

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

This 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 (“Rochester Hills”). In this Agreement, the County and Rochester Hills 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 Rochester Hills enter into this Agreement. Rochester Hills desires that the County, through the Department of Facilities Management—Building Safety Division, monitor Rochester Hills’ Supervisory Control and Data Acquisition System (“SCADA System”). The County Department of Facilities Management currently monitors similar systems for the Water Resources Commissioner. The County is willing to monitor the SCADA System. The purpose of this Agreement is to delineate the responsibilities and obligations of the Parties regarding monitoring the SCADA System.

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 or amendment.
 - 1.2. **Claim** means all losses, complaints, demands for relief, damages, lawsuits, causes of action, proceedings, judgments, deficiencies, penalties, costs, and expenses arising under or relating to this Agreement, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigations, litigation expenses, amounts paid in settlement, and/or any other amount for which either Party becomes legally and/or contractually obligated to pay a third party, 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.

- 1.3. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, or any such persons' successors.
- 1.4. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.5. **Exhibit** means all of the following documents which are fully incorporated into this Agreement:
 - 1.5.1. **Exhibit I: Scope of Service**
- 1.6. **Fees** mean the amount of money paid by Rochester Hills to the County to monitor the SCADA System pursuant to this Agreement. Fees do not include costs for operation, maintenance and repair of the SCADA System or any equipment connected with it.
- 1.7. **Rochester Hills** means the City of Rochester Hills including, but not limited to, its Council, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, or any such persons' successors.
- 1.8. **Supervisory Control and Data Acquisition System ("SCADA System")** means the system owned, operated and maintained by Rochester Hills which provides real time monitoring, reporting, alarms, and alerts for the Rochester Hills' water and wastewater (sewer) systems.
- 1.9. **System Contact** means the individual or individuals designated by the County and Rochester Hills who are the authorized points of contact between the County and Rochester Hills regarding this Agreement.
2. **COUNTY RESPONSIBILITIES.** Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the County shall carry out the following:
 - 2.1. The County shall perform all services set forth in Exhibit I, Scope of Services.
 - 2.2. The County shall identify a System Contact and alternate and notify Rochester Hills in writing of the System Contact and alternate. The County must notify Rochester Hills in writing of any changes to the System Contact and alternate within twenty-four (24) hours of any change.
 - 2.3. The System Contact shall be the first point of contact for Rochester Hills regarding this Agreement. The System Contact shall be the sole individual responsible for relaying information and/or communicating the needs regarding this Agreement.
3. **POLITICAL SUBDIVISION'S RESPONSIBILITIES.** Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the County shall carry out the following:
 - 3.1. Rochester Hills shall meet all requirements set forth in Exhibit I, Scope of Services.
 - 3.2. Rochester Hills shall identify a System Contact and alternate and notify the County in writing of the System Contact and alternate. Rochester Hills must

notify the County in writing of any changes to the System Contact and alternate within twenty-four (24) hours of any change.

- 3.3. The System Contact shall be the first point of contact for the County regarding this Agreement. The System Contact shall be the sole individual responsible for relaying information and/or communicating the needs regarding this Agreement.

4. **FINANCIAL RESPONSIBILITIES.**

- 4.1. Rochester Hills shall pay the County Twelve Thousand Three Hundred and Twelve Dollars (\$12,312.00) per year as Fees (\$18 per alarm point per month for 57 alarm points) to perform the services set forth in this Agreement
- 4.2. The Fees are due and payable on the first of each month.
- 4.3. The Fees paid to the County under this Agreement only include the services set forth in this Agreement and do not include costs associated with the operation, maintenance, or repair of the SCADA System or equipment connected with it.
- 4.4. If Rochester Hills, for any reason, fails to pay the County any monies when due under this Agreement, Rochester Hills agrees, unless expressly prohibited by law, that the County or the County Treasurer, at their sole option, shall be entitled to setoff amount due from any other Rochester Hills funds that are in the County's possession. Funds include but are not limited to the Delinquent Tax Revolving Fund ("DTRF"). Any setoff or retention of funds by the County shall be deemed a voluntary assignment of the amount by Rochester Hills to the County. Rochester Hills waives any Claims against the County for any acts related specifically to the County's offsetting or retaining such amounts. This Section shall not limit Rochester Hills' legal right to dispute whether the underlying amount retained by the County was actually due and owing under this Agreement.
- 4.5. If the County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay the County any amounts due and owing, the County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to the County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid
- 4.6. Nothing in this Section shall operate to limit the County's right to pursue or exercise any other legal rights or remedies under this Agreement against Rochester Hills to secure reimbursement of amounts due the County under this Agreement. The remedies in this Section shall be available to the County on an ongoing and successive basis if Rochester Hills at any time becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if the County pursues any legal action in any court to secure its payment under this Agreement, Rochester Hills agrees to pay all costs and expenses, including attorney's fees and court costs, incurred by the County in the collection of any amount owed by Rochester Hills.

5. **DURATION OF INTERLOCAL AGREEMENT.**
 - 5.1. The Agreement and any amendments hereto shall be effective when executed by both Parties, with resolutions passed by the governing bodies of each Party, and when the Agreement is filed according to MCL 124.510. 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.
 - 5.2. This Agreement shall remain in effect until December 31, 2013 or until cancelled or terminated by either Party pursuant to Section 7. Rochester Hills may renew this Agreement for two (2) years, not to extend beyond December 31, 2015, by written request to the County.
6. **LIABILITY.**
 - 6.1. Each Party shall be responsible for any Claim made against that Party by a third party, and for the acts of its employees or agents arising under or related to this Agreement.
 - 6.2. Except as provided in Section 4.6, in any Claim that may arise under or relate to this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including any attorney fees.
 - 6.3. Neither Party shall have any right under any legal principle to be indemnified by the other Party or any of its employees or agents in connection with any Claim.
 - 6.4. Except as otherwise expressly provided in this Agreement, neither Party shall be liable to the other Party for any consequential, incidental, indirect, or special damages of any kind in connection with this Agreement.
 - 6.5. Rochester Hills shall be solely responsible for all costs, fines, and fees associated with responding to or the failure to respond to alarms or alerts of the SCADA System.
7. **TERMINATION OR CANCELLATION OF AGREEMENT.**
 - 7.1. Either Party may terminate or cancel this Agreement for any reason upon thirty (30) days written notice to the other Party. The effective date for termination or cancellation shall be clearly stated in the notice.
 - 7.2. Rochester Hills shall not be responsible for payment of Fees after the effective date of termination or cancellation of this Agreement and shall receive a pro-rata refund of any pre-paid Fees.
 - 7.3. Within thirty (30) Days of the effective date of termination or cancellation of this Agreement, Rochester Hills shall remove any equipment it may have on or in County premises or facilities which relate to this Agreement.
 - 7.4. The Parties shall not be obligated to pay a cancellation or termination fee, if this Agreement is cancelled or terminated as provided herein.
8. **NO THIRD PARTY BENEFICIARIES.** Except as expressly provided in this Agreement, 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.
9. **COMPLIANCE WITH LAWS.** Each Party shall comply with all federal, state, and local laws, statutes, ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

10. **DISCRIMINATION**. The Parties shall not discriminate against their employees, agents, applicants for employment, or other 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.
11. **RESERVATION OF RIGHTS**. 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.
12. **FORCE MAJEURE**. Each Party shall be excused from any obligations under this Agreement during the time and to the extent that a Party is prevented from performing due to causes beyond such Party's control, including, but not limited to, an act of God, war, fire, strike, labor disputes, civil disturbances, reduction of power source, or any other circumstances beyond the reasonable control of the affected Party. Reasonable notice shall be given to the affected Party of any such event.
13. **IN-KIND SERVICES**. This Agreement does not authorize any in-kind services, unless previously agreed to by the Parties and specifically listed herein.
14. **DELEGATION/SUBCONTRACT/ASSIGNMENT**. A Party shall not 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 effect 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 set to the County, it shall be addressed and sent to:

Oakland County Department of Facilities Management,
Attention: Director
One Public Works Drive,
Waterford, Michigan, 48328
and
Chairperson of the Oakland County Board of Commissioners,
1200 North Telegraph,
Pontiac, Michigan 48341

18.2. If Notice is sent to Rochester Hills, it shall be addressed to:

City of Rochester Hills
Attention: DPS/Engineering Director
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. **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.
20. **AGREEMENT MODIFICATIONS OR AMENDMENTS.** Any modifications, amendments, rescissions, waivers, or releases to this Agreement must be in writing and agreed to by both Parties. Unless otherwise agreed, the modification, amendment, rescission, waiver, or release shall be signed by the same persons who signed the Agreement or other persons as authorized by the Parties' governing bodies.
21. **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.

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.

IN WITNESS WHEREOF, Bryan K. Barnett, Mayor, hereby acknowledges that he 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 Rochester Hills and hereby accepts and binds Rochester Hills to the terms and conditions of this Agreement.

EXECUTED: _____
Bryan K. Barnett, Mayor

DATE: _____

WITNESSED: _____
Jane Leslie, City Clerk

DATE: _____

IN WITNESS WHEREOF, Michael J. Gingell., 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 Oakland County and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: _____
Michael J. Gingell., Chairperson
Oakland County Board of Commissioners

DATE: _____

WITNESSED: _____
Bill Bullard, Jr., Clerk Register of Deeds
County of Oakland

DATE: _____

Exhibit I – Scope of Services

1. The County through the Department of Facilities Management – Building Safety Division (“Building Safety Division”) will provide 24/7 monitoring of 57 specific alarms for the SCADA System. Rochester Hills shall provide the Building Safety Division a written list of the 57 alarm points and their locations.
2. When the Building Safety Division receives an alarm or alert from the SCADA System, the Building Safety Division will contact the designated person set forth on the “call list.” Rochester Hills shall ensure that the “call list” is accurate and shall notify the Building Safety Division immediately if there are any changes to the “call list.” Rochester Hills shall notify the County in writing in the manner in which the Building Safety Division is to contact individuals on the “call list.”
3. Once the Building Safety Division reaches an individual on the call list, it will provide that individual with all alarm/alert information.
4. The City will provide Building Safety with scripted instructions and at no time will Building Safety be required to make diagnostic decisions or make water or wastewater system adjustments. Building Safety will be required to login to the system and follow diagnostic instructions under the direction of a City employee.
5. The Building Safety Division shall maintain written records for seven (7) years for the following information: (1) type of alarm that was received by the County, (2) who was contacted by the County, (3) what was directed by Rochester Hills staff, and (4) what was done online under the direction of Rochester Hills' staff to rectify the alarm situation. Upon receipt of a written request from Rochester Hills, the County shall provide Rochester Hills with the records set forth above. The request must sufficiently describe the records that are requested.
6. Rochester Hills shall provide any and all equipment needed to monitor and operate the SCADA System. Rochester Hills is responsible for the installation, operation, maintenance and repair of all equipment needed for the SCADA System. If the installation, operation, maintenance or repair of the SCADA System requires work at or on County premises or facilities such work shall be approved in writing by the County in advance of the commencement of the work and such work shall be conducted in a manner as not to disturb County operations. The County shall approve, in writing, all subcontractor or agents that will perform work for Rochester Hills at or on County premises or facilities.
7. At no cost to the County, Rochester Hills shall train all applicable County employees regarding the SCADA System. The training shall include detailed written instructions that the County may keep at the Building Safety Division, which set forth steps for monitoring the SCADA System.