

INTERLOCAL SERVICE AGREEMENT
BETWEEN CITY OF ROCHESTER HILLS AND ROCHESTER COMMUNITY
SCHOOLS
FOR SERVICES

This Interlocal Service Agreement dated, this _____ day of _____, 2013 (the “Effective Date”), is made among:

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

-And-

Rochester Community Schools
501 W. University Drive
Rochester, Michigan 48307

RECITALS

WHEREAS, the City of Rochester Hills, a Michigan municipal corporation, 1000 Rochester Hills Drive, Rochester Hills, MI 48309 (hereinafter “Rochester Hills”), and the Rochester Community Schools, a Michigan general powers school district, 501 W. University Drive, Rochester, MI 48307 (hereinafter the “School District”), together referred to as the “Parties” or the “Party” are authorized separately by law to perform various functions and provide services (hereafter referred to collectively as “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 public agency to exercise jointly with any other public agency, any power, privilege or authority which such public agencies share in common with which each might exercise separately; and

WHEREAS, pursuant to Sections 11a(3) and (4) of the Revised School Code, MCL 380.1 *et seq.*, a general powers school district has the authority to exercise a power incidental or appropriate to the performance of any function related to the operation of the school district in the interests of public elementary and secondary education in the school district and to enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district; and

WHEREAS, due to the fact that some areas of Services need to meet specific standards or details which require specialized skills and knowledge, 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 the School District have specific areas of expertise in their respective departments and have personnel capable of performing 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 provide the Services for the other Party ; and

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

WHEREAS, pursuant to resolutions adopted by their respective City Council and Board of Education, the Parties each have been authorized to execute this Agreement to provide the 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 Hills and the School District engage their respective departments to provide the Services consisting of the following work: Rochester Hills performing service and/or maintenance/repair on the School District’s government-owned vehicles such as loaders, dozers, cars, mowers, forklifts, motorcycles, trailers, trucks, and other equipment whether marked or unmarked, used for public purposes by the School District, service and/or maintenance of water and/or sewer systems, roads, pathways and traffic control devices, and other public works services as requested and agreed to in writing (the “Services”). 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 the Services in accordance with accepted industry standards and practices and each Party represents that it has the necessary facility, tools and equipment, and its employees have the qualifications, experience and abilities to provide Services, and in particular, Rochester Hills represents that its employees are properly licensed to perform the service, and/or maintenance /repair of the School District-owned government vehicles. The School District understands, acknowledges and relies on the representation that Rochester Hills will use the highest standards which control the repair and maintenance of municipal vehicles. Rochester Hills will not deviate from these standards even at the request of the School District.
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. For Vehicle Repair and other Public Works Repair/Maintenance:

- i. 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.

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

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

iii. For non-hourly Services, the School District and Rochester Hills shall agree in writing prior to the performance of the Services on the fees that will be charged to each Party for the Services.

B. Providing of Materials

i. Mutual Providing of Materials

- a. The Parties agree to make available to each other certain materials of their respective departments.
- b. Requests for such materials shall be documented by and between the Parties' respective directors and/or their designees.
- c. These materials include, but are not limited to the following consumable supplies: rock salt, garbage bags and paper products.

ii. Subject to Availability

The providing of materials under this Agreement shall be strictly subject to the availability as determined by the sole and uncontrolled discretion of the providing Party. The responsibility of each Party to provide materials within its own jurisdiction shall remain the first priority.

iii. Material Compensation

- a. The requesting Party shall pay to the providing Party in an amount consistent with the Appendices A attached hereto.
- b. Price per Ton may change on a monthly basis based on the current price paid by the providing Party.
- c. All purchases for supplies, materials and equipment provided pursuant to this Agreement shall be in accordance with all applicable laws, rules and regulations, including but not limited to Section 1274 of the Revised School Code, as well as all applicable policies, procedures, rules and regulations of the Parties.

4. If necessitated by the Services rendered, the Party receiving the 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 Services provided by the other Party.
5. Before June 1st of each year, starting in 2013, each Party shall review its personnel costs and any costs affecting their ability to provide Services under this Agreement. If those costs have increased, the Parties shall come to an agreement in writing 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 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 receipt of the invoice, provided however, if a Party disputes any amount in an invoice in writing, the disputing Party may withhold payment of said disputed amount and the Parties agree to meet in good faith to resolve said dispute in a timely manner.
7. The Parties reserve the right to, in its discretion, refuse to provide Services to the other Party. No Party is obligated to use the Services of the others exclusively, and each Party is expressly allowed to obtain or provide Services through other means or vendors.
8. Rochester Hills will provide vehicle repair Services hereunder for the School District in a good and workmanlike manner and any parts provided by Rochester Hills under this Agreement shall be newly manufactured or assembled from newly manufactured parts and that all Services and parts will be free from defects and warranted by the manufacturer, if applicable for a ninety (90) day period.
9. Except as provided in Section 8 above, 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 the Services, and 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.
10. The Agreement shall continue in effect until terminated by any Party in writing. 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 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 Parties.

11. 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 approved by both Parties.
12. 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.
13. 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.
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 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 shall be sent to Director of Public Services, City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, MI 48309. All notices sent to the School District shall be sent to the Superintendent, Rochester Community Schools, 501 W. University, Rochester, MI 48307.

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 is executed by the Parties on the date hereafter set forth.

CITY OF ROCHESTER HILLS

ROCHESTER COMMUNITY SCHOOLS

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: