

CITY OF SOUTHFIELD - CITY OF LATHRUP VILLAGE
FIRE PROTECTION SERVICES CONTRACT

THIS AGREEMENT is made this ____ day of _____, 2021, by and between the City of Southfield, a Michigan municipal corporation, and the City of Lathrup Village, a Michigan municipal corporation.

W I T N E S S E T H:

WHEREAS, the City of Lathrup Village does not have the necessary facilities except for water, water mains and fire hydrants, to provide fire protection services to the persons and property located within its city limits; and

WHEREAS, the City of Southfield is possessed of fire-fighting equipment and personnel adequate to serve the needs of the City of Lathrup Village; and

WHEREAS, the City of Lathrup Village is desirous of purchasing fire protection services from the City of Southfield and the latter is agreeable to furnishing such services upon the terms and under the conditions herein stated; and

WHEREAS, the City of Southfield and the City of Lathrup Village are legally authorized to enter into an Inter-Municipal contract involving the provision of fire protection services by the City of Southfield to the City of Lathrup Village pursuant to the law of the State of Michigan, to wit: Art. VII, Section 28 of the Michigan Constitution of 1963, and Public Act No. 236 of 1967, as amended, (MSA 5.3323(1), et seq.; MCL 123.811, et seq.) and Public Act No. 35 of 1951 (MSA 5.4081, et seq.; MCL 124.1, et seq.);

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

1. The City of Southfield agrees that it will provide fire protection services commencing July 1, 2021 through June 30, 2022 and that this Contract can be extended for an additional one (1) year period through June 30, 2023 at the option of the City. During these time periods, and during all times that the instant Contract is in full force and effect, the City of Lathrup Village agrees to purchase such fire services, subject to all of the terms, conditions and qualifications set forth herein.

2. It is the intention of the parties hereto that the fire protection services be rendered by the City of Southfield to the City of Lathrup Village and that said services shall be equivalent to the services rendered by the City of Southfield to the property located therein, to the owners thereof, and to its residents. The services to be rendered shall include the services of the City of Southfield's Life Support Unit, and other similar services, as well as actual fire-fighting. Notwithstanding anything contained in this Contract to the contrary, the responsibility of the City of Southfield to the City of Lathrup Village or to any resident thereof, or property therein, shall not be any greater than the responsibility of the City of Southfield to its own residents and property.

No failure on the part of the City of Southfield to fulfill any part of this Contract shall give rise to any claim for redress unless such non-performance would have given rise to a valid claim if the occurrence had taken place within the city limits of the City of Southfield.

3. The City of Lathrup Village agrees that in the event the City of Southfield shall be unable to respond to any call for fire protective services or the services of the Life Support Unit because of the prior commitment of its equipment and personnel, or if for any reason beyond its control, the City of Southfield shall be unable to reach the scene of a fire, or if there shall be any failure of communication or error therein which is beyond the control of the City of Southfield and which prevents or delays an arrival of fire equipment where or when it is needed, there shall be no liability of any kind or nature on the part of the City of Southfield.

4. It is understood and agreed by the parties hereto that the City of Southfield and all its agents and personnel, while performing any act under the terms of this Contract, shall be deemed to be acting in a governmental capacity and shall not be liable in damages or otherwise for any personal injury or property damage suffered by any person or persons during such performance as provided by law.

5. The City of Lathrup Village, agrees that it will indemnify, save harmless, defend, and release the City of Southfield from all actions, proceedings, claims, liabilities and damages arising from or in connection with this Agreement, without limitation, for any loss or damage to any uninsured property or any fire related equipment of the City of Southfield, incurred in connection with the performance of this Contract, including, by way of example and not limited to, damage to Southfield fire trucks, pumpers and Southfield fire equipment damaged due to lack of maintenance of City of Lathrup Village equipment and/or property. The City of Lathrup Village further agrees that it will be responsible for the proper defense of any and all claims made by any person, firm or corporation against the City of Southfield arising from any cause whatsoever in connection with the performance and obligations of this Contract by the City of Southfield within the City of Lathrup Village. The City of Southfield shall be named as additional insured or additional protected entity under the City of Lathrup Village insurance policy or other similar protection, which protection to the City of Southfield shall be primary, notwithstanding any protection, whether primary, excess, or contributing, otherwise available to the City of Southfield. In the event any claims, actions, proceedings, liabilities, or damages occur or arise outside the corporate limits of the City of Lathrup Village while the City of Southfield is performing its obligations pursuant to this Contract, the City of Lathrup Village agrees that it will indemnify, save harmless, and defend the City of Southfield, for any and all liability therefrom, including, without limitation, any loss or damage to any uninsured property or equipment of the City of Southfield, to the extent of coverage to the City of Southfield by virtue of the City of Southfield's inclusion as a protected entity within the insurance policy or other similar protection of the City of Lathrup Village. The City of Lathrup Village shall pay all deductibles associated with such insurance coverage or other similar protection. The City of Lathrup Village shall pay and shall indemnify the City of Southfield for any deductibles or co-payments charged or assessed by any applicable insurance carrier with respect to the replacement or repair of any fire equipment damaged as a result of or by reason of the City of Southfield's performance under this Contract. Provided, however, the City of Lathrup Village is not precluded from bringing action against the City of Southfield only for the material breach of this Contract by the City of Southfield and the

City of Lathrup Village will not be obligated to defend such action or pay any resulting judgment therefrom. Nothing herein contained shall be deemed to prevent the City of Southfield from employing counsel or joining in the defense of any action against it as provided by insurance coverage or otherwise at its own cost. For purposes of the indemnity provisions herein, the City of Southfield shall be deemed to include the City of Southfield and all employees, officers, and agents thereof. The City of Lathrup Village's insurance coverage or other similar protection beneficially for the City of Southfield shall be provided to the same extent and limits of coverage as the City of Lathrup Village maintains for its own general liability insurance or similar protection. The City of Lathrup Village shall at all times during the term of this Contract, provide access to the City of Southfield of any and all documents, records, certificates or files relating to the City of Lathrup Village's insurance or other similar protection coverage for purposes of the City of Southfield's inspection and review thereof, and shall provide copies of such documents as shall reasonably be requested by the City of Southfield.

These indemnity/release provisions set forth herein shall survive the termination or expiration of this Contract.

6. It is agreed that when any fire or other apparatus or personnel from the City of Southfield responds to any call for service within the City of Lathrup Village, all of the fire equipment and all of the members of the City of Southfield Fire Department shall be under the exclusive command of the senior officer of the City of Southfield Fire Department then present, and no person or officer of the City of Lathrup Village shall have any supervisory or disciplinary control whatsoever with respect to such fire or other apparatus and personnel.

7. It shall be the responsibility of the City of Lathrup Village to provide and maintain adequate water mains, fire hydrants, water supply, water pressure, roads, alleys, routes of access and traffic control as may be necessary and reasonably convenient for the proper performance by the City of Southfield of its obligations under this Contract. No failure of any one of the foregoing items shall be the responsibility of the City of Southfield or its personnel or agents. It is further agreed that the City of Southfield shall inspect, test and pump out the fire hydrants of the City of Lathrup Village and any defect or impairment in the fire hydrants discovered shall be reported in writing immediately to the City of Lathrup Village which shall be solely responsible for repairing and correcting all such defects or impairments.

8. In connection with the performance of this Contract, the City of Southfield shall provide same type of fire inspection and fire prevention service as is rendered to the property and residents of the City of Southfield, including fire inspection of new buildings. The City of Southfield shall render to the City of Lathrup Village an annual report of its total fire activities, also showing those occurring in the City of Lathrup Village, and shall monthly submit a report of all fire and rescue incidents occurring in the City of Lathrup Village and handled by the City of Southfield Fire Department during the previous month.

9. In connection with the performance of this Contract, it shall be the responsibility of the City of Lathrup Village to notify the City of Southfield of all new businesses and their locations within thirty (30) days after a new business has opened its doors for business operations.

10. In consideration of the performance of the City of Southfield of the foregoing obligations, the City of Lathrup Village shall pay to the City of Southfield for the period of this agreement; the annual sum of \$639,234.56 for the period of July 1, 2021 through June 30, 2022; and the annual sum of \$652,019.25 for the period of July 1, 2022 through June 30, 2023. It is understood and agreed, however, in the event that an arbitration or other third party compulsory award is rendered against the City of Southfield with respect to wages or rates of compensation to be paid by the employees and personnel of the City of Southfield Fire Department, the above rate of compensation will be further adjusted and increased to reflect such increased costs to the City of Southfield. The annual sum as set forth above, shall be divided into equal quarters and each such quarterly payment shall be due on or before July 1, October 1, January 1, and April 1, in advance of the period within which the services are rendered. Payments shall be directed to: Austen Michaels, Director of Fiscal Services. As to the first fiscal year beginning July 1, 2019, all quarterly payments which have not been made prior to the execution of this Agreement shall be due and payable upon the execution of this Agreement. In addition to the foregoing charges, the City of Lathrup Village shall pay to the City of Southfield any increased cost for insurance for the protection of the personnel of the Fire Department which may be assessed by any insurance company for the City by virtue of the fact that such fire personnel shall be acting outside of the city limits of the City of Southfield pursuant to this Contract. The City of Southfield may terminate this Contract upon ten (10) days notice to the City of Lathrup Village upon the City of Lathrup Village's failure to make timely payment of the quarterly payments and other charges as herein required or failure to maintain insurance or similar protection in accordance with Section 5 hereunder, and after receiving such notice, the City of Lathrup Village shall be allowed to cure the described defect within twenty (20) days from the date of such written notice, and upon the failure of Lathrup Village to cure the defect, the Contract shall then terminate.

11. Each party shall carry full Michigan Workers' Compensation insurance for all of their respective employees, and neither party shall be liable to the other for any injuries, accidents, or damages occurring to or sustained by their respective employees.

12. This Contract shall be effective and continue in effect for the period from July 1, 2021, to June 30, 2022 and thereafter from July 1, 2022 to June 30, 2023, until and unless otherwise terminated by written notice as herein set forth. Except as provided in Section 10 herein, the Fire Protection Services provided in this Agreement shall continue to be provided by Southfield to Lathrup Village beyond the expiration date as provided herein, until either party has provided the other with a prior ninety (90) day written notice of termination of this Agreement; provided, however, the compensation payable to Southfield by Lathrup Village pursuant to Section 10 hereof subsequent to June 30, 2023 shall be increased consistent with the annual increase in the Consumer Price Index for the preceding period. During such extension period all other terms and conditions of this Agreement shall be in full force and effect. Provided, however, the indemnity provisions contained herein shall survive any termination or expiration of this Contract, with respect to claims, demands and/or lawsuits instituted against the City of Southfield, its officers, agents or employees, subsequent to such termination or expiration of the Contract. Notice required hereunder shall be conclusively presumed to have been served when deposited in a United States Post Office box enclosed in an envelope with postage fully prepaid thereon addressed to the then municipal office of the party upon whom notice is being served.

13. Both municipalities understand their mutual need to forecast expenditures well in advance of the adoption of their annual budgets and to pre-plan for anticipated major increases in the cost of services one or more years in advance. To this end, the City of Southfield shall keep the City of Lathrup Village reasonably informed as to any proposals or plans which may involve increasing or decreasing expenditures for fire services as and when they may arise in the future so that the City of Lathrup Village will have reasonable notice of possible increases and a reasonable opportunity to evaluate the end costs to the City.

14. The parties to this Contract agree that they, and any sub-contractors who may exist in the future, shall not discriminate against any employee or applicant for employment who performs any services under this Contract with respect to the hire, tenure, terms, conditions, or privileges of employment, or as to any matter directly or indirectly related to such employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. Any breach of this covenant shall be regarded as a material breach of the Contract.

15. Both parties to this Contract agree that there shall be no discrimination against any employee who is employed in the work covered by this Agreement, or against any applicant for such employment, because of race, color, religion, sex, national origin, marital status, height, weight, family status, sexual orientation, gender identity, or age. This provision shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.

16. No failure by either party to insist upon strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Contract, but each and every covenant, agreement, term and condition of this Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

17. If any provision of this Contract or application thereof to any person or circumstance shall, to any extent, become invalid or unenforceable, the remainder of the Contract, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

18. This instrument contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither party, nor either party's agents have made any representations except as expressly set forth herein, and no rights or remedies are or shall be acquired by the other party by implication or otherwise unless expressly set forth herein.

19. The rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided by law or equity.

20. In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason or strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations, riots, insurrection, war, or other reason of a similar or dissimilar nature, not the direct fault of the party delayed in performing hereunder, then the performance of such acts shall be excused for the period of the delay.

21. This Contract shall not be assigned without the prior written agreement of both parties.

22. Due to the fact that street closures impede emergency access, the City of Lathrup Village agrees that prior consultation with the City of Southfield Fire Department is required before any street closures in the City of Lathrup Village may occur. The City of Lathrup Village further agrees that in the event the normal flow of traffic is impeded by road construction or some other unusual event so that access to Lathrup Village by public safety vehicles is hindered and/or access by public safety vehicles through Lathrup Village to certain sections of the City of Southfield is required, then upon a declaration of an emergency by the Southfield Chief of Police or Chief of the Fire Department, the City of Lathrup Village agrees to remove, immediately upon notification, such barriers as are deemed necessary by the City of Southfield which may at the time be installed at locations bordering the City of Southfield. Such barriers may be reinstated by the City of Lathrup Village at the termination of such emergency.

23. Upon the default by the City of Southfield in the performance of its obligations hereunder, the City of Lathrup Village shall notify the City of Southfield in writing specifying the nature of the claimed default. The City of Southfield shall have not more than thirty (30) days from receipt of the written notice to cure the default. Upon the failure of the City of Southfield to timely cure such default, the City of Lathrup Village may terminate this Contract upon providing not less than ten (10) days written notice to the City of Southfield.

IN WITNESS WHEREOF, the parties have, by their duly authorized officers, hereunto set their hands the day and year first above written.

CITY OF LATHRUP VILLAGE

CITY OF SOUTHFIELD

BY: _____
Kelly Garrett, Mayor

BY: _____
Kenson J. Siver, Mayor

BY: _____
Dr. Sheryl L. Mitchell, City Administrator

BY: _____
Yvette Talley, City Clerk

BY: _____
Nicole Humphries, Deputy City Clerk