

**FIRST AMENDMENT AND MEMORANDUM TO:
AGREEMENT REGARDING CONSTRUCTION
AND REIMBURSEMENT FOR COST OF AUSTIN EXTENSION AND
DEVONDALE PAVING**

This First Amendment to the Agreement signed on January 6, 2009 is made on _____, 2009, between the City of Rochester Hills ("the City"), a Michigan municipal corporation, whose address is 1000 Rochester Hills Dr., Rochester Hills, MI 48309, and Kirco Construction, LLC ("Kirco"), a Michigan corporation, whose principal office is located at 101 W. Big Beaver Rd., Ste. 200, Troy, MI 48084.

WHEREAS, Kirco is the developer of certain property (Parcels 15-29-452-027 & 028) located at Devondale and Austin Avenue, north of Auburn, west of Crooks, the City of Rochester Hills, Oakland County, Michigan, which is proposed to be improved with construction of a new industrial building to be occupied by Rayconnect, Inc. (hereinafter the "Development Site"); and

WHEREAS, the City plans to extend Austin Avenue between its current terminus and Devondale and also to pave Devondale; and

WHEREAS, the City and Kirco have entered into an Agreement that defines the terms, conditions and scope of the project, and provides that Kirco will act as general contractor for the construction of the Austin Ave. and Devondale Rd. project on behalf of and in cooperation with the City; and

WHEREAS, Kirco has received at least three competitive bids to complete the work as required by the Agreement; and

WHEREAS, the Agreement requires that the Rochester Hills City Council approve the awarding of the bid and construction contract; and

WHEREAS, this document serves as an amendment and memorandum to the Agreement.

THEREFORE, the City and Kirco agree:

1. That D & R Earthmoving, LLC will be retained to perform the site utilities and earthwork, including sheet piling; and
2. That Nagle Paving Company will be retained to install the aggregate sub-base and asphalt; and
3. The costs to complete the project are provided on Attachment A, Pay Item List, and total \$1,317,421.51; and

4. Kirco will be paid up to an additional \$131,742.15 for general conditions, overhead and fee, for an estimated total project cost of \$1,449,163.66.

The City and Kirco have caused this agreement to be executed by their duly authorized officials.

Kirco Construction, LLC

by: _____

Its: _____

City of Rochester Hills

by: _____

Bryan K. Barnett, Mayor

STATE OF MICHIGAN

COUNTY OF OAKLAND

On _____, 2008, before me personally appeared Kirco Construction, LLC, by _____, its _____ who acknowledged to me that he signed the foregoing instrument on behalf of Kirco Construction, LLC.

Notary Public

STATE OF MICHIGAN

COUNTY OF OAKLAND

On _____, 2008, before me personally appeared the City of Rochester Hills by Bryan K. Barnett, its Mayor, who acknowledged that he signed the foregoing instrument on behalf of the City.

Notary Public

**ATTACHMENT A – PAY ITEM LIST
(See Next Page)**