

**WIRELESS OAKLAND AGREEMENT  
BETWEEN  
OAKLAND COUNTY  
AND  
CITY OF ROCHESTER HILLS**

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This Agreement ("the Agreement") is made between Oakland County, a Constitutional and Municipal Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County"), and the City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 ("Municipality"). In this Agreement the County and the Municipality may also be referred to individually as "Party" or jointly as "Parties."

**PURPOSE OF AGREEMENT.** Pursuant to the Urban Cooperation Act of 1967, 1967 PA 7, MCL 124.501, *et seq.*, the County and the Municipality enter into this Agreement for the purpose of delineating the relationship and responsibilities between the County and the Municipality regarding the Wireless Oakland Initiative. The Wireless Oakland Initiative has the following three goals: (1) Blanket the County with wireless internet service; (2) Address the County's "digital-divide" and provide low-cost or no-cost personal computers and technology training to underserved population groups; and (3) Develop a Telecommunication and Technology Planning Toolkit to support continued high-tech investments in local government and promote integration of those investments with local community character and quality of life. Citizens, business entities, and governmental entities will all benefit from this wireless internet service. The citizens of the County will be more prepared to fill high-tech jobs; business entities will be better prepared to compete in the global market; and governmental entities, including Oakland County and the Municipality, will realize increased efficiencies when providing services to their citizens.

Neither the County nor the Municipality will own or operate the wireless internet service. Instead, the County will collect and pool public assets located throughout the County to license to the owner/operator of the wireless internet service in exchange for free wireless internet access at a certain bandwidth. The County will license the use of the collected assets to the owner/operator on a non-exclusive, non-interfering basis. The owner/operator shall not have any permanent or exclusive rights to these public assets.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 1.1. **Agreement** means the terms and conditions of this Agreement, the Exhibits attached hereto, and any other mutually agreed to written and executed modification, amendment, or addendum.
- 1.2. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, as defined herein, whether such Claim is brought in law or equity, tort, contract, or otherwise.
- 1.3. **Contract** means the contract between the County and Contractor and all the properly promulgated amendments. The Contract is attached as Exhibit C.
- 1.4. **Contractor** means the entity selected by the County to install, implement, operate, and maintain the wireless internet service.
- 1.5. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
- 1.6. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.7. **Default** means a Party's failure to perform any obligation contained in this Agreement or if the wireless internet service offered pursuant to the Wireless Oakland Initiative ceases to exist.
- 1.8. **Municipality** means the City of Rochester Hills, a Municipal and Constitutional Corporation including, but not limited to, its Council, Board, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors.
- 1.9. **Public Asset(s)** means any real or personal property including but not limited to structures, facilities, antennae, and/or land, owned by the Municipality.
- 1.10. **Wireless Oakland Advisory Board** means the Board that provides advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service.
- 1.11. **Wireless Oakland Initiative** means the wireless internet service (as fully described in the Contract) that will blanket all of Oakland County and that will be provided, owned, and operated by the Contractor.

2. **AGREEMENT EXHIBITS.** The Exhibits listed below and their properly promulgated amendments are incorporated and are part of this Agreement.

2.1. **Exhibit A** – Public Asset License Agreement

2.2. **Exhibit B** - Wireless Oakland Advisory Board

2.3. **Exhibit C** – Contract between the County and Contractor

3. **COUNTY RESPONSIBILITIES.**

3.1. The Municipality shall provide the County with a list and corresponding map of Public Assets that can be utilized for the Wireless Oakland Initiative.

3.2. The County, specifically the County Executive or his designee, is authorized to execute the License Agreement, attached as Exhibit A to this Agreement, on behalf of the Municipality with the Contractor for use of Public Assets identified in the list from the municipality to be utilized for the wireless internet service.

3.3. Prior to executing the License Agreement(s) for each individual Public Asset to be utilized, the County shall present the Municipality with a map identifying the specific Public Assets to be used and licensed and the Municipality shall handle approval or disapproval of such requests in accordance with its administrative procedures.

3.4. The County shall not request the construction of new towers or underground facilities through this Agreement.

3.5. The County shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.

3.6. The County shall designate an individual, who works for the County, to be a point of contact and information regarding this Agreement and the Wireless Oakland Initiative. The County shall ensure that the Contractor designates an individual, who works for the Contractor, to be a point of contact and information regarding the Wireless Oakland Initiative.

4. **MUNICIPALITY RESPONSIBILITIES.**

4.1. The Municipality shall use its best efforts to assist with the installation and implementation of the wireless internet service, including, but not limited to, waiving any local/municipal permit fees or other fees or local/ municipality costs associated with the installation, implementation, operation, and/or maintenance of the wireless internet service and providing space to locate the wireless equipment at no cost.

4.2. There shall be no costs (including, but not limited to, all electrical costs associated with installation and operation of the wireless equipment for wireless internet service) to the Municipality stemming from this Agreement, unless otherwise agreed to in writing by the Municipality.

- 4.3. The Municipality shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.
- 4.4. The Municipality shall designate an individual, who works for the Municipality, to be a point of contact and information regarding this Agreement and the Wireless Oakland Initiative.

5. **WIRELESS OAKLAND ADVISORY BOARD RESPONSIBILITIES.**

- 5.1. The Wireless Oakland Advisory Board shall provide advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service.
- 5.2. The structure, organization, and responsibilities of the Wireless Oakland Advisory Board are set forth in Exhibit B.

6. **CONTRACTOR RESPONSIBILITIES.**

- 6.1. Except as otherwise provided in this Agreement, the installation, implementation, operation, and maintenance of the wireless internet service shall be at the sole cost, expense, and risk of the Contractor.

7. **DURATION OF INTERLOCAL AGREEMENT.**

- 7.1. The Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party.
- 7.2. Unless extended by mutual, written agreement by both Parties, this Agreement shall remain in effect for six (6) years from the date the Agreement is completely executed by both Parties or until cancelled or terminated by either Party pursuant to Section 9.

8. **ASSURANCES.**

- 8.1. Except as provided in Exhibit A, each Party shall be responsible for its own acts and the acts of its employees, and agents, the costs associated with those acts, and the defense of those acts.
- 8.2. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 8.3. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement, including but not limited to, all FCC rules and regulations.

9. **TERMINATION OR CANCELLATION OF AGREEMENT.** The Municipality or the County may terminate or cancel this Agreement upon sixty (60) days written notice, if the other Party Defaults in any obligation contained in this Agreement and within the sixty (60) day notice period the Party failed to cure such Default or failed to take a course of action to cure such Default. The effective date of termination and/or cancellation and the specific Default shall be clearly stated in the written notice. If this Agreement is terminated and/or cancelled, the existing License Agreements executed pursuant to this Agreement shall still be valid.
10. **NO THIRD PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties and subject to Exhibit A, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.
11. **DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.
12. **PERMITS AND LICENSES.** Except as otherwise agreed to by the Parties, or provided for in this Agreement, the Contractor shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to install, own, operate, manage, and maintain the wireless internet service.
13. **RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.
14. **DELEGATION/SUBCONTRACT/ASSIGNMENT.** Neither Party shall delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
15. **NO IMPLIED WAIVER.** Absent a written waiver, no act, 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.
16. **SEVERABILITY.** 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.

17. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
18. **NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
- 18.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Department of Information Technology, Director, 1200 North Telegraph Road, Building #49 West, Pontiac, Michigan, 48341 and Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph, Pontiac, Michigan 48341.
- 18.2. If Notice is sent to the Municipality, it shall be addressed to: Mayor, City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan, 48309 and MIS Department, Director, City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan, 48309.
- 18.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.
19. **DISPUTE RESOLUTION.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to the individuals listed in Section 18 for possible resolution. The individuals shall promptly meet and confer in an effort to resolve such dispute. If the individuals cannot resolve the dispute in five (5) days, the dispute may be submitted to the signatories of this Contract or their successors in office. The signatories of this Contract may meet promptly and confer in an effort to resolve such dispute. If such dispute can not be resolved, the Parties may exercise their remedies at law and/or equity.
20. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by 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 or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, 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. **AGREEMENT MODIFICATIONS OR AMENDMENTS.** Any modifications, amendments, recessions, waivers, or releases to this Agreement must be in writing and agreed to by both Parties.

22. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

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

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Bryan K Barnett, Mayor  
City of Rochester Hills

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_

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 Agreement on behalf of the Oakland County, and hereby accepts and binds the Oakland County to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Bill Bullard, Jr., Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Ruth Johnson, Clerk/Register of Deeds  
County of Oakland