

REGULAR AGENDA NEW BUSINESS #2

Memorandum

To: Honorable Mayor and City Council
From: Linda Styczen, Procurement Officer
Date: June 19, 2017
Subject: Recommendation for 2017 Tree Planting Program

Background

The Public Works Forestry Division is responsible for the care and maintenance of City parkway trees and trees on City property. The City has a multi-year reforestation program to replace diseased trees resulting from the Emerald Ash Borer.

Scope of Work

The project scope include furnishing, delivering and planting 796 trees throughout the City in the fall and spring.

Results

The City issued an Invitation to Bid and three (3) bids were received.

Bidder	Address	Total Cost
ACRES GROUP	23940 W. Andrew Road Plainfield, IL 60585	\$196,440.00
BRANCATO LANDSCAPING	2130 Oxford Road Des Plaines, IL 60018	\$274,915.00
ST. AUBIN NURSERY	35445 Irene Road Kirkland, IL 60146	\$398,000.00

The lowest responsible bidder, Acres Group, is qualified and experienced with this work, having been awarded the previous bid for tree planting.

Funding for the 2017 Tree Planting Program is included in the FY 2017/18 Capital Projects Fund. The budget for the tree planting program is \$223,000.

I recommend the City Council approve the attached resolution authorizing the execution of an agreement with Acres Group for \$196,440.

Agreement exhibits are on file in the City Clerk's office and available for review.

RESOLUTION R- -17

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
ACRES GROUP FOR THE 2017 TREE PLANTING PROGRAM**

WHEREAS, the City of Wheaton, DuPage County, Illinois is desirous to enter into an agreement for the 2017 tree planting program; and

WHEREAS, the City conducted an Invitation to Bid process and received and reviewed three submittals for the 2017 tree planting program; and

WHEREAS, it is determined by the City that the proposal received from Acres Group meets the City's needs; and

WHEREAS, it is necessary for the City to enter into an agreement with Acres Group for the purpose of providing the 2017 tree planting program.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is hereby authorized to execute and the City Clerk is hereby directed to attest to a contracted services agreement between the City of Wheaton and Acres Group, Plainfield, IL, for the 2017 tree planting program.

ADOPTED this 19th day of June 2017.

Mayor

ATTEST:

City Clerk

Roll Call Vote:

Ayes:

Nays:

Absent:

This number must appear on all
invoices and documents
No. C 36952

**Agreement Between the City of Wheaton, Illinois
and ACRES GROUP**

2017 TREE PLANTING PROGRAM

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and Acres Group, ("Contractor"), 23940 W. Andrew Road, Plainfield, IL 60585.

WITNESSETH:

Whereas, the City has determined that it is necessary to hire a contractor to provide labor, and/or materials and/or equipment to perform the 2017 Tree Planting Program (hereinafter the "Work") as more fully recited in the Invitation to Bid issued May 2017, which is incorporated herein as Exhibit A; and

Whereas, the City has heretofore requested proposals for the work, materials, and services necessary to perform the services and complete all the Work as specified in Exhibit A; and

Whereas, the Contractor did submit a proposal to the City for the Work specified, which is attached hereto and incorporated herein as Exhibit B.; and

Whereas, the City did on the 19th day of June, 2017, select the Contractor for the Work specified in this Agreement and Exhibits.

Now, therefore, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Contractor hereto do hereby agree as follows:

1. Scope of Services. The Recital paragraphs are incorporated herein as substantive terms and conditions of this Agreement and as representing the intent of the Parties. Any inconsistency between the Work as stated by the City and the work as proposed by the Contractor shall be controlled by the Work as stated by the City unless specifically varied in writing to the contrary in this paragraph.

The Contractor shall furnish all labor, materials, and equipment to provide and perform the Work. The Contractor represents and warrants that it shall perform the Work in a manner consistent with the level of care and skill customarily exercised by other professional contractors under similar circumstances. The Contractor shall be responsible for the work performed under the Agreement Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under this Agreement, or in any way whatsoever with the Work.

2. Compensation. The City shall compensate the Contractor per the terms of the Contractor's proposal which is attached hereto as Exhibit B,

3. Term of Agreement. This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Contractor and shall terminate upon the written approval of the City's Project Manager.

4. Time is of the Essence. Time is of the essence in the performance of all the terms and conditions of this Agreement.

5. Additional Services. The Contractor shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Contractor, Engineer or the City determines that additional goods and/or services are required to complete the Work, such additional goods shall not be provided and/or such additional services shall not be performed unless authorized in writing by the City. Terms, frequency, and prices for additional work shall be as mutually agreed upon in writing by the City and the Contractor.

6. Integration. The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party via change order or amendment. No course of conduct before, or during the performance of this Agreement, shall be deemed to modify, change, or amend this Agreement.

7. Waiver. Any failure of either the City or the Contractor to strictly enforce any term, right, or condition of this Agreement, whether implied or expressed, shall not be construed as a waiver of such term, right, or condition.

8. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules, and regulations now in force or hereafter enacted, in the provision of the goods and/or performance of the services required under this Agreement.

9. Freedom of Information Act: The Contractor shall, within twenty-four hours of the City's request, provide any documents in the Contractor's possession related to the Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act. This provision is a material covenant of this Agreement. Contractor agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to a FOIA request. Should Contractor request that City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Contractor agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fee, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Contractor agrees to defend, indemnify, and hold harmless City, and agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees and any other expenses) to defend any denial of a FOIA request by Contractor's request to utilize a lawful exemption to City.

10. Discrimination Prohibited. The Contractor shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Contractor agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

11. Prevailing Wage: Where applicable, the Contractor and any subcontractors shall comply with all provisions of the Prevailing Wage Act, 820 ILCS 130/1 et seq., or any successor statute, and the documents

entitled "Special Provisions for: Wages of Employees on Public Works," and "DuPage County Prevailing Wage Schedule".

12. Status of Independent Contractor. Both City and Contractor agree that Contractor will act as an Independent Contractor in the performance of the Work. Accordingly, the Independent Contractor shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Contractor's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Contractor further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Contractor is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of City, and Contractor specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Contractor, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Agreement.

13. Assignment; Successors and Assigns. Neither this Agreement, nor any part, rights, or interests hereof, may be assigned, to any other person, firm, or corporation without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

14. Non-disclosure. During the course of the Work Contractor may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Contractor shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose or disseminate such information to any third party without the express written consent of the City.

15. Hold Harmless and Indemnification. The Contractor shall defend, hold harmless, and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, judgment, or settlement, including, but not limited to, reasonable attorneys' fees and costs of litigation including reasonable expert witness, and all causes of action of any kind or character, that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions, or omissions of any agent, subcontractor, or contractor hired to perform any services on behalf of the Contractor.

16. Termination of Contract. If the Contractor fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Contractor. In the event of a termination, the City shall pay the Contractor for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Contractor's breach. The City shall have the right to terminate this Agreement, without cause, upon twenty-one (21) days written notice to the Contractor. The Contractor shall be paid for all work performed in conformance with the Agreement through the effective date of the not for cause termination. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; (iii) by e-mail or (iv)served by certified or registered mail,

return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

17. Cancellation for Unappropriated Funds: The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

18. Default. In case of default by the Contractor, the City will procure articles or service from other sources and hold the Contractor responsible for any excess cost incurred. The City reserves the right to cancel the whole or any part of the Agreement if the Contractor fails to perform any of the provisions in the Agreement, fails to make delivery within the time stated, becomes insolvent, suspends any of its operations, or if any petition is filed or proceeding commenced by or against the Contractor under any State or Federal law relating to bankruptcy arrangement, reorganization, receivership, or assignment for the benefit of creditors. The Contractor will not be liable to perform if situations arise by reason of strikes, acts of God or the public enemy, acts of the City, fires, or floods.

19. Force Majeure. No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

20. Notification. All notification under this Agreement shall be made as follows:

<i>If to the Contractor:</i>	<i>If to the City:</i>
Acres Group	City of Wheaton
Attn: Jeff Dumas	Attn: City Clerk
23940 W. Andrew Drive	303 West Wesley Street Box 727
Plainfield, IL 60585	Wheaton, IL 60189-727
Fax #	Fax # 630-260-2017
<i>e-mail</i> jeff.dumas@acresgroup.com	<i>e-mail</i> cityclerk@wheaton.il.us

21. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

22. Recovery of Costs. In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

23. Governing Law. This Agreement is governed by the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

In Witness Whereof, the parties have entered into this Agreement this 19th day of June 2017

City of Wheaton, an Illinois municipal corporation

By: _____ Date: _____

Title: _____

Attest:

Sharon Barrett-Hagen, City Clerk

Contractor Name

By: _____ Date: _____

Title: _____

Attest: