

**LEASE AGREEMENT BETWEEN THE CITY OF LA CROSSE  
AND  
TODAY'S TREE SERVICE, INC.**

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") is entered into this 1<sup>st</sup> day of May, 2017, by and between the City of La Crosse, a municipal corporation in Wisconsin (hereinafter referred to as "CITY"), and Today's Tree Service, Inc., a Wisconsin domestic closed corporation, with principal offices located at 2613 Thomas Street, La Crosse, Wisconsin (hereinafter referred to as "LESSEE").

WHEREAS, LESSEE desires to lease property owned by the City of La Crosse for the purpose of operating a brush site; and,

WHEREAS, CITY desires to lease said property to LESSEE for the purpose of LESSEE operating a brush site that is available for use by its residents.

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and received, the parties hereby covenant and agree as follows:

1. **PURPOSE AND DESCRIPTION.** The CITY does hereby lease to LESSEE the premises as depicted on the map attached as Exhibit A, which is incorporated into this Lease, for the sole purpose of operating a brush site for individuals and entities, including City of La Crosse residents, to drop off brush and for LESSEE to handle and dispose of such brush, including wood waste, according to the terms and conditions of this Lease.
2. **"AS IS" CONDITION OF PREMISES.** LESSEE agrees and accepts the leased premises "as is" and acknowledges that it has inspected the leased premises and determined it to be suitable for LESSEE's use. LESSEE acknowledges and agrees that CITY has not made and does not make any representations or warranties, express or implied, either oral or written with respect to the physical or structural condition of the leased premises, including, but not limited to, dimensions, soil conditions, environmental conditions, and governmental regulatory restrictions. LESSEE also acknowledges and agrees that CITY has not made and does not make any representations or warranties, express or implied, either oral or written, with respect to income potential, operating expenses, uses, habitability, tenant ability, or suitability for any purpose, merchantability or fitness of the leased premises for a particular purpose, all of which warranties CITY hereby expressly disclaims. LESSEE is relying entirely upon information and knowledge obtained from its own investigation, experience or personal inspection of the leased premises.
3. **TERM.** The term of this lease shall be from May 1, 2017 through April 30, 2018.
4. **TERMINATION.** This Lease shall terminate by its terms at 11:59 p.m. on April 30, 2018, except if otherwise terminated earlier as provided in this Lease. CITY has the right to terminate the Lease for any reason prior to April 30, 2018 upon sixty (60) days written notice to LESSEE.
5. **RENT.** As rent for the leased premises, LESSEE shall pay to CITY a monthly rental amount of \$100.00, payable without demand and in advance during each and every month of the lease term. Payment of the first month's rent is due May 1, 2017, and then the first of the month for each month thereafter. All rent payments shall be made to the following:

City of La Crosse  
Attn: Treasurer's Office  
400 La Crosse Street  
La Crosse, WI 54601

6. LATE FEE. In the event that any rent payment required to be paid by the LESSEE is not paid within five (5) business days of when it is due, LESSEE shall pay to CITY, in addition to such payment or other charges due, a "late fee" in the amount of \$25.00.

7. SECURITY DEPOSIT. No security deposit is required.

8. DEFAULT. In the event that LESSEE fails to pay rent when due and such default continues for a period of ten (10) days, or in the event of a breach by the LESSEE of any other covenant, term or condition of this Lease, the Lease may, at CITY'S option, be declared null and void and terminated. In such an event, CITY shall have the immediate right to possession of the leased premises and shall also have and may exercise any and all legal remedies thereby accruing to the CITY.

9. UTILITIES. No utilities shall be provided.

10. OPERATIONS. LESSEE shall comply with the following operating conditions for the brush site:

A. Hours of Operation. LESSEE shall be responsible for opening and closing the brush site in conformance with hours established by the Board of Public Works.

B. Staffing. LESSEE shall furnish and schedule staff to provide at least one person at the brush site for the hours that the site is open. The staff provided shall be capable of handling all duties required for brush site operation, including lifting and emptying bags and cans of brush, operating a wood chipper, inspecting loads of brush, opening and closing gates, answering questions, handing out literature, and dealing professionally with the public. The CITY may provide literature to be dispensed to the public that describes the City's recycling program.

C. Brush Site Rules. LESSEE shall be responsible for establishing and enforcing brush site rules such as:

(1) All brush shall be removed from bags, unless the bags are compostable;

(2) Brush and wood waste shall only be accepted at the brush site; and

(3) Rotted vegetables or other putrescible food waste shall not be accepted.

D. Fees. LESSEE is permitted to charge the following fees for use of the brush site:

(1) Resident Fees: City of La Crosse residents shall not be charged for accessing or using the brush site for their non-commercial brush. LESSEE shall work with the Recycling Coordinator for the City of La Crosse to enable City residents to obtain an annual permit at no charge to expedite the admission and brush drop-off process. Permits may be obtained upon the first entrance by a resident for the season or by contacting the Recycling Coordinator for the City of La Crosse.

(2) Non-Resident/Contractor Fees: The following fees may be charged to non-residents and contractors:

- Pickup Truck \$ 10.00/load
- Trailer \$ 25.00/load
- Dump Truck \$100.00/load
- Dump Truck (stumps) \$250.00/load
- Annual Contractor Permit (prorated per truck) \$200.00/load

E. Costs and Revenue. LESSEE shall pay all costs and expenses of operating the brush site. LESSEE shall retain any revenue from its operation of the brush site.

F. Denial of Access. LESSEE has the right to deny access to the brush site to any individual(s) or entities with unacceptable materials or who dispute the cost of the brush site use.

11. CONDITION OF PREMISES. LESSEE shall keep the leased premises reasonably clean and orderly. Any land that is disturbed shall be returned to the condition it was at the start of the Lease, in such a manner that is in compliance with all federal, state and local laws, rules and regulations and in accordance with the approved zoning and permits.

12. MAINTENANCE AND REPAIR. LESSEE shall, at its sole expense, keep, maintain and repair the leased premises, any improvements, and all equipment in good working order and condition and in a manner to preserve and protect the general appearance of the leased premises. No changes, alterations or additions shall be made to the leased premises without prior written approval of the CITY'S Board of Public Works.

13. TENANT IMPROVEMENTS. LESSEE shall make no alterations or improvements to the leased premises without the prior written approval of the CITY'S Board of Public Works.

14. NO LIEN. LESSEE shall not at any time permit any lien or claim, to be filed against the leased premises, or any part thereof, on account of any such expenses or charges for same.

15. TAXES. LESSEE is solely responsible for any and all taxes for its property or that may result as a consequence of its use of the leased premises.

16. CITY'S RIGHT TO INSPECT. CITY and its authorized agents or assigns shall have the right to access the leased premises at any and all reasonable times for the purposes of inspection, protection or repair.

17. DAMAGE OR DESTRUCTION. In the event the leased premises are substantially destroyed by fire or other casualty, CITY at its sole option may terminate this Lease, and rent shall abate between the time of destruction and the termination of the Lease. In the event of the partial destruction of the leased premises by fire or other casualty, CITY may at its sole option terminate this Lease or repair the leased premises, and in such case, the rent shall proportionately abate during the time between such partial destruction and repair thereof. In the event CITY determines to terminate this Lease as set forth in this provision, CITY shall give LESSEE written notice of thirty (30) days after said fire or other casualty.

18. SURRENDER OF LEASED PREMISES. The leased premises shall be surrendered and vacated by LESSEE by 11:59 p.m. on April 30, 2018 or upon earlier termination pursuant to the terms and conditions of this Lease. Upon termination of the Lease, LESSEE shall be solely responsible for removing any and all of its fixtures and personal property from the leased premises. LESSEE shall leave the leased premises in good order and condition, clean, without debris or order, except for reasonable wear and tear. Any of its fixtures and personal property abandoned by LESSEE on the leased premises shall be disposed of by CITY at LESSEE'S sole cost and expense.

19. PERSONAL PROPERTY. CITY shall not be liable for any loss or damage to any fixtures or personal property in or about the leased premises, regardless of the cause of such loss or damage.

20. LESSEE'S FIXTURES AND PROPERTY. LESSEE shall have the right during the term of this Lease and upon termination of the Lease to remove any and all of its fixtures and personal property placed on or installed by it on the leased premises. Any damage caused to the leased premises by the placement, installation, maintenance, or removal of LESSEE'S fixtures or personal property shall be repaired by LESSEE at its sole expense upon the request of CITY. If LESSEE fails to repair such damage, the CITY may repair the damage and LESSEE shall reimburse the CITY for such repair.

21. SIGNS. LESSEE may place on or in the leased premises such business signs as they pertain to the brush site operation at LESSEE'S sole expense with the approval of the Recycling Coordinator for the City of La Crosse. LESSEE is solely responsible for any and all damage caused by sign placement, installation, maintenance, or removal of such signs.

22. LIABILITY, INDEMNIFICATION AND HOLD HARMLESS. LESSEE shall be liable for damage to any person or property in or about the leased premises which shall include damages resulting to other real property and personal property, caused by or in any way related to LESSEE's operations at the leased premises. CITY shall not be responsible for any loss, damage or inconvenience to LESSEE, LESSEE'S employees, agents, invitees or guests, persons or property that may occur in the leased premises or from the use thereof, however caused. LESSEE agrees to indemnify CITY and hold CITY harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, reasonable attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of LESSEE, or of anyone acting under its direction or control or on its behalf in connection, regardless if liability without fault is sought to be imposed on CITY. LESSEE'S aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of CITY, its elected and appointed officials, officers, employees or authorized representatives. Nothing in this Lease shall be construed as CITY waiving its

statutory limitations and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Lease.

23. INSURANCE. LESSEE shall, at its sole expense, obtain and maintain in effect at all times during this Lease the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Lease;
- 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability; and,
- 4) To the extent that LESSEE employs any employees or as otherwise required by law, Worker's Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, CITY shall be named as an additional insured on any general liability insurance, automobile insurance, and umbrella liability insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Lease, LESSEE shall file with CITY, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Lease. Such evidence shall include an additional insured endorsement signed by the insurer's representative. LESSEE shall provide CITY with a thirty (30) day notice prior to termination or cancellation of the policy. CITY reserves the right to require review and approval of the actual policy of insurance before it executes this Lease.

24. NO PERSONAL LIABILITY. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of CITY have any personal liability arising out of this Lease, and LESSEE shall not seek or claim any such personal liability.

25. ASSIGNMENT AND SUBLETTING. LESSEE shall not assign, transfer, or encumber this Lease or any part thereof, and shall not sublet or allow any other lessee or tenant to come in.

26. BANKRUPTCY. Neither this Lease nor any interest therein nor any estate hereby created shall pass to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors or otherwise by operation of law during the term of this Lease or any renewal thereof.

27. NOTICES: All notices required or options granted under this Lease shall be given or exercised in writing and shall be deemed to be properly served if (a) sent by certified mail and return receipt requested, or (b) personally delivered to the following addresses:

TODAY'S TREE SERVICE INC.:                      Jeff Wiedman  
   Today's Tree Service  
   PO Box 793  
   Onalaska, WI 54650

CITY OF LA CROSSE:                                      City Clerk  
   400 La Crosse St.  
   La Crosse, WI 54601

With a copy to:

Recycling Coordinator  
City of La Crosse  
400 La Crosse St.  
La Crosse, WI 54601

28. BINDING AGREEMENT. It is agreed that all covenants and conditions of the Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties.

29. SEVERABILITY. The provisions of this Lease are severable. If any provision or part of this Lease or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Lease and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

30. GOVERNING LAW. This Lease and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Lease shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

31. NO WAIVER. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

32. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Lease, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

33. COMPLIANCE WITH LAW. The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

34. JURY TRIAL WAIVER. The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Lease. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

35. CONSTRUCTION. This Lease shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Lease shall be deemed to have been drafted by the parties of equal bargaining strength. The captions and headings appearing at the first of each numbered section of this Lease are inserted and included solely for convenience but shall never be considered or given any effect in construing this Lease with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Lease, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

36. SURVIVAL. All express representations, indemnifications and limitations of liability included in this Lease will survive its completion or termination for any reason.

37. AUTHORITY. The persons signing this Lease warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

38. INDEPENDENT CONTRACTORS. The parties, their employees, agents, volunteers, and representatives shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Lease to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

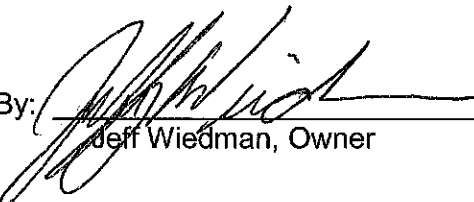
39. COUNTERPARTS. This Lease may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

40. GOOD STANDING. LESSEE affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. LESSEE is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

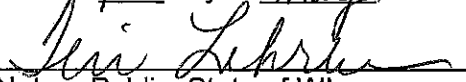
41. ENTIRE AND SUPERSEDING AGREEMENT. This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Lease shall be amended only by formal written supplementary amendment. No oral amendment of this Lease shall be given any effect. All amendments to this Lease shall be in writing executed by both parties.

IN WITNESS WHEREOF, the parties to this Lease Agreement cause this instrument to be executed by their authorized representative on the day and year first above written.

**TODAY'S TREE SERVICE, INC. (LESSEE):**

By:   
Jeff Wiedman, Owner

Subscribed and sworn to before  
me this 1<sup>st</sup> day of May 2017.

  
Notary Public, State of WI

My Commission: exp 7/24/2020

CITY OF LA CROSSE:

By: Timothy Kubit  
Timothy Kubit, Mayor

By: Teri Lehrke  
Teri Lehrke, City Clerk

Subscribed and sworn to before  
me this 1<sup>st</sup> day of May, 2017.

Sandra Craig  
Notary Public, State of WI  
My Commission: 11/11/2017

