

**ORDINANCE NO. O-\_\_\_\_\_-2022**

**An Ordinance Waiving Bid and Authorizing the Execution of a Contract  
For Ditch Cleaning Services at the North Property Line of 933 South Riverside Drive  
In the City of Elmhurst**

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WHEREAS, the City of Elmhurst (the “City”) maintains the drainage ditch (the “Drainage Ditch”) located on the north side of 933 South Riverside Drive; and

WHEREAS, the Drainage Ditch handles the storm water runoff from the storm sewer system on Riverside Drive and Van Buren Street and discharges the runoff into Salt Creek; and

WHEREAS, the total distance of the Drainage Ditch is approximately one thousand one hundred (1,100) lineal feet, and the Drainage Ditch’s current profile has been altered by sediment and debris; and

WHEREAS, because of the sediment and debris, the Drainage Ditch is not flowing properly leading to poor-drainage roadway storm sewer system and occasional street flooding; and

WHEREAS, due to the cost to address cleaning the entire Drainage Ditch, the City staff is recommending a multi-year phased approach whereby cleaning the first three hundred fifty (350’) feet, the most critical portion to correct, of the Drainage Ditch; and

WHEREAS, the City staff requested a proposal from Earthwerks Land & Improvement Development Corporation (“Earthwerks”) of Lisle, Illinois, for the clearing of trees and debris, excavating the ditch bottom to reinstate positive drainage, stabilizing its slope and restoring the Drainage Ditch (the “Project”); and

WHEREAS, pursuant to Section 3.20 (a) (1) entitled “Bidding and contract procedures” of the City’s Municipal Code, the corporate authorities of the City have the authority to waive

competitive bidding if authorized by a vote of two-thirds (2/3) of the Aldermen then holding office; and

WHEREAS, it is advisable, necessary, and in the public interest that the City waive bid for the Project and enter into a contract, in substantially the same form as is attached hereto as Exhibit "A" and made a part hereof with Earthwerks in an amount not to exceed Sixty-One Thousand Two Hundred Fifty (\$61,250.00) Dollars.

NOW, THEREFORE, be it ordained by the Mayor and City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois, as follows:

Section 1: The corporate authorities hereby incorporate the foregoing preamble clauses into this Ordinance.

Section 2: The corporate authorities of the City determine that competitive bidding for the Project is hereby dispensed with and waived.

Section 3: It is hereby determined that it is advisable, necessary and in the public interest that the City enter into the contract with Earthwerks for the Project in an amount not to exceed Sixty-One Thousand Two Hundred Fifty (\$61,250.00) Dollars.

Section 4: The Contract by and between Earthwerks and the City for the Project, in substantially the same form as attached hereto as Exhibit "A" and made a part hereof, is hereby approved.

Section 5: The Mayor be and is hereby authorized and directed to execute and the City Clerk by and is hereby authorized and directed to attest and to place the municipal seal on the Contract and to take all necessary steps to effectuate the terms thereof provided that Earthwerks returns to the City a properly executed Contract with all other necessary written

contract documents attached, along with the proper contract bond and certificates of insurance.

Section 6: The general prevailing rate of wages in DuPage County, Illinois, for each craft or type of worker or mechanic needed to execute the contract or perform the work, and the general prevailing rate for legal holiday and overtime work, as ascertained by the Illinois Department of Labor, shall be paid for each craft or type of worker needed to execute the contract or to perform such work required for the Project.

Section 7: This Ordinance shall be in full force and effect upon its passage by a two-thirds (2/3) vote of the Aldermen and approval in accordance with law.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2022.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTENTION: \_\_\_\_\_

APPROVED by me this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Scott M. Levin, Mayor of the City of Elmhurst,  
DuPage and Cook Counties, Illinois

ATTESTED and filed in my office,  
this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jackie Haddad-Tamer, City Clerk of the City of  
Elmhurst, DuPage and Cook Counties, Illinois

Exhibit "A"  
Contract

## **COUNCIL ACTION SUMMARY**

**SUBJECT:** An ordinance waiving bid and authorizing the execution of a contract for ditch cleaning services at the north property line of 933 South Riverside Drive in the City of Elmhurst (the "Project").

**ORIGINATOR:** City Attorney

### **DESCRIPTION OF SUBJECT MATTER:**

Pursuant to the Public Works and Building Committee's recommendation, the City Attorney prepared an ordinance waiving bid and authorizing the execution of the Contract with Earthwerks for the Project in an amount not to exceed Sixty-One Thousand Two Hundred Fifty (\$61,250.00) Dollars.

## CONTRACT

This Contract is made this \_\_\_\_ day of \_\_\_\_\_, 2022, between the City of Elmhurst, the City, and Earthwerks Land Improvements & Development, the Contractor, for cleaning three hundred fifty (350) lineal feet of drainage ditch located on the north property line of 933 South Riverside Drive, Elmhurst, Illinois (the "Project").

The Contractor hereby agrees as hereinafter set forth:

**1. The Work.** For and in consideration of the payments to be made by the City to the Contractor, and according to the terms of the Contract, the City and the Contractor agree that the Contractor at its own proper cost and expense shall perform services including, but not limited to, the clearing of trees and debris, excavating the ditch bottom to reinstate positive drainage, stabilize the slope, and restoring the ditch (the "Work") for the Project, in the City of Elmhurst, DuPage County, Illinois, and to furnish all materials and labor necessary to complete the Work in full compliance with of the terms and the requirements of this Contract.

**2. Contract Sum.** The City shall pay the Contractor for the performance of the work, at the unit prices set forth in the Contractor's Proposal, which is hereby incorporated as part of this Contract, as full compensation for furnishing all the materials, for doing all work contemplated and specified in this Contract, for all loss or damage arising out of the nature of the work or from any action of the elements, or from any unforeseen difficulties which may be encountered in the prosecution of the same, for all risks of every description connected with the work, and for well and faithfully completing the work, and the whole thereof, in full compliance with the plans and contract documents, and within the time stated in this Contract. The undersigned Contractor declares that it understands that the quantities shown in the Proposal are approximate only and that they are subject to increase or decrease; and agrees that it will take, in full payment, the amount of the summation of the actual quantities, as finally determined, multiplied by the unit prices shown on the schedule of prices forming a part of this Contract.

The total contract price shall not exceed Sixty-One Thousand Two Hundred Fifty (\$61,250.00) Dollars (three hundred fifty (350) lineal feet times One Hundred Seventy-Five (\$175.00) Dollars per lineal foot).

**3. Contract Time.** The Contractor shall commence the Work expeditiously after the date the City gives the Contractor written notice to proceed. The Work shall be substantially completed no later than \_\_\_\_\_, 2022, unless an extension of time is granted at the discretion of the City.

**4. Payments.** The City shall approve payment of and pay to the Contractor any and all fees, charges and amounts due to Contractor for services performed prior to the termination consistent with the requirements of the Local Government Prompt Payment Act (50 ILCS 505/4 *et seq.*). The Contractor shall comply with the requirements of the Local Government Prompt Payment Act (50 ILCS 505/4, *et seq.*).

**5. Assignment of Contract.** The Contract shall be deemed to be exclusive between City and Contractor. This Contract shall not be assigned by the Contractor without first obtaining

permission in writing from the City. The City may refuse to accept any substitute Contractor for any reason.

**6. Notices.** Written notices between City and Contractor shall be deemed sufficiently given after being placed in the United States mail, registered or certified, postage pre-paid, addressed to the above parties as follows:

a. If to City:

City of Elmhurst  
209 North York Street  
Elmhurst, Illinois 60126  
Attn: James Grabowski, City Manager

b. If to Contractor:

Earthwerks Land Improvements & Development  
2111 Ogden Avenue  
Lisle, Illinois 60532  
Attn: Dan Davies, President

c. Either party may change its mailing address by giving written notice to the other party as provided above. Whenever this contract requires one party to give the other notice, such notice shall be given only in the form and to the addresses described in this paragraph.

**7. Entire Contract.** This Contract consists of the following component parts, all of which are as fully a part of this contract as if herein set out verbatim, or if not attached, as if attached hereto:

- (a) Addenda, if any (none unless indicated here): \_\_\_\_\_
- (b) Contractor's Proposal, attached hereto as Appendix "A"
- (c) Contractor's Certification Form, attached hereto as Appendix "B"
- (d) Insurance Requirements, attached hereto as Appendix "C"
- (e) DuPage County, Illinois Prevailing Wages

This contract represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations or understandings, whether written or oral.

This Contract may only be amended or a provision hereof waived by the parties by written instrument executed by authorized signatories of the City and Contractor. This Contract is executed that day and year first written above.

**8. Contractor Investigation.** The Contractor represents that it has, before executing this Contract, carefully examined the provisions of this Contract, inspected in detail the site of the proposed Work, investigated and become familiar with all the local conditions affecting the contract and is fully acquainted with the detailed requirements of the Work. By executing this Contract the Contractor conclusively assures and warrants to the City that it has made these examinations and that it understands all requirements for the performance of the Work. The

Contractor shall be responsible for all errors resulting from its failure or neglect to comply with the provisions of the Contract and agrees that the City will, in no case, be responsible for any costs, expenses, losses, or change in anticipated profits resulting from a failure or neglect of the Contractor to make these examinations.

City: City of Elmhurst

Contractor: Earthwerks Land Improvements &  
Development

By: \_\_\_\_\_  
Scott M. Levin, Mayor

By: \_\_\_\_\_  
Dan Davies, President

Attest:

Attest:

By: \_\_\_\_\_  
Jackie Haddad-Tamer, City Clerk

By: \_\_\_\_\_  
Dan Davies, President



**APPENDIX "A"**  
**Contractor's Proposal**



*2111 Ogden Ave. Lisle, Illinois 60532 \* 630-482-2341 \* 630-482-2342f*

Proposal Dated: April 5, 2022

Dear Mr. Kent Johnson, Elmhurst City Engineer

Earthwerks Land Improvement & Development Corp. is pleased to present this proposal for Miscellaneous Ditch & Drainage Improvements. This proposal is based on areas reviewed with Mike Litwin March 16<sup>th</sup>. All prices are inclusive of mobilization, traffic control, and all incidentals to complete the work.

1. 933 S Riverside Dr; approx. 1,005' of ditch restoration – beginning at Riverside Dr headwall and extending eastward to 66" CMP; clearing of trees and debris, excavation of ditch bottom to reinstate positive drainage, slope stabilization and restoration; priced to allow phased construction
  - a. **\$175 per [lft] of ditch**

With gratitude,

Nicholas F. Tremmel, PE  
*Project Engineer*

**APPENDIX “B”**  
**CONTRACTOR’S CERTIFICATION**

The assurances hereinafter made by the Contractor are each a material representation of fact upon which reliance is placed by the City of Elmhurst in entering into the contract with the Contractor. The City of Elmhurst may terminate the contract if it is later determined that the Contractor rendered a false or erroneous assurance.

I, Dan Davies, hereby certify that I am the President of Earthwerks Land Improvements & Development (the “Contractor”) and as such, hereby represent and warrant to the City of Elmhurst, a municipal corporation, that the Contractor and its shareholders holding more than five percent (5%) of the outstanding shares of the corporation, its officers and directors are:

- (A) not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1;
- (B) not barred from contracting as a result of a violation of either Section 33E-3 (bid rigging) or 33E-4 (bid-rotating) of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 5/33E-4);
- (C) not in default, as defined in 5 ILCS 385/2, on an educational loan, as defined in 5 ILCS 385/1;

In addition, the Contractor hereby represents and warrants to the City of Elmhurst, that:

- (A) the Contractor has and will comply with all laws relating to the payment of general prevailing wages in accordance with the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*);
- (B) the Contractor has and will comply with all laws relating to the employment preference to veterans in accordance with the Veterans Preference Act (330 ILCS 55/0.01 *et seq.*);
- (C) the Contractor has and will comply with all laws relating to the employment of Illinois workers in accordance with the Employment of Illinois Workers on Public Works Act (30 ILCS 570/1 *et seq.*);
- (D) the Contractor, pursuant to 30 ILCS 580/1 *et seq.* (“Drug-Free Workplace Act”), will provide a drug-free workplace by:
  - (1) Publishing a statement:
    - a. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance including cannabis, is prohibited in the Contractor’s workplace;

- b. Specifying the actions that will be taken against employees for violations of such prohibition;
  - c. Notifying the employee that, as a condition of employment on such Contract, the employee will:
    - i. Abide by the terms of the statement;
    - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- (2) Establishing a drug-free awareness program to inform employees about:
  - a. the dangers of drug abuse in the workplace;
  - b. the Contractor's policy of maintaining a drug-free workplace;
  - c. any available drug counseling, rehabilitation, and employee assistance program; and
  - d. the penalties that may be imposed upon employees for drug violations;
- (3) Making it a requirement to give a copy of the statement required by Subsection (D)(1) to each employee engaged in the performance of the Contract, and to post the statement in a prominent place in the workplace;
- (4) Notifying the City within ten (10) days after receiving notice under paragraph(D)(1)c from an employee or otherwise receiving actual notice of such conviction;
- (5) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by 30 ILCS 580/5;
- (6) Assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicating that a trained referral team is in place;
- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section;
- (E) the Contractor has not excluded and will not exclude from participation in, denied the benefits of, subjected to discrimination under, or denied employment

to any person in connection with any activity funded under the contract on the basis of race, color, age, religion, national origin, disability, or sex;

- (F) the Contractor, at the time the Contractor submitted a Proposal on this contract, had an Illinois Department of Human Rights pre-qualification number or had a properly completed application for same on file with the Illinois Department of Human Rights, as provided for in 44 Illinois Administrative Code 750.210;
- (G) no City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of any interest in the Contractor; or, if the Contractor's stock is traded on a nationally recognized securities market, that no City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of more than one percent (1%) of the Contractor, but if any City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of less than one percent (1%) of such Contractor, the Contractor has disclosed to the City in writing the name(s) of the holder of such interest.
- (H) no officer or employee and no spouse or immediate family member living with any officer or employee of the City has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Contractor in violation of the Elmhurst Municipal Code; and
- (I) the Contractor has not given to any officer, employee, spouse or immediate family member living with any officer or employee of the City any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer in violation of the Elmhurst Municipal Code.
- (J) in compliance with the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635), the Contractor is a party to a collective bargaining agreement dealing with the subject matter of the Substance Abuse Prevention on Public Works Projects Act or has in place and is enforcing a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act.
- (K) neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is

not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person and that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

- (L) the Contractor acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to work performed under this agreement are considered a public record of the City; and therefore, within thirty (30) days of completion of the work required of the Contractor under this agreement, the Contractor shall produce to the City, in electronic format, all records that directly relate to the governmental function performed by the Contractor under this agreement at no additional cost to the City; and furthermore, the Contractor shall review its records and promptly produce to the City any additional records in the Contractor's possession which the City requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the Contractor shall produce to the City such records within three (3) business days of a request for such records from the City at no additional cost to the City.

If any certification made by the Contractor changes, the Contractor shall notify the City of Elmhurst in writing within seven (7) days.

Dated: \_\_\_\_\_, 2022

Contractor:

Earthwerks Land Improvements & Development

By: \_\_\_\_\_  
Dan Davies, President

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a notary public in and for the State and County aforesaid, hereby certify that Dan Davies, known to me to be the President of Earthwerks Land Improvements & Development appeared before me this day in person and, being first duly sworn on oath, acknowledged that he executed the foregoing certification as his free act and deed.

Dated: \_\_\_\_\_, 2022.

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Notary Public

## **APPENDIX "C"**

### **INSURANCE**

Contractor shall maintain during the entire term of the Contract, the following insurance coverages:

- A. Commercial General Liability Insurance. Comprehensive or Commercial general liability insurance, including, but not limited to, coverage for bodily injury, personal injury, and property damage, and endorsements for failure to supply and pollution, shall be maintained at the sum(s) of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;
- B. Business Automobile Liability. Comprehensive automobile liability including, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage, shall be maintained at the sum(s) of one million dollars (\$1,000,000) per accident;
- C. Excess/Umbrella Liability. Comprehensive excess/umbrella liability in the amount of two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate; and
- D. Workers' Compensation Insurance. Workers' Compensation coverage with statutory limits as may be required by the State of Illinois and Employers Liability coverage of:
  - 1. Each Accident \$1,000,000
  - 2. Disease-policy limit \$1,000,000
  - 3. Disease-each employee \$1,000,000