

Village of Itasca

550 W. Irving Park Rd., Itasca, Illinois 60143-2018

Committee of the Whole Meeting Agenda

March 15, 2016

(Immediately following Village Board Meeting)

(Upstairs Board Room)

President: Jeffery J. Pruyn
Trustees: Jeff Aiiani
Marty Hower
Michael J. Latoria
Ellen Leahy
Frank J. Madaras
Lucy Santorsola
Clerk: Melody J. Craven
Administrator: Evan Teich

Phone: 630.773.0835
FAX: 630.773.2505

1. Call to Order; Roll Call
2. Pledge of Allegiance
3. Audience Participation
4. Presentation of Committee of the Whole Meeting minutes of March 1st, 2016

Documents: [20160301 COW MTG MINUTES.PDF](#)

5. President's Comments

6. Community Development Committee

- a. Discussion and possible action regarding the significance of a U.S. Supreme Court case Reed v. Town of Gilbert, AZ relating to sign regulations.

Documents: [VILLAGE BOARD UPDATE ON SCOTUS REED CASE.PDF](#), [MEMO TO HILL RE SIGN ORDINANCE.PDF](#)

7. Administration Committee

8. Environment Committee

9. Finance Committee

10. Public Safety Committee

11. Public Works/Infrastructure Committee

- a. Discussion concerning construction engineering contract for the Safe Routes to School project.

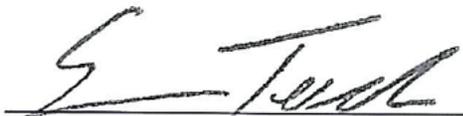
- b. Discussion concerning Task Order for Sanitary Sewer Flow Monitoring.

Documents: [FLOW MONITORING TASK ORDER.PDF](#)

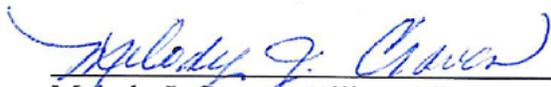
- c. Discussion and possible action concerning ongoing emerald ash borer infestation for selected ash trees throughout the Village.

Documents: [EMERALD ASH BORER TREATMENT 2016.PDF](#)

- d. Presentation by Stanley Consulting regarding Wastewater Treatment Plant Update
- 12. Department Head Reports
- 13. Executive Session
- 14. Adjournment



Evan Teich, Village Administrator



Melody J. Craven, Village Clerk

VILLAGE OF ITASCA COMMITTEE OF THE WHOLE MEETING MINUTES

March 1, 2016 – Immediately Following Village Board Meeting

- Call to Order:** Mayor Jeff Pruyn called the meeting to order at 7:59PM.
- Roll Call:** Present: Trustees – Marty Hower, Jeff Aiani, Mike Latoria, Frank Madaras, Ellen Leahy, Lucy Santorsola; Deputy Village Clerk – Jacob Lawrence.
- Also present: Village Administrator – Evan Teich; Village Attorney – Chuck Hervas; Chief of Police – Robert O’Connor; Community Development Director – Nancy Hill; Director of Public Works – Ross Hitchcock; Finance Director – Julie Ciesla; Village Engineering Consultant – Aaron Fundich; Village Engineering Consultant – Scott Marquardt.
- Absent: Village Clerk – Melody Craven.
- Pledge of Allegiance:** Recited at the Village Board meeting.
- Audience Participation:** Casey Apassiano of 500 W. Division St. discussed his concerns over a lack of lighting along Irving Park Road. He requested that the Board ask the State to fund more lighting projects.
- Minutes:** Mayor Pruyn asked if there were any questions regarding or corrections to the Committee of the Whole Meeting minutes of (February 16, 2016) as presented. Hearing none, Trustee Leahy made a motion to approve said minutes; Trustee Hower seconded the motion. Motion carried by a unanimous voice vote.
- President’s Comments:** Mayor Pruyn had no report.
- Public Works/Infrastructure Committee:** Trustee Aiani presented discussion and possible action concerning Illinois Tollway Contract 1-14-4642, Illinois Route 390 from Arlington Heights Road to Lively Boulevard and Request for approval of Cost Participation Letter.
- Trustee Aiani, Chairperson
- Mr. Scott Marquardt explained that earlier that day the Tollway was scheduled to issue a Notice to Proceed to the Contractor for the Elgin O’Hare West of Prospect Avenue to East of Lively Boulevard and Prospect Avenue project, with construction scheduled to begin in April 2016. Due to the dollar value of Village-desired enhancements which are included in this project, since the final IGA is not yet approved the Tollway has therefore requested written Village approval of the attached letter which describes the enhancements and their associated expenses.

Mr. Marquardt recommended that the Village Board consider providing direction to the Mayor to sign the attached cost participation letter, which the Illinois Tollway has requested in the interim until the IGA can be finalized. Discussion ensued over the costs of the naming of Prospect Road bridge.

Hearing no further objections, Trustee Aiani made a motion to recommend approval of the Tollway's Cost Participation Letter; Trustee Madaras seconded. Motion carried by a unanimous voice vote.

Community Development Committee:

Trustee Latoria, Chairperson
(Nancy Hill's Presentation of an Economic Development Plan)

Trustee Latoria presented discussion and possible action concerning a proposed economic development plan.

Ms. Nancy Hill presented her proposed economic development plan to the Board and audience. Her presentation included: challenges and opportunities, guiding plan documents, accomplishments, current and ongoing activities, and goals and future action steps.

Ms. Hill's presentation ended with presenting four major goals:

- Implement recommendations of Comprehensive Plan and other documents
- Build a community brand communicating a positive image that attracts residents, visitors, and businesses
- Promote economic development and business growth in the Village
- Retain, expand and attract commercial, office and industrial businesses.

Trustee Leahy thought that the Village's logo needed an update. Trustee Leahy asked Ms. Hill what the top two to three action items were for her to succeed with this plan. Ms. Hill stated that Comprehensive Plan implementation and a significant re-branding effort are her two strongest action items.

Trustee Santorsola asked who would take ownership of the branding process. Ms. Hill responded that Community Development would manage it and she would create an ad hoc committee to implement the process.

Trustee Latoria stated that before we commit dollars to the project we need a total cost. Ms. Hill concluded her presentation by offering that, as part of the budgeting process, she would estimates from several companies.

(Zoning Map Update)

Trustee Latoria presented discussion and possible action concerning an updated Zoning Map for 2016. Hearing no objections, Trustee Latoria made a motion to recommend approval of the new Zoning Map; Trustee Leahy seconded. Motion carried by a unanimous voice vote.

Administration Committee:
Trustee Santorsola, Chairperson

Trustee Santorsola had no report.

Environment Committee:
Trustee Leahy, Chairperson

Trustee Leahy had no report.

Public Safety Committee:
Trustee Madaras, Chairperson

Trustee Madaras had no report.

Finance Committee:
Trustee Hower, Chairperson
(Continued Auditing Services
Agreement with Sikich)

Trustee Hower presented discussion and possible action concerning an agreement with Sikich for continued auditing services.

Ms. Julie Ciesla reported that it is her recommendation that the proposal of Sikich, LLP be selected for a total three year engagement fee of \$147,701. This fee covers the annual professional auditing services, one-time fee for GASB 68 implementation, annual financial report preparation, one-time consulting fee for preparing a CAFR, and annual Single Auditing fees. Single Audit fees are only required during the year the Village expends more than \$750,000 in federal grant awards in one fiscal year or where else required.

Ms. Ciesla stated that, currently, this is not applicable in the foreseeable future which the Village will experience a potential total contract savings of \$13,380. It is also my recommendation for the Village to change from an Annual Financial Report and prepare a Comprehensive Annual Financial Report at the additional one-time fee of \$1,500 and an annual cost to GFOA of about \$435. It would be my goal to have this completed during the FYE 2018 annual audit.

Mayor Pruyn stated there was a bill in Springfield to make auditing services competitively bid, so this agreement could not come at a better time. Discussion ensued over the merits of a Comprehensive Annual Financial Report (CAFR).

Discussion ensued over the terms of the contract, particularly the 3-year nature of the contract. Trustee Latoria asked whether or not this could be reduced.

Hearing no further objections, Trustee Hower made a motion to recommend approval of the contract; Trustee Leahy seconded. Motion carried by a unanimous voice vote.

Department Heads:

Chief O'Connor reported the Police Department will participate with several other agencies on Friday, March 4th, 2016 in a scenario-based active shooter exercise. As an agency, the Police Department will receive credits for this exercise and will not have to participate in this type of exercise for another 8 years. Chief O'Connor also reported the Police Department had been giving a few active shooter presentations for businesses and schools.

Ms. Nancy Hill reported that she attended the DuPage County Stormwater Committee. The County has yet again validated the Village's work. Ms. Hill credited Jerry Dell and Amy McKenna for their work. In addition, Ms. Hill reported that the Community Development Department is preparing to issue the building permits for the Hamilton Lakes apartments. All four permits will be over \$1,000,000.

Mr. Aaron Fundich, Village Engineer Consultant, reported that Hamilton Lakes Drive will be closed next week the evening of Tuesday, March 8th. It will be a one night closure as the Tollway works towards on building support beams.

Mr. Ross Hitchcock, Public Works Director, reported that Public Works Department is planning to start an 8-year sanitary sewers television project. Mike Subers has taken the lead on this project. Mr. Subers has joined with Lombard and other municipalities in a consortium. Public Works will go out to bid, arrive at a price, and return to the Board for action.

Ms. Julie Ciesla, Finance Director, reported that she is currently scheduling budget meetings. She thanked Public Works for auditing the water sewer lines. Ms. Ciesla also reported on her progress on creating a plan for policies and procedures. She noted that a purchasing policy ranks high in importance.

Mr. Evan Teich, Village Administrator, reported on ComEd's high voltage power lines project. Mr. Teich is working with four other communities as a group to schedule meetings with key ComEd staff. The group has hired a lobbyist to do a Phase 1 approach with ComEd. The price for this lobbyist will total to \$5,000 per community and the purpose is to gauge how serious ComEd is about the project. The group is pursuing both a political and legal approach. The group demands that ComEd either bury the lines or cancel the project.

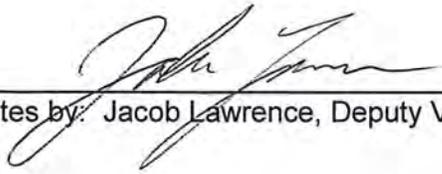
Trustee Santorsola stated that there are many in the Clover Ridge subdivision that feels strongly about ComEd's project and she urged the Board to use the Illinois Commerce Commission (ICC) as a channel to voice their concerns. Deputy Clerk Jacob Lawrence presented a flier to distribute that spells out directions on how to do file a comment or complaint via the ICC.

Village Clerk Melody Craven was absent; Deputy Clerk Jacob Lawrence had no report.

Village Attorney Chuck Hervas reported that tomorrow morning, Wednesday, March 3rd 2016, he would be presenting an oral argument in the Hancock case. Mr. Hervas reported that the Court granted leave to file an amended complaint in the pending Baxter & Woodman litigation.

Adjournment:

Trustee Aiani made a motion to adjourn the Committee of the Whole Meeting at 9:41PM; Trustee Madaras seconded the motion. Motion carried by a unanimous voice vote.



Minutes by: Jacob Lawrence, Deputy Village Clerk



550 W. Irving Park Road, Itasca, Illinois 60143-2018
630-773-0835 • Fax 630-773-2505 • www.itasca.com

Memorandum

TO: Village President Jeff Pruyn and
Itasca Village Board of Trustees

FROM: Nancy Hill, Community Development Director

DATE: March 9, 2016 for March 15, 2016 Village Board Meeting

RE: Impacts of SCOTUS' *Reed* case on the Village of Itasca's Sign Regulations

A ruling in June 2015 by the U.S. Supreme Court dramatically changes the way all local governments must now regulate signs. This memo is to outline these changes and to inform the Village Board on how staff plans to react to the Court's ruling.

Previously, most federal courts ruled that cities could enforce a limited number of content-based regulations on signs – regulations relating to the actual content of a sign's message – provided such standards were not intended to censor or restrict speech. In *Reed v. Gilbert*, the Supreme Court ruled that if a sign has to be read in order to determine if a certain regulation applies, then that regulation is content-based and presumed to be unconstitutional. Attached is a memo from the Village Attorney that outlines more details of the case.

As a result of the Supreme Court's decision, content-specific regulations within our sign regulations are no longer enforceable. The Village can no longer dictate what message signs may or may not contain. Sign regulations should only specify which types of signs are allowed, where they may be placed, and what size they can be, not what they say. Content-specific regulations should therefore be eliminated from throughout the Village's sign regulations.

Unfortunately, the Village of Itasca's sign regulations contain many similar, if not identical, regulations to those that were struck down. Some of our current sign regulations require a sign to be read in order to determine the sign type, what regulations apply; therefore these signs are considered content-based because of this ruling. Therefore, a substantial re-writing of sections of the Village's sign regulations, which are contained in Chapter 11 of the Zoning Ordinance, will be necessary.

The *Reed* decision will have the most significant impact on our standards for temporary signs such as banners, real estate signs, and political signs. The Village's current regulations are entirely content specific – staff must read a sign to determine if the sign is a real estate “for sale” sign, “open house” sign, a political sign, etc., or to ensure flags or pennants don't contain a

commercial message. The Village will need to draft uniform regulations for all temporary signs based on where they are placed and how they are built, and not on what they say.

For example, the sign ordinance allows a certain number of on and off site “open house” signs in residential districts. Because one has to read the sign to determine that these signs are “open house” signs, this regulation would likely be found unconstitutional if challenged. However, to be safer from litigation, the Village could modify the sign regulations to state that “residential properties that are for sale or for lease” may have a maximum number of signs on their property, with a maximum square footage.

There are certain steps the Village should take in light of the *Reed* decision:

1. Community Development staff, with the assistance of the Village Attorney, is reviewing the Village’s sign regulations, Zoning Ordinance, and Code of Ordinances to identify any regulations that are content-based. This would include any regulations that are based on the content or subject of the message, the person and/or group delivering the message, or an event(s) taking place. All temporary signs and signs that are exempt from permitting requirements should also be identified. The number of exceptions from permitting and separate categories for signs should be reduced, eliminating as many of both as possible.
2. Once identified, new or amended regulations will be drafted by staff and the Village Attorney to be as content-neutral as possible, while accepting that, if the regulations are not entirely content-neutral, there will be some legal risk that could otherwise be avoided. The Village Attorney strongly suggests these revisions be made by the end of this summer.

No action on the part of the Village Board is required at this time. In the near future, staff will formally propose text amendments to the Zoning Ordinance to address necessary changes to our sign regulations. Text amendments require review by the Plan Commission during a public hearing and approval by the Village Board. Public notice of the public hearing is required.

The Village Board asked staff to address dynamic display signs, and we will also include language in the proposed text amendments to allow them in certain zoning districts with restrictions on size and percentage of total sign area (so that they are similar to the McDonalds and Crawford Supply signs in square footage and look).

MEMORANDUM

To: Nancy Hill
From: Chuck Hervas
Date: March 9, 2016

Re: Memorandum for Village Board explaining *Reed* decision

On June 18, 2015, the United States Supreme Court decided the case of *Reed v. Town of Gilbert, Arizona*. The Supreme Court found Gilbert's sign code unconstitutional, and issued an opinion that makes sweeping changes to almost every sign ordinance in the United States. The issue has been discussed at numerous legal conferences that I have attended over the past several months. While legal experts do not agree on much, they all agree that every municipality must review its sign code after the *Reed* decision.

The Town of Gilbert took issue with a temporary directional sign utilized by the Good News Community Church. The Church placed directional signs to the services (the Church used temporary locations) on late Saturday and removed the directional signs on Sunday afternoon. The Town of Gilbert cited the Church for exceeding the time limits for displaying a temporary directional sign and for failing to include an event date on the sign. The battle between the Church and the Town lasted several years and ended up in the United States Supreme Court. The Town won the case in the District Court and in the Court of Appeals. In a rather unusual move, the Supreme Court voted 9-0 in favor of the Good News Community Church. One constitutional expert stated that the Church was very clever in reproducing two photographs at the beginning of their brief before the Supreme Court. One photograph showed a small directional sign in a neatly manicured parkway area of the Town. Another photograph showed multiple political signs stacked all over the parkway. The Church explained that the political signs were legal and the directional sign was not. This was a great example of "a picture is worth a thousand words." The Court ruled that the Town of Gilbert could not discriminate between temporary political signs and temporary directional signs. One of the keys to understanding the Supreme Court's decision is to note that if you must read the sign in order to apply the sign code, the code is unconstitutional. In other words, content-based distinctions are no longer allowed.

This ruling affects all sorts of signs that appear in the Village of Itasca. The most common temporary signs in the Village are homes for sale, garage sales, political, special events, and temporary directional signs. The Village may no longer distinguish signs by content, but may regulate signs through reasonable time, place, and manner restrictions. In particular, signs may be regulated by zoning district and size. There can no longer be a special provision for political signs verses for sale signs or temporary directional signs. The courts have been particularly active in applying the *Reed* case to sign ordinances and much more. For instance, the South Carolina legislature got tired of robocalls during election season and passed a law regulating political robocalls, but not other types of robocalls. The courts struck down the regulation as an unconstitutional content-based distinction. In Illinois, the *Reed* case received attention when the

federal court struck down Springfield's panhandling ordinance based upon the analysis in *Reed*. Springfield allowed panhandlers to hold signs asking for money, but banned aggressive verbal requests for money. The federal court said no. *Reed* is being applied in more than sign cases.

Technically, the Itasca sign ordinance is unconstitutional in certain respects after the *Reed* decision. If the Village were to enforce provisions of the sign ordinance that made content-based distinctions, the Village would be subject to a lawsuit consistent with the *Reed* decision. To that end, Community Development has begun to amend the sign code to comply with *Reed*. Yordana will be working with Nancy and Shannon to make these corrections. It is imperative that the Village amend the sign code within a "reasonable" time after the *Reed* decision. I would urge the Village to make corrections no later than the end of this summer.

TASK ORDER 16-R300

In accordance with Paragraph 1.01 of the Agreement between the Village of Itasca ("Owner") and Robinson Engineering, Ltd. ("Engineer") for General Professional Services dated January 2013 ("Agreement"), Owner and Engineer agree to as follows:

1. Specific Project Data:

- A. Title: Sanitary Sewer Flow Monitoring
- B. Description: Planning, Installation, Monitoring and Data Analysis of automated flow monitors placed at Various locations throughout Village's sanitary sewer system

2. Services of Engineer:

Preparation and calibration of automated flow monitoring devices; meetings with public works; installation of meters; weekly data reads; meter retrieval, data downloads and analyses; preparation of written report summarizing results and recommendations for future I/I investigations. Scope of services intended to include two months of flow monitoring from approximately April 1, 2016 through May 31, 2016.

Estimated manhour summary:

CSE Subcontractor	12 HR	@	\$234/HR	=	\$ 2,808
Meter Rentals	4 EA	@	\$650/MO. X 2	=	\$ 5,200
Principal Engineer	6 HR	@	\$190/HR	=	\$ 1,140
Senior Project Manager	16 HR	@	\$170/HR	=	\$ 2,720
GIS Developer	8 HR	@	\$108/HR	=	\$ 864
Resident Engineer	80 HR	@	\$118/HR	=	\$ 9,440
Field Crew Member	24 HR	@	\$78/HR	=	\$ 1,872
Administrative Support	8 HR	@	\$75/HR	=	\$ 900
Total Not to Exceed Cost:					\$23,504

VILLAGE OF ITASCA

ROBINSON ENGINEERING, LTD.

By: _____

By: _____

Title: _____

Title: Aaron E. Fundich, PE, Exec. Vice President

Date Signed: _____

Date Signed: _____



PUBLIC WORKS

411 N Prospect Ave
Itasca, Illinois 60143-1795
Tel: 630-773-2455 Fax: 630-773-9856
www.itasca.com

MEMORANDUM

Date: March 10, 2016

To: Village President
Board of Trustees
Village Administrator

From: Ross Hitchcock, Director of Public Works *RH*

RE: Emerald Ash Borer Treatment 2016

In 2010 we started our Emerald Ash Borer Tree Management Plan. At that time the Village had about 1100 parkway Ash trees, we now have about 325 left. In an effort to spread out the cost of a mass tree removal we have continued to treat 215 trees every two years.

In 2010 Truegreen was the low bidder at \$4.90 per caliper inch. They have held that price for six years and have agreed to hold the price once again. The average price per treated tree is \$91.00, with a not-to-exceed amount of \$19,904.

I recommend accepting Truegreen's proposal of \$4.90 per caliper inch with a not-to-exceed amount of \$19,904 to treat 215 parkway Ash trees.

The average cost of removing a mature Ash tree is \$750 per tree.



**Commercial Service Agreement
2016**

TruGreen Commercial
 Jack Gerdevich (Business Development Manager)
 1075 Carolina Dr, West Chicago, IL 60185
 Office Telephone: 630-231-8770 option 2 Fax: 630-231-8861

Service Address:
 ITASCA PUBLIC WORKS
 411 N PROSPECT AVE
 ITASCA, IL 60143
 ATTN: DAVE SLOAN

Telephone: (630) 773-2455
 Call Ahead Needed

Bill To Address:
 ITASCA PUBLIC WORKS
 411 N PROSPECT AVE
 ITASCA, IL 60143
 ATTN: DAVE SLOAN

LAWN CARE SERVICES

TREE AND SHRUB CARE SERVICES

TREATMENT	DESCRIPTION/ as needed	COST	TREATMENT	DESCRIPTION/ as needed	COST
Early Spring	<input type="checkbox"/> Fertilizer <input type="checkbox"/> Preemergent Crabgrass <input type="checkbox"/> Weed Control	\$ -	Early Spring	<input type="checkbox"/> Superior Horticultural Oil	\$ -
Spring	<input type="checkbox"/> Fertilizer <input type="checkbox"/> Preemergent Crabgrass <input type="checkbox"/> Weed Control	\$ -	Spring	<input type="checkbox"/> Root Zone Injection Fertilizer	\$ -
Early Summer	<input type="checkbox"/> Fertilizer <input type="checkbox"/> Weed Control	\$ -	Early Summer	<input type="checkbox"/> Insect Control <input type="checkbox"/> Disease Control	\$ -
Summer	<input type="checkbox"/> Fertilizer <input type="checkbox"/> Weed Control	\$ -	Summer	<input type="checkbox"/> Insect Control <input type="checkbox"/> Disease Control	\$ -
Early Fall	<input type="checkbox"/> Fertilizer <input type="checkbox"/> Weed Control	\$ -	Early Fall	<input type="checkbox"/> Insect Control <input type="checkbox"/> Disease Control	\$ -
Fall	<input type="checkbox"/> Fertilizer <input type="checkbox"/> Weed Control	\$ -	Fall	<input type="checkbox"/> Root Zone Injection Fertilizer	\$ -
Winterizer	<input type="checkbox"/> Fertilizer	\$ -	Winterizer	<input type="checkbox"/> Antidesiccant <input type="checkbox"/> Superior Horticultural Oil	\$ -
ANNUAL LAWN CARE COST:		\$ -	ANNUAL TREE & SHRUB CARE COST:		\$ -

BENEFICIAL SERVICES

BENEFICIAL SERVICES

<input type="checkbox"/> Grub Control	\$ -	<input type="checkbox"/> Trunk Injections (Merit)	\$ -
<input type="checkbox"/> Spring Aeration & Overseed	\$ -	<input type="checkbox"/> Apple Scab Treatment 1	\$ -
<input type="checkbox"/> Fall Aeration & Overseed	\$ -	<input type="checkbox"/> Apple Scab Treatment 2	\$ -
<input type="checkbox"/> Extra Herbicide cost for summer	\$ -	<input type="checkbox"/> Apple Scab Treatment 3	\$ -
<input type="checkbox"/> Nuisance Pest Control 1	\$ -	<input type="checkbox"/> Bed Weed Control (pre) 1	\$ -
<input type="checkbox"/> Nuisance Pest Control 2	\$ -	<input type="checkbox"/> Bed Weed Control (post) 2	\$ -
<input type="checkbox"/> Nuisance Pest Control 3	\$ -	<input type="checkbox"/> Bed Weed Control (post) 3	\$ -
<input type="checkbox"/> Vegetation Control 1	\$ -	<input type="checkbox"/> Bed Weed Control (post) 4	\$ -
<input type="checkbox"/> Vegetation Control 2	\$ -	<input checked="" type="checkbox"/> Emerald Ash Borer Injection (TreeAge)	\$ 19,903.80
<input type="checkbox"/> Vegetation Control 3	\$ -		\$ -
<input type="checkbox"/> Vegetation Control 4	\$ -		\$ -
<input type="checkbox"/> Flight Control 1	\$ -		\$ -
<input type="checkbox"/> Flight Control 2	\$ -		\$ -
<input type="checkbox"/> Flight Control 3	\$ -		\$ -
<input type="checkbox"/> ICE MELT	\$ -		\$ -
Annual Beneficial Service Cost:		Annual Beneficial Service Cost: \$ 19,903.80	
Total Sales Tax:		Total Sales Tax:	
Total Annual Lawn Care Services Cost: \$ -		Total Annual Tree & Shrub Care Cost: \$ 19,903.80	

Comments:
 Amount not to exceed \$19,903.80

Comments: 215 Estimated DBH - 4062
 The final treatment cost will be computed by the actual total DBH measurement, which could be less or more than the total estimated amount proposed.

SEE REVERSE SIDE FOR ADDITIONAL TERMS

Total Annual Service Cost: \$ 19,903.80

Standard Terms and Conditions

- 1 **Term.** The term of this Agreement shall one (1) year from the date signed by you the Customer
- 2 **Price Increases** Prices of services provided in this agreement may be increased should you add property under this agreement or in the event of increases in the cost of fuel material or 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 after the first year 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% a p r) or the maximum interest rate allowed by law will be charged on any balance unpaid over thirty (30) days. A service charge of \$25.00 will be charged for any returned check. Should it become necessary to bring an action to collect amounts due under this agreement, you agree to pay all costs of such collection including, but not limited to, any reasonable attorney's fees or other professional fees and court costs.
- 4 **Check processing policy ACH:** 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 from your account or to process the payment as a check transaction. If TruGreen uses information from your check to make an electronic fund transfer funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. Returns in the event that your payment is returned unpaid, you authorize us the option to collect a fee as allowed by law through an electronic fund transfer from your account.
- 5 **Termination** In the case of your non-payment or default, TruGreen has the right to terminate this Agreement immediately upon notice to you. TruGreen may terminate this Agreement for convenience upon 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 breach, and thereafter TruGreen fails to cure the breach within thirty (30) days after said notice. (a) **Additional termination provisions for landscape companies, property management companies, agents and other similar entities:** To the extent you represent one or more property owners and/or properties covered under this agreement, and in the event such owner terminates your contract with regard to one or more properties then 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.
- 6 **Sale 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. Should you 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.
- 7 **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 NONPERFORMANCE OF ANY OBLIGATIONS UNDER THE AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR INCOME REGARDLESS OF THE BASIS FOR THE CLAIM.
- 8 **Duty to Inspect** You have a duty to inspect the property within fifteen (15) days after service has been performed by TruGreen. 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.
- 9 **Notice to tenants, employees, invitees** To the extent necessary, you have a duty to notify all tenants, employees, visitors and any other invitee on the premises of a scheduled service prior to the performance of any scheduled service by TruGreen.
- 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 no implied warranty of merchantability or fitness of the product for any particular purpose, and no such warranty shall be implied by law, usage of trade, course of performance, course of dealing, or on any other basis.
- 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 labor dispute, industry disturbance, delay in transportation, 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 chargeable in any way to such party, provided, however, the other party suffering such cause shall immediately notify the other party of such inability and shall use reasonable efforts to remedy same with all reasonable dispatch. If any event of force majeure should prevent a party from performing its obligations under this Agreement for a period of ninety (90) 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, and shall inure to the benefit of, the parties hereto and to any permitted successors and assigns.
- 13 **Watering Cultural Practices** The success of this program depends on proper watering, mowing and cultural practices. Some products used by TruGreen may include label directions requiring the watering of the material after application. If any of these products are used on the property, TruGreen will provide you with watering instructions following the application and you agree to assume such watering responsibility. Climate conditions, soil conditions, plant diseases, 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 **Modification 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 **Insects and Borers.** Total insect elimination is not desirable with any program because beneficial insects will be lost along with the targeted pests. Plants invaded by borers have a high probability of death or decline. Sound cultural practices and control applications may extend the life of some plant species. Treatment for boring insects may include additional cost. Consult your TruGreen specialist with details.
- 16 **Authorization to provide service.** TruGreen agrees to furnish labor and materials for purposes of this Agreement and is authorized by you to treat the property at the address shown above. You represent and warrant to TruGreen that you are the owner of said property, or in the event that you are not the owner of the property to which this Agreement applies, you represent and warrant that you have the legal authority to execute and bind the owner of the property to the terms and conditions of this Agreement.
- 17. **MANDATORY ARBITRATION** Any claim, dispute or controversy regarding any contract, tort statute, or otherwise ("Claim"), arising out of or relating to this agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association ("AAA"), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at www.adr.org, or by calling 1-800-778-7879. The arbitrator's decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator's award; any such suit may be brought only in Federal District Court for the District or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal state, or local court shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver."
- 18. **CLASS ACTION WAIVER** Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiffs or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION, HOWEVER, THEY UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY THROUGH ARBITRATION.
- 19 Unless expressly noted otherwise herein, this Agreement and any invoice issued by TruGreen pursuant to the terms hereof, set forth the entire understanding of the parties and supersede any and all proposals, negotiations, representations and prior agreements relating to the subject matter of this Agreement, written or otherwise, including without limitation any sales agreement previously executed by the parties. To the extent that any terms set forth in an invoice should conflict with the terms set forth in this Agreement this Agreement shall control. No terms, conditions, or warranties other than those stated herein or in any invoice issued by TruGreen and no agreements or understanding, oral or written, in any way purporting to modify these conditions shall be binding on the parties hereto unless hereafter made in writing and signed by authorized representatives of both parties.
- 20 This customer service Agreement is only valid if accepted by you within 30 days of the date submitted to customer.

TruGreen Limited Partnership

By: *Josh Enders* Date: _____
REPRESENTATIVE/GENERAL MANAGER

Print Name: _____ Date: _____
AUTHORIZED AGENT/CUSTOMER

Customer Signature: _____ Date: _____
AUTHORIZED AGENT/CUSTOMER