MEMORANDUM

TO: Mayor Brenda Bodnar, Council President Schutt and Members of Council

FROM: Shane McAvinew, Director of Parks & Recreation

DATE: October 15, 2020

RE: **Senior & Disabled Resident Snow Plow Program**

As previously advised, three snow plow contractors will be retained to properly service the Senior Snow Plow Program. Proposals were received from Ameriscape Landscape & Design, Arnold's Landscape & Design, and MJO Lawn Inc. Based on the proposals and the number of applications received, Ameriscape and Arnold's will be assigned 3 sections each (90-120 driveways) and MJO will be assigned 1 to 2 sections (30-60 driveways), depending on the number of late applications received.

Attached are Services Agreements prepared for each contractor with not-to-exceed amounts. At Monday's meeting, Council will be asked to approve these Agreements by Motion. I will be participating in the meeting to answer any questions you might have.

Thank you.

Services Agreement

This Services Agreement (this "**Agreement**"), dated as of _____, 2020 (the "**Effective Date**"), is entered into by and between **Ameriscape Land Design Inc.,** an Ohio Corporation ("**Service Provider**") and the **Village of Mayfield**, an Ohio municipal corporation ("**Customer**").

WHEREAS, Service Provider has the capability and capacity to provide certain Snow Plow services; and

WHEREAS, Customer desires to retain Service Provider to provide the said services under the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer (hereinafter, collectively, the "**Parties**", or each, individually, a "**Party**") agree as follows:

1. Services.

1.1 Service Provider shall provide to Customer the services (the "**Services**") set out in the statement of work, attached hereto and incorporated herein as **Exhibit A,** (the "**Statement of Work**"). The Service Provider shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; and (d) to the satisfaction of the Customer.

2. Service Provider Obligations. Service Provider shall:

2.1 Appoint representatives to the following positions:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**Service Provider Contract Manager**"). Service Provider shall provide the contact information for the Service Provider Contract Manager to the Customer.

(b) A sufficient number of employees to perform the Services set out in each Statement of Work (collectively, with Service Provider Contract Manager, "**Provider Representatives**").

2.2 Assign only qualified, legally authorized Provider Representatives to provide the Services.

2.3 Comply with all applicable laws and regulations in providing the Services.

2.4 Comply with all Customer rules, regulations, and policies of which it has been made aware, in its provision of the Services.

2.5 The Service Provider shall register as a contractor with the Mayfield Village Building Department by November 1, 2020.

3. Customer Obligations. Customer shall:

3.1 Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**"), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed, in Customer's sole discretion.

4. Fees and Expenses.

4.1 For the Services to be performed hereunder, the Customer will pay to Service Provider a fee determined in accordance with the fee schedule set forth in the fee schedule, attached hereto and incorporated herein as **Exhibit B**, (the **"Fee Schedule").** Said fee shall be paid in seven (7) installments payable on or before the tenth of each month beginning November 10, 2020. The Customer will retain the seventh and final installment until all damage reports submitted by May 15, 2021 have been repaired.

5. Term, Termination, and Survival.

5.1 This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of one (1) year, (the "Term") unless sooner terminated pursuant to Section 5.2.

5.2 Customer, in its sole discretion, may terminate this Agreement in whole or in part, at any time without cause, and without liability except for required payment for services rendered, prior to the termination date, by providing at least 30 days' prior written notice to Service Provider. If any property damages are reported to the Service Provider pursuant to Paragraph 7 below, prior to termination of all or part of this Agreement, the Service Provider will make all repairs before any required payments are forwarded.

6. Independent Contractor.

6.1 It is understood and acknowledged that the Services which Service Provider will provide to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Customer. Service Provider shall control the conditions, time, details, and means by which Service Provider performs the Services. The Customer shall have the right to inspect the work of Service Provider as it progresses solely for the purpose of determining whether the work is completed according to the applicable Statement of Work.

6.2 Service Provider has no authority to commit, act for or on behalf of the Customer, or to bind the Customer to any obligation or liability.

6.3 Service Provider shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Service Provider hereunder.

7. Property Damage. The Customer shall provide all residents participating in the program with blank forms to be completed if any damage occurs to their property. Residents will return the forms to the Customer, who shall keep a record of all reports received and shall advise the Service Provider (usually within 48 hours) of all damage reported. A copy of the original damage form will be provided to Service Provider and Service Provider shall verify receipt. Repair of all damage (other than seeding and work that can only be done weather-permitting), must be completed within fifteen (15) days from the date the damage report was received by the Customer.

8. Indemnification. Service Provider shall indemnify, defend, and hold harmless Customer and its officers, directors, managers, shareholders, members, partners, employees, agents, affiliates, successors, and permitted assigns (collectively "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees, and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, (collectively, "**Losses**"), arising out of or resulting from any claim of a third party or Customer arising out of or occurring in connection with Service Provider's negligence, willful misconduct, or breach of this Agreement. Service Provider shall not enter into any settlement without Customer's or Indemnified Party's prior written consent.

9. Compliance with Law. Service Provider is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Service Provider has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

10. Insurance. For the duration of the Term, Service Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to, commercial general liability with limits no less than $500,000.00 per occurrence and $1,000,000.00 in the aggregate, including bodily injury and property damage and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement, and workers' compensation insurance to the extent required by law. Upon Customer's request, Service Provider shall provide Customer with a certificate of insurance from Service Provider's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Customer as an additional insured. Service Provider shall provide Customer with 10 days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against Customer's insurers and Customer or the Indemnified Parties.

If it shall have any employees providing services for Customer, Service Provider shall also provide (i), with respect to employees providing services in Ohio, workers' compensation coverage with the Ohio Bureau of Workers' Compensation and shall otherwise be in compliance in all respects with the Ohio Workers' Compensation Act and (ii) with respect to employees providing services in any other state, workers' compensation coverage covering those employees for at least $100,000 and shall provide a certificate of insurance to Customer evidencing such coverage within 30 days of the effective date of this Agreement.

11. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

12. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction

13. Amendments. No amendment or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

14. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

16. Choice of Law. This Agreement and all related documents are governed by, and construed in accordance with, the laws of the State of Ohio, United States of America.

17. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

[Signature Page to Immediately Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

CUSTOMER:

MAYFIELD VILLAGE

_____
Brenda Bodnar
Mayor, Mayfield Village

_____
Stephen Schutt
President of Council, Mayfield Village

Approved as to Form:

_____
Anthony J. Coyne
Law Director, Mayfield Village

SERVICE PROVIDER:

AMERISCAPE LAND DESIGN INC.

_____

By:_____

Its: _____

EXHIBIT A

STATEMENT OF WORK

- Contractor(s) must have a minimum of one (1) truck for each section bid, and an adequate back up plan for use of an alternate truck(s) in the event of a mechanical or other problem with truck rendering it unavailable. A “section” is approximately 30-40 driveways. Trucks are to be no larger than a one ton pick-up.

- It is the Contractor’s responsibility to monitor the amount of snowfall and plow when snow exceeds 2" on the ground.

- Snow **must** remain on the property it originated from and may not be placed in the street. (Snow left in the street becomes a traffic obstacle for motorists and may be plowed back into the drives by the Village snowplows.) Snow may not be piled around hydrants or mailboxes.

- Contractor must clean drives twice daily in a 12-hour period as determined by amount of snowfall. **Driveways must be cleared prior to 7 a.m., and if warranted, again prior to 5 p.m.**

- Contractor must clear snow from the **full width** of the driveway.

- Contractors are not responsible for any displaced gravel.

- Contractor must mark driveways: (1) to identify participants in program, and (2) to identify edge of drive. Markers should be of lath sticks colored with a bright paint on the top 6" of the markers. Gravel driveways should be identified with a different marking on the lath stick.

EXHIBIT B

FEE SCHEDULE

- 3 sections (approximately 90-120 drives) at a rate of $235.00 per drive plus an additional $50.00 for circular driveways.