

Council Business Meeting

March 21, 2017

Title: Approval of Contract for Plaza Tree Enhancement Project

From: David Lohman City Attorney

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Summary:

At its March 7, 2017 meeting, Council approved proceeding with the Plaza Tree Enhancement Project, subject to approval of a contract for the tree planting work to be presented for Council consideration at its March 21 meeting. This agenda item presents the proposed contract with Solid Ground, Inc., for Council decision.

Actions, Options, or Potential Motions:

1. Authorize Interim City Administrator Karns to execute the proposed contract with Solid Ground, Inc. [with the following modifications:.....], along with any additional changes the Interim City Administrator deems necessary to reach consensus with the contractor and sufficiently protect the City's interests; or
2. Authorize staff to undertake further negotiations with Solid Ground, Inc. to seek agreement on a final version of the contract [that includes the following modifications.....] and to present it at the April 4, 2017 Council meeting for decision.

Staff Recommendation:

Evaluate the attached proposed contract, and choose one of the two possible actions shown above.

Resource Requirements:

Approximately 40 hours of staff time is expected to be required to oversee and manage the proposed project. This includes replanting removed trees and additional watering and maintenance over and above that required for the current trees.

Policies, Plans and Goals Supported:

N/A

Background and Additional Information:

Minutes from [March 6, 2017 Council Study Session](#) regarding Plaza Tree Enhancement Project.

Minutes from [March 7, 2017 Council Regular Meeting](#) regarding Plaza Tree Enhancement Project.

Attachments:

Proposed contract

Contract for GOODS AND SERVICES

<p>CITY OF ASHLAND</p> <p>20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-6002 Fax: 541/488-5311</p>	<p>CONTRACTOR: Solid Ground Landscaping, Inc.</p> <p>CONTACT: Seth Barnard</p> <p>ADDRESS: 855 Reiten Drive</p> <p>TELEPHONE: 541-601-9421</p>
DATE AGREEMENT PREPARED:	EMAIL ADDRESS: seth@solidgroundlandscape.com
BEGINNING DATE:	ESTIMATED TIME FOR COMPLETION: 2 days
COMPENSATION: \$1.00	
GOODS AND SERVICES TO BE PROVIDED: See Statement of Work attached hereto as Exhibit B.	
<p>ADDITIONAL TERMS:</p> <p>In the event of conflicts or discrepancies among the contract documents, the City of Ashland Contract for Goods and Services will be primary and take precedence, and any exhibits or ancillary contracts or agreements having redundant or contrary provisions will be subordinate to and interpreted in a manner that will not conflict with the said primary City of Ashland Contract.</p>	
<p>NOW THEREFORE, pursuant to Ashland Municipal Code Chapter 2.50.090 and after consideration of the mutual covenants contained herein the CITY AND CONTRACTOR AGREE as follows:</p> <ol style="list-style-type: none"> 1. All Costs by Contractor: Contractor shall, provide all goods as specified above and shall at its own risk and expense, perform any work described above and, unless otherwise specified, furnish all labor, equipment and materials required for the proper performance of such work. 2. Qualified Work: Contractor has represented, and by entering into this Contract now represents, that any personnel assigned to the work required under this Contract are fully qualified to perform the work to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded. Contractor must also maintain a current City business license. 3. Completion Date: Contractor shall provide all goods in accordance with the standards and specifications, no later than the date indicated above and start performing the work under this Contract by the beginning date indicated above and complete the work by the completion date indicated above. 4. Compensation: City shall pay Contractor for the specified goods and for any work performed, including costs and expenses, the sum specified above. 5. Statutory Requirements: ORS 279B.220, 279B.225, 279B.230, 279B.235, ORS Chapter 244 and ORS 670.600 are made part of this Contract. 6. Indemnification: Contractor agrees to defend, indemnify and save City, its officers, employees and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this Contract by Contractor (including but not limited to, Contractor's employees, agents, and others designated by Contractor to perform work or services attendant to this Contract). Contractor shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, directly, solely, and proximately caused by the negligence of City. 7. Subsurface Soil and Other Conditions: City will advise Contractor of any known or suspected contaminants, dangerous conditions, and subsurface (or otherwise concealed) physical conditions that differ materially from those readily visible or apparent on the surface at the project site. City shall be responsible for all subsurface soil and other conditions not readily apparent on the surface of the project site. 8. Approvals: City will obtain all necessary development approvals from authorities and private parties with jurisdiction or control over the work to be performed under this Contract, except that Contractor shall obtain a City right-of-way closure permit. 9. Warranties and Guarantee: <ol style="list-style-type: none"> a. <u>Landscaping Warranty.</u> All plants and trees are guaranteed for a period of 18 months from date of job completion. During the warranty/guarantee period, keeping the trees upright and minimizing related risks of injury to pedestrians on the City Plaza are of the essence to this Contract. If, in the reasonable sole discretion of City, the uprightness of the subject trees cannot be maintained except by staking or any other measures that increase the risks of injury to pedestrians on the Plaza, Contractor will replace any such trees with approximately equivalent trees which are not likely to require measures unreasonably posing risks of injuries to pedestrians. b. <u>Maintenance Schedule.</u> As a condition precedent to any performance under this Contract, City and Contractor must have reached agreement upon a reasonable schedule for the watering, maintaining, and monitoring of the 	

health of the subject trees during the warranty/guarantee period.

- c. **Notice:** During the warranty/guarantee period, Contractor shall keep City fully and currently apprised of any impending circumstance in which Contractor reasonably anticipates that it will not be capable of honoring its warranty obligations under this Contract.
- d. **Subcontractor Warranties.** Work performed by subcontractors, if City consents to any, is not warranted by Contractor but is subject to warranties provided by subcontractors.

10. Termination:

- a. **Mutual Consent.** This Contract may be terminated at any time by mutual consent of both parties.
 - b. **For Cause.** City may terminate or modify this Contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by City if any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, or not renewed.
 - c. **For Default or Breach.**
 - i. Time is of the essence for Contractor's performance of each and every obligation and duty under this Contract. City by written notice to Contractor of default or breach, may at any time terminate the whole or any part of this Contract if Contractor fails to provide services called for by this Contract within the time specified herein or in any extension thereof.
 - ii. The rights and remedies of City provided in this subsection (c) are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
 - d. **Obligation/Liability of Parties.** Termination or modification of this Contract pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections a, b, or c of this section, Contractor shall immediately cease all activities under this Contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Contractor shall deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. City shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
- 11. Independent Contractor Status:** As certified by Contractor's execution of attached Exhibit A, Contractor is an independent Contractor and not an employee of the City. Contractor shall have the complete responsibility for the performance of this Contract.
- 12. Non-discrimination Certification:** The undersigned certifies that the undersigned Contractor has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts. Contractor further certifies that it shall not discriminate in the award of such subcontracts, if any. The Contractor understands and acknowledges that it may be disqualified from bidding on this contract, including but not limited to City discovery of a misrepresentation or sham regarding a subcontract or that the Bidder has violated any requirement of ORS 279A.110 or the administrative rules implementing the Statute.
- 13. Assignment and Subcontracts:** Contractor shall not assign this Contract or subcontract any portion of the work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Contractor shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract shall not create any contractual relation between the assignee or subcontractor and City.
- 14. Insurance:** Contractor shall at its own expense provide the following insurance:
- a. **Workers Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. Workers compensation insurance is required if work is performed by employees, subcontractors, or volunteers.
 - b. **General Liability** insurance with a combined single limit, or the equivalent, of not less than \$2,000,000, for each occurrence for Bodily Injury and Property Damage.
 - c. **Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000, for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - d. **Additional Insured/Certificates of Insurance.** Contractor shall name The City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Workers' Compensation, required herein but only with respect to Contractor's services to be provided under this Contract. As evidence of the insurance coverages required by this Contract, Contractor shall furnish acceptable insurance certificates prior to commencing work under this Contract. Contractor's insurance shall primary and non-contributory. The certificate shall specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the City. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
- 15. Governing Law; Jurisdiction; Venue:** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City (and/or any other or department of the State of Oregon) and

the Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon filed in Jackson County, Oregon. Contractor, by the signature herein of its authorized representative, hereby consents to the in personam jurisdiction of said courts. In no event shall this section be construed as a waiver by City of any form of defense or immunity, based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction.

16. **Mediation and Arbitration:** The parties shall first attempt to settle any unresolved controversy concerning this Agreement conducted by the Landscape Contractors Board (LCB). If the LCB decides not to mediate the dispute, then the parties shall promptly mediate under the terms and conditions of ORS 36.185 to 36.210 using the Portland Arbitration Service. In any event (be it LCB or private mediation), the mediation shall be subject to the confidentiality provisions of ORS 36.180 TO 36.228 as amended. If the parties are not able to resolve the controversy through mediation, then the controversy shall be resolved through binding arbitration by the Arbitration Service of Portland. There will be one arbitrator. The costs of the arbitrator and the arbitration service shall be shared equally by the parties. The results of the arbitration shall be binding as provided by Oregon law, and judgment on the award rendered by the arbitrator shall be entered in the circuit court of Jackson County. The arbitrator shall have the authority to issue preliminary and equitable relief, as well as the authority to award any other remedy or relief that an Oregon court could order or grant. Notwithstanding, a party may, without any inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the right of property of that party pending the establishment of any mediation or arbitration (or pending the arbitrator's determination of the merits of the dispute, controversy or claim).
17. THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
18. **Prior Approval Required Provision.** Approval by the City of Ashland Council or the Public Contracting Officer is required before any work may begin under this Contract.

Solid Ground Landscape, Inc:

City of Ashland

By _____
Signature

By _____
Interim City Administrator

Print Name

Print Name

Title

Date

W-9 One copy of a W-9 is to be submitted with the signed contract.

Purchase Order No. _____

EXHIBIT A

CERTIFICATIONS/REPRESENTATIONS: Contractor, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Contractor is not subject to backup withholding because (i) it is exempt from backup withholding or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that (a) it has the power and authority to enter into and perform the work, (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) the work under the Contract shall be performed in accordance with the highest professional standards, and (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, and it is a corporation authorized to act on behalf of the entity designated above and authorized to do business in Oregon or is an independent Contractor as defined in the contract documents, and has checked four or more of the following criteria:

- _____ (1) I carry out the labor or services at a location separate from my residence or is in a specific portion of my residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor

(Date)

EXHIBIT B

STATEMENT OF WORK FROM SOLID GROUND LANDSCAPE, INC

Client name: City of Ashland

Job location: Ashland City Plaza

Solid Ground will perform the following landscaping work:

1. General conditions (permits, traffic mitigation, pedestrian safety precautions, site evaluation, and utility locates).
2. Dig and remove 3 existing trees to be relocated to other City property or to SOU for others to plant.
3. Dig and relocate one Zelcova tree to planter nearest information booth (Southernmost tree).
4. Deliver and install 2 large caliper Zelcova trees and 2 Willow Oak trees (already located in tag from local nursery).
5. Modify irrigation as required for new plantings.
6. Fertilize and mulch trees as required.
7. Site cleanup, including restoration to pre-installation status, repairing any damage to subsoil, and repairing or replacing any pavers or public facilities damages in the course of the work.