

**CITY OF FERNDALE
REQUEST FOR COUNCIL ACTION**

FROM: Byron A. Photiades, DPW Director

SUBJECT: Lathrup Village Agreement to Use Southwest Storage Yard

SUMMARY & BACKGROUND:

The City of Lathrup Village has approved an agreement, drafted by Ferndale, to use the Southwest Storage Yard as a transfer site for its leaves.

Lathrup Village would pay a host fee of \$1,500, and a labor/equipment fee of \$3,700 for its estimated cost of loading leaves into transfer trucks.

Lathrup Village would join the Cities of Huntington Woods, Oak Park and Pleasant Ridge in using the yard; the intergovernmental agreements with those Cities are expected in fiscal year '10 to generate about \$30,000.

Attachment: Agreement

COUNCIL AGENDA DATE: December 14, 2009

CITY ATTORNEY REVIEW: P. Daniel Christ

FINANCE DIRECTOR REVIEW: JCHubanks

CITY MANAGER APPROVAL: Robert J. Bruner, Jr.

COMMENTS:

RECOMMENDED ACTION:

Moved by , seconded by , that the Agreement to use the City's Southwest Storage Yard as a transfer site for leaves by the City of Lathrup Village be approved and that the Mayor and City Clerk be authorized to sign said Agreement.

AGREEMENT BETWEEN THE CITY OF LATHRUP VILLAGE AND THE CITY OF FERNDALE REGARDING USE OF SOUTHWEST STORAGE AREA

This Agreement (the "Agreement") is made between the City of Lathrup Village ("Lathrup Village"), a Michigan Municipal Corporation with an address at 27400 Southfield Road, Lathrup Village, Michigan 48076 and the City of Ferndale ("Ferndale"), a Michigan Municipal Corporation with an address at 300 E. Nine Mile Road, Ferndale, Michigan 48220.

Pursuant to Article VII, § 28 of the Michigan Constitution of 1963, Ferndale and Lathrup Village enter into this Agreement for the purpose of delineating the obligations and responsibilities regarding the use by Lathrup Village of Ferndale's Southwest Storage Yard as a transfer site for leaves.

This Agreement, which will provide for efficient and coordinated collection of leaves, is determined to be in the best interests of both Lathrup Village and Ferndale.

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

1. Ferndale shall allow Lathrup Village to utilize its Southwest Storage Yard as a transfer site for leaves from October 5, 2009 through December 4, 2009. This Agreement may be extended for additional years upon terms and conditions agreed to by the parties. Any such delivery of leaves by Lathrup Village to the Southwest Storage Yard shall be through the west gate entrance of the storage yard, with any such trucks using Republic Street in Oak Park.
2. Lathrup Village shall pay Ferndale for using the Southwest Storage Yard as a transfer site for leaves the amount of \$1,500 within fourteen (14) days from the execution of this Agreement. Additionally, Lathrup Village shall pay Ferndale \$3,700 the amount that represents the estimated proportionate tonnage between the two communities for employees and equipment costs associated with loading the leaves into the transfer trucks at the Southwest Storage Yard as described in the attached 2009 leaf disposal schedule, which is attached as Exhibit 1 and incorporated by reference into this Agreement. This \$3,700 shall also be paid by Lathrup Village to Ferndale within fourteen (14) days from the execution of this Agreement. In the event that Lathrup Village employees work at the Southwest Storage Yard for the loading of leaves to be transferred from the Southwest Storage Yard or in the event that the actual hours for labor and equipment are less than the estimated hours for Lathrup Village as set forth in Exhibit 1, the \$3,700 payment to Ferndale shall be adjusted on a proportionate basis based on Exhibit 1 and a reimbursement to Lathrup Village shall be made within thirty (30) days from the date the adjustment is calculated and verified by Ferndale's DPW Director. In the event that the actual hours for labor and equipment are more than the estimated hours for Lathrup Village as set forth in Exhibit 1, Lathrup Village shall pay an additional amount to Ferndale adjusted on a proportionate basis based on Exhibit 1 within thirty (30) days from the date the adjustment is calculated and verified by Ferndale's DPW Director. In the event that Lathrup Village employees work at the

Southwest Storage Yard as discussed above, they shall utilize Lathrup Village equipment only.

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 Lathrup Village or Ferndale.
4. Absent a written waiver, no act, failure or delay by either Lathrup Village 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 Lathrup Village or Ferndale shall subsequently affect 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 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 6th 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 Lathrup Village and Ferndale. Unless

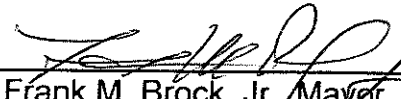
otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by the same persons who signed this Agreement or other persons as authorized by the Lathrup Village and Ferndale governing bodies.

11. This Agreement represents the entire Agreement and understanding between Lathrup Village and Ferndale. This Agreement shall supersede all other oral or written Agreements between Lathrup Village and Ferndale respecting 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.

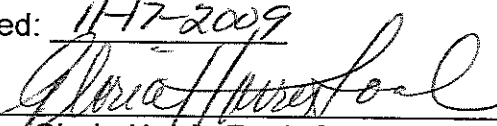
12. This Agreement may be executed in two or more counter parts, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. The effective date shall be the date the last party has executed the Agreement.

IN WITNESS WHEREOF, the City of Lathrup Village and the City of Ferndale have caused this Agreement to be signed and executed on its behalf by its respective Mayor and City Clerk on the day and year noted below:

City of Lathrup Village,
a Michigan Municipal Corporation

By: 
Frank M. Brock, Jr., Mayor

Dated: 11-17-2009

By: 
Gloria Harris-Ford, City Clerk

Dated: 11-17-2009

City of Ferndale,
a Michigan Municipal Corporation

By: _____
Craig S. Covey, Mayor

Dated: _____

By: _____
J. Cherilynn Tallman, City Clerk

Dated: _____

Exhibit 1

2008	CITY	PER CENTAGE	TONNAGE
	Ferndale	28%	1166
	Oak Park/Pleasant Ridge	49%	2074
	Huntington Woods	23%	982
	TOTAL		4222

2009	CITY	PER CENTAGE	TONNAGE
	Ferndale	24%	1166
	Oak Park/Pleasant Ridge	43%	2074
	Huntington Woods	20%	982
	Lathrup Village	13%	619
	TOTAL		4841