

INTERLOCAL SERVICE AGREEMENT
BETWEEN CITIES OF ROCHESTER HILLS
AND ROCHESTER FOR FLEET SERVICES

This Interlocal Service Agreement dated, this 8th day of February, 2010, 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 for the repair and maintenance of municipal vehicles 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 municipal vehicles have specific performance requirements which require specialized service and maintenance work, it is difficult for public entities to locate service facilities that are able to perform those specialized services, economically, properly and timely; and

WHEREAS, ROCHESTER HILLS has a facility at its Department of Public Services building located at 511 East Auburn Road, Rochester Hills, MI 48309, that contains the Rochester Hills Fleet Division. The Rochester Hills Fleet Division operates a vehicle repair facility and has personnel capable of repairing and maintaining municipal vehicles for ROCHESTER HILLS and, by this and other interlocal agreements, other public entities; and

WHEREAS, ROCHESTER HILLS represents, and ROCHESTER acknowledges, that ROCHESTER HILLS has the necessary facility, tools, equipment and personnel to repair and maintain ROCHESTER'S municipal vehicles, including loaders, dozers, cars and trucks; and

WHEREAS, the Parties mutually desire to enter into this Agreement to allow ROCHESTER HILLS to repair or maintain ROCHESTER's municipal vehicles 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 allow ROCHESTER HILLS to repair or maintain ROCHESTER's municipal vehicles on an as-requested basis according to the terms and conditions set forth below.

THEREFORE, the Parties agree, as follows:

1. ROCHESTER, engages ROCHESTER HILLS' Fleet Division to provide repair and maintenance services during ROCHESTER HILLS' regular business hours consisting of the following work: service and/or maintenance on ROCHESTER's loaders, dozers, cars and trucks as requested by ROCHESTER. ROCHESTER HILLS will arrange to have a technician on call, if needed, 24 hours a day, 7 days per week. For services performed after or before regular business hours, or on weekends or holidays, ROCHESTER will be billed at premium rate with a minimum billing of three (3) hours of service. ROCHESTER understands and acknowledges that ROCHESTER HILLS' first priority is to service ROCHESTER HILLS' vehicles. However, ROCHESTER HILLS will make every reasonable effort to timely complete work for ROCHESTER.
2. ROCHESTER HILLS will perform repair and maintenance services on ROCHESTER'S municipal vehicles in accordance with accepted industry standards and practices.
3. Subject to an annual adjustment of rates as provided in Paragraph 5, ROCHESTER shall pay ROCHESTER HILLS for the maintenance and repair services provided by ROCHESTER HILLS' Fleet Division at the following rates:

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|----------------------------|----------|-------------------------------|
| Technician's time: | \$87.30 | |
| Technician's premium time: | \$130.95 | Per hour or fraction thereof. |
4. ROCHESTER shall also pay the costs for all parts and supplies used in the repair and/or maintenance of ROCHESTER'S municipal vehicles.
5. Before April 1st of each year, starting in 2011, ROCHESTER HILLS shall review its personnel costs, including technician's time and technician's premium time, and any costs affecting the ability of ROCHESTER HILLS to provide services under this Agreement. If those costs have increased, ROCHESTER HILLS shall notify ROCHESTER in writing of the amount of and reason for the increased costs for services under the Agreement. Those increased costs will become effective for services provided after April 30 of each year.

6. ROCHESTER HILLS shall invoice ROCHESTER on a monthly basis for services and parts provided for ROCHESTER'S municipal vehicles during the preceding month. ROCHESTER shall pay ROCHESTER HILLS' invoices within thirty (30) days of the invoice date.
7. ROCHESTER HILLS reserves the right to, in its discretion, refuse to repair or maintain any ROCHESTER municipal vehicle. ROCHESTER is not obligated to use the services of ROCHESTER HILLS exclusively, and ROCHESTER is expressly allowed to repair and maintain ROCHESTER'S municipal vehicles elsewhere.
8. This Agreement does not, and is not intended to include or connote any warranties, promises or guaranties by ROCHESTER HILLS of any nature whatsoever, concerning the repair or maintenance of ROCHESTER'S municipal vehicles. SPECIFICALLY, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR TO BE IMPLIED BY ROCHESTER HILLS WITH RESPECT TO SERVICES OR PARTS PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL ROCHESTER HILLS 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 ROCHESTER HILLS or ROCHESTER specifies a later termination date in the notice supplied to the other Party.

If ROCHESTER HILLS has vehicles belonging to ROCHESTER on its site, ROCHESTER shall state in its termination notice whether it authorizes ROCHESTER HILLS to complete work on those vehicles or whether ROCHESTER HILLS should discontinue work on the vehicles, in which case ROCHESTER shall retrieve the vehicles within five (5) days of the notice of termination. If ROCHESTER HILLS completes work on the vehicles based on instructions from ROCHESTER after termination of the Agreement, all costs, terms and conditions of this Agreement shall apply as to those vehicles.

10. Upon receipt of notice of termination of the Agreement by ROCHESTER, ROCHESTER HILLS shall, within thirty (30) days, deliver a final invoice to ROCHESTER for any current charges and outstanding balances that have not previously been invoiced or paid. ROCHESTER shall continue to be responsible for payment for the cost of services, parts and supplies either invoiced prior to termination or performed or purchased by ROCHESTER HILLS before the notice of termination. ROCHESTER HILLS will attempt to return any used parts and supplies to suppliers that it is unable to use on other vehicles being serviced by ROCHESTER

HILLS. If ROCHESTER is unable to obtain full refunds or only obtains partial refunds, ROCHESTER will be invoiced for those non-refundable and/or partially refundable parts and supplies. ROCHESTER shall pay ROCHESTER HILLS' invoice within 30 days from the date of the invoice.

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, ROCHESTER HILLS shall indemnify, defend and hold harmless ROCHESTER from any and all claims of damage against ROCHESTER for damages to ROCHESTER's loaders, dozers, cars and trucks proximately caused by the gross negligence of ROCHESTER HILLS in the provision of services, maintenance and/or repairs for ROCHESTER 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. ROCHESTER HILLS acknowledges that it is currently insured with proper coverage and limits. ROCHESTER HILLS agrees to keep its current insurance, or insurance of a similar nature, in effect during all dates of service or maintenance to ROCHESTER municipal vehicles. Upon requested ROCHESTER, ROCHESTER HILLS 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 writing sent to ROCHESTER HILLS shall be sent to Mayor, City of Rochester Hills, 1000 Rochester Hills Dr. Rochester Hills MI 48309. All writing 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 6th Judicial 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 hereinafter set forth.

WITNESSES:

CITY OF ROCHESTER

By: _____

By: _____

CITY OF ROCHESTER HILLS:

By: _____

By: _____