City of Birmingham
A Walkable Community

MEMORANDUM

Department of Public Services

DATE: **October 13, 2014**

TO: **Joseph A. Valentine, City Manager**

FROM: **Lauren A. Wood, Director of Public Services**

SUBJECT: **2014 Fall Tree Planting Project**

Sealed bids were opened on Tuesday, October 7, 2014, for the cost to provide and plant 115 balled & burlapped trees. The caliper of the trees that were specified in the request for proposal is 3"-3½" caliper. The trees to be planted will be placed on various street rights-of-way and parks during the Fall of 2014. Four bidders responded. The result of the sealed bids follows in the table below.

Bidder	Base Bid	Deviations
KLM Landscape	**$35,085.00**	**No**
Agroscaping, Inc.	$30,875.00	No
Nature's Garden Center	$44,225.00	Yes
Marine City Nursery Co.	$45,125.00	No

This purchase will include providing all trees, planting, topsoil, pruning and necessary watering. The trees also will have a two year warranty. Money has been allocated in the 2014-2015 budget from various accounts for this service. The bids are evaluated according to: completeness of the bid, reference checks, firm experience and our working knowledge of the firm. This purchase will include providing all trees, planting, topsoil, pruning and watering.

Despite being $4,210.00 more than the low bid, KLM Landscaping has worked with the City on many projects, including tree installations in the CBD, City parks, and City ROW. Their performance has been of the highest quality and the tree stock provided has exceeded specifications. This company uses trees grown on their local farm which increases the survival rate of the new trees. KLM has been very responsive to all communications and requests.

KLM Landscape has previously completed street tree planting projects for the Department of Public Services; in particular, during the spring of 2012 and spring of 2014 tree plantings. We have not been so pleased with the recent experience from the low bidder, Agroscaping, Inc. In particular, plant material quality and the need for added staff assistance with various projects. Some recent projects by Agroscaping, Inc. included Barnum tree plantings and the spring and fall of 2013 tree plantings. The Department of Public Services (DPS) recommends awarding the fall 2014 street tree purchase and planting project to KLM Landscape.

SUGGESTED RESOLUTION:

To approve the purchase and planting of 115 trees from KLM Landscape for the 2014 fall tree purchase and planting project for a total project cost not to exceed $35,085.00. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of all required insurances. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services.

ATTACHMENT A - AGREEMENT

For Fall 2014 Tree Purchase and Planting Project

This AGREEMENT, made this _____day of _____, 2014, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and KLM Landscape, Inc., having its principal office at 70570 Powell Rd Armada MI 48005 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Public Services Department, is desirous of having work completed to supply and install trees in the right of ways, Woodward Avenue median, and parks in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform tree supply and planting of one-hundred and fifteen 3"-3 ½" caliper B&B trees, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform tree supply and planting.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform tree supply and planting and the Contractor's cost proposal dated October 7, 2014 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed $35,085.00, as set forth in the Contractor's October 7, 2014 cost proposal.

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor 's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to

employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

E. Professional Liability: Professional liability insurance with limits of not less than $1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.

F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than $1,000,000, per occurrence preferred, but claims made accepted.

G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than $3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.

H. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
5) If so requested, Certified Copies of all policies mentioned above will be furnished.

J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend,

pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Lauren Wood, Director of Public Services
851 South Eton
Birmingham, MI 48009

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute

arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

CONTRACTOR

_____

By:_____

Its:

CITY OF BIRMINGHAM

_____

By:_____
Scott D. Moore
Its: Mayor

_____

By:_____
Laura Pierce
Its: City Clerk

Approved:

Lauren A. Wood, Director of Public Services
(Approved as to substance)

B. Sharon Ostin, Director of Finance
(Approved as to financial obligation)

Timothy J. Currier, City Attorney
(Approved as to form)

Joseph A. Valentine, City Manager
(Approved as to substance)

ATTACHMENT B - BIDDER'S AGREEMENT
For Fall 2014 Tree Purchase and Planting Project

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Kirk Knobloch	October 7, 2014
BID PREPARED BY (Print Name)	**DATE**
President/CEO	October 7, 2014
TITLE	**DATE**
	KLM@KLMLandscape.net or KIRK@KLMLandscape.net
AUTHORIZED SIGNATURE	**E-MAIL ADDRESS**
KLM Scape & Snow d/b/a KLM Landscape	
COMPANY	
70570 Powell Armada MI 48005	586.752.5562
ADDRESS	**PHONE**
N/A	
NAME OF PARENT COMPANY	**PHONE**
ADDRESS	

ATTACHMENT C - COST PROPOSAL

For Fall 2014 Tree Purchase and Planting Project

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)

ARMSTRONG MAPLE	2 @ 3"-3.5"	$290.00	$580.00
CLEVELAND SELECT PEAR	22@ 3"-3.5"	$287.00	$6,314.00
DISEASE RESISTANT ELM	30 @ 3"-3.5"	$290.00	$8,700.00
ENGLISH OAK	2 @ 3"-3.5"	$353.00	$706.00
KATSURA	20 @ 3"-3.5"	$265.00	$5,300.00
LOCUST	9 @ 3"-3.5"	$290.00	$2,610.00
REDSPIRE PEAR	8 @ 3"-3.5"	$360.00	$2,880.00
SERVICEBERRY	7 @ 3"-3.5"	$360.00	$2,520.00
ZELKOVA	15 @ 3"-3.5"	$365.00	$5,475.00

TOTAL PROJECT COST: $ 35,085.00
Tree stock, related planting materials and installation (per specifications).

The minimum order which shall be accepted on a delivered price is

$ 250.00.

ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

For For Fall 2014 Tree Purchase and Planting Project

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

Linda Knoblock	10-18-14
PREPARED BY (Print Name)	**DATE**
Owner	10-14-14
TITLE	**DATE**
	Kitts@KCMLANDSCAPE.NET
AUTHORIZED SIGNATURE	**E-MAIL ADDRESS**
KCM Landscape	
COMPANY	
70570 Powell Rd Armada MI 48005	586-752-5562
ADDRESS	**PHONE**
NAME OF PARENT COMPANY	**PHONE**
ADDRESS	
TAXPAYER I.D.#	

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/24/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
The Whims Insurance Agency
322 Main Street Suite 200
P.O. Box 81847
Rochester MI 48308

CONTACT NAME: Whims Ins Agency
PHONE (A/C, No, Ext): (248) 651-7321 FAX (A/C, No): (248) 651-3992
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Cincinnati Insurance Company	10677
INSURER B: Cincinnati Casualty	28665
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
KLM Scape & Snow LLC, DBA: KLM Landscape
70570 Powell Road
Armada MI 48005

COVERAGES CERTIFICATE NUMBER: CL1421912998 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER [ ] POLICY [X] PRO-JECT [ ] LOC	X		ZPP0226881	1/11/2014	1/11/2017	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [X] HIRED AUTOS [X] SCHEDULED AUTOS [X] NON-OWNED AUTOS	X		ZPP0226881	1/11/2014	1/11/2017	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$ 1,000
							Underinsured motorist	$ 1,000,000
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			ZPP0226881	1/11/2014	1/11/2017	EACH OCCURRENCE	$ 10,000,000
							AGGREGATE	$ 10,000,000
								$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC2127582	1/11/2014	1/11/2015	[X] WC STATU-TORY LIMITS [ ] OTH-ER	
							E.L. EACH ACCIDENT	$ 500,000
							E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Coverage as defined in policies. The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers are included as Additional Insureds on the the General Liability Policy and Automobile Liability for services performed by KLM Landscape as their interest may appear, if required by written contract with the named insured, subject to the terms and conditions of the policies. Umbrella coverages are following form. 30 day Notice of Cancellation applies.

CERTIFICATE HOLDER
klaird@bhamgov.org

City of Birmingham
Attn: Finance Director
P O Box 3001
151 Martin Street
Birmingham, MI 48012-3001

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Eric Putman/JT

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