

# SYSTEM MAINTENANCE AGREEMENT

THIS SYSTEM MAINTENANCE AGREEMENT (hereinafter "Agreement") is entered into this 5th day of May, 2005, by and between Astrum Technologies, located at 1010 West Hamlin Road; Rochester Hills, Michigan 48309, ("Seller"), and The City of Rochester Hills located at 1000 Rochester Hills Drive; Rochester Hills, MI 48309 (hereinafter "Customer").

## 1. SCOPE OF AGREEMENT

During the term of this Agreement (hereinafter "Term"), the Seller agrees to provide Customer with repair and maintenance services and parts, as set forth in Section 2 of this Agreement, to maintain the Customer's City Wide SCADA System equipment listed in Addendum II to this Agreement and pursuant to the Customer's Request for Proposals dated January 20, 2005 and Seller's Proposal dated February 9, 2005.

## 2. CONDITIONS OF SERVICE

Seller shall supply all supervision, labor, service facilities, repair parts, test equipment, and supplies necessary to meet the service requirements stated in this Agreement.

### 2.1 Service Facilities

Seller shall have a full service maintenance facility available. The location and staffing level shall be sufficient to meet the service requirements stated in this Agreement.

### 2.2 Right to Subcontract

Seller may subcontract service work to authorized service centers that meet the minimum requirements of a service center set forth in the Seller Authorized Service Center Agreement, upon approval of the Customer. Should any subcontractor fail to perform or their work otherwise proves unsatisfactory, Seller will arrange for continuing maintenance of the equipment by qualified technicians for the duration of this Agreement.

### 2.3 Covered Equipment

Covered Equipment is defined and limited to that equipment listed in Addendum II.

### 2.4 Equipment Maintenance

Maintenance will be provided at the hourly rates as provided in Seller's cost proposal dated February 9, 2005, and as noted in Addendum III.

**2.5 Replacement Parts/Spare Parts**

Seller will provide replacement parts or spare parts as noted in Addendum III.

**2.6 Working Hours**

Working hours are defined as 8:00 a.m. to 5:00 p.m. Monday through Friday excluding holidays.

**2.7 Services**

The repair, installation, removal, or reinstallation of equipment shall be performed by Seller, following reasonable notice and as defined in Customer's RFP dated January 20, 2005, and at the rates listed in Seller's Cost Proposal dated February 9, 2005 and in conformance with requirements noted in Addendum III.

**2.8 Preventive Maintenance**

Seller will provide preventive maintenance at the rates detailed in Seller's cost proposal dated February 9, 2005 and at the frequency detailed in Addendum III .

**2.9 Service Records**

The Seller shall maintain service records and make such records available to Customer upon reasonable request. Copies of Service Reports will be submitted with each invoice, detailing all work performed.

**2.10 Software Upgrades**

Seller will provide software upgrades at the rates detailed in Seller's cost proposal dated February 9, 2005, for the equipment.

**2.11 Database Reprogramming**

Database changes made at Customer's request will be performed at the hourly rates listed in Seller's cost proposal (programming) dated February 9, 2005.

**2.12 General**

Prior to contract signing, Seller reserves the right to request a complete serial number listing of all equipment to be covered under this agreement.

### **3. CUSTOMER FINANCIAL OBLIGATIONS**

- 3.1** Customer shall pay the total invoiced amount for each service visit as set forth in Seller's cost proposal dated February 9, 2005. All invoices are payable within thirty (30) days of receipt of Seller's invoice.
- 3.2** Rates shall remain firm for four (4) years or through termination of this contract as provided in Seller's cost proposal dated February 9, 2005.
- 3.3** Any other payments under this Agreement are due within thirty (30) days of receipt of Seller's invoice.
- 3.4** All late payments under this Agreement shall bear interest at a rate of one and one-half percent (1.5%) per month.

### **4. WARRANTY**

- 4.1** Seller warrants parts and labor for one (1) year and that all services and repair work performed under this contract shall be free from defects in workmanship and all manufactured equipment supplied hereunder shall, at the time of installation be free from defects in materials and workmanship.

#### **Patents, Trademarks, Information**

- a.** Nothing in this Agreement shall be construed as;
  - (i)** A warranty or representation by Seller that any advice provided under this Agreement is or will be free from infringement of patents of third parties; or
  - (ii)** Conferring a right to Customer to use in advertising, publicity or otherwise any trademark or trade name of Seller; or
  - (iii)** Granting to Customer by implication, estoppel, or otherwise any licenses or rights under patents of Seller.
- b.** Seller makes no representations, extends no warranties of any kind, either expressed or implied, and assumes no responsibilities whatsoever with respect to the adequacy, accuracy or utility of any information obtained by Customer under this Agreement. Seller assumes no responsibilities whatsoever with respect to the use by Customer or any third party of any information obtained by Customer or third party under this Agreement

with respect to any use, sale or other disposition by Customer or its clients or other transferees of any products incorporating or made by use of the information obtained under this Agreement.

#### **4.4 General**

- a. Radio systems are subject to degradation of service from natural phenomena such as so-called "skip" interference and other causes beyond the reasonable control of Seller such as motor ignition and other electrical noise as well as interference from other users assigned by the FCC to the same or adjacent frequencies. Seller cannot be responsible for interference or disruption of service caused by operation of other radio systems or by natural phenomena or by motor ignition or other interference over which there is no reasonable control. Such foregoing interference and noise can be minimized by the addition of corrective devices (at Customer's expense) adapted for particular locations and installations. Seller will investigate interference complaints (at the rates specified in Seller's cost proposal dated February 9, 2005 and make recommendations as to the use of such devices; however, total freedom from noise and interference cannot be guaranteed.
- b. Seller does not assume responsibility for signal strength unless the deficiency is the result of substandard equipment maintenance.
- c. If, due to the action of regulatory authorities, changes to the equipment become necessary, such changes will be performed by Seller upon request at the expense of Customer.

### **5. TERM AND TERMINATION**

- 5.1 The services under this Agreement will be provided by Seller to Customer for an initial two year period with an option to renew thereafter on a two year basis as provided herein.

The effective date of this Agreement is May 5<sup>th</sup> of 2005.

- 5.2 In the event that Customer fails to make any overdue payments due to Seller under this Agreement within fifteen (15) days after receipt of written notice from Seller, Seller may at its option immediately thereafter terminate this Agreement.
- 5.3 In the event of any other default under this Agreement, either Customer or Seller shall give the other party written notice describing the default and a thirty (30) day period to correct the default. This Agreement may then be immediately canceled if the default is not corrected prior to the end of the thirty (30) day period.

### **6. INSURANCE AND INDEMNIFICATION**

- 6.1 To the fullest extent permitted by law, Vendor agrees to defend, pay in behalf of, indemnify and hold harmless the City of Rochester Hills, its elected and appointed officials, employees and volunteers and others working in behalf of the City of Rochester Hills against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Rochester Hills, its elected and appointed officials, employees, volunteers or others working in behalf of the City of Rochester Hills by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract.
- 6.2 The insurance provisions contained in the Customer's Request for Proposal dated January 20, 2005 has be maintained by the Seller for the life of this agreement.

## 7. GENERAL PROVISIONS

- 7.1 All notices under this Agreement shall be in writing and shall be deemed to have been duly given upon being delivered personally or upon receipt if mailed by certified mail, return receipt requested. Notices shall be sent to the representatives named below or any subsequent representative for which notice was provided pursuant to this section.

**Seller:**

Astrum Technologies

**Customer:**

City of Rochester Hills

- 7.2 This Agreement shall be interpreted and the legal relations between the parties determined in accordance with the laws of the State of Michigan. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of enforceability of any other provisions thereof.
- 7.3 Seller shall not be responsible for delays or failures in performance under this Agreement that are due to causes beyond its reasonable control including, but not limited to, acts of God, war, fires, severe weather, floods, strikes, blackouts or embargoes. In the event such delays or failures interrupt Seller's services to Customer, Seller shall promptly notify Customer of the circumstances and the anticipated delay.
- 7.4 This Agreement represents the entire understanding of the parties with respect to the subject matter hereof and this Agreement supersedes and replaces all prior Agreements and understandings, either oral or written, regarding the subject hereof.

7.5 This Agreement cannot be amended, modified or any provisions waived orally. All amendments and modifications must be in writing and signed by both parties. All waivers must be provided in writing by the party waiving their rights under this Agreement.

7.6 This Agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, Seller may: (i) assign all of its rights, obligations and liabilities under this Agreement to any subsidiary; or (ii) assign its rights to monies due or payable under this Agreement; Seller shall provide Customer with written notice of any such assignment. Seller's assignment of monies due or payable under the Agreement will not relieve Seller of any obligations or responsibilities to Customer hereunder.

IN WITNESS WHEREOF, intending to be legally bound, Seller and Customer have executed this Agreement as of the dates set forth below.

**ASTRUM TECHNOLOGIES**

**Seller**

By: *J. Palawski*

Name: John J. Palawski

Title: Pres.

Date: 5/13/05

**CITY OF ROCHESTER HILLS**

**Customer**

By: *Pat Somerville*

Name: Pat Somerville

Title: Mayor

Date: 5/11/05

**ADDENDUM I**

**SYSTEM MAINTENANCE RATES**

**A. MONTHLY RATES**

Monthly charges for maintenance:           N/A          

Annual charges for maintenance:           N/A          

**B. SERVICE RATES**

Rates for services are pursuant to Seller's proposal dated February 9, 2005 and shall remain firm for four (4) years:

Hourly Rate           \$65.00 per hour          

Emergency and After Hours           \$84.50 per hour          

**C. DATABASE CORRECTION RATES**

Hourly Rate:           \$65.00 per hour

## **ADDENDUM II**

### **EQUIPMENT LIST**

#### **Locations of Equipment covered by this agreement:**

- **Service Building**
- **5 Sewage Pump Stations**
- **2 Booster Pump Stations**
- **3 Water Meter Locations**
- **26 PRV Locations**
- **2 Repeater Sites**

Equipment covered by this agreement is outlined in customers RFP as an attachment identified as appendix "A".

Drawings provided by the customer of the SCADA System configuration covered by this agreement is outlined in customers RFP as an attachment identified as Appendix "B".

## **ADDENDUM III**

### **SPECIAL CONDITIONS**

#### **Equipment Maintenance**

Equipment Maintenance will be performed on an “as requested” basis, at the hourly rates shown in Seller’s cost proposal dated February 9, 2005.

#### **Replacement Parts/Spare Parts**

Replacement Parts, new Equipment and Spare Parts will be provided “as requested”, and will be billed at each Item’s actual cost, plus a 15% Markup, as identified in Seller’s cost proposal dated February 9, 2005.

#### **Services**

Services will be performed in accordance with the definition and response times as defined in customer’s RFP dated January 20, 2005, pages 3-5. Hourly rates shall be pursuant to Seller’s cost proposal dated February 9, 2005

#### **Preventive Maintenance**

Preventive Maintenance will be performed on an annual basis as outlined on page #3, paragraph “A” of the Customers RFP, at the hourly rates outlined in Seller’s cost proposal dated February 9, 2005.

#### **Software Upgrades/Programming**

Seller will provide Software Upgrades to the SCADA System upon customer’s request. Seller will provide a written estimate outlining Software cost, plus 15% Markup, as well as all required labor to facilitate implementation.

Software Programming will be performed on an “as requested” basis as outlined in Customer’s RFP, at the hourly rates shown in Seller’s cost proposal dated February 9, 2005.