

**2013 – 2015 FIRE DISPATCH SERVICE AGREEMENT BETWEEN
THE COUNTY OF OAKLAND
AND THE CITY OF ROCHESTER HILLS**

This Agreement is made and entered into between the COUNTY OF OAKLAND, a Michigan Constitutional and Municipal Corporation, whose address is 1200 North Telegraph Road, Pontiac, Michigan 48341 (the "COUNTY"), and the CITY OF ROCHESTER HILLS whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 (the "MUNICIPALITY"). In this Agreement, the COUNTY shall be represented by the OAKLAND COUNTY SHERIFF, in his official capacity as a Michigan Constitutional Officer, whose address is 1200 North Telegraph Road, Bldg. 38 E., Pontiac, Michigan 48341 (the "SHERIFF"). In this Agreement, whenever the COUNTY and the SHERIFF are intended to be referred to jointly, they shall collectively be referred to as the "OAKLAND COUNTY SHERIFF'S OFFICE" ("O.C.S.O.")

WITNESSETH

WHEREAS, the MUNICIPALITY is authorized by law to provide fire protection service for its residents; and

WHEREAS, in order to provide effective fire protection services for its residents, the MUNICIPALITY must also provide Fire Department communication and dispatch functions; and

WHEREAS, the O.C.S.O. provides police communication and dispatch functions and has the capability to provide fire dispatch but, absent this Agreement, is not obligated to provide "FIRE DISPATCH SERVICE", as defined in this Agreement, for the MUNICIPALITY; and

WHEREAS, the COUNTY and MUNICIPALITY may enter into a contract by which the O.C.S.O. would provide FIRE DISPATCH SERVICE for MUNICIPALITY; and

WHEREAS, the MUNICIPALITY has concluded that it is more cost effective to contract for FIRE DISPATCH SERVICE with the O.C.S.O. than to equip and staff its own fire communication and dispatch center; and

WHEREAS, the O.C.S.O. agrees to provide FIRE DISPATCH SERVICE for the "MUNICIPAL FIRE PERSONNEL", as defined in this Agreement, under the following terms and conditions;

NOW, THEREFORE, it is mutually agreed as follows:

1. The COUNTY, with the cooperation and approval of the SHERIFF, shall, in conjunction with its existing O.C.S.O. police communications functions, provide FIRE DISPATCH SERVICE to MUNICIPAL FIRE PERSONNEL.
2. Except as expressly provided for in this Agreement, the Parties agree that this Agreement does not, and is not intended to, transfer, delegate, or assign to the other Party or any civil or legal responsibility, duty, obligation, duty of care, cost, legal obligation, or liability associated with any governmental function delegated and/or entrusted to either party under any existing law or regulations.
3. For all purposes and as used throughout this Agreement, the words and expressions listed below, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows:
 - 3.1. "FIRE DISPATCH SERVICE" shall be defined to include: any emergency or non-emergency telephone call or notice, of any kind, received by the O.C.S.O., which requests, requires, or, in the sole judgment of the O.C.S.O. or a COUNTY AGENT appears to request or require the

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presence, attention, or services of any MUNICIPAL FIRE PERSONNEL to address, respond, or attend to any issue, event, or circumstance involving public health or safety, an accident, an accidental injury, the protection of property, or any emergency (including, but not limited to medical, fire, *and/or* health), and an O.C.S.O. or COUNTY AGENT radio communication, or any attempted radio communication to any MUNICIPAL FIRE PERSONNEL.

- 3.2. "MUNICIPAL FIRE PERSONNEL" shall be defined to include: all uniformed, non-uniformed, civilian, command, volunteer, administrative, and/or supervisory personnel employed and/or contracted by the MUNICIPALITY to provide, supply, support, administer, or direct any fire or emergency related services and/or any persons acting by, through, under, or in concert with any of them; or any MUNICIPALITY official, officer, employee or agent whose job duties may include the receipt of any O.C.S.O. FIRE DISPATCH SERVICE.
 - 3.3. "COUNTY AGENT" shall be defined to include the SHERIFF and all COUNTY elected and appointed officials, commissioners, officers, boards, committees, commissions, departments, divisions, employees (including any SHERIFF'S DEPUTY), agents, predecessors, successors, or assigns, (whether such persons act or acted in their personal, representative, or official capacities), and all persons acting by, through, under, or in concert with any of them. COUNTY AGENT as defined in this Agreement shall also include any person who was a COUNTY AGENT at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in his/her previous capacity.
 - 3.4. "CLAIM" shall be defined to include any and all losses, complaints, demands for relief, damages, lawsuits, causes of action, proceedings, judgments, deficiencies, penalties, costs and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation, litigation expenses, amounts paid in settlement, and/or any other amount for which the COUNTY or COUNTY AGENT becomes legally and/or contractually obligated to pay, whether direct, indirect, or consequential, whether based upon any alleged violation of the constitution (federal or state), any statute, rule, regulation, or the common law, whether in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
4. The MUNICIPALITY agrees that under the terms of this Agreement, except for the FIRE DISPATCH SERVICE(S) expressly contracted for herein, that neither the O.C.S.O. nor any COUNTY AGENT(S) shall be obligated, in any other way, to provide or assist the MUNICIPALITY or any MUNICIPAL FIRE PERSONNEL with any other direct, indirect, backup or supplemental support or police, fire or emergency-related services or protection of any kind or nature whatsoever, or send COUNTY AGENT(S) to respond, in any way, to any call for FIRE PERSONNEL services.
 5. Under all circumstances, the MUNICIPALITY shall remain solely and exclusively responsible for all costs and/or liabilities associated with providing available on-duty MUNICIPAL FIRE PERSONNEL to receive and respond to FIRE DISPATCH SERVICE in a timely and professional manner.
 6. The MUNICIPALITY acknowledges that there may be circumstances when, despite all reasonable O.C.S.O. or COUNTY AGENT(S) efforts, an O.C.S.O. or COUNTY AGENT(S) attempt to communicate or provide FIRE DISPATCH SERVICES(S) for MUNICIPAL FIRE PERSONNEL may be unsuccessful and, as a result, FIRE PERSONNEL'S timely response to a call for FIRE PERSONNEL assistance may not be forthcoming.
 7. The MUNICIPALITY agrees that this Agreement does not, and is not intended to, include any O.C.S.O. warranty, promise, or guarantee of any kind or nature whatsoever concerning the provision of FIRE DISPATCH SERVICES(S) to the MUNICIPALITY except that the COUNTY will make a reasonable effort to provide FIRE DISPATCH SERVICE(S) for MUNICIPAL FIRE PERSONNEL consistent with existing O.C.S.O. communication and dispatch policies, procedures, orders and standards.

8. This Agreement does not, and is not intended to, obligate or require the O.C.S.O. to change, alter, modify, or develop any different O.C.S.O. dispatch related procedures, policies, and/or standards; purchase or use any special or additional equipment; or, alternatively, prohibit the O.C.S.O. from implementing any future communication-related changes that the O.C.S.O., in its sole judgment and discretion, believes to be in its best interest.
9. MUNICIPALITY shall be solely and exclusively responsible during the term of this Agreement for guaranteeing that: (a) all MUNICIPAL FIRE PERSONNEL radios and other communication equipment will be properly set, adjusted, and maintained to receive any FIRE DISPATCH SERVICE from the O.C.S.O. and/or COUNTY AGENT and will comply with all current and future applicable O.C.S.O. dispatching procedures, policies, standards, technical specifications, and/or any applicable state or federal communication requirements, including, but not limited, to all Federal Communications Commission orders, regulations, and policies; (b) all MUNICIPAL FIRE PERSONNEL will be adequately trained and will comply with all current and future applicable O.C.S.O. dispatching procedures, policies, standards, technical specifications and/or any applicable state or federal communication requirements, including, but not limited, to all Federal Communications Commission orders, regulations, and policies; and (c) the MUNICIPALITY and all MUNICIPAL FIRE PERSONNEL shall at all times promptly and properly notify the designated COUNTY AGENT of any on-duty or off-duty status and/or availability or unavailability of MUNICIPAL FIRE PERSONNEL to receive FIRE DISPATCH SERVICE from the O.C.S.O.
10. The MUNICIPALITY shall be solely and exclusively responsible for all costs, expenses and liabilities associated with the purchase, lease, operation, and/or use of any MUNICIPAL FIRE PERSONNEL radio or other communication equipment. The O.C.S.O. shall not be obligated to provide MUNICIPAL FIRE PERSONNEL with any radio or other communication equipment of any kind. MUNICIPALITY shall not be obligated under the terms of this Agreement to supply or provide the O.C.S.O. with any additional telephones, telephone lines, radios, other communications equipment, or property.
11. The O.C.S.O. may, at its sole discretion and expense, inspect any MUNICIPAL FIRE PERSONNEL radio or other communication equipment to ensure that it conforms with applicable O.C.S.O. dispatching procedures, policies, standards, technical specifications, and/or state and federal law. If the inspection reveals a lack of conformance, the O.C.S.O. shall notify the MUNICIPALITY in writing of the specific violations. The MUNICIPALITY shall address and correct such violations at its own expense within thirty (30) calendar days of receiving the written notice or present a written plan to O.C.S.O. within 15 calendar days setting forth a procedure for correcting the violations. If MUNICIPALITY fails to address and/or correct such violations within the time period set forth in this paragraph, the O.C.S.O. may terminate and/or cancel the Agreement.
12. In consideration of the COUNTY'S promises and efforts under this Agreement, MUNICIPALITY shall pay the COUNTY \$12,798.24 (Twelve Thousand Seven Hundred Ninety-Eight Dollars and Twenty-Four Cents) per month for the months of April 1, 2013 through March 31, 2014 and \$13,054.62 (Thirteen Thousand and Fifty-Four Dollars and Sixty-Two Cents) per month for the months of April 1, 2014 through March 31, 2015. Said payments shall be made as follows:
 - 12.1 The COUNTY shall send an invoice to the MUNICIPALITY on the first calendar day of each month for services rendered the previous month. The MUNICIPALITY shall have 30 days from the date of each invoice to make payment. For example, for services rendered in July of 2013, the COUNTY will bill the MUNICIPALITY on August 1, 2013 and the MUNICIPALITY shall pay the invoice within 30 days of the invoice date.
 - 12.2 All Monthly payments shall be due and payable by MUNICIPALITY without any further notice or demand from the COUNTY.
 - 12.3 Each monthly payment shall be made by a check drawn on a MUNICIPALITY account and shall be made payable to the County of Oakland and delivered to the attention of: Mr.

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Andy Meisner, Oakland County Treasurer, 1200 N. Telegraph Road, Pontiac, MI 48341-0479 (or such other person as the COUNTY may from time to time designate in writing).

- 12.4 Each payment shall clearly identify that it is a monthly payment being made pursuant to this Agreement and identify the calendar month for which MUNICIPALITY intended the payment to apply. The COUNTY, in its discretion, may apply any monthly payment received from MUNICIPALITY to any past due amount or monthly payment then due and owing to the COUNTY pursuant to this Agreement.
13. If the MUNICIPALITY, for any reason, fails to pay the COUNTY any monies when and as due under this Agreement, the MUNICIPALITY agrees that unless expressly prohibited by law, the COUNTY or the County Treasurer, at their sole option, shall be entitled to setoff from any other MUNICIPALITY funds that are in the COUNTY'S possession for any reason. Funds include but are not limited to the Delinquent Tax Revolving Fund ("DTRF"). Any setoff or retention of funds by the COUNTY shall be deemed a voluntary assignment of the amount by the MUNICIPALITY to the COUNTY. The MUNICIPALITY waives any CLAIMS against the COUNTY or its Officials for any acts related specifically to the COUNTY'S offsetting or retaining such amounts. This paragraph shall not limit the MUNICIPALITY'S legal right to dispute whether the underlying amount retained by the COUNTY was actually due and owing under this Agreement. If the COUNTY chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay the COUNTY any amounts due and owing the COUNTY under this Agreement, the COUNTY shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to the County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts an accumulated interest are fully paid. Nothing in this Section shall operate to limit the COUNTY'S right to pursue or exercise any other legal rights or remedies under this Agreement against MUNICIPALITY to secure reimbursement of amounts due the COUNTY under this Agreement. The remedies in this paragraph shall be available to the COUNTY on an ongoing and successive basis if MUNICIPALITY at any time becomes delinquent in its payments. Notwithstanding any other terms and conditions in this Agreement, if the COUNTY pursues any legal action in any court to secure its payment under this Agreement, the MUNICIPALITY agrees to pay all costs and expenses, including attorney's fees and court costs, incurred by the County in the collection of any amount owed by MUNICIPALITY.
14. The MUNICIPALITY agrees that all MUNICIPALITY representations, liabilities, payment obligations and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions or CLAIMS either occurring or having their basis in any events or transactions that occurred before the cancellation or expiration of this Agreement shall survive the cancellation or expiration of this Agreement. The parties agree that the expiration, cancellation, or termination of this Agreement shall be without prejudice to any rights or claims of either party against the other and shall not relieve either party of any obligations which, by their nature, survive expiration or termination of this Agreement.
15. Each party shall be responsible for any CLAIM made against that party and for the acts of its Employees or Agents.
16. In any CLAIM that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including any attorney fees.
17. Except as otherwise provided in this Agreement, neither Party shall have any right under any legal principle to be indemnified by the other Party or any of its employees or AGENTS in connection with any CLAIM.
18. 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 the

Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.

19. This Agreement does not, and is not intended to, create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, and/or right to be indemnified, or any other right of any kind in favor of any person, organization, alleged third party beneficiary, or any right to be contractually, legally, equitably or otherwise subrogated to any indemnification or any other rights provided under the terms of this Agreement.
20. Neither the COUNTY nor any COUNTY AGENT, by virtue of this Agreement or otherwise, shall be considered employees of the MUNICIPALITY. The COUNTY and/or any COUNTY AGENTS legal status and relationship to the MUNICIPALITY shall be that of an Independent Contractor. No MUNICIPAL FIRE PERSONNEL shall, by virtue of this Agreement or otherwise, be considered an employee, agent, or working under the supervision and control of the COUNTY and/or any COUNTY AGENT.
21. The MUNICIPALITY and the O.C.S.O. shall each remain the sole and exclusive employer of each of their respective employees. The MUNICIPALITY and COUNTY each agree to remain solely and exclusively responsible for the payment of each of their respective employees' wages, compensation, overtime wages, expenses, fringe benefits, pension, retirement benefits, training expenses, or other allowances or reimbursements of any kind, including, but not limited to, workers' disability compensation, unemployment compensation, Social Security Act protection and benefits, employment taxes, or any other statutory or contractual right or benefit based, in any way, upon employment.
22. This Agreement does not, and is not it intended to, create, change, modify, supplement, supersede, or otherwise affect or control, in any manner, any term or condition of employment of any COUNTY AGENT, or any applicable O.C.S.O. employment and/or union contract, any level or amount of supervision, any standard of performance, any sequence or manner of performance, and/or any O.C.S.O. rule, regulation, training and education standard, hours of work, shift assignment, order, policies, procedure, directive, ethical guideline, etc., which shall solely and exclusively, govern and control the employment relationship between the O.C.S.O. and/or all conduct and actions of any COUNTY AGENT.
23. Neither the MUNICIPALITY nor any MUNICIPAL FIRE PERSONNEL shall provide, furnish or assign any COUNTY AGENT with any job instructions, job descriptions, job specifications, or job duties, or, in any manner, attempt to control, supervise, train, or direct any COUNTY AGENT in the performance of any COUNTY duty or obligation under the terms of this Agreement.
24. The MUNICIPALITY shall promptly deliver to the O.C.S.O. written notice and copies of any CLAIM, accusation or allegation of negligence or other wrongdoing, whether civil or criminal in nature, that the MUNICIPALITY becomes aware of which involves, in any way, the O.C.S.O. or any COUNTY AGENT. The MUNICIPALITY shall cooperate with the O.C.S.O. in any investigation conducted by the SHERIFF of any act or performance of any duties by any COUNTY AGENT.
25. Subject to the following Paragraph, and unless canceled as provided for in this Paragraph, this Agreement shall become effective during the month specified in paragraph 12 , and shall remain in effect continuously until it expires, without any further act or notice being required of any party, at 11:59 P.M. on March 31, 2015. This Agreement may be cancelled for any reason, including the convenience of any Party, and without any penalty, before its March 31, 2015 expiration by delivering a written notice of the cancellation to the other signatories to this Agreement, or their successors in office. Such written notice shall provide at least ninety (90) calendar day notice of the effective date of cancellation, and such cancellation of this Agreement shall be effective at 11:59 P.M. on the last calendar day of the calendar month following the expiration of the 90 calendar day notice period. If this Agreement is terminated for any reason, the MUNICIPALITY will fully reimburse the COUNTY for all direct and indirect labor costs incurred by the COUNTY as a result of the Agreement's termination.

Such costs include, but are not limited to, unemployment compensation claims made by COUNTY employees hired by the COUNTY to fulfill the terms of this Agreement.

26. This Agreement, and any subsequent amendments, shall not become effective prior to approval by resolution of the COUNTY Board of Commissioners and the MUNICIPALITY'S Governing Body. The approval and terms of this Agreement shall be entered into the official minutes and proceedings of the COUNTY Board of Commissioners and MUNICIPALITY Council and shall also be filed with the Office of the Clerk for the COUNTY and the MUNICIPALITY Clerk. In addition, this Agreement, and any subsequent amendments, shall be filed by a designated COUNTY AGENT with the Secretary of State for the State of Michigan and shall not become effective prior to the filing of this Agreement with the Secretary of State.
27. Any signatory or any signatories' successor in office to this Agreement shall send, by first class mail, any correspondence and written notices required or permitted by this Agreement to each of the signatories of this Agreement, or any signatories' successor in office, to the addresses shown in this Agreement. Any written notice required or permitted under this Agreement shall be considered delivered to a party as of the date that such notice is deposited, with sufficient postage, with the U.S. Postal Service.
28. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole, according to its fair meaning, and not construed strictly for or against any Party. As used in this Agreement, the singular or plural number, possessive or non-possessive, shall be deemed to include the other whenever the context so suggests or requires.
29. Absent an express written waiver, the failure of any party to pursue any right granted under this Agreement shall not be deemed a waiver of that right regarding any existing or subsequent breach or default under this Agreement. No failure or delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.
30. The COUNTY and MUNICIPALITY acknowledge that this Agreement shall be binding upon them and, to the extent permitted by law, upon their administrators, representatives, executors, successors and assigns, and all persons acting by, through, under, or in concert with any of them.
31. This Agreement sets forth the entire contract and understanding between the COUNTY and MUNICIPALITY and fully supersedes any and all prior contracts, agreements or understandings between them in any way related to the subject matter hereof after the effective date of this Agreement shall remain effective and enforceable for any CLAIM arising or occurring during any prior contract period. This Agreement shall not be changed or supplemented orally. This Agreement may be amended only by concurrent resolutions of the COUNTY Board of Commissioners and MUNICIPALITY Governing Body in accordance with the procedures set forth herein.
32. Each Party shall comply with all federal, state, and local statutes, ordinances, regulations, administrative rules, requirements applicable to its activities performed under this Agreement.
33. 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.
34. This Agreement, consisting of seven (7) pages, sets forth the entire contract and understanding between the COUNTY and the MUNICIPALITY and fully supersedes any and all prior contracts, agreements or over any actual or apparent conflict with any term of condition in such a contract. It is further understood and agreed that the terms of this Agreement are contractual and are not a mere recital and that there are no other contracts, understandings, or representations between the

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COUNTY and the MUNICIPALITY in any way related to the subject matter hereof, except as expressly stated herein. This Agreement shall not be changed or supplemented orally. This Agreement may be amended only by concurrent resolutions of the COUNTY Board of Commissioners and the MUNICIPALITY governing body in accordance with the procedures set forth herein.

35. For and in consideration of the mutual promises, acknowledgments, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the COUNTY and the MUNICIPALITY hereby agree and promise to be bound by the terms and provisions of this Agreement.

IN WITNESS WHEREOF, Bryan K. Barnett, Mayor of the City of Rochester Hills, hereby acknowledges that he or she has been authorized by resolution of the Rochester Hills City Council (a certified copy of which is attached) to execute this Agreement on behalf of the City and hereby accepts and binds the City to the terms and conditions of this Agreement on this _____ day of _____, 2013.

WITNESS:

THE CITY OF ROCHESTER HILLS,
a Michigan Municipal Corporation

BY: _____
BRYAN K. BARNETT
Mayor

BY: _____
JANE LESLIE
Clerk

IN WITNESS WHEREOF, Michael Gingell, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners (a certified copy of which is attached) to execute this amendment to the Current Agreement on behalf of the COUNTY OF OAKLAND and hereby accepts and binds the COUNTY OF OAKLAND to the terms and conditions of this Agreement on this _____ day of _____, 2013.

WITNESS:

COUNTY OF OAKLAND, a Michigan
Municipal Corporation

BY: _____
Michael Gingell, Chairperson
Oakland County Board of Commissioner

IN WITNESS WHEREOF, MICHAEL J. BOUCHARD, in his official capacity as the OAKLAND COUNTY SHERIFF, a Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this Agreement on this ____ day of _____, 2013.

WITNESS:

OAKLAND COUNTY SHERIFF, a Michigan
Constitutional Officer

BY: _____
MICHAEL J. BOUCHARD,
Oakland County Sheriff