorio Park Controlled Burns – Jeff gave an update on the controlled burns and an update on the crayfish problem.
2. CORP Public Information Meetings Summary – Shelly was present to answer any questions. Commissioner LaMacchia asked if Park Impact Fees stayed in the district or if they were use for all parks. Commissioner Kennedy asked that a copy of this should be sent to the Technology Committee. Chairman Orth requested that when we receive the draft proposal to send a copy to the Technology Committee.
3. Bike Path Mapping Funding Award – Shelly was present to answer any questions. Commissioner Kennedy asked if we had any communications with the county.
4. Kenosha Bandshell Concerts Funding Award – Shelly informed the commission that Mary Durkee is working with Penney Haney to come up with the dates.

DIRECTOR/SUPERINTENDENT COMMENTS: Jeff informed the Commission that KUSD will be installing and monitoring two cameras that will be put on the cell tower in Anderson Park.

There being no further business to come before the Board of Park Commissioners it was moved, seconded and unanimously carried to adjourn at 5:39 pm.

CITY OF KENOSHA – BOARD OF PARK COMMISSIONERS
Meeting Minutes – March 7, 2011

A meeting of the Board of Park Commissioners was held on Monday, March 7, 2011, at the Kenosha Municipal Building in Room 202. The meeting was called to order at 6:50 pm. The following members were present: Chairman Orth, Commissioners LaMacchia and Kennedy. Commissioners Downing and Green were excused. Staff members in attendance were Jeff Warnock.

- C-1. Approval of Lease By and Between the City of Kenosha, Wisconsin (A Municipal Corporation) and Harris Golf Cars (An Iowa Corporation)
It was moved by Commissioner Kennedy, seconded by Commissioner LaMacchia, to defer to the next meeting. Motion passed 3-0.

DIRECTOR/SUPERINTENDENT COMMENTS: None

CITIZEN/COMMISSIONERS COMMENTS: None

There being no further business to come before the Board of Park Commissioners it was moved, seconded and unanimously carried to adjourn at 6:55 pm.



Engineering Division
 Michael M. Lemens, P.E.
 Director/City Engineer
Fleet Maintenance
 Mauro Lenci
 Superintendent
Parks Division
 Jeff Warnock
 Superintendent

Street Division
 John H. Prijic
 Superintendent
Waste Division
 Rocky Bednar
 Superintendent

DEPARTMENT OF PUBLIC WORKS

Ronald L. Bursek, P.E., Director

Municipal Building · 625 52nd ST · RM 305 · Kenosha, WI 53140
 Telephone (262) 653-4050 · Fax (262) 653-4056

March 14, 2011

TO: Michael Orth, Chairman
Board of Park Commissioners

FROM: Jeff Warnock, Superintendent of Parks *JW*

Re: Approval of Lease By and Between the City of Kenosha, Wisconsin (A Municipal Corporation) and Harris Golf Cars (An Iowa Corporation)

BACKGROUND INFORMATION

We did a request for proposal with the Finance Department Purchasing Agent and evaluated all proposal and negotiated the best possible deal with Harris Golf Cars. Currently we are evaluating cost savings for lease to own or a straight term lease.

STAFF RECOMMENDATION

Staff recommends a two week deferral.

C-1



Engineering Division
Michael M. Lemens, P.E.
Director/City Engineer
Fleet Maintenance
Mauro Lenci
Superintendent
Administrative Supervisor
Janice D. Schroeder

Street Division
John H. Prijic
Superintendent
Waste Division
Rocky Bednar
Superintendent
Parks Division
Jeff Warnock
Superintendent

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March 9, 2011

TO: Alderman Michael Orth, Chairman
Board of Park Commissioners

FROM: Jeff Warnock, Park Superintendent *Jw*

RE: Advertising signs for Anderson Park Diamond #2

Attached you will find pictures of backstop signs that the KUSD would like to place at Anderson Park Diamond #2. This athletic field is utilized by the Tremper Softball Team.

Recommendation: To approve the signs for placement

"NEW" 2011 Temper Softball Field - backstop signage

4'

**BUILDING TRADES
LABOR UNIONS**

- BRICKLAYERS & ALLIED CRAFT WORKERS LOCAL NO. 1
- CARPENTERS 651
- IRON WORKERS LOCAL NO. 8
- PAINTERS & DRYWALL FINISHERS D.C.# 7
- PLASTERERS & CEMENT MASONRY LOCAL NO. 599 AREA 842
- ROOFERS, WATERPROOFERS LOCAL NO. 65

**ELECTRICAL ASSOCIATION
AND ELECTRICAL UNION**



Custom Signs & Graphics Services Provided By:
J. EWENS DESIGN
 SIGN DIVISION
 2121 Szold Street / Kenosha, WI 53140
 262.652.1415

3'1" x 4' w x .125" d Dibond board signs
 1 - each required

3/1/11 - REVISED 3/3/11
 filename: Temper Softball Field.ppt





Engineering Division
Michael M. Lemens, P.E.
Director/City Engineer
Fleet Maintenance
Mauro Lenci
Superintendent

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DEPARTMENT OF PUBLIC WORKS

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March 9, 2011

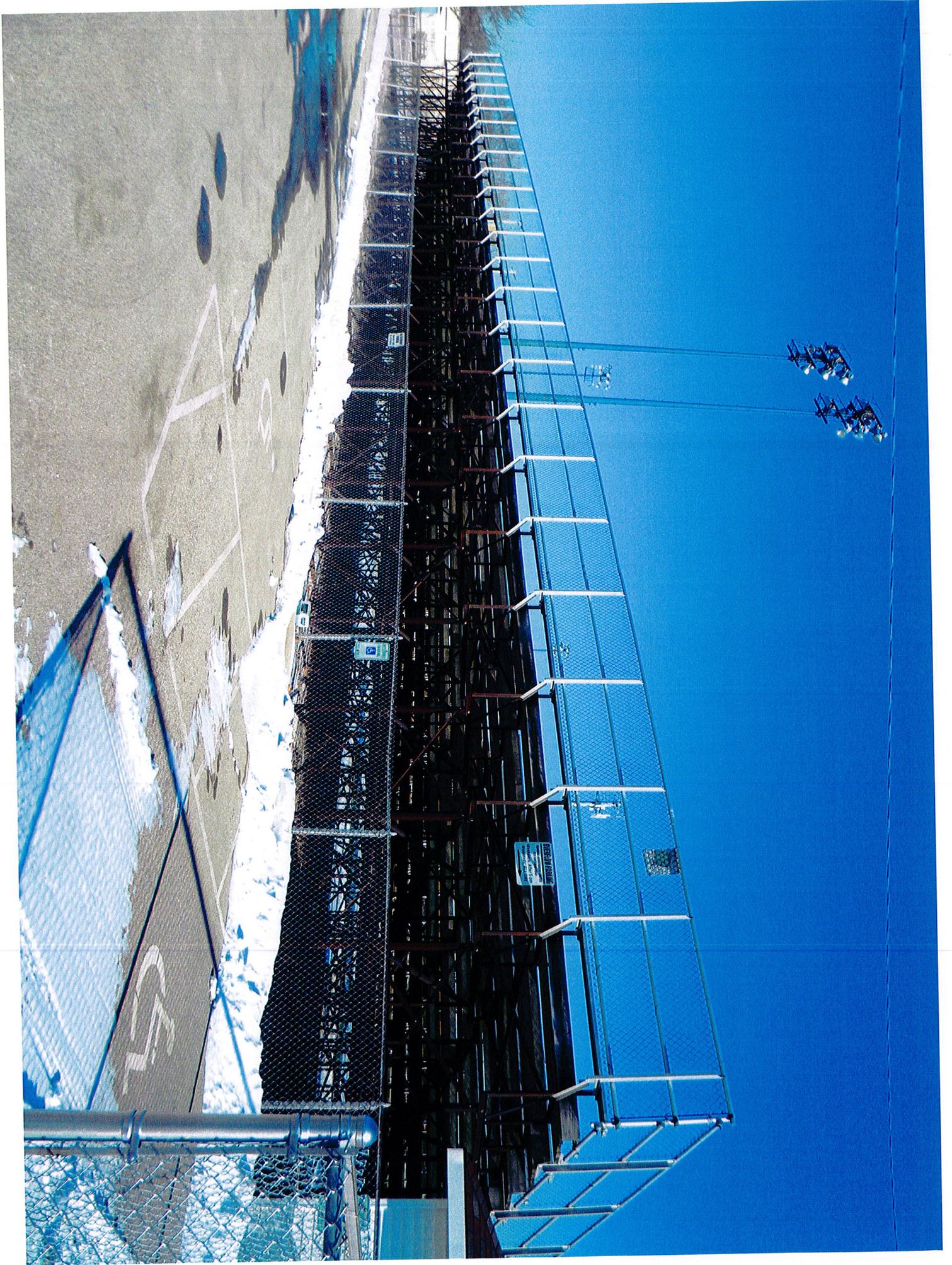
TO: Alderman Michael Orth, Chairman
Board of Park Commissioners

FROM: Jeff Warnock, Park Superintendent *JW*

RE: Advertising signs – Simmons Stadium

A request has been received from Eric Olson for permission to place advertising signs at Simmons Stadium. They would be placed on the fencing of the bleachers that face Sheridan Road.

Recommendation: To approve the request for signs, however the organization will need to provide the Park Superintendent with a proof of the sign size and wording for approval prior to having signs constructed and placed on the fencing.





ENGINEERING DIVISION
MICHAEL M. LEMENS, P.E.
DIRECTOR/CITY ENGINEER

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
RONALD L. BURSEK, P.E., DIRECTOR

MUNICIPAL BUILDING • 625 - 52ND ST. • RM. 305 • KENOSHA, WI 53140
TELEPHONE (262) 653-4050 • FAX (262) 653-4056

C-3

March 10, 2011

To: Michael Orth, Chairman
Park Commission

G. John Ruffolo, Chairman
Public Works Committee

From: Ronald L. Bursek, P.E. 
Director of Public Works

Subject: *Professional Service Contract for Parkway Tree Removals*

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received five proposals to complete the Parkway Tree Removal contract for 2011. Staff has reviewed the proposals and has chosen Droprite Tree & Landscape LLC based on their references, experience, and standard quoted rates.

The 2011 Adopted Capital Improvement Plan line item PK-93-004 has \$140,000 with \$80,000 targeted for Reforestation and \$60,000 targeted for Tree & Stump Removal. However after closer examination of the program and the increase of damaged trees due to severe weather over the last few years staff is recommending that more of the funds under Tree Reforestation be redirected to the Tree/Stump Removal.

Staff is anticipating that the 2011 Tree/Stump Removal contract will allow the Park Division to eliminate the backlog that has been generated over the past few years.

In addition, the City of Kenosha Public Works – Engineering Division has worked with staff to arrange the overlap of tree removals for various Public Works roadway projects be included under the Tree Removal contract on a per inch rate as identified in the 2011 proposal. The funding for the additional trees will be paid for out of the appropriate CIP line items.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Droprite Tree & Landscape LLC for \$97,695 to include their quote of \$84,995 with \$12,700 of contingency, authorize the Director to execute the contract and authorize the remaining funds under Tree Reforestation be used for Tree/Stump Removal. The funding for this work will be paid for out of CIP PK-93-004 Reforestation/Tree & Stump Removal.

2011 CONTRACT TO REMOVE TREES

By And Between

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

And

**DROPRITE TREE & LANDSCAPE, LLC
a Wisconsin Limited Liability Company**

TOTAL CONTRACT AWARD NOT TO EXCEED \$97,695.00

CONTRACT AMOUNT: \$84,995.00

**COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF KENOSHA:
NOT TO EXCEED \$12,700.00**

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 **DROPRITE TREE & LANDSCAPE, LLC**, a Wisconsin limited liability company, located at 7709 12th Street, Somers, Wisconsin, 53171, hereinafter referred to as the “**CONTRACTOR**”.

WITNESSETH:

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 DROPRITE TREE & LANDSCAPE, 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, basal sprouts, brush, vines, weeds and debris removal within five feet (5') from outside of the trunk.
 - f. **“STUMPING”** means either removal of a stump or grinding of a stump, as appropriate.
 - g. **“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.
 - h. **“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 Eighty-Four Thousand, Nine Hundred Ninety-Five Dollars (\$84,995.00), 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 Twelve Thousand, Seven-Hundred Dollars (\$12,700.00). 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 with respect to each tree within five (5) working days of the start of the removal process.

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 December 31, 2011, 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 obligation 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, surplus or waste materials that have accumulated as a result of the Work.

Within two (2) hours after the completion of the Removal Process of a specified tree, the **CONTRACTOR** shall remove all 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 One Hundred Dollars (\$100.00) 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. 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.

- o Commercial General Liability: General Aggregate – One Million (\$1,000,000.00) Dollars; each occurrence – One Million (\$1,000,000.00) Dollars.
- o Automobile Liability :
 - Bodily Injury per Person – One Million (\$1,000,000.00) Dollars;
 - Bodily Injury per Accident – One Million (\$1,000,000.00) Dollars;

- Property Damage – Two Hundred Thousand (\$200,000.00) Dollars; OR a combined single limit of One Million (\$1,000,000.00) Dollars.
- Worker’s Compensation: Statutory limits.

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**.

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:

Droprite Tree & Landscape, LLC
7709 12th Street
PO Box 163
Somers, Wisconsin 53171

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 Municipal Corporation**

BY: _____
RONALD BURSEK, Director,
Department of Public Works
Date: _____

BY: _____
DIRK NELSON, City Forester
Date: _____

STATE OF WISCONSIN)
: SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2011, **RONALD BURSEK, Director of Public Works**, and **DIRK NELSON, City Forester**, of the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, to me known to be such Director of Public Works and City Forester of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said City, by its authority.

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

2011 Contract Removal List #1

ADDRESS	STREET	SPECIES	Cost	Modifier	DBH	LOCATION	RPLCT	MARKED	NOTES
7308	10 AVENUE	NORWAY MAPLE			46		1		
7412	10 AVENUE	ASH			28		1		
7910	10 AVENUE	SILVER MAPLE			38		1		
7910	10 AVENUE	SILVER MAPLE			48		0		
6113	11 AVENUE	SUGAR MAPLE			34		1		LOW GROW REPLACEMENT
5026	14 AVENUE	ASH			44		1		
7314	14 AVENUE	BOXELDER			15	MIDDLE TREE ON 14TH AVE.	1		
8611	15 AVENUE	SILVER MAPLE			52		0		
4709	17 AVENUE	ASH			34		1		
8115	17 AVENUE	ASH			28		1		TREE ON 24 STREET
2406	18 AVENUE	NORWAY MAPLE			24		0		
3537	18 AVENUE	HONEYLOCUST			22				
3821	18 AVENUE	SILVER MAPLE			35				
4721	18 AVENUE	SIBERIAN ELM			44		1		
4721	18 AVENUE	AMERICAN ELM			34		0		
7612	18 AVENUE	NORWAY MAPLE			22	SOUTH TREE			
7725	18 AVENUE	ASH			25		0		
8518	18 AVENUE	NORWAY MAPLE			20	SOUTH TREE	1		
3916	19 AVENUE	NORWAY MAPLE			20		0		
3916	19 AVENUE	NORWAY MAPLE			22		1		
8053	19 AVENUE	NORWAY MAPLE			20	NORTH TREE	0		
7302	2 AVENUE	SILVER MAPLE			36	WEST TREE	1		
7750	2 AVENUE	NORWAY MAPLE			30		1		
4714	20 AVENUE	SILVER MAPLE			34		1		
5020	20 AVENUE	SILVER MAPLE			40		1		
6734	20 AVENUE	BASSWOOD			58		0		
6734	20 AVENUE	BASSWOOD			60		1		
7711	20 AVENUE	SUGAR MAPLE			26		1		
8534	20 AVENUE	SUGAR MAPLE			22		1		
1747	21 AVENUE	WHITE ASH			16		1		
4411	21 AVENUE	LINDEN			34		0		
4411	21 AVENUE	LINDEN			36		1		
4612	21 AVENUE	NORWAY MAPLE			36				
4816	21 AVENUE	NORWAY MAPLE			10		1		LOW GROW REPLACEMENT
4701	22 AVENUE	SUGAR MAPLE			18		1		
8450	22 AVENUE	NORWAY MAPLE			16		1		
3007	23 AVENUE	ASH			14		1		

2011 Contract Removal List #1

4616	23 AVENUE	NORWAY MAPLE			38	1	LOW GROW REPLACEMENT
6318	23 AVENUE	HONEYLOCUST			21	0	NARROW PARKWAY
6707	23 AVENUE	NORWAY MAPLE			24	1	LOW GROW REPLACEMENT
6707	23 AVENUE	NORWAY MAPLE			24	0	
7734	23 AVENUE	SUGAR MAPLE			19	1	
7803	23 AVENUE	NORWAY MAPLE		EAST TREE	20	1	
8323	23 AVENUE	ASH			30		
2211	24 AVENUE	GREEN ASH			44		
2503	24 AVENUE	NORWAY MAPLE			22	1	LOW GROW REPLACEMENT
2620	24 AVENUE	NORWAY MAPLE		MIDDLE TREE ON 27 STREET	26	1	LOW GROW REPLACEMENT
5026	24 AVENUE	NORWAY MAPLE			32	1	
7415	24 AVENUE	SUGAR MAPLE			17	1	
8225	25 AVENUE	SUGAR MAPLE			24	1	
8336	25 COURT	SUGAR MAPLE			28	1	
8336	25 COURT	SUGAR MAPLE			28	1	
8354	25 COURT	WHITE ASH			20		
2819	26 AVENUE	ASH			22	1	RPLCTS. ON 26 AVENUE, DOUBLE LOT
3021	26 AVENUE	ASH		ON 26 AVENUE	26	1	
3021	26 AVENUE	ASH		ON 26 AVENUE	30	1	
7726	27 AVENUE	NORWAY MAPLE			32	2	MIDDLE TREE
7954	28 AVENUE	NORWAY MAPLE			24	0	NORTH TREE
7954	28 AVENUE	NORWAY MAPLE			23	0	TREE ON 29 STREET
1726	29 STREET	LINDEN			42	1	
2106	29 STREET	NORWAY MAPLE			27	1	
2112	29 STREET	SUGAR MAPLE			24		
2112	29 STREET	SUGAR MAPLE			32	0	
6610	3 AVENUE	GREEN ASH			48	1	
7405	3 AVENUE	WHITE ASH			30	1	OWNER WANTS WOOD
7002	30 AVENUE	ASH		CONTACT OWNER PRIOR TO REMOVAL	22	1	OWNER WANTS WOOD
7002	30 AVENUE	ASH		GEORGE MASSEY, 909-1120	30	1	
7847	30 AVENUE	NORWAY MAPLE			17	1	
6614	31 AVENUE	ASH			36		
6638	31 AVENUE	NORWAY MAPLE			28		
6638	31 AVENUE	NORWAY MAPLE			46		
6921	31 AVENUE	NORWAY MAPLE			24	1	WEST TREE ON 74 STREET
7400	31 AVENUE	SILVER MAPLE			34		NORTH TREE ON 31 AVENUE
7400	31 AVENUE	SIBERIAN ELM			35		
5237	32 AVENUE	SILVER MAPLE			36	1	

2011 Contract Removal List #1

6528	32 AVENUE	SIBERIAN ELM		30	ON 66 STREET	1	
7812	32 AVENUE	SUGAR MAPLE		18		1	
7818	32 AVENUE	SILVER MAPLE		26	NORTH TREE	0	
5810	33 AVENUE	SILVER MAPLE		34		1	
5918	33 AVENUE	HONEYLOCUST		21		1	PLEASE REMOVE IN FIRST BATCH
8703	33 AVENUE	SILVER MAPLE		39		1	
2011	34 AVENUE	GREEN ASH		26	MIDDLE TREE ON 58 ST.	1	LOW GROW REPLACEMENT
4924	34 AVENUE	SILVER MAPLE		22		1	
5237	34 AVENUE	SUGAR MAPLE		12		1	
5541	34 AVENUE	HONEYLOCUST		24		1	
6037	34 AVENUE	LINDEN		18		1	
2505	34 STREET	LINDEN		10			
2515	34 STREET	SILVER MAPLE		47			
2515	34 STREET	SILVER MAPLE		42		1	
2814	34 STREET	NORWAY MAPLE		12			
5617	35 AVENUE	SUGAR MAPLE		20		1	
5808	35 AVENUE	SIBERIAN ELM		36	ON 59 STREET	0	
6414	35 AVENUE	JAPANESE TREE LILAC		8			
7807	35 AVENUE	NORWAY MAPLE		24	SOUTH TREE	0	
7833	35 AVENUE	NORWAY MAPLE		20	NORTH TREE	0	
1828	35 STREET	OAK		48			
5622	36 AVENUE	NORWAY MAPLE		22		1	
6711	36 AVENUE	ASH		31		1	
7823	36 AVENUE	SILVER MAPLE		56			
1500	36 STREET	NORWAY MAPLE		19		0	
6032	37 AVENUE	SILVER MAPLE		28	S. OF SIDEWALK ON 60 PLACE	0	ON CITY PROPERTY
6032	37 AVENUE	SILVER MAPLE		58	S. OF SIDEWALK ON 60 PLACE	0	ON CITY PROPERTY
7210	37 AVENUE	SILVER MAPLE		40	ON 73 STREET	1	
6426	38 AVENUE	NORWAY MAPLE		14		1	
6429	38 AVENUE	SILVER MAPLE		52		0	
7014	38 AVENUE	SILVER MAPLE		37		1	
7621	38 AVENUE	NORWAY MAPLE		18		1	
7736	38 AVENUE	EUROPEAN HORNBEAM		10			
7831	38 AVENUE	MAPLE		20			
1913	39 STREET	NORWAY MAPLE		14		1	
7211	40 AVENUE	NORWAY MAPLE		20		1	
7815	40 AVENUE	SUGAR MAPLE		15		0	
7850	40 AVENUE	NORWAY MAPLE		18		0	

2011 Contract Removal List #1

7934	40 AVENUE	ASH				22			0	
5910	41 AVENUE	SUGAR MAPLE				38			1	
7031	41 AVENUE	NORWAY MAPLE				16				
4709	42 AVENUE	LINDEN				8			1	
5922	44 AVENUE	AMERICAN ELM				38			1	
2005	44 PLACE	ASH				42			1	
7206	45 AVENUE	SUGAR MAPLE				20	E. TREE ON 73 STREET		1	
5905	46 AVENUE	NORWAY MAPLE				14			0	
6045	46 AVENUE	HONEYLOCUST				24				
6045	46 AVENUE	HONEYLOCUST				27				
3914	46 STREET	ASH				20	WEST TREE		0	
5914	47 AVENUE	NORWAY MAPLE				17	NORTH TREE		0	
6037	47 AVENUE	NORWAY MAPLE				16			1	
6343	47 AVENUE	ASH				13			1	
6343	47 AVENUE	ASH				18			0	
5439	49 AVENUE	HONEYLOCUST				19	SOUTH TREE		0	
8044	49 AVENUE	NORWAY MAPLE				20			1	NORTH TREE
8044	49 AVENUE	NORWAY MAPLE				33			0	SOUTH TREE
7727	5 AVENUE	NORWAY MAPLE				28			1	
5634	51 AVENUE	NORWAY MAPLE				18			1	
5403	52 AVENUE	SIBERIAN ELM				14			1	
5403	52 AVENUE	SIBERIAN ELM				26			0	
6203	54 AVENUE	NORWAY MAPLE				9	ON 62 STREET		0	
2227	54 STREET	NORWAY MAPLE				20			1	
4103	57 STREET	SUGAR MAPLE				16			0	
1617	59 STREET	NORWAY MAPLE				26			0	
4003	6 AVENUE	NORWAY MAPLE				12	WEST TREE ON 40 STREET		0	
3519	60 STREET	HONEYLOCUST				15			0	
3519	60 STREET	HONEYLOCUST				16			0	
4206	60 STREET	HONEYLOCUST				22			1	LOW GROW REPLACEMENT
4517	60 STREET	HONEYLOCUST				20	WEST TREE		1	
570	63 STREET	ASH				15				ACROSS STREET FROM 813 64 ST.
813	64 STREET	ASH				32				
4809	67 STREET	HONEYLOCUST				22	EAST TREE			
5710	67 STREET	ASH				15			1	
4206	68 STREET	NORWAY MAPLE				15				
5422	68 STREET	SILVER MAPLE				26	EAST TREE		1	LOW GROW REPLACEMENT
914	69 STREET	NORWAY MAPLE				22				

CITY OF KENOSHA, WISCONSIN
PARK DIVISION

TREE REMOVAL CONTRACT SPECIFICATIONS
AND SPECIAL CONDITIONS

Project No. 11-1410

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 Kenosha Park Division at (262) 653-4080 between 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 who shall distribute them to each abutting property owner and place them at each building on front of which work will occur. 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 within five (5') feet from outside of trunk.** Cleanup must be completed within two (2) hours of removal. The site is to be 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

Tree Removal Specs. & Special Conditions -
Project No. 11-1410 **Page 2**

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 to a radius of five (5') feet to provide a uniform and level surface. 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 three (3) weeks of tree removal.

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.

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.

Tree Removal Specs. & Special Conditions -
Project No. 11-1410 **Page 3**

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.



ENGINEERING DIVISION
MICHAEL M. LEMENS, P.E.
DIRECTOR/CITY ENGINEER

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

ASSISTANT CITY ENGINEER
SHELLY BILLINGSLEY, P.E.
STORMWATER UTILITY

Ronald L. Bursek, P.E., Director

Municipal Building · 625 52nd ST · RM 305 · Kenosha, WI 53140
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March 10, 2011

To: Anthony Nudo, Chairman
Stormwater Utility Committee

Michael Orth, Chairman
Park Commission

From: Ronald L. Bursek, P.E. 
Director of Stormwater Utility

Subject: *Professional Service Contract to Prune Trees in Lawn Park Areas*

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received four proposals to complete the 2011 contract to prune trees in lawn park areas. Staff has reviewed the proposals and has chosen Trees R Us, Inc. based on their references, experience, and standard quoted rates.

Trees R Us was awarded the 2010 Tree Pruning contract of which there were a few issues that staff is confident can be resolved with an earlier contract release date. Trees R Us Inc was the lowest bid by approximately \$10,000 and has completed a variety of municipality/village contracts.

The 2011 tree pruning contract includes pruning approximately 4,500 trees within the public right-of-way in the following area: within the City limits west of 39th Avenue and South of 60th Street (including 60th Street).

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Trees R Us, Inc. for \$76,000 to include their quote of \$66,425 with \$9,575 of contingency and authorize the Director to execute the contract. The funding for this work will be paid for out of the Stormwater Utility account number 501-09-50106-219.

2011 CONTRACT TO PRUNE TREES

By And Between

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

And

**TREES R US, INC.
An Illinois Corporation**

TOTAL CONTRACT AWARD NOT TO EXCEED \$76,000.00

CONTRACT AMOUNT: \$66,425.00

**COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF KENOSHA:
NOT TO EXCEED \$9,575.00**

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 **TREES R US, INC.** an Illinois corporation, located at 1104 Washington Avenue, Wauconda, Illinois, 60084, hereinafter referred to as the “**CONTRACTOR**”.

WITNESSETH:

WHEREAS, the **CONTRACTOR** has submitted to the **CITY** a written Proposal to provide maintenance pruning work to lawn park area and public right-of-way trees located on all City streets and avenues West of 39th Avenue and South of 60th Street including 60th Street within the City of Kenosha, 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 Prune 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 TREES R US, INC. 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. **“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.
 - f. **“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-Six Thousand Four Hundred Twenty-five Dollars (\$66,425.00), 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 subject to the additional unit price compensation identified in the Proposal not to exceed an additional Nine Thousand Five Hundred Seventy-Five Dollars (\$9,575.00). 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 providing maintenance pruning to all lawn park areas and right-of-way trees on all City streets and avenues located West of 39th Avenue and South of 60th Street including 60th Street within the City of Kenosha, in accordance with the Specifications and Special Conditions in Exhibit "A", which Exhibit is 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**, 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 December 31, 2011, 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 obligation 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 pruning.
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, surplus or waste materials that have accumulated as a result of the Work.

Within twenty-four (24) hours after the completion of the Pruning Process, the **CONTRACTOR** shall remove all 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 One Hundred Dollars (\$100.00) 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. 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.
- o Commercial General Liability: General Aggregate – One Million (\$1,000,000.00) Dollars; each occurrence – One Million (\$1,000,000.00) Dollars.
 - o Automobile Liability :
 - Bodily Injury per Person – One Million (\$1,000,000.00) Dollars;
 - Bodily Injury per Accident – One Million (\$1,000,000.00) Dollars;
 - Property Damage – Two Hundred Thousand (\$200,000.00) Dollars; OR a combined single limit of One Million (\$1,000,000.00) Dollars.
 - o Worker's Compensation: Statutory limits.
- 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**.
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:

Trees R Us, Inc.
1104 Washington Avenue
PO Box 6014
Wauconda, IL 60084

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.

**TREES "R" US, INC.,
An Illinois Corporation**

BY: _____
JENNI WILLIS, President

Date: _____

BY: _____
NICK WILLIS,
Vice President

Date: _____

STATE OF)
 : SS.
COUNTY OF)

Personally came before me this _____ day of _____, 2011, **JENNI WILLIS, President, and NICK WILLIS, Vice President,** of **TREES R US, INC.**, an Illinois corporation, to me known to be such President and Vice President of said corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said corporation, by its authority.

Notary Public,
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney

CITY OF KENOSHA, WISCONSIN
PARK DIVISION

CONTRACT SPECIFICATIONS AND SPECIAL CONDITIONS
FOR PRUNING TREES IN LAWN PARK AREAS

Project No. 11-1411

WORK TO BE PERFORMED. Work will consist of maintenance pruning work on lawn park areas and public right-of-way trees within the City of Kenosha. This includes removing debris from the site and the proper disposal thereof.

LOCATION OF WORK. Work will consist of tree pruning on lawn park areas and public right-of-way in the following section of the City of Kenosha.

- West of 39th Avenue and South of 60th Street including 60th Street within the City of Kenosha city limits.

All work shall be conducted in an organized manner and on a block-by-block basis. Written notification by Contractor of planned work shall be given to residents of the affected area not less than two (2) working days in advance of the schedule work, nor more than seven (7) working days in advance of the work.

Contractor must notify the City Forester of scheduled work locations not less than two (2) working days in advance of said work.

Contractor shall provide the City with a sample of the notification letter to be given to residents in the 2011 Pruning Contract area in advance of commencement of work.

The City reserves the right to change, add or delete areas or quantities as it deems to be in its best interest. The City will give notice to Contractor of the addresses or areas to be pruned.

SCHEDULE. Pruning operations shall commence no later than thirty (30) days after Contract has been awarded. The time limit for completion of work is December 31, 2011, with any trees within the outlined pruning area that have not been pruned, but which require pruning will be placed on future pruning contracts as no time extension will be granted.

Tree pruning shall only be performed during those seasonal periods which will not be injurious to the health and well-being of the tree or the grounds. The City of Kenosha reserves the right to define those periods when pruning will not be permitted by the Contractor. Unless otherwise authorized by the City, failure of the Contractor to comply with the approved pruning schedule shall be sufficient cause to give notice that the Contractor is in default of the Contract, and terminate said Contract.

The Kenosha Park Division may prioritize prunings at its discretion, and will give the Contractor 24 hours advance notification of any such action. These prunings may occur outside the designated contract pruning location.

WORK HOURS. The contractor shall schedule work between the hours of 7:00 A.M. and 6:00 P.M., Monday through Saturday, unless authorized by the City to do otherwise.

SUPERVISION. The Contractor shall be under the direct supervision of the City or its authorized representatives. 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). If any incidents occur that will impact any day's work, the Park Division must be contacted as soon as possible.

INSPECTIONS. The contractor shall call the Kenosha Park Division at 262-653-4080 between 7:00 A.M. and 8:00 A.M. on the morning 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 Park Division has notified abutting property owners of anticipated work using the "Work Notification Form".

The Park Division will provide a supply of informative leaflets at no cost to Contractor who shall distribute them to each abutting property owner and place them at each building on front of which work will occur. 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-133.1-2006 (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.

DISCONTINUANCE OF WORK. The Contractor shall immediately cease any practice obviously hazardous, as determined by the City, upon receipt of either written or oral notice from the Superintendent of Parks and City Forester, or his designee.

TREE PRUNING. The purpose of the Tree Pruning Contract is to raise the lawn park area trees so that they are in compliance with Section 34.05 D. of the Code of General Ordinances for the City of Kenosha, Wisconsin.

All pruning shall be done in accordance with the American National Standards Institute (ANSI) Standard A300-2001.

Trees shall be pruned in such a manner as to preserve their health and maintain a natural shape. Pruning shall consist of the removal of the lower branches of a tree to provide clearance for both vehicular and pedestrian traffic. No more than one-fourth (1/4) of the foliage on a mature tree shall be removed within a growing season. Trees planted within any lawn park or public right-of-way areas that are subject to vehicular traffic shall be pruned so that any branches or foliage projecting over such areas provide a clearance of not less than thirteen and one-half (13.5') feet from the pavement. Any branches or foliage projecting over any public right-of-way areas that are subject to pedestrian or bicycle traffic shall be pruned so that any branches or foliage projecting over such areas provide a clearance of not less than eight and one-half (8.5') feet from the pavement or ground. Any deadwood within the tree shall be removed of the branch exceeds one (1) inch in diameter at its base.

Not every tree within the 2011 Pruning Contract area will require maintenance pruning. Contractor shall bypass and note trees that do not require Contract pruning.

CLEANUP. All debris from tree pruning shall be cleaned up each day before the work crew leaves the site, unless permission is given by the City to do otherwise. It shall be the responsibility of the Contractor to remove and dispose of in a proper and acceptable manner all logs, brush and debris resulting from tree pruning operations. Failure to do so will generate a penalty equal to the cost of cleanup by Kenosha Park Division.

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.

WORKING IN PROXIMITY TO ELECTRICAL HAZARDS. A close inspection shall be made by the tree worker and his or her supervisor to determine whether an electrical conductor passes through a tree or passes within reach distance of the tree worker before climbing, entering or working around any tree.

Only a qualified line-clearance tree trimmer or qualified line-clearance tree trimmer trainee shall be assigned to the work if it is determined that an electrical hazard exists. A trainee shall be under the direct supervision of qualified personnel. A qualified line-clearance tree trimmer is a tree worker who, through related training and on-the-job experience, is familiar with the special techniques and hazards involved in line clearance. A trainee is a worker regularly assigned to a line-clearance tree trimming crew and undergoing on-the-job training who, in the course of such training, has demonstrated his/her ability to perform his/her duties safely at his/her level of training. (OSHA Standard 29CFR1910.)

There shall be a second qualified line-clearance tree trimmer or line-clearance tree trimmer trainee within normal voice communication during line-clearance operations aloft when:

- The line-clearance tree trimmer or line-clearance tree trimmer trainee must approach more closely than ten (10') feet (3m) to any conductor or electrical apparatus energized in excess of 750 volts;
- When branches of limbs being removed cannot first be cut (with a pole pruner/pole saw) sufficiently clear of the primary conductors and apparatus so as to avoid contact; or,
- When roping is required to remove branches or limbs from such conductors or apparatus.

All other workers shall maintain a minimum clearance of ten (10') feet (3m) from energized conductors rated 50 kV phase-to-phase or less; for conductors rated over 50 kV phase-to-phase, the minimum clearance shall be ten (10') feet plus 4/10 inches (3m plus 10mm) for each kilovolt over 59 kV.

Ladders, platforms and aerial devices, including insulated aerial devices, shall not be brought in contact with an electrical conductor.

When an aerial lift device contacts an electrical conductor, the truck supporting the aerial device shall be considered as energized, and contact with the truck shall be avoided, except where emergency rescue procedures are being carried out. Emergency rescue should only be attempted by properly trained persons familiar with electrical hazards.

TREE DAMAGE. Climbing iron, spurs or spikes shall not be used on trees to be pruned. Any tree damage caused by Contractor shall be repaired immediately, and at no additional expense, to the satisfaction of the City. Trees damaged beyond repair, as determined by a qualified arborist, acceptable to the City and the Contractor whose expenses shall be jointly covered by both parties, are to be removed at no expense to the City, with the stump ground to City standards, and replaced by a tree of the size and species designated at no additional expense to the City. The dollar value of such damaged tree(s), as determined by a qualified arborist,

acceptable to the City and Contractor whose expenses shall be jointly covered by both parties, shall be deducted from monies owed to the Contractor.

PROTECTION OF OVERHEAD UTILITIES. Tree trimming operations may be conducted in areas where overhead electric, telephone and cable television facilities exist. The Contractor shall protect all utilities from damage, shall immediately contact the appropriate utility if damage should occur, and shall be responsible for all claims for damage due to his/her operations. The Contractor shall make arrangements with the utility for removal of all necessary limbs and branches which may conflict with or create a personal hazard in conducting the operations of this contract. If the Contractor has properly contacted the utility in sufficient time to arrange for the required work by the utility, delays encountered by the Contractor in waiting for the utility to complete its work shall not be the responsibility to the Contractor.

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.

C-5



ENGINEERING DIVISION
MICHAEL M. LEMENS, P.E.
DIRECTOR/CITY ENGINEER

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
RONALD L. BURSEK, P.E., DIRECTOR

MUNICIPAL BUILDING • 625 - 52ND ST. • RM. 305 • KENOSHA, WI 53140
TELEPHONE (262) 653-4050 • FAX (262) 653-4056

March 10, 2011

To: Michael Orth, Chairman
Park Commission

From: Ronald L. Bursek, P.E. 
Director of Public Works

Subject: *Professional Service Contract for Planting Trees in Lawn Park Areas*

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received six proposals to complete the Planting Trees in Lawn Park Areas contract for 2011. Staff has reviewed the proposals and has chosen Paul Swartz Nursery & Garden Shop, Inc. based on their references, experience, and standard quoted rates.

The 2011 Adopted Capital Improvement Plan line item PK-93-004 has \$140,000 with \$80,000 targeted for Reforestation and \$60,000 targeted for Tree & Stump Removal. However after closer examination of the program and the increase of damaged trees due to severe weather over the last few years staff is recommending that more of the funds be allocated to Parkway Tree Removal contract.

In addition, staff is anticipating that with the increase in the funding allocation for the 2011 Tree/Stump Removal contract will allow the Park Division to eliminate the backlog that has been generated over the past few years.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Paul Swartz Nursery & Garden Shop, Inc for \$33,975 to include their quote of \$29,575 with \$4,400 of contingency, authorize the Director to execute the contract and authorize the remaining funds under Tree Reforestation be used for Tree/Stump Removal. The funding for this work will be paid for out of CIP PK-93-004 Reforestation/Tree & Stump Removal.

**2011 CONTRACT TO PROVIDE TREES
AND TO PLANT SAID TREES IN CITY LAWN PARK AREAS
AND PUBLIC RIGHT-OF-WAY**

By And Between

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

And

**PAUL SWARTZ NURSERY & GARDEN SHOP, INC.
a Wisconsin Corporation**

TOTAL CONTRACT AWARD NOT TO EXCEED \$33,975.00

CONTRACT AMOUNT: \$ 29,575.00

COMPENSATION FOR ADDITIONAL TREES AND PLANTING AS REQUIRED BY THE CITY OF KENOSHA: NOT TO EXCEED \$4,400.00

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 "**CITY**", and **PAUL SWARTZ NURSERY & GARDEN SHOP, INC.**, a Wisconsin corporation, located at 30728 93rd Street, Burlington, Wisconsin, 53105 hereinafter referred to as "**CONTRACTOR**".

W I T N E S S E T H:

WHEREAS, the **CONTRACTOR** has submitted to the **CITY** a written Proposal to provide the trees and the labor and equipment to plant said trees on lawn park areas and public rights-of-way within the City of Kenosha 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 Provide Trees and to Plant Said Trees in City Lawn Park Areas and Public Right-of-Way. 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 **PAUL SWARTZ NURSERY & GARDEN SHOP, INC.** and any subcontractors approved by the **CITY**.

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

d. **“OVERPAYMENT”** means any money the **CONTRACTOR** received which the **CONTRACTOR** was not entitled to receive under this Agreement, 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. **“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.

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

2. **WORK TO BE PERFORMED BY THE CONTRACTOR AND PRICE/COST.** The **CONTRACTOR**, for the sum of Twenty Nine Thousand, Five Hundred Seventy-Five Dollars (\$29,575.00), will perform and complete, or will cause to be performed and completed, all Work in a good and workmanlike manner, and it will do so in accordance with and subject to the provisions of this Contract. In addition, **CONTRACTOR** will provide additional trees and perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal subject to the additional unit price compensation identified in the Proposal not to exceed an additional Four Thousand Four Hundred Dollars (\$4,400.00). 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 planting of 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 WORK.** The **CONTRACTOR** will commence work within five (5) working days following execution of 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**, 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 Work, until completion and acceptance, or November 30, 2011, whichever is earlier.
 - b. Respecting warranty, until expiration of warranty term.
 - c. Respecting Indemnity and Hold Harmless Agreement and Liability Insurance, until claims filed, if any, are resolved, or expiration of applicable statutes 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 obligation 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 tree planting.
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, surplus or waste materials that have accumulated as a result of the Work.

Within twenty-four (24) hours after the completion of the Planting Process of a specified tree, the **CONTRACTOR** shall remove all 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 One Hundred Dollars (\$100.00) 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**, 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. 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: General Aggregate – One Million (\$1,000,000.00) Dollars; each occurrence – One Million (\$1,000,000.00) Dollars.
- Automobile Liability :
 - ◆ Bodily Injury per Person – One Million (\$1,000,000.00) Dollars;
 - ◆ Bodily Injury per Accident – One Million (\$1,000,000.00) Dollars;
 - ◆ Property Damage – Two Hundred Thousand (\$200,000.00) Dollars; OR a combined single limit of One Million (\$1,000,000.00) Dollars.
- Worker's Compensation: Statutory limits.

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**.

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:

Paul Swartz Nursery & Garden Shop, Inc.
30728 93rd Street
Burlington, WI 53105

40. **EXECUTION AUTHORITY.** **CITY AND CONTRACTOR** each certify that they have authority under their respective organizational structure and governing laws to execute this Contract.

2011 KENOSHA STREET TREES, EXHIBIT A

COMMON NAME	BOTANICAL NAME	SIZE	ROOT	QTY.	UNIT PRICE	TOTAL COST
Chanticleer Callery Pear	pyrus calleryana "Chanticleer"	2"	B&B	25	\$160.00	\$4,000.00
Japanese Tree Lilac	syringa reticulata "Ivory Silk" tree form	2"	B&B	15	\$165.00	\$2,475.00
Skyline Honeylocust	gleditsia Triacanthos enermis	2"	B&B	20	\$175.00	\$3,500.00
Red Jewel Crabapple	malus "Jewelcole"	2"	B&B	20	\$145.00	\$2,900.00
Silver Linden	tilia tomentosa	2"	B&B	30	\$165.00	\$4,950.00
Miyabei Maple	acer miyabei	2"	B&B	20	\$170.00	\$3,400.00
Autumn Blaze Maple	acer x freemantii "Jeffersred"	2"	B&B	40	\$165.00	\$6,600.00
Tuliptree	liriodendron tulipifera	2"	B&B	10	\$170.00	\$1,700.00
					Street Occupancy Permit	\$50.00
					Total	\$29,575.00

CITY OF KENOSHA, WISCONSIN
PARK DIVISION

CONTRACT SPECIFICATIONS AND SPECIAL CONDITIONS
FOR PLANTING TREES IN LAWN PARK AREAS

Project No. 11-1412

WORK TO BE PERFORMED. Work will consist of tree providing and planting trees on lawn park areas and public right-of-way within the City of Kenosha. This shall include removing debris from the site and the proper disposal thereof. All labor, supervision, equipment, and materials necessary for the execution of the work shall be provided by the Contractor at no additional cost to the City.

LOCATION OF WORK. Work will consist of tree planting on lawn park areas and public right-of-way, within the City of Kenosha. Total trees to be planted may be up to approximately one hundred eighty (180). The Contractor shall be given planting locations lists on a monthly basis, or as planting locations become available.

SUPERVISION. Contractor shall consult the Kenosha Park Division concerning details and scheduling of all work. Contractor must have a responsible person in charge at all times to whom the Kenosha 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 Kenosha Park Division of Contractor's responsible person(s).

INSPECTIONS. The contractor shall call the Kenosha Park Division at 262-653-4080 between 7:00 A.M. and 8:00 A.M. on the morning 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.

SAFETY. Contractor shall be responsible for contacting Digger's Hotline (1-800-242-8511) and making sure the sites are marked prior to any tree planting.

SCHEDULE. Planting operations shall commence no later than May 15, 2011 and the time limit for completion of work is November 30, 2011, with any outstanding tree plantings that have not occurred being placed on future planting contracts where no time extension is granted. The Kenosha Park Division may prioritize the plantings and redirect the Contractor having given a reasonable lead time to make the changes in scheduling.

WORK HOURS. The contractor shall schedule work between the hours of 7:00 A.M. and 6:00P.M., Monday through Saturday, unless authorized by the City to do otherwise.

DISCONTINUANCE OF WORK. The Contractor shall immediately cease any practice obviously hazardous, as determined by the City, upon receipt of either written or oral notice from the City Forester, or his designee.

APPLICABLE SPECIFICATIONS AND STANDARDS. *American Standard for Nursery Stock, ANS Z60.1*, Current Edition. American Nursery and Landscape Association, 1000 Vermont Avenue, N.W., Suite 300, Washington D.C. 20005.

MATERIALS. All plant material shall conform to American Standard for Nursery Stock. Plants shall be true to species and variety specified, and nursery grown in accordance with good horticultural practices under climatic conditions similar to those in the locality of the planting sites. Trees shall conform

to the measurement specified unless approved in writing by the City. Use of larger plants shall not increase the price to the City. Substitutions of plant material will not be permitted unless authorized in writing by the Kenosha Park Division. The attached Exhibit "A" notes the species, numbers and sizes of trees to be planted under this contract.

Mulching material shall consist of aged or composted wood chips or shredded bark and shall be free of material injurious to plant growth. Wood chips shall be one-eighth (1/8") inch nominal thickness, with at least fifty (50%) percent having an area of not less than one (1 sq. in.) square inch, and no piece having an area of more than six (6 sq. in.) square inches.

Water shall be supplied by the Contractor for the initial watering and be suitable for irrigation and free from ingredients harmful to plant life.

CERTIFICATION. All plant materials, shipments, and deliveries shall comply with State and Federal laws and regulations governing the inspection, shipping, selling, and handling of plant stock. A certificate of inspection, or a copy thereof, for injurious insects, plant diseases and other plant pests shall be made available upon request. The certificate shall bear the name and address of the source of the plant stock.

TRANSPORTATION AND STORAGE OF PLANT MATERIAL. During transportation of plant material, care shall be taken to prevent injury and drying out of the trees. Should the roots be dried out, large branches torn, broken balls of earth broken or loosened, or areas of bark torn, the City may reject the injured tree(s) and order them replaced at no additional cost to the City.

Plants must be protected at all times from the sun or drying winds. Those that cannot be planted immediately upon delivery shall be kept in the shade, well-protected, with the root balls covered with wood chips or other acceptable material, and kept well watered.

EXCAVATION OF PLANTING AREAS. The contractor shall notify Digger's Hotline to verify the location of underground utilities prior to each excavation. The Contractor shall be responsible for assuring that utility marking is complete before planting begins. The Contractor shall be responsible for all damages resulting from neglect or failure to comply with this requirement.

The City Forester shall be notified after the site is marked by Digger's Hotline to locate the tree on the lawn park area. The City will mark the planting site with a white "T" where the tree(s) shall be planted no later than two (2) working days after such notification.

Excavated planting holes that will not be planted with a new tree may pose an immediate and considerable hazard to the public. These open holes shall be adequately barricaded with appropriate warning devices.

Where soil conditions or below ground obstructions which cannot be remedied are encountered, the Kenosha Park Division will designate alternate planting locations. The Kenosha Park Division will incur any costs associated with such relocation.

PLANTING OPERATIONS. Trees must be protected from excessive vibrations. Trees shall not be thrown or bounced off a truck or loader to the ground. Trees shall not be dragged, lifted, or pulled by the trunk or foliage parts in a manner that will loosen the roots in the ball.

Trees shall be set with the top of the root collar at or slightly above finished grade. Trees shall be set so they will be at the same depth one (1) year after planting.

After the tree has been set and one-half of the backfilling is completed to support the root ball, strings, wire baskets, burlap and other wrappings shall be removed from the top one-half of the root ball. The balance of the wrappings may be left intact around the bottom half of the root ball. If the root collar is deep in the ball, excess soil shall be removed away from the trunk using hands, not tools.

Planting holes shall be backfilled with excavated soil. When the holes are approximately two-thirds (2/3) full, they shall be thoroughly watered to eliminate air pockets. After this initial watering, excavated soil shall be installed to the top of the hole and watered. Puddled soil conditions shall be prevented by avoiding compaction once the soil is wet.

All trees shall be mulched over the root system with a three (3") inch to four (4") inch layer of aged wood chips or shredded bark immediately after planting. Mulching material shall be pulled back no less than three (3") inches and no more than six (6") inches from the trunk.

Plants shall be thoroughly watered after planting to nursery standards. Contractor is responsible for initial watering that shall be completed the day of planting.

All twine, rope, transit guards, or wrappings, ribbons, and plant labels secured around the trunk or branches shall be removed after planting is complete.

CLEANUP. Soil, branches and wrapping materials, rejected trees or other debris resulting from any tree planting shall be promptly cleaned up and removed. The work area shall be kept safe and neat at all times until the cleanup operation is completed. Under no circumstances shall the accumulation of soil, branches or other debris be allowed upon a public property in such a manner as to result in a public hazard.

GUARANTEED PERIOD AND PLACEMENT. The Contractor shall guarantee that all trees are healthy and in a flourishing condition for one (1) year from the date of acceptance. The guarantee does not include vandalism, storm damage, animal damage, or mechanical damage unrelated to Contractor's activities.

The Contractor shall remove and replace, without cost, and as soon as weather conditions permit, all plants not in a healthy and flourishing condition as determined by the Kenosha Park Division at any time during the guarantee period. Replacements shall be subject to all requirements stated in this specification.

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 regarding liability for damages or injuries, or the cause of the situation. 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.

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 plantings.