

## AGREEMENT

This Agreement ("Agreement") is made this 22nd day of October, 2018, by and between the City of Ferndale, ("Ferndale"), a Michigan Municipal Corporation, with an address at 300 E. Nine Mile Road, Ferndale, Michigan 48220 and the Ferndale Downtown Development Authority ("DDA"), with an address at 300 E. 9 Mile Road, Ferndale, Michigan 48220;

The DDA is interested in a feasible, efficient and economic method to provide landscaping and maintenance serves within the DDA jurisdictional boundaries ("Area").

Ferndale, through its Department of Public Works ("DPW") is willing and interested in providing landscape and maintenance serves to the DDA in the DDA Area,

NOW, THEREFORE, in consideration of the mutual promises, obligations, representations and assurances set forth in this Agreement, the parties agree to the following:

1. The specifications for the two year Agreement between Ferndale and DDA is detailed in the Scope of Work, provided by DPW, attached and incorporated by reference as **Exhibit 1**.
2. Payment for services performed will be based upon the fee proposal as submitted and set forth in Exhibit A of Scope of Work and Addendum A, Fee Proposal which are incorporated by reference and made part of this Agreement.
3. This Agreement does not, and is not intended to, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of DDA or Ferndale.
4. Absent a written waiver, no act, failure or delay by either DDA or Ferndale to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either DDA or Ferndale shall subsequently effect its right to require strict performance of this Agreement.
5. Nothing contained herein shall be construed to make the employees of either party the employees of the other or to render either party liable for such other party's debts or obligations.
6. If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
7. The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number,

any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.

8. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the clerk of the respective party. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery services or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

9. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any claim arising under or related to this Agreement shall be brought in the 6<sup>th</sup> Judicial Circuit Court of the State of Michigan and venue is acknowledged as proper in the court set forth above.

10. Any modifications, amendments, recessions, waivers, or releases to this Agreement must be in writing and agreed to by both DDA and Ferndale. Unless otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by the same persons who signed this Agreement or other persons as authorized by the DDA and Ferndale governing bodies.

11. This Agreement represents the entire Agreement and understanding between DDA and Ferndale. This Agreement shall supersede all other oral or written Agreements between DDA and Ferndale with respect to this matter. The language of this Agreement shall be construed as a whole according to its fair meaning, and shall not be construed strictly for or against any party.

12. This Agreement may be executed in two or more counter parts, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. The effective date shall be the date the last party has executed the Agreement.

13. The undersigned represent and warrant that they have full authority to execute this Agreement on behalf of their respective parties without the consent or joinder of any other person or party.

IN WITNESS WHEREOF, the Ferndale Downtown Development Authority and the City of Ferndale have caused this Agreement to be signed and executed on the day and year first above written.

City of Ferndale

By: 

Dave Coulter, Mayor

By: 

Marne McGrath, Clerk

Ferndale Downtown Development Authority

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

Dean Bach, Chairman

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

Barry Hicks, Executive Director