

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2019-17**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO  
ENTER INTO AN AGREEMENT WITH CONTRACT SWEEPERS AND  
EQUIPMENT TO PROVIDE STREET SWEEPING SERVICES IN 2019, AND  
DECLARING AN EMERGENCY**

**WHEREAS**, the Village has solicited proposals for street sweeping services throughout the Village in 2019; and,

**WHEREAS**, Contract Sweepers and Equipment was recommended by staff as the contractor with the lowest and best price; and,

**WHEREAS**, funds are available in the Village's 2019 budget for street sweeping services; and,

**WHEREAS**, immediate action is required to assure street sweeping can begin in May, 2019, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

**Section 1.** That the Council authorizes the Mayor and Fiscal Officer to enter into a contract with Contract Street Sweepers and Equipment to provide an initial street sweeping and six (6) additional monthly street sweepings in 2019.

**Section 2.** That the street sweeping shall be limited to streets with curb and gutter only.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

**Section 5.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

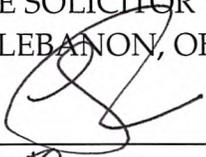
Adopted this 18<sup>th</sup> day of April, 2019.

Attest: Nicole Armstrong James D. Smith  
Nicole Armstrong, Fiscal Officer James D. Smith, Mayor

Rules Suspended: / /2019 (if applicable)	Effective Date – / /2019
Vote - <u>6</u> Yeas ___ Nays	
First Reading – / /2019	Effective Date – / /2019
Second Reading – / /2019	
Third Reading – / /2019	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 4 / 19 / 2019

## **AGREEMENT FOR SERVICES**

This AGREEMENT FOR SERVICES (the "Agreement") made as of the date stated below, between the Village of South Lebanon, Ohio, 10 N. High Street, South Lebanon, OH 45065 (the "Village") and Contract Sweepers & Equipment Co., organized under the laws of the State of Ohio as a Corporation, whose address is 10136 Mosteller Lane, West Chester, Ohio 45069 (the "Company").

The Village desires to engage the Company to render services as described herein.

The Village and the Company, in consideration of their mutual covenants herein agree, in respect of the performance of services by the Company and the payment for those services by the Village, to the following terms, conditions and obligations.

### **SECTION 1 - BASIC SERVICES OF COMPANY**

- 1.1 The Company shall perform Basic Services ("the Services") the scope of which is particularly set forth, defined and identified, in the attachment hereto, and made a part of this Agreement as Exhibit 1.

### **SECTION 2 - ADDITIONAL SERVICES OF COMPANY**

- 2.1 If authorized in writing by the Village and the Company, the Company shall furnish or obtain from others Additional Services of certain types, which are not considered normal or customary Basic Services.

### **SECTION 3 – THE VILLAGE’S RESPONSIBILITIES**

The Village shall:

- 3.1. Provide all criteria and full information for the Project, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist the Company by providing all available information pertinent to the Services in the possession of the Village including any previous reports and any other data relative to the Services.
- 3.3. Furnish Company, as required for performance of the Services, data prepared by or services of others, as applicable.
- 3.4. Arrange for access to and make all provisions for the Company to enter upon public and private property as required for Company to perform the scope of services.
- 3.5. Provide such accounting, insurance counseling and such legal services as may be required for the Services, such legal services as the Village and the Company may require or the Company may reasonably request with regards to legal issues pertaining to the Services.

- 3.6. Designate in writing the person or persons to act as the Village's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the Village's policies and decisions with respect to materials, equipment, elements and systems pertinent to Company's services.
- 3.7. Give prompt written notice to the Company whenever the Village observes or otherwise becomes aware of any development that affects the scope or timing of the Services, or any defect in the work of any third party.
- 3.8. Furnish, or direct the Company to provide, upon approval of the Village, necessary Additional Services as stipulated in accordance with Section 2 of this Agreement or other services as required.
- 3.9. Bear all costs incident to compliance with the requirements of this Section 3.

**SECTION 4 - PERIOD OF SERVICE**

- 4.1. The provisions of this Section 4 and the various rates of compensation for the Services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Services.
- 4.2. Upon receipt of a fully executed Agreement from the Village, Company shall proceed with the performance of the Services called for in Exhibit 1.
- 4.3. The Services shall commence in May and be completed in November. Precise dates for performance of the Services shall be determined by the Village.
- 4.4. If the Village has requested significant modifications or changes in the extent of the Services, the time of performance of the Services and the rates of compensation shall be adjusted appropriately, upon approval of the Village and the Company of a written Schedule and price.

**SECTION 5 - PAYMENTS TO CONTRACTOR**

**5.1 Methods of Payment for Services and Expenses of Company**

- 5.1.1. For Services. The Village shall pay the Company for Services rendered under Section 1 as follows:

The Company agrees to provide the Services set forth in Exhibit 1 attached hereto to the Village as follows:

Initial Spring Clean Up	\$1,248.00
Six (6) Monthly Sweeps @ \$1,145/each	<u>\$6,870.00</u>
<b>TOTAL COST OF SERVICES</b>	<b>\$8,118.00</b>

- 5.1.2 For Additional Services. The Village shall pay the Company for Additional Services rendered based on the hourly rates for Services as follows:

Additional sweeping due to excessive leaves	\$135.00 per hour
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## **5.2 Times of Payments.**

5.2.1. The Company shall submit itemized statements for Basic and Additional Services rendered. The Village shall make prompt payments in response to the Company's itemized statements by mailing via ordinary U.S. mail such payment no later than five (5) business days after the Village Council's regularly scheduled Council Meeting on the 3<sup>rd</sup> Thursday of each month.

## **5.3 Other Provisions Concerning Payments.**

5.3.1. If the Village fails to make any payment due the Company for the Services within forty-five (45) days after receipt of Company's itemized statement therefore, the amounts due the Company shall include a charge at the rate of 1% per month from said 45th day, and in addition, the Company may, after giving seven (7) days written notice to the Village, suspend the Services under this Agreement until the Company has been paid in full all amounts due for the Services.

5.3.2. In the event of termination by the Village under paragraph 6.1 upon the completion of any phase of the Services, progress payments due the Company for the Services satisfactorily rendered through such phase shall constitute total payment for such Services.

## **SECTION 6 - GENERAL CONSIDERATIONS**

### **6.1 Termination.**

The obligation to provide the Services under this Agreement may be terminated by either party upon seven (7) days' written notice by certified mail, return receipt requested, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### **6.2 Controlling Law and Venue**

This Agreement is to be governed by the law of the State of Ohio. The venue for any disputes hereunder shall exclusively be the Warren County, Ohio Court of Common Pleas.

### **6.3 Successors and Assigns.**

6.3.1 The Village and the Company each binds himself/herself and his/her partners, successors, executors, administrators, assigns and legal representatives to the other party, to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

6.3.2 Neither the Village nor the Company shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or

responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Company from employing such independent consultants, associates and subcontractors, as the Company may deem appropriate to assist the Company in the performance of the Services hereunder.

6.3.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Village and the Company.

#### **6.4 Modification or Amendment**

No modification or amendment of any provisions of this Agreement shall be effective unless made by a written instrument, duly executed by the party to be bound thereby, which refers specifically to this Agreement and states that an amendment or modification is being made in the respects as set forth in such amendment.

#### **6.5 Construction**

Should any portion of this Agreement be deemed unenforceable by any administrative or judicial officer or tribunal of competent jurisdiction, the balance of this Agreement shall remain in full force and effect unless revised or terminated pursuant to any other section of this Agreement.

#### **6.6 Waiver**

No waiver by either party of any breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.

#### **6.7 Relationship of Parties**

The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Agreement.

#### **6.8 Parties**

Whenever the terms "the Village" and "the Company" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of the Village and the Company.

#### **6.9 Headings**

Paragraph headings in this Agreement are for the purposes of convenience and identification and shall not be used to interpret or construe this Agreement.

## 6.10 Notices

All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:

TO: The Village of South Lebanon, Ohio  
Attn. Village Administrator  
10 N. High Street  
South Lebanon, OH 45065

Company: Contract Sweepers & Equipment Co.  
Attn. Craig Miller, Area Manager  
10136 Mosteller Lane  
West Chester, Ohio 45069

## 6.11 Insurance

The Company shall carry comprehensive general and professional liability insurance, with no interruption of coverage during the entire term of this Agreement. The Company further agrees that in the event that its comprehensive general liability policy is maintained on a "claims made" basis, and in the event that this Agreement is terminated, the Company shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Agreement. The Company shall provide the Village with a certificate of insurance evidencing such coverage, and shall provide thirty (30) days notice of cancellation or non-renewal to the Village. Cancellation or non-renewal of insurance shall be grounds to terminate this Agreement. The insurance shall comply with all of the following provisions:

(a) The insurer shall have an AM Best rating of A- or better, unless otherwise agreed by the Village in writing;

(b) The insurance coverage must have commercial general liability limit of \$1,000,000 per occurrence for bodily injury, personal injury and property damage and the minimum general aggregate shall be \$2,000,000;

(c) The automobile liability limit shall be at least \$500,000 per accident for bodily injury and property damage where applicable;

(d) The insurance coverage shall have Ohio stop gap employer's liability with a \$1,000,000 limit;

(e) The Company shall name the Village, its elected and appointed officials, agents, employees and volunteers as additional insureds to all insurance policies with waiver of subrogation against the Village, and shall furnish the Village with certificates of insurance naming such individuals and entities as additional insureds. The coverage shall be primary to the additional insureds and not contributing with any other insurance or similar protection available to the additional insured's, whether available coverage is primary, contributing or excess, and shall provide the Village with the same coverage and duty to defend as the primary coverage provides for the Company;

(f) The Company shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor; provided that all coverages for subcontractors shall be subject to all requirements stated herein; and

(g) The Company shall carry statutory worker's compensation insurance and statutory employer's liability insurance as required by law and shall provide the Village with certificates of insurance evidencing such coverage simultaneous with the execution of this Agreement.

## **SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES**

**7.1 This Agreement is subject to the following special provisions, if any:**

7.1.1 None.

**7.2 The following Exhibit is attached to and made a part of this Agreement:**

Exhibit 1

## **SECTION 8 – DISPUTE RESOLUTION**

Any and all controversies, disputes, disagreements, claims and demands of whatsoever kind or nature arising out of or relating in any way to this Agreement, alleged breaches thereof, and/or the parties' relationship shall: (i) first be submitted to mediation before a mediator mutually agreed upon, and if mediation is not successful, then; (ii) the parties may litigate the dispute subject to the jurisdiction and venue stipulation in Section 6, Paragraph 6.3 herein.

## **SECTION 9 – FORCE MAJEURE EVENT**

In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of (or if failure to perform the Services is caused by) natural disaster, action or decrees of governmental bodies (hereinafter referred to as a "Force Majeure Event), the party who has been so effected shall immediately give notice to the other party. Upon receipt of such notice, all obligations under the Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, either party may terminate this Agreement.

## **SECTION 10 – ENTIRE AGREEMENT**

This Agreement, together with the Exhibits and schedules identified above constitute the entire agreement between the Village and the Company, and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by all parties.

## **SECTION 11 – INDEMNIFICATION**

The Company will indemnify and save the Village harmless from loss, claims, expenses, causes of action, costs, damages, and other obligations including but not limited to the Village's reasonable attorney fees, financial or otherwise, to the extent arising from (a) negligent, reckless, and errors or omissions by the Company, its agents, employees, licensees, contractors, or subcontractors; and, (b) the failure of the Company, its agents, employees, licensees, contractors, or subcontractors, to observe the applicable standard of care in providing services pursuant to this Agreement.

**SECTION 11 – EXECUTION**

**COMPANY:**

IN EXECUTION WHEREOF, Contract Sweepers & Equipment Co., the Company herein, has caused this Agreement to be executed on the date stated below by Craig Miller, whose title is Area Manager, pursuant to a Resolution or Consent Action authorizing such act.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**VILLAGE:**

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, Ohio, has caused this Agreement to be executed on the date stated below by its Mayor and its Fiscal Officer, pursuant to Resolution No. 2019- 17.

SIGNATURE: James D. Smith

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: 4/18/19

SIGNATURE: Nicole Armstrong

PRINTED NAME: Nicole Armstrong

TITLE: Fiscal Officer

DATE: 4/18/19

APPROVED AS TO FORM:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
VILLAGE OF SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: 4/18/19