

CITY OF SYLVAN LAKE
STORMWATER SYSTEM
OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____ 2024, by and between the COUNTY OF OAKLAND, a Michigan constitutional corporation ("County"), whose address is 1200 N. Telegraph, Pontiac, Michigan 48341 and the CITY OF SYLVAN LAKE, a Michigan municipal corporation, whose address is, 1820 Inverness Street, Sylvan Lake, Michigan 48320-1679 ("City"). In this Agreement, either the County and/or the City may also be referred to individually as a "Party" or jointly as "Parties."

Recitals:

WHEREAS the City owns a Stormwater Pumping Station and Collection System located within the City and providing service to part of the City (hereinafter called the "System") and is further described in **Exhibit A**; and

WHEREAS the City desires to engage the County to operate and maintain only the Pumping Station, at this time, on behalf of the City on a non-profit basis and in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS the City may want to include the Collection System for operations and maintenance service at some later date, in accordance with section 9.2 of this Agreement; and

WHEREAS the County, by and through the Office of the Water Resources Commissioner ("WRC") may operate and maintain the "System" as agent for the County; and

WHEREAS the County, by and through the Office of the Oakland County Water Resources Commissioner, has qualified personnel capable of providing stormwater operations and maintenance services; 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 7"), authorizes 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 pursuant to resolutions adopted by their respective legislative bodies, the Parties each have been authorized to execute this Agreement for the Services according

to the terms and conditions of this Agreement.

NOW, THEREFORE in consideration of these premises and the mutual promises, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the County and the City mutually agree as follows:

Article I. Statement of Authority and Purpose.

- 1.1 Authority. Pursuant to Act 7 of 1967, and any other applicable laws of the State of Michigan, the County and the City enter into this Agreement to establish terms and conditions for the operation and maintenance of the System. Each Party agrees to take all actions reasonably necessary to effectuate the objectives set forth in this Agreement.
- 1.2 Purpose. The purpose of this Agreement is to authorize the County to operate and maintain the System on behalf of the City on a non-profit basis and in accordance with the Services detailed in **Exhibit B** attached hereto. In exchange for the Services, the County shall be reimbursed for its Costs and Overhead from the Revenue collected and deposited in the System Enterprise Fund maintained by the County on behalf of and for the benefit of the City.

Article II. Definitions.

In addition to the above defined terms i.e., ("County," "City," "WRC," "Party" and "Parties") and any terms defined in other sections of this Agreement e.g., ("Services"), the Parties agree that the following words and expressions, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 2.1 "Agreement" shall mean each of the various provisions and parts of this document, including all attached Exhibits and any amendments thereto, as may be executed and approved by the Parties.
- 2.2 "Cost(s)" shall be defined as the labor, including statutory and customary fringe benefits, overtime, material and supplies, power and utility services, vehicle and/or equipment rental and subcontractor services devoted to the Services as defined in this Agreement.
- 2.3 "Contractor" shall be defined as an independent contractor engaged by the County to perform the Services and responsibilities necessary to carry out the objectives under this Agreement.
- 2.4 "County Agent" or "County Agents" shall be defined as any and all Oakland County elected officials, appointed officials, directors, board members, commissioners, authorities, other boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, 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 them, excluding the City and/or any City Agents, as

defined herein.

- 2.5 "WRC Personnel" as used in this Agreement shall be defined as a specific subset of, and included as part of the larger group of County Agents as defined above, and assigned by the County to work in the Office of the Oakland County Water Resources Commissioner as shown in the County budget and/or personnel records of the County.
- 2.6 "City Agent" or "City Agents" shall be defined to include any and all City officers, elected officials, appointed officials, directors, board members, council members, authorities, boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, consultants, 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 them, excluding the County and/or any County Agents, as defined herein.
- 2.7 "Claim(s)" shall be defined to include any and all alleged claims, complaints, demands for relief or damages, lawsuits, and causes of action, whether in law or equity, tort, contract, or otherwise, by third parties, arising out of the ownership, operation, maintenance of the System, but does not include claims between the Parties.
- 2.8 "Overhead" shall be defined to include the following: all allocation of the labor cost, including statutory and customary fringe benefits, of personnel responsible for administering this contract or supervising the work performed in connection with this Agreement; an allocation of expenses of the WRC; and an allocation of indirect costs of Oakland County charged to the WRC for support services, such as (but not limited to) legal, personnel, accounting, computer support, and insurance and/or risk management. The Overhead expense allocations and methodology are set forth in **Exhibit C**.
- 2.9 "Service Charge" shall be defined as the quarterly fee charged to the City for the operations and maintenance of the system. The fee is reviewed on an annual basis and modified from time to time as mutually agreed upon.
- 2.10 "Revenue" shall be defined as the funds derived from the service charge.
- 2.11 "State" shall be defined as the "State of Michigan," a sovereign governmental entity of the United States, and also shall include within its definition any and all departments or agencies of State government.
- 2.12 "System Enterprise Fund" shall be defined as the account for the System established and maintained by the County on behalf of the City.

Article III. County Responsibilities; WRC Operation and Maintenance Services.

- 3.1 Services. The County agrees to perform the operation and maintenance services for the System (all of the following being referred to in this Agreement as the "WRC Services" or "Services") as set forth in **Exhibit B** attached to this Agreement.
 - (a) The Services to be provided by the County to the City under this Agreement shall be performed by the County's "WRC Personnel" and/or Contractor. The County will maintain and designate a sufficient number of County Agents and WRC Personnel, having sufficient qualifications, in order to carry out and provide the Services under and in accordance with this Agreement. However, the County will give due consideration to any input received from the City concerning the number and charges of Contractors and WRC Personnel assigned to provide Services for

the System.

- (b) The County shall be responsible for furnishing all WRC Personnel and Contractors with all job instructions, job descriptions and job specifications and shall in all circumstances control, supervise, train or direct all WRC Personnel in the performance of any and all Services under this Agreement. The County shall remain the sole and exclusive employer of all County Agents and WRC Personnel.
 - (c) This Agreement is neither intended, nor shall it be interpreted, to create, change, or otherwise affect or control, in any manner any employment right, privilege, benefit, or any other term or condition of employment, of any kind or nature whatsoever, in, upon, or for any County Agent or WRC Personnel. Except as expressly provided for under the terms of this Agreement and/or laws of this State, no County Agent or WRC Personnel, while such person is currently and/or actively employed by the County shall be employed or utilized to perform any other services by or for the City during the term of this Agreement. This section shall not prohibit the City from employing any person who was a former County Agent but is no longer employed in that capacity by the County.
- 3.2 System Capital Replacement Expenditures. Except in cases of emergencies, the County shall not expend funds from the System Enterprise Fund for capital replacement or improvement projects in excess of \$5,000 without prior approval from the City.
- 3.3 Establish Reserves. The County may establish a reserve for system emergencies, system replacement, or other purposes with the consent of the City.
- 3.4 Independent Contractor. At all times and for all purposes under the terms of this Agreement, the County and/or any and all County Agents' legal status and relationship to the City shall be that of an Independent Contractor.
- 3.5 Insurance - County. The County will endeavor to obtain and to maintain for the duration of this Agreement the following insurance coverages with insurance companies licensed to do business in the State of Michigan, but only if such insurance coverage is commercially available. It is understood and agreed, that all costs, including the premium, self-insured retention or deductible, shall be included as a System Cost:
- (a) Professional Liability or Errors and Omissions with limits of \$10,000,000 per occurrence and \$15,000,000 aggregate.
 - (b) Commercial General Liability with limits of \$10,000,000 per occurrence and \$15,000,000 aggregate.
 - (c) Certificates of Insurance.
 - i. So long as the City maintains current on its annual premium for the coverage outlined herein, it shall be a Named Insured under the policy.
 - (d) Non-Exclusivity and Limitations of Insurance Coverage. It is understood by the City, that the insurance coverages set forth herein and obtained and maintained by the County is not exclusive to this Agreement. Meaning, that the County may purchase and maintain the insurance coverages to insure the County (its respective elected officials, officers, employees, and agents) against such Claims arising from the County Services provided under this Agreement, as well as similar

Services the County provides to other municipal public corporations. As such, the City, along with other participating municipal corporations, will share in the cost of the insurance premium paid by the County. To this end, the County agrees to reasonably allocate the premium paid for the insurance to the various water and sewer systems operated and maintained by the County, including the City's System, and provide reasonable justification for the allocation of said cost to the City. In addition, it is understood and agreed, that the purchase of insurance and payment of the premium (as a System Cost), does not guarantee insurance coverage for any Claim. All policies set forth herein are subject to the terms, conditions, and limitations set forth in the insurance policies. As such, uninsured Claims shall be and remain a System Cost. Moreover, insured Claims arising from the County's Services to a municipal water and sewer system, other than the City's System, may limit or possibly eliminate coverage of a Claim arising from the County's Services under this Agreement. In the event of such an occurrence, it is understood that an otherwise insured Claim that is in excess of any valid and collectible insurance rights/policies, shall be and remain a System Cost.

- 3.6 Permit Assistance. The County will assist the City in the procurement of all permits, guarantees, warranties, easements, licenses, and other similar approvals and consents necessary to operate and maintain the System received by or granted to the City as the owner of the System.
- 3.7 Regulatory Compliance. The County will supervise all regulatory compliance and financial transactions, except for the enforcement of the City's ordinances or regulations.
- 3.8 Disbursing Funds. Upon request from the City for the disbursement of funds from the System Enterprise Fund, the County shall promptly disburse funds to the City in the amount and manner requested, provided that the balance remaining in the System Enterprise Fund is adequate for the operation and maintenance of the System.

Article IV. City's Responsibilities.

- 4.1 Ordinance - Enforcement. The City is responsible for enforcement of the City's ordinances and regulations for illicit discharges into the storm sewer system.
- 4.2 Major Repairs of the System. The City is responsible for major repairs of the System, which are determined on a case-by-case basis by the County as capital replacement, repairs or maintenance valued at \$5,000 or more per occurrence. The City has the option of directing the County to perform this work on behalf of the City, utilizing WRC Personnel or a Contractor, or administering this work independent of this Agreement. Major repairs of the System performed by the County pursuant to this Agreement will be invoiced to the City separately and in addition to the quarterly service charge.
- 4.3 Testing and Sampling Fees; Consultant Fees. The City agrees that the term "Costs" includes, but is not limited to, fees for testing, sampling, engineering services or studies, master planning, capital improvements, as well as all of the costs related to procurement of the same.
- 4.4 Permits - City. The City will be responsible for procuring, and in accordance with their respective terms, all permits, guarantees, warranties, easements, licenses, and other similar approvals and consents necessary to operate and maintain the System received by or granted to the City as the owner of the System.

Commented [BS1]: No Rates.

4.5 City - Insurance.

(a) It shall be the responsibility of the City to determine and obtain real and personal property insurance with limits that the City, in its discretion, deems necessary and appropriate for the System and components of the System.

(b) It shall be the responsibility of the City to determine and obtain General Liability Insurance or self-insurance to protect against the City's liabilities and exposures set forth in Article VI.

4.6 Property Access. The City will be responsible for and will secure the right of access necessary for WRC Personnel or Contractors to perform the Services under this Agreement. The City will be responsible for all costs or Claims associated with securing rights of access.

4.7 Compliance with State and Federal Law and Regulations. The City will be and remain responsible for Costs associated with compliance with all federal, state, and local laws, ordinances, regulations, and requirements in any manner affecting any work or performance of this Agreement or with any City duty or obligation under any applicable state or federal laws and/or regulations.

4.8 System Ownership. Notwithstanding any other term or condition in this Agreement, no provision in this Agreement is intended, nor shall it be construed, as constituting a divestiture or forfeiture of the City's absolute ownership of and authority over the System.

Article V. Compensation for Services.

~~5.1~~ Compensation from System Revenue. The County's Costs and Overhead incurred for the Services shall be compensated by the City in the annual amount of _____ . ~~Should be time and material.~~

~~5-25.1~~ County Services Performed Non-Profit Basis. The City acknowledges and agrees that the County will assist the City in the operations and maintenance of the System on a non-profit basis for the benefit of the users of the system and therefore the County is without funds to finance, operate and maintain the System. Therefore, it is understood and agreed that in no event shall the County or its general fund be charged with or liable for the cost of operating, maintaining, repairing, replacing, or administering the System. All Costs and Overhead associated with the Services under this Agreement will be the responsibility of the City.

Article VI. Standard of Care; Warranty Waiver; Consequential Damages and Liability.

6.1 Standard of Care; Waiver of Warranty and Consequential Damages. The County will perform the Services under this Agreement in accordance with the standard of care and diligence normally provided by other professional firms providing similar Services. However, the County makes no warranty, express or implied, with respect to any Services provided. SPECIFICALLY, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR IMPLIED BY THE COUNTY WITH RESPECT TO SERVICES PROVIDED UNDER THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER UNDER CONTRACT, TORT OR OTHERWISE.

- 6.2 Liability for Claims. Except as otherwise provided in this Agreement, it is understood that each Party shall be responsible for any Claims made against that Party and for the acts or omissions of its respective employees or City and/or County Agents. With respect to Claims that arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation including attorney fees. Except as otherwise provided in this Agreement, 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. 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 the privileges and immunities as provided by law afforded to the Parties. The Parties expressly reserve all privileges and immunities as provided by law.
- 6.3 Force Majeure: System Malfunction: Misuse or Vandalism of System. The City will be responsible for damage and liability to the System or components thereof caused by flood, fire, Acts of God or other force majeure, civil disturbance, Acts of War, terrorism or misuse of property. In addition, the City will be responsible for all Claims, damages and liability caused by design and/or construction defects, malfunction or failure of the System or any component thereof, sewer breaks, and vandalism provided the same is not directly caused by the acts or omissions of County Agents.
- 6.4 No Third-Party Beneficiary. This Agreement does not create any rights or benefits to parties other than the City and the County.

Article VII. Cooperation and Communication; Dispute Resolution.

- 7.1 Cooperation. The County agrees to ensure that all County Agents fully cooperate with the City and City Agents in the performance of all Services under this Agreement. The City agrees to ensure that City Agents cooperate with WRC Personnel in the performance of the Services under this Agreement.
- 7.2 Communication. There shall be an open and direct line of communication established and maintained between the Parties in order to promote the handling of both routine and emergency situations in a timely and cooperative manner according to the circumstances as they exist or become known. Each Party will designate one or more liaisons for such purposes, and will notify the other Party of such designee(s). The liaisons shall also be used for purposes of communicating and coordinating specific needs, plans, instructions, issues, concerns and other matters relating to the System or Services.
- 7.3 Dispute Resolution. The Parties agree that any and all claims alleging a breach of this Agreement, or with respect to the Services provided under this Agreement, shall first be submitted to an alternative dispute resolution process. Such an alternative dispute resolution process may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. If the matter is not resolved through an alternative dispute resolution process, or if the Parties cannot agree upon the form and procedures for the alternative dispute resolution process, the Parties may seek legal recourse in a court of competent jurisdiction. For claims requiring immediate relief to prevent irreparable harm, either Party may seek relief directly from a court of competent jurisdiction without submitting the matter to the alternative dispute resolution process.

Article VIII. Term; and Termination.

- 8.1 Term. The Parties agree that the term of this Agreement shall begin on the Effective Date of this Agreement. This Agreement shall be effective for an initial term of ten (10) years from the effective date, and shall be automatically extended for additional ten (10) year terms, unless terminated as provided herein, or otherwise agreed to in writing by the Parties.
- 8.2 Termination. Notwithstanding any other term or provision in any other section of this Agreement, either Party, upon a minimum of one hundred and eighty (180) calendar days written notice to the other Party, may terminate this Agreement for any reason, including convenience, without incurring any penalty, expense, or liability to the other Party. The effective date for any such termination shall be clearly stated in the notice.
- 8.3 Survival of Certain Terms and Conditions Following Termination or Expiration of Agreement. The Parties agree that record-keeping and audit requirements, any payment obligations to the other Party, and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions, or Claim(s) either occurring or having their basis in any events or transactions that occurred during the term of this Agreement, shall survive the termination or expiration of this Agreement.
- 8.4 Cooperation Following Termination of Agreement. In the event the Agreement is terminated as provided herein, the Parties agree to cooperate in all respects and assist in the wind down from the County's operation and maintenance of the System. The City will be responsible for all Costs and Overhead incurred by the County through the date of termination, including the Costs and Overhead incurred by the County during the termination notice period referenced above to wind down and end the County's involvement in the provision of the Services.

Article IX. Agreement Approval; Effective Date; and Amendments; Changes to Scope of Services.

- 9.1 Agreement Approval; Amendments; and Effective Date. Except as otherwise provided herein, this Agreement, and/or any subsequent amendments thereto, shall not become effective prior to the approval by resolutions of both the City and the County. The Effective Date of this Agreement, and any amendments hereto, shall be the date as reflected in the opening paragraph of this Agreement.
- 9.2 Amendment to Scope of Services. During the term of this Agreement, the Scope of Services attached hereto as **Exhibit B**, may be amended by the WRC and approved by resolution of the City during the term of this Agreement without requiring a resolution from the Oakland County Board of Commissioners.

Article X. General Provisions.

- 10.1 Governing Law. 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. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
- 10.2 Reservation of Rights: Governmental Function. 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. In addition, the Parties maintain that the obligations set forth in this Agreement will be in the exercise

or discharge of a governmental function.

- 10.3 Severability. If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision of persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.
- 10.4 Binding Contract: Assignment: and Amendments. This Agreement will be binding upon and for the benefit of the Parties hereto and their respective successors and assigns, subject to any assignment requiring the prior written consent of the non-assigning Party by an amendment to this Agreement signed by all Parties, and the assignee binding the assignee to the terms and provisions of this Agreement.
- 10.5 Captions. The section headings or titles and/or all section numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- 10.6 Notices. Except as otherwise expressly provided for herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Agreement to be delivered to the following:

COUNTY OF OAKLAND:

OAKLAND COUNTY WATER
RESOURCES COMMISSIONER
1 Public Works Drive
Waterford, Michigan 48328

CITY OF SYLVAN LAKE:

CITY MANAGER
1820 Inverness Street
Sylvan Lake, Michigan 48320-1679

- 10.7 Notice Delivery. Except with respect to notices of termination, all correspondence and written notices 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. Notices of termination shall be personally delivered or sent by certified mail, return receipt requested, and shall be considered delivered to a party on the date of receipt as represented by the return receipt or by proof of personal service.
- 10.8 Entire Agreement. This Agreement sets forth the entire agreement between the County and the City and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the County and the City in any way related to the subject matter hereof, except as expressly stated herein. This Agreement shall not be changed or supplemented orally and may be amended only as otherwise provided herein.
- 10.9 Recitals. The recitals shall be considered an integral part of the Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.

COUNTY OF OAKLAND

By: _____
David T. Woodward, Chairperson
Oakland County Board of Commissioners

CITY OF SYLVAN LAKE

By: _____
John Martin, City Manager

By: _____
Dennise Dryden, Clerk/Treasurer

Exhibit A

Exhibit B
Scope of Services
Stormwater System Operations and Maintenance

The County agrees to perform the following operation and maintenance services of the City of Sylvan Lake as defined in the Agreement ("System") (all of the following being referred as the "WRC Services" or "Services") on behalf of the City:

1. Perform operation and maintenance of the City's Stormwater Pump Station, including payment of power costs, periodic inspection, preventative maintenance, and routine repairs and replacements (any repair or replacement less than \$5,000), Repairs or replacements costing \$5,000 or more are considered a major repair of the system, covered in section 4.3 of the Agreement.
2. The County will provide a 24-hour, 7-days per week dispatch center to receive alarms from the Supervisory Control and Data Acquisition System (SCADA) and any other reports of System emergencies, and will dispatch emergency service crews to respond to such alarms and reports,
3. All Services provided by the County under this Agreement will be performed In accordance with all applicable county, state and federal permits and regulations, all applicable state and federal laws and all applicable City ordinances.

Exhibit C OVERHEAD EXPENSE

WRC Overhead charges are expenses not included in the direct hourly system labor and equipment costs. Overhead is allocated to all the systems that WRC services. Overhead expense includes, but is not limited to:

Safety Program

Labor, equipment and training needed to meet or exceed all required safety standards.

Training

Training and certification costs for field and engineering staff required to keep them up-to-date on industry standards and innovations.

WRC Administration

Labor, equipment and training required to oversee the daily WRC operations. This includes Permitting, Mapping, GIS, Asset Management and Miss Dig.

Building Use and Maintenance

Use of the various WRC buildings (includes Pump Maintenance, and Public Works buildings) and labor equipment, insurance, utilities, supplies and other related costs needed to operate and maintain such buildings.

Miscellaneous Supplies

Supplies which are not inventoried and not purchased for a specific system are allocated to the benefiting systems. This category includes uniforms, gloves, boots and repair parts.

Oakland County Support

Various Oakland County departments support the staff and work performed at the WRC. These departments include Human Resources, Purchasing, Information Technology and Fiscal Services. The portion of their costs which is charged to the WRC is then allocated to the funds operated by this division.