

**OAKLAND COUNTY DRAIN COMMISSIONER'S
CONTRACT FOR STORM WATER MANAGEMENT
SERVICES WITH THE CITY OF ROCHESTER HILLS**

This CONTRACT (hereafter, this "Contract") is made and entered into between the **COUNTY OF OAKLAND**, a Michigan Constitutional and Municipal Corporation, whose address is 1200 North Telegraph Road, Michigan 48341 (hereafter, the "County"), by and through its Drain Commissioner and the **CITY OF ROCHESTER HILLS**, a Michigan Municipal Corporation whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033 (hereafter, the "Municipality"). In this Contract, either the County and/or the Municipality may also be referred to individually as a "Party" or jointly as "Parties."

WHEREAS, the County of Wayne through the Rouge River National Wet Weather Demonstration Project has offered technical assistance and federal grants to local government entities for addressing and improving the water quality and recreational use of the Rouge River; and,

WHEREAS, implementation of the National Pollutant Discharge Elimination System ("NPDES") General Stormwater Discharge Permit for Storm Water Discharges from Separate Storm Water Drainage Systems (Permit No. MIG610000) ("Storm Water General Permit") issued by the State of Michigan will further the goal to improve water quality and recreational use of the Rouge River; and,

WHEREAS, illicit discharge elimination, public education and subwatershed management planning are considered examples of the types of activities required by the Storm Water General Permit which will assist in restoring the water quality of the Rouge River; and,

WHEREAS, the Oakland County Drain Commissioner is actively participating in the implementation of the Storm Water General Permit issued by the State of Michigan for the County of Oakland; and,

WHEREAS, pursuant to Miscellaneous Resolutions #02162 and #02163, the County applied for, and was awarded, federal grant funding not exceeding a total of \$103,995 (Main 1-2 Stormwater Detention Pond Inventory Project \$54,350 grant and Main 1-2 Stream Bank Inventory Project \$49,645 grant) from the County of Wayne via United States Environmental Protection Agency (USEPA), to implement inventory of detention ponds and stream banks; and,

WHEREAS, in order to comply with the federal grant funding requirements and objectives, the County of Oakland was required to enter into an Inter-Agency Agreement ("IAA") with the County of Wayne, and further, agreed to comply with certain administrative procedures; and,

WHEREAS, said grant, among other things, requires a minimum 50% match in funds from local municipalities; and,

WHEREAS, the Drain Commissioner is prepared to administer the Detention Pond Inventory and Streambank Inventory Projects, in accordance with the grant conditions; and,

WHEREAS, the Municipality has requested the Oakland County Drain Commissioner for assistance in administering this Grant as outlined in the attached Scope of Services and has agreed in return to reimburse the County as provided for in this Contract; and,

WHEREAS, the Oakland County Drain Commissioner has determined, at the present time, that it has sufficient personnel or consultants as defined herein, possessing the requisite knowledge and expertise and is agreeable to assisting the Municipality by providing the requested services under the terms and conditions of this Contract; and,

WHEREAS, the Parties recognize and agree that absent an agreement such as this, the County has no obligation to provide these services or grant funding to or for the Municipality.

NOW, THEREFORE, in consideration of these premises and the mutual promises, representations, and agreements set forth in this Contract, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the County and the Municipality mutually agree as follows:

ARTICLE I. DEFINED TERMS. In addition to the above defined terms (i.e., "Contract", "County", "Municipality", "Party" and "Parties"), the Parties agree that the following words and expressions, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall, be defined and interpreted as follows:

- 1.1 "Consultant" - shall be defined as an independent contractor engaged by the County to perform any services necessary to carry out the objectives under this agreement.
- 1.2 "County Agent" or "County Agents" shall be defined as any and all Oakland County elected officials, appointed officials, directors, board members, council members, commissioners, authorities, other boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, and/or any such persons' successors or predecessors, agents, employees, attorneys, or auditors (whether such persons act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them, excluding the Municipality and/or any Municipality Agents, as defined herein.

- 1.3 "OCDC Personnel" as used in this Contract shall be defined as a specific subset of, and included as part of the larger group of County Agents as defined above, and shall be further defined as any and all County Agents specifically employed and assigned by the County to work in the Office of the Oakland County Drain Commissioner as shown in the current County budget and/or personnel records of the County.
- 1.4 "Municipality Agent" or "Municipality Agents", shall be defined to include any and all Municipality officers, elected officials, appointed officials, directors, board members, council members, authorities, boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, and/or any such persons' successors or predecessors, agents, employees, attorneys, or auditors (whether such persons act or acted in their personal, representative, or official capacities), and/or any and all persons acting by, through, under, or in concert with any of them, except that no County Agent shall be deemed a Municipality Agent and conversely, no Municipality Agent shall be deemed a County Agent.
- 1.5 "Claim(s)" shall be defined to include any and all alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation costs and expenses, including, but not limited to, any reimbursement for reasonable attorney fees, witness fees, court costs, investigation and/or litigation expenses, any amounts paid in settlement, and/or any other amounts, liabilities or Claim(s) of any kind whatsoever which are imposed on, incurred by, or asserted against either the County and/or any County Agent, as defined herein, or any Claim(s) for which the County and/or any County Agent may become legally and/or contractually obligated to pay or defend against, or any other liabilities of any kind whatsoever, 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 and arising out of any alleged breach of any duty by the County and/or any County Agent to any third-person, the Municipality, including any Municipality Agent under or in connection with this Contract or are based on or result in any way from the County's and/or any County Agent's participation in this Contract.
- 1.6 "State" shall be defined as the "State of Michigan," a sovereign governmental entity of the United States, and shall also include within its definition any and all departments or agencies of State government including specifically, but not limited to, the Michigan Department of Environmental Quality ("MDEQ").

ARTICLE II. OAKLAND COUNTY DRAIN COMMISSIONER'S STORM WATER MANAGEMENT SERVICES. The Parties agree that the full and complete scope of storm water management services shall be as described in attached Exhibit "A"

and limited in the following subsections (hereinafter defined and referred to as either “OCDC storm water management services” or services).

2.1 PURPOSE OF “SERVICES” The Parties agree that the purpose of any and all “OCDC storm water management services” or “Services” to be performed under this Contract shall be to assist (e.g., to help, aid, lend support, and/or participate in as an auxiliary, to contribute effort toward completion of a goal, etc.) the Municipality in the performance of Municipality's official functions, obligations, and Municipality's legal responsibilities relating to the Storm Water General Permit and fulfillment of the state and federal environmental laws and regulations.

2.2 MANNER COUNTY TO PROVIDE SERVICES. The Parties agree that any and all “OCDC storm water management services” or “Services” to be provided by the County for the Municipality under this Contract shall be performed by the County's “OCDC Personnel” or consultants as defined herein.

2.2.1 OCDC Personnel or consultants shall be employed and assigned by the County in such numbers and based on such appropriate qualifications and other factors as decided solely by the County.

2.2.2 The Parties agree that the County shall be solely and exclusively responsible for furnishing all OCDC Personnel and consultants with all job instructions, job descriptions and job specifications and shall in all circumstances control, supervise, train or direct all OCDC Personnel in the performance of any and all Services under this Contract.

2.2.3 Except as otherwise expressly provided for herein, the Parties agree and warrant that, at all times and for all purposes relevant to this Contract, the County shall remain the sole and exclusive employer of all County Agents and OCDC Personnel.

2.2.4 This Contract is neither intended, nor shall it be interpreted, to create, change, grant, modify, supplement, supersede, alter, or otherwise affect or control, in any manner, form, or at any time, any right, privilege, benefit, or any other term or condition of employment, of any kind or nature whatsoever, in, upon, or for any County Agent or OCDC Personnel with the County, any applicable County employment and/or union contract, and/or any County rule(s), regulation(s), hours of work, shift assignment, order(s), policy(ies), procedure(s), directive(s), ethical guideline(s), etc., which shall, solely and exclusively, govern and control the employment relationship between the County and any County Agent or OCDC Personnel and/or the conduct and actions of any County Agent or any OCDC Personnel.

- 2.2.5 The Municipality agrees that except as expressly provided for under the terms of this Contract and/or laws of this State, no County Agent or OCDC Personnel, while such person is currently and/or actively employed or otherwise remains on the payroll of the County as a County Agent shall be employed, utilized, or perform any other services, of any kind, directly or indirectly, in any manner or capacity, or otherwise be available to perform any other work or assignments by or for the Municipality during the term of this Contract. This section shall not prohibit the Municipality from employing any person who was a former County Agent but is no longer employed in that capacity by the County.
- 2.2.6 Except as otherwise expressly provided by the Contract and/or applicable State law, the Parties agree and warrant that neither the County, nor any County Agent, nor any OCDC Personnel, by virtue of this Contract or otherwise, shall be deemed, considered or claimed to be an employee of the Municipality and/or a Municipality Agent.
- 2.2.7 The Municipality shall not otherwise provide, furnish or assign any OCDC Personnel with any job instructions, job descriptions, job specifications, or job duties, or in any manner attempt to control, supervise, train, or direct any OCDC Personnel in the performance of any OCDC Storm Water Management Service duty or obligation under the terms of this Contract.
- 2.3 LIMITS AND EXCLUSIONS ON COUNTY "SERVICES". Except as otherwise expressly provided for within the attached Scope of Services, neither the County nor any County Agents or consultants shall be responsible for assisting or providing any other services or assistance to the Municipality or assume any additional responsibility for assisting the Municipality in any other way or manner with any Municipality obligations under any and all State or Federal laws or regulations.

ARTICLE III. TERM OF CONTRACT. The Parties agree that the term of this Contract shall begin on the effective date of this Contract. This Contract, unless extended by mutual written agreement, shall expire within 90 days written notice by either party or written agreement of parties prior to 90 days. Any and all OCDC Storm Water Services otherwise provided to the Municipality prior to the effective date of this Contract shall be subject to the terms and conditions in this Contract.

ARTICLE IV. BUDGET AND PAYMENT SCHEDULE. The parties acknowledge that this agreement is expected to be funded in part from federal grant funding from the United States Environmental Protection Agency ("USEPA"). The Municipality's total budget for the services outlined in the attached Scope of Services is **\$22,980.00** for Detention Pond Inventory and **\$0.00** for Streambank Inventory for a grand total of **\$22,980.00**.

The internal distribution of USEPA grant funding by County for the Municipality's Detention Pond Inventory shall not exceed **\$8,559.00**; and for the Streambank Inventory shall not exceed **\$0.00**.

The Municipality shall provide a minimum matching costs: **\$14,421.00** for Detention Pond Inventory and **\$0.00** for Streambank Inventory.

- 4.1 In consideration of the promises set forth in this Contract, the Municipality agrees to pay to the County **\$14,421.00** for services outlined in the scope of services attached as Exhibit "A". This payment shall be made to Oakland County Fiscal Services no later than February 23, 2004.
 - 4.1.1 The parties acknowledge that Municipal payment obligations set forth in paragraph 4.1 are premised upon the assumption that a total of ten (10) municipalities will enter into identical Interlocal Agreements with the County. If, however, one or more Municipalities elect not to participate, the Municipalities payment obligations under paragraph 4.1 may increase. If such an increase occurs, the County will provide written notice to the Municipality of the projected increase. The Municipality will have ten days from the date of this notice to terminate this agreement due to such increased payment obligations. The County reserves the right to unilaterally cancel this Agreement if it determines, in its sole discretion, that the number of participating municipalities is too small to economically support the cost of this program.
- 4.2 If, during the term of this Contract, there are additional services requested of the County, the Parties shall negotiate additional fees to be paid by the Municipality.
- 4.3 The Municipality understands and agrees that the County has no funds other than the USEPA grant funds to pay for services under this agreement. All costs other than USEPA funds associated with these services under this agreement will be the responsibility of the Municipality.
- 4.4 The Municipality shall be responsible and pay for any cost for services authorized by the Municipality, which exceed the total budget described herein.
- 4.5 The Municipality further agrees that if there is any amount due and owing to the County under this Contract, which is still unpaid at the time the County distributes funds to the Municipality from the Delinquent Tax Revolving Fund (DTRF), the County shall be entitled to reduce, set-off, and permanently retain any amount due to the municipality from Delinquent Tax Revolving Fund (DTRF) by any such amount then still due and owing the County pursuant to this Contract.

ARTICLE V. NO TRANSFER OF MUNICIPALITY LEGAL OBLIGATIONS TO COUNTY. Except as expressly provided for in this Contract, the Municipality agrees that this Contract does not, and is not intended to, transfer, delegate, or assign to the County, and/or any County Agent or OCDC Personnel 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 the Municipality under any applicable State or Federal laws or regulations.

ARTICLE VI. NO DELEGATION OR DIMINUTION OF ANY GOVERNMENTAL AUTHORITY. The Parties reserve to themselves any rights and obligations related to the provision of any and all of each Party's respective governmental services, authority, responsibilities, and obligations. Except as expressly provided otherwise herein, this Contract does not, and is not intended to, create, diminish, delegate, transfer, assign, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, civil or legal responsibility, obligation, duty of care, liability, capacity, immunity, authority or character of office of either the Party to any other person or Party.

6.1 The Parties further agree, notwithstanding any other term or condition in this Contract, that no provision in this Contract is intended, nor shall it be construed, as a waiver of any governmental immunity, as provided by statute or applicable court decisions, by either Party, either for that Party and/or any of that Party's County or Municipal Agents.

ARTICLE VII. LIABILITY. The Municipality further agrees that the County shall not be liable to the Municipality for any and all Claim(s), except as otherwise expressly provided for in this Contract.

7.1 The Parties agree that this Contract does not and is not intended to create or include any County warranty, promise, covenant or guaranty, either express or implied, of any kind or nature whatsoever in favor of the other Municipality, and/or any Municipality Agents, or any other person or entity, or that the County's efforts in the performance of any obligation under this Contract will result in satisfying the Municipality's obligations and requirements under the General Storm Water Permit, or obligations under State and Federal law and regulations.

ARTICLE VIII. INDEMNIFICATION. The Municipality shall not be obligated to pay any portion of any court ordered judgment or award to a third party for which a court has determined that the County and/or any County Agent was solely negligent or at fault. However, the Municipality agrees to, indemnify, defend and hold harmless the County and/or any County Agent from any Claims, loss or damage connected to or resulting from any work done by the Municipality and/or any Municipality Agent under

this Agreement, unless such loss or damage is caused by the Municipality and/or Municipality Agents following direct instructions from County Agents.

ARTICLE IX. MUNICIPALITY AGENTS AND COOPERATION WITH THE COUNTY. The Municipality agrees that it shall be solely and exclusively responsible, during the term of this Contract, for guaranteeing that all Municipality Agents fully cooperate with OCDC Personnel in the performance of all Services under this Contract.

Municipality shall use its best efforts to obtain and secure the right of access to all public and private property necessary for OCDC personnel or consultants to perform the services outlined in the attached Scope of Services. Municipality shall be responsible for all costs or claims associated with securing rights of access to public or private property. The Municipality reserves the right to not secure a right of access where the Municipality determines, in its sole discretion, that obtaining the right of access is cost prohibitive.

9.1 To the extent necessary in satisfying the conditions of this contract, the Municipality shall employ and assign qualified Municipality Agents, as necessary and appropriate to provide for any and all of Municipality's legal obligations under the General Storm Water Permit and/or applicable State and Federal laws and regulations. Municipality Agents shall be employed and assigned based on appropriate qualifications and other factors as decided by the Municipality. The Municipality agrees that it shall be solely responsible for furnishing all Municipality Agents with all job instructions, job descriptions and job specifications and shall solely control, direct, and supervise all Municipality Agents and shall be solely responsible for the means and manner in which Municipality's duties or obligations under General Storm Water Permit and/or applicable State and Federal laws and regulations are satisfied.

9.2 The Municipality agrees that no County employee, agent, or consultant shall, by virtue of this Contract or otherwise, be considered to be an employee of the County and/or a County Agent. This Contract does not grant or confer, and shall not be interpreted to grant or confer, upon any Municipal agent or employee the status, privilege, right or benefit of County employment or that of a County agent.

ARTICLE X. INDEPENDENT CONTRACTOR. The Parties agree that at all times and for all purposes under the terms of this Contract, the County's and/or any and all County Agents' legal status and relationship to the Municipality shall be that of an Independent Contractor. Except as expressly provided herein, each Party will be solely responsible for the acts of its own employees, Agents, and servants during the term of this Contract. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Contract.

ARTICLE XI. COUNTY PRIORITIZATION OF COUNTY RESOURCES. The Municipality acknowledges and agrees that this Contract does not, and is not

intended to, create either any absolute right in favor of the Municipality, or any correspondent absolute duty or obligation upon the County, to guarantee that any specific number(s) or classification of County Agents will be present on any given day to provide County services to the Municipality.

ARTICLE XII. CANCELLATION OR TERMINATION OF THIS CONTRACT. Except as follows, and notwithstanding any other term or provision in any other section of this Contract, either Party, upon a minimum of ninety (90) calendar days written notice to the other Party, may cancel and/or completely terminate this Contract for any reason, including convenience, without incurring any penalty, expense, or liability to the other Party. The effective date for any such termination is to be clearly stated in the notice.

12.1 At 5:00 p.m. on the effective date of the cancellation of this Contract all Municipality and/or County obligations under this Contract, except those rights and obligations expressly surviving cancellation as provided for in this Contract, shall end.

12.2 The Municipality agrees that any and all Municipality obligations, including, but not limited to, any and all indemnification and hold harmless promises, waivers of liability, record-keeping requirements, any Municipality payment obligations to the County, and/or any other related obligations provided for in this Contract with regard to any acts, occurrences, events, transactions, or Claim(s) either occurring or having their basis in any events or transactions that occurred before the cancellation or completion of this Contract, shall survive the cancellation or completion of this Contract.

ARTICLE XIII. EFFECTIVE DATE, CONTRACT APPROVAL, AND AMENDMENT. The Parties agree that this Contract, and/or any subsequent amendments thereto, shall not become effective prior to the approval by concurrent resolutions of both the Oakland County Board of Commissioners and the Council for the City of Rochester Hills. The approval and terms of this Contract, and/or any possible subsequent amendments thereto, shall be entered in the official minutes and proceedings of both the Oakland County Board of Commissioners and the Council for the City of Rochester Hills and shall also be filed with the office of the Clerk of the County and the Clerk for the City of Rochester Hills.

ARTICLE XIV. COMPLIANCE WITH "URBAN COOPERATION ACT OF 1967". Pursuant to section 10(4) of the Urban Cooperation Act of 1967, as amended, being MCL 124.510(4), the Parties agree that this Contract, and/or any possible subsequent amendments, shall be filed with the Michigan Secretary of State and this Contract, and/or any possible subsequent amendments, shall not become effective prior to this required filing with the Secretary of State.

ARTICLE XV. GOVERNING LAW. This Contract 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 Contract 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 Contract, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.

ARTICLE XVI. CAPTIONS. The section headings or titles and/or all section numbers contained in this Contract are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Contract.

ARTICLE XVII. NOTICES. Except as otherwise expressly provided for herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Contract to be delivered to either Party shall be sent to that Party by first class mail. All such written notices, including any notice canceling or terminating this Contract as provided for herein, shall be sent to the other Party's signatory to this Contract, or that signatory's successor in office, at the addresses shown in this Contract. All correspondence or written notices 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.

ARTICLE XVIII. ENTIRE CONTRACT. This Contract sets forth the entire agreement between the County and the Municipality and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the County and the Municipality in any way related to the subject matter hereof, except as expressly stated herein. This Contract shall not be changed or supplemented orally and may be amended only as otherwise provided herein.

FOR AND IN CONSIDERATION of the mutual assurances, promises, acknowledgments, warrants, representations, and agreements set forth in this Contract, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned hereby execute this Contract on behalf of the Parties, and by doing so legally obligate and bind the Parties to the terms and conditions of this Contract.

IN WITNESS WHEREOF, _____, _____ of the City of Rochester Hills, hereby acknowledges that he has been authorized by a resolution of the Council for the City of Rochester Hills, a certified copy of which is attached, to execute this Contract on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Contract.

EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____
_____, Clerk
City of Rochester Hills

IN WITNESS WHEREOF, _____, 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 Contract on behalf of the Oakland County, and hereby accepts and binds the Oakland County to the terms and conditions of this Contract.

EXECUTED: _____ DATE: _____

Chairperson, Oakland County
Board of Commissioners

WITNESSED: _____ DATE: _____
G. William Caddell,
County of Oakland Clerk/Register of Deeds