

**INTERLOCAL SERVICE AGREEMENT**  
**BETWEEN CITY OF ROCHESTER HILLS AND CHARTER TOWNSHIP OF ORION**  
**FOR PUBLIC WORKS SERVICES**

This Interlocal Service Agreement dated, this 5<sup>th</sup> day of January, 2015, is made among:

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

-and-

Charter Township of Orion  
2525 Joslyn Road  
Orion, Michigan 48360

**RECITALS**

WHEREAS, the City of Rochester Hills, a Michigan municipal corporation, 1000 Rochester Hills Drive, Rochester Hills, MI 48309 (hereinafter "ROCHESTER HILLS"), and the Charter Township of Orion, a Michigan charter townshio, 2525 Joslyn Road, Orion, Michigan 48360 (hereinafter "ORION TOWNSHIP"), 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 ORION TOWNSHIP have specific areas of expertise in their respective public services/works departments and have personnel capable of performing Public Works Services for the other Parties 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 Parties ; and

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

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

THEREFORE, the Parties agree, as follows:

1. ROCHESTER HILLS and ORION TOWNSHIP 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 Parties.

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 1<sup>st</sup> 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 a Party's collective bargaining agreement with its respective unit changes in the wages or benefits category, then the 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 Parties. No Party is obligated to use the services of the others 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 any 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 ANY 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 any Party. Any Party may terminate its participation in this Agreement, for any reason (including the convenience of any Party), without penalty. A Party may deliver a written notice of termination of the Agreement to the other Parties 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 Parties.
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 a 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 defend and hold harmless the other Parties from any and all claims of damage against those other Parties for damages to their property or facilities proximately caused by the gross negligence of the first Party in the provision of Public Works Services under this Agreement. The duty to 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 Parties. 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 Parties 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 first 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 each other in any investigation conducted by another party of any acts or performances of any services under this Agreement.
16. The Parties agree that all defense 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 ORION TOWNSHIP shall be sent to Township Supervisor, Charter Township of Orion, 2525 Joslyn Road, Orion Township, MI 48360.

18. This Agreement sets forth the entire Agreement among the Parties and supersedes any prior understandings or agreements. Amendment or modification of this Agreement shall be in writing signed, dated and approved by all 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 all Parties participated 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 requesting 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 a Party shall subsequently affect its right to require strict performance of this Agreement.

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

CHARTER TOWNSHIP OF ORION

CITY OF ROCHESTER HILLS

By:   
Chris Barnett

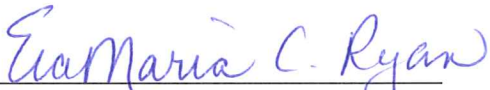
By: \_\_\_\_\_

Its: Supervisor

Its: \_\_\_\_\_

STATE OF MICHIGAN  
COUNTY OF Oakland

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of January,  
2015, by Chris Barnett.

  
Notary Public  
Oakland County, Michigan  
My commission expires: 6-26-2018

EVAMARIA C. RYAN  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES Jun 26, 2018  
ACTING IN COUNTY OF Oakland

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: