

AGENDA
BOARD OF PARK COMMISSIONERS
Kenosha Municipal Building - Room 204
Monday, April 28, 2014 - 5:00 pm

Chairman:	Scott N. Gordon	Vice Chairman:	Keith W. Rosenberg
Commissioner:	Kurt Wicklund	Commissioner:	Rocco J. LaMacchia, Sr.
Commissioner:	Jack Rose		

Call to Order
Roll Call

Approval of the minutes of the meeting held on April 14, 2014.

1. Request from the Urban League of Racine & Kenosha to hold their “Juneteenth Festival” on Saturday, June 28, 2014 *(with a rain date of Saturday, July 12, 2014)* from 11:00am to 6:30pm at Pennoyer Park and the Bandshell. *(District 1)*
2. Award of Professional Service Contracts for:
 - a. Project 14-1417 Parkway Tree Removal to Asplundh Tree Expert Co. *(Schofield, Wisconsin) (Citywide)(Also referred to Public Works)*
 - b. Project 14-1418 Planting Trees in Lawn Park Areas to Paul Swartz Nursery & Garden Shop Inc. *(Burlington, Wisconsin) (Citywide)*
3. Approval of the second amendment to the Lease between the City *(of Kenosha, Wisconsin)*, Board of Park Commissioners, Baseball Like It Oughta Be, LLC and Northwoods League, Inc. *(Also referred to Finance) (Referred from Council on 4/21/14)*
4. Approval of Resolution to authorize staff to pursue a grant for Sunrise Park. *(District 5)*
5. Change Requests.

INFORMATIONAL ITEMS:

1. Project Status Report

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS/OTHER BUSINESS PERTAINING TO
PARKS COMMISSION MATTERS AS 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.

BOARD OF PARK COMMISSIONERS
Minutes of Meeting held Monday, April 14, 2014

A meeting of the Board of Park Commissioners was held on Monday, April 14, 2014 in Room 204 of the Kenosha Municipal Building. The meeting was called to order at 5:00 pm by Acting Chairman Kennedy.

At roll call, the following members were present: Commissioners Schwartz and LaMacchia. Chairman Orth and Commissioner Mathewson were excused. Staff members in attendance were Michael Lemens, Director of Public Works; Shelly Billingsley, Deputy Director of Public Works/City Engineer; Jeff Warnock, Superintendent of Parks; Police Chief John Morrissey; Deputy Police Chief Dan Miskinis; Fire Chief John Thomsen; Deputy Fire Chief John Poltrock; Alderperson Curt Wilson and Alderperson Scott Gordon.

It was moved by Commissioner LaMacchia, seconded by Commissioner Schwartz, to approve the minutes from the meeting held on Monday, March 10, 2014. Motion carried unanimously.

1. Request from the Journey Church to hold their "Hope Run Kenosha – Stop the Traffik" on Friday, June 6, 2014 at Eichelmann and Wolfenbuttel Park. *(District 2) (PW- Approve 5-0 for use of Celebration Place)*
Public Hearing: John Johnson spoke.
It was moved by Commissioner Schwartz, seconded by Commissioner LaMacchia, to approve. Motion carried unanimously.
2. Request from the Kenosha YMCA to hold their "37th Firecracker Run" on Sunday, June 29, 2014 at Library Park. *(District 2)*
Staff: Jeff Warnock spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Schwartz, to approve. Motion carried unanimously.
3. Approval of Task Orders #11- Amendment #1 for Professional Services by SAA Design Group Inc., for the Poerio Park Trail. *(Districts 1 & 4)*
Staff: Shelly Billingsley spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Schwartz, to approve. Motion carried unanimously.
4. Award of Contract for Project 12-1424 Southport Park Trail Development *(7501 2nd Avenue)* to Parking Lot Maintenance Inc. *(Pewaukee, Wisconsin)* in the amount of \$115,000. *(District 12)*
Staff: Shelly Billingsley spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Schwartz, to approve. Motion carried unanimously.
5. Resolution by Alderperson Keith W. Rosenberg – To Request The Board Of Park Commissioners To Locate And Construct A Dog Park In Anderson Park. *(Referred from Council on 3/3/14) (Deferred from the meeting on 3/10/14)*
Staff: Jeff Warnock spoke.
It was moved by Commissioner LaMacchia, seconded by Commissioner Schwartz, to open up to a public hearing. Motion carried unanimously.
Public Hearing: no one spoke.
It was then moved by Commissioner LaMacchia, seconded by Commissioner Schwartz to defer for 60 days. Motion carried unanimously.

6. Change Requests. (*Districts 1, 4 & 14*)

Staff: Shelly Billingsley spoke.

It was moved by Commissioner LaMacchia, seconded by Commissioner Schwartz, to approve. Motion carried unanimously.

INFORMATIONAL ITEMS:

1. Project Status Report
2. Progress Report of the Master Plans Process - Shelly Billingsley and Jeff Warnock spoke.

SUPERINTENDENT COMMENTS: Jeff presented an appreciation award to Commissioner Chris Schwartz and thanked her for being a member of the Board of Parks Commission. He also has awards for Commissioner Mathewson and Chairman Orth who were absent.

CITIZEN COMMENTS: Tammy Conforti talked about the Dream Playground Program and the progress.

COMMISSIONER COMMENTS: Acting Chairman Kennedy thanked the staff for the level of support with him on Parks issues and announced this is his last meeting as a member for the Board of Parks Commission. He also commented on how very proud he is of the Corp Plan, the City Pools, and Golf Course. Acting Chairman Kennedy also commented on the Kennedy Master Plan and how he would like to see the great lawn and therefore the rugby goals shall be removable.

ADJOURNMENT - There being no further business to come before the Board of Parks Commissioners, it was moved, seconded and unanimously carried to adjourn at 5:16 pm.

**KEITH G. BOSMAN
MAYOR**



CITY OF KENOSHA
625 – 52nd Street
Kenosha, Wisconsin 53140
(262) 653-4000
Fax (262) 653-4010

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April 28, 2014

TO: Chairman Scott Gordon, Board of Park Commissioners

FROM: Mayor Bosman

RE: Juneteenth Festival

The Urban League of Racine and Kenosha is requesting from the Parks Commission the use of Pennoyer Park and the bandshell for their Juneteenth Festival from 11 a.m. to 6:30 p.m. Saturday, June 28, 2014. (Rain date is July 12, 2014). Set up will take place beginning at 10 a.m. June 28 and take down will be complete by 7 p.m. June 28. They plan to have live music and public amplification.

Recommendation: Approval of the use of Pennoyer Park for the Urban League's Juneteenth Festival.

**SPECIAL EVENT APPLICATION
CITY OF KENOSHA – PUBLIC WORKS/PARK DIVISION**

Please note that this application does not guarantee approval of your event or equipment requested. The event will need the approval of the Board of Park Commissioners, Public Works and/or the Superintendent of Parks.

EVENT ORGANIZATION INFORMATION

Name of Responsible Organization Urban League of Racine & Kenosha
Contact Person who is responsible for event: YOLANDA ADAMS
Address: 1418 68th ST
City/State/Zip Kenosha WI 53143
Daytime # ²⁶² 6522111 Evening # ²⁶² 637 8532 Cell# ²⁶² 705-4734
Fax # ²⁶² 637-8634 E-mail: Yadams2013@gmail.com
Is the Host Organization a 501(c)-3? Yes, provide ES# 39-1042332

EVENT INFORMATION

Name of the Event: Juneteenth Festival
Date Requested: Sat 6-28-14 Rain Date 7-12-14
Location Requested: Velodrome Pennoyer Bldg Estimated Attendance 1010
Charitable Event: No Yes. Proceeds donated to Urban League Programs
Brief Description of the Event: Food vendors, entertainment.
To include DJs and amplified music, jump house for children, Resource tables, information booths.
Set up date and time: 6/28/14 Set up at 10:00 A / Start at 11:00A
Time of Event: 11:00 AM - 6:30 PM
Take down date and time: 6:00 Teardown / end 6:30 / exit Park 7:00 PM.

FOR OFFICE USE ONLY:

Application Packet Received _____ Admin. Or Commission Approval _____
Copies sent to: Alderperson _____ Dirk _____ Police _____
Fire: _____ PW Admin _____ PW-Streets: _____ Kris _____
Park Calendar _____ Zimbra _____

**TEMPORARY STRUCTURE
CITY OF KENOSHA - PARK DIVISION**

Please review Item #8 in the Policy/Procedure Manual

Name of Event Juneteenth Festival
Park Requested Pennoyer Park Bandshell Date of Event: Saturday June 28, 2014

**Structure location must be placed on site map.

Type of Temporary Structure

Tent

Staging

Trailers

Inflatables

Dunk Tank

Other, Please explain _____

Vendor Information

(Name of Company and/or individual providing temporary structure)

Name of Company/Individual: Urban League - Yolanda Adams

Work # 262.652.2111 Home # 262.637.8532 Cell 262.705.434

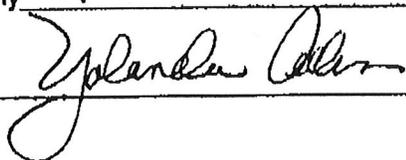
Insurance

All vendors that are supplying the organization with a temporary structure must supply a Certificate of Insurance for product and premises insurance in the amount of \$1,000,000 in the aggregate naming the City of Kenosha as 'additional insured', unless all vendors are being insured as an umbrella under the organizers. Copy to be attached or sent to the Park Division 30 days prior to the event.

Insurance Company Sparks Insurance

Signature

Vendor Signature



Date 04/08/14

**PUBLIC AMPLIFICATION PERMIT APPLICATION
CITY OF KENOSHA – PARK DIVISION**

By ordinance, public amplification is not allowed in City Parks except by permission from the Board of Park Commissioners. Permission for amplification does not exempt a group from obeying Ordinance restrictions on the volume of sound. Please be considerate of park neighbors and other park users. When notifying the alderman and neighborhood association (if necessary) about your event, be sure to include detailed information about any plans you have for amplified sound.

Event Information:

Name of Event Juneteenth Festival

Location of Event: Pennoyer Park Bandshell Date of Event Saturday, June 28 2014

Contact Person Yolanda Adams

Type of Amplified Sound

- DJ
- Sound System
- Speeches/Announcements
- Karaoke
- Other (please specify) _____

Requested time of amplification: Start: 11:00 am Ending 6:30 pm

Name of Company and/or Individual handling the amplification of the event:

Yolanda Adams, CEO, Urban League

Daytime # 262.652.2111 Evening # 262.637.8532 Cell # 262.705.4734

Alderson notification

Have you contacted the Alderson of the District in which the event will be held?

_____ Yes _____ No Date: _____

See Attachment D1 for an excerpt of the Noise Ordinance or go to the City of Kenosha web site at www.kenosha.org and click on General Ordinances and review Section 23.



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 23, 2014

Urban League of Racine & Kenosha
Attn: Yolanda Green
1418 68th St
Kenosha, WI 53143

RE: Park use for a Juneteenth Festival at Pennoyer Park and the Bandshell

To whom it may concern:

Your request for park use at Pennoyer Park and the Bandshell for the Juneteenth Festival event on Saturday, June 28, 2014 (with a rain date of Saturday, July 12, 2014) will be reviewed by the Board of Parks Commission. The meeting is scheduled for:

Monday, April 28, 2014

5:00 p.m.

Room 204

Kenosha Municipal Building, 625-52nd Street

You and/or your representative are required to appear.

If you have any questions, you may contact the Community Relations Liaison Kris Kochman at 262-653-4177 or kkochman@kenosha.org.

Sincerely,

Diane S. Hoff

Secretary of the Parks Commission

cc: Board of Parks Commission
Michael M. Lemens, Director of Public Works – w/a
Shelly Billingsley, Director of Engineering – w/a
Jeff Warnock, Superintendent of Parks – w/a
via email yadams2013@gmail.com



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 16, 2014

To: Eric J. Haugaard, Chairman, Public Works Committee
Scott N. Gordon, Chairman, Park Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Director of Engineering /City Engineer

Subject: **Professional Service Contract for Parkway Tree Removal Project #14-1417**

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received four proposals to complete the Parkway Tree Removal Contract for 2014. Staff has reviewed the proposals and has chosen Asplundh Tree Expert Co., Schofield, Wisconsin, based on their references, experience and standard quoted rates.

Contractor	Proposal Amount
Asplundh Tree Expert Co., Schofield, WI	\$99,850
Droprite Tree & Landscape, Somers, WI	\$103,747
Arbor Images, Inc	\$131,450
Trees "R" Us, Inc.	\$198,255

The 2014 tree removal list contract includes removing approximately 293 trees.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Asplundh Tree Expert Co., Schofield, Wisconsin, for \$110,000 to include their quote of \$99,850 with \$10,150 of contingency and authorize the Director to execute the contract. The funding for this work will be paid for out of CIP PK-93-004 Reforestation/Tree & Stump Removal.

SAB/kjb

CONTRACT TO REMOVE TREES

By And Between

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

And

**Asplundh Tree Expert Co.
A Pennsylvania Corporation**

TOTAL CONTRACT AWARD NOT TO EXCEED \$110,000

CONTRACT AMOUNT: \$99,850

COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF KENOSHA: NOT TO EXCEED \$10,150

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 **ASPLUNDH TREE EXPERT CO.**, a Pennsylvania Corporation, with offices located at 5907 Municipal Street, Schofield, Wisconsin, 54476, hereinafter referred to as "**CONTRACTOR**".

WITNESSETH:

WHEREAS, CONTRACTOR has submitted to **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 **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, **CITY** and **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 **ASPLUNDH TREE EXPERT CO**, 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 **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 **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 **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 CONTRACTOR. The **CONTRACTOR**, for the sum of Ninety-Nine Thousand Eight Hundred Fifty (\$99,850), 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, **CONTRACTOR** will perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal not to exceed an additional Ten Thousand One Hundred Fifty (\$10,150) In the event of a conflict between the Request for Proposal, the Proposal and this Contract, the terms and conditions of the Contract shall control and supersede the other documents. The Work comprises the removing of the trees specified in Instructions to Bidders in accordance with the Specifications and Special Conditions, which 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 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 the 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 November 26, 2014, whichever is earlier.
- b. Respecting the warranty, until expiration of 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 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 and will assure professional quality of 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 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 or 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 **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 right-of-ways, 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 **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 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 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** which the **CITY** could be secondarily liable for, which secondary liability was not assumed by **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 Workers' 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 exempt 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 take 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:

\$1,000,000.00 each occurrence

General Aggregate –\$2,000,000.00 each occurrence

Automobile Liability:

Bodily Injury per Person –\$1,000,000.00

Bodily Injury per Accident –\$1,000,000.00

Property Damage – \$200,000.00; OR a combined single limit of \$1,000,000.00.

Worker's Compensation: Statutory limits.

Employer's Liability

\$100,000 Each Accident

\$100,000 Disease, Each Employee

\$500,000 Disease, Policy Limit

Umbrella Liability

\$2,000,000 over the primary insurance coverage listed.

Said insurance coverage shall be verified by a Certificate of Insurance issued to **CITY**, which shall provide that should any of the described policies be canceled or amended before the expiration date, the issuing company will endeavor to mail a thirty (30) day written notice to the certificate holder. The **CITY** shall be named as an additional insured with respect to the insurance coverages listed above and the **CITY** shall be provided with an additional insured endorsement certifying that the **CITY** is an additional insured with respect to the insurance coverages listed above.

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 provisions 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:

Joseph Schneider
ASPLUNDH TREE EXPERT CO.
5907 Municipal Street
Schofield, Wisconsin 54476

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: _____
MICHAEL M. LEMENS, 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 _____, 2014 **MICHAEL M. LEMENS, Director of Public Works,** and **DIRK NELSON, City Forester,** of the **CITY OF KENOSHA, WISCONSIN,** a municipal corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such Mayor and City Clerk/Treasurer of said City, and acknowledged 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: _____

ASPLUNDH TREE EXPERT CO.
A Pennsylvania Corporation

BY: _____
Joseph B Schneider, Vice President

Date: _____

STATE OF _____)

:SS.

COUNTY OF _____)

Personally came before me this _____ day of _____, 2014,
Joseph B. Schneider, Vice President, of **ASPLUNDH TREE EXPERT CO.**, a Pennsylvania Corporation, to me known to be such Vice President of said company, and acknowledged to me that he executed the foregoing instrument as such officer as the agreement of said corporation, by its authority.

Notary Public, _____ City, ___ State.
My Commission expires/is: _____

AFFIDAVIT OF ORGANIZATION AND AUTHORITY
AND CAREFUL INSPECTION OF SITE
AND PREPARATION OF PROPOSAL OR BID

STATE OF WISCONSIN)
:SS.
COUNTY OF Marathon)

Joseph B. Schaeider being first duly sworn, on oath, deposes and says that the Bidder on the attached Bid Proposal is organized as indicated below, and that all statements herein are made on behalf of such Bidder, and this deponent is authorized to make them.

[Fill Out Applicable Paragraph]

AA **CORPORATION.** The Bidder is a corporation incorporated and existing under the laws of the State of _____, and its President is George Crechman its Secretary is Joseph Dwyer, and it does have a corporate seal.

The President is authorized to sign construction contracts and bids for the Company by action of its Board of Directors taken on _____, a certified copy of which is attached hereto. [Strike out the last sentence, if applicable.]

LIMITED LIABILITY COMPANY. The Bidder is a limited liability company organized and existing under the laws of the State of _____. Pursuant to its articles of organization, the Bidder may be bound by action of its managing member/members [strike one].

PARTNERSHIP. The Bidder is a partnership consisting of _____, General Partners, doing business under the name of _____.

SOLE PROPRIETOR. The Bidder is an individual; and, if operating under a trade name, such trade name is as follows: _____.

ADDRESS. The business address of the Bidder is as follows.

5907 MUNICIPAL STREET
SCARFIELD, WI
54476

TELEPHONE NUMBER: 715-241-8733

STATUTORY SWORN STATEMENT.

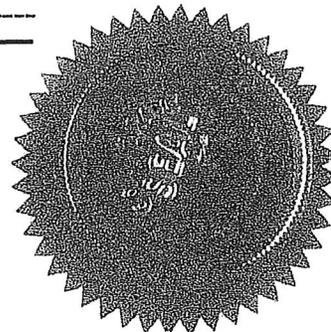
_____, also deposes and states that he/she has examined the Instructions to Bidders, has investigated site conditions; or, in the alternative, has waived such inspections at Bidder's peril, and has carefully prepared the Bid Proposal from the plans and specifications, and checked the same in detail before submitting this proposal or Bid. The undersigned also deposes and states that the statements contained in this Affidavit are true and correct.

[Corporate Seal]

Signed: Joseph B. Schaeider
Typed Name: Joseph B. Schaeider
Title: V.P.
Date: 4/3/2014

STATE OF WISCONSIN)
:SS.
COUNTY OF _____)

Subscribed and sworn to before me
This _____ day of _____, 2013.
Notary Public, _____ County, Wisconsin
My Commission Expires/is: _____



City of Kenosha
625 - 52nd Street, Room 305
Kenosha, Wisconsin 53140

Department of Public Works:

PROPOSALS DUE: April 9, 2014 by 2:00 P.M.

A representative of this organization has reviewed the proposal documents and inspected the trees noted in the Contract Specifications and Special Conditions, or waived said right, and hereby submits the following Proposal to remove said trees in accordance with City of Kenosha specifications and special conditions at the following prices, to be firm for sixty (60) days from date of Proposal, subject to Proposal being accepted within that time and a Contract entered into for that price.

Line 1: Estimated Number of Trees to 200 Trees (Includes removal, stump grinding, topsoil & seed

Lump Sum	-	\$ <u>99,800.00</u>
Line 2 Street Occupancy Permit Allowance	-	\$ <u>53.00</u>
Total: (Line 1 + Line 2)	=	\$ <u>99,850.00</u>

All work shall be completed no later than November 26, 2014 subject to liquidated damages of One hundred (\$100.00) Dollars per day in the event of delay where no extension is granted.

Additional removals may be added to the list at the proposed price of:

- \$ 25.00 (per tree, top soil and seed)
- \$ 14.00 per inch (from 1" to 16")
- \$ 16.00 per inch (from 17" to 29")
- \$ 18.00 per inch (from 30" to 35")
- \$ 21.00 per inch (from 35" to 56")

Measure at fifty-four (54") inches above ground level.

The effective date of the contract will be the date of return of executed Contract to Contractor with notice to proceed. The Contractor shall furnish sufficient labor, material equipment and supervision to complete the work according to the above time schedule.

Cash Discount Terms:

_____ % _____ Days, Net

Net _____ Days

Date: _____

Respectfully submitted,

Firm: Asplundh Tree Expert Co

Signature: Joseph B. Schmidt

Title: Vice President

Address: 5907 Municipal St

Phone: (715) 241-8733

Fax: _____

Optional: (For informational purposes ONLY)



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 16, 2014

To: Scott N. Gordon, Chairman,
Park Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Director of Engineering /City Engineer

Subject: **Professional Service Contract for Planting Trees in Lawn Park Areas
Project #14-1418**

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received three proposal to complete the Planting of Trees in Lawn Park Areas for 2014. Staff has reviewed the proposals and is recommending that the Contract be awarded to Paul Swartz Nursery & Garden Shop, Inc., Burlington, Wisconsin, based on their references, experience and standard quote rates.

Contractor	Proposal Amount
Paul Swartz Nursery & Garden Shop, Burlington, WI	\$28,875
Finishing Touches Landscape, Burlington, WI	\$37,175
Breezy Hill Nursery, Salem, WI	\$48,167

The 2014 planting trees in lawn park areas contract includes approximately 293 trees.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Paul Swartz Nursery & Garden Shop, Inc. for \$32,000 to include their quote of \$28,875 with \$3,125 of contingency and authorize the Director to execute the contract. The funding for this work will be paid for out of CIP PK-93-004 Reforestation/Tree & Stump Removal.

SAB/kjb

**2014 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 \$32,000

CONTRACT AMOUNT: \$28,875

**COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF
KENOSHA: NOT TO EXCEED \$3,125**

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, CONTRACTOR has submitted to **CITY** a written Proposal to provide the trees and the labor and equipment to plant said trees on lawn park areas and public right-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 **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, **CITY** and **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 **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 **CITY**.

e. **“WORK”** means any contractual endeavor undertaken by **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 CONTRACTOR. The **CONTRACTOR**, for the sum of Twenty-Eight Thousand Eight Hundred Seventy-Five (\$28,875), 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, **CONTRACTOR** will perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal not to exceed an additional Three Thousand One Hundred Twenty-Five (\$3,125). In the event of a conflict between the Request for Proposal, the Proposal and this Contract, the terms and conditions of the 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 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 November 26, 2014, whichever is earlier.
- b. Respecting the warranty, until expiration of 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 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 and will assure professional quality of 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 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 or 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 **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 right-of-ways, 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 **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 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 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** which the **CITY** could be secondarily liable for, which secondary liability was not assumed by **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 Workers' 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 exempt 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 take 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:

\$1,000,000.00 each occurrence

General Aggregate - \$2,000,000.00 each occurrence

Automobile Liability:

Bodily Injury per Person –\$1,000,000.00
Bodily Injury per Accident –\$1,000,000.00
Property Damage – \$200,000.00; OR a combined single limit of \$1,000,000.00.

Worker's Compensation: Statutory limits.

Employer's Liability
\$100,000 Each Accident
\$100,000 Disease, Each Employee
\$500,000 Disease, Policy Limit

Umbrella Liability

\$2,000,000 over the primary insurance coverage listed.

Said insurance coverage shall be verified by a Certificate of Insurance issued to **CITY**, which shall provide that should any of the described policies be canceled or amended before the expiration date, the issuing company will endeavor to mail a thirty (30) day written notice to the certificate holder. The **CITY** shall be named as an additional insured with respect to the insurance coverages listed above and the **CITY** shall be provided with an additional insured endorsement certifying that the **CITY** is an additional insured with respect to the insurance coverages listed above.

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 provisions 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:

Ross Swartz
PAUL SWARTZ NURSERY & GARDEN SHOP, INC.
30728 93rd Street, Burlington, Wisconsin, 53105

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: _____
MICHAEL M. LEMENS, 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 _____, 2014
MICHAEL M. LEMENS, Director of Public Works, and **DIRK NELSON, City Forester**, of the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such Mayor and City Clerk/Treasurer of said City, and acknowledged 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: _____

PAUL SWARTZ NURSERY & GARDEN SHOP, INC.

BY: _____
Ross P. Swartz, President

Date: _____

BY: _____
Elizabeth A. Swartz, Secretary

Date: _____

STATE OF WISCONSIN)

:SS.

COUNTY OF KENOSHA)

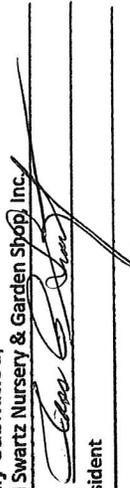
Personally came before me this _____ day of _____, 2014,
Ross P. Swartz, President and **Elizabeth A. Swartz, Secretary**, of **PAUL SWARTZ NURSERY & GARDEN SHOP, INC.**, a Wisconsin corporation, to me known to be such President and Secretary of said company, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said corporation, by its authority.

Drafted By:
JONATHAN A. MULLIGAN,
Assistant City Attorney

EXHIBIT A

PROPOSAL FOR PARKWAY TREE PLANTING
 REVISED 2013 KENOSHA STREET TREES
 PROJECT NO. 14-1418

COMMON NAME	BOTANICAL NAME	SIZE	ROOT	QTY.	UNIT PRICE	TOTAL COST
Autumn Gold Ginkgo	Ginkgo Biloba "Autumn Gold"	2"	B&B	15	\$ 195.00	\$ 2,925.00
Japanese Tree Lilac	Syringa Reticulate "Ivory Silk" Tree Form	2"	B&B	15	\$ 175.00	\$ 2,625.00
Ironwood	Ostrya Virginiana	2"	B&B	20	\$ 210.00	\$ 4,200.00
Adirondak Crab	Malus "Adirondak"	2"	B&B	20	\$ 175.00	\$ 3,500.00
Silver Linden	Tilia Tormentosa	2"	B&B	30	\$ 180.00	\$ 5,400.00
Marmo Maple	Acer x Freemanii "Marmo"	2"	B&B	30	\$ 180.00	\$ 5,400.00
Exclamation! London Planetree	Plantanus x Acerifolia "Morton Circle"	2"	B&B	15	\$ 195.00	\$ 2,925.00
Frontier Elm	Ulmus "Frontier"	2"	B&B	10	\$ 185.00	\$ 1,850.00
				Sub-Total		28,825.00
				Street Occupancy Permit Allowance	\$50.00	
				TOTAL (Subtotal + Permit Allowance)		28,875.00

Respectfully submitted,
 Firm: Paul Swartz Nursery & Garden Shop, Inc.
 Signature: 
 Title: President

Address: 30728 93rd Street Burlington, WI 53105
 Phone: 262-537-8083
 Fax: 262-537-8092



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 25, 2014

To: Scott N. Gordon, Chairman,
Park Commission

From: Michael M. Lemens, P.E.
Director of Public Works

Subject: Approval of the second amendment to the Lease between the City (of Kenosha, Wisconsin), Board of Park Commissioners, Baseball Like It Oughta Be, LLC and Northwoods League, Inc

BACKGROUND/ANALYSIS

As a referral from Common Council, the Legal Department has prepared the following second amendment to the Lease between the City (of Kenosha, Wisconsin), Board of Park Commissioners, Baseball Like It Oughta Be, LLC and Northwoods League, Inc.

RECOMMENDATION

Staff has no recommendation.

MML/dh

SECOND AMENDMENT TO

LEASE

Between

**THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation,**

**BOARD OF PARK COMMISSIONERS
OF THE CITY OF KENOSHA, WISCONSIN,
A Municipal Park Commission**

And

**BASEBALL LIKE IT OUGHTA BE, LLC,
A Wisconsin Limited Liability Company**

**NORTHWOODS LEAGUE, INC.
A Florida Corporation**

This Second Amendment to Lease (“SECOND AMENDMENT”) is made and entered into between the CITY OF KENOSHA, WISCONSIN, the BOARD OF PARK COMMISSIONERS OF THE CITY OF KENOSHA, WISCONSIN hereafter referred to collectively as “CITY” and BASEBALL LIKE IT OUGHTA BE, LLC and NORTHWOODS LEAGUE, INC., hereinafter referred to collectively as “LESSEE”. This SECOND AMENDMENT shall be effective upon approval and execution by the parties. The effective date shall be the date of last execution.

W I T N E S S E T H:

WHEREAS, the CITY and LESSEE entered into a Lease for the use of Simmons Athletic Field, hereafter referred to as the “PREMISES”, with the date of last execution of the Lease being January 25, 2013; and

WHEREAS, the CITY and LESSEE entered into a FIRST AMENDMENT to the Lease for the use of Simmons Athletic Field with the date of last execution of the FIRST AMENDMENT being June 25, 2013; and

WHEREAS, pursuant to Article 4.2 of the Lease, the LESSEE, at LESSEE's expense, is to complete IMPROVEMENTS to the PREMISES from the list of IMPROVEMENTS attached as Exhibit B to the Lease. A copy of Exhibit B is attached to this SECOND AMENDMENT; and

WHEREAS, one of the IMPROVEMENTS listed on Exhibit B is “Outfield fence – cover with plywood” at an estimated cost of \$10,000; and

WHEREAS, for aesthetic, maintenance and durability considerations, the LESSEE desires to

cover the outfield fence with navy blue vinyl-coated mesh windscreen in place of plywood at the same estimated cost of \$10,000.

NOW THEREFORE, in consideration of the mutual undertakings, understandings, and agreements hereinafter set forth, the CITY and the LESSEE agree as follows:

1. The foregoing recitals are incorporated into this SECOND AMENDMENT as if fully set forth in this Paragraph.
2. The IMPROVEMENTS listed on Exhibit B attached to the Lease and this Second AMENDMENT as “Outfield fence- cover with plywood” is amended to read “Outfield fence – cover with navy blue vinyl-coated mesh windscreen” with an estimated cost of \$10,000.
3. The technical specifications for the vinyl-coated mesh windscreen manufactured by Beacon Athletics to be used by the LESSEE to cover the outfield fence are attached as Exhibit 1.
4. Capitalized terms used in this SECOND AMENDMENT, and not otherwise defined shall have the meanings given to such terms in the Lease.
5. This SECOND AMENDMENT shall inure to the benefit of the parties and be binding upon their successors.
6. This SECOND AMENDMENT shall be construed under the laws of the State of Wisconsin.
7. This SECOND AMENDMENT may be executed in any number of counterparts, each of which shall constitute an original, and which taken together shall constitute one and the same instrument.
8. Except as otherwise provided in this SECOND AMENDMENT, all other terms and conditions of the Lease and the FIRST AMENDMENT remain in full force and effect.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK
SIGNATURES APPEAR ON THE FOLLOWING PAGES**

IN WITNESS WHEREOF, the parties hereto have hereunto executed this FIRST AMENDMENT on the dates below given.

**THE BOARD OF PARK COMMISSIONERS
OF THE CITY OF KENOSHA
a Municipal Park Commission**

BY: _____
SCOTT N. GORDON, Chairperson

Date: _____

BY: _____
MICHAEL M. LEMENS,
Director of Public Works

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2014, **SCOTT N. GORDON, Chairperson** of the **Board of Park Commissioners of the City of Kenosha** and **MICHAEL M. LEMENS, Director of Public Works** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Chairperson and Director of Public Works, 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: _____

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation**

BY: _____
KEITH G. BOSMAN, Mayor,
Date: _____

BY: _____
DEBRA SALAS
City Clerk/Treasurer
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, **KEITH G. BOSMAN, Mayor**, and **DEBRA SALAS, City Clerk/Treasurer** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

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

NORTHWOODS LEAGUE, INC.
a Florida Corporation

BY: _____
RICHARD R. RADATZ, JR., President

Date: _____

STATE OF MINNESOTA)
:SS.
OLMSTED COUNTY)

Personally came before me this ____ day of _____, 2014, **RICHARD R. RADATZ, JR., President**, of the **NORTHWOODS LEAGUE, INC.** to me known to be such President and acknowledged that he executed the foregoing instrument as such officer as the Agreement of said corporation, by its authority.

Notary Public, Olmsted County, MN
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney

BASEBALL LIKE IT OUGHTA BE FUNDED PROJECTS	
Simmons Field Improvements	
Project:	Cost:
Phase 1	
Demolition	\$25,000
Concession Stand Upgrades	\$24,860
Merchandise Stand buildout in clubhouse bldg	\$13,465
Office building/ ticket booth exterior updates	\$8,250
Netting reconstruction	\$5,000
Stain stamped concrete brick wall	\$5,000
Install & provide 4 top tables	\$18,700
Grandstand (seat install, aesthetic work, sandblasting, etc)	\$61,687
Design costs	\$15,000
Phase 1 total:	\$176,962
Phase 2 (by May 1 2014)	
Outfield fence - cover with plywood	\$10,000
Field Updating and Maintenance	\$10,000
Scoreboard	\$10,000
Painting	\$8,250
Concessions Updgrades	\$35,140
Total Cost:	\$250,352



Windscreen Technical Specifications – Standard Vinyl-Coated Mesh (VCM 9X12)

Fiber Construction:	Woven Polyester
Weave Count:	9 x 12 Yarns/in. ²
Percent Shade:	Approximately 84%
Weight:	8.2-oz./yd. ² (+/- 10%)
Air Flow – ASTM D-737:	340 C.F.M.
Tensile Strength – ASTM D-5034:	230 x 200
Tongue Tear Strength – ASTM D-5587:	100 x 110
UV-Resistance:	83% tensile strength retained after 1,000 hrs.
Color(s):	Forest Green, Kelly Green, Yellow, Red, Royal Blue, Navy Blue, Carolina Blue, Burgundy, Purple, Orange, Brown, Tan, Black, Gray, White
Warranty:	Limited 3-year pro-rated warranty against fabric and manufacturing defects, as well as breakdown from UV light

CONSTRUCTION

Panels will have heat-sealed edges on all sides featuring no-stitch heat-bonded hems with brass grommets spaced at 18” center-to-center distance. Panels made 7’ or taller will typically have a mid-line lacing strip that is also reinforced and have grommets spaced every 18”. Panels made over 6’ tall may also have a horizontal heat-sealed seam apart from the lacing strip.

6” x 12” framed air vents or 18” diameter half-circle wind flaps can be installed in any panel as requested by the customer.

The above typical values are intended as guides and do not represent specification limits.



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

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WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 25, 2014

To: Scott Gordon, Chairman
Park Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works / City Engineer

CC: Rocco LaMacchia, Sr.
District 5

Subject: *Approval of Resolution to authorize staff to pursue grant for Sunrise Park*

BACKGROUND INFORMATION

Staff and SAA Design Group have identified the following possible grant to be submitted for the May 1st deadline for the 2014 DNR Stewardship grants:

1. Sunrise Park – Phase II of the Main trail system

The 2014 Stewardship grant funding will require a 50/50 match the adopted CIP for Sunrise in the 2014-2018 allocated funds to Sunrise Park.

RECOMMENDATION

Approve the resolution authorizing the Director of Public Works pursue a DNR Stewardship grant for Sunrise Park. If the City receives the grant it will go through Finance, Parks and Common Council for acceptance.

RESOLUTION FOR OUTDOOR RECREATION AIDS

WHEREAS, the City of Kenosha is interested in acquiring or developing lands for public outdoor recreation purposes as described in the application; and

WHEREAS, financial aid is required to carry out the project;

THEREFORE, BE IT RESOLVED, that the City of Kenosha has budgeted a sum sufficient to complete the project or acquisition and

HEREBY AUTHORIZES SAA Design Group, to act on behalf of the City of Kenosha to:

Submit an application to the State of Wisconsin Department of Natural Resources for any financial aid that may be available;

Submit reimbursement claims along with necessary supporting documentation within 6 months of project completion date;

Submit signed documents; and

Take necessary action to undertake, direct and complete the approved project.

BE IT FURTHER RESOLVED that the City of Kenosha will comply with state or federal rules for the programs to the general public during reasonable hours consistent with the type of facility; and will obtain from the State of Wisconsin Department of Natural Resources or the National Park Service approval in writing before any change is made in the use of the project site.

Adopted this 28th day of April, 2014.

I hereby certify that the foregoing resolution was duly adopted by Kenosha Parks Commission at a legal meeting on 28th day of April, 2014

Authorized Signature: _____ **Title:** _____

IMPORTANT NOTE: *The DNR expects the individual authorized by this resolution to become familiar with the applicable grant program's procedures for the purpose of taking the necessary actions to undertake, direct, and complete the approved project. This includes acting as the primary contact for the project, submitting required materials for a complete grant application, carrying out the acquisition or development project (e.g., obtaining required permits, noticing, bidding, following acquisition guidelines, etc.), and closing the grant project (e.g., submitting grant reimbursement forms and documentation, and organization of project files for future monitoring of compliance with grant program.*



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT
FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT
WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 25, 2014

To: Scott N. Gordon, Chairman
Parks Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works/City Engineer

Subject: Change Request

BACKGROUND INFORMATION

At the May 14, 2012 meeting the Commissioners agreed this item should appear on all future agendas. There are no change requests at this time.

RECOMMENDATION

Approve to add change requests on the agenda only when needed.

SB/dh

April 25, 2014

Informational #1

TO: Michael M. Lemens, P.E.
Director of Public Works

FROM: Shelly Billingsley, P.E. 
Deputy Director of Public Works / City Engineer

SUBJECT: Project Status Report

- Project # 08-1443 Bike and Pedestrian Connections** - Plans have begun but a major focus on bike paths has been to complete the Bike Path crossing at Washington Road and the extension through Nash Park. Once these projects have been bid, design will be completed on this third phase. (Citywide)
- Project #11-1415 / 12-1415 / 13-1415 CORP Implementations** – Continuing. (Citywide)
- Project #11-1417 Strawberry Park Mass Grading, Trail and Shelter (DNR Stewardship Grant)** [SAA Design Group] – Design work on the master plan implementation has been put on hold due to FEMA study (16)
- Project #11-1421 Southport Beach House Restoration (Wisconsin Coastal Management Grant)** – The final report, plans and specifications have been submitted to the Wisconsin Coastal Management Grant for close out. Plans and specifications were submitted to the State Historic Society at the end of February. [Enberg Anderson] (12)
- Project #11-1125 Pennoyer Beach Outfall Stormwater Infiltration Basin (GLRI Grant)** – [VEIT] AES has tentatively agreed to come down in the spring of 2014 to plant new plugs and re-seed all bioswales pending settlement agreement. (SWU) (1)
- Project #11-1137 Pike River Monitoring (WI Coastal Management Grant)** – The final report and sampling report has been sent to the WI Coastal Management Grant administration. (SWU) (1 and 4)
- Project #12-1424 Southport Park Trail (DNR Stewardship Grant)** – [Parking Lot Maintenance] Project was awarded by Common Council on April 21. Staff is working with contractor to develop schedule. (12)
- Project #12-1430 Alford Park Warehouse Demolition** – [Earth Construction] Project close-out documents were sent to contractor (1).
- Project #12-1421- Simmons Island Boardwalk Phase IA** (DNR Stewardship Grant) [H&H Civil Construction]. Construction is expected to begin on May 5 and run through September – pending KWU easement approval. (2)
- Project #12-1432 - Peorio Park Trail** [SAA Design Group] Staff is reviewing plans and specifications. Project will be rebid by the spring of 2014. (DNR Stewardship Grant) (1 and 4)
- Project #13-1413 - Petzke Park Phase II** [SAA Design Group] Plans and specifications are being developed for Phase II of Petzke Park with construction in 2014. (1)
- Project #13-1414 - Washington Park Velodrome** [SAA Design Group] - City staff is currently re-scoping the project. (6)
- Project #13-1412 - Simmons Field** – [Camosy Construction] Work has met substantial completion. Final seeding and grading will be finished in the spring of 2014. (12)
- Project 13-1419 – Anderson Fishing Pier** – [SAA Design Group] Design is in process. (9)
- Project 14-1422 – Kennedy Park Master Plan** - [SAA Design Group] SAA Design Group will begin working on concepts for both parks and will present these at two Public Informational Meetings in April. (1)
- Project 14-1423 – Pennoyer Park Master Plan** - [SAA Design Group] SAA Design Group will begin working on concepts for both parks and will present these at two Public Informational Meetings in April. (1)
- Project 14-1425 Simmons Island Fence** – Staff is currently working on developing plans and specifications. (2)
- Design Work-** Misc. Park projects, ADA Accessible Playground, and finishing 2012 and 2013 CORP projects.