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CITY of NOVI CITY COUNCIL

Agenda Item E April 7, 2008

SUBJECT: Approval to enter into agreement with Oakland County for the use and maintenance of Live Scan Equipment for submission and exchange of fingerprint information.

SUBMITTING DEPARTMENT: Police *DM*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Livescan technology has provided the Novi Police Department the ability to electronically send fingerprints to the Oakland County Prosecutor and to the State of Michigan for inclusion on a defendant's criminal history record. As with all technology, the lifecycle of our livescan device ended.

In February of 2008, in collaboration with Oakland County, the Novi Police Department was provided a new Identix Livescan kiosk system. The county purchased most of the Live Scan Equipment with grant funds; thus, the County shall remain the owner of the Live Scan Equipment, even though it is located at the Novi Police Department.

We are seeking Novi City Council's approval on an agreement with Oakland County to delineate the responsibilities and obligations of the parties regarding the use and maintenance of Live Scan Equipment for submission and exchange of fingerprint information. Oakland County is specifically requiring a certified resolution from the Novi City Council. This agreement was reviewed and approved by Novi's corporate counsel.

In an effort to reduce costs to the cities and the County, the County negotiated and executed a single Software License Agreement and Maintenance Agreement for all Live Scan Equipment purchased by the County.

Per the agreement, the City of Novi is required to pay \$3,313 in maintenance fees annually to the County for four (4) years, for maintenance and preventive service. The obligation to pay maintenance fees shall begin on May 1, 2009.

RECOMMENDED ACTION: Approval to enter into agreement with Oakland County for the use and maintenance of Live Scan Equipment for submission and exchange of fingerprint information.

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

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

**LIVE SCAN AGREEMENT
BETWEEN
OAKLAND COUNTY
AND
CITY OF NOVI**

This Agreement is made between Oakland County, a Constitutional Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 and the City of Novi, 45175 W. Ten Mile Road, Novi, MI 48375-3024. In this Agreement, the County and the Political Subdivision 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 Political Subdivision enter into this Agreement. The purpose of this Agreement is to delineate the responsibilities and obligations of the Parties regarding use and maintenance of Live Scan Equipment for submission and exchange of Fingerprint Information.

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 nonpossessive, shall be defined, read, and interpreted as follows:
 - 1.1. **Agreement** means the terms and conditions of this Agreement, the Exhibits attached hereto, and any other mutually agreed to written and executed modification or amendment.
 - 1.2. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, cost, or expense, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Political Subdivision, its employees or agents, whether such Claim is brought in law, equity, tort, contract, or otherwise.
 - 1.3. **Contractor** means the vendor selected by the County, pursuant to County purchasing policies and procedures, to provide the Live Scan Equipment and the maintenance services for the Live Scan Equipment.
 - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members,

council members, commissioners, authorities, committees, employees, agents, or any such persons' successors.

- 1.5. **Courts and Law Enforcement Management Information System ("CLEMIS")** means the computer system which provides access to and entry of public safety and law enforcement data and facilitates the exchange of such data between public safety and law enforcement agencies. CLEMIS also provides access to other criminal justice databases. CLEMIS is interfaced to state and federal law enforcement computers systems which maintain records and files essential to the needs of the public safety and law enforcement community.
 - 1.6. **Courts and Law Enforcement Management Information System Division ("CLEMIS Division")** means a division of the Oakland County Department of Information Technology that supports CLEMIS users. The CLEMIS Division provides services such as training for CLEMIS, a help desk, technical support, application development, liaison with the State on technology matters, vendor liaison, CLEMIS administration, project management, and a CLEMIS application backup site.
 - 1.7. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.8. **Exhibit** means all of the following documents which are fully incorporated into this Agreement:
 - 1.8.1. **Exhibit I**: Software License
 - 1.8.2. **Exhibit II**: Maintenance Agreement
 - 1.9. **Fingerprint Information** means the fingerprint impressions and associated data that is entered into the Live Scan Equipment by the Political Subdivision.
 - 1.10. **Live Scan Equipment (or Equipment)** means cabinet or desktop style handscanner systems including hardware, software, demographic interfaces and software customization as delivered by the Contractor.
 - 1.11. **Maintenance Fees** means the amount of money paid by the Political Subdivision to the County to maintain the Live Scan Equipment pursuant to Section 4 of this Agreement. Maintenance Fees do not include costs for maintenance services not covered by the Maintenance Agreement.
 - 1.12. **Political Subdivision** means the City of Novi, including, but not limited to, its Council, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, or any such persons' successors.
 - 1.13. **System Manager** means the individual or individuals designated by the Political Subdivision who is the authorized point of contact between the County and the Contractor for receiving/sending of material or Live Scan Equipment related to this Agreement or other issues related to this Agreement.
2. **COUNTY RESPONSIBILITIES**. Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the County shall carry out the following:

- 2.1. The County shall provide Live Scan Equipment, specifically one (1) cabinet style handscanner system, to the Political Subdivision for its use. The County purchased most of the Live Scan Equipment with grant funds; thus, the County shall remain the owner of the Live Scan Equipment, even though it is located at the Political Subdivision.
 - 2.2. In an effort to reduce costs to the Political Subdivision and the County, the County negotiated and executed a single Software License Agreement, Exhibit I, and Maintenance Agreement, Exhibit II, for all Live Scan Equipment purchased by the County.
 - 2.3. The Contractor shall provide the maintenance services for the Live Scan Equipment, not the County, as set forth in the Maintenance Agreement attached as Exhibit II.
 - 2.4. Once the Political Subdivision enters and submits the Fingerprint Information into the Live Scan Equipment, the County will submit the Fingerprint Information to the State of Michigan, pursuant to law. The County shall also store all Fingerprint Information entered and submitted into the Live Scan Equipment at the County.
3. **POLITICAL SUBDIVISION'S RESPONSIBILITIES.**
- 3.1. The Political Subdivision shall use and operate the Live Scan Equipment properly and according to this Agreement and applicable law.
 - 3.2. The Political Subdivision shall comply with the Software License, attached as Exhibit I, and the Maintenance Agreement, attached as Exhibit II.
 - 3.3. In exchange for the use of the Live Scan Equipment, the Political Subdivision shall pay for the maintenance services provided by the Contractor. The Maintenance Fees and the manner of payment are set forth in Section 4 of this Agreement. The Political Subdivision shall be solely responsible to pay for any maintenance services not covered by the Maintenance Agreement, Exhibit II.
 - 3.4. Each Political Subdivision shall identify a System Manager and alternative and notify the County in writing of the System Manager and alternative. The Political Subdivision must notify the County in writing of any changes to the System Manager and alternative within five (5) Days of any change.
 - 3.5. The System Manager shall be the first point of contact for the Political Subdivision when problems occur with the Live Scan Equipment. The System Manager shall be the sole individual responsible for relaying problems with the Live Scan Equipment to the Contractor and/or communicating the need for maintenance to the Contractor.
 - 3.6. The Political Subdivision shall send its employees or agents to training classes regarding Live Scan Equipment as required by the County. The training classes shall be provided to the Political Subdivision at no charge.
 - 3.7. The Political Subdivision shall require that all users of Live Scan Equipment report any problem or unusual activity to the System Manager to enable proper maintenance of the Live Scan Equipment.
 - 3.8. The Political Subdivision shall be solely responsible for entering Fingerprint Information into the Live Scan Equipment for its jurisdiction.

- 3.9. The Political Subdivision shall be solely responsible for ensuring that the Fingerprint Information entered into Live Scan Equipment is accurate, complete, updated, and/or purged as required by law.
 - 3.10. The Fingerprint Information entered into the Live Scan Equipment shall be and remain the data of the Political Subdivision.
 - 3.11. The Political Subdivision shall replace or repair the Live Scan Equipment which is willfully or negligently lost, stolen, damaged, or destroyed and shall be responsible for the costs associated with such replacement or repair, normal wear and tear excepted.
 - 3.12. The Political Subdivision shall not move (from the facility where it is located) the Live Scan Equipment until written notice is given to the County. The Political Subdivision shall not dispose of the Live Scan Equipment without first getting written permission of the County.
 - 3.13. Except as otherwise provided by this Agreement, the Political Subdivision shall be solely responsible for all costs, fines, and fees associated with the use and misuse of the Live Scan Equipment.
4. **FINANCIAL RESPONSIBILITIES.**
- 4.1. The County shall pay the Maintenance Fees to the Contractor annually for the Maintenance Agreement and invoice the Political Subdivision for the amount and in the manner set forth in this section.
 - 4.2. The Political Subdivision shall pay Three Thousand, Three Hundred and Thirteen (\$3,313.00) Dollars in Maintenance Fees annually to the County for four (4) years, for maintenance and preventative services for each cabinet style handscanner system provided to the Political Subdivision by the County. The obligation to pay Maintenance Fees shall begin on May 1, 2009.
 - 4.3. The County shall invoice the Political Subdivision quarterly for the Maintenance Fees. The Maintenance Fees become due to the County upon receipt of such invoice and the Political Subdivision agrees to pay the invoice within forty-five (45) Days of receipt.
 - 4.4. Except as provided in this Agreement, the County is not responsible for any cost, fee, fine or penalty incurred by the Political Subdivision in connection with this Agreement.
 - 4.5. To the maximum extent provided by law, if there is any amount past due under this Agreement, the County, in its sole discretion, has the right to set off that amount from any amount due to the Political Subdivision from the County, including, but not limited to, distributions from the Delinquent Tax Revolving Fund (DTRF).
5. **DURATION OF INTERLOCAL AGREEMENT.**
- 5.1. 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 according to MCL 124.510. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party.
 - 5.2. This Agreement shall remain in effect until December 31, 2013 or until cancelled or terminated by either Party pursuant to Section 7.

6. **ASSURANCES.**
 - 6.1. 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.
 - 6.2. Except as otherwise provided by law, the Political Subdivision shall be responsible for Claims that arise out of its use of the Live Scan Equipment
 - 6.3. Neither Party shall be liable to the other Party for any consequential, incidental, indirect, or special damages of any kind in connection with this Agreement.
7. **TERMINATION OR CANCELLATION OF AGREEMENT.**
 - 7.1. Either Party may terminate or cancel this Agreement for any reason upon thirty (30) days notice. The effective date for termination or cancellation shall be clearly stated in the notice.
 - 7.2. Notwithstanding any other provision of this Agreement, if the Political Subdivision ceases to be a member of CLEMIS, this Agreement shall terminate, as of the date the Political Subdivision ceases to be a member of CLEMIS, with no notice required by either Party.
 - 7.3. The Political Subdivision shall not be responsible for payment of Maintenance Fees after the effective date of termination or cancellation of this Agreement.
 - 7.4. Within thirty (30) Days of the effective date of termination or cancellation of this Agreement, the Political Subdivision shall return the Live Scan Equipment to the County.
 - 7.5. 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.**
 - 8.1. Upon notice to the Political Subdivision of the County's determination that the Political Subdivision has failed to comply with federal, state, or local law or the requirements contained in this Agreement, the County may immediately suspend this Agreement, provided the notice contains a detailed description of the basis for the determination.
 - 8.2. Upon submission of a written plan or statement by the Political Subdivision to the County addressing each basis listed in the County's notice and the County agrees to such written plan or statement (such agreement shall not be unreasonably withheld), then the Political Subdivision shall be entitled to an immediate reinstatement of the Agreement.
 - 8.3. The right to suspend this Agreement is in addition to the right to terminate or cancel this Agreement contained in Section 7.
 - 8.4. The County shall not incur penalty, expense, or liability if services are suspended under this Section, unless the Agreement is not immediately reinstated as provided in this Section or the County wrongfully suspended the Agreement under this Section.
9. **NO THIRD PARTY BENEFICIARIES.** Except as expressly provided in this Agreement, 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.
10. **COMPLIANCE WITH LAWS.** Each Party shall comply with all federal, state, and local laws, statutes, ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement and applicable to the operation of the Live Scan Equipment.
 11. **DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or other 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.
 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, 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. **IN-KIND SERVICES.** This Agreement does not authorize any in-kind services, unless previously agreed to by the Parties and specifically listed herein.
 15. **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.
 16. **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.
 17. **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.
 18. **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 number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.

19. **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: (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.

19.1. If Notice is set to the County, it shall be addressed and sent to:

Oakland County Department of Information Technology,
Manager of CLEMIS Division,
1200 North Telegraph Road, Building #49 West,
Pontiac, Michigan, 48341
and
Chairperson of the Oakland County Board of Commissioners,
1200 North Telegraph,
Pontiac, Michigan 48341

19.2. If Notice is sent to the Political Subdivision, it shall be addressed to:

David E. Molloy
City of Novi Police Department
48125 W. Ten Mile Road
Novi, MI 48375
and
Clay Pearson, Manager
City of Novi
48175 W. Ten Mile Road
Novi, MI 48375-3024

19.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.

20. **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.
21. **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 bodies.

- 22. **RESCISSION OF PREVIOUS INTERLOCAL AGREEMENT.** This Agreement hereby rescinds and supersedes the Live Scan Maintenance Agreement previously entered into between the County and Political Subdivision and this Agreement shall control all matters contemplated therein.
- 23. **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. 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.

IN WITNESS WHEREOF, _____ hereby acknowledges that he has been authorized by a resolution of the _____, a certified copy of which is attached, to execute this Agreement on behalf of the Political Subdivision and hereby accepts and binds the Political Subdivision to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, Bill Bullard, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, 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: _____

Bill Bullard, Jr., Chairperson
Oakland County Board of Commissioners

WITNESSED: _____ DATE: _____

Ruth Johnson, Clerk Register of Deeds
County of Oakland