

**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 48309-3033 ("CITY OF ROCHESTER HILLS"). 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 CITY OF ROCHESTER HILLS 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, CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS; and

WHEREAS, the COUNTY and CITY OF ROCHESTER HILLS may enter into an contract by which the O.C.S.O. would provide FIRE DISPATCH SERVICE for CITY OF ROCHESTER HILLS; and

WHEREAS, the CITY OF ROCHESTER HILLS 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 "CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS FIRE PERSONNEL.
2. 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:
 - 2.1. "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 presence, attention, or services of any CITY OF ROCHESTER HILLS 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,

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fire, and/or health), which results in any O.C.S.O. or COUNTY AGENT radio communication, or any attempted radio communication to any CITY OF ROCHESTER HILLS FIRE PERSONNEL.

- 2.2. "CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS official, officer, employee or agent whose job duties may include the receipt of any O.C.S.O. FIRE DISPATCH SERVICE.
- 2.3. "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.
- 2.4. "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.
3. Except for the FIRE DISPATCH SERVICE expressly contracted for herein, the O.C.S.O. and/or any COUNTY AGENT shall not be obligated to provide or assist CITY OF ROCHESTER HILLS or any CITY OF ROCHESTER HILLS FIRE PERSONNEL with any other direct, indirect, backup, or supplemental support or fire-related service or protection, of any kind or nature, or be obligated to send any COUNTY AGENT to respond, in any way, to any call for CITY OF ROCHESTER HILLS FIRE PERSONNEL services.
4. Under all circumstances, CITY OF ROCHESTER HILLS shall remain solely and exclusively responsible for all costs and/or liabilities associated with providing available on-duty CITY OF ROCHESTER HILLS FIRE PERSONNEL to receive and respond to FIRE DISPATCH SERVICE in a timely and professional manner.
5. This Agreement does not, and is not intended to, include any O.C.S.O. warranty, promise, or guaranty, of any kind or nature, concerning the performance of FIRE DISPATCH SERVICE to the CITY OF ROCHESTER HILLS except that O.C.S.O. will make a reasonable effort to provide FIRE DISPATCH SERVICE for CITY OF ROCHESTER HILLS FIRE PERSONNEL consistent with existing O.C.S.O. dispatching procedures, policies, and/or standards.
6. 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.
7. CITY OF ROCHESTER HILLS shall be solely and exclusively responsible, during the term of this Agreement, for guaranteeing that: (a) all CITY OF ROCHESTER HILLS FIRE PERSONNEL

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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 CITY OF ROCHESTER HILLS 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) CITY OF ROCHESTER HILLS and all CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS FIRE PERSONNEL to receive FIRE DISPATCH SERVICE from the O.C.S.O.

8. CITY OF ROCHESTER HILLS shall be solely and exclusively responsible for all costs, expenses and liabilities associated with the purchase, lease, operation, and/or use of any CITY OF ROCHESTER HILLS FIRE PERSONNEL radio or other communication equipment. The O.C.S.O. shall not be obligated to provide CITY OF ROCHESTER HILLS FIRE PERSONNEL with any radio or other communication equipment of any kind. CITY OF ROCHESTER HILLS 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.
9. The O.C.S.O. may, at its sole discretion and expense, inspect any CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS in writing of the specific violations. CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS 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.
10. In consideration of the COUNTY'S promises and efforts under this Agreement, CITY OF ROCHESTER HILLS shall pay the COUNTY \$9,677.23 (Nine Thousand Six Hundred Seventy Seven Dollars and Twenty Three Cents) per month for the months of April 1, 2010 through March 31, 2011, \$9,968.84 (Nine Thousand Nine Hundred Sixty Eight Dollars and Eighty Four Cents) per month for the months of April 1, 2011 through March 31, 2012 and \$10,468.74 (Ten Thousand, Four Hundred Sixty Eight and Seventy Four cents) per month for the months of April 1, 2012 through March 31, 2013. Said payments shall be made as follows:
 - 10.1 Each monthly payment shall be due and payable no later than the 15th calendar day of each calendar month starting on the 15th calendar day after this Agreement takes effect and continuing each calendar month thereafter.
 - 10.2 All Monthly payments shall be due and payable by CITY OF ROCHESTER HILLS without any further notice or demand from the COUNTY.
 - 10.3 Each monthly payment shall be made by a check drawn on a CITY OF ROCHESTER HILLS account and shall be made payable to the County of Oakland and delivered to the attention of: Oakland County Treasurer, 1200 N. Telegraph Road, Pontiac, MI 48341-0479, or in any manner directed by the County.
 - 10.4 Each payment shall clearly identify that it is a monthly payment being made pursuant to this Agreement and identify the calendar month for which CITY OF ROCHESTER HILLS

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intended the payment to apply. The COUNTY, in its discretion, may apply any monthly payment received from CITY OF ROCHESTER HILLS to any past due amount or monthly payment then due and owing to the COUNTY pursuant to this Agreement.

11. All payment obligations in this Agreement shall be absolute and unconditional and shall not be subject to any set-off, defense, counterclaim, or recoupment for any reason by CITY OF ROCHESTER HILLS. To the maximum extent provided by law, if there is any amount past due under this Agreement, the County has the right to set-off that amount from any amount due to CITY OF ROCHESTER HILLS from the County, including, but not limited to, distributions from the Delinquent Tax Revolving Fund (DTRF).
12. Notwithstanding any other provision in this Agreement, with regard to any actual or alleged 'CLAIM' (as defined above), the parties agree that neither one shall have any rights under this Agreement or any other legal theory or principle (i.e. legal, equitable, or implied indemnification, contribution, subrogation, or other similar right) to be indemnified or reimbursed by the other party of any of its agents for any such "Claims".
13. Nothing in this Agreement is intended, nor shall it operate, to diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity or character of office including, but not limited to, governmental immunity on behalf of either Party or any of its agents.
14. 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.
15. Neither the COUNTY nor any COUNTY AGENT, by virtue of this Agreement or otherwise, shall be considered employees of ROCHESTER HILLS. The COUNTY and/or any COUNTY AGENTS legal status and relationship to CITY OF ROCHESTER HILLS shall be that of an Independent Contractor. No CITY OF ROCHESTER HILLS 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.
16. CITY OF ROCHESTER HILLS and the O.C.S.O. shall each remain the sole and exclusive employer of each of their respective employees. CITY OF ROCHESTER HILLS and the 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.
17. 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.
18. Neither CITY OF ROCHESTER HILLS nor any CITY OF ROCHESTER HILLS 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.

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19. CITY OF ROCHESTER HILLS 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 CITY OF ROCHESTER HILLS becomes aware of which involves, in any way, the O.C.S.O. or any COUNTY AGENT. CITY OF ROCHESTER HILLS 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.
20. Subject to the following Paragraph, and unless canceled as provided for in this Paragraph, this Agreement shall become effective on upon execution by both parties, 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, 2013. This Agreement may be cancelled for any reason, including the convenience of any Party, and without any penalty, before its March 31, 2013 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 a ninety (90) calendar days 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.
21. This Agreement, and any subsequent amendments, shall not become effective prior to the approval by concurrent resolutions of the COUNTY Board of Commissioners and the CITY OF ROCHESTER HILLS City Council. The approval and terms of this Agreement shall be entered into the official minutes and proceedings of the COUNTY Board of Commissioners and CITY OF ROCHESTER HILLS City Council and shall also be filed with the Office of the Clerk for the COUNTY and the CITY OF ROCHESTER HILLS 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.
22. 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.
23. 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.
24. 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.
25. The COUNTY and CITY OF ROCHESTER HILLS 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.
26. This Agreement sets forth the entire contract and understanding between the COUNTY and CITY OF ROCHESTER HILLS 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

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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 CITY OF ROCHESTER HILLS City Council in accordance with the procedures set forth herein.

- 27. Each Party shall comply with all federal, state, and local statutes, ordinances, regulations, administrative rules, requirements applicable to its activities performed under this Agreement.
- 28. 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.
- 29. 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.
- 30. 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 CITY OF ROCHESTER HILLS hereby agree and promise to be bound by the terms and provisions of this Agreement.

IN WITNESS WHEREOF, Bryan K. Barnett, Mayor, CITY OF ROCHESTER HILLS, hereby acknowledges that he has been authorized by a resolution of the CITY OF ROCHESTER HILLS City Council (a certified copy of which is attached) to execute this Agreement on behalf of CITY OF ROCHESTER HILLS and hereby accepts and binds CITY OF ROCHESTER HILLS to the terms and conditions of this Agreement on this _____ day of _____ 2010.

WITNESS:

THE CITY OF ROCHESTER HILLS,
a Michigan Municipal Corporation

BY: _____
BRYAN K. BARNETT
Mayor

IN WITNESS WHEREOF, BILL BULLARD, 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 _____, 2010.

WITNESS:

COUNTY OF OAKLAND, a Michigan
Municipal Corporation

BY: _____
BILL BULLARD, Jr.
Chairperson, Oakland County Board of
Commissioners

IN WITNESS WHEREOF, MICHAEL J. BOUCHARD, in his official capacity as the OAKLAND COUNTY SHERIFF, a Michigan Constitutional Officer, hereby concurs and accepts the terms and conditions of this Agreement on this _____ day of _____, 2010.

WITNESS:

OAKLAND COUNTY SHERIFF, a Michigan Constitutional Officer

BY:

MICHAEL J. BOUCHARD,
Oakland County Sheriff