

**AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES
BETWEEN THE
VILLAGE OF ROMEO DOWNTOWN DEVELOPMENT AUTHORITY, MICHIGAN
AND
VANS VALLEY PRODUCE/RAY VAN STEENKISTE**

THIS AGREEMENT, made as of the 17th day of December, A.D., 2016, (Effective Date) by and between the **VILLAGE OF ROMEO DOWNTOWN DEVELOPMENT AUTHORITY, MICHIGAN**, whose address is 228 N. Main Street, Suite H, Romeo MI 48065, hereinafter called the **DDA** and **VANS VALLEY PRODUCE/RAY VANSTEENKISTE** whose address is 16075 28 Mile Road, Ray Township, MI, hereinafter called the **CONTRACTOR**.

WHEREAS, **DDA** desires to employ a **CONTRACTOR** to render professional landscaping maintenance including maintaining 98, 23 inch wide, wire hanging flower baskets mounted on 13 foot high streetlight poles, 40 28 inch wide, pole mounted flower baskets throughout the downtown area, rectangular planters in the SW Quadrant, alleyways, gazebo, Bailey St. parking lot and smaller plantings. The contractor responsibility will be to water and monitor the water needs to assure that the plants in pots, baskets, planters, Bailey St. park, gazebo and alleyways receive sufficient water for healthy growth; and to monitor and adjust the watering schedule throughout the season, taking into consideration seasonal variation in water needs.

NOW, THEREFORE, **DDA** and **CONTRACTOR** in consideration of their mutual covenants herein agree in respect of the performance of professional landscaping maintenance services by **CONTRACTOR** and the payment for those services by **DDA**, as set forth below.

SECTION 1 BASIC SERVICES OF THE CONTRACTOR

The **CONTRACTOR** shall:

1.1 Water and monitor the water needs of all flowers and plants in hanging flower baskets and pole mounted baskets on streetlight poles and in stationery pots and all other locations noted in the "Project Work" paragraph above in the CBD, daily from May 29, 2017 until October 20, 2017, May 28, 2018 until October 19, 2018 and May 27, 2019 until October 18, 2019 between the hours of 11:00 p.m. and 4:00 a.m., prevailing Eastern Time. In the event that a second watering is needed due to dry weather conditions or other, the **CONTRACTOR** is authorized to apply additional water between the hours of 3 p.m. and 6 p.m., prevailing Eastern Time. The second daily watering determination may be made by the **CONTRACTOR**, or **DDA**. **CONTRACTOR** shall not drive or operate a motor vehicle upon the sidewalk in the performance of its duties pursuant to this Agreement.

1.2 Fertilizer shall be provided, applied and performed by the **CONTRACTOR** as specified by Ray VanSteenkiste (flower provider). Fertilizer shall be a commercial grade, water soluble, 20-10-20 or equal formulation with micro and macro nutrients. Fertilizer shall be applied at a constant feed rate of 150 ppm of nitrogen thru the entire watering period.

1.3 Maintain the flowers and plants in the flower baskets mounted on the streetlight poles. Maintenance includes, but is not limited to, deadheading and trimming.

1.4 If the **CONTRACTOR** in his/her professional opinion determines that fungicide or disease treatment is needed, **CONTRACTOR** is authorized to apply one application of fungicide immediately at a cost not to exceed Four Hundred Seventy Five Dollars (\$475.00). The cost of the fungicide or disease treatment shall be reimbursed by the **DDA** in an amount not to exceed

Four Hundred Seventy Five Dollars (\$475.00), if properly invoiced to the **DDA** in the next regular billing cycle submitted by **CONTRACTOR**.

Within twelve (12) hours after the application of the fungicide or disease treatment, **CONTRACTOR** shall notify the DDA Coordinator or DDA Chairperson via in person, telephone, or email that a fungicide or disease treatment was applied and the total cost of the fungicide or disease treatment that was applied.

1.5 If the **CONTRACTOR** in his/her professional opinion determines that additional fungicide or disease treatment is needed beyond the first application, **CONTRACTOR** shall notify the DDA Coordinator or DDA Chairperson for written authorization to purchase additional fungicide or disease treatment and the authority to apply the additional fungicide or disease treatment.

1.6 Replace plants that are dead or dying due to lack of water and care with same type of plant. All plants are to be purchased from Van's Valley. **CONTRACTOR** is solely responsible for the cost of replacement of any plants that are dead or dying due to lack of water and care.

1.7 Obtain a copy of the location of the flower baskets and planter locations from the Romeo DDA Office prior to the commencement of any work to be performed by **CONTRACTOR**.

1.8 Be responsible for all project work. Additionally, **CONTRACTOR** shall provide all equipment and supplies needed to conform to the requirements set forth within this Agreement.

1.9 Serve as advisor to the **DDA** on plant maintenance when so required.

1.10 Designate a person to act as **CONTRACTOR'S** representative with respect to this work. This person shall have the authority to make decisions and bind the **CONTRACTOR**. The representative designated by the **CONTRACTOR** shall provide the **DDA's** representative with a 24 hour contact phone number to be used in case of an emergency.

1.11 Meet with the Romeo Village Chief of Police prior to performing any services set forth in this Agreement and comply with all local, state, and federal laws, including, but not limited to, wearing an appropriate traffic safety vest.

SECTION 2 DDA'S RESPONSIBILITIES

The **DDA** shall:

2.1 Provide **CONTRACTOR** with complete information concerning the requirements of the authorized service(s).

2.2 Assist **CONTRACTOR** in securing rights of entry upon public lands as required for **CONTRACTOR** to perform authorized work.

2.3 Give thorough consideration of all reports and other documents presented by **CONTRACTOR** and inform **CONTRACTOR** of all decisions within a reasonable time as not to delay the work of **CONTRACTOR**.

2.4 Designate a person to act as **DDA'S** representative with respect to a specific authorized project. The person designated as **DDA'S** representative shall have complete authority to transmit instructions, receive information, interpret and define **DDA'S** policies and decisions with respect to the authorized work.

2.5 Provide **CONTRACTOR** with water, free of charge, for the **CONTRACTOR** to use in the performance of this Agreement. The water shall be available at a location that is near Village Park. **CONTRACTOR** is responsible for purchasing all valves, material, labor and permits needed to connect to the municipal water supply provided by the **DDA**.

SECTION 3 PAYMENT

3.1 For services rendered by **CONTRACTOR** under the terms of this Agreement, **DDA** shall pay **CONTRACTOR** upon receipt of invoices. The fee charged for this project shall not exceed \$21,139.67 for 2017, 2018 and 2019 without the written authorization of the **DDA**. The \$21,139.67 annually not to exceed amount does not include the cost of fungicide or disease treatment set forth in Section 1.4 of this Agreement which is preauthorized at an amount not to exceed \$475.00.

3.2 Invoices will be issued on a monthly basis for work performed. Payment for services rendered and properly invoiced will be made within thirty (30) days following receipt thereof.

SECTION 4 INSURANCE

The **CONTRACTOR** shall not commence work under this Agreement until they have obtained the insurance. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverage shall be with insurance carriers acceptable to the **DDA**.

Additionally, the **CONTRACTOR** understands and agrees that the insurance shall not be: (1) changed without at least sixty (60) days prior notice to the **DDA** by the **CONTRACTOR** and the **DDA** shall be promptly furnished with a copy of such policies upon written request by the **DDA**; and (2) cancelled without the prior written consent of the **DDA**.

The **CONTRACTOR** understands and agrees that the policy limits set forth in the insurance policies shall not be reduced during the term of this Agreement.

The **CONTRACTOR** agrees that deductible for the insurance policies set forth in the insurance policies shall not exceed \$1,000.00.

SECTION 5 NON-LIABILITY/INDEMNIFICATION

In further consideration of the **DDA's** entry into this Agreement, the Parties agree that:

- A. The Village and **DDA** shall not be liable for actions of the **CONTRACTOR** while performing services pursuant to this Agreement that causes any loss, cost, injury, or death to persons.
- B. The Village and **DDA** shall not be liable for actions of the **CONTRACTOR** while performing services pursuant to this Agreement that causes any loss, cost, injury, or damage to any property.
- C. The Village and **DDA** shall not be liable for any claims of **CONTRACTOR's** employees and mechanics for violations of Federal, State, or local laws, including, but not limited to laws governing fair labor law practices, and claims for payment of material and equipment purchased, claims for payment of material and equipment leased or rented.

SECTION 6 FORCE MAJEURE

- A. Any delay attributable to a Force Majeure shall not be deemed a violation of the **CONTRACTOR'S** obligations under this Agreement. A "Force Majeure" is an occurrence or nonoccurrence arising from causes beyond the control of the **CONTRACTOR**, including, but not limited to: (1) an Act of God; and (2) unreasonable delay by a governmental agency in reviewing a submission, which occurrence or nonoccurrence could not have been avoided or overcome by due diligence and that delays the performance of any obligation of a **CONTRACTOR** hereunder. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes, the failure to obtain a permit or license as a result of a **CONTRACTOR'S** actions or omissions, or the failure to obtain any settlement or judgment for contribution, or insurance coverage.
- B. When circumstances occur that **CONTRACTOR** believes constitute Force Majeure, **CONTRACTOR** shall notify the **DDA** in writing of the circumstances within one business day after it first becomes aware of those circumstances. Within ten (10) business days after **CONTRACTOR** first becomes aware of such circumstances, **CONTRACTOR** shall supply the **DDA**, in writing, a report explaining, to the extent of **CONTRACTOR'S** knowledge, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken, and to be taken by **CONTRACTOR** to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of the **CONTRACTOR** to comply with the written notice provision of this paragraph shall constitute a waiver of **CONTRACTOR'S** right to assert a claim of Force Majeure with respect to the circumstances in question.
- C. If the **DDA** agrees that a delay is or was caused by Force Majeure, **CONTRACTOR'S** delay shall be excused and the **DDA** shall provide **CONTRACTOR** such additional time as may be reasonable necessary to compensate for the Force Majeure event. In no event shall the additional time be longer than that period reasonably necessitated by the Force Majeure event. Any determination by the **DDA** that an event does not constitute a Force Majeure shall be subject to dispute resolution under Section 7 of this Agreement. In proceedings on any dispute regarding a delay in performance, **CONTRACTOR** shall have the burden of proving: (1) that the delay is or was caused by a Force Majeure event; and (2) that the amount of additional time requested is reasonable necessary to compensate for that event.

SECTION 7 DISPUTE RESOLUTION

- A. Any dispute that arises under this Agreement shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement between the parties. The period for informal negotiations shall end when the **DDA** provides a written statement setting forth its proposed resolution of the dispute to **CONTRACTOR**.
- B. If the parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the **DDA** unless, within ten (10) days after receipt of the **DDA's** proposed resolution, **CONTRACTOR** files a petition for mediation with the **DDA** setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief

requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Agreement.

- C. In any proceeding before a mediator on any dispute, **CONTRACTOR** shall have the burden of coming forward with the evidence and the burden of persuasion on factual issues.
- D. If any dispute proceeds to mediation, the **CONTRACTOR** and **DDA** shall each pay 50% of all costs of the mediation.

SECTION 8 MISCELLANEOUS

8.1 Total Contract Cost. The total fees currently authorized for these services shall not exceed Twenty One Thousand One Hundred Thirty-nine Dollars and Sixty-seven cents (\$21,139.67) for 2017, 2018 and 2019 without the express written authorization of the **DDA**, with the exception of the application of fungicide or disease treatment in the amount of \$47.00 if needed.

8.2 Termination. The obligation to provide further services under this Agreement may be terminated by:

- (a) **DDA** with or without cause upon seven (7) days written notice to **CONTRACTOR**;
- and (b) **CONTRACTOR** for cause upon thirty (30) days written notice to **DDA**. In the event of any termination, **CONTRACTOR** will be paid for all services and reimbursable expenses rendered to the date of termination. Further, **CONTRACTOR** shall be required to complete any requirements of this Agreement should **DDA** require same.

8.3 Term of Agreement. Subject to Section 6, subsection 6.2(a), this Agreement shall remain in full force and effect for the period from the Execution Date until OCTOBER 30, 2019, unless extended hereafter in writing.

8.4 Breach by CONTRACTOR. It is mutually agreed that in the event the **CONTRACTOR** fails to complete the services as stated in this Agreement for any reason, the **DDA** may hire a different contractor to proceed with such work and deduct all reasonable costs from the amount hereinabove specified as payment to the **CONTRACTOR** for such services or in the event that such payments due to the **CONTRACTOR** are insufficient to fully compensate the **DDA** for such reasonable costs, it shall be the obligation of the **CONTRACTOR** to reimburse the **DDA** for such costs.

8.5 Amendment. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof. It may not be changed or modified except in writing, signed by the parties hereto.

8.6 Integration. This Agreement sets forth the entire Agreement and understanding between the parties as to the subject matter hereof, and supersedes all prior and/or contemporaneous discussions, representations, amendments, or understandings of every kind and nature between them. No verbal statements made by any employee, representative, or agent of the **DDA** shall constitute an agreement of the **DDA** unless such verbal statement is set forth in this Agreement.

8.7 Waiver. No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by a representative of the **CONTRACTOR** and signed by Chairpersons of the **DDA** upon its executive Board's approval.

8.8 Assignability. This Agreement may not be assigned by either party without the prior written consent of the other party.

8.9 Applicable Law. This Agreement has been executed, delivered and accepted at and shall be deemed to have been made at the Village of Romeo, Macomb County, Michigan and shall be interpreted in accordance with the laws of the State of Michigan.

8.10 Severability. If any provision of this Agreement is found to be invalid or unenforceable, it shall not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.

8.11 Construction. This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties hereto. This Agreement therefore shall not be construed against any party to this Agreement.

8.12 Notices. All communications given pursuant to this Agreement shall be in writing and shall be deemed properly served when delivered if delivered in person to the party to whom it is addressed, on the next business day if delivered by a nationally recognized overnight delivery service, or two (2) business days after deposit in the U.S. Mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

(a) If to **DDA**:
Romeo Downtown Development Authority
228 N. Main Street, Suite H
Romeo, Michigan 48065
Attn: DDA Executive Director

(b) If to **CONTRACTOR**:
Ray Van Steenkiste
16075 28 Mile Road
Ray Township, Michigan 48003
Attn: Ray Van Steenkiste

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

**ROMEO DDA:
DOWNTOWN DEVELOPMENT AUTHORITY
ZACK HAYES, CHAIRMAN**

**CONTRACTOR:
VAN'S VALLEY PRODUCE
RAY VANSTEENKISTE**
