

# **COST PARTICIPATION AGREEMENT**

## **CONSTRUCTION**

**Adams Road Relocation**

**Auburn Road to M-59**

**City of Rochester Hills**

**BOARD Project No. 47981**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the Board of Road Commissioners for the County of Oakland, Michigan, hereinafter referred to as the BOARD, and the City of Rochester Hills, hereinafter referred to as the COMMUNITY, provides as follows:

WHEREAS, the BOARD, in cooperation with the Michigan Department of Transportation, hereinafter referred to as MDOT, and the COMMUNITY, have programmed the realignment and widening of Adams Road from Auburn Road to Highway M-59, as described in Exhibit "A," attached hereto and made a part hereof, which improvements involve roads under the jurisdiction of the BOARD and within the COMMUNITY, hereinafter referred to as the PROJECT; and

WHEREAS, the estimated total cost of the PROJECT is \$8,997,330; and

WHEREAS, the BOARD has entered into MDOT Contract Number 04-5088 for partial funding of the physical construction of the PROJECT cost with State program dollars under the State Build Michigan III Funds; and

WHEREAS, the BOARD, as requesting party therein, shall be the party financially responsible to MDOT to bear all costs of the PROJECT in excess of the state funds, hereinafter referred to as the LOCAL MATCH; and

WHEREAS, said LOCAL MATCH shall include construction items ineligible to receive State funds described as water main and sanitary sewer work; and

WHEREAS, the COMMUNITY understands and agrees that the Highway or Street being improved under the terms of this Agreement and funded with State Build Michigan III Funds, shall not be subject to any restriction by local authorities in using certain commercial vehicles on such Highway or Street; and

WHEREAS, the BOARD and the COMMUNITY have reached a mutual understanding regarding the cost sharing of the PROJECT and wish to commit that understanding to writing in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, it is hereby agreed between the COMMUNITY and the BOARD that:

1. The parties hereto approve of the PROJECT, declare its public necessity, and authorize the BOARD to forthwith undertake and complete the PROJECT, as above described, and to perform all engineering, inspection, and administration in reference thereto.
2. The actual total cost of the PROJECT may include the total payments to the contractor, construction materials testing, engineering, and inspection costs, utility relocation, construction and permanent traffic controls.
3. The State Build Michigan III Funds being used towards the eligible items of the PROJECT cost shall not exceed the amount of \$6,000,000.
4. The BOARD has agreed to contribute the construction engineering services for the PROJECT, estimated in the amount of \$1,087,500, at no cost to the COMMUNITY.
5. The COMMUNITY shall fund the water main and sanitary sewer work, along with the associated engineering services and overages, estimated in the amount of \$357,650, independently.
6. The remaining balance of the LOCAL MATCH shall be shared equally by the BOARD and the COMMUNITY, estimated in the amount of \$726,090, respectively.
7. Upon execution of this Agreement, the BOARD shall submit an invoice to the COMMUNITY in the amount of \$541,870 (being 50% of the COMMUNITY'S share of the total LOCAL MATCH).
8. The BOARD may invoice the COMMUNITY periodically as additional costs accrue, after the initial payment has been expended.

9. Upon completion of the PROJECT construction, the BOARD shall submit an estimated final invoice to the COMMUNITY for the remainder of the COMMUNITY'S share of the total estimated final PROJECT cost.
  
10. Upon receipt of said invoice(s), the COMMUNITY shall submit payment to the BOARD the full amount thereof, within thirty (30) days of such receipt.
  
11. The total actual LOCAL MATCH shall be determined from the records of the BOARD upon completion of state financial audits of the PROJECT and a final determination of the total state and federal funds used on the PROJECT. Final adjustments in the financial obligations of the parties hereto will be made upon completion of the required audits. The BOARD shall submit a final invoice to the COMMUNITY for its share, if any.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and date first written above.

BOARD OF ROAD COMMISSIONERS FOR THE  
COUNTY OF OAKLAND  
A Public Body Corporate

By \_\_\_\_\_

Its \_\_\_\_\_

CITY OF ROCHESTER HILLS

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT A**  
**Adams Road Relocation**  
**Auburn Road to M-59**  
**In The**  
**City of Rochester Hills**  
**BOARD PROJECT NO. 47981**

Realignment and widening work along Adams Road from Auburn Road to Highway M-59; and all together with necessary related work. The construction of water main and sanitary sewer work will also be included.

**ESTIMATED PROJECT COST**

Contractor Payments (based on Engineer's Estimate for road work)	\$7,250,000
Construction Engineering (15% of contractor payments for road work)	1,087,500
Force Account Work performed by the BOARD	100,000
Utility Relocation Work	202,180
1. Preliminary estimate as determined by DTE	\$102,180
2. Preliminary estimate as determined by Consumers Energy	\$100,000
Water Main & Sanitary Sewer Cost	<u>357,650</u>
1. Contractor payments	\$311,000
2. Engineering costs	\$ 46,650
Estimated Total Project Cost	\$8,997,330
Less BMIII Funds (applicable to contractor payments only & capped)	<u>(6,000,000)</u>
Estimated LOCAL MATCH	<u>\$2,997,330</u>

**DISTRIBUTION OF LOCAL MATCH**

BOARD	\$1,913,590
COMMUNITY	<u>\$1,083,740</u>
Total Shares	<u>\$2,997,330</u>

**COST PARTICIPATION BREAKDOWN**

		BOARD	COMMUNITY	LOCAL MATCH
Contractor Payments	\$7,250,000			
Less BMIII Funds	<u>(6,000,000)</u>			
Net Total		625,000	625,000	\$1,250,000
Construction Engineering		1,087,500		1,087,500
Force Account Work		100,000		100,000
Utility Relocation		101,090	101,090	202,180
Water Main / Sanitary Sewer			357,650	357,650
<b>TOTAL SHARE</b>		<b>\$1,913,590</b>	<b>\$1,083,740</b>	<b>\$2,997,330</b>



QUALITY LIFE THROUGH GOOD ROADS:  
ROAD COMMISSION FOR OAKLAND COUNTY  
"WE CARE"

Board of Road Commissioners

Rudy D. Lozano  
Chairman

Larry P. Crake  
Vice-Chairman

Richard G. Skarritt  
Commissioner

Brent O. Bair  
Managing Director

Gerald M. Holmberg  
Deputy Managing Director  
County Highway Engineer

April 13, 2006

Ms. Jackie Burch, Contract Processing Specialist  
Design Division  
Michigan Department of Transportation  
425 W. Ottawa  
P.O. Box 30050  
Lansing, MI 48909

Re: ADAMS ROAD; PROJECT NO. 47981  
MDOT CONTRACT NO. 04-5088

Dear Ms. Burch:

The above referenced contract was approved by the Board, and subsequently signed by Brent O. Bair, Managing Director, at the regularly scheduled Board meeting of Thursday, April 13, 2006. All copies of the signed contract as well as two copies of the Board resolution authorizing execution are enclosed.

Upon approval by MDOT, please forward a fully signed and executed copy of the contract to my attention.

Sincerely,

Deborah Mathews  
Deputy-Secretary /Clerk of the Board

/dm

Enclosure

cc: Thomas Blust  
Dennis Lockhart  
Thomas Noechel

31001 Lahser Road  
Beverly Hills, MI  
48025

248-645-2000

FAX

248-645-1349

TDD

248-645-9923

www.rcocweb.org

Adams Road Realignment  
Auburn Road to M-59 Highway  
City of Rochester Hills  
Job Number 78891  
Control Section MBS 63043  
Contract No. 04-5088  
RCOC Project No. 47981

COPY OF RESOLUTION ADOPTED BY THE  
BOARD OF COUNTY ROAD COMMISSIONERS  
OF THE COUNTY OF OAKLAND, MICHIGAN  
UNDER DATE OF APR 13 2006

WHEREAS, this Board, in cooperation with the Michigan Department of Transportation, has programmed the realignment and widening work along Adams Road from Auburn Road to Highway M-59, in the City of Rochester Hills, as Road Commission for Oakland County Project No. 47981; and

WHEREAS, this Board has received Michigan Department of Transportation Contract No. 04-5088 for:

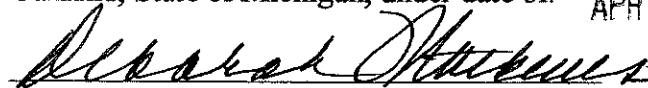
Realignment and widening work along Adams Road from Auburn Road to Highway M-59; and all together with necessary related work.

WHEREAS, paragraph 18 of Contract No. 04-5088 states:

18. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

NOW, THEREFORE, BE IT RESOLVED that this Board approves Michigan Department of Transportation Contract No. 04-5088 for the realignment and widening work along Adams Road from Auburn Road to Highway M-59, in the City of Rochester Hills, Oakland County, Michigan; and by this resolution authorizes Brent O. Bair, Managing Director to execute the contract on behalf of the Board.

I hereby certify that the above is a true and correct copy of a resolution adopted by the Board of County Road Commissioners of the County of Oakland, State of Michigan, under date of: APR 13 2006

  
Deborah Mathews  
Deputy-Secretary/Clerk of the Board

BUILD MICHIGAN III  
NON FED

CAB  
Control Section MBS 63043  
Job Number 78891  
Contract No. 04-5088

THIS CONTRACT is made and entered into this date of \_\_\_\_\_, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT;" and the ROAD COMMISSION FOR THE COUNTY OF OAKLAND, MICHIGAN, hereinafter referred to as the "REQUESTING PARTY;" for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in Oakland County, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I," dated March 3, 2004, attached hereto and made a part hereof:

Realignment and widening work along Adams Road from Auburn Road to Highway M-59; and all together with necessary related work.

WITNESSETH:

WHEREAS, the State of Michigan is hereinafter referred to as the "State;" and

WHEREAS, the PROJECT has been approved for financing in part with State Build Michigan III Funds; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.
2. The term "PROJECT COST," as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering and inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to perform, at no cost to the PROJECT, such administration of the PROJECT covered by this contract as is necessary to assist the REQUESTING PARTY to qualify for funding. Such administration may include performing such review, legal, financing, any other PROJECT related activities as are necessary to assist the REQUESTING PARTY in meeting applicable State requirements.

The DEPARTMENT shall provide the REQUESTING PARTY with a notice to proceed with the award of the construction contract for the PROJECT.

The DEPARTMENT shall make a final acceptance inspection of the PROJECT as necessary to ensure the PROJECT meets State requirements. Failure to comply with State requirements may result in forfeiture of future distributions of the Michigan Transportation Fund as described in Section 6. No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

4. The REQUESTING PARTY, under the terms of this contract, shall advertise and award the PROJECT work in accordance with the following:

- A. The REQUESTING PARTY will, at no cost to the DEPARTMENT or the PROJECT, design, or cause to be designed, the PROJECT, and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT is for its own purposes and is not to nor does it relieve the REQUESTING PARTY of liability for any claims, causes of action or judgments arising out of the design of the PROJECT.
- B. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable State laws, local ordinances, and State and local standards and regulations.
- C. The REQUESTING PARTY, hereby, certifies to the DEPARTMENT that the contracting procedures to be followed by the REQUESTING PARTY in connection with the solicitation of the construction contract for the PROJECT shall be based on an open competitive bid process. It is understood that the proposal for the PROJECT shall be publicly advertised and the contract awarded on the basis of the lowest responsive and responsible bid in accordance with applicable State statutes, local ordinances, and State and local regulations.
  - (1) The REQUESTING PARTY shall not award the construction contract prior to receipt of a notice to proceed from the DEPARTMENT.



(2) Upon verification that contractor selection by the REQUESTING PARTY was made in accordance with the terms of this contract and upon receipt of the "Request for Payment" form from the REQUESTING PARTY, the DEPARTMENT will authorize payment to the REQUESTING PARTY for the eligible amount in accordance with Section 5.

D. The REQUESTING PARTY will, at no cost to the PROJECT or the DEPARTMENT, comply with all applicable State statutes, local ordinances, and State and local regulations, including, but not limited to, those specifically relating to construction contract administration and obtain all permits and approvals with railway companies, utilities, concerned State, Federal, and local agencies, etc., and give appropriate notifications as may be necessary for the performance of work required for the PROJECT.

The REQUESTING PARTY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60 and 1996 PA 173, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the REQUESTING PARTY shall require its contractors and subcontractors to comply with the same.

E. All work in connection with the PROJECT shall be performed in conformance with the DEPARTMENT'S current Standard Specifications for Construction, special provisions, and the supplemental specifications and plans pertaining to the PROJECT. All materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. Any changes in the scope of work for the PROJECT will require approval by the DEPARTMENT.

F. The REQUESTING PARTY shall, at no cost to the PROJECT or to the DEPARTMENT, appoint a project engineer who shall administer the PROJECT and ensure that the plans and specifications are followed, and shall perform or cause to be performed the construction engineering and inspection services necessary for the completion of the PROJECT.

Should the REQUESTING PARTY elect to use consultants for construction engineering and inspection, the REQUESTING PARTY shall provide a full-time project manager employed by the REQUESTING PARTY who shall ensure that the plans and specifications are followed.

- G. The REQUESTING PARTY shall require the contractor who is awarded the contract for the construction of the PROJECT to provide, as a minimum, insurance in the amounts specified in and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:
- (1) Maintain bodily injury and property damage insurance for the duration of the PROJECT.
  - (2) Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other party with jurisdiction for the roadway being constructed as the PROJECT, and their employees, for the duration of the PROJECT and to provide copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.
  - (3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current Standard Specifications for Construction and to provide copies of notices and reports prepared to those insured.

5. The PROJECT COST shall be met in part by contributions by State Build Michigan III Funds. State Build Michigan III Funds shall be applied to the eligible items of the PROJECT COST up to an amount not to exceed the lesser of: (1) the approved and responsible low bid amount, or (2) \$6,000,000. The balance, if any, of the PROJECT COST, after deduction of State Build Michigan III Funds, is the sole responsibility of the REQUESTING PARTY.

The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of PROJECT work.

Based upon the final cost of the PROJECT, the final costs included in the grant, and/or a request by the REQUESTING PARTY, a payment adjustment may be initiated and/or authorized by the DEPARTMENT for eligible items of the PROJECT COST such that the total amount of State Build Michigan III Funds does not exceed \$6,000,000. The grant includes those activities of preliminary engineering, right-of-way acquisition, construction, and construction engineering related to the grant. The REQUESTING PARTY shall certify all actual costs incurred for work performed under this contract that are eligible for payment with STATE BUILD MICHIGAN III Funds and will be required to repay any STATE BUILD MICHIGAN III Funds it received in excess of the total of such costs.

6. The REQUESTING PARTY shall establish and maintain adequate records and accounts relative to the cost of the PROJECT. Said records shall be retained for a period of three (3) years after completion of construction of the PROJECT and shall be available for audit by the DEPARTMENT. In the event of a dispute with regard to allowable expenses or any other issue under this contract, the REQUESTING PARTY shall continue to maintain the records at least until that dispute has been finally decided and the time after all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the records at any reasonable time after giving reasonable notice.

The REQUESTING PARTY, within six (6) months of completion of the PROJECT and payment of all items of PROJECT COST related thereto, shall make a final reporting of construction costs to the DEPARTMENT and certify that the PROJECT has been constructed in accordance with the PROJECT plans, specifications, and construction contract.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING

PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 998-502 and applicable State laws and regulations relative to audit requirements.

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The REQUESTING PARTY certifies that a) it is a person under 1995 PA 71 and is not aware of and has no reason to believe that the property is a facility as defined in MSA 13A.20101(1)(l); b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); MSA 13A.20126(3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, State and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

9. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either State or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT. If the REQUESTING PARTY refuses to participate in the cost of remediation, the amount of TED FUNDS the REQUESTING PARTY received from Grant 352 shall be forfeited back to the DEPARTMENT.

10. If State funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

11. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the State.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT does not relieve the REQUESTING PARTY and the local agencies, as applicable, of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402, MSA 3.996(102).

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401; MSA 3.996(101), which is incidental to the completion of the PROJECT.

12. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402; MSA 3.996(102). Exclusive jurisdiction of such

highway for the purposes of MCL 691.1402; MSA 3.996(102) rest with the REQUESTING PARTY and other local agencies having respective jurisdiction.

13. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

14. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

15. In addition to any protection afforded by a policy of insurance, the REQUESTING PARTY agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and all officers, agents, and employees thereof from any an all claims by persons, firms, or corporations for labor, materials, supplies or services provided to the REQUESTING PARTY in connection with the contract which the REQUESTING PARTY shall perform under the terms of this contract; and

The DEPARTMENT shall not be subject to any obligations or liabilities by contractors of the REQUESTING PARTY or their subcontractors or any other person not a party to this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

16. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964 being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

17. The REQUESTING PARTY and other local agencies, as applicable parties, understand and agree that the highway(s) or street(s) being improved under the terms of this agreement and funded with Transportation Economic Development Funds, shall not be subject to any restriction by local authorities in using certain commercial vehicles on such highway(s) or street(s). Such restrictions are in conflict with the basic concept of the Transportation Economic Development Program and Funding. The REQUESTING PARTY, by signing this agreement, agrees to obtain concurrence from other local governmental agencies within whose jurisdiction or control the highway(s) or street(s) are being improved.

18. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

ROAD COMMISSION FOR THE  
COUNTY OF OAKLAND

MICHIGAN DEPARTMENT  
OF TRANSPORTATION

By *[Signature]*  
Title: *Managing Director*

By \_\_\_\_\_  
Department Director MDOT

By \_\_\_\_\_  
Title: \_\_\_\_\_

FORM APPROVED  
3/18/04  
*[Signature]*  
ASSISTANT  
ATTORNEY  
GENERAL

WCS  
REVIEWED  
3-5-04  
CONTRACTS

APPROVED:  
*[Signature]*  
RCOC Legal Dept.  
6-29-04  
Date





**APPENDIX A**  
**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998