



CITY of NOVI CITY COUNCIL

**Agenda Item G
March 22, 2010**

SUBJECT: Approval of Severe Weather System Interlocal Agreement between Oakland County and the City of Novi to purchase and install one (1) early warning siren at a cost of \$17,250.

SUBMITTING DEPARTMENT: Police *DM*

CITY MANAGER APPROVAL: *[Signature]*

EXPENDITURE REQUIRED	\$17,250.00
AMOUNT BUDGETED	\$17,250.00
APPROPRIATION REQUIRED	N/A
LINE ITEM NUMBER	101-301.00-982.000

BACKGROUND INFORMATION:

As part of the FY 2009-2010 budget process, general funds were allocated for the purchase of one (1) early warning siren to maximize the tornado siren coverage for the City of Novi.

After researching the location and coverage of the existing early warning sirens throughout Novi, the plan is to place the siren on Eight Mile Road to ensure that the ITC Community Sports Park will have adequate coverage in case of a severe weather warning. The addition of this emergency siren will also provide coverage to our residents located east of Garfield Road.

The interlocal agreement outlines the responsibilities between Oakland County and the City of Novi. The maximum cost of one new siren is expected to be \$23,000 of which the local community is responsible for 75% (\$17,250) and Oakland County is responsible for 25% (\$5,750). Upon approval, the County will order the siren, power, and coordinate the installation. Once the siren is operational, Oakland County is responsible for the cost of the electric service and ongoing maintenance.

As with other agreements, the City of Novi will need a resolution authorizing the Mayor to enter into the Severe Weather Warning System Interlocal Agreement. Legal counsel has reviewed this matter and opines there is no legal impediment which precludes the City of Novi from executing this agreement.

This request aligns with City Council goal to improve the level and delivery of City services in a cost effective manner and is consistent with the Police Department's ongoing commitment and responsibility in emergency management and preparedness.

RECOMMENDED ACTION: Approval of Severe Weather System Interlocal Agreement between Oakland County and the City of Novi to purchase and install one (1) early warning siren at a cost of \$17,250.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

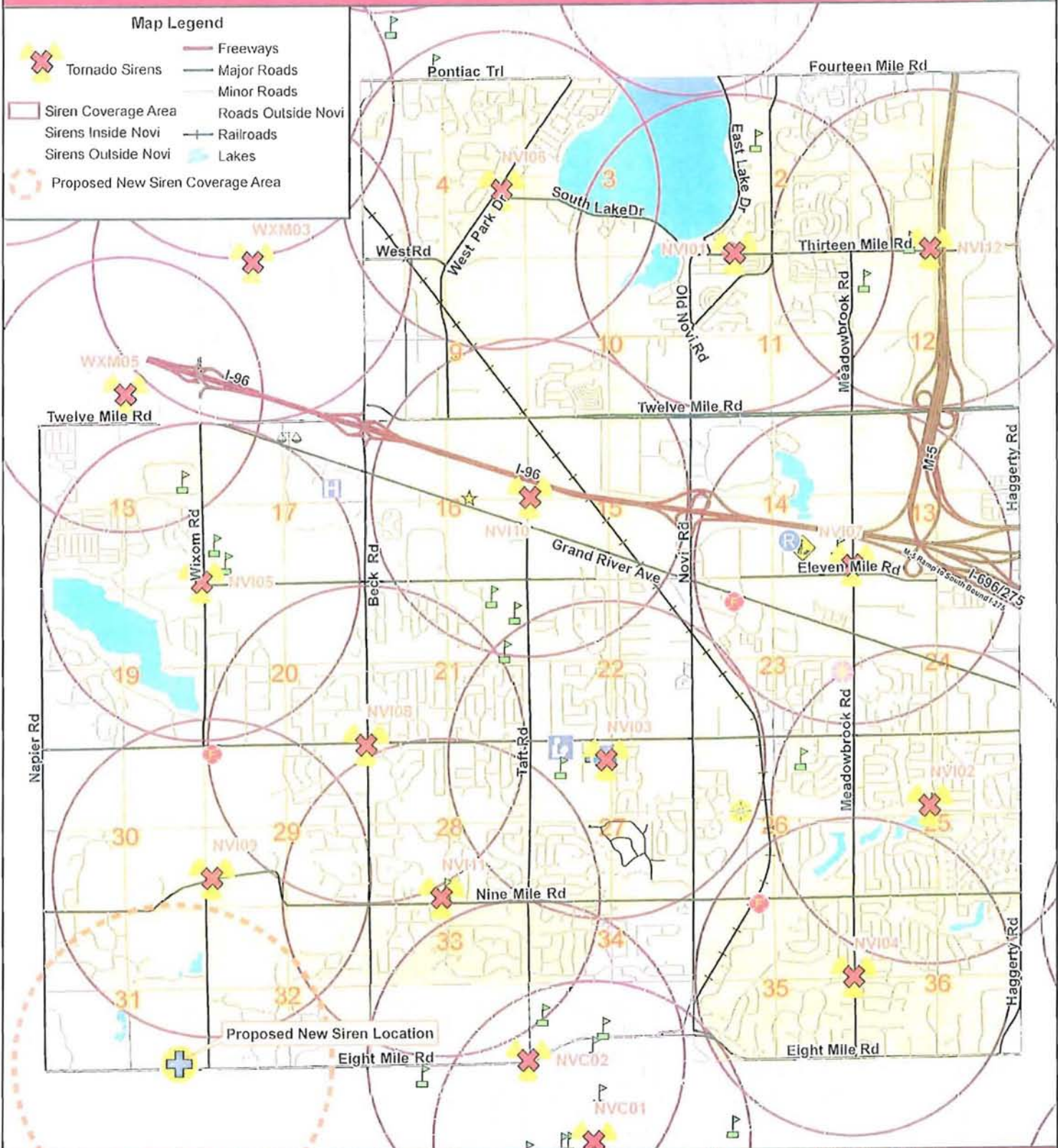
PROPOSED LOCATION FOR NEW EMERGENCY SIREN

Coverage Across the City of Novi and Adjoining Communities



Map Legend

- Tornado Sirens
- Siren Coverage Area
- Sirens Inside Novi
- Sirens Outside Novi
- Proposed New Siren Coverage Area
- Freeways
- Major Roads
- Minor Roads
- Roads Outside Novi
- Railroads
- Lakes



CITY OF NOVI

GEOGRAPHIC INFORMATION SERVICES
 INFORMATION TECHNOLOGY DEPARTMENT
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-3279
 MAP AUTHOR: CHRIS BLOUGH,
 CITY GIS MANAGER



MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

March 15, 2010

Richard S. Kos,
Emergency Management Coordinator
Novi Police Department
45125 W. Ten Mile Road
Novi, MI 48375

Re: *Severe Weather Warning System Interlocal Agreement Review*
Our File No. 55142 NOV

Dear Mr. Kos:

You asked us to review a draft interlocal agreement prepared by Oakland County for the installation and operation of a severe weather warning system within the City. According to the cover letter from the County Emergency Management Coordinator, M. Tracey McGee, the proposed agreement is in response to the City's request to the County that it purchase and install one tornado siren in partnership with the Oakland County Early Weather Warning Program. The letter indicates that the maximum cost for the siren is expected to be \$23,000.00. The proposal outlined in the letter calls for the County to bear 25% of the cost and the City to contribute the other 75%, or \$17,250.00.

SUMMARY OF THE AGREEMENT

Under the proposed agreement the County is responsible for the installation of one siren at the location designated by the City, and to provide maintenance and electrical service to the siren. There is no requirement for the City to contribute to ongoing maintenance or electrical supply expenses incurred by the County. The County retains the right to immediately suspend service without penalty, expense, or liability upon notice to the City if, in the County's discretion, the City has failed to reasonably comply with federal, state or local law or any requirements contained in the agreement.

The City's responsibilities are to pay \$17,250.00 within 30 days of the installation of the siren, provide operational status reporting on the first Saturday of each month between March and November upon request and to bear any cost associated with relocating the siren. By entering this agreement, the City is also acknowledging the County's ownership of the siren. The City by entering into the agreement also agrees, to the maximum extent provided by law, that if there is an amount past due from the City under the contract, the County has the right to set-off that amount from any amount due to the municipality from the County, including but not limited to distributions from the Delinquent Tax Revolving Fund.

Richard S. Kos
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The agreement commences when both parties execute the agreement, adopt resolutions authorizing the agreement and when the agreement is filed with the County and City Clerks. The agreement will be filed with the State as required by statute. The agreement remains in effect until cancelled. Cancellation may be made for any reason by either party upon 30 days written notice to the other party, with the notice providing the cancellation date clearly stated in the notice. The agreement does not contain a cancellation or termination fee if proper notice is provided.

OBSERVATIONS

The cover letter indicates the maximum cost of the siren is \$23,000.00, but the agreement states the City is to pay \$17,250.00 regardless of the actual cost of the siren. As we understand it, it is possible that the actual cost could vary up or down for the anticipated \$23,000. Both parties may want to clarify how this is worded if that is the case.

The City is required to bear any relocation cost, even if the County wants the siren relocated (although the County's obligation calls for the siren to be installed at the location designated by the City). This is probably fairly unlikely to happen, but we point it out as a theoretical possibility. Paragraph 9 of the agreement, Compliance With Laws, makes reference to policies, procedures, rules and regulations attached as exhibits to the agreement. You will want to get copies of any such policies in order to confirm the City's ability to comply with them.

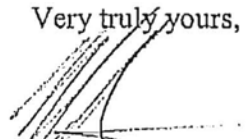
With regard to the set-off language, this office disputes the effectiveness of such a provision but past experience has been that the County will only agree to include the phrase "to the maximum extent provided by law," which does appear in this agreement as noted above. Given that the agreement does not require periodic payment to the County, the set-off provision for amounts due should have little if any impact in this agreement. Finally, we note that the agreement does provide, in paragraph 5, that each party will be responsible for its own employees, agents and subcontractors, including costs associated with the acts and for the defense of those acts.

RECOMMENDATIONS

We see no legal impediment to entering into this agreement. The attached resolution authorizing the Mayor and Clerk to sign the agreement indicates that some minor technical adjustments can be made if after discussing any of the above minor items with the County there is some clarification that occurs.

Richard S. Kos
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If you have any questions, please do not hesitate to contact me.

Very truly yours,

Mark S. Roberts

MSR:jec

1391417

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION APPROVING SEVERE WEATHER
WARNING SYSTEM INTERLOCAL AGREEMENT BETWEEN
OAKLAND COUNTY AND THE CITY OF NOVI

Minutes of a _____ Meeting of the City Council of the City of Novi,
County of Oakland, Michigan, held in the City Hall in said City on _____, 2010,
at 7:00 o'clock P.M., Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____
_____ and supported by Councilmember _____.

WHEREAS, the County of Oakland has prepared an Interlocal agreement, under the Urban Cooperation Act of 1967, MCL 124.501, *et seq.*, between the County and the City for the purpose of documenting the County's proposal to install one (1) severe weather warning system siren in the City at a location to be determined by the City, and to provide maintenance and electrical costs therefor: and

WHEREAS, the City has agreed to accept the installation of the siren and to pay an amount equal to 75 percent of the cost of the installation, up to \$17,250:

NOW, THEREFORE, BE IT RESOLVED that the Novi City Council hereby authorizes the City Manager to sign the Severe Weather Warning System Interlocal Agreement between Oakland County and the City of Novi in the form attached hereto.

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

I, MARYANNE CORNELIUS, the duly-qualified Clerk of the City of Novi, Oakland County, Michigan, do hereby certify that the foregoing is an amended copy of the Resolution adopted by the City Council of the City of Novi, at a duly-called meeting held on _____, 2010, a copy of which is on file in my office.

MARYANNE CORNELIUS
Clerk, City of Novi

This Resolution was signed and acknowledged before me on _____, 2010, by MARYANNE CORNELIUS, the duly-authorized Clerk for the City of Novi, a Michigan municipal corporation.

Notary Public, Oakland County, Michigan
My Commission Expires:_____



C O U N T Y M I C H I G A N

HOMELAND SECURITY DIVISION
Department of Health and Human Services

L. BROOKS PATTERSON, OAKLAND COUNTY EXECUTIVE

Theodore H. Quisenberry, Manager
HOMELAND SECURITY DIVISION

January 26, 2010

Richard S. Kos, PEM
Emergency Management Coordinator
City of Novi Police Department
45125 W. Ten Mile Road
Novi, MI 48375

Dear Mr. Kos,

This letter is in response to your request to purchase and install one tornado siren in partnership with the Oakland County Early Weather Warning Program.

Selection of the siren's location may affect the final costs. However, the maximum cost for one new siren is expected to be \$23,000. The County's twenty-five percent share of the cost is \$5,750; the City of Novi's seventy-five percent share would be \$17,250.

Enclosed are two copies of the Interlocal Agreement. Please return the executed agreements along with your local miscellaneous resolution or a copy of your certified board minutes indicating that funding for the project has been approved/allocated.

Once these documents have been returned to me I will begin the Oakland County Board of Commissioners approval process, order the siren, order the power and coordinate the installation.

If you have any questions please feel free to contact me at 248-858-1593.

Sincerely,

M. Tracey McGee
Emergency Management Coordinator

PC: file

SEVERE WEATHER WARNING SYSTEM INTERLOCAL AGREEMENT
BETWEEN
OAKLAND COUNTY
AND
CITY OF NOVI

This Interlocal Agreement ("the Agreement") is made between Oakland County, a Constitutional and Municipal Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County"), and the City of Novi, 45175 W. Ten Mile Road, Novi, Michigan 48375 ("Municipality"). In this Agreement, the County and the Municipality 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 the Municipality enter into this Agreement for the purpose of adding the Municipality 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, within or without quotation marks, or possessive or non-possessive, shall be defined, read, and interpreted as follows.
 - 1.1. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County, its employees or agents, whether such Claim is brought in law or equity, tort, contract, or otherwise.
 - 1.2. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, any and all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, volunteers, and/or any such persons' successors.
 - 1.3. **Municipality** means City of Novi, a Constitutional Corporation including, but not limited to, its Council, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council

- members, commissioners, authorities, committees, employees, agents, subcontractors, volunteers, and/or any such persons' successors.
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 Municipality at the location designated by the Municipality.
 - 2.2. Provide for maintenance of the siren.
 - 2.3. Provide for electrical costs of the siren.
 3. **MUNICIPALITY'S RESPONSIBILITIES**. Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the Municipality shall provide the following:
 - 3.1 Pay seventeen-thousand, two-hundred and fifty dollars (\$17,250) for the installation of the 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 Municipality acknowledges that the County will retain ownership of the siren.
 - 3.5 To the maximum extent provided by law, if there is any amount past due under this Agreement, the County has the right to set-off that amount from any amount due to the Municipality from the County, including, but not limited to distributions from the Delinquent Tax Revolving Fund.
 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 6.
 5. **ASSURANCES**.
 - 5.1. Each Party shall be responsible for its own acts and the acts of its employees, agents, and subcontractors, the costs associated with those acts, and the defense of those acts.
 6. **TERMINATION OR CANCELLATION OF AGREEMENT**.
 - 6.1. Either Party may terminate or cancel this Agreement for any reason upon thirty (30) days notice before the effective date of termination or cancellation. The effective date for termination or cancellation shall be clearly stated in the notice.
 - 6.2. The Parties shall not be obligated to pay a cancellation or termination fee, if this Agreement is cancelled or terminated as provided herein.
 7. **SUSPENSION OF SERVICES**. Upon notice to the Municipality, the County may immediately suspend this Agreement or the Municipality's participation in the outdoor warning system, if the Municipality 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 6. The County shall incur no penalty, expense, or liability if services are suspended under this Section.

8. **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 Municipality.
9. **COMPLIANCE WITH LAWS.** Each Party shall comply with all federal, state, and local statutes, ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement, including, but not limited to, the policies, procedures, rules and regulations attached as Exhibits to this Agreement, and properly promulgated amendments to those Exhibits.
10. **DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or another 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. **PERMITS AND LICENSES.** 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 its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting Party.
12. **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.
13. **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, acts of government (other than the Parties'), 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.
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. A delegation, subcontract and/or assignment made without the prior written consent of the other Party is void.
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.
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 department 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 sent to the County, it shall be addressed and sent to:
Oakland County Emergency Response and Preparedness, 1200 N. Telegraph, County Service Center, Pontiac, MI 48341 and Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph, Building 12 East, Pontiac, Michigan 48341.
 - 18.2 If Notice is sent to the Municipality, it shall be addressed to: The Chief Elected Official of the Municipality at the address listed on the first page of this Agreement.
 - 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**. 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 Sixth Judicial Circuit Court of the State of Michigan, the Fifth 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.
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 body.
21. **ENTIRE AGREEMENT**. This Agreement represents the entire Agreement and understanding between the Parties. This Agreement supercedes all other oral or written Agreements between the Parties including previous siren

purchase agreements. 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.

Authorized Agent of Municipality

Date

Chairperson, Oakland County Board of
Commissioners

Date