

AGREEMENT FOR SNOW AND ICE REMOVAL SERVICES

THIS AGREEMENT FOR SNOW AND ICE REMOVAL SERVICES (“Agreement”) is entered into as of this ____ day of _____, 2020 (“Effective Date”), by and between MIDWEST DIRT, LLC (“Contractor”) and the VILLAGE OF POPLAR GROVE, an Illinois municipal corporation, (the “Village”).

RECITALS:

WHEREAS, the Village desires to have Contractor provide snow plowing/removal and ice control (salt) support services (the “Services” as further defined below) for parking lots, streets, alleys and/or other public ways of the Village during the 2020-2021 season; and

WHEREAS, Contractor desires to perform such Services; and

WHEREAS, Village and Contractor have reached an accord as to the terms and conditions upon which Contractor shall perform such Services; and

WHEREAS, the Village and Contractor have memorialized such terms and conditions herein.

NOW THEREFORE, in consideration of the covenants, agreements, mutual promises and other provisions herein contained and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are incorporated herein and made a part hereof.
2. Scope of Services. Contractor shall perform the following services for the Village, upon request by the Village (the “Services”): plow/remove snow and ice and salt from the public streets, roads, alleys, turn lanes, fire lanes and/or public parking lots as identified by the Village. Exact routes for Services shall be determined by the Village. Services under this Agreement shall be on an “As Needed” basis. Consequently, there is no guarantee by the Village of a minimum number of times Services will be required.

This Agreement, or any portion thereof, shall not be subcontracted to any third party without prior written consent from the Village. No such consent shall be construed as making the Village a party to any subcontracting or subjecting the Village to liability of any kind to any subcontractor. No subcontractor or subcontracting shall under any circumstances relieve the Contractor of their liability and obligations under this Agreement, and despite any such subcontracts, subletting or assignments, the Village shall deal through the Contractor.

Contractor shall have a person on call twenty-four (24) hours per day, at a telephone number supplied to the Village Public Works Director, during the snow season (October 31st through April 30th). Contractor shall utilize its own operators and equipment and shall commence Services operations within one (1) hour from the time the Village's Public Works Director's call is placed with the Contractor's "on call" person. Contractor is required to have two-way communications between its vehicles and a phone number that can be reached at any time throughout snow and ice removal operations. Contractor shall designate a snow and ice coordinator who will maintain communication with the Village Public Works Director in order to track completion of each section within the plowing routes. The Contractor's snow and ice coordinator shall be located within the Poplar Grove area so as to facilitate communications between the Village and the Contractor.

The Contractor shall provide the required equipment to complete the specified routes identified by the Village Public Works Director. Plowing shall be completed within four to six (4-6) hours of the beginning of operations unless otherwise authorized by the Village, and in such case, shall continue until completed or released by the Village. Roadways shall be plowed in such a manner (curb to curb) as to not inhibit parking lanes or delivery of mail by Postal Employees. The Village Public Works Director shall provide details of snow removal/disposal as needed.

From the time the Contractor is contacted to the time Contractor completes operation, the Contractor is considered under contract to provide Services for the Village and Contractor may not do other private or public work. The Village shall be responsible for loading of the Contractor's vehicles with salt or salt/chips mix and mixing of salt and chips at the Village designated storage yard, if necessary.

Streets deemed to have been improperly plowed shall be addressed and corrected by the Contractor at no additional costs to the Village. Charges for "Missed Streets" shall include only the actual time spent plowing said street(s) and will not include travel time to and from said street(s). Contractor must report equipment breakdowns that will impact operational requirements, immediately to the Village.

The Contractor shall submit, within five (5) working days, a written report that lists each piece of equipment, the starting time, the time completed, the specified equipment used (by classification), down time and an assessment of any damage done to public or private property. This report shall also document time spent performing corrective plowing or travel time spent returning to and from "Missed Street(s)" done at no additional cost to the Village.

It is the intent of the Village to use in-house manpower and resources to perform limited plowing during a snow operation and cleanup after a regular snow operation. If it is

determined by the Public Works Director that Village manpower and resources are not available or adequate, the Contractor may be requested to perform additional cleanup.

Nothing in this Agreement shall prevent the Village from modifying snow plowing routes, contracting for other labor and equipment, reassigning equipment or utilizing any combination of Village forces to meet the needs of the public and maximize the efficiency of the snow plowing/removal and ice control operations.

All specifications, services, terms and conditions in the Request for Proposal and the Contractor's response to Request for Proposal are incorporated herein by reference and made a part hereof.

3. Equipment. The Contractor shall at all times maintain and have available for operations any and all equipment listed in Exhibit A, attached hereto and incorporated herein.

Village reserves the right to inspect and reject any piece of equipment which it finds, in its sole discretion, to be unacceptable. The Contractor shall display the Contractor name on each plow or salt vehicle utilized under this Agreement. Signs are to be displayed on each side of the Contractor vehicles during performance of the Services.

Contractor is allowed to provide both owned and/or leased equipment. If any of the equipment is owned, bidder must provide a complete list of owned equipment including the make, model and year of manufacture, length of ownership and descriptive use of the equipment. Contractor must also provide a complete list of any leased equipment which will be used in the operation, including make, model, year of manufacture, length of lease of said equipment, inclusive dates of said lease and a descriptive use of the equipment. To the extent Contractor utilizes or intends to utilize any other type of equipment, Contractor shall provide a list of such equipment detailing the type, make, model, year of manufacture, ownership or lease and descriptive use of the equipment along with the hourly rate for such equipment (with operator). Contractor may be asked to provide a copy of the formal lease agreement with the company/individual from which they lease their snow plowing/removal equipment and/or written proof of ownership of said equipment. A list of all the equipment to be utilized by Contractor as a part of this Agreement is attached hereto as Exhibit A.

4. Term. The term of this Agreement shall be for one (1) Village fiscal year commencing on October 31, 2020 and expiring April 30, 2021, unless sooner terminated as set forth below. The parties hereto may renew this Agreement for a two (2) year term upon the mutual consent of both parties hereto with such consent being stated in writing, at least forty-five (45) days prior to the expiration of the initial one (1) year term. The Village shall have the right, in its sole discretion, to terminate this Agreement upon giving thirty (30) days prior written notice to Contractor. Contractor shall be paid for its Services rendered up to the

date that notice of termination is given. Contractor shall have the right to terminate this Agreement, with or without cause, upon giving sixty (60) days prior written notice to the Village.

5. Payment. Contractor shall be paid a single hourly rate per category class of vehicle for Services provided. Payment shall be made in accordance with the pricing schedule attached as Exhibit B and incorporated herein. Payment shall be made for the actual hours worked for performing Services on the specific routes. There shall be NO premium or differentials for overtime or holidays. Contractor may submit per snow event or monthly invoices to the Village for the amounts properly due under this Agreement. Invoices shall include a detailed, itemized statement of all charges for which payment is sought, specifying for each date that Services were rendered including the start and stop times for each piece of snow removal equipment used and the applicable charges.

If the Village contests any invoice or portion thereof, the contested part of the invoice shall not be due until the dispute has been resolved. Village shall withhold a two percent (2%) retainage, up to and not to exceed \$10,000.00, until any property damage can be assessed and repaired (generally by May 15th).

6. Performance. Contractor (and its subcontractors) shall perform all Services diligently and in a good, professional and first-class manner, using good quality materials, equipment and workmanship and appropriately trained personnel (including supervisors when appropriate) to complete the Services in an orderly and timely manner. Village reserves the right to inspect any and all work performed by Contractor (or its subcontractors) to ensure that such work is performed in conformance to the terms of this Agreement and to the satisfaction of the Village. Contractor shall obtain and maintain, at its expense and at all times during the term of this Agreement, all necessary licenses, permits, training or other authorizations which may be necessary to perform the Services. The Village shall not be responsible for the Contractor's failure to carry out the Services in accordance with the terms and conditions of this Agreement.

7. Insurance. Upon execution of this Agreement, and prior to Contractor commencing any work or Services under this Agreement, Contractor shall obtain and maintain during the term of this Agreement, commercial general liability insurance, umbrella liability insurance, and automobile liability insurance on ISO form CG 00 01 10 01 (or a substitute form providing equivalent coverage) and Contractor shall provide the Village with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 20 10 11 85 (or substitute form providing equivalent coverage) or on the combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 (or substitute forms providing equivalent coverage) naming the Village as Additional Insured thereunder. Additional insured coverage shall apply as primary insurance and be noncontributory with respect to any other insurance afforded to the Village. All coverage shall be placed with an insurance company duly admitted in the

State of Illinois and shall be reasonably acceptable to the Village. All vendor insurance carriers must maintain an A.M. Best rating of "A-" or better. Coverage shall be afforded to the additional insured whether or not a claim is in litigation.

The insurance coverage required above shall be of sufficient type, scope and duration to ensure coverage for the Village for all liability concerns related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed by, or on behalf of the Village, in relation to this Agreement. The following insurance requirements shall apply to the Contractor for the duration of this Agreement unless explicitly waived by the Village Administrator:

- Commercial General Liability. The coverage available to the Village, as Additional Insured, shall not be less than \$1 million each occurrence, \$2 million general aggregate (subject to a per project general aggregate provision applicable to the project), \$1 million products/completed operations aggregate and \$1 million personal and advertising injury limits. Such insurance shall cover liability arising from premises, operations, independent vendors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- Umbrella Liability. The coverage available to the Village, as Additional Insured, shall not be less than \$2 million each occurrence, \$2 million generate aggregate. Such insurance shall cover liability arising from premises, operations, independent vendors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- Automobile Coverage. The coverage available to the Village, as Additional Insured, shall include business automobile liability limits of liability of not less than \$300,000.00 per occurrence, \$500,000.00 per accident.
- Workers Compensation. Contractor shall maintain during the life of this Agreement statutory workers' compensation and employer's liability insurance for all its employees engaged in work described herein. The coverage must also include Employer's Liability with minimum limits of \$100,000.00 per incident.
- Insurance Certificates. Each Certificate of insurance shall provide that the Contractor and insurer must give the Village at least sixty (60) days prior written notice of cancellation and termination of the Village's coverage thereunder. Not less than two (2) weeks prior to the expiration, cancellation or termination of any such policy, Contractor shall supply the Village with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal

of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of the Village as set forth above.

8. Indemnification. To the fullest extent permitted by law, Contractor shall pay, indemnify, defend and hold harmless the Village, its officers, representatives, elected and appointed officials, agents, and employees (“Indemnified Parties”) from and against any and all claims, loss, expense, liability, damage or cost (including, without limitation, judgments, attorneys’ fees and costs, court costs and the cost of appellate proceedings) which any of the Indemnified Parties incur because of injury to, or death of any person, or on account of damage to property (including, but not limited to, damage to buildings, curbs, parking blocks, islands, sidewalks, light poles, signs, landscaping, paving or striping of property or equipment used in connection therewith), including the loss of use thereof, or any other claim arising out of, in connection with or as a consequence of the performance of, or the failure to perform, the Services by Contractor, its agents, employees, subcontractors or anyone for whose acts Contractor may be liable with respect to the Services. Contractor, for itself and its agents, employees and subcontractors, and any party claiming through any of them, also waives all right of recovery, claim, action or cause of action against the Indemnified Parties for any matters described in the preceding sentence. This indemnity shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable by or for the vendor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts, and serves as an express agreement to waive the protection of *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155, 585 N.E.2d 1023 (1991) in Illinois. Further, Contractor agrees that it is solely responsible for compliance with all safety laws applicable to the work performed hereunder, including but not limited to the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1960 and all standards and regulations which have been or shall be promulgated by the agencies which administer the Acts. Under no circumstances shall Contractor, its subcontractors, agents, and employees be required to indemnify the Village for the Village’s own negligence.
9. Default and Remedies. If Contractor fails to perform the Services as required by this Agreement or otherwise defaults under this Agreement, Village may, in its sole discretion and in addition to any other rights at law or in equity, (1) send notice of the default to Contractor and demand strict performance of the terms of this Agreement; (2) cancel this Agreement by notice to Contractor; (3) cure the default, without notice to Contractor, and deduct the cost to cure and any direct and consequential damages from any payment due to Contractor at the time of default or coming due thereafter; provided, if no further payments are due to Contractor, then Contractor shall, immediately on presentation of Village’s invoice, reimburse Village for the cost of curing Contractor’s default and such direct or consequential damages or (4) draw upon any performance bond, letter of credit or any other performance security furnished by Contractor. In the event of a default and/or

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Rockford, IL 61107
Attention: Roxanne M. Sosnowski
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Email: roxanne@sosnowskiszeto.com

11. Time is of the Essence. All time limits in this Agreement and any exhibits hereto are of the essence of this Agreement.
12. Legal Compliance. The Contractor shall comply with all applicable Federal, State, County, and Village laws, ordinances, rules and regulations, including, but not limited to Prevailing Wage. Lack of knowledge on the part of the Contractor will in no way be cause for release of this obligation. If the Village becomes aware of violation of any laws on the part of the Contractor, it reserves the right to terminate this Agreement and pursue any other legal remedies deemed necessary. The validity of this Agreement and any disputes arising from this Agreement shall be governed by the laws of the State of Illinois.
13. Safety. Prevention of accidents is the responsibility of the Contractor and its subcontractors, agents, and employees. The Contractor, its subcontractors, agents, and employees shall be fully and solely responsible for the snow plowing/removal and salting safety associated with this Agreement. The Contractor shall have exclusive direct control over and charge of the acts or omissions of its subcontractors, agents and employee, and any other persons performing portions of the Services and not directly employed by the Contractor.
14. Contractor Is Independent Contractor. It is expressly agreed and understood that the Contractor is in all respects an Independent Contractor as to the Services, notwithstanding in certain respects the Contractor is required to follow the directions of the Village Administrator or his/her designee, and that the Contractor is in no respect an agent, servant, or employee of the Village. This agreement specifies the work to be done by the Contractor, but the method to be employed to accomplish this work is the responsibility of the Contractor, unless otherwise provided in this Agreement.
15. Taxes. No charge will be allowed for any taxes from which the Village of Poplar Grove, Illinois is exempt. The Village of Poplar Grove, Illinois is not liable for the Illinois Retailers' Occupation Tax, the Service Occupation Tax or the Service Use Tax. The Village is exempt

from the Federal Excise and Transportation Tax.

16. Entirety and Binding Effect. This Agreement represents the entirety of the Agreement between the Parties and shall be binding upon them and inure to the benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees, and assigns.
17. Survival of Provisions. If any of the provisions of this Agreement are invalid with any statute or rule of law of the State of Illinois or of any judicial district in which it may be so brought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict herewith, but the remainder of this instrument and any other application of such provision shall not be affected thereby.
18. Use of Headings. The clause headings appearing in this agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain.
19. Amendments and Modifications. Except as otherwise provided for herein, this Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination, or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the Parties hereto.
20. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.
21. Previous Agreements. The foregoing is the agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiation between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified, and void.
22. Miscellaneous. No failure of Village or Contractor to enforce the terms of this Agreement shall constitute a waiver by Village or Contractor of any contractual right under this Agreement. The rights and duties arising under this Agreement shall be governed by the law of the State of Illinois. Any action against Contractor or the Village shall be brought in Circuit Court of the 17th Judicial Circuit, Boone County, Illinois.

IN WITNESS WHEREOF, the parties hereto have set their hand as of the date first referenced above.

MIDWEST DIRT, LLC

VILLAGE OF POPLAR GROVE,
ILLINOIS

By: _____

By: _____

Nathan Walton

Its: _____

Owen Costanza

Its: President

ATTEST:

Karri Anderberg, Village Clerk

EXHIBIT A-

CONTRACTOR EQUIPMENT LIST

Equipment Type	Salt Spreader (Y/N)	Size of Plow	Make & Model	Year	Own or Lease	Years of Ownership or Term of Lease
Sterling single axle dump with plow/wing and salter				2003		
Skidloaders with 10' plows						
4 yard wheel loaders w/ 16' plows						
Grader w/ 11' plow and 16' wing						
Tandem dumps with 12' plows						
¾ ton pickup truck with plow						
F-550 w/ 10' plows						

EXHIBIT B- PRICING

- For Single Axle Dump Truck w/ Wing and Spreader: \$135/HR
- For 3500 or Smaller Trucks w/ Plow: \$85/HR
- For Skid Loader or Tractor w/ Push Box or Plow: \$125/HR
- For Front End Loader w/ 16' Plow: \$250/HR
- For Grader w/ 11' Plow and 16' Wing: \$200/HR
- For Tandem Axel Dump Truck with 12' Plow : \$150/HR
- For F-550's w/ 10' plow: \$95/HR