



**CITY OF WAUKESHA**

**Administration**

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 www.waukesha-wi.gov

<b>Common Council Item Number:</b> Click here to enter text.	<b>Date: July 1, 2020</b>
<b>Submitted By:</b> Ron Grall, Director of Parks, Recreation & Forestry Mike Talaska, Forestry Supervisor	<b>City Administrator Approval:</b> KL Kevin Lahner, City Administrator
<b>Finance Department Review:</b> Rich Abbott, Finance Director RA	<b>City Attorney's Office Review:</b> Brian Running, City Attorney BR
<b>Subject:</b> Approval of the proposed Tree Growing Agreement between Leaves Inspired and the City of Waukesha.	

**Details:**  
 The Parks, Recreation & Forestry Department (WPRF) is always seeking more cost-effective and efficient means of operation. Because of the effects of the emerald ash borer (EAB) we are continuing to remove more trees than we are planting each year. As part of the approved 2020 operating budget, funds were set aside for a third year of growing agreements to help with this problem. With this tree growing agreement, we would put down the first installment of \$30 per tree, which averages about 20% of the full cost, on the trees at Leaves Inspired Nursery this year, locking in future prices and guaranteeing future stock for several years in the future. We will continue to utilize this program in the future, given a positive experience with this third set of contracts. Specifics regarding tree species, size and timeline are included in the attached contract for Leaves Inspired Nursery, of which the amount is \$4,920.00 for 164 trees.

**Options & Alternatives:**  
 WPRF could continue to purchase trees on a bi-annual basis, however, this agreement locks in prices at lower prices than would be paid in the future. This also guarantees stock, that trees will be available for purchase and planting.

**Financial Remarks:**  
 As part of the 2020 Forestry Operating budget, \$9,800.00 was earmarked in 5610.53510, Non-Assessed Trees to go towards the growing agreements. \$4,920.00 will be the contract amount with Leaves Inspired, which is the down payment of \$30 per tree for 164 trees.

**Executive Action:**  
 Recommend approval of the tree growing agreement between Leaves Inspired and the City of Waukesha, and authorize the Mayor to enter into this contact.

**Committee Recommendation:**  
 The Parks, Recreation and Forestry Board will be considering this item at the July 6, 2020 meeting, and making a recommendation to the Common Council.





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### **Contract 3**

#### **Contract Growing Agreement Details**

This document establishes the procedures for a Contract Growing Agreement under which Leaves Inspired Tree Nursery will grow trees to be delivered to the City of Waukesha from Fall 2021 to Spring 2024. The quantities, species, & prices for the contract are shown below. This document also establishes procedures for placing future orders of trees, if both parties agree to renew this agreement beyond the first contract.

1. **Crop Size:** 164 trees

It is agreed upon by both Waukesha and Leaves Inspired that the following trees shall come into size at the estimated time given. If the trees come into size earlier, Waukesha will have to the option to purchase those trees then or the following year. If the trees are not to size in the estimated time, Waukesha will have to option to purchase the trees at the current size for a smaller dollar amount or purchase the trees the following year. Waukesha will not be charged extra if the trees are larger in caliper as long as they are purchased within the terms. The trees will be balled and burlapped according to ANSI standards, at a minimum, with untreated burlap and sisle twine. The cages will be low profile. Leaves Inspired will harvest at the appropriate time of year for the best plant health. When an order is placed Waukesha has the responsibility to notify Leaves Inspired of the desired delivery date(s). The delivery/pick-up date(s) will be agreed upon by both parties.

Contracted trees include: 25 Autumn Fantasy maple, 20 Gladiator Crabapple, 12 Shawnee Brave Bald Cypress, 12 Emerald City Tuliptree, 20 Espresso Kentucky coffeetree, 30 Ironwood, 25 Harvest Gold linden, and 20 Accolade Elm.

Autumn Fantasy maple is expected to reach 1.75" caliper in Fall of 2021 and is a Fall/Spring dig tree. Gladiator Crabapple is expected to reach 1.75" caliper in Fall of 2022 and is a Fall/Spring dig tree. Shawnee Brave Bald Cypress is expected to reach 1.75" caliper in Spring of 2022 and is a Spring dig tree. Emerald City Tuliptree is expected to reach 1.75" caliper in Spring of 2023 is a Spring dig tree. Espresso Kentucky coffeetree is expected to reach 1.75" caliper in Fall of 2022 and is a Fall/Spring dig tree. Ironwood is expected to reach 1.75" caliper in Spring of 2024 and is a Spring dig tree. Harvest Gold linden is expected to reach 1.75" caliper in Fall of 2021 and is a



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Fall/Spring dig tree. Accolade Elm is expected to reach 1.75" caliper in Fall of 2021 and is a Fall/Spring dig tree.

## 2. Terms

### A. Pricing:

- **Contract 3:** Upon execution of this agreement, the client shall pay an upfront payment of \$30/unit for the trees ordered for Contract 3 as shown above.
- **Upfront Payment – Future Seasons:** To place an order for a future season, client shall pay an upfront payment of \$30/unit.
  1. The upfront payment will be refunded to the client if Leaves Inspired Tree Nursery, for any reason, cannot fulfill their obligations under an order. Examples include: pest infestations, crop failures, natural disasters, quarantine, or failure to deliver for any other reason.
  2. The upfront payment will be retained by Leaves Inspired Tree Nursery should the client decide not to honor their obligations under this agreement to purchase the finished product, or if the agreement or an order under this agreement is cancelled or terminated for any reason other than material breach by Leaves Inspired Tree Nursery.
- **Finished Price:** The finished price of trees for Contract 3 are as shown below. The client will owe the balance of the finished price less the \$30 upfront payment for each unit. The finished price of trees for future orders (if any) will be locked in as the quoted price at the time the order is placed. If client opts to renew for Contact 4 and places the next order by June 23<sup>rd</sup>, 2020, 2020 pricing will apply to Contract 4.
- For Contract 3 and any future orders, any nursery acknowledgment, invoice, etc. shall reflect that the balance due is the finished price less the upfront payment.

### Prices

Common Name	Finished Price 1.5"	Finished Price 1.75"
Autumn Fantasy maple	\$110	\$125
Gladiator Crabapple	\$110	\$125
Shawnee Brave Bald Cypress	\$120	\$135
Emerald City Tuliptree	\$155	\$175



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Espresso Kentucky coffeetree	\$125	\$140
Ironwood	\$135	\$160
Harvest Gold linden	\$130	\$140
Accolade Elm	\$125	\$140

- **Smaller than expected size:** Should weather conditions impede upon normal/anticipated growth rates, client will be invoiced the price quoted for the actual finished size when less than the size ordered. Minimum saleable size prices do apply. i.e. 1.5" caliper for single stem trees.
- **Larger than expected size:** If accepted by the client, trees that have grown larger than the size ordered will be charged at the price quoted for the original size ordered by the client.
- **Early harvest:** Client has the right to request early harvest of their agreement crop at a smaller size than contracted with the understanding that:
  - Early harvest will not occur if plant health would be negatively impacted as determined by Leaves Inspired Tree Nursery.
  - Early harvest will not occur if, due to labor or time constraints, Leaves Inspired cannot accommodate the request.
  - The client will be charged the price for the finished size received as listed in the table above, minus the \$30 down payment, for Contract 3 and as agreed in any applicable future order form.
  - Any request by the client for early harvest will be made in writing and signed by the client forester or designee as change order to this agreement.
- **Delayed Harvest:** Client has the right to delay harvest of an agreement crop, either in full or partial, no more than 1 year beyond the original delivery date specified in the order, with the understanding that:
  1. A written change order must be signed/dated by both Leaves Inspired Tree Nursery & client spelling out that the client, by choosing to delay harvest, will pay the quoted finished price of the tree at the new size even if greater than the original quoted amount.
- **Shipping:** Shipping charges are not included in tree price. Leaves Inspired will arrange for shipping and invoice the client. The client reserves the option to pick up stock at Leaves Inspired's facility or arrange for delivery by hiring its own carrier.



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B. **Quotes for future orders:** To aid transparency and minimize any price confusion placing a future order, Leaves Inspired Tree Nursery will provide the client no later than January 31 of each year a specific quote of pricing for a) upfront payment (\$30/unit) and b) the remainder due upon receipt (finished price) for the sizes requested by the client and sizes up to .5" less than and .5" greater than requested, at .25" increments, and minimum sizes for each species.

C. **Changes to orders:** Both the client and Leaves Inspired Tree Nursery shall retain the option to at any time make changes to an order as long as said changes are mutually agreeable to both parties and neither conflicts with the American Standard for Nursery Stock of the most updated version or current specifications in effect at the time of the order prior to delivery on site to the client. Any such change shall be made by a written change order signed by both parties. The city forester or designee may sign such change order on behalf of the client as long as the funds to pay for the change are budgeted.

D. **Grow Report:** Leaves Inspired Tree Nursery agrees to provide a written annual "growth report" following the spring growth cycle to the city forester or designee for each crop grown under this agreement, on the following schedule: Year 1 – trees planted – no report. Year 2 – report by June 20. Year 3 – report by June 20, and so on, until the crop in question is harvested. The report may contain but is not limited to the following information:

- Species, caliper, condition (poor to excellent), position in contract cycle, work performed on crop.

4. **Procedures at Nursery:**

- If the client wishes to tag the stock of the contracted grow trees he/she can do so. However, Leaves Inspired Tree Nursery can also select the trees to be tagged for client if said client doesn't wish to tag stock.
- Once the contracted crop has been tagged, representatives of the client and Leaves Inspired Tree Nursery will consult and collaborate on the desired final pruning, if any, to be performed on the client's selections prior to order fulfillment.
- Any changes to standard or recommended nursery pruning protocols will be accompanied by a written change order signed/dated by representatives of Leaves Inspired Tree Nursery and client detailing requested/performed deviation from the standard practices.



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- The client shall retain the option to review contracted growing stock at any time during the contract term until the client accepts delivery.

5. **Acceptance of trees:**

- All plant material shall conform to the American Nursery Standard for Nursery Stock, most current edition. The client reserves the right to reject, at any time prior to or upon delivery, any tree that does not meet the ANSI standard referenced above, the client specifications as specified in the applicable order form, or does not meet current specifications if determined to be inappropriate for the clients needs in the opinion of the city forester or designee.
- The client further reserves the right, at the time of delivery, to reject any and all plants that are either damaged due to digging, shipping, handling, or for any reason does not comply with the American Standard for Nursery Stock, most current edition.
- For any unit rejected under this section, the client will receive a refund or credit of \$30/rejected unit. If issued as a credit, the credit shall be applied toward the total finished price owed on the next invoice.

6. **Dispute resolution:**

- Both Leaves Inspired Tree Nursery & the client agree that the mutually beneficial spirit of this contract grow agreement shall be applied to the resolution of any contingency, unaddressed here, which may result from the production of living stock in open fields.

City of Waukesha:

Attest:

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Shawn N. Reilly, Mayor

Gina L. Kozlik, City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

To certify funds are available to pay the City's obligations:

\_\_\_\_\_

Richard L. Abbott, Finance Director

Date: \_\_\_\_\_