

**AN EMERGENCY RESOLUTION
AUTHORIZING AND DIRECTING THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO A DEVELOPMENT AGREEMENT WITH
345 MINER ROAD, LLC AND MARS ELECTRIC COMPANY**

WHEREAS, Mars Electric Company desires to expand its current outdoor storage area on the property located at 6655 Beta Dr., Mayfield Village, Ohio 44143 which requires the issuance of a temporary permit; and

WHEREAS, as a condition of the issuance of the temporary permit for the expansion of the outdoor storage area, Mars Electric Company is to provide certain landscape screening and buffering in order to minimize the impact on adjacent residential property owners; and

WHEREAS, the Village, Mars Electric Company and 345 Miner Road, LLC desire to enter into a Development Agreement to memorialize an agreement regarding such landscape screening and buffering; and

WHEREAS, Council deems it necessary and in the best interest to the health, safety and welfare of all Village residents to enter into the Development Agreement with Mars Electric Company and 345 Miner Road, LLC.

BE IT RESOLVED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. The Mayor and President of Council are authorized and directed to enter a Development Agreement with Mars Electric Company and 345 Miner Road, LLC in a form substantially similar to that set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meeting of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This resolution is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety and welfare of the residents of Mayfield Village, Ohio, for the reason that it provides for time sensitive construction and development. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approved by the Mayor or otherwise at the earliest time allowed by law.



STEPHEN SCHUTT
Council President

First Reading: July 19, 2021

Second Reading: _____, 2021

Third Reading: _____, 2021

PASSED: July 19, 2021



BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:



ANTHONY J. COYNE, ESQ.,
Director of Law

ATTEST: 

MARY E. BETSA, MMC
Clerk of Council

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2021 (the "Effective Date"), by and between MAYFIELD VILLAGE, OHIO, an Ohio municipal corporation having a mailing address of 6622 Wilson Mills Road, Mayfield Village, Ohio 44143 (the "Village"), 345 MINER ROAD, LLC, an Ohio limited liability company having a mailing address of 6317 Kenarden Drive, Highland Heights, Ohio ("345 Miner") and MARS ELECTRIC COMPANY, an Ohio Corporation having a mailing address of 6655 Beta Dr., Mayfield Village, Ohio 44143 ("Mars").

RECITALS:

WHEREAS, Mars leases the property located at 6655 Beta Dr., Mayfield Village, Ohio 44143 (the "Mars Property") for operation of its business from 6660 BETA, LLC; and

WHEREAS, 345 Miner is the owner of approximately 16 acres of land located on Highland Rd. within the Village of Mayfield (the "345 Miner") that is in the process of being subdivided and improved with a residential development; and

WHEREAS, the Mars Property and the 345 Miner Property are adjacent to each other and share a common border; and

WHEREAS, Mars has requested and been granted a special permit in order to expand certain outdoor storage located on the Mars Property subject to certain conditions; and

WHEREAS, one such condition is providing a landscaping buffer on the Mars Property to adequately screen the outdoor storage area from the residential development on the 345 Miner Property (the "Improvements"); and

WHEREAS, Mars and 345 Miner have agreed to share in the cost and construction of the Improvements; and

WHEREAS, the Village has agreed to provide support for the construction of the Improvements in order to protect the health, safety and welfare of Village residents and preserve business operations in the Village; and

WHEREAS, the parties desire to enter into this Agreement in order to set forth the respective rights, agreements and obligations of the parties as more fully provided herein.

WITNESSETH:

For and in consideration of the covenants herein contained, and upon the terms and conditions herein set forth, the Parties hereby agree as follows:

- 1) **Construction of Improvements.** Mars and 354 Miner shall construct and install the Improvements in a good and workmanlike manner, according to all applicable Village codes and specifications and in substantial compliance with the proposed Site Plan, attached hereto as Exhibit "A" and Scope of Work attached hereto as Exhibit "B" and incorporated herein by reference (collectively the "Plans"). All required applications shall be submitted and fees paid in accordance with the applicable laws, rules, regulations, codes and ordinances in effect on the Effective Date. All permits necessary for the Improvements shall be issued by the Village, subject to Mars and 345 Miner qualifying therefor, as soon as practicable after submittal and approval and in the usual course of business.
- 2) **Cost of Improvements.** 345 Miner shall contribute the materials and labor needed to construct the mounding necessary in accordance with the Plans (the "345 Miner Improvements"), at its sole cost and expense. Mars shall cause the landscaping to be constructed in accordance with the Plans (the "Mars Improvements"), at its sole cost and expense. The Village shall contribute an amount not to exceed \$9,000 to Mars for the construction of the Mars Improvements promptly after being provided with evidence that the Improvements have been completed and all costs associated therewith have been paid.
- 3) **Timing of Improvements.** 345 Miner shall construct the 345 Miner Improvements within a reasonable amount of time after the Effective Date in order to enable Mars to complete the Mars Improvements in accordance with this section. Mars shall cause the Mars Improvements to be completed by November 1, 2021 in order to allow planting during the fall months for the preservation of plantings contemplated. Thereafter, Mars shall be responsible for the continuing maintenance of the Improvements at its sole cost and expense so long as Mars is a tenant or owner of the Mars Property. However, in the event replacement of any spruce trees is necessary, 345 Miner or its successors or assigns shall be responsible for such replacement at its sole cost and expense.
- 4) **Business Operations.** Mars shall continue its business operations in Mayfield Village for a minimum of five (5) years from the Effective Date. In the event Mars moves its operation out of Mayfield Village prior to the expiration of said five (5) year period, Mars shall return the \$9,000 contribution from Mayfield Village within ten (10) days of ceasing business operations within Mayfield Village.
- 5) **Default.** In the event Mars or 345 Miner fail to comply in any material respect with any term or condition of this Agreement, the Village may declare a default through the provision of written notice to Mars or 345 Miner. In the event Mars or 345 Miner fails to cure such default within thirty (30) days after receipt of written notice from the Village (or if such further time is reasonably required to cure, the Village in its sole discretion may grant an extension in writing of up to sixty (60) days provided Mars or 345 Miner commences actions to cure such default within such thirty (30) day period and diligently pursues same), the Village may, at its sole option, terminate this Agreement. Further, upon default of Mars under this section, the Village may require Mars to return any funds

received from the Village under this Agreement.

- 6) **Entire Agreement.** This Agreement and the Exhibits attached hereto set forth the complete understanding and agreement of the parties. No oral statements, representations or agreements other than contained in this Agreement shall have any force or effect and the Village and Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.
- 7) **Miscellaneous.**
- a) **Village Council.** This Agreement and all terms and provisions hereof are subject to and conditioned upon the approval of the Mayfield Village Council.
- b) **Approvals of the Village.** Any provision of this Agreement requiring the approval of the Village, the satisfaction or evidence of satisfaction from the Village, certificate or certification by the Village where the opinion of the Village, shall be interpreted as requiring action by the Mayor, Planning Commission, Architectural Review Board, Zoning Board of Appeals, or Village Council (or such other applicable official(s) as the Mayor may from time to time appoint or designate) granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, unless such provision or the administrative procedures applicable to the Village expressly provide otherwise.
- c) **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had not been contained herein.
- d) **Waiver.** The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future right or option, but same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.
- e) **Notices.** All notices herein authorized or required to be given hereunder shall be sent by certified mail, registered mail or overnight express, postage prepaid, to the following addresses, or such other addresses as the parties may from time to time designate in writing:

If to the Village:

Mayfield Village, Ohio
Attn: Mayor Brenda Bodnar
6622 Wilson Mills Road
Mayfield Village, Ohio 44143

With a copy to:

Anthony J. Coyne, Esq., Director of Law
Mansour Gavin LPA
North Pointe Tower
1001 Lakeside Avenue, Suite 1400
Cleveland, Ohio 44114

If to Mars:

Mars Electric
Attn: Michael Doris, President
6655 Beta Drive
Suite 200
Mayfield Village, Ohio 44143

If 345 Miner:

345 Miner Road. LLC
Attn: Christopher Skoda, President
6317 Kenarden Drive
Highland Heights, Ohio 44143

- f) Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents or instruments as may be reasonable and appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.
- g) Survival.** All agreements, representations, warranties and indemnifications herein, including those made in the Recitals, shall be considered to have been relied upon and shall survive the execution and delivery of this Agreement.
- h) Assignment.** The Parties may not assign this Agreement or any of its rights, interests, or obligations hereunder except as approved in writing by the Village. For the purposes of this Agreement, any change in ownership of Parties by merger, consolidation, sale of assets, transfer of shares or units, or other means of

transferring ownership and/or control of the Parties and its business shall be deemed an assignment.

- l) Headings.** The Section headings in this Agreement are for purposes of reference only and shall not affect or define the meanings of the Sections hereof.
- j) Exhibits.** The Exhibits attached hereto are made a part of this Agreement.
- k) Applicable Law and Binding Effect.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. This Agreement shall inure to the benefit of and be shall binding upon the parties hereto and their respective successors and assigns.
- l) Counterparts/Signature.** This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument. Signatures delivered by electronic means (facsimile, pdf scan, etc.) shall be deemed originals thereof.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED on the date first written above.

MAYFIELD VILLAGE, OHIO

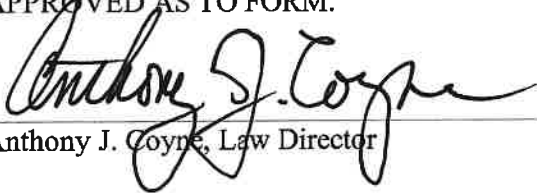


Brenda Bodnar, Mayor



Stephen Schutt, President of Council

APPROVED AS TO FORM:



Anthony J. Coyne, Law Director

345 MINER ROAD, LLC

By:
Its:

MARS ELECTRIC COMPANY

By:
Its:

By signing below, 6660 BETA, LLC hereby acknowledges it has reviewed the terms of this Development Agreement and hereby consents to the alterations as provided herein.

6660 BETA, LLC

By:
Its:

EXHIBIT "A"

Site Plan

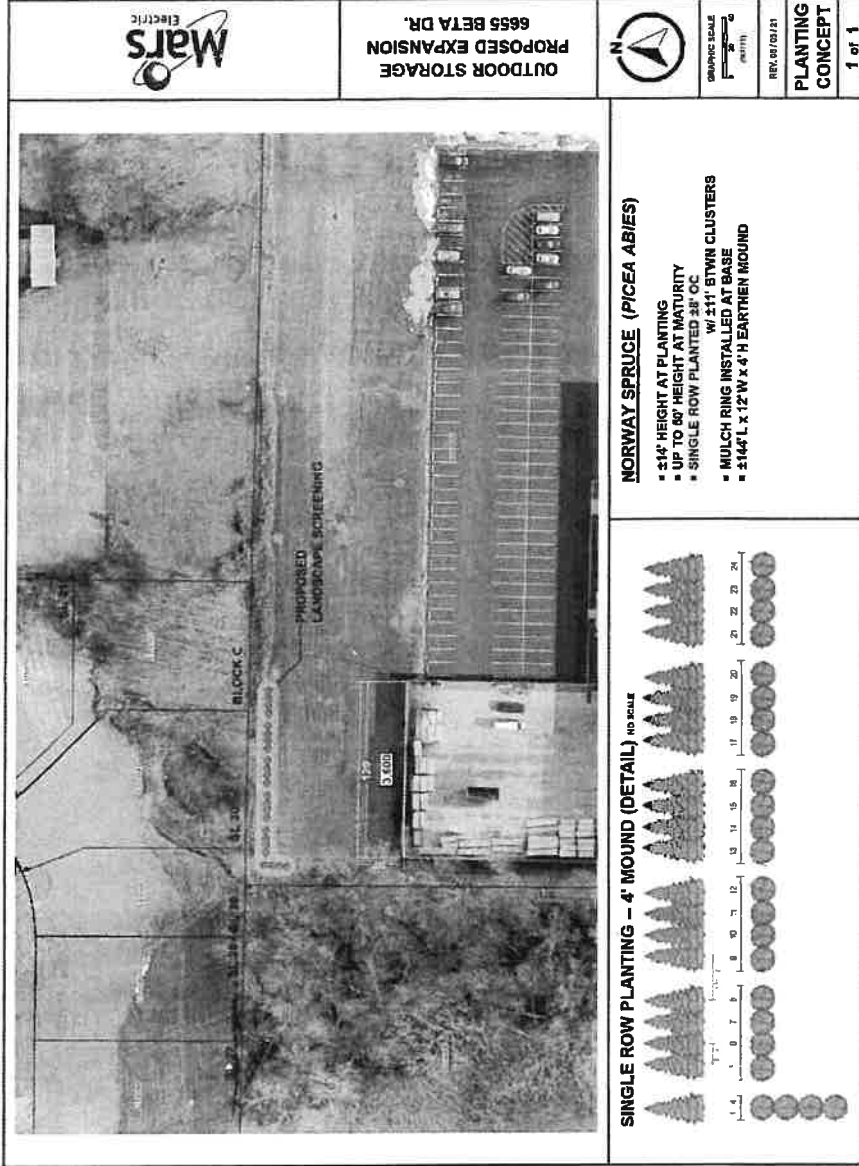


EXHIBIT "B"
Scope of Work

D.T. Custom Landscapes
9690 Brakeman Rd
Chardon, OH 44024

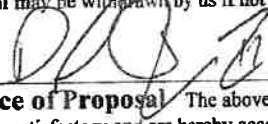
Name: Skoda Construction
Address: Montebello Housing development
Phone: Chris Skoda cell: (216) 214 - 3142

We hereby submit specifications and estimates for: **Landscape Installation**

1. **(Trees & Mulch)** We will deliver and install 25 14ft. Norway Spruce on mound for screening. All trees will have a mulch ring around them.
Price = \$16,250.00 (one year warranty on trees but lack of water will void)

We Propose hereby to furnish material and labor – complete in accordance with the above specifications.
Payments will be made as follows 50% down Final payment upon completion.
This proposal may be withdrawn by us if not accepted within 30 days

Authorized
Signature :

 6/28/2021

Acceptance of Proposal The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as written above.

Date of acceptance _____ Signature _____

If you have any questions please do not hesitate to contact me at the number listed below. Thank you.

Daniel Tvergyak II
D.T. Custom Landscapes
Office: (440) 286 – 2978 Cell: (440) 289 - 7663

345 Miner Road LLC

784 Som Center Road

Mayfield Village, OH 44143

Estimate

Date	Estimate #
6/21/2021	152

Name / Address
Montebello South Cobblestone Road Mayfield Village, Ohio 44143

Project

Description	Total
345 Miner Road LLC at it's own expense will install a dirt mound approximately 180' long and 5' high on the shared property line between Premier Partners and the Montebello Subdivision.	0.00
Total	\$0.00