

INTERLOCAL SERVICE AGREEMENT
BETWEEN CITIES OF ROCHESTER HILLS
AND ROCHESTER FOR PUBLIC WORKS SERVICES

This Interlocal Service Agreement dated, this ____ day of _____, 2011, is made between:

City of Rochester
400 Sixth Street
Rochester, MI 48307

-And-

City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309

RECITALS

WHEREAS, the City of Rochester Hills, a Michigan municipal corporation, 1000 Rochester Hills Drive, Rochester Hills, MI 48309 (hereinafter "ROCHESTER HILLS"), and the City of Rochester, a Michigan municipal corporation, 400 Sixth Street, Rochester, MI 48307 (hereinafter "ROCHESTER,") together referred to as the "Parties" or the "Party" are authorized separately by law to provide public works services, including, but not limited to, municipal water, sewer, roadways, pathways and traffic related devices (hereafter referred to collectively as "Public Works Services") for their respective public entities; and

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28, and the Urban Cooperation Act of 1967, being MCL 124.501, et. seq. (the "Act"), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common with which each might exercise separately; and

WHEREAS, due to the fact that some areas of municipal services need to meet specific standards or details which require specialized skills and knowledge, and it is difficult for public entities to locate service providers that are able to perform those specialized services, economically, properly and timely; and

WHEREAS, ROCHESTER HILLS and ROCHESTER have specific areas of expertise in their respective public services/works departments and have personnel capable of performing Public Works Services for the other Party and, by this and other interlocal agreements, other public entities; and

WHEREAS, the Parties represent and acknowledge that they have the necessary facilities, tools, equipment and personnel to assist, repair and provide Public Works Services for the other Party ; and

WHEREAS, the Parties mutually desire to enter into this Agreement to allow the Parties to provide Public Works Services to the other Party on an as-requested basis; and

WHEREAS, pursuant to resolutions adopted by their respective City Councils, the Parties each have been authorized to execute this Agreement to provide Public Works Services for the other Party on an as-requested basis according to the terms and conditions set forth below.

THEREFORE, the Parties agree, as follows:

1. ROCHESTER and ROCHESTER HILLS engage their respective public services/works department to provide Public Works Services consisting of the following work: service and/or maintenance on water and/or sewer systems, roads, pathways and traffic control devices and other Public Works Services as requested. The Parties will arrange to have a contact on call, if needed, 24 hours a day, 7 days per week. The Parties understand and acknowledge each Party's first priority is to service its own municipality. However the Parties will make every reasonable effort to timely complete work for the other Party.
2. The Parties will perform Public Works Services in accordance with accepted industry standards and practices.
3. Subject to an annual adjustment of rates as provided in Paragraph 5, the Parties shall pay each other for the services provided at the following rates:

A. During Regular Business Hours (M-F, 7:00am – 3:30pm):

Employee's time: Current direct expenses per hour/plus benefits based on classification to the ¼ hour fraction for the duration of the agreement.

Vehicle/Equipment hourly rate: According to MDOT's current Act 51 Rates/hour or ¼ hour fraction for the duration of the agreement.

B. During Weekends, Holidays and after Regular Business Hours:

For services performed after or before regular business hours, or on weekends or holidays, Public Works Services will be billed at premium rate (time and a half or double time) with a minimum billing of four (4) hours of service.

4. The Party receiving the Public Works Services shall also pay the costs for all parts, materials and supplies used. An administrative fee of 20% will be assessed on the total invoice for the Public Works Services provided by the other Party.
5. Before June 1st of each year, starting in 2012, each Party shall review its personnel costs and any costs affecting their ability to provide Public Works Services under this Agreement. If those costs have increased, the Parties shall come to an agreement on the amount of and reason for the increased costs for services under the Agreement.

Those increased costs will become effective for services provided after July 1st of each year. In the event either parties collective bargaining agreements with their respective units change in the wages or benefits category, then both parties agree to meet and decide on a modified change.

6. The Parties will reconcile the charges/invoices on a monthly basis for Public Works Services, parts and materials provided to the other during the preceding month. The net amount due shall be paid to the other Party within thirty (30) days of the invoice date.
7. The Parties reserve the right to, in its discretion, refuse to provide services to the other Party. Neither Party is obligated to use the services of the other exclusively, and each Party is expressly allowed to obtain or provide Public Works Services through other means or vendors.
8. This Agreement does not, and is not intended to include or connote any warranties, promises or guarantees by either Party of any nature whatsoever, concerning the provision of Public Works Services. SPECIFICALLY, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR TO BE IMPLIED WITH RESPECT TO SERVICES, MATERIALS OR PARTS PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER. UNDER CONTRACT, TORT OR OTHERWISE.
9. The Agreement shall continue in effect until terminated by either Party. Either Party may terminate this Agreement, for any reason (including the convenience of any Party), without penalty. Either Party may deliver a written notice of termination of the Agreement to the other Party in accordance with the notice provision of Paragraph 17. Termination shall become effective thirty (30) days from the date of the notice unless the terminating Party specifies a later termination date in the notice supplied to the other Party.
10. Upon receipt of notice of termination of the Agreement the Parties shall perform a final reconciliation for any current charges and outstanding balances that have not previously been invoiced or paid. Each Party shall continue to be responsible for payment for the cost of services, parts and supplies either invoiced prior to termination or performed or purchased before the notice of termination. Each Party will attempt to return any new or used parts and supplies to suppliers that it is unable to use. If either Party is unable to obtain full refunds or only obtains partial refunds, the other Party will be invoiced for those non-refundable and/or partially refundable parts and supplies. The net reconciled amount shall be paid within thirty (30) days from the date of the reconciliation.
11. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. No liability, right or benefit arising

out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

12. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agency, or employees of any public agency when performing their respective functions within the territorial limits of their respective agencies shall apply to the same degree and extent to the performance of such functions, services and duties under this Agreement. Furthermore, the Parties believe that their performance of services and duties pursuant to this Agreement will be in the exercise or discharge of a governmental function.
13. Subject to the disclaimer of warranties and limitation of damages in paragraph 8 hereof, each Party shall indemnify, defend and hold harmless the other Party from any and all claims of damage against that Party for damages to its property or facilities proximately caused by the gross negligence of the other Party in the provision of Public Works Services under this Agreement. The duty to indemnify, defend and hold harmless shall include all costs of litigation or defense of claims including attorney fees, costs and expert fees.
14. Each Party acknowledges that it is currently insured with proper coverage and limits. Each Party agrees to keep its current insurance, or insurance of a similar nature, in effect at all times while providing Public Works Services to the other Party. Upon request each Party shall provide a Certificate of Insurance as evidence of its coverage.
15. The Parties agree that they shall promptly deliver to the other Party written notice and copies of any claims, complaints, charges, or any other accusations or allegations of negligence or other wrongdoing, whether civil or criminal in nature, that the other Party becomes aware of which involves, in any way the facility, equipment, personnel and/or services under this Agreement. Unless otherwise provided by law and/or the Michigan Court Rules, the parties agree to cooperate with one another in any investigation conducted by the other party of any acts or performances of any services under this Agreement.
16. The Parties agree that all indemnification and hold harmless promises, waivers of liability, representations, insurance coverage obligations, 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 transaction that occurred before termination of this Agreement, shall survive the termination.
17. Any written notice required or permitted under the 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. Unless specifically otherwise set out in the Agreement, all notices sent to ROCHESTER HILLS shall be sent to Mayor, City of

Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, MI 48309-3033. All notices sent to ROCHESTER shall be sent to City Manager, City of Rochester, 400 Sixth Street, Rochester, MI 48307.

- 18 This Agreement sets forth the entire Agreement between the Parties and supersedes any prior understandings or agreements. Amendment or modification of this Agreement shall be in writing signed, dated and approved by both Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not constructed strictly for or against any Party, as both Parties participating in the drafting of this Agreement. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.
19. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from the Agreement. The remainder of this Agreement shall remain in full force.
20. 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. Except as otherwise required by law or court rule, any action brought to enforce, interpret or decide any claim arising under this Agreement shall be brought in the Oakland County Circuit Court, the 52-3 District Court, or the United States District Court for the Eastern District of Michigan, Southern Division as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
21. The recitals shall be considered an integral part of the Agreement.
22. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any Party's rights in this Agreement, or any other right of any kind in favor of any third party beneficiary, individual or legal entity.
23. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and/or agents necessary to perform all of its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requested Party.
24. Absent a written waiver, no fact, failure or delay by a Party 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

Party shall subsequently affect its right to require strict performance of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties on the date hereafter set forth.

CITY OF ROCHESTER

CITY OF ROCHESTER HILLS

By: _____

By: _____

Its: _____

Its: _____

STATE OF MICHIGAN
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____.

Notary Public
Oakland County, Michigan
My commission expires:

STATE OF MICHIGAN
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____.

Notary Public
Oakland County, Michigan
My commission expires: