RESOLUTION 2016-047             PASSED: MAY 9, 2016

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO ENTER INTO AN AGREEMENT EXTENSION WITH TRUGREEN FOR EMERALD ASH BORER TREATMENT FROM JULY 1, 2016 THROUGH JULY 1, 2017.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the MAYOR of the City of DeKalb be authorized and directed to extend an Agreement with TruGreen for one year.

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor’s signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 9th day of May 2016 and approved by me as Mayor on the same day. Passed by an Omnibus vote of 7-0-1 on the Consent Agenda. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Faivre, Rey. Nay: Baker.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
TruGreen Limited Partnership will be exercising the option to renew and extend the Emerald Ash Borer Treatment contract with the City of Dekalb for the term of one (1) year, effective 07/01/16 until 07/01/17. The original winning bid pricing of $6.55 per DBH will be honored and will not be subject to increase during this timeframe. All growth of the trees at the time of service will be measured and recorded by TruGreen L.P. and will be subject to the pricing specified above. All final measurements will be provided to the City of Dekalb once service has been rendered and completed in its entirety. If you have any questions, please feel free to contact Greg Draper at (815) 405-5239.

Sincerely,

Scott Marsh
General Manager
Rockford Branch #5747
Rochelle Branch #5118
Standard Terms and Conditions

1. Date: The term of this Agreement shall be one (1) year from the date signed by you, the Customer.

2. Price Increases. Prices or services provided in this Agreement may be increased should you apply under this Agreement, or, in the event of increases in the cost of fuel, material, labor, or costs incurred by TruGreen due to government regulation and other causes. In addition, TruGreen may elect to increase the price of services under this Agreement effective after the first year of the Agreement, or after any subsequent anniversary date of the Agreement by a percentage amount not to exceed five percent (5%) of the then current price, or consistent with any increase in the current consumer price index, whichever is greater. TruGreen shall not increase its prices on an elective basis more frequently than once during any agreement year.

3. Payment Terms. Payment is due to TruGreen within 30 days after the invoice date. In the event you fail to make payment when due, TruGreen reserves the right to terminate this Agreement. A late service fee equal to the lesser of 1.5% per month (18% annually) or the maximum interest rate allowed by law will be charged on any balance unpaid over thirty (30) days. A service charge of $15.00 will be assessed for any returned check. Should it become necessary to bring an action to collect amounts due under this agreement, you agree to pay all of such collection including, but not limited to, any reasonable attorney’s fees or other professional fees and court costs.

4. Check Processing Notice (ACP) When you provide a check as payment, you authorize TruGreen either to use information from your check to make a one-time electronic fund transfer or, if you authorize us to do so in writing, to open a savings or checking account to process the payment as an electronic fund transfer from your checking account. If the payment is returned unpaid, you authorize TruGreen to collect the return fee allowed by law through an electronic fund transfer from your account.

5. Termination. In the event of your nonpayment for services or refusal to permit access to your property to TruGreen, TruGreen has the right to terminate the Agreement immediately upon notice to you. You will pay all amounts due prior to the date of termination. In the event that TruGreen terminates this Agreement for convenience within thirty (30) days prior written notice to you. You may cancel this Agreement for material breach by TruGreen, provided that you give TruGreen written notice of the details of the claim and the breach within thirty (30) days after service.

6. Additional termination provisions to landscape companies, property management companies, agents and other similar entities. To the extent you represent one or more property owners or your properties covered under this agreement, and in the event such owner terminates your contract with regard to one or more properties, than upon notice to TruGreen, you may terminate this Agreement only as it relates to such property for which owner terminated its contract with you. To the extent that this Agreement applies to other properties, not terminated by the owner, this Agreement shall continue in full force and effect with regard to such other properties.

7. Notice of Property. You agree to notify TruGreen in writing immediately in the event that you sell any property which is the subject of this Agreement. TruGreen shall make the appropriate adjustment in price to accommodate the reduction of square footage treated in the event that property is sold. In the event all property which is the subject of the Agreement is sold, this Agreement shall be terminated upon receipt by TruGreen of your written notice that you have sold the property. You should fail to notify TruGreen as required in this provision, you agree to indemnify TruGreen for any damages incurred as a result of your failure to notify.

8. Liability. TruGreen is responsible for direct damages resulting from its negligence or breach of this Agreement, but is not responsible for any indirect, incidental, consequential, punitive, or special damages arising or resulting from the performance or non-performance of any obligations under the Agreement including, but not limited to, loss of profits or income, nonetheless, the basis for the claim.

9. Duty to Inspect. You will have a duty to inspect the property within fifteen (15) days after service has been performed. If you believe TruGreen provided deficient work, you agree to notify TruGreen immediately in writing. If written notice is not received by TruGreen within fifteen (15) days after the date of service, you agree that any and all claims alleging damage of any nature or to recover past payments and/or rights to withhold future payments due under this Agreement are waived.

10. No Warranties. Except as expressly set forth in this Agreement, TruGreen makes no warranty or representation of any kind, expressed or implied, concerning either products used or services performed, including, but not limited to, marketplace of merchandise or fitness of products for any particular purpose, and no such warranty shall be implied by law, usage of trade, course of performance, course of dealing, or any other terms.

11. Force Majeure. Except for the payment of TruGreen’s invoices owed by you, if either TruGreen or you shall be prevented or delayed in the performance of any or all of the provisions of this Agreement, by reason of any act of God, governmental, regulatory or legal action, act of God or any cause beyond such party’s control, the obligations hereunder of such party shall be extended for as long as such cause shall be in effect and any delay or loss suffered by the other party shall not be charged to such party. If TruGreen is delayed in performance of a claim after such party serving such notice shall immediately notify the other party of such inability and shall use reasonable efforts to remedy same with reasonable dispatch. If any event of force majeure should prevent a party from performing its obligations under this Agreement for a period of thirty consecutive (30) days, the other party shall have the right to cancel this Agreement upon notice to the party unable to perform its obligations.

12. No Assignment. You shall not have the right to assign this Agreement or agree to the transfer of this Agreement by operation of law or otherwise without the prior written consent of TruGreen. This Agreement shall be binding upon you and shall inure to the benefit of the parties hereto and to any permitted successors and assigns.

13. Waivers. Time of Essence. The success of this program depends on proper watering, mowing and cultural practices. Some products used by TruGreen may include genetically modified organisms (GMOs) or other types of genetically modified organisms (GMOs). TruGreen will provide you with watering instructions following the application and you agree to assume such watering responsibility. Climate conditions, season, plant disease, plant material, and miscellaneous external factors will impact response to treatment. Results for difficult-to-control diseases will vary depending on environment, culture and agronomic programs used or treatment applied. Treatment for diseases may include additional cost. Consult your TruGreen specialist for details.

14. Identification of program. This program consists of lawn care and/or tree and shrub care as indicated above. Specific products, rates of application and method of application will vary with the season, weather conditions, and the needs of your lawn as determined by your TruGreen specialist. Your regularly scheduled programs may be modified depending on the weather and the condition of your landscape. The application methods and procedures used to perform service under this Agreement will be determined solely by TruGreen. Your TruGreen specialist will keep you informed on any modifications to this schedule.

15. Service Guarantees. To the extent any program becomes unenforced or is not performed as scheduled, TruGreen shall not be liable to you for any failure to perform service under this Agreement. However, TruGreen shall not be liable for any failure to perform service under this Agreement if you fail to pay for the service as agreed or if you fail to make your payment when due. To the extent any service is not performed as scheduled, TruGreen shall not be liable to you for any failure to perform service under this Agreement.