

FAIRFIELD TOWNSHIP
RESOLUTION NO. 21-37

**RESOLUTION AUTHORIZING THE ADMINISTRATOR TO ENTER INTO CONTRACT
WITH T.R. GEAR LANDSCAPING FOR THE FAIRFIELD TOWNSHIP
PRINCETON ROAD MEDIANS, AT A TOTAL AMOUNT OF \$11,404.00.**

WHEREAS: Landscaping work is required for Princeton Road medians to further the safety and welfare of Fairfield Township residents;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of Fairfield Township, Butler County, Ohio, as follows;

SECTION 1: The Board hereby authorizes the Administrator to enter into contract with T.R. Gear Landscaping for the maintenance and landscaping of the Fairfield Township Princeton Road Medians, at a total cost of \$11,404.00, to be paid from Fund No. 2906. The proposed contract is attached hereto as Exhibit "A".

SECTION 2: The Board hereby dispenses with the requirement that this resolution be read on two separate days, pursuant to RC 504.10, and authorizes the adoption of this resolution upon its first reading.

SECTION 3 This resolution is the subject of the general authority granted to the Board of Trustees through the Ohio Revised Code and not the specific authority granted to the Board of Trustees through the status as a Limited Home Rule Township.

SECTION 4: That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code.

SECTION 5: This resolution shall take effect at the earliest period allowed by law.

Adopted: February 24, 2021

Board of Trustees

Vote of Trustees

Susan Berding: Susan Berding

yes

Shannon Hartkemeyer: Shannon Hartkemeyer

yes

Joe McAbee: Joe McAbee

yes

AUTHENTICATION

This is to certify that this is a resolution which was duly passed, and filed with the Fairfield Township Fiscal Officer this 24th day of February, 2021

ATTEST:

Shelly Schultz
Shelly Schultz, Fairfield Township Fiscal Officer

APPROVED AS TO FORM:

L. E. Barbieri
Lawrence E. Barbieri, Township Law Director



**Fairfield Township Princeton Road
Medians**

Landscape Maintenance Contract



This **Commercial Landscape Management Service Agreement** (the "Agreement") dated 10/2/20 by and between:

CUSTOMER

Fairfield Township
6032 Morris Road
Hamilton, OH 45011

and

CONTRACTOR

T. R. Gear Landscaping, LLC
3300 Port Union Road
Fairfield, OH 45014

constitutes the entire agreement between the aforementioned parties and includes the scope of service, guarantees, terms and conditions, pricing, and payment responsibilities for landscape management services provided at:

Fairfield Township Princeton Road
Medians
3385 Princeton Road
Fairfield Township, OH 45011

The initial Term of this agreement shall take effect March 1, 2021 (the "Commencement Date") and will continue through December 31, 2021. Unless specified in the "Additional Contract Term Provisions" section below, this agreement shall automatically renew on a year-to-year basis, unless either party gives written notice to the other of intention not to renew at least sixty (60) days prior to any anniversary of the Commencement Date.

Services

During the Term, Contractor shall provide, or arrange for the provision of, the Services.

The "Services" consist of the landscape maintenance, enhancement, irrigation, or other general landscape services described in the "Scope of Landscape Services" attached hereto.

The "Landscape Site" consists of the exterior landscaped areas for the site(s) identified on Scope of Landscape Services where Services will be furnished by the Contractor in accordance with the Scope of Landscape Services.

The Contractor shall provide the Services in accordance with applicable professional horticulture standards using trained, uniformed, and properly supervised personnel, and properly maintained equipment.

The Contractor shall promptly remove all of its tools, equipment, surplus materials, landscape waste materials and rubbish from the Landscape Site after rendering Services.

Any regulated substances required to be applied as part of the Services shall be applied in accordance with applicable regulations by properly licensed personnel. Other materials shall be applied in accordance with the manufacturer's directions.

**Service Pricing for:
Fairfield Township Princeton Road Medians**

<u>Services Included</u>	<u>Occ</u>	<u>Per Occ</u>	<u>Total</u>
Landscape Maintenance Services			
Litter Control & Weed Control in Beds	24	\$113.00	\$2,712.00
Plant & Bed Care Services			
Spring Clean-up	1	\$556.00	\$556.00
Mulch (Spring)	1	\$2,170.00	\$2,170.00
Ornamental Shrub Pruning	2	\$255.00	\$510.00
Fall Cleanup/Cutbacks	2	\$478.00	\$956.00
Watering Truck with Driver			
Maintenance Handwatering Service	15	\$300.00	\$4,500.00
Subtotal			\$11,404.00
Est. Tax			\$0.00
Total for Proposed Services			\$11,404.00
Extra Services Not Included in the Base Contract			
Winter Visit/ Litter Control			\$0.00
Turf Core Aeration			\$0.00
Plant Health Care			\$0.00

Scope of Services:

LANDSCAPE MAINTENANCE SERVICES

Litter Control & Weed Control in Beds

PLANT & BED CARE SERVICES

Spring Clean-up

Mulch (Spring)

Ornamental Shrub Pruning

Fall Cleanup/Cutbacks

WATERING TRUCK WITH DRIVER

Maintenance Handwatering Service

OPTIONAL SERVICES

Winter Visit/ Litter Control

Turf Core Aeration

Plant Health Care

DEFINITIONS:

You should note the following words have special meaning throughout this Agreement:

1. "You" and "Your" means Customer and all of their agents or representatives.
2. "We", "Our", "Ours" and "Us" mean Contractor and all of its representatives.
3. "Services" means all materials, labor, supplies and equipment necessary to perform the specified work.

TERMS AND CONDITIONS

Accessibility: For us to perform the required Services in a cost-effective manner and for the estimated Agreement Price quoted in this Agreement, you agree to permit free and timely access to the necessary areas of your site to perform required Services. All planned work under this Agreement will be performed during our normal working hours unless otherwise stipulated elsewhere in this Agreement. Work crews shall arrive at the job site unannounced unless otherwise noted herein.

Taxes: You agree to be responsible for all applicable taxes on the Services and/or materials used or provided in connection with the Services to be provided under this Agreement.

Permits: Unless otherwise required by law, you agree to obtain and bear all costs incurred in connection with obtaining any necessary permits, approvals or consent for the Services provided pursuant to this Agreement.

Contractor will maintain a license, as required by State or local law, and will comply with all other license and permit requirements of the City, State and Federal Governments, as well as all other requirements of law.

Payment Terms: You agree to pay invoices within fifteen (15) days of receipt. If a payment plan is indicated on the face of this Agreement, payments under the plan will be due as indicated and without further demand or invoicing required. Should a payment become thirty (30) days or more delinquent, we may stop all work under this Agreement without notice and/or cancel this Agreement. If this happens, the entire Agreement Price (less prior payments) will become due and payable immediately upon demand. A late charge of one-and-a-half (1½%) percent per month will be charged on all amounts that are delinquent.

Payment is by check or ACH transfer. A five (5%) percent surcharge will be added for every payment by credit card. Any costs from automated or third-party invoicing processing required by you will be added to the agreement price. Any check dishonored will incur a one hundred (\$100) charge.

In the event we must commence collection action or arbitration to recover any amount payable under this Agreement, you agree to reimburse us for all costs, expenses and attorneys' fees when incurred by us.

Existing Conditions: The Agreement Price is conditioned upon the materials and systems covered being in maintainable condition. If the initial inspection or seasonal start-up visit indicates that repairs are necessary, a firm quotation will be submitted to you for your approval. Should you not authorize the repairs, we may remove the material(s), system(s), component(s) or part(s) from the Scope of Services under this Agreement. We cannot be liable for damages to private or temporary utilities or siding within 6" of the turf. We are not responsible for the conditions of the premises and will not be liable for any slip, trip or fall accidents on these premises.

Concealed Conditions: Concealed conditions, such as underground utilities, invisible fence, rock, debris, poor drainage situations, etc., not readily apparent at the time of providing the estimated Agreement Price quoted in this Agreement may cause us to incur additional costs, including without limitation additional materials and labor, which will be an extra charge (fixed price amount to be negotiated or on a time-and-material basis at our rates then in effect) over the Agreement Price.

You agree to pay on a time and materials basis for any additional work required to complete the work occasioned by concrete, rock, pipe, electrical lines, etc. encountered while performing such tasks, or any other conditions not readily apparent while estimating the work. We reserve the right to charge for any damages to equipment incidental to performance of contract.

Extra Work: Unless otherwise stated elsewhere in this Agreement, this Agreement does not include repairs to any system(s), the provision or installation of materials or service calls requested by you. If requested, you will be charged for these Services at our customer rates then in effect.

If you require any alteration to or deviation from this Agreement involving extra work, you agree that the cost of material and/or labor will be an extra charge (fixed price amount to be negotiated or on a time-and-material basis at our customer rates then in effect) over the Agreement Price.

Work Performed by Others: Unless otherwise stated elsewhere in this Agreement, we will not be responsible for work that is performed by anyone other than us or our subcontractor.

Therefore, you agree to permit only our personnel or agent(s) to perform the Services included. Should anyone other than us perform such Services, we may, at our option, terminate this Agreement or eliminate the areas or materials involved from the Scope of Services of this Agreement.

Subcontracts: We reserve the right to hire qualified subcontractors to perform parts of this Agreement or specialized Services, so long as such subcontractors comply with the provisions set forth herein.

Hold Harmless: If there is a claim, damage, loss or expense that is caused in whole or in part by the negligent performance of the Services by us or anyone whose act we are liable, then, we will defend, indemnify and hold you harmless from and against these claims, damages, losses and expenses.

Insurance: We, and our subcontractors, agree to maintain General Liability, Automotive Liability, Worker's Compensation insurance and any other insurance required by law for the Services.

Delays Outside Our Control: In the event that there is a delay, loss, damage or detention caused by unavailability of equipment or materials, delay of carriers, strikes, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature or by any cause beyond our control, you agree that we will not be liable for this delay, loss, damage, or detention.

Due to the unpredictability of weather systems, we cannot be held responsible for postponements or cancellations of Services scheduled to be performed. No refund for cancelled Services or allowances shall be made. We shall act diligently to ensure that you receive all Services and the Agreement obligations are met.

Ground Repair Exclusion: We will attempt to minimize disturbance to your property. Due to the size and weight of equipment involved, some damage may occur. You understand that ground repairs are not included. In addition, any objects or plants within the area where Services are performed are your responsibility to either move or waive its rights to claim damages. Dust, dirt, and debris are incidental to the Services, and as such shall not be considered damage .

Loss of Profits: Under no circumstances, whether arising in contract, tort (including negligence and strict liability), equity or otherwise, will we be responsible for loss of use, loss of profits, anticipatory damages, increased operating or maintenance expenses, claims of your tenants or clients, or any special, indirect, consequential, incidental, exemplary or punitive damages arising at any time or from any cause.

Limited Warranty: We will not be held responsible for repairs or damages resulting from weather, animals, vandalism, 3rd party activity or events beyond our control.

You acknowledge that we are NOT the manufacturer of the installed materials and equipment and that we make no representations or warranties as to the installed materials and equipment or their specifications, fitness for a particular purpose, performance or merchantability other than as set forth in the preceding paragraph. You will look solely to the manufacturer to remedy any alleged deficiency in the installed materials and equipment and damages related directly or indirectly thereto. WE DISCLAIM ALL OTHER WARRANTIES ON THE MATERIALS FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limits of Liability: We guarantee that our performance of Services under this Agreement will be in accordance with generally accepted practices for similar services. In case of any failure to perform our obligations under this Agreement, our liability is limited to correcting, repairing, or replacing, at our option, the deficient work. You acknowledge and agree that such correction, repair or replacement shall be the sole remedy available to you and in no event will our liability exceed the total amount of compensation we receive for Services rendered.

Dispute Resolution: Should a dispute arise between you and us that remains unresolved, then either party may seek exclusive relief through the procedure of the American Arbitration Association (AAA), or any equivalent recognized independent arbitrating organization. A single arbitrator shall decide all disputes. The arbitrator shall render a decision no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorneys' fees, incurred as a result of the dispute.

We both agree that any action through arbitration against either of us relating to any breach of this Agreement must be commenced within one (1) year from the date when the disputed work was performed.

Workforce: The workforce will be personally presentable for the Services being performed. All employees shall be competent and qualified and shall be U.S. citizens or legally authorized to work in the United States.

Contractor shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a), 60-741.5(a), and 61-300.10. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, national origin, sexual orientation, gender identity, protected veteran status or disability. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, protected veteran status or disability.

Non-Solicitation: During and for a period of twelve months following any termination of this Agreement, you shall not, directly or indirectly or through others, hire, solicit or encourage any employee, consultant or subcontractor of ours to leave or terminate their employment or relationship with us. You shall not hire any such employee, consultant, or subcontractor who has left our employment or contractual engagement within one year of such employment or engagement.

Changes: This Agreement shall not be subject to change or modification other than by a writing to which both parties are signatories. Due to the inability to anticipate rising fuel costs, we reserve the right to incorporate a proportional and negotiable fuel surcharge during the course of the contract.

Early Termination: Customer may terminate this Agreement at any time by giving at least ninety (90) days' notice to us in writing. Such notice will be deemed to have been given on the date of receipt at our address shown on the first page of this Agreement.

Customer shall reserve the right to cancel this contract for reasons of non-performance with thirty days advance written notice. Customer agrees to forfeit any contract terms that contained multiple year or volume discounts upon cancellation. A reconciliation of the account will be performed, that will charge the customer for all services provided through the final service date, as well as for any resources utilized or materials previously procured in expectation of the contract's future execution. Credits will be applied for any overpayments previously received. The final invoice shall be due in full upon receipt.

Notice: Any notice, demand, communication or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices shall be effective when received. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received after 4:00pm or on weekends or holidays, will be deemed received on the next business day. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between the parties.

Independent Contractor: We undertake performance of the Services as an independent company and shall be wholly responsible for the methods of performance. You shall have no right to supervise or direct the methods used.

Law and Venue: The Agreement shall be governed by and construed in accordance with the Laws of Butler County where the work is performed. Butler County with respect to any litigation arising hereunder shall be the venue which governs our office location.

Waiver: A waiver by us of any breach of this Agreement shall not be binding unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. You shall pay all attorneys' fees and costs incurred by us in enforcing the rights under this Agreement.

Paragraph Headings: The paragraph headings contained herein are included solely for the convenience of the parties and do not, in any way, modify, amplify or give full notice of any of the terms, covenants or conditions of this Agreement.

Purchase Orders: This Agreement supersedes all other agreements, either oral or in writing, between the parties with respect to the subject matter and contains all of the covenants and agreements between the parties and this writing constitutes the final expression of the parties' agreement. This Agreement may not be modified except in writing signed by an authorized representative of each party.

No change is allowed to this Agreement, nor shall they become part of this Agreement whatsoever by our acknowledgment or acceptance of your purchase order forms that contain different provisions whether in addition to or not identical to the terms set forth herein. You acknowledge and agree that any purchase order issued by you, in accordance with this Agreement, is intended only to establish payment authority for your internal accounting purposes. No purchase order from you shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the purchase order will have any force or effect.

Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties shall negotiate replacement terms for any invalid provision which reflect the original intent of the parties under this Agreement.

Survival: Upon completion of the Services or in the event of termination, obligations and duties provided for in the terms and conditions of this Agreement shall survive. Each party binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

Special Provisions:

You and Our Acceptance:

This Agreement will become effective only after acceptance as evidenced by the respective signatures of the parties' authorized representatives. This Agreement includes all of your and our obligations. No person has authority to make any claim, representation, promise or condition on our behalf that is not documented within this Agreement.

Authorized for Customer:

Guine Vanderhaar
Signature

2/26/21
Date

Authorized for Contractor:

Michael A. King
Signature

3/5/21
Date