

**AGREEMENT FOR SEVERE WEATHER SYSTEM BETWEEN  
OAKLAND COUNTY AND  
CITY OF OAK PARK**

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This Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the City of Oak Park, 14000 Oak Park Blvd., Oak Park, Michigan 48237 ("Public Body"). County and Public Body may be referred to individually as a "Party" and jointly as "Parties".

**PURPOSE OF AGREEMENT.** County and Public Body enter into this Agreement pursuant to the Urban Cooperation Act of 1967, 1967 Public Act 7, MCL 124.501 *et seq.*, for the purpose of adding the Public Body to the County's outdoor warning 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, shall be defined, read, and interpreted as follows:
  - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment.
  - 1.2. **Claims** mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought 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 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.
  - 1.4. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
  - 1.5. **Public Body** means the City of Oak Park which is an entity created by state or local authority or which is primarily funded by or through state or local authority, including, but not limited to, its council, its Board, 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.
  - 1.6. **Public Body Employee** means any employees, officers, directors, members, managers, trustees, volunteers, attorneys, representatives of Public Body, licensees, concessionaires, contractors, subcontractors, independent contractors, agents, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal,

representative or official capacities), and/or any persons acting by, through, under, or in concert with any of the above. "Public Body Employee" shall also include any person who was a Public Body Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.

2. **COUNTY RESPONSIBILITIES.** Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the County shall provide the following:

- 2.1. Install one (1) siren within the Public Body at the location designated by the Public Body.
- 2.2. Provide for maintenance of the siren.
- 2.3. Provide for electrical costs of the siren.

3. **PUBLIC BODY RESPONSIBILITIES.** Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the Public Body shall provide the following:

- 3.1. Pay seventeen thousand, two hundred and fifty dollars (\$17,250) for the installation of one siren. Payment is to be made within thirty (30) days after installation of the siren.
- 3.2. Provide operational status reporting during the first Saturday of the month siren test (March through November) if requested.
- 3.3. Bear all costs associated with any siren relocation.
- 3.4. Public Body acknowledges that the County will retain ownership of the siren.

4. **DURATION OF INTERLOCAL AGREEMENT.**

- 4.1. 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 with the Clerk of each County where the Parties are located. The Agreement shall be filed with the Secretary of State of the State of Michigan pursuant to MCL 124.510.
- 4.2. This Agreement shall remain in effect until cancelled or terminated by either Party pursuant to Section 7.

5. **PAYMENTS.**

- 5.1. If Public Body, for any reason, fails to pay County any monies when and as due under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was actually due and owing under this Agreement.
- 5.2. If County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay County any amounts due and owing County under this Agreement, 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 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.

- 5.3. Nothing in this Section shall operate to limit County's right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.
- 5.4. Either Party's decision to terminate and/or cancel this Agreement, shall not relieve Public Body of any payment obligation rendered prior to the effective date of any termination or cancellation of this Agreement. The provisions of this Subsection shall survive the termination, cancellation, and/or expiration of this Agreement.

## 6. **ASSURANCES.**

- 6.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.
- 6.2. **Responsibility for Attorney Fees and Costs.** Except as provided for in Section 5.3, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.
- 6.3. **No Indemnification.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.
- 6.4. **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. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.
- 6.5. **Authorization and Completion of Agreement.** 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.
- 6.6. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

## 7. **TERMINATION OR CANCELLATION OF AGREEMENT.**

- 7.1. Either Party may terminate or cancel this entire Agreement upon thirty (30) days written notice, if either Party decided, in its sole discretion, to terminate this Agreement, for any reason including convenience.
- 7.2. The effective date of termination and/or cancellation shall be clearly stated in the written notice. Either the County Executive or the Board of Commissioners is authorized to terminate this Agreement for County under this provision.

- 7.3. The Parties shall not be obligated to pay a cancellation or termination fee, if this Agreement is cancelled or terminated as provided herein.
8. **SUSPENSION OF SERVICES**. Upon notice to the Public Body, the County may immediately suspend this Agreement or the Public Body's participation in the outdoor warning system, if the Public Body has failed to reasonably comply, within the County's discretion, with federal, state, or local law, or any requirements contained in this Agreement. The right to suspend services is in addition to the right to terminate or cancel this Agreement contained in Section 7. The County shall incur no penalty, expense, or liability if services are suspended under this Section.
9. **DELEGATION OR ASSIGNMENT**. Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
10. **NO EMPLOYEE-EMPLOYER RELATIONSHIP**. Nothing in this Agreement shall be construed as creating an employee-employer relationship between County and Public Body. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants during the term of this Agreement. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Agreement.
11. **NO THIRD-PARTY BENEFICIARIES**. Except as provided for the benefit of the Parties, 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.
12. **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.
13. **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.
14. **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, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
15. **FORCE MAJEURE**. Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.

16. **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: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.
- 16.1. If Notice is sent to County, it shall be addressed and sent to: Oakland County Homeland Security Division, 1200 N. Telegraph Road, County Service Center, Pontiac, MI 48341, and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Building 12 East, Pontiac, Michigan 48341.
- 16.2. If Notice is sent to Public Body, it shall be addressed to: The Chief Elected Official of the Public Body at the address listed on the first page of this agreement.
- 16.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.
17. **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.
18. **SURVIVAL OF TERMS.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 6); No Employee-Employer Relationship (Section 10); No Third-Party Beneficiaries (Section 11); No Implied Waiver (Section 12); Severability (Section 13); Force Majeure (Section 15); Governing Law/Consent to Jurisdiction and Venue (Section 17); Survival of Terms (Section 18); Agreement Modifications or Amendments (Section 19); and Entire Agreement (Section 20).
19. **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 body.
20. **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 for the purchase of sirens, including, but not limited to, siren purchase agreements and severe weather warning system agreements. The language of this Agreement shall be construed according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, [insert name and title of public body official] hereby acknowledges that he/she has been authorized by a resolution of the City of Oak Park, a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
[insert name of official, title, and the City of Oak Park]

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
[insert name, title]

AGREEMENT  
ADMINISTRATOR: \_\_\_\_\_ DATE: \_\_\_\_\_  
(IF APPLICABLE)

IN WITNESS WHEREOF, David Woodward, Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners 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: \_\_\_\_\_ DATE: \_\_\_\_\_  
David Woodward, Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Oakland County Board of Commissioners  
County of Oakland