

MASTER SERVICES AGREEMENT FOR THE OPERATION OF THE DEPARTMENT OF PUBLIC SERVICES FOR THE CITY OF LATHRUP VILLAGE

This Master Services Agreement (Agreement) is made on July 1, 2020 (Effective Date), by and between Lathrup Services LLC (Service Provider), whose address is 1224 East Windemere, Royal Oak, MI 48073, and City of Lathrup Village (City), whose address is 27400 Southfield Road, Lathrup Village, MI 48076.

RECITALS

1. Service Provider is in the business of public work services.
2. The City desires to engage Service Provider, and Service Provider desires to be so engaged, for the provision of services in accordance with the terms and conditions contained in this Agreement.

For valid consideration received, the parties agree as follows:

1. *Services.* During the Term (as defined below) of this Agreement, Service Provider shall perform those services set forth on Exhibit A, in accordance with the performance standards set forth on Exhibit B and on the terms and conditions contained in this Agreement (Services).
2. *Payment.* The City shall pay Service Provider for the Services provided according to the Schedule of Fees set forth on Exhibit C. On the written agreement of both parties, the Schedule of Fees may be amended from time to time during the Term of this Agreement. The City will pay each invoice submitted to it by the Service Provider no later than 30 days from the date the invoice is received.
3. *Term and Termination.* This Agreement shall commence on the Effective Date and shall continue for an initial term of one year (Initial Term). The Initial Term shall be extended for consecutive one-year periods unless either party provides written notice of its intent to terminate this Agreement as provided to the other not less than 60 days before the end of the then-current Term. The Initial Term, as the same may be extended, shall constitute the "Term." Notwithstanding the foregoing, either party may terminate this Agreement (1) on mutual written agreement of the parties, (2) on the occurrence of any breach of this Agreement that is not cured within 30 days after receipt of written notice of the breach, (3) if either party is declared bankrupt or insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed or any proceedings are commenced, voluntarily or involuntarily, by or against either party under any bankruptcy or similar law, or (4) The City may terminate this contract at any time for any reason by giving at least thirty (30) day's notice in writing to the contractor. If this Agreement is terminated, the obligations of Service Provider and the City shall terminate, other than the City's obligation to provide earned and unpaid compensation to Service Provider for Services performed before the termination date.

4. *Independent Contractor.* The relationship between the parties is that of independent contracting parties. Nothing contained in this Agreement or the course of conduct between the parties will be considered to form a partnership, employment relationship, or any other relationship except that of an independent contractor. In performance of the Services under this Agreement, Service Provider is an independent contractor with the authority to control and direct the performance of the Services.

5. *Taxes, Benefits, and Expenses.* Service Provider is responsible for all expenses connected with the performance of the Services to the City under this Agreement. Service Provider shall be solely responsible for paying all applicable federal, state, and local taxes and for filing all related returns and reports in connection with the performance of Services to the City under this Agreement. Service Provider acknowledges that the City has no obligation to and will not withhold taxes of any kind or nature with respect to the Services performed by Service Provider. Service Provider shall indemnify and hold the City harmless to the extent of any obligation of the City to pay any taxes, whether income or otherwise, including any withholding taxes, social security taxes, unemployment taxes, or disability insurance or similar items in connection with any payments made to Service Provider by the City.

6. *Insurance.* Service Provider shall purchase and maintain throughout the Term statutory workers' compensation and commercial general liability insurance covering bodily injury, property damage, premises operations, completed operations, and contractual liability, each of which insurance policies shall have limits reasonably satisfactory to City. Service Provider shall also maintain automobile insurance coverage on the vehicle(s) its employees use in the course of the performance of Services to the City under this Agreement. The insurance shall be in the amount, with coverage and from an insurance company satisfactory to the City. Service Provider shall maintain coverage without interruption from the Effective Date of this Agreement until the date of termination of this Agreement; *provided, however*, the coverage provided under all policies must be issued on an occurrence basis. At the request of the City, the City shall be added as an additional named insured on any insurance policy. Additionally, Service Provider shall furnish the City with a copy of certificates of insurance, which shall contain an obligation of the carrier to notify the City at least 30 days in advance of any cancellation or nonrenewal of the policy.

List of required insurance:

- a. Worker's Compensation Coverage A;
- b. Employer's Liability Coverage B;
- c. Commercial General Liability in the minimum limit of \$1 million;
- d. Automobile Liability in the minimum limit of \$1 million;
- e. Environmental Insurance or Pollution Liability in the minimum amount of \$1 million;
- f. Excess and Umbrella Liability;
- g. Owners & Contractors Protective Liability in the minimum amount of \$1 million.

7. *Confidentiality.* Neither party shall use, exploit, or make known to any person or business entity, any information directly or indirectly received by a party or acquired pursuant to the relationship created by this Agreement, including, without limitation, information relating to

business affairs, data, designs, manuals, training materials and documentation, formulas, ideas, inventions, knowledge of manufacturing processes, methods, prices, financial and accounting data, timekeeping data, products and product specifications, systems and technical information (Confidential Information). Notwithstanding the foregoing, the Service Provider and the City shall each be permitted to disclose Confidential Information of the other to its own employees, subcontractors, accountants, attorneys, and other agents and its affiliates or subsidiaries to the extent the disclosure is reasonably necessary for the performance of its duties and obligations or the enjoyment of its rights under this Agreement; *provided, however*, that Service Provider and the City shall be responsible for any violation of the confidentiality obligations set forth in this Agreement by any permitted third parties to which it provides Confidential Information.

8. *City Provided Fleet Gasoline Cards.* The City, at its option, may provide fleet gasoline cards to the Service Provider for the employees who will be working on City jobs. The Service Provider will provide to the City a list of all authorized signers. The Service Provider shall attach the gas receipts to the monthly invoice provided to the City, along with a summary of the attached gas receipts. The Service Provider shall reimburse the City for all gas receipts on a monthly basis.

9. *Materials.* It is anticipated that materials such as gravel, salt, sand, and the like will be used by the Service Provider on City jobs. The City will have the obligation to purchase all such materials. When the materials are delivered to the service yard, the Service Provider shall sign all delivery receipts and submit the signed delivery receipts along with its monthly report.

The Supervisor or designee will review the projected weekly job assignments/work orders with the City Administrator. The Service Provider shall maintain an inventory of such materials within the DPS yard. When it is time to order such materials, the Service Provider shall obtain permission from the City Administrator or designee.

10. *Monthly Invoices.* Service Provider shall provide to the City Administrator a monthly invoice. The monthly invoice shall consist of a listing of all work performed during the last thirty days. The list will include the names of all employees working on each job, a list of equipment for each job, and the materials used on each job. Payment shall be made as set forth in paragraph 2, which references Exhibit C.

It is specifically understood that any work not on the regular City maintenance list must be pre-approved by the City Administrator or his/her designee.

11. *Files and Records.* Any and all files and records of work performed by the Service Provider shall remain under the ownership of the City. The Service Provider shall maintain a copy of all work records at the DPS Building in appropriately labeled filing cabinets or within a computer program for which the City has been provided all access codes.

12. *Subcontractors.* The City and Service Provider shall review a list of proposed subcontractors that the Service Provider may use in the normal course of its duties. The City shall review the use of all subcontractors, except for those that may be called for emergency services. All subcontractors shall invoice the Service Provider, who will then include that invoice with its monthly payment request.

13. *Reasonableness.* Service Provider acknowledges and agrees that Service Provider has weighed all the facts, conditions, and circumstances pertaining to this Agreement, has been afforded an opportunity to consult with counsel of its choice concerning this Agreement and its legal effect, and acknowledges that all of the provisions of this Agreement are reasonable. Service Provider shall not contest the validity of any provision of this Agreement and waives any and all rights that Service Provider may have to bring any claim, action, or suit or to raise any defense regarding the validity and reasonableness of this Agreement or any of its provisions.

14. *Indemnification.*

(a) Service Provider shall indemnify, defend, and hold the City, its affiliates, and their respective officers, directors, council, members, employees, agents, and other representatives harmless from and against all claims, losses, expenses, liabilities, demands, obligations, or damages of every kind and nature (including, without limitation, reasonable attorney fees and expenses) (Losses), arising out of or related to (i) any act or omission of Service Provider or (ii) any breach of this Agreement by Service Provider.

(b) The City shall indemnify, defend, and hold Service Provider, its affiliates, and their respective officers, directors, council, members, employees, agents, and other representatives harmless from and against all Losses arising out of or related to (i) any act or omission of the City or (ii) any breach of this Agreement by City.

15. *Force Majeure.* If either party is prevented or delayed in the performance of any of its obligations under this Agreement due to Force Majeure (defined below), that party will provide written notice to the other party specifying the nature and expected duration of the Force Majeure. The performance of the party invoking Force Majeure with respect to any obligation will be excused and the time for performance extended, but only for the period of delay or inability to perform due to Force Majeure. If the total of any period of delay or inability to perform due to Force Majeure asserted by either party during the Term equals or exceeds 30 consecutive days, the other party will have the right, at its option, to either terminate this Agreement by written notice or to continue to excuse the first party's performance for the period of any delay or inability to perform due to Force Majeure. As used in this Agreement, "Force Majeure" shall mean any act of God, fire, casualty, flood, war, strike, lockout, labor trouble, or any other circumstances beyond the reasonable control of the party asserting it that prevent or delay the performance of any of its obligations under this Agreement.

16. *Assignment.* The rights and obligations conferred under this Agreement may not be assigned by either party without the prior written consent of the other party. Any attempted assignment in violation of this Section 13 is null and void.

17. *Notices.* Any notice required or permitted to be given under this Agreement must be in writing and may be delivered in person, by registered mail, facsimile, or by overnight courier addressed to the respective party at the address set forth in the introduction of this Agreement or a changed address as may be given by a party to the other by written notice. Any notice will be considered to have been given when personally delivered or five business days after the date of mailing or one business day after the date of forwarding if sent by facsimile or overnight courier.

18. *Binding Agreement; Successors.* This Agreement will be binding on, inure to the benefit of, and be enforceable by the successors and assigns of the parties; provided, however, that no assignment of this Agreement will be effective without the express written consent of the other party.

19. *Governing Law.* This Agreement is a contract made under, and shall be governed by and construed in accordance with, the laws of the State of Michigan without giving effect to its choice-of-law principles. The parties agree that any legal or equitable action or proceeding with respect to this Agreement or the transactions contemplated by it shall be brought only in any court sitting in Oakland County of the State of Michigan, and each of the parties submits to and accepts generally and unconditionally the exclusive jurisdiction of those courts with respect to it and its property and irrevocably consents to the service of process in connection with any action or proceeding by personal delivery or by the mailing by registered or certified mail, postage prepaid to its address first set forth above. Nothing in this Agreement shall affect the right of any party to serve process in any other manner permitted by law. Each party irrevocably waives any objection to the laying of venue of any action or proceeding in the above-described courts.

20. *Cost of Enforcement.* Each party shall pay all costs and expenses, including reasonable attorney fees, incurred by the other party in enforcing the provisions of this Agreement or in recovering any claims or damages arising from a breach of this Agreement if the other party is successful in its action.

21. *Waiver.* The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of any term or obligation or be deemed a waiver of any subsequent breach.

22. *Survival.* The provisions of Sections 5, 7, and 14 shall survive the termination of this Agreement or any relationship between the parties for the period set forth in that Section, and if not set forth, indefinitely.

23. *Severability.* If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision is invalid and unenforceable as written, that provision will be deemed modified in a manner consistent with the intent of the original provision, so as to make it valid and enforceable. This Agreement, and the application of the provision to persons or circumstances other than those with respect to which it would be invalid or unenforceable, shall not be affected.

24. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding between the parties and supersedes all other agreements and understandings, both written and oral, of the parties relating to the subject matter of this Agreement.

25. *Counterparts; Facsimile.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or electronic transmission, and a facsimile or electronic version of this Agreement or of a signature of a party will be effective as an original.

The parties have executed this Agreement as of the Effective Date.

SERVICE PROVIDER:

LATHRUP SERVICES LLC

A Michigan limited liability company

By: /s/ _____

Bjerne Sunde

Its: Member

CITY OF LATHRUP VILLAGE:

A Michigan Municipal Corporation

By: /s/ _____

Mykale Garrett

Its: Mayor

LATHRUP SERVICES LLC

EXHIBIT A

Scope of Services

Revised July 1, 2020

The Service Provider shall supply the following services to the City by way of illustration but not limitation:

GENERAL PUBLIC SERVICES

- Snow removal: Level – at 3 inches accumulation (26 miles of side streets)
- Salt routes – main roads in and out of town
- Salt supplies – maintain supplies and storage
- Grass cutting
- Tree trimming (investigates & performs. Referrals to tree service for tree & limb removal, if needed)
- Tree planting
- Landscaping
- Compost delivery
- Leaf pick-up
- Park maintenance - including weekly weed removal and weed whacking, including playground areas and walkways
- Special event signage – place and remove
- Training – including safety and cultural diversity
- Set up for Farmer’s Market
- City Hall Upkeep
- Ordinary repairs
- Equipment Maintenance, Repairs (repairs exceeding \$4,000 shall be covered by the City)
- Vehicle Maintenance, Repairs (repairs exceeding \$4,000 shall be covered by the City)
- Training and certifications as required, including safety related
- And other functions which are usual for a municipal department of public services.

MAJOR / LOCAL STREETS

- Street Grading
- Street Patching
- Street cleaning – debris/animal/obstruction removal
- Right-of-way maintenance/cleaning
- Erection and maintenance of traffic signs and markings
- Clearing view of stop signs
- Extra cement permit inspections (for new driveway approaches and culvert replacement installations)

EXHIBIT A
Scope of Services - Continued

WATER / SEWER

- Water Meter readings and replacement
- Check for Water Leaks
- Infrastructure maintenance
- Storm water drainage
- Televising sewer lines – coordinate work with City of Southfield
- Sanitary Retention tank – maintain grounds and emergency pumping
- Culvert/Ditch/Stormwater Investigations/Cleaning (at request of City/Contractor)
- Fire Hydrants – repair, replace, maintain/flush
- Catch basin inspection/repair (and/or referral to Sunde Services)
- Excluded from the above, is any underground work of any kind

Reimburse costs to City of Lathrup Village:

- Fuel
- DPS Garage Utilities – phone, electric, gas, water, alarm
- Internet/WiFi, Cellular Data – if authorized by City and/or Lathrup Services

Other functions which are usual for a municipal department of public services.

EXHIBIT B
Performance Standards - General

The Service Provider shall supply to the City a list of all employees who will work on any City jobs. The Service Provider shall maintain a minimum of four (4) employees to work on City jobs at all times.

Part-time and seasonal staff will be hired as needed for seasonal services, including grass cutting, leaf pickup, snow removal and salting.

For each and every proposed employee a driver's license and any special driver's license shall be supplied to the City so that they may perform the required police check for driving privileges and for other required police background investigations.

Each of the aforementioned minimum number of workers i.e. four (4) employees, shall be required to work a minimum of thirty hours per week on City jobs.

The Service Provider shall provide a specific list of supervisors who will be responsible for City jobs.

All aforementioned employees must wear a uniform type shirt which identifies them as agents for the City of Lathrup Village and the identification shirts must be worn at all times while they are working on City jobs. This includes supervisors.

The Service Provider shall provide a list of emergency contacts to the City Administrator.

All employees of the Service Provider shall comply with any and all federal and state employment related rules and criteria which are typical for employees working at a department of public services.

EXHIBIT B
Performance Standards – Snow Fall Policy

In the event that snow fall accumulations are at three (3) inches the Lathrup Village Police Department will call the DPS Staff member on call.

Priority One

All major arterial streets are salted and plowed. These include:

- Sunset Blvd (Roseland to Southfield Rd)
- Santa Barbara Dr (Eleven Mile Rd to Roseland Blvd)
- Bloomfield Dr (Eleven Mile Rd to Twelve Mile Rd)
- Lathrup Blvd (Lincoln Dr to Twelve Mile Rd)
- Rainbow Dr (Eleven Mile Rd to Southfield Rd)

Priority Two

When Priority One routes are done, crews shift to Priority Two, which includes

- All major arterial street intersections
- City Hall (during office hours and when the Community Room is booked for events)

Crews salt intersections only where the majority of stopping and turning takes place. This permits "tracking" of salt beyond the intersection.

Within a few days after a snow and as soon as is reasonably possible, the streets and intersections are to be as cleared of ice or snow.

Priority Three

All paved Lathrup Village Streets are plowed but not salted.

This typically includes two heavy plow trucks and 1 pick up truck which is primarily tasked with intersections and dead end streets.

EXHIBIT B

Performance Standards – Snow Fall Policy

The City of
Lathrup Village

SALT ROUTE

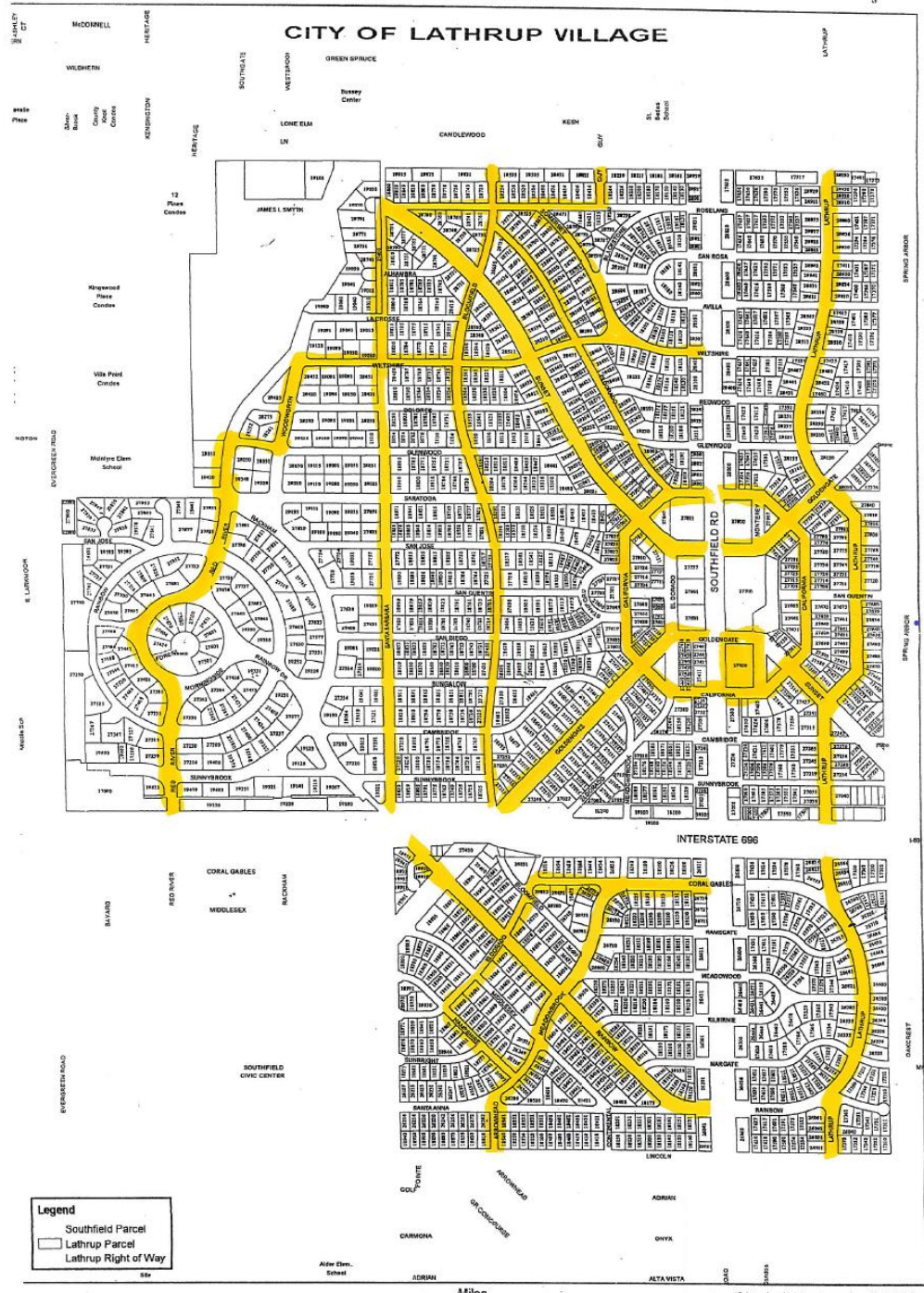


EXHIBIT C
Schedule of Fees

The City shall pay the Service Provider the total sum of Three Hundred Ninety Nine Thousand Eight Hundred Seventy Dollars and 00/100 (\$399,870.00) per year at the rate of Thirty Three Thousand Three Hundred Twenty Two Dollars and 52/100 (\$33,322.52) per month upon the submission of the appropriate invoice and other proper documentation.

It is specifically agreed between the parties that the Service Provider is not responsible for any budgeted water main repairs or the installation of any new water mains as the work responsibility for those items shall remain pursuant to the agreement with the City and Sunde Building Inc.

EXHIBIT D
List of Employees and Supervisors

Employees:

Timothy Prast
David “Crush” Chang
Rob McSwane
Robert “Bob” Cichowlas

Supervisors:

Bjerne Sunde
Randy Baldwin