



# Naperville

## CITY COUNCIL AGENDA ITEM

**SUBJECT:** Approve Sole Source Award and Authorize City Manager to Lease Three  
Parcels of City Property for Leaf Disposal

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**TYPE OF VOTE:** A. A motion to approve a sole source award requires a simple  
majority; and  
B. A motion to lease property owned by the City for a term of two  
years requires a three-quarter (3/4) vote (7 positive votes)

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**ACTION REQUESTED:**  
A. Approve the sole source award of Procurement 16-173: Leaf Disposal Services, to  
BioAg, Inc. for a two year contract term in an amount not to exceed \$208,000 per year;  
and  
B. Authorize the City Manager to enter into a two year lease agreement of three parcels of  
City property for the disposal of leaves.

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**BOARD/COMMISSION REVIEW:**  
N/A

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**COUNCIL ACTION PREVIOUSLY TAKEN:**

Date	Item No.	Action
8/16/11	I.11	Council unanimously waived the applicable provisions of the Naperville Procurement Code and set prices for Fiscal Years 2011 – 2016 and awarded Contract 12-060, Leaf Disposal, to various contractors, for an amount not to exceed \$539,000 for the period of October 1, 2011 through April 30, 2016.

**DEPARTMENT:** Department of Public Works  
Finance Department

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**SUBMITTED BY:** Richard Dublinski, Director of Public Works  
Rachel Mayer, Finance Director

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## **BACKGROUND:**

The City administers two methods by which residents may conveniently dispose of leaves. The first method allows residents to dispose of leaves by bagging the leaves and placing the bags at the curb in front of their residence. The bagged leaves are picked up curbside by the City's contracted waste haulers along with other yard waste. The second method allows residents to dispose of their leaves via a bulk curbside leaf collection program.

### **Bulk Curbside Leaf Collection Program**

This program is structured so that DPW collects leaves that have been deposited on the street next to the curb in front of residences. The City residents are provided three curbside leaf collection opportunities during the fall season, which equates to one pickup collection citywide every two weeks. The program has historically begun six weeks prior to Thanksgiving Day. This service is primarily provided in-house by DPW personnel and contracted temporary labor.

DPW annually collects over 50,000 cubic yards of leaves through the program. The collected leaves must be disposed of in an environmentally appropriate way compliant with Illinois Environmental Protection Agency ("IEPA") regulations. In the past, the City has contracted with a third party to appropriately dispose of the collected leaves. The disposal process involves the City hauling the collected leaves to designated farm land where the contracted third party spreads, treats and tills the leaves into the soil.

### **Challenges**

Properly disposing of approximately 50,000 cubic yards of leaves collected over a 45 day period in the late Fall with unpredictable weather conditions, is a challenging task, in part due to limited local disposal sites and reliable disposal vendors.

### **Disposal Sites**

The availability of local disposal sites are crucial to the efficiency of the bulk curbside leaf collection program, as the leaves are disposed of immediately as they are collected. Available farm land is increasingly difficult to find locally and the cost of hauling the leaves out of the area greatly increases costs and negatively impacts DPW's ability to complete the program on time.

The City has identified the following three parcels of vacant City owned agricultural property upon which leaves may be spread for disposal. Site plans and legal descriptions of the three parcels are attached.

- 4100 Plainfield/Naperville Road (15.9 acres),
- The southeast corner of Route 59 and 103<sup>rd</sup> Street (19.0 acres), and
- The southwest corner of 91<sup>st</sup> Street and Wolf's Crossing Road (17.5 acres).

Although the City has approximately 52.4 acres of City property that may be used for leaf disposal, approximately 250 additional acres of agricultural land is required to dispose of the approximately 50,000 cubic yards of leaves collected annually.

### **Disposal Vendor**

In addition to finding local farm land to use for the disposal of leaves, it is a challenge to find a third party vendor capable of reliably and appropriately disposing of approximately 50,000 cubic yards of leaves delivered over an approximate 45 day period in all weather conditions. The success of the bulk curbside leaf collection program requires the City to partner with a disposal vendor that is able to (1) provide at least 200 acres, in addition to the aforementioned City owned property, of farm land located within five miles of the City, (2) receive approximately 50,000 cubic yards of leaves delivered over an approximate 45 day period in all weather conditions, and (3) dispose of the leaves in an environmentally appropriate way compliant with IEPA regulations, including obtaining any necessary permits. Over the past several years there has been only one local vendor, BioAg, Inc., that has been willing to provide said service at the current \$3.85 per cubic yard price set by Council in 2011.

### **Prior Council Action**

In 2011, the City had an existing agreement with its residential recycling contractor to dispose of the City's leaves at a cost of \$3.85 per cubic yard. However, disposal locations used by the City's residential recycling contractor were not efficient from most areas of the City<sup>1</sup>. To determine whether the City could get better disposal locations and a better price per cubic yard for leaf disposal, staff issued a bid and received two responses. One was for \$5.20 per cubic yard and the other was for \$4.25 per cubic yard. Instead of accepting either of those bids, the City Council waived the procurement code and set a price of \$3.85 per cubic yard for leaf disposal for Fiscal Years 2011-2016 and made it available to any interested vendor. For the past several years, BioAg has been the only vendor able to provide for leaf disposal at local locations. The \$3.85 price per cubic yard set by Council expires on April 30, 2016.

Additionally, in 2011, the City entered into an agreement with Drendel Farms to lease the City's aforementioned 52.4 acres of vacant City owned agricultural property, split between three separate parcels contingent on the City being allowed to deposit its leaves on the parcels for disposal. During the initial year (2011/12) the City charged Drendel Farms \$4,725 for the lease and in subsequent years Drendel Farms was charged \$150/acre (\$7,860) per year. Drendel Farm's lease expires on April 14, 2016.

It is notable that Ben Drendel is the president of both Drendel Farms and BioAg. In order to best address the leaf disposal needs of the bulk curbside leaf collection program, both local farms owned or leased by BioAg and the City parcels leased by Drendel Farms have been used as disposal sites. This has been advantageous for the City because it allows the City to reduce trucking costs by having access to dispose of a majority of its leaves at sites located in Naperville.

### **DISCUSSION:**

The continued success of the City's bulk curbside leaf collection program hinges on securing a reliable, competent vendor to dispose of the leaves collected by the City and the availability of local property where the City may deposit collected leaves for disposal.

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<sup>1</sup> The City's residential recycling contract no longer provides for bulk leaf disposal.

### **BioAg Sole Source**

DPW has researched the availability of sources for the disposal of leaves collected by the City and has concluded that BioAg is the only available source that meets the City's needs. The Naperville Procurement Code requires that for a sole source procurement the City's Chief Procurement Officer must conduct a good faith review of available sources and determine that there is only one source available for the needed service<sup>2</sup>. In order to verify DPW's determination that BioAg is the only available source, the Procurement Department published a notice of its intent to award a sole source contract to BioAg for leaf disposal services on the City's online bidding service and in the newspaper to allow suppliers to notify the City if they were also able to perform the services. A copy of the notice is attached. The stated purpose of the notice was to publically announce the City's intent to sole source the leaf disposal contract to BioAg for \$208,000 per year over two years with three additional option years. The notice invited any vendor that does not agree that the leaf disposal service needed is only available from BioAg to contact the City's procurement services team. The notice was published on February 8, 2016 and to date, the procurement services team has not received any responses.

The City's Chief Procurement Officer has determined that BioAg is the only source available for the disposal of leaves collected via the City's bulk curbside leaf collection program. BioAg meets the City's requirements concerning access to nearby disposal sites and the ability to accept approximately 50,000 cubic yards of leaves delivered over an approximate 45 day period in all weather conditions for appropriate disposal. Additionally, BioAg has performed well as the City's current leaf disposal supplier.

### **Leaf Disposal Agreement**

The proposed leaf disposal agreement between the City and BioAg is attached. The term of the agreement is May 1, 2016 through April 30, 2018 with three additional option years available. The agreed upon unit cost is \$4.00 per cubic yard for the initial two year term. For each of the three one-year option years, the contractor can request no more than a 5% increase in the unit cost, which must be agreed to by the City. The previous cost, which began in the curbside recycling contract more than 15 years ago, was \$3.85 per cubic yard. The new cost is a 3.8% increase, which staff believes is fair given that the cost has not changed in 15 years and will be maintained for the two year contract term.

### **Lease of City's Agricultural Property**

As discussed above, the City owns three parcels of agricultural property which have been leased to Drendel Farms while still being used by the City to deposit leaves for disposal. These properties are not desirable parcels for purposes other than leaf disposal and farming. The last bid advertisement to lease these City properties was conducted in 2011 and Drendel Farms was the only bidder. The Naperville Park District recently conducted a bid to lease its agriculturally zoned properties and Drendel Farms was the only bidder. These parcels, however, are a strategic piece of DPW's leaf disposal operations because of their convenient locations and ability to take leaves during all weather conditions. Being able to deposit leaves on these properties allows DPW operators to continue collecting the leaves without having to travel long distances to

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<sup>2</sup> per 1-9B-4:5 of the Naperville Municipal Code

dispose of leaves. Without the use of these properties for leaf disposal, the City's cartage costs will increase and the City may not be able to complete bulk curbside leaf collection program on schedule.

**Drendel Farms Lease**

Drendel Farms has been leasing the land since 2011 and has met all the terms of the existing lease including accepting leaves from the bulk curbside leaf collection program and maintaining the site. Drendel Farms' lease expires on April 14, 2016. Ben Drendel has indicated that Drendel Farms is willing to enter into a new lease for said property for a nominal cost in exchange for continuing to allow the property to be used by the City to deposit its leaves for disposal.

It is recommended that Council authorize the City Manager to enter into a lease agreement for these properties for a nominal fee contingent on the City being allowed to deposit its leaves on the parcels for disposal. It is anticipated that the term of any such lease will be May 1, 2016 through April 30, 2018 with three additional option years and that the lessee will continue to be Drendel Farms.

**Future of Leaf Program**

DPW is currently investigating various other innovative options for the disposal of leaves. DPW's intent is to find other ways to continue the program while reducing the increasing costs associated with both cartage and disposal. Since the other options may require an initial capital outlay, DPW will provide additional information for Council review at a later date.

**FISCAL IMPACT:**

CIP #: N/A

Leaf disposal services is one line-item budgeted in the account in the table below. This contract has a 3.8% percent increase from FY16 to CY2016. A total of \$196,350 was budgeted for leaf disposal services and the annual award of \$208,000 is slightly higher than the City's CY2016 budget estimates. Additional funding will be requested for second year of the contract in CY2017.

Account Number	Fund Description	Total Budget Amount
010-4230-431.40-43	General Fund - DPW	\$271,350

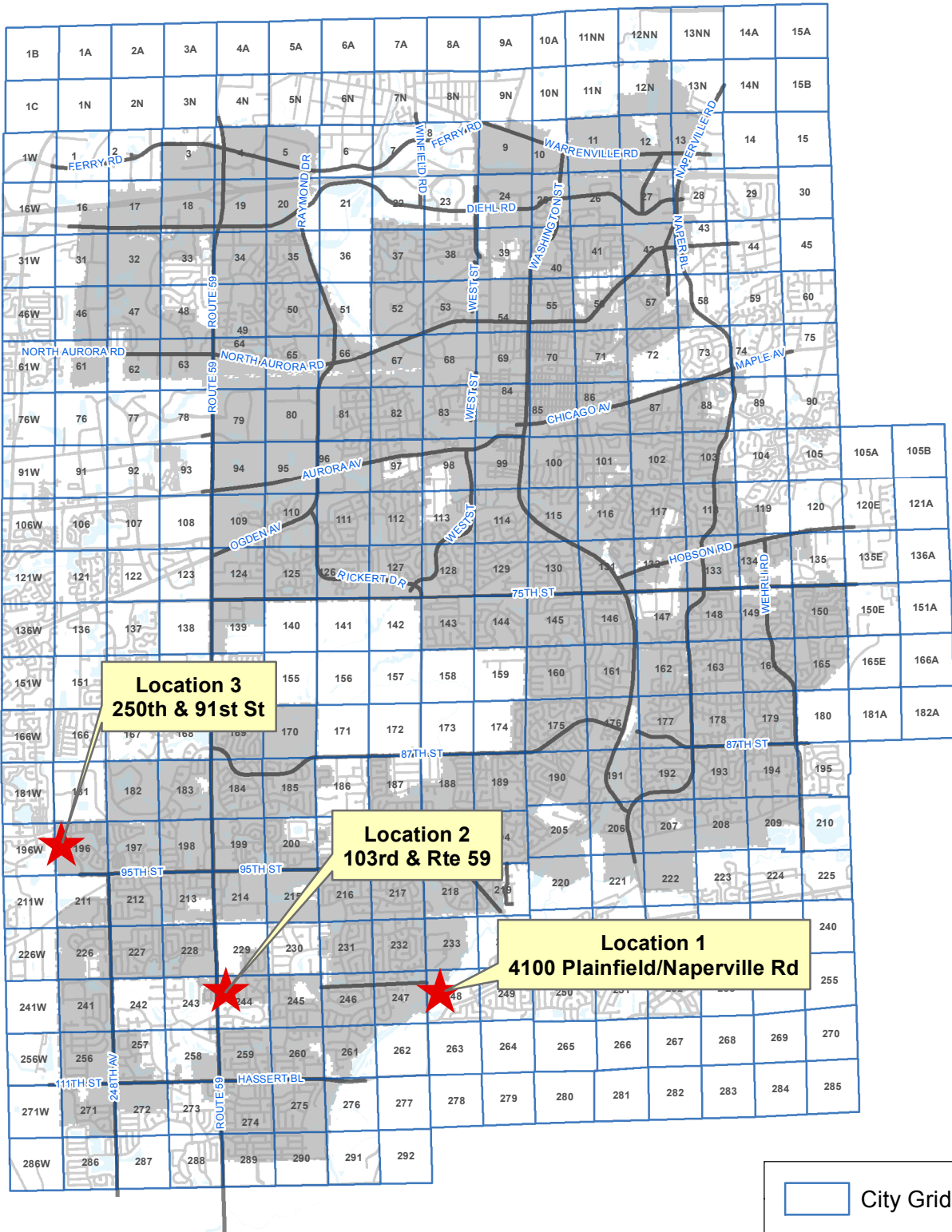
**RECOMMENDATION:**

- A. Approve the sole source award of Procurement 16-173: Leaf Disposal Services, to BioAg, Inc. for a two year contract term in an amount not to exceed \$208,000 per year; and
- B. Authorize the City Manager to enter into a two year lease agreement of three parcels of City property for the disposal of leaves.

**ATTACHMENTS:**

- 1. Site plans and legal descriptions of three parcels of City property
- 2. Notice of its intent to award a sole source contract to BioAg leaf disposal services
- 3. Bulk Curbside Leaf Collection Program Disposal Agreement

# City of Naperville LEAF DISPOSAL LOCATIONS



Department of Public Works  
Strategic Services Division  
www.naperville.il.us  
3/4/2016



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Legal Description:  
W1/2 SE1/4 S5 T37N R9E

PIN #: 0113100001

City of Naperville  
**LOCATION 1:**  
**4100 PLAINFIELD/NAPERVILLE RD**



 Leaf Disposal Site



Department of Public Works  
Strategic Services Division  
[www.naperville.il.us](http://www.naperville.il.us)  
3/4/2016



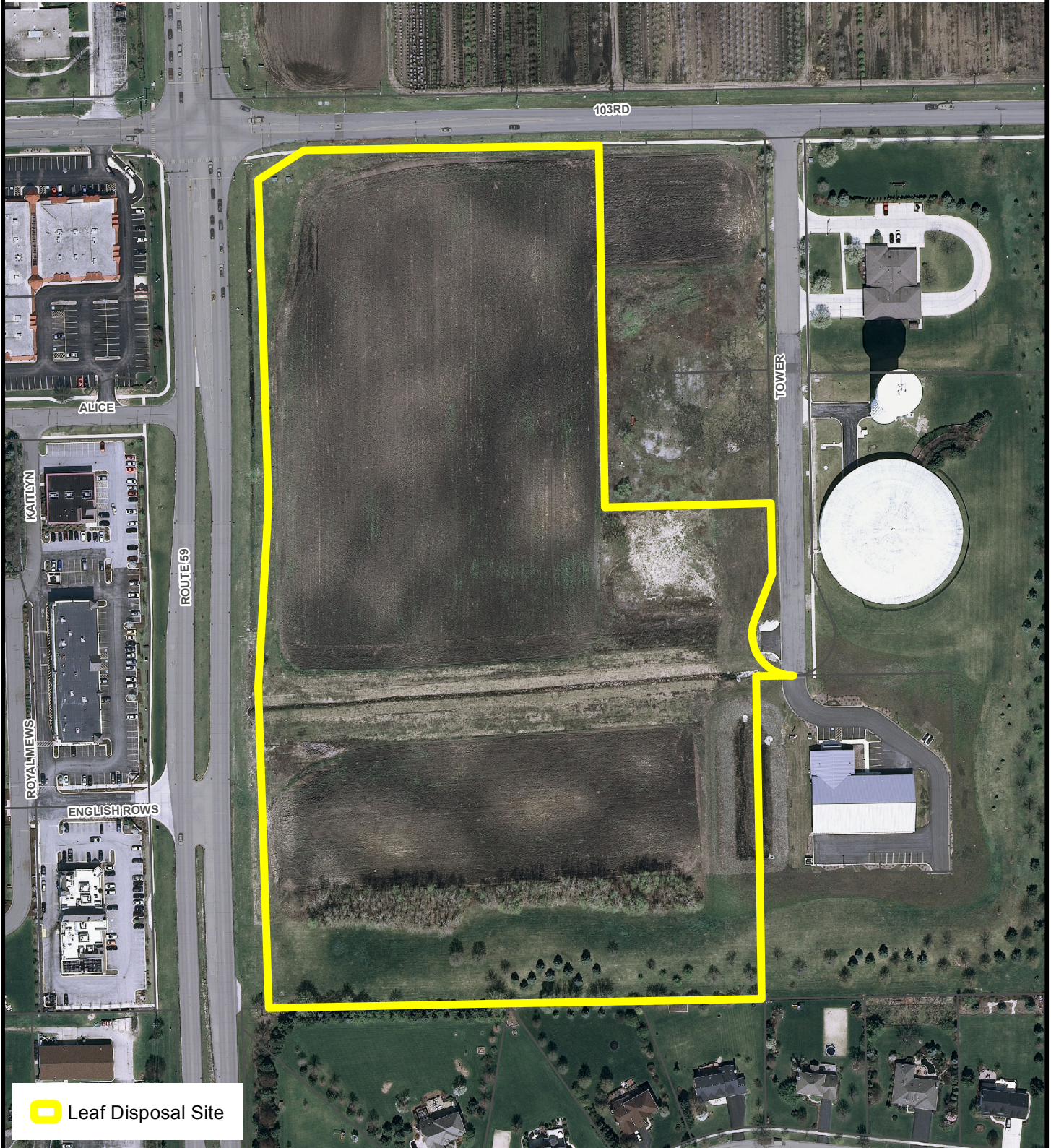
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Legal Description:  
NW1/4 NW1/4 S15 T37N R9E

PIN #: 0115101044

City of Naperville  
**LOCATION 2:**  
**NEAR 103RD AND ROUTE 59**



 Leaf Disposal Site



Department of Public Works  
Strategic Services Division  
[www.naperville.il.us](http://www.naperville.il.us)  
3/4/2016



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Legal Description:  
NW1/4 NW1/4 S15 T37N R9E

PIN #: 0105400012

City of Naperville  
**LOCATION 3:**  
**NEAR 250TH AND 91ST STREET**



 Leaf Disposal Site



Department of Public Works  
Strategic Services Division  
[www.naperville.il.us](http://www.naperville.il.us)  
3/4/2016



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**CITY OF NAPERVILLE  
NOTICE OF INTENT TO AWARD SOLE SOURCE  
PROCUREMENT 16-173**

**Procurement Name:** Leaf Disposal Services  
**Vendor Name:** Bio-Ag  
**Vendor Address:** 28 W 753 Davidson Rd, Naperville, IL 60564  
**Contract Amount:** \$416,000 (\$208,000 annually)  
**Contract Term:** Two Years with Three Additional Option Years Available

The City of Naperville Procurement Services Team intends to make a purchase which has been determined to qualify as a "Sole Source" purchase made in accordance with Section 1-9B-4-5 of the Naperville Municipal Procurement Code. The purpose of this "Notice of Intent to Award" is to publicly announce the City's intent to award a Sole Source Contract for a specific service, construction or item of tangible personal property.

This is **NOT** a request for quotes or proposals. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement. Any vendor who does not agree that the service, construction or item of tangible personal property is available only from the vendor determined to be a sole source may protest the "Notice of Intent to Award" by contacting the Procurement Services Team within fifteen (15) calendar days of the date this Notice is posted. Your protest must be in writing and describe the basis for the protest. Please submit your protest, via email and include the words "PROTEST OF NOTICE OF INTENT TO AWARD SOLE SOURCE CONTRACT TO: Bio-Ag" and your company name on the subject line. If you have questions, please contact:

Primary Point of Contact  
Kim Schmidt  
[schmidtk@naperville.il.us](mailto:schmidtk@naperville.il.us)  
(630) 420-4162

Secondary Point of Contact  
Bryn Wildman  
[wildmanb@naperville.il.us](mailto:wildmanb@naperville.il.us)  
(630) 420-6720

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The City of Naperville, Illinois intends to award a sole source to Bio-Ag for \$208,000 per year for a two year contract with three additional option years available.

**BACKGROUND:**

The City of Naperville provides a bulk curbside leaf collection to its residents. This program is structured so that the entire city has three curbside leaf collection opportunities during the season, which equates to one pickup collection citywide every two weeks. The program has historically begun six weeks prior to Thanksgiving Day. This service is primarily provided in-house by DPW personnel and contracted temporary labor. It also requires the City to haul leaves to area farm sites for third-party disposal.



Farm land is becoming increasingly difficult to find in the area, and the cost of trucking the leaves out of the area greatly increases the cost of disposal and has an impact on the City's ability to complete the program on time. The location of available farms throughout the city is crucial to the efficiency of the leaf program, as the leaves are disposed of as they are collected.

**SCOPE OF WORK:**

The supplier will be responsible for disposing of approximately 52,000 cubic yards (CY) of leaves collected and hauled to the site by the City of Naperville. The supplier is responsible for disposing of the bulk material in an environmentally friendly way and must obtain any and all necessary permits from the Illinois Environmental Protection Agency (IEPA). The term of this contract is May 1, 2016 through April 30, 2018 with three additional option years available.

**REQUIREMENTS/QUALIFICATIONS:**

The successful supplier shall meet the following requirements and/or qualifications:

- Shall own, lease and/or have some other contractual agreement providing a minimum of 200 acres of agricultural land within 5 miles of the city limits of Naperville.
- The ability to accept approximately 52,000 cubic yards (CY) of leaves from October 15 – December 1. The material must be accepted as the City is collecting the leaves to minimize double handling of the leaves.
- The supplier must be able to accept leaves Monday through Saturday from 6:30 a.m. until approximately 5:00 p.m. in all weather conditions.

Bio-Ag currently disposes of the leaves from the City's curbside leaf collection program at land in or near the City of Naperville. These leaves are land applied by Bio-Ag.

# Chicago Tribune

Printed: 2/8/2016 3:25:11 PM

Page 1 of 2

\* Agency Commission not included

Order ID: 3956988

**GROSS PRICE \* :** **\$39.24**

**PACKAGE NAME: IL Govt Legal Notice CTC**

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**Product(s):** Chicago Tribune , Publicnotices.com, classified.chicagotribune.com

**AdSize(s):** 1 Column,

**Run Date(s):** Wednesday, February 10, 2016

**Color Spec.** B/W

**Preview**

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Order ID: 3956988

**GROSS PRICE \* :** **\$39.24**

**PACKAGE NAME: IL Govt Legal Notice CTC**

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**LEGAL NOTICE**

**CITY OF NAPERVILLE NOTICE OF INTENT  
SOLE SOURCE AWARD #16-173**

The City of Naperville intends to make a purchase which has been determined to qualify as a "Sole Source" purchase in accordance with Section 1-9B-4-5 of the Naperville Municipal Procurement Code. The purpose of this "Notice of Intent to Award" is to publicly announce the City's intent to award a Sole Source Contract for a specific service: leaf disposal services. The supplier will be responsible for disposing of approximately 52,000 cubic yards (CY) of leaves collected and hauled to the site by the City of Naperville. The supplier is responsible for disposing of the bulk material in an environmentally friendly way and must obtain any and all necessary permits from the Illinois Environmental Protection Agency (IEPA). It also requires the City to haul leaves to area farm sites for third-party disposal.

Any vendor who does not agree that the service is available only from the vendor determined to be a sole source, may protest the "Notice of Intent to Award" by contacting the Procurement Services Team within fifteen (15) calendar days of the Legal Notice posting. Your protest must be in writing and describe the basis for the protest. Please submit your protest, via email and include the words "PROTEST OF NOTICE OF INTENT TO AWARD SOLE SOURCE CONTRACT TO: Bio-Ag" and your company name on the subject line. If you have questions, please contact: Primary: Kim Schmidt at schmidt@naperville.il.us or Secondary: Bryn Wildman at wildman@naperville.il.us .

**BULK CURBSIDE LEAF COLLECTION PROGRAM DISPOSAL AGREEMENT  
BETWEEN CITY OF NAPERVILLE AND BIOAG, INC.**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, between the **City of Naperville (“City”)**, an Illinois municipal corporation and home rule unit of government, with offices located at 400 South Eagle Street, Naperville, Illinois 60540, and **BIOAG, INC. (“Contractor”)**, an Illinois corporation located at 28W753 Davidson Road, Naperville, Illinois 60564 for disposal of leaves collected by the City via the City’s bulk curbside leaf collection program (“**Agreement**”).

**RECITALS**

**WHEREAS**, in addition to the City’s bagged leaf collection program that allows residents to dispose of bagged landscape waste weekly, the City Council has determined that it is in the public interest to offer residents with an alternative way to dispose of leaves via a bulk curbside leaf collection program where the City collects leaves that have been deposited on the street next to the curb in front of residences three times per year, between approximately late October and early December, weather permitting; and

**WHEREAS**, the City’s bulk curbside leaf collection program is not administered by the City’s contracted waste hauler, but rather is primarily administered by the City’s Department of Public Works which is responsible for the curbside pickup and disposal of leaves collected via the City’s bulk curbside leaf collection program; and

**WHEREAS**, the City annually collects between approximately 42,000 and 52,000 cubic yards of leaves through its bulk curbside leaf collection program; and

**WHEREAS**, the City may with the approval of the City Council, enter into contracts for leaf disposal per 65 ILCS 5/11-19-1 and 4-2-3:2.1, Naperville Municipal Code; and

**WHEREAS**, the City’s current bulk curbside leaf collection program disposal agreement expires on April 30, 2016; and



**WHEREAS**, leaves collected by the City via the City's bulk curbside leaf collection program must be disposed of in an environmentally appropriate way pursuant to Illinois Environmental Protection Agency ("IEPA") regulations; and

**WHEREAS**, the use of nearby local farm land to dispose of leaves collected by the City via the City's bulk curbside leaf collection program is crucial to minimizing the City costs by reducing time and costs to transport collected leaves for disposal; and

**WHEREAS**, nearby local farm land has become increasingly sparse making it increasingly costly and inefficient to transport and dispose of the leaves on farm land located at significant distances; and

**WHEREAS**, per the Sole Source Procurement Section, 1-9B-4:5, of the City's Procurement Code the City's Chief Procurement Officer has conducted a good faith review of available sources for disposal of leaves collected by the City via the City's bulk curbside leaf collection program, including the publication of notice of intent to sole source this Agreement to the Contractor which did not receive any protests in response, and determined that there is only one source for disposal of leaves collected by the City via the City's bulk curbside leaf collection program; and

**WHEREAS**, it is in the best interests of the City to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and undertakings herein contain, the sufficiency of which is mutually acknowledged, the **City** and the **Contractor** (hereinafter jointly referred to as "**Parties**") agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated in this Section as though fully set forth.
2. **Disposal Service.** The Contractor agrees to receive and appropriately dispose of any and all leaves delivered to it by the City throughout the Term of this Agreement. The Contractor shall be capable of appropriately disposing of no less than fifty two thousand (52,000) cubic yards of leaves delivered to it by the City between October 15 and December 1. The Contractor shall maintain no less than two hundred (200) acres of agricultural land within five (5) miles of the

municipal boundary of the City reserved exclusively for disposal of leaves the Contractor receives from the City. City owned property may not be used to satisfy the two hundred (200) acres of agricultural land requirement. The Contractor shall provide the City with the addresses and available acreage of all locations where the City may deliver leaves for disposal. All provided locations shall be available and able to accept large quantities of leaves delivered by the City Monday through Saturday from 6:30 A.M. until 5:00 P.M., in any weather condition. Leaves delivered by the City to agricultural land designated by the Contractor shall immediately become the property and responsibility of the Contractor. The Contractor shall be solely responsible for spreading, tilling or otherwise appropriately disposing of delivered leaves. The Contractor shall solely responsible for all aspect of disposal of the leaves including but not limited to the provision of material and labor, equipment, fuel, power, machinery, tools, disease-treatment materials, seed, inoculation, fertilizers, licensing and permitting. The Contractor shall appropriately maintain all property where City leaves are delivered.

3. **Regulatory Compliance.** The Contractor shall at all times conduct its leaf disposal services in strict compliance with all federal, state and local laws, ordinances, or rules and regulations, and shall immediately notify the City of any notice of violation received for a site to which residential leaf matter collected in the City has been taken for disposal or processing. Any notice of violation may be considered by the City to be failure to conform to the Agreement and shall be cause for immediate termination of this Amendment.
4. **Defense and Indemnification.** The Contractor shall defend, indemnify, and hold harmless the City, and its officers, agents, employees, and representatives for any injury or damage to person or property, including but not limited to any liability, losses or damages, including court costs and attorney fees, resulting or arising out of the Contractor or its officers, agents, employees, representatives, family or subcontractors' disposal of leaves delivered to it by the City. Such indemnification shall not be limited by reason of any insurance coverage provided by the Contractor. Such indemnification shall not apply to liability resulting solely from the City's own actions. This provision shall survive the expiration or termination of this Agreement.
5. **Consideration.** In consideration of the promises and provisions herein, the City shall pay the Contractor four dollars (\$4.00) per cubic yard of leaves delivered by the City to the Contractor

for disposal. Upon the City's delivery of leaves to the Contractor's designated premises, the City shall record and inform the Contractor of the number of cubic yards of leaves being delivered for disposal. The Contractor shall provide the City with an invoice specifying: (1) the number of cubic yards of leaves delivered the Contractor by the City for disposal; (2) the address where said leaves were delivered, and (3) the date when said leaves were delivered. Invoices submitted shall be paid in accordance with applicable City policy. The Parties shall make a good faith effort to amicably resolve any discrepancies concerning the number of cubic yards of leaves delivered by the City to the Contractor, however, in the event that a discrepancy cannot be amicably resolved, the City's record of the number of cubic yards of leaves it delivered to Contractor shall be controlling and dispositive to resolve any discrepancy.

6. **Term.** The Term of this Agreement shall begin on May 1, 2016 and end on April 30, 2018.
7. **Extension Option.** This City has three (3), one (1) year extension options whereby the City may choose to extend this Agreement for one (1) year up to three (3) times, subject to the same terms and conditions set forth herein, except that upon showing of good cause and upon the agreement of the Parties, the Contractor may require no more than a five percent (5.00%) annual increase in the price per cubic yard consideration. The City may exercise its option upon written notice to the Contractor at the address provided in the Notice Section herein, no less than thirty (30) days prior to the expiration of the Agreement.
8. **Insurance.** The Lessee shall maintain a Commercial General Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; Automobile Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; and Workers' Compensation insurance in accord with the laws of the State of Illinois. The Lessee shall name the City as an additional insured on all applicable policies and tender to the City the original and updated endorsements and certificates of insurance reflecting the same. For any claims related to the performance of the Lessee's work, Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. The Lessee's Workers'

Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Lessee, its employees, agents and subcontractors.

9. **Termination.** This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor at the address provided in the Notice Section herein.

10. **No Waiver.** Failure of either Party hereto to insist upon strict and punctual performance of any terms or conditions of this Agreement shall not be construed to constitute a waiver of, or estoppel against, asserting the rights to require such performance.

11. **No Assignment or Subcontract Without Consent.** The Contractor shall not assign nor subcontract any of its responsibilities under this Agreement without the written consent of the City.

12. **Notices.** Any notice provided for herein shall be sent to the following:

**For the Contractor:** Benjamin Drendel, President of BIOAG, INC.  
28W753 Davidson Road, Naperville, Illinois 60564

**For the City:** City of Naperville Department of Public Works  
ATTN: Director of the Department of Public Works  
180 Fort Hill Drive, Naperville, IL 60540

13. **Binding Effect.** This Agreement shall extend to and be binding upon the heirs, executors and administrators of the Parties to this lease.

14. **Amendment.** This Agreement sets forth all of the agreements, conditions, covenants, representations, warranties and understandings between the Parties with respect to the subject matter hereof. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.

15. **Severability.** If any part of this Agreement is determined by a court to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect and be enforced to the greatest extent permitted by law.

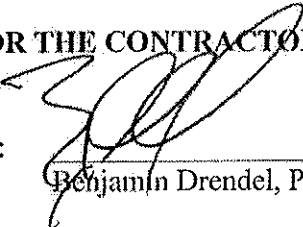


16. **Venue.** The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

17. **Authority.** Pursuant to authorization provided by the Naperville City Council, Douglas A. Krieger, City Manager for the City of Naperville warrants and represents that he is authorized to execute this Agreement on behalf of the City. Benjamin Drendel, President of Drendel Farms, Inc., warrants and represents that he is authorized to execute this Agreement on behalf of the Contractor.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Agreement as of the Effective Date set forth on page one, and by their signatures hereto acknowledge that they have read and understand this Agreement and intend to be bound by its terms.

**FOR THE CONTRACTOR, BIOAG, INC.:**

By:   
Benjamin Drendel, President of BIOAG, INC.

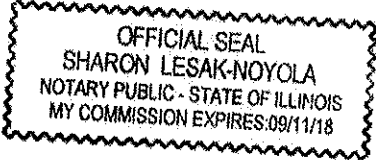
State of Illinois        )  
                                  ) ss  
County of DuPage    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Benjamin Drendel**, appeared before me this day in person and acknowledged the signature set forth above.

Given under my hand and official seal this 7 day of March, 2016.

  
Notary Public

(seal)



**FOR THE CITY OF NAPERVILLE:**

By: \_\_\_\_\_  
Douglas A. Krieger, City Manager

Attest: \_\_\_\_\_  
Pam LaFeber, Ph.D., City Clerk

State of Illinois        )  
                                  ) ss  
County of \_\_\_\_\_)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Douglas A. Krieger and Pam LaFeber**, appeared before me this day in person and acknowledged the signatures set forth above.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public (seal)