* * * SPECIAL MEETING * * *
AGENDA
BOARD OF PARK COMMISSIONERS
Monday, July 19, 2010
Kenosha Municipal Building Council Chambers
6:45 pm

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

Call to Order
Roll Call

C. REFERRED TO COMMISSION

C-1. Award the Tree Removal Contract #10-10 to Droprite Tree & Landscape, LLC, Somers, Wisconsin in the amount of $60,000. *(Also referred to Finance Committee and Stormwater Utility Committee)*

C-2. Award the Parkway Tree Pruning Contract #09-10 to Trees "R" Us, Inc, Wauconda, Illinois in the amount of $100,00.00. *(Also referred to Finance Committee and Stormwater Utility Committee)*

C-3. Award the Tree Planting Contract #11-10 to Paul Swartz Nursery & Garden Shop, Inc, Burlington, Wisconsin in the amount of $50,000.00. *(Also referred to Finance Committee and Stormwater Utility Committee)*

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS

OTHER BUSINESS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE PLEASE CALL 653-4052 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

C-1

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

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

DEPARTMENT OF PUBLIC WORKS

Ronald L. Bursek, P.E., Director

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

July 14, 2010

To: Michael J. Orth, Chairman, Parks Commission
Anthony Nudo, Chairman, Stormwater Utility Committee
David F. Bogdala, Chairman, Finance Committee

From: Jeff Warnock
Superintendent of Parks

Subject Tree Removal Contract, 2010, #10-10

The Department of Public Works, Park Division has opened bids for the above referenced project.

Following is the list of the two low bidders:

Company	Initial List (#1) Price Bid 10-10	Removal List (#2), based on Additional Removals from Bid 10-10	Total Price
Droprite Tree & Landscaping, LLC	$21,495.00	$21,088.00	$42,583.00
Lakeside Tree Service	$21,420.00	$24,712.00	$46,132.00

It is recommeded that this contract be awarded to Droprite Tree & Landscaping LLC, for $42,583.00 plus $17,417.00 in contingency funds for trees that may need to be removed, for total award amount of $60,000.00. Fund is from CIP Line Item PK-93-004.

2010 CONTRACT TO REMOVE TREES

By And Between

THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation
[Through Its Department of Finance]

And

DROPRITE TREE & LANDSCAPE, LLC,
A Wisconsin Corporation

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 Finance, hereinafter referred to as **"CITY",** and **DROPRITE TREE & LANDSCAPE, LLC**, a Wisconsin corporation, located at P.O. Box 163, Somers, Wisconsin 53171, 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 remove trees according to the specifications and special conditions contained in the Request for Proposals, and **CITY** has accepted said 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 State law.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings and undertakings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged, **CITY** and **CONTRACTOR** agree as follows:

1. DEFINITIONS.

a. "AGREEMENT". The following documents comprise the complete Agreement: Request for Proposals, Proposal, this executed "2010 Contract To Remove Trees", 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, Determinations 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 Finance and Park Division, and are incorporated into this Contract by reference.

b. "CONTRACTOR" shall mean Droprite Tree & Landscape, LLC, and any subcontractors approved by the **CITY.**

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

d. "OVERPAYMENT" means any money **CONTRACTOR** received which **CONTRACTOR** was not entitled to receive under this Agreement, including, but not limited to, excess payment made in error and payment for defective and/or rejected Work which was not redone or replaced and accepted by **CITY.**

e. "STUMPING" means either removal of a stump or grinding of a stump, as appropriate.

f. "REMOVAL PROCESS" means the systematic removal of the tree, commencing with the first cut or break by the **CONTRACTOR**, and including the trunk, stump, and debris removal.

g. "WORK" means any contractual endeavor undertaken by **CONTRACTOR**, by itself and through approved subcontractors, to fulfill the terms of the Agreement, 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 AND PRICE/COST. CONTRACTOR, for the sum of Twenty-one Thousand Four Hundred Ninety-five ($21,495.00) Dollars, will perform and complete, or will cause to be performed and completed, all Work in a good and workmanlike manner, and it will do so in accordance with and subject to the provisions of this Agreement. In the event of a conflict between the Request for Proposals, the Proposal and the 2010 Contract To Remove Trees, the terms and conditions of the 2010 Contract To Remove Trees shall control and supersede the other documents. Work comprises the removing the trees specified in Exhibit "A" in accordance with the Specifications and Special Conditions in Exhibit "B", which Exhibits are attached hereto and incorporated herein by reference. In the event of a conflict with this Contract To Remove Trees, the Specifications and Special Conditions will control and supersede an inconsistent provision in this 2010 Contract To Remove Trees.

3. COMMENCEMENT AND DILIGENT PROSECUTION OF WORK. CONTRACTOR will commence work within ten (10) working days following execution of Contract and notice to proceed, and will prosecute Work diligently until fully complete in accordance with this Contract. **CONTRACTOR** shall complete Work within the Contract term.

CONTRACTOR shall fully remove at least five (5) trees per week until Agreement is terminated. **CONTRACTOR** shall complete the removal process with respect to each tree within ten (10) working days of the start of the removal process.

CONTRACTOR, in the event of a dispute respecting quantity or quality of Work, shall not refuse to perform Work and shall not delay the performance of Work pending the resolution of said dispute. Arbitration is not herein required and unresolved disputes may be settled through the Courts.

CONTRACTOR has the duty of requesting of **FORESTER**, in writing, prior to the time for Contract completion, for an extension of time to complete the Work where the progress

of the Work was delayed, the Work will not be completed on time, and **CONTRACTOR** was not responsible for such delay. Should **FORESTER** grant an extension, **CONTRACTOR** will not be liable for liquidated damages arising out of the delay. Should **FORESTER** determine that the Work will not be completed on schedule through normal methods and where no request for a time extension has been requested, or if requested, such request was not justified, **FORESTER** shall provide **CONTRACTOR** with written notice requiring **CONTRACTOR** to take such extraordinary measures as may be required to complete Work on time, or as close to on time as possible. The failure of **CONTRACTOR** to take such extraordinary measures shall be grounds for **CITY** to suspend Work by **CONTRACTOR** and take such other measures as will assure completion of Work within the Contract time, or if that is impossible, within a reasonable time. Nothing contained herein shall prevent **FORESTER** from stopping the **CONTRACTOR** from proceeding with Work beyond the time set for the completion date where the completion date was not extended.

4. CONTRACT TERM. The term of this Contract shall be from the date of execution until each of the following:

a. Respecting Work, until completion and acceptance, or December 31, 2010, whichever is earlier.

b. Respecting warranty, until expiration of warranty term.

c. Respecting Indemnity and Hold Harmless Agreement and Liability Insurance, until claims filed, if any, are resolved, or expiration of applicable statutes of limitations where no claims were filed.

5. TERMINATION FOR CAUSE. In the event either party should fail to fulfill in a timely manner its obligation under this Agreement, the nonbreaching party shall thereupon have the right to terminate this Agreement 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.

CONTRACTOR shall perform no new or additional Work upon receipt of a notice of termination without the advance, written permission of **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 **CONTRACTOR** and **CITY** as to the true meaning or requirements of this Contract, or as to the manner of execution of 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.

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. **CONTRACTOR** shall select such methods and equipment for the performance of all operations connected with Work as will assure professional quality of Work and a rate of progress which will assure the timely completion of Work. **CONTRACTOR** is responsible for furnishing all labor, equipment, material and supplies required to perform Work.

8. SUSPENSION OF WORK BY CITY. **FORESTER** shall have authority to suspend Work where he/she believes that **CONTRACTOR** is not performing Work in

accordance with this Contract. **CONTRACTOR** shall have no right to additional compensation for delay or a right to an extension of time to complete Work where Work is suspended by **FORESTER** for good cause.

9. INJUNCTIONS. Should a preliminary or temporary injunction suspend Work for a period of time, the deadline for completion of 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 Work, this Contract shall be null and void as of the date such injunction, Court order or judgment becomes final, although **CONTRACTOR** shall be entitled to reasonable compensation for Work performed to that date. In the event a permanent injunction, Court order or judgment reduces the scope of Work, this Contract shall be deemed modified in accordance therewith and compensation of **CONTRACTOR** shall be proportionately reduced to reflect the decrease in the scope of Work.

10. CHANGE ORDERS FOR ADDITIONAL WORK, ADJUSTMENT IN PRICE. CONTRACTOR does not have the discretion to refuse to comply with a Change Order to increase the scope of Work identified in **CITY** Request for Proposals. Increases in the scope of Work shall result in a determination of **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 **CONTRACTOR,** and upon approval and execution, shall be considered a Contract amendment, to be kept on file in **CITY** Department of Finance and Park Division, and incorporated into this Contract by reference. Should **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 **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. CONTRACTOR will only use subcontractors, major suppliers and dumping or disposal sites, which are listed in this Contract. Any changes in said list must be approved by **FORESTER**. **CONTRACTOR** is responsible for the Work of subcontractors and for delays in Work occasioned thereby.

CONTRACTOR has a duty to remove and replace subcontractors whose involvement in Work will result in a breach of this Contract.

13. CONTROL AND PROTECTION OF WORK SITE. CONTRACTOR shall be responsible for the control and protection of Work site from commencement of Work until Work is completed.

14. WARRANTY. CONTRACTOR will replace any Work which is defective or not in conformity with this Contract at no cost to **CITY** for a period of one (1) year after final acceptance of Work by **CITY.**

15. CITY COOPERATION. CITY will reasonably cooperate with **CONTRACTOR** to facilitate **CONTRACTOR'S** performance of Work. **CITY** will physically mark trees to be removed and notify **CONTRACTOR** of the nature of the markings. **CONTRACTOR** will provide reasonable notice to **CITY** when the assistance thereof is requested. However, **CITY** has no obligation to supervise or perform any part of Work.

16. GOVERNMENTAL PERMITS AND APPROVALS. CONTRACTOR is authorized to perform work under this Contract without obtaining a separate permit from the **FORESTER** or a Street Encroachment Permit.

17. LAWS, RULES AND REGULATIONS. CONTRACTOR shall comply with all Federal, State and local laws, rules and regulations applicable to the performance of this Contract and 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 **CONTRACTOR** performs Work as an independent Contractor, **FORESTER** shall have the right to request **CONTRACTOR** to remove and replace any of **CONTRACTOR'S** employees involved in Work when said employee does not furnish quality workmanship or is uncooperative with or disrespectful to any **CITY** personnel associated with Work. **CONTRACTOR** will comply with any reasonable request.

CONTRACTOR, at all times Work is being performed, shall assign an employee or agent on the Work site to be the person to whom **FORESTER** may furnish instructions or orders, or make inquiries of at all times when Work is being performed. The name of such employee or agent shall be submitted to **FORESTER** in writing, upon commencement of Work.

19. SANITATION AND HEALTH. CONTRACTOR has the obligation of arranging for drinking water and sanitary conveniences for employees, subcontractors, suppliers, and agents thereof and for taking such Work site precautions as will deter the spread of infectious diseases. **CONTRACTOR** shall not use materials in such manner as to pose a health hazard. **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 in the matter.

20. INSPECTION. CITY has the right, at its cost and expense, to assign or retain inspectors to determine that Work is performed in conformance with this Contract. Only **FORESTER**, however, can reject Work. The use of inspectors by **CITY** shall not relieve **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 **FORESTER** to have **CONTRACTOR** take corrective action at **CONTRACTOR'S** cost and expense to remedy such deficiencies or defects, when discovered. The use of inspectors by **CITY** shall not relieve **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. Materials used must be suitable to and compatible with the nature of the Work, Work site and prevailing year round weather conditions that affect Work and the Work site.

22. UTILITIES. CONTRACTOR has the obligation of obtaining utility locations, clearances, or cutoffs directly from the relevant utility at **CONTRACTOR'S** cost and expense.

23. CLEANUP. CONTRACTOR shall at all times keep all areas related to Work, including all rights-of-way, 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 Work.

Within twenty-four (24) hours after the completion of the Removal Process on a specified tree, **CONTRACTOR** shall remove all surplus materials, tools, equipment or plants, leaving the Work site and the sites of easements and areas related to Work, unobstructed, clean and sanitary, ready for their intended use and in as safe a condition as their nature will reasonably permit. Should **CONTRACTOR** neglect any such duty, **FORESTER** may cause any such Work to be performed at **CONTRACTOR'S** cost and expense.

24. PAYMENT OF EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS. 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 **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. **CONTRACTOR**, as a condition of payment, shall execute an Affidavit Respecting Construction Lien Waivers/Releases and file such document with **CITY** Director of Finance.

25. LIQUIDATED DAMAGES FOR DELAYS IN CONTRACT COMPLETION. In the event that **CONTRACTOR** fails to fully and completely perform Work within the Contract term, **CONTRACTOR** shall pay to **CITY** for such default the sum of One Hundred ($100.00) Dollars 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 **CITY** from **CONTRACTOR.**

26. RIGHTS OF CITY UPON CONTRACTOR DEFAULT. CONTRACTOR recognizes the right of **CITY** to suspend Work, to order the revision of nonconforming Work, to re-let all or part of Work or to itself perform such Work as may be required to ensure the timely completion of Work or to replace improper or defective Work, as determined necessary by **FORESTER**. No provision of this section 26 may be construed to relieve **CONTRACTOR** of its obligations under this Contract.

27. OVERPAYMENTS AND SETOFFS UNRELATED TO CONTRACT. CONTRACTOR will promptly, upon receipt of written demand from **CITY** Director of Finance, refund any Overpayments received thereby. Should **CONTRACTOR** not comply with said request within thirty (30) days of receipt of written notice, **CONTRACTOR** shall pay **CITY** interest for said amount at the rate of one (1%) percent per month on the unpaid balance, until paid in full.

Should **CONTRACTOR** owe **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 Work under this Contract, **CONTRACTOR** authorizes **CITY** to deduct said amount from any payment due **CONTRACTOR** hereunder.

28. SAFETY PRECAUTIONS. CONTRACTOR, during the performance of Work, shall assume control of the Work site and put up and properly maintain, at **CONTRACTOR'S** cost and expense, adequate barriers, warning signs, lights and such other devices and take such measures as will make 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 Work, during both day and night hours. **FORESTER** may order **CONTRACTOR**, by a time or date certain, to take designated safety

measures and the failure of **CONTRACTOR** to promptly obey said order shall result in liquidate damages of Five Hundred ($500.00) Dollars per day for each day said order is not complied with. **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 **FORESTER** or **CITY** inspectors or lack thereof, in this regard. **CONTRACTOR** has an obligation to check warning and safety devices on a daily basis.

29. PAYMENT - ACCEPTANCE OF WORK. Payment shall be made by **CITY** on a monthly basis upon submission of invoice for completed Work to **CITY** Director of Finance, within fifteen (15) days after **FORESTER** executed a document accepting Work as being performed in accordance with this Contract, subject to the following.

CITY may withhold payment if **CONTRACTOR** is not in compliance with any order issued by the **FORESTER**. Payment will be reduced by the amount of any claim which **CITY** may have against **CONTRACTOR** for improper, defective, or rejected Work or liquidated damages due to delay in the schedule of time for Work completion, or in taking safety precautions, by the amount of setoffs authorized by this Contract, or for any other primary liability of **CONTRACTOR** which **CITY** could be secondarily liable for, which secondary liability was not assumed by **CITY** under this Contract.

Work shall not be accepted by **FORESTER** until all employees, subcontractors and suppliers have been fully paid for all work, labor, services, supplies or materials provided thereby, and lien waivers or releases have been procured and filed with the **CITY** Finance Director.

30. INDEPENDENT CONTRACTORS, WORKERS AND UNEMPLOYMENT COMPENSATION. 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. **CONTRACTOR** shall be responsible for Workers and Unemployment Compensation with respect to its employees.

31. PROHIBITIONS AS TO ASSIGNMENT, SUBCONTRACTING AND JOINT VENTURES. CONTRACTOR may not assign this Contract, enter into a joint enterprise or sublet any Work without the express written approval of **FORESTER** and **CITY** is not liable for any costs and expenses arising therefrom. Listed subcontractors, major suppliers, and dumping and disposal sites are excepted from this prohibition. An unlawful assignment, joint enterprise or subletting shall render this Contract voidable by the **FORESTER** as of the date thereof, and **CITY** will not be obligated to pay to **CONTRACTOR** any money for any Work performed by an unauthorized party. If this Contract is voided, **CONTRACTOR** will continue to be responsible for maintaining the safety of the Work site until relieved of this obligation by **FORESTER** or until another contractor takes possession of the Work site. The **CONTRACTOR** will be responsible for any cost, loss, expense or damages the **CITY** may incur in enforcing this provision.

32. INDEMNITY AND HOLD HARMLESS AGREEMENT. CONTRACTOR agrees that it will, at all times relevant to this Contract, defend, indemnify and hold harmless **CITY** and its officers, agents, employees and representatives, from and against any and all liability, loss, charges, damages, claims, judgments, costs, expenses or attorneys fees, which they may hereafter sustain, incur or be required to pay as a result of any action taken or not taken by **CITY** or its officers, agents, employees or representatives to supervise or oversee the adequacy of safety precautions taken by **CONTRACTOR** or as a result of the willful or negligent act or omission of **CONTRACTOR** and its subcontractors, suppliers, assigns, employees, officers, agents or representatives, or resulting from **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 for sustain personal injury, death or property loss or damage, or a violation of any other right protected by law.

33. INSURANCE. CONTRACTOR, prior to performing Work and during the Contract term, shall carry the insurance policies in the following minimum limits, which shall be written and enforceable in accordance with the laws of the State of Wisconsin.

- Commercial General Liability: General Aggregate - One Million ($1,000,000.00) Dollars; each occurrence - One Million ($1,000,000.00) Dollars.

- Automobile Liability:
  - Bodily injury per person - One Million ($1,000,000.00) Dollars;
  - Bodily injury per accident- One Million ($1,000,000.00) Dollars;
  - Property damage - Two Hundred Thousand ($200,000.00) Dollars, or a combined single limit of One Million ($1,000,000.00) Dollars.

- Worker's Compensation - Statutory limits.

Said insurance coverage shall be verified by a Certificate of Insurance issued to Finance Department of **CITY**, which shall provide that should any of the described policies be cancelled or terminated before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the **CITY**.

34. COOPERATION. CONTRACTOR shall permit **CITY** employees and representatives to have reasonable access to Work site at all times.

35. SEVERABILITY. It is mutually agreed that in case any provision of this Contract is determined by a Court of law to be unconstitutional, illegal or unenforceable, then it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

36. NONDISCRIMINATION. In the performance of Work under this Contract, **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. 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. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including, but not limited to, employees.

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 hereto, said amendment to be attached hereto and incorporated herein, it being expressly understood that **CITY** Director of Finance must approve any amendment of this Contract.

39. NOTICES. Notices required by or relevant to this Contract shall be furnished by **CONTRACTOR** to **CITY** by personal service or by certified mail with return receipt, sent or delivered to the **FORESTER** or Director of Finance at the Municipal Building, Room 208, 625 - 52nd Street, Kenosha, Wisconsin 53140.

Notices required by or relevant to this Agreement shall be furnished by **CITY** to **CONTRACTOR** by personal service or by certified mail with return receipt sent or delivered to:

Mr. Daniel Tessmann, President,
Droprite Tree & Landscape, LLC,
P.O. Box 163,
Somers, Wisconsin 53171

40. EXECUTION AUTHORITY. CITY and **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 below given.

CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation

BY:_____
CAROL STANCATO, Finance Director
Date:_____

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

BY:_____
DIRK NELSON, City Forester
Date:_____

DROPRITE TREE & LANDSCAPE, LLC,
A Wisconsin Corporation

BY:_____
DANIEL TESSMANN, Managing Member
Date:_____

Drafted By:
EDWARD R. ANTARAMIAN,
Acting City Attorney

2010 Contract Removal List #1

EXHIBIT A

ADDRESS	STREET	SPECIES	Cost	Modifier	DBH	LOCATION	RPLCT	MARKED	NOTES
3551	10 AVE.	SILVER MAPLE			44		1	01/21/10	
7718	10 AVE.	NORWAY MAPLE			20		1	01/20/10	LOW GROWING VARIETY
7551	15 AVE.	LINDEN			16	ON 15 AVENUE	1	01/20/10	
4710	17 AVE.	SILVER MAPLE			18		1	01/20/10	LOW GROWING VARIETY
7504	19 AVE.	LINDEN			21	ON 75 STREET	1	01/21/10	LOW GROWING VARIETY
4219	21 AVE.	LINDEN			29		1	01/20/10	
1605	21 ST.	NORWAY MAPLE			17		1	01/20/10	
2821	23 AVE.	SUGAR MAPLE			29		1	01/21/10	
3012	23 AVE.	ASH			28		0	01/20/10	
6703	23 AVE.	SIBERIAN ELM			44		1	01/22/10	
7119	24 AVE.	SILVER MAPLE			36		1	01/20/10	
7119	24 AVE.	SILVER MAPLE			38		N/A	01/20/10	
7328	24 AVE.	NORWAY MAPLE			13		1	01/20/10	LOW GROWING VARIETY
2303	24 ST.	NORWAY MAPLE			17	WEST TREE	1	01/20/10	ON 23 AVENUE
7947	25 AVE.	ASH			20		1	01/20/10	STREET LIGHT CONFLICT
2216	26 AVE.	NORWAY MAPLE			15		1	01/20/10	
2217	26 AVE.	NORWAY MAPLE			22		1	01/20/10	
3106	26 AVE.	HONEYLOCUST			26		1	01/22/10	LOW GROWING VARIETY
5557	31 AVE.	NORWAY MAPLE			31		0	01/22/10	
5557	31 AVE.	NORWAY MAPLE			31		0	01/22/10	
5557	31 AVE.	NORWAY MAPLE			24		0	01/22/10	
2616	31 ST.	NORWAY MAPLE			28		1	01/22/10	
2120	32 ST.	LINDEN			24		1	01/20/10	
7738	34 AVE.	SILVER MAPLE			44		1	01/22/10	
6708	35 AVE.	SIBERIAN ELM			36		1	01/20/10	
7209	38 AVE.	SILVER MAPLE			39		1	01/21/10	
5606	44 AVE.	NORWAY MAPLE			26	SOUTH TREE	0	01/21/10	EXISTING STREET TREE
6109	44 AVE.	NORWAY MAPLE			22		1	01/21/10	
6118	44 AVE.	SILVER MAPLE			22		1	01/21/10	
6118	44 AVE.	SILVER MAPLE			16		N/A	01/21/10	
6320	5 AVE.	ASH			17		0	01/21/10	NARROW PARKWAY AND WIRES
6320	5 AVE.	ASH			15		1	01/21/10	NARROW PARKWAY AND WIRES
6323	57 AVE.	SILVER MAPLE			15		1	01/22/10	
6323	57 AVE.	SILVER MAPLE			11		N/A	01/22/10	
6414	57 AVE.	NORWAY MAPLE			20		?	01/22/10	
4053	6 AVE.	NORWAY MAPLE			22	SOUTH TREE	NO	01/20/10	EXISTING STREET TREE
4103	6 AVE.	BOXELDER			15	NORTH TREE	NO	01/20/10	EXISTING STREET TREE

ADDRESS	STREET	SPECIES	Cost	Modifier	DBH	LOCATION	RPLCT	MARKED	NOTES
4517	60 ST.	SUGAR MAPLE			20	TREE ON 46 AVE.	1	01/21/10	
920	62 ST.	NORWAY MAPLE			35	ON 62 STREET	1	01/21/10	
920	62 ST.	NORWAY MAPLE			28	ON 62 STREET	N/A	01/21/10	
214	68 PLACE	ASH			24	ON 68 PLACE		01/22/10	
214	68 PLACE	ASH			24	ON 68 PLACE		01/22/10	
214	68 PLACE	ASH			24	ON 68 PLACE		01/22/10	
4007	7 AVE.	HONEYLOCUST			24		1	01/21/10	
4408	7 AVE.	HONEYLOCUST			20		1	01/21/10	LOW GROWING VARIETY
2618	73 ST.	SUGAR MAPLE			21		1	01/21/10	LOW GROWING VARIETY
2618	73 ST.	SUGAR MAPLE			26		N/A	01/21/10	
3118	74 ST.	SILVER MAPLE			31	EAST TREE ON 74 ST.	0	01/21/10	
3118	74 ST.	SILVER MAPLE			28	ON 32 AVENUE	1	01/21/10	
4302	79 ST.	NORWAY MAPLE			20	NORTH TREE	1	01/21/10	ON 43 AVENUE
4620	79 ST.	SUGAR MAPLE			18	SOUTH TREE	0	01/21/10	ON 47 AVENUE
3501	86 PL.	ASH			28		1	01/21/10	
LINCOLN	PARK	ASH			28			02/01/10	N. SIDE OF M.L.K. DRIVE, 110' W OF 18 AVE.
LINCOLN	PARK	ASH			25			02/01/10	N. SIDE OF M.L.K. DRIVE, 200' W OF 18 AVE.
LINCOLN	PARK	ASH			22			02/01/10	S. SIDE OF M.L.K. DRIVE, 360' W OF 18 AVE.
5802	PERSHING	NORWAY MAPLE			25	ON 58 ST.	1	01/21/10	
5903	PERSHING	NORWAY MAPLE			24	SOUTH TREE	0	01/21/10	EXISTING STREET TREE
6717	PERSHING	NORWAY MAPLE			18	NORTH TREE	1	01/21/10	
906	WASHINGTON	HONEYLOCUST			15		2	01/21/10	

EXHIBIT B

CITY OF KENOSHA, WISCONSIN
PARK DIVISION

TREE REMOVAL CONTRACT SPECIFICATIONS
AND SPECIAL CONDITIONS

Proposal No. 10-10

WORK TO BE PERFORMED. Work shall consist of tree removal - severing and lowering portions of trees that prevent all damage to property, including turf, sidewalks, utilities, vehicles, persons and the like. This includes removing stumps and debris from the site and proper disposal.

LOCATION OF WORK. Work will consist of tree removal on public right-of-ways, City-wide, per the attached list, which is incorporated herein by reference.

SUPERVISION. Contractor shall consult the Kenosha Park Division concerning details and scheduling of all work. Contractor must have a responsible person in charge of work at all times to whom the Park Division may issue directives, who shall accept and act upon such directives. A name, phone number and address must be made available to the Park Division of Contractor's responsible person(s).

INSPECTIONS. The Contractor shall call the Kenosha Park Division at 653-4080 between 7:00 A.M. and 8:00 A.M. on the morning of each day work will be performed to inform the Park Division of locations for that day's work. The Park Division may conduct inspections of Contractor's work at any time without notification.

PUBLIC RELATIONS. The Kenosha Park Division has notified abutting property owners of anticipated work using the "Work Notification Form" and/or the "Hazard Tree Removal Notification" letter.

The Park Division shall provide a supply of informative leaflets at no cost to Contractor who will distribute them to each abutting property owner and place them at each building in front of which work will occur. Contractor shall answer any questions from citizens concerning the project. Anyone asking a question that the Contractor cannot answer will be referred to the Park Division at 653-4080.

SAFETY. Work will conform to the most recent revision of American National Standards Institute Standard Z-133.1 (Safety Requirements for Pruning, Trimming, Repairing, Maintaining, Removing Trees and for Cutting Brush). A copy of these standards is on file at the office of the Kenosha Park Division and is made a part of the Contract by this reference. Contractor is responsible for contacting Digger's Hotline (1-800-242-8511) and making sure the sites are marked prior to any stump removal.

REMOVAL. Only trees designated by the Park Division on designated work orders are to be removed. Trees are to be topped before removal, unless conditions allow felling, and removed at a maximum stump height of four (4") inches above the highest surrounding grade. No trees shall be felled onto sidewalks, traffic signs, hydrants or other infrastructure. **Removal includes: stump removal, removal of basal sprouts, brush, vines and weeds within three (3') feet of trunk.** Cleanup must be completed within two (2) hours of removal. The site is to be left in a condition at least as clean as pre-work conditions. Tree parts dropped or lowered from trees are to be kept off private property as much as possible. For

trees marked for removal that extend through power and/or telephone and/or cable television wires, it will be Contractor's responsibility to notify the responsible utilities prior to removal and make any necessary arrangements. Contractor is responsible for the hauling and disposal of all waste wood harvested during removal operations.

Once the removal process has begun for any said tree, the tree must be removed down to and including the stem, within five (5) working days of start. Any exception to this must be approved by the City Forester. The Kenosha Park Division may prioritize removals at its discretion. The Contractor shall be given twenty-four (24) hours advance notification of such action.

STUMP GRINDING. Only stumps designated by the Park Division on designated work orders are to be ground. Stumps and all exposed roots are to be ground out to a depth of twelve (12") inches below surface of soil and to a radius of five (5') feet to provide a uniform and level surface. Grinding debris will be packed into and mounded over stump hole to a height of two (2") inches above curb or sidewalk height. Contractor is responsible for the hauling and deposit of all excess grinding debris. Cleanup must be completed within two (2) hours of grinding. The site is to be left in a condition at least as clean as pre-work conditions. Grinding debris is to be kept off private property, streets and sidewalks as much as possible. Contractor is responsible for contacting Digger's Hotline (1-800-242-8511) and making sure the sites are marked prior to any stump grinding. Stumps must be ground within three (3) weeks of tree removal.

TRAFFIC CONTROL. Traffic control is the total responsibility of Contractor and must be coordinated with the Public Safety Dispatcher (656-1234). Contractor is responsible for posting the streets where work is to be performed twenty-four (24) hours prior to the work's commencement. If it becomes necessary to tow parked vehicles, the Contractor shall coordinate towing with the Park Division.

COORDINATION OF WORK. Separate crews may work on separate streets if the streets are close to one another. Each crew must complete work on each particular block before moving to another block unless the Park Division gives permission to do otherwise.

EVIDENCE. In all situations involving injury or property damage, Contractor is not to perform further work until photography, police reports and other evidence gathering activities are completed. The Park Division will supply guidelines for this situation. Contractor is to make no statement to anyone about which party might be liable for damages or injuries, or what caused any tree to break apart, fall, etc. All such questions shall be directed to the Park Division at 653-4080.

PAYMENTS. Payment shall be made monthly, unless otherwise agreed. Payment shall be made within fifteen (15) working days after the Finance Department receives an invoice or application for payment with adequate cost breakdown to certify payment due. Payment shall be on a per tree basis. Stump removal and cleanup must be completed.

ASSIGNMENT AND SUBLETTING. No Contract shall be assigned or subcontracted without the written consent of the Park Division. In no case shall consent relieve the Contractor from Contractor's contractual obligation or change the terms of this Contract. Any assignee or subcontractor approved by the Park Division shall be required to submit insurance certificates as per the Contract requirements prior to any removals.

C-2

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

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

DEPARTMENT OF PUBLIC WORKS
Ronald L. Bursek, P.E., Director

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

July 14, 2010

To: Michael J. Orth, Chairman, Parks Commission
Anthony Nudo, Chairman, Stormwater Utility Committee
David F. Bogdala, Chairman, Finance Committee

From: Jeff Warnock JW
Superintendent of Parks

Subject Tree Pruning Contract, 2010, #09-10

The Department of Public Works, Park Division has opened bids for the above referenced project.

Following is the list of the bidders:

Company	Estimated Number of Trees	Price per Tree	Total Price
Trees : "R" Us, Inc	4500	$14.94	$67,230.00
Lakeside Tree Service	4500	$16.00	$72,000.00
Arbor Images	4500	$18.00	$81,000.00
Trees-B-Gone	4500	$19.91	$89,595.00
Aerial Work Services Co,	4500	$35.00	$157,500.00
Asplundh Tree Expert Co.	4500	$42.80	$192,600.00
Droprite Tree & Landscape, LLC	4500	$100.00	$450,000.00
Water, Wood and Stone	4500	$126.00	$567,000.00

It is recommeded that this contract be awarded to Trees "R" Us, Inc, Wauconda, Illinois, for $67,230.00 plus $32,770.00 in contingency funds for additional trees that could be pruned, for total award amount of $100,000.00. Fund is from 501-09-50106-219 of the Storm Water Utility.

2010 CONTRACT TO PROVIDE MAINTENANCE PRUNING TO LAWN PARK AREA AND PUBLIC RIGHT-OF-WAY TREES

By And Between

THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation
[Through Its Department of Finance]

And

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

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 Finance, hereinafter referred to as **"CITY"**, and **TREES "R" US, INC.**, an Illinois corporation, located at P.O. Box 6014, Wauconda, Illinois 60084, 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 maintenance pruning work to lawn park area and public right-of-way trees located on all City streets and avenues East of 39th Avenue and South of 60th Street, including 39th Avenue and 60th Street street trees, according to the specifications and special conditions contained in the Request for Proposals, and **CITY** has accepted said 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 State law.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings and undertakings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged, **CITY** and **CONTRACTOR** agree as follows:

1. DEFINITIONS.

a. "CITY" shall mean the City of Kenosha, Wisconsin.

b. "FORESTER" shall mean the Forester of the City of Kenosha within the Park Division, and include designees.

c. "CONTRACT". The following documents comprise the complete Contract: Request for Proposals, 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, Determinations 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 Finance

Department and Park Division, and are incorporated into this Contract by reference.

d. "CONTRACTOR" shall mean the party who proposed to do Work herein described whose proposal was accepted by **CITY**. The term shall include approved subcontractors.

e. "WORK" means any contractual endeavor undertaken by **CONTRACTOR**, by itself and through approved subcontractors, to fulfill the terms of the Proposal as accepted, including, but not limited to, the providing of labor, service, materials, the oversight of approved subcontractors, and the disposal and dumping of materials and debris arising out of the endeavor.

f. "OVERPAYMENT" means any money **CONTRACTOR** received which **CONTRACTOR** was not entitled to receive under this Agreement, including, but not limited to, excess payment made in error and payment for defective and/or rejected Work which was not redone or replaced and accepted by **CITY.**

2. WORK TO BE PERFORMED BY CONTRACTOR AND PRICE/COST. **CONTRACTOR**, for the sum of Sixty-seven Thousand Two Hundred Thirty ($67,230.00) Dollars, will perform and complete, or will cause to be performed and completed, all Work, defined in this Contract, in a good and workmanlike manner, and it will do so in accordance with and subject to the provisions of this Contract. In the event of a conflict between the Request for Proposals, the Proposal and the Contract, the terms and conditions of the Contract shall control and supersede the other documents. Work shall consist of providing maintenance pruning to all lawn park areas and right-of-way trees on all City streets and avenues located East of 39th Avenue and South of 60th Street, including 39th Avenue and 60th Street street trees, in accordance with the Specifications and Special Conditions in Exhibit "A", which Exhibit is attached hereto and incorporated herein by reference. In the event of a conflict with this Contract, said document will control and supersede an inconsistent Contract provision.

3. COMMENCEMENT AND DILIGENT PROSECUTION OF WORK. **CONTRACTOR** will commence work within thirty (30) working days following execution of Contract and notice to proceed, and will prosecute Work diligently until fully complete in accordance with this Contract. **CONTRACTOR** shall complete Work within the Contract term.

CONTRACTOR, in the event of a dispute respecting quantity or quality of Work, shall not refuse to perform Work and shall not delay the performance of Work pending the resolution of said dispute. Arbitration is not herein provided for and unresolved disputes may be settled through the Courts.

CONTRACTOR has the duty of requesting **CITY** Forester, in writing, prior to the time for Contract completion, for an extension of time to complete the Work where the progress of the Work was delayed, the Work will not be completed on time, and **CONTRACTOR** was not responsible for such delay. Should **CITY** Forester grant an extension, **CONTRACTOR** will not be liable for liquidated damages arising out of the delay. Should **CITY** Forester determine that the Work will not be completed on schedule through normal methods and where no request for a time extension has been requested, or if requested, such request was not justified, **CITY** Forester shall provide **CONTRACTOR** with written notice requiring **CONTRACTOR** to take such extraordinary measures as may be required to complete Work on time, or as close to on time as possible. The failure of **CONTRACTOR** to take such extraordinary measures shall be grounds for **CITY** to suspend Work by **CONTRACTOR** and take such other measures as will assure

completion of Work within the Contract time, or if that is impossible, within a reasonable time. However, nothing herein contained shall prevent **CITY** Forester from stopping the **CONTRACTOR** from proceeding with Work beyond the time set for the completion date where the completion date was not extended.

4. CONTRACT TERM. The term of this Contract shall be from the date of execution until each of the following:

a. Respecting Work, until completion and acceptance, or December 31, 2010, whichever is earlier.

b. Respecting warranty, until expiration of warranty term.

c. Respecting Indemnity and Hold Harmless Agreement and Liability Insurance, until claims filed, if any, are resolved, or expiration of statute of limitations where no claims filed.

5. TERMINATION FOR CAUSE. In the event either party should fail to fulfill in a timely manner its obligation under this Agreement, the nonbreaching party shall thereupon have the right to terminate this Agreement 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.

CONTRACTOR shall perform no new or additional Work upon receipt of a notice of termination without the advance, written permission of **CITY** Forester, except as necessary to cure the default, but not beyond the ten (10) day period to cure.

6. CITY FORESTER'S DECISION FINAL. Should any dispute arise at any time between **CONTRACTOR** and **CITY** as to the true meaning or requirements of this Contract, or as to the manner of execution of 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 **CITY** Forester shall be final and conclusive, until and unless set aside by a Court of law.

CONTRACTOR agrees that should any decision of the **CITY** Forester be challenged in Court, the Court may only set aside a decision of the **CITY** Forester if it is wholly arbitrary and capricious and/or made in complete disregard of undisputed facts.

7. METHODS, LABOR, EQUIPMENT, MATERIALS AND SUPPLIES. CONTRACTOR shall select such methods and equipment for the performance of all operations connected with Work as will assure professional quality of Work and a rate of progress which will assure the timely completion of Work. **CONTRACTOR** is responsible for furnishing all labor, equipment, material and supplies required to perform Work.

8. SUSPENSION OF WORK BY CITY. CITY Forester shall have authority to suspend Work where he/she believes that **CONTRACTOR** is not performing Work in accordance with this Contract. **CONTRACTOR** shall have no right to additional compensation for delay or a right to an extension of time to complete Work where Work is suspended by **CITY** Forester for good cause.

9. INJUNCTIONS. Should a preliminary or temporary injunction suspend Work for a period of time, the deadline for completion of Work shall be extended by such time as the preliminary to temporary injunction was in effect. In the event a permanent injunction or Court

order or judgment prohibits Work, this Contract shall be null and void as of the date such injunction, Court order or judgment becomes final, although **CONTRACTOR** shall be entitled to reasonable compensation for Work performed to that date. In the event a permanent injunction, Court order or judgment reduces the scope of Work, this Contract shall be deemed modified in accordance therewith and compensation of **CONTRACTOR** shall be proportionately reduced to reflect the decrease in the scope of Work.

10. CHANGE ORDERS FOR ADDITIONAL WORK, ADJUSTMENT IN PRICE. **CONTRACTOR** does not have the discretion to refuse to comply with a Change Order to increase the scope of Work identified in **CITY** Request for Proposals. Increases in the scope of Work shall result in a determination of **CONTRACTOR'S** additional compensation based upon good faith negotiation, with the Contract as a guideline. Change Orders must be approved by the **CITY** Forester on behalf of the **CITY,** and by **CONTRACTOR,** and upon approval and execution, shall be considered a Contract amendment, to be kept on file in **CITY** Finance Department and Park Division, and incorporated into this Contract by reference. Should **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 **CITY** 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. CONTRACTOR will only use subcontractors, major suppliers and dumping or disposal sites, which are listed in this Contract. Any changes in said list must be approved by **CITY** Forester. **CONTRACTOR** is responsible for the Work of subcontractors and for delays in Work occasioned thereby.

CONTRACTOR has a duty to remove and replace subcontractors whose involvement in Work will result in a breach of this Contract.

13. CONTROL AND PROTECTION OF WORK SITE. CONTRACTOR shall be responsible for the control and protection of Work site from commencement of Work until Work is completed.

14. WARRANTY. CONTRACTOR will replace any Work which is defective or not in conformity with this Contract at no cost to **CITY** for a period of one (1) year after final acceptance of Work by **CITY.**

15. CITY COOPERATION. CITY will reasonably cooperate with **CONTRACTOR** to facilitate **CONTRACTOR'S** performance of Work. **CITY** will physically mark trees to be removed and notify **CONTRACTOR** of the nature of the markings. **CONTRACTOR** will provide reasonable notice to **CITY** when the assistance thereof is requested. However, **CITY** has no obligation to supervise or perform any part of Work.

16. GOVERNMENTAL PERMITS AND APPROVALS. CONTRACTOR is authorized to perform work under this Contract without obtaining a separate permit from the **CITY** Forester or a Street Encroachment Permit.

17. LAWS, RULES AND REGULATIONS. CONTRACTOR shall comply with all Federal, State and local laws, rules and regulations applicable to the performance of this Contract and 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 **CONTRACTOR** performs Work as an independent Contractor, **CITY** Forester shall have the right to request **CONTRACTOR** to remove and replace any of **CONTRACTOR'S** employees involved in Work when said employee does not furnish quality workmanship or is uncooperative with or disrespectful to any **CITY** personnel associated with Work. **CONTRACTOR** will comply with any reasonable request.

CONTRACTOR, at all times Work is being performed, shall assign an employee or agent on the Work site to be the person to whom **CITY** Forester may furnish instructions or orders, or make inquiries of at all times when Work is being performed. The name of such employee or agent shall be submitted to **CITY** Forester in writing, upon commencement of Work.

19. SANITATION AND HEALTH. CONTRACTOR has the obligation of arranging for drinking water and sanitary conveniences for employees, subcontractors, suppliers, and agents thereof and for taking such Work site precautions as will deter the spread of infectious diseases. **CONTRACTOR** shall not use materials in such manner as to pose a health hazard. **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 in the matter.

20. INSPECTION. CITY has the right, at its cost and expense, to assign or retain inspectors to determine that Work is performed in conformance with this Contract. However, only **CITY** Forester can reject Work. The use of inspectors by **CITY** shall not relieve **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 **CITY** Forester to have **CONTRACTOR** take corrective action at **CONTRACTOR'S** cost and expense to remedy such deficiencies or defects, when discovered. The use of inspectors by **CITY** shall not relieve **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. Materials used must be suitable to and compatible with the nature of the Work, Work site and prevailing year round weather conditions which affect Work and the Work site.

22. UTILITIES. CONTRACTOR has the obligation of obtaining utility locations, clearances, or cutoffs directly from the relevant utility at **CONTRACTOR'S** cost and expense.

23. CLEANUP. CONTRACTOR shall at all times keep all areas related to 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 Work.

Within twenty-four (24) hours after the completion of Work on a specified tree, **CONTRACTOR** shall remove all surplus materials, tools, equipment or plants, leaving the Work site and the sites of easements and areas related to Work, unobstructed, clean and sanitary, ready for their intended use and in as safe a condition as their nature will reasonably permit. Should **CONTRACTOR** neglect any such duty, **CITY** Forester may cause any such Work to be performed at **CONTRACTOR'S** cost and expense.

24. PAYMENT OF EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS. **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 **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. **CONTRACTOR**, as a condition of payment, shall execute an Affidavit Respecting Construction Lien Waivers/Releases and file such document with **CITY** Director of Finance.

25. LIQUIDATED DAMAGES FOR DELAYS IN CONTRACT COMPLETION. In the event that **CONTRACTOR** fails to fully and completely perform Work within the Contract term, **CONTRACTOR** shall pay to **CITY** for such default the sum of One Hundred ($100.00) Dollars 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 **CITY** from **CONTRACTOR.**

26. RIGHTS OF CITY UPON CONTRACTOR DEFAULT. CONTRACTOR recognizes the right of **CITY** to suspend Work, to order the revision of nonconforming Work, to re-let all or part of Work or to itself perform such Work as may be required to ensure the timely completion of Work or to replace improper or defective Work, as determined necessary by **CITY** Forester. However, none of the above shall relieve **CONTRACTOR** of its obligations under this Contract.

27. OVERPAYMENTS AND SETOFFS UNRELATED TO CONTRACT. **CONTRACTOR** will promptly, upon receipt of written demand from **CITY** Director of Finance, refund any Overpayments received thereby. Should **CONTRACTOR** not comply with said request within thirty (30) days of receipt of written notice, **CONTRACTOR** shall pay **CITY** interest for said amount at the rate of one (1%) percent per month on the unpaid balance, until paid in full.

Should **CONTRACTOR** owe **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 Work under this Contract, **CONTRACTOR** authorizes **CITY** to deduct said amount from any payment due **CONTRACTOR** hereunder.

28. SAFETY PRECAUTIONS. CONTRACTOR, during the performance of Work, shall assume control of the Work site and put up and properly maintain, at **CONTRACTOR'S** cost and expense, adequate barriers, warning signs, lights and such other devices and take such measures as will make 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 Work, during both day and night hours. **CITY** Forester may order **CONTRACTOR**, by a time or date certain, to take designated safety

measures and the failure of **CONTRACTOR** to promptly obey said order shall result in liquidate damages of Five Hundred ($500.00) Dollars per day for each day said order is not complied with. **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 **CITY** Forester or **CITY** inspectors or lack thereof, in this regard. **CONTRACTOR** has an obligation to check warning and safety devices on a daily basis.

29. PAYMENT - ACCEPTANCE OF WORK. Payment shall be made by **CITY** on a monthly basis upon submission of invoice for completed Work to **CITY** Director of Finance, within fifteen (15) days after **CITY** Forester executed a document accepting Work as being performed in accordance with this Contract, subject to the following.

Payment will not be made for so long as any order relative to seeking compliance with this Contract made to **CONTRACTOR** by **CITY** Forester is not complied with. Payment will be reduced by the amount of any claim which **CITY** may have against **CONTRACTOR** for improper, defective, or rejected Work or liquidated damages due to delay in the schedule of time for Work completion, or in taking safety precautions, by the amount of setoffs authorized by this Contract, or for any other primary liability of **CONTRACTOR** which **CITY** could be secondarily liable for, which secondary liability was not assumed by **CITY** under this Contract.

Work shall not be accepted by **CITY** Forester until all employees, subcontractors and suppliers have been fully paid for all work, labor, services, supplies or materials provided thereby, and lien waivers or releases have been procured and filed with the **CITY** Finance Director.

30. INDEPENDENT CONTRACTORS, WORKERS AND UNEMPLOYMENT COMPENSATION. 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. **CONTRACTOR** shall be responsible for Workers and Unemployment Compensation with respect to its employees.

31. PROHIBITIONS AS TO ASSIGNMENT, SUBCONTRACTING AND JOINT VENTURES. CONTRACTOR may not assign this Contract, enter into a joint enterprise or sublet any Work without the express written approval of **CITY** Forester and **CITY** is not liable for any costs and expenses arising therefrom. Listed subcontractors, major suppliers, and dumping and disposal sites are excepted from this prohibition. An unlawful assignment, joint enterprise or subletting shall render this Contract voidable by the **CITY** Forester as of the date thereof, and **CITY** will not be obligated to pay to **CONTRACTOR** any money for any Work performed by an unauthorized party. However, if this Contract is voided, **CONTRACTOR** will continue to be responsible for maintaining the safety of the Work site until relieved of this obligation by **CITY** Forester or until another contractor takes possession of the Work site. The **CONTRACTOR** will be responsible for any cost, loss, expense or damages the **CITY** may incur in enforcing this provision.

32. INDEMNITY AND HOLD HARMLESS AGREEMENT. CONTRACTOR agrees that it will, at all times relevant to this Contract, defend, indemnify and hold harmless **CITY** and its officers, agents, employees and representatives, from and against any and all liability, loss, charges, damages, claims, judgments, costs, expenses or attorneys fees, which they may hereafter sustain, incur or be required to pay as a result of any action taken or not taken by **CITY** or its officers, agents, employees or representatives to supervise or oversee the adequacy of safety precautions taken by **CONTRACTOR** or as a result of the willful or negligent

act or omission of **CONTRACTOR** and its subcontractors, suppliers, assigns, employees, officers, agents or representatives, or resulting from **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 for sustain personal injury, death or property loss or damage, or a violation of any other right protected by law.

33. INSURANCE. CONTRACTOR, prior to performing Work and during the Contract term, shall carry the insurance policies in the following minimum limits, which shall be written and enforceable in accordance with the laws of the State of Wisconsin.

- Commercial General Liability: General Aggregate - One Million ($1,000,000.00) Dollars; each occurrence - One Million ($1,000,000.00) Dollars.

- Automobile Liability:
  - Bodily injury per person - One Million ($1,000,000.00) Dollars;
  - Bodily injury per accident- One Million ($1,000,000.00) Dollars;
  - Property damage - Two Hundred Thousand ($200,000.00) Dollars, or a combined single limit of One Million ($1,000,000.00) Dollars.

- Worker's Compensation - Statutory limits.

Said insurance coverage shall be verified by a Certificate of Insurance issued to Finance Department of **CITY**, which shall provide that should any of the described policies be cancelled or terminated before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the certificate holder.

34. COOPERATION. CONTRACTOR shall permit **CITY** employees and representatives to have reasonable access to Work site at all times.

35. SEVERABILITY. It is mutually agreed that in case any provision of this Contract is determined by a Court of law to be unconstitutional, illegal or unenforceable, then it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

36. NONDISCRIMINATION. In the performance of Work under this Contract, **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. 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. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including, but not limited to, employees.

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 hereto, said amendment to be attached hereto and incorporated herein, it being expressly understood that **CITY** Director of Finance must approve any amendment of this Contract.

39. GOVERNING LAW; VENUE. This Contract shall be construed, enforced and governed in all respects, in accordance with the laws and statutes of the United States of America and the State of Wisconsin, and as they may be amended from time to time. All disputes between the parties to this Contract are to be venued in the courts of Kenosha County, Wisconsin, or the Federal Courts for the Eastern District of Wisconsin; the parties consent to personal jurisdiction thereto.

40. NOTICES. Notices required by or relevant to this Contract shall be furnished by **CONTRACTOR** to **CITY** by personal service or by certified mail with return receipt, sent or delivered to the **CITY** Forester or Director of Finance at the Municipal Building, Room 208, 625 - 52nd Street, Kenosha, Wisconsin 53140.

Notices required by or relevant to this Agreement shall be furnished by **CITY** to **CONTRACTOR** by personal service or by certified mail with return receipt sent or delivered to:

Nick Willis,
Vice President,
Trees "R" Us, Inc.,
P.O. Box 6014,
Wauconda, Illinois 60084

41. EXECUTION AUTHORITY. CITY and **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 below given.

CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation

BY:_____
CAROL STANCATO, Finance Director
Date:_____

BY:_____
RONALD L. BURSEK,
Director of Public Works
Date:_____

BY:_____
DIRK NELSON, City Forester
Date:_____

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

BY:_____
JENNI WILLIS, President
Date:_____

BY:_____
NICK WILLIS,
Vice President
Date:_____

Drafted By:
EDWARD R. ANTARAMIAN,
Acting City Attorney

EXHIBIT A

CITY OF KENOSHA, WISCONSIN
FINANCE DEPARTMENT

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

Proposal No. 09-10

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

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

- East of 39th Avenue and South of 60th Street, including 39th Avenue and 60th Street street trees.

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

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

Contractor shall provide the City with a sample of the notification letter to be given to residents in the 2010 Pruning Contract area in advance of commencement of work.

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

SCHEDULE. Pruning operations shall commence no later than thirty (30) days after Contract has been awarded. The time limit for completion of work is December 31, 2010, with any trees within the outlined pruning area that have not been pruned, but which require pruning, being placed on future pruning contracts where no time extension is granted.

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

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

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

SUPERVISION. The Contractor shall be under the direct supervision of the City or its authorized representatives. Contractor shall consult the Kenosha Park Division concerning details and scheduling of all work. Contractor must have a responsible person in charge of work at all times to whom the Park Division may issue directives, who shall accept and act upon such directives. A name, phone number and address must be made available to the Park Division of Contractor's responsible person(s). If any incidents occur that will impact any day's work, the Park Division must be contacted as soon as possible.

INSPECTIONS. The Contractor shall call the Kenosha Park Division at 653-4080 between 7:00 A.M. and 8:00 A.M. on the morning of each day work will be performed to inform the Park Division of locations for that day's work. The Park Division may conduct inspections of Contractor's work at any time without notification.

PUBLIC RELATIONS. The Park Division has notified abutting property owners of anticipated work using the "Work Notification Form".

The Park Division shall provide a supply of informative leaflets at no cost to Contractor who will distribute them to each abutting property owner and place them at each building in front of which work will occur. Contractor shall answer any questions from citizens concerning the project. Anyone asking a question that the Contractor cannot answer will be referred to the Park Division at 653-4080.

SAFETY. Work will conform to the most recent revision of American National

Standards Institute Standard Z-133.1-2006 (Safety Requirements for Pruning, Trimming, Repairing, Maintaining, Removing Trees and for Cutting Brush). A copy of these standards is on file at the office of the Kenosha Park Division and is made a part of the Contract by this reference. Contractor is responsible for contacting Digger's Hotline (1-800-242-8511) and making sure the sites are marked prior to any stump removal.

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

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

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

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

Not every tree within the 2010 Pruning Contract area will require maintenance pruning. Contractor shall bypass and note trees do not require Contract pruning.

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

TRAFFIC CONTROL. Traffic control is the total responsibility of Contractor and must be coordinated with the Public Safety Dispatcher (656-1234). Contractor is responsible for posting the streets where work is to be performed twenty-four (24) hours prior to the work's commencement. If it becomes necessary to tow parked vehicles, the Contractor shall coordinate towing with the Park Division.

COORDINATION OF WORK. Separate crews may work on separate streets if the streets are close to one another. Each crew must complete work on each particular block before moving to another block unless the Park Division gives permission to do otherwise.

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

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

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

- The line-clearance tree trimmer of line-clearance tree trimmer trainee must approach more closely than ten (10') feet (3m) to any conductor or electrical apparatus energized in excess of 750 volts;

- When branches of limbs being removed cannot first be cut (with a pole pruner/pole saw) sufficiently clear of the primary conductors and apparatus so as to avoid contact; or,

- When roping is required to remove branches or limbs from such conductors or

apparatus.

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

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

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

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

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

EVIDENCE. In all situations involving injury or property damage, Contractor is not to perform further work until photography, police reports and other evidence gathering

activities are completed. The Kenosha Park Division will supply guidelines for this situation. Contractor is to make no statement to anyone about which party might be liable for damages or injuries, or what caused any tree to break apart, fall, etc. All such questions shall be directed to Kenosha Park Division at 653-4080.

PAYMENTS. Payment shall be made monthly, unless otherwise agreed. Payment shall be made within fifteen (15) working days after the Finance Department receives an invoice or application for payment with adequate cost breakdown to certify payment due. Payment shall be on a per tree basis. Stump removal and cleanup must be completed.

ASSIGNMENT AND SUBLETTING. No Contract shall be assigned or subcontracted without the written consent of the Park Division. In no case shall consent relieve the Contractor from Contractor's contractual obligation or change the terms of this Contract. Any assignee or subcontractor approved by the Park Division shall be required to submit insurance certificates as per the Contract requirements prior to any removals.

C-3

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

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

DEPARTMENT OF PUBLIC WORKS

Ronald L. Bursek, P.E., Director

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

July 14, 2010

To: Michael J. Orth, Chairman, Parks Commission
Anthony Nudo, Chairman, Stormwater Utility Committee
David F. Bogdala, Chairman, Finance Committee

From: Jeff Warnock JW
Superintendent of Parks

Subject Tree Reforestation Contract, 2010, #11-10

The Department of Public Works, Park Division has opened bids for the above referenced project.

Following is the list of the bidders:

Company	Grand Total
Paul Swartz Nursery & Garden Shop, Inc	$26,670.00
Arthur Weiler	$27,800.00
Dan Larsen Landscaping, Inc	$31,670.00
The Swartz Nurseries, Inc	$35,350.00
Breezy Hill Nursery, Inc	$35,827.40
Green Man Wood Services, Inc	$42,000.00
J. Kasian Sons	$42,030.00
Water, Wood And Stone	$50,495.00
McKay Nursery Co	No Bid

It is recommeded that this contract be awarded to Paul Swartz Nursery & Garden Shop, Inc, Burlington, Wisconsin, for $26,670.00 plus $23,330.00 in contingency funds for additional trees that may be required for storm related replacements (if needed), for total award amount of $50,000.00. Fund is from CIP Line Item PK-93-004.

2010 CONTRACT TO PROVIDE TREES AND TO PLANT SAID TREES IN CITY LAWN PARK AREAS AND PUBLIC RIGHTS-OF-WAY

By And Between

THE CITY OF KENOSHA, WISCONSIN, A Municipal Corporation [Through Its Department of Finance]

And

PAUL SWARTZ NURSERY & GARDEN SHOP, INC., A Wisconsin Corporation

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 Finance, 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 parkways and public rights-of-way within the City of Kenosha according to the specifications and special conditions contained in the Request for Proposals, and **CITY** has accepted said 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 State law.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings and undertakings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged, **CITY** and **CONTRACTOR** agree as follows:

1. DEFINITIONS.

a. "AGREEMENT". The following documents comprise the complete Agreement: Request for Proposals, Proposal, this executed "2010 Contract To Provide Trees and To Plant Said Trees in City Lawn Park Areas and Public Rights-of-Way", 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, Determinations 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 Finance 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 **CONTRACTOR** was not entitled to receive under this Agreement, including, but not limited to, excess payment made in error and payment for defective and/or rejected Work which was not redone or replaced and accepted by **CITY.**

e. **"WORK"** means any contractual endeavor undertaken by **CONTRACTOR**, by itself and through approved subcontractors, to fulfill the terms of the Agreement, including, but not limited to, the furnishing of trees, the providing of labor, service, materials, the oversight of approved subcontractors, and the disposal and dumping of materials and debris arising out of the endeavor.

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

2. **WORK TO BE PERFORMED BY CONTRACTOR AND PRICE/COST. CONTRACTOR**, for the sum of Twenty-six Thousand Six Hundred Seventy ($26,670.00) Dollars, will perform and complete, or will cause to be performed and completed, all Work in a good and workmanlike manner, and it will do so in accordance with and subject to the provisions of this Agreement. In the event of a conflict between the Request for Proposals, the Proposal and the 2010 Contract To Provide Trees and To Plant Said Trees in City Lawn Park Areas and Public Rights-of-Way, the terms and conditions of the 2010 Contract shall control and supersede the other documents. 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. In the event of a conflict with this Contract To Provide Trees and Plant Said Trees in City Lawn Park Areas and Public Rights-of-Way, the Specifications and Special Conditions will control and supersede an inconsistent provision in this Contract to provide trees and plant said trees.

3. **COMMENCEMENT AND DILIGENT PROSECUTION OF WORK. CONTRACTOR** will commence work within ten (10) working days following execution of Contract and notice to proceed, and will prosecute Work diligently until fully complete in accordance with this Contract. **CONTRACTOR** shall complete Work within the Contract term.

CONTRACTOR, in the event of a dispute respecting quantity or quality of Work, shall not refuse to perform Work and shall not delay the performance of Work pending the resolution of said dispute. Arbitration is not herein required and unresolved disputes may be settled through the Courts.

CONTRACTOR has the duty of requesting of **FORESTER**, in writing, prior to the time for Contract completion, for an extension of time to complete the Work where the progress of the Work was delayed, the Work will not be completed on time, and **CONTRACTOR** was not responsible for such delay. Should **FORESTER** grant an extension, **CONTRACTOR** will not be liable for liquidated damages arising out of the delay. Should **FORESTER** determine that the Work will not be completed on schedule through normal methods and where no request for a time extension has been requested, or if requested, such request was not justified, **FORESTER** shall provide **CONTRACTOR** with written notice requiring **CONTRACTOR** to take such extraordinary measures as may be required to complete Work on time, or as close to on time as

possible. The failure of **CONTRACTOR** to take such extraordinary measures shall be grounds for **CITY** to suspend Work by **CONTRACTOR** and take such other measures as will assure completion of Work within the Contract time, or if that is impossible, within a reasonable time. Nothing contained herein shall prevent **FORESTER** from stopping the **CONTRACTOR** from proceeding with Work beyond the time set for the completion date where the completion date was not extended.

4. CONTRACT TERM. The term of this Contract shall be from the date of execution until each of the following:

a. Respecting Work, until completion and acceptance, or November 30, 2010, whichever is earlier.

b. Respecting warranty, until expiration of warranty term.

c. Respecting Indemnity and Hold Harmless Agreement and Liability Insurance, until claims filed, if any, are resolved, or expiration of applicable statutes of limitations where no claims were filed.

5. TERMINATION FOR CAUSE. In the event either party should fail to fulfill in a timely manner its obligation under this Agreement, the nonbreaching party shall thereupon have the right to terminate this Agreement 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.

CONTRACTOR shall perform no new or additional Work upon receipt of a notice of termination without the advance, written permission of **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 **CONTRACTOR** and **CITY** as to the true meaning or requirements of this Contract, or as to the manner of execution of 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.

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. **CONTRACTOR** shall select such methods and equipment for the performance of all operations connected with Work as will assure professional quality of Work and a rate of progress which will assure the timely completion of Work. **CONTRACTOR** is responsible for furnishing all labor, equipment, material and supplies required to perform Work.

8. SUSPENSION OF WORK BY CITY. FORESTER shall have authority to suspend Work where he/she believes that **CONTRACTOR** is not performing Work in accordance with this Contract. **CONTRACTOR** shall have no right to additional compensation for delay or a right to an extension of time to complete Work where Work is suspended by **FORESTER** for good cause.

9. INJUNCTIONS. Should a preliminary or temporary injunction suspend Work for a period of time, the deadline for completion of 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 Work, this Contract shall be null and void as of the date such injunction, Court order or judgment becomes final, although **CONTRACTOR** shall be entitled to reasonable compensation for Work performed to that date. In the event a permanent injunction, Court order or judgment reduces the scope of Work, this Contract shall be deemed modified in accordance therewith and compensation of **CONTRACTOR** shall be proportionately reduced to reflect the decrease in the scope of Work.

10. CHANGE ORDERS FOR ADDITIONAL WORK, ADJUSTMENT IN PRICE. **CONTRACTOR** does not have the discretion to refuse to comply with a Change Order to increase the scope of Work identified in **CITY** Request for Proposals. Increases in the scope of Work shall result in a determination of **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 **CONTRACTOR,** and upon approval and execution, shall be considered a Contract amendment, to be kept on file in **CITY** Department of Finance and Park Division, and incorporated into this Contract by reference. Should **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 **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. CONTRACTOR will only use subcontractors, major suppliers and dumping or disposal sites, which are listed in this Contract. Any changes in said list must be approved by **FORESTER**. **CONTRACTOR** is responsible for the Work of subcontractors and for delays in Work occasioned thereby.

CONTRACTOR has a duty to remove and replace subcontractors whose involvement in Work will result in a breach of this Contract.

13. CONTROL AND PROTECTION OF WORK SITE. CONTRACTOR shall be responsible for the control and protection of Work site from commencement of Work until Work is completed.

14. WARRANTY. CONTRACTOR will replace any Work which is defective, including replacing any tree that dies, or any Work not in conformity with this Contract at no cost to **CITY** for a period of one (1) year after final acceptance of Work by **CITY.**

15. CITY COOPERATION. CITY will reasonably cooperate with **CONTRACTOR** to facilitate **CONTRACTOR'S** performance of Work. **CONTRACTOR** will provide reasonable notice to **CITY** when the assistance thereof is requested. However, **CITY** has no obligation to supervise or perform any part of Work.

16. GOVERNMENTAL PERMITS AND APPROVALS. CONTRACTOR is authorized to perform work under this Contract without obtaining a separate permit from the

FORESTER or a Street Encroachment Permit.

17. LAWS, RULES AND REGULATIONS. CONTRACTOR shall comply with all Federal, State and local laws, rules and regulations applicable to the performance of this Contract and 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 **CONTRACTOR** performs Work as an independent Contractor, **FORESTER** shall have the right to request **CONTRACTOR** to remove and replace any of **CONTRACTOR'S** employees involved in Work when said employee does not furnish quality workmanship or is uncooperative with or disrespectful to any **CITY** personnel associated with Work. **CONTRACTOR** will comply with any reasonable request.

CONTRACTOR, at all times Work is being performed, shall assign an employee or agent on the Work site to be the person to whom **FORESTER** may furnish instructions or orders, or make inquiries of at all times when Work is being performed. The name of such employee or agent shall be submitted to **FORESTER** in writing, upon commencement of Work.

19. SANITATION AND HEALTH. CONTRACTOR has the obligation of arranging for drinking water and sanitary conveniences for employees, subcontractors, suppliers, and agents thereof and for taking such Work site precautions as will deter the spread of infectious diseases. **CONTRACTOR** shall not use materials in such manner as to pose a health hazard. **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 in the matter.

20. INSPECTION. CITY has the right, at its cost and expense, to assign or retain inspectors to determine that Work is performed in conformance with this Contract. Only **FORESTER**, however, can reject Work. The use of inspectors by **CITY** shall not relieve **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 **FORESTER** to have **CONTRACTOR** take corrective action at **CONTRACTOR'S** cost and expense to remedy such deficiencies or defects, when discovered. The use of inspectors by **CITY** shall not relieve **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. Materials used must be suitable to and compatible with the nature of the Work, Work site and prevailing year round weather conditions that affect Work and the Work site.

22. UTILITIES. CONTRACTOR has the obligation of obtaining utility locations, clearances, or cutoffs directly from the relevant utility at **CONTRACTOR'S** cost and expense.

23. CLEANUP. CONTRACTOR shall at all times keep all areas related to Work, including all rights-of-way, 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 Work.

Within twenty-four (24) hours after the completion of the planting process of a specified tree, **CONTRACTOR** shall remove all surplus materials, tools, equipment or plants, leaving the Work site and the sites of easements and areas related to Work, unobstructed,

clean and sanitary, ready for their intended use and in as safe a condition as their nature will reasonably permit. Should **CONTRACTOR** neglect any such duty, **FORESTER** may cause any such Work to be performed at **CONTRACTOR'S** cost and expense.

24. PAYMENT OF EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS. **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 **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. **CONTRACTOR**, as a condition of payment, shall execute an Affidavit Respecting Construction Lien Waivers/Releases and file such document with **CITY** Director of Finance.

25. LIQUIDATED DAMAGES FOR DELAYS IN CONTRACT COMPLETION. In the event that **CONTRACTOR** fails to fully and completely perform Work within the Contract term, **CONTRACTOR** shall pay to **CITY** for such default the sum of One Hundred ($100.00) Dollars 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 **CITY** from **CONTRACTOR.**

26. RIGHTS OF CITY UPON CONTRACTOR DEFAULT. CONTRACTOR recognizes the right of **CITY** to suspend Work, to order the revision of nonconforming Work, to re-let all or part of Work or to itself perform such Work as may be required to ensure the timely completion of Work or to replace improper or defective Work, as determined necessary by **FORESTER**. No provision of this section 26 may be construed to relieve **CONTRACTOR** of its obligations under this Contract.

27. OVERPAYMENTS AND SETOFFS UNRELATED TO CONTRACT. **CONTRACTOR** will promptly, upon receipt of written demand from **CITY** Director of Finance, refund any Overpayments received thereby. Should **CONTRACTOR** not comply with said request within thirty (30) days of receipt of written notice, **CONTRACTOR** shall pay **CITY** interest for said amount at the rate of one (1%) percent per month on the unpaid balance, until paid in full.

Should **CONTRACTOR** owe **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 Work under this Contract, **CONTRACTOR** authorizes **CITY** to deduct said amount from any payment due **CONTRACTOR** hereunder.

28. SAFETY PRECAUTIONS. CONTRACTOR, during the performance of Work, shall assume control of the Work site and put up and properly maintain, at **CONTRACTOR'S** cost and expense, adequate barriers, warning signs, lights and such other devices and take such measures as will make 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 Work, during both day and night hours. **FORESTER** may order **CONTRACTOR**, by a time or date certain, to take designated safety measures and the failure of **CONTRACTOR** to promptly obey said order shall result in liquidate damages of Five Hundred ($500.00) Dollars per day for each day said order is not complied with. **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 **FORESTER** or **CITY** inspectors or lack thereof, in this regard. **CONTRACTOR** has an obligation to check warning and safety devices on a daily basis.

29. PAYMENT - ACCEPTANCE OF WORK. Payment shall be made by **CITY** on a monthly basis upon submission of invoice for completed Work to **CITY** Director of Finance, within thirty (30) days after **FORESTER** executed a document accepting Work as being performed in accordance with this Contract, subject to the following.

CITY may withhold payment if **CONTRACTOR** is not in compliance with any order issued by the **FORESTER**. Payment will be reduced by the amount of any claim which **CITY** may have against **CONTRACTOR** for improper, defective, or rejected Work or liquidated damages due to delay in the schedule of time for Work completion, or in taking safety precautions, by the amount of setoffs authorized by this Contract, or for any other primary liability of **CONTRACTOR** which **CITY** could be secondarily liable for, which secondary liability was not assumed by **CITY** under this Contract.

Work shall not be accepted by **FORESTER** until all employees, subcontractors and suppliers have been fully paid for all work, labor, services, supplies or materials provided thereby, and lien waivers or releases have been procured and filed with the **CITY** Finance Director.

30. INDEPENDENT CONTRACTORS, WORKERS AND UNEMPLOYMENT COMPENSATION. 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. **CONTRACTOR** shall be responsible for Workers and Unemployment Compensation with respect to its employees.

31. PROHIBITIONS AS TO ASSIGNMENT, SUBCONTRACTING AND JOINT VENTURES. CONTRACTOR may not assign this Contract, enter into a joint enterprise or sublet any Work without the express written approval of **FORESTER** and **CITY** is not liable for any costs and expenses arising therefrom. Listed subcontractors, major suppliers, and dumping and disposal sites are excepted from this prohibition. An unlawful assignment, joint enterprise or subletting shall render this Contract voidable by the **FORESTER** as of the date thereof, and **CITY** will not be obligated to pay to **CONTRACTOR** any money for any Work performed by an unauthorized party. If this Contract is voided, **CONTRACTOR** will continue to be responsible for maintaining the safety of the Work site until relieved of this obligation by **FORESTER** or until another contractor takes possession of the Work site. The **CONTRACTOR** will be responsible for any cost, loss, expense or damages the **CITY** may incur in enforcing this provision.

32. INDEMNITY AND HOLD HARMLESS AGREEMENT. CONTRACTOR agrees that it will, at all times relevant to this Contract, defend, indemnify and hold harmless **CITY** and its officers, agents, employees and representatives, from and against any and all liability, loss, charges, damages, claims, judgments, costs, expenses or attorneys fees, which they may hereafter sustain, incur or be required to pay as a result of any action taken or not taken by **CITY** or its officers, agents, employees or representatives to supervise or oversee the adequacy of safety precautions taken by **CONTRACTOR** or as a result of the willful or negligent act or omission of **CONTRACTOR** and its subcontractors, suppliers, assigns, employees, officers, agents or representatives, or resulting from **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 for sustain personal injury, death or property loss or damage, or a violation of any other right protected by law.

33. INSURANCE. CONTRACTOR, prior to performing Work and during the Contract term, shall carry the insurance policies in the following minimum limits, which shall be written and enforceable in accordance with the laws of the State of Wisconsin.

- Commercial General Liability: General Aggregate - One Million ($1,000,000.00) Dollars; each occurrence - One Million ($1,000,000.00) Dollars.

- Automobile Liability:
  - Bodily injury per person - One Million ($1,000,000.00) Dollars;
  - Bodily injury per accident- One Million ($1,000,000.00) Dollars;
  - Property damage - Two Hundred Thousand ($200,000.00) Dollars, or a combined single limit of One Million ($1,000,000.00) Dollars.

- Worker's Compensation - Statutory limits.

Said insurance coverage shall be verified by a Certificate of Insurance issued to Finance Department of **CITY**, which shall provide that should any of the described policies be cancelled or terminated before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the **CITY**.

34. COOPERATION. CONTRACTOR shall permit **CITY** employees and representatives to have reasonable access to Work site at all times.

35. SEVERABILITY. It is mutually agreed that in case any provision of this Contract is determined by a Court of law to be unconstitutional, illegal or unenforceable, then it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

36. NONDISCRIMINATION. In the performance of Work under this Contract, **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. 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. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including, but not limited to, employees.

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 hereto, said amendment to be attached hereto and incorporated herein, it being expressly understood that **CITY** Director of Finance must approve any amendment of this Contract.

39. NOTICES. Notices required by or relevant to this Contract shall be furnished by **CONTRACTOR** to **CITY** by personal service or by certified mail with return receipt, sent or delivered to the **FORESTER** or Director of Finance at the Municipal Building, Room 208, 625 - 52nd Street, Kenosha, Wisconsin 53140.

Notices required by or relevant to this Agreement shall be furnished by **CITY** to **CONTRACTOR** by personal service or by certified mail with return receipt sent or delivered to:

Mr. Ross P. Swartz, President,
Paul Swartz Nursery & Garden Shop, Inc.,
30728 - 93rd Street,
Burlington, Wisconsin 53105

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

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

CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation

BY:_____
CAROL STANCATO, Finance Director
Date:_____

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

BY:_____
DIRK NELSON, City Forester
Date:_____

PAUL SWARTZ NURSERY &
GARDEN SHOP, INC.,
A Wisconsin Corporation

BY:_____
ROSS P. SWARTZ, President
Date:_____

BY:_____
ELIZABETH A. SWARTZ, Secretary
Date:_____

Drafted By:
EDWARD R. ANTARAMIAN,
City Attorney

2010 KENOSHA STREET TREES

COMMON NAME	BOTANICAL NAME	SIZE	ROOT	QTY.	UNIT PRICE	PLANTING CHARGE	TOTAL COST	TOTAL
Chanticleer Callery Pear	pyrus calleryana "Chanticleer"	2"	B&B	25	$92.00	$55.00	$147.00	$3,675.00
Japanese Tree Lilac	syringa reticulata "Ivory Silk" tree form	2"	B&B	15	$98.00	$55.00	$153.00	$2,295.00
Skyline Honeylocust	gleditsia Triacanthos enermis	2"	B&B	20	$110.00	$55.00	$165.00	$3,300.00
Red Jewel Crabapple	malus "Jewelcole"	2"	B&B	20	$75.00	$55.00	$130.00	$2,600.00
Redmond Linden	tilia americana x euchlora "Redmond"	2"	B&B	30	$98.00	$55.00	$153.00	$4,590.00
Common Hackberry	celtis occidentalis	2"	B&B	20	$98.00	$55.00	$153.00	$3,060.00
Autumn Blaze Maple	acer x freemanii "Jeffersred"	2"	B&B	50	$88.00	$55.00	$143.00	$7,150.00
							TOTAL COST	$26,670.00

EXHIBIT A

EXHIBIT B

CITY OF KENOSHA, WISCONSIN
PARK DIVISION

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

Proposal No. 11-10

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

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

SUPERVISION. Contractor shall consult the Kenosha Park Division concerning details and scheduling of all work. Contractor must have a responsible person in charge at all times to whom the Kenosha Park Division may issue directives, who shall accept and act upon such directives. A name, phone number and address must be made available to the Kenosha Park Division of Contractor's responsible person(s).

INSPECTIONS. The Contractor shall call the Kenosha Park Division at 653-4080 between 7:00 A.M. and 8:00 A.M. on the morning of each day work will be performed to inform the Kenosha Park Division of locations for that day's work. The Kenosha Park Division may conduct inspections of Contractor's work at any time without notification.

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

SCHEDULE. Planting operations shall commence no later than May 15, 2010 and the time limit for completion of work is November 30, 2010, with any outstanding tree plantings that have not occurred being placed on future planting contracts where no time extension is granted. The Kenosha Park Division may prioritize the plantings and redirect the Contractor having given a reasonable lead time to make the changes in scheduling.

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

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

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

MATERIALS. All plant material shall conform to ***American Standard for Nursery Stock.*** Plants shall be true to species and variety specified, and nursery grown in accordance with good horticultural practices under climatic conditions similar to those in the locality of the planting sites. Trees shall conform to the measurement specified unless approved in writing by the City. Use of larger plants shall not increase the price to the City. Substitutions of plant material will not be permitted unless authorized in writing by the Kenosha Park Division. The attached Exhibit "A" notes the species, numbers and sizes of trees to be planted under this Contract.

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

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

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

TRANSPORTATION AND STORAGE OF PLANT MATERIAL. During transportation of plant material, care shall be taken to prevent injury and drying out of the trees. Should the roots be dried out, large branches torn, broken balls of earth broken or loosened, or

areas of bark torn, the City may reject the injured tree (s) and order them replaced at no additional cost to the City.

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

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

The City Forester shall be notified after the site is marked to locate the tree on the lawn park area. The curb will be marked with a white "T" where the tree(s) shall be planted. The City will mark the planting site no later than two (2) working days after such notification.

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

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

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

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

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

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

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

Plants shall be thoroughly watered after planting.

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

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

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

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

EVIDENCE. In all situations involving injury or property damage, Contractor is not to perform further work until photography, police reports and other evidence-gathering activities are completed. The Kenosha Park Division will supply guidelines for this situation. The Contractor shall not make any statements to anyone regarding liability for damages or injuries, or the cause of the situation. All such questions shall be directed to the Kenosha Park Division at 653-4080.

PAYMENTS. Payments shall be made on a monthly basis unless otherwise agreed upon between the parties. Payment shall be made within fifteen (15) working days after City receives an invoice or application for payment, with adequate cost breakdown to certify payment due. Payment shall be on a per tree basis.

ASSIGNMENT AND SUBCONTRACTING. No Contract shall be assigned or subcontracted without the written consent of the Kenosha Park Division. In no case shall consent relieve the Contractor from Contractor's contractual obligation, nor shall it change the terms of the Contract. Any assignee or subcontractor approved by the Kenosha Park Division shall be required to submit Certificates of Insurance as per the Contract requirements prior to any plantings.