



## CITY of NOVI CITY COUNCIL

**Agenda Item D**  
**March 13, 2017**

**SUBJECT: Approval to enter into the South West Oakland Special Response Team (SWOSRT) Intergovernmental Agreement with the Township of West Bloomfield.**

**SUBMITTING DEPARTMENT:** Public Safety - Police *DEM*

**CITY MANAGER APPROVAL:** *SA*

### **BACKGROUND INFORMATION:**

In 2011, the Novi and West Bloomfield Township Police Departments joined efforts to organize the South West Oakland Special Response Team (SWOSRT) to assist with high risk incidents such as armed, barricaded individuals and the execution of high risk search warrants requiring specialized training to reduce the risk of staff and suspect injury.

Since its inception, the South West Oakland Special Response Team has participated in 21 activations for search warrant execution, dignitary protection and armed, barricaded subjects. Operations included the standoff with an armed citizen who killed West Bloomfield Police Officer Patrick O'Rourke and most recently assisted with a peaceful resolution to an armed, barricaded subject on March 2, 2017 in the City of Novi. The team has also attended several table top and functional emergency exercises throughout our community to include Twelve Oaks Mall and Walsh College. Novi is currently represented by 4 sworn officers and West Bloomfield has 11 members, including the team commander.

The agreement provides clear direction regarding each department's responsibilities regarding deployment, scene supervision, team member composition and insurance requirements. A draft agreement was reviewed by the City Attorney who recommended specific changes regarding Freedom of Information Act and Indemnification and Immunity language. The agreement contains all changes recommended by the City Attorney's office.

**RECOMMENDED ACTION: Approval to enter into the South West Oakland Special Response Team (SWOSRT) Intergovernmental Agreement with the Township of West Bloomfield.**

## MEMORANDUM



**TO:** DAVID E. MOLLOY  
DIRECTOR OF PUBLIC SAFETY / CHIEF OF POLICE

**FROM:** JERROD S. HART *JH*  
ASSISTANT CHIEF OF POLICE – SUPPORT SERVICES

**SUBJECT:** INTERGOVERNMENTAL AGREEMENT - SWOSRT

**DATE:** MARCH 3, 2017

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In 2011, the Novi and West Bloomfield Township Police Departments joined efforts to organize the South West Oakland Special Response Team (SWOSRT) to assist with high risk incidents such as armed, barricaded individuals and the execution of high risk search warrants requiring specialized training to reduce the risk of staff and suspect injury.

Since its inception, the South West Oakland Special Response Team has participated in 21 activations for search warrant execution, dignitary protection and armed, barricaded subjects. Operations included the standoff with an armed citizen who killed West Bloomfield Police Officer Patrick O'Rourke and most recently assisted with a peaceful resolution to an armed, barricaded subject on March 2, 2017 in the City of Novi. The team has also attended several table top and functional emergency exercises throughout our community to include Twelve Oaks Mall and Walsh College. Novi is currently represented by 4 sworn officers and West Bloomfield has 11 members, including the team commander.

The attached agreement provides clear direction regarding each department's responsibilities regarding deployment, scene supervision, team member composition and insurance requirements. A draft agreement was reviewed by Tom Schultz who recommended specific changes regarding Freedom of Information Act and Indemnification and Immunity language. The attached agreement contains all changes recommended by Mr. Schultz and I verified the insurance coverage with the Clerks and Human Resources Departments.

I recommend we place the agreement on the March 13, 2017 City Council Agenda for their review and approval. The West Bloomfield Township Board will review the agreement on March 6, 2017. If approved by both governing bodies, I will ensure the signature pages are merged into one document and filed with our Clerks office and internal file.

**SOUTH-WEST OAKLAND SPECIAL RESPONSE TEAM  
INTERGOVERNMENTAL AGREEMENT  
CITY OF NOVI  
AND  
TOWNSHIP OF WEST BLOOMFIELD**

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This Intergovernmental Agreement ("Agreement") is originally made between the City of Novi, 45125 W. Ten Mile, Novi, MI 48375 ("City of Novi"), and the Charter Township of West Bloomfield, 4530 Walnut Lake Road, West Bloomfield, MI 48323 ("West Bloomfield Township"). In this Agreement, the City of Novi, the Township of West Bloomfield, or other Participating Communities may also be referred to individually as "Party" or jointly as "Parties."

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

**1. AUTHORITY**

The Parties enter into this Agreement pursuant to the authorization under the Mutual Police Assistance Agreements Act, P. A. 236 of 1967, MCL 123.811, *et seq.*; the Urban Cooperation Act, P.A. 7 of 1967, MCL 124.501, *et seq.*; the Intergovernmental Transfers of Functions and Responsibilities Act, P. A. 8 of 1967, MCL 124.531, *et seq.*

**2. PURPOSE OF AGREEMENT**

The general purpose of this Agreement is to establish the South-West Oakland Special Response Team (SWOSRT) to render mutual aid when requested by a Participating Community or other law enforcement entity in situations where the SWOSRT is necessary or requested to respond to potentially life threatening situations and/or incidents requiring specialized skills, tactics, and/or equipment.

**3. DEFINITIONS**

The following definitions shall apply to the words, terms, and expressions used in this Agreement.

**Agreement** shall mean the South-West Oakland Special Response Team Agreement originally between the City of Novi and West Bloomfield Township.

**Commanding Officer** shall mean the highest ranking Police Officer or his/her designee, on duty in the Participating Community who has the responsibility for directing the police or public safety department at the time of the request for SWOSRT deployment.

**Participating Community** shall mean a county, township, city, or village that has a police department and participates in this Agreement.



**Police officer** shall mean a peace officer or public safety officer having jurisdiction in the Participating Community by which he or she is employed.

**Requesting Community** shall mean a community or agency that requests SWOSRT deployment to their community for a potentially life threatening situations and/or incidents requiring specialized skills, tactics, and/or equipment.

**Responding Community** shall mean each Participating Community that deploys personnel and/or equipment in response to a request for deployment.

**South-West Oakland Special Response Team "SWOSRT"** means the multi-jurisdictional special response team under the direction and supervision of the SWOSRT Advisory Board, operating pursuant to the terms set forth in this Agreement.

**South-West Oakland Special Response Team (SWOSRT) Advisory Board** refers to the Advisory Board established pursuant to this Agreement to implement this Agreement and provide recommendations for the direction and operation of SWOSRT.

#### **4. PARTICIPATING COMMUNITIES**

Originally the City of Novi and West Bloomfield Township are Participating Communities in the SWOSRT. Additional communities may be permitted to participate upon the unanimous consent of the SWORT Advisory Board.

#### **5. RESPONSIBILITIES OF EACH PARTICIPATING COMMUNITY**

- 5.1. Select members. Each Participating Community shall select from its employment, full-time employees who shall serve on the team.
- 5.2. Employee benefits. Each Participating Community is responsible for the wages, salary, overtime, workers compensation, retirement, insurance, local, state and federal income tax withholding, and other fringe benefits for its employees selected to be on the team.
- 5.3. Training. Each Participating Community shall be responsible to provide their team members with training in the techniques of a specialized response team.
- 5.4. Equipment. Each Participating Community shall be responsible to provide all equipment, uniforms, and vehicles for their team members, including but not limited to weapons, firearms, ammunition, vests, clothing, gear, radios and vehicles. Each Participating Community shall also be responsible, regardless of fault, for repairing or replacing any damage to their own vehicles and/or equipment provided.
- 5.5. Permits and Licenses. Each Participating Community 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.

- 5.6 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 of their originating Community.
- 5.7. Responsibility. Each Participating Community shall be responsible for its own acts and the acts of its employees, agents, and subcontractors acting within the scope of their employment while participating on the SWOSRT.

## 6. TEAM COMPOSITION

- 6.1. Team Commander. Shall be selected by the Advisory Board. Responsibilities include: oversight for team duties, training, tactical command, team policies. The Team Commander is authorized to issue general orders to the Team. The Entry Team Leader shall serve as Acting Team Commander in his /her absence.
- 6.2. Removal by Participating Community. A Community's Chief of Police retains the right to remove any of their personnel from the Team. All Participating Communities shall be notified of said changes.
- 6.3. Leave of Absence. The Team Commander may grant a leave of absence from the Team, with good cause, such as: call to active military service or a temporary medical disability. The inactive member may be re-activated by the Team Commander when circumstances permit. The re-activated member must be able to comply with Team Standard Operating Procedures and may be assigned personal improvement plans by the Team Commander.

## 7. DEPLOYMENT OF SWOSRT

- 7.1 Deployment shall be authorized by the Chief of Police.
- 7.2. Request for Deployment. The Commanding Officer for the Requesting Community who determines a need for deployment of SWOSRT within his/her Community shall communicate the request for deployment to the Commanding Officer of the other Participating Communities.
- 7.3. Notice to Team Commander. The request shall next be directed to the Chief of Police and the SWOSRT Team Commander or designee, and if possible, shall identify the nature of the incident and the location where the responding SWOSRT personnel and equipment should report.
- 7.4. Availability. Deployment will be dependent upon the current personnel base, availability, and existing conditions within the Participating Communities. Parties will deploy their SWOSRT personnel or equipment to the incident, unless the SWOSRT personnel are unavailable due to another incident, existing conditions within the other Participating Communities, or other factors that make personnel unavailable. If the SWOSRT is unable to respond, the Team Commander shall make prompt notification to the requesting Community. No Participating Community shall be liable for a failure to respond to a request for deployment for any reason.

- 7.5. Team Commander. At the incident, the Team Commander will report to the requesting Community's Incident Commander. The Team Commander shall remain in control of the SWOSRT and work in conjunction with the Incident Commander to resolve the incident. The Team Commander shall advise the Incident Commander of the SWOSRT capabilities.
- 7.6. Withdrawal. The personnel and equipment of a Responding Community may be withdrawn at any time in the discretion of the Commanding Officer of the Responding Community. The Commanding Officer of the Requesting Community shall be notified of the withdrawal whenever possible. The Responding Community shall not have any obligation to keep its personnel or equipment in the Requesting Community for a longer period of time than deemed necessary by the Commanding Officer of the Responding Community. A Responding Community shall not be liable to a Requesting Community for leaving the scene in the Requesting Community.

## 8. SWOSRT ADVISORY BOARD

- 8.1. Composition. The Advisory Board shall be comprised of the Chief of Police, or designee, for each Participating Community.
- 8.2. Policies and procedures. The Advisory Board may adopt policies and procedures for the SWOSRT.
- 8.3. Meetings. The Advisory Board shall meet annually or as necessary. Proper notice of the meetings shall be sent to all Participating Communities at least seven (7) calendar days before the meeting is scheduled.
- 8.4. Vote. The concurring vote of a majority of the Advisory Board members present shall be required to approve any matter brought before the Advisory Board.
- 8.5. Implementation. The Advisory Board shall provide recommendations for implementation of this Agreement and for the direction and operation of SWOSRT.

## 9. NOTICES

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by certified mail, registered mail, or tracked express delivery service and shall be 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.

To the City of Novi: Chief of Police  
City of Novi Police Department,  
45125 W. Ten Mile, Novi, MI 48375

To West Bloomfield: Chief of Police  
West Bloomfield Township Police Department

4530 Walnut Lake Road,  
West Bloomfield, MI 48323.

The address and/or individual to which Notice is sent may be changed by notifying the Advisory Board and each Participating Community in writing of the change.

## **10. INSURANCE**

Each Participating Community shall procure and maintain for the duration of this Agreement, at its sole and exclusive expense, the following insurance coverage:

- 10.1. Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- 10.2. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability not less than \$1,000,000 per occurrence combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 10.3. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury, and Property Damage.
- 10.4. Excess Liability (Umbrella) Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

## **11. INDEMNIFICATION**

Each party shall be responsible for any claims made against that party and for the acts of its respective police agency, officers, officials and employees. For any claims that may arise from the performance of this Agreement, each party shall seek its own legal representation and bear the costs associated with such representation including any attorney fees. Except as otherwise provided in this Agreement, none of the parties shall have any right under any legal principle to be indemnified by either of the other parties or any of the other parties' respective police agencies, officers, officials, or employees in connection with any claim. For purposes of this paragraph, the term "claims" shall mean and include any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation, costs and/or expenses of any kind which are imposed upon, incurred by, or asserted against a party.

Nothing in this Agreement is intended, nor shall it operate, to diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity or character of office including, but not limited to, governmental immunity on behalf of the parties to this Agreement or any of their respective employees, appointees, officials or agents.

**12. GOVERNMENTAL IMMUNITY**

Each Participating Community being a public entity is immune from liability under the Governmental Liability for Negligence Act, MCL 691.1401 et seq., and nothing herein shall abrogate or impair the immunity granted thereby. All activities performed under this Agreement are hereby deemed to be governmental functions. Neither the Participating Communities nor their officials and employees, except in cases of willful misconduct or gross negligence, shall be liable for the death of or injury to persons, or for damage to property when responding to a request for deployment of the SWOSRT.

**13. NO THIRD PARTY BENEFICIARIES**

Nothing in the provisions of this Agreement is intended to 1) create duties or obligations to or rights in third parties not parties to this Agreement, or 2) to affect the legal liability or any party to this Agreement by imposing any standard of care with respect to third party claims.

**14. EFFECTIVE DATE AND TERM**

This Agreement shall take effect on the final date of execution and shall remain in effect until cancelled or terminated in writing pursuant to the terms contained in this Agreement.

**15. TERMINATION**

Any Participating Community may terminate their participation in the SWOSRT for any reason whatsoever by providing thirty (30) days written notice of the effective date of termination. The effective date for termination or cancellation shall be clearly stated in the written notice.

**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 and effect.

**17. 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.

**18. ASSIGNMENT PROHIBITED**

There shall be no assignment of this Agreement or any of the rights and obligations under this Agreement.

**19. AMENDMENT**

Amendment of this Agreement shall be in writing, approved by Resolution of the legislative body for each of the Participating Communities and shall be signed by authorized representatives.



**20. GOVERNING LAW**

This Agreement shall be governed, construed, and enforced under the laws of the State of Michigan. Venue is proper in a court of competent jurisdiction within the State of Michigan.

**21. 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.

**AS WITNESSED**, and pursuant to the Resolution adopted by the Charter Township of West Bloomfield Board of Trustees approving this Intergovernmental Agreement and authorizing the execution thereof, duly authorized representatives have executed this Agreement as of the date below.

**CHARTER TOWNSHIP OF WEST BLOOMFIELD**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Steven Kaplan  
Township Supervisor

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Deborah Binder  
Township Clerk

STATE OF MICHIGAN    )  
  ) ss  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by **Steven Kaplan**, Township Supervisor, and **Deborah Binder**, Township Clerk of the Charter Township of West Bloomfield.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in the County of Oakland





JOHNSON ROSATI SCHULTZ JOPPICH PC

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Thomas R. Schultz  
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February 20, 2017

Jerrod Hart, Assistant Police Chief  
City of Novi  
45175 Ten Mile Road  
Novi, MI 48375

**RE: SWOSRT Agreement**

Dear Assistant Chief Hart:

You asked us to review a proposed Agreement relating to the South-West Oakland Special Response Team (SWOSRT). Our comments are as follows:

- There is a typo in paragraph 4, on page 2. The heading should read "Participating Communities."
- Section 5.8, relating to confidentiality should be removed. Novi will take appropriate action under FOIA in the event of a request. It is unwise to attempt to agree in advance with the Township as to what that action is or should be. We do not recommend signing this Agreement with this provision in it.
- Section 10, relating to insurance, should be reviewed by the City's insurer to confirm that the City has in place these limits or better.
- We would revise paragraph 11, relating to indemnification and Immunity, to read as follows in its entirety. It would be unusual for either party to indemnify the other under this sort of an agreement. The language we typically use and see in these sorts of intergovernmental agreements is as follows:

Each party shall be responsible for any claims made against that party and for the acts of its respective police agency, officers, officials and employees. For any claims that may arise from the performance of this Agreement, each party shall seek its own legal representation and bear the costs associated with such representation including any attorney fees. Except as otherwise provided in this Agreement, none of the parties shall have any right under any legal principle to be indemnified by either of the other parties or any of the other parties' respective police agencies, officers,

officials, or employees in connection with any claim. For purposes of this paragraph, the term "claims" shall mean and include any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation, costs and/or expenses of any kind which are imposed upon, incurred by, or asserted against a party.

Nothing in this Agreement is intended, nor shall it operate, to diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity or character of office including, but not limited to, governmental immunity on behalf of the parties to this Agreement or any of their respective employees, appointees, officials or agents.

We would not recommend signing the Agreement without this change to Section 11.

Subject to the foregoing, we see no legal impediment to the City's entering into this Agreement, with the changes noted above.

Sincerely yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

A handwritten signature in black ink, appearing to read "Th R Schultz", with a long, sweeping flourish extending downwards and to the right.

Thomas R. Schultz

TRS:jah

cc: Pete Auger, City Manager  
Cortney Hanson, City Clerk  
David Molloy, Director of Public Safety