



SPECIAL TRUNKLINE
 FEDERAL AID PROGRESS PAYMENT
 ACT-51 AND ADDED WORK

DAB
 Control Section AR1 63043; BT01 63043
 Job Number 55850A; 55850; 55850C
 Federal Item ARRA 0963(199);
 Federal Project JJ 3422;
 Contract 09-5189

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 CITY OF ROCHESTER HILLS, a Michigan municipal corporation, hereinafter referred to as the "CITY"; for the purpose of fixing the rights and obligations of the parties in agreeing to construction improvements within the corporate limits of the CITY.

WITNESSETH:

WHEREAS, the DEPARTMENT is planning reconstruction work along portions of Highway M-59 within the corporate limits of the CITY; and

WHEREAS, the CITY has requested additional work in connection with a portion of the DEPARTMENT'S construction, which additional work in conjunction with the DEPARTMENT'S construction is hereinafter referred to as the "PROJECT" and is further described as follows:

PART A

Reconstruction and widening work on Highway M-59 from Crooks Road to Dequintre Road, including the replacement of a 6-inch diameter watermain with a new 12-inch diameter watermain; together with necessary related work, located within the corporate limits of the CITY; and

PART B

Maintaining Water Sprinkler Systems along Highway M-59 between Crooks Road and Dequindre Road; together with necessary related work, located within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT presently estimates the PROJECT COST as hereinafter defined in Section 1 to be:

PART A:	\$53,930,800
PART B:	\$ 2,200
TOTAL:	\$53,933,000

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 agreement.

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 CITY hereby consents to the designation of the PROJECT as a state trunkline highway. The parties shall undertake and complete the construction of the PROJECT as a state trunkline highway in accordance with this contract. The term "PROJECT COST", as herein used, is hereby defined as the cost of construction or reconstruction of the PROJECT including the costs of early preliminary engineering (EPE), preliminary engineering (PE), plans and specifications; acquisition costs of the property for rights of way, including interest on awards, attorney fees and court costs; physical construction necessary for the completion of the PROJECT as determined by the DEPARTMENT; and construction engineering (CE), legal, appraisal, financing, and any and all other expenses in connection with any of the above.

2. The cost of alteration, reconstruction and relocation, including plans thereof, of certain publicly owned facilities and utilities which may be required for the construction of the PROJECT, shall be included in the PROJECT COST; provided, however, that any part of such cost determined by the DEPARTMENT, prior to the commencement of the work, to constitute a betterment to such facility or utility, shall be borne wholly by the owner thereof.

3. The CITY shall make available to the PROJECT, at no cost, all lands required thereof, now owned by it or under its control for purpose of completing said PROJECT. The CITY shall approve all plans and specifications to be used on that portion of this PROJECT that are within the right of way which is owned or controlled by the CITY. That portion of the PROJECT which lies within the right of way under the control or ownership by the CITY shall become part of the CITY facility upon completion and acceptance of the PROJECT and shall be maintained by the CITY in accordance with standard practice at no cost to the DEPARTMENT. The DEPARTMENT assumes no jurisdiction of CITY right of way before, during or after completion and acceptance of the PROJECT.

4. The parties will continue to make available, without cost, their sewer and drainage structures and facilities for the drainage of the PROJECT.

5. The DEPARTMENT will administer all phases of the PROJECT and will cause to be performed all the PROJECT work.

Any items of PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

6. The CITY will approve the design of the watermain replacement in PART A and the entire PART B portion of the PROJECT and shall accept full responsibility for the design with respect to the facilities functioning as a part of the CITY'S facilities. Any approvals by the DEPARTMENT are for its own purposes and are not to nor do they relieve the CITY of liability for any claims, causes of action or judgments arising out of the design of the facilities.

7. The construction portion of the PROJECT COST for PART A, excluding watermain betterment, shall be met entirely by contributions from agencies of the Federal Government. The betterment cost for the upsizing of watermain in PART A is estimated to be

\$32,100 and shall be paid as a lump sum. The balance of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the DEPARTMENT and the CITY in the following proportions and in the manner and at the times hereinafter set forth:

	<u>PART A</u>	<u>PART B</u>
DEPARTMENT -	87.5%	0%
CITY -	12.5%	100%

The PROJECT COST and the respective shares of the parties is estimated to be as follows:

	<u>TOTAL ESTIMATED COST</u>	<u>BETTER-MENT COST</u>	<u>FEDERAL AID</u>	<u>BALANCE AFTER FEDERAL AID</u>	<u>DEPT'S SHARE</u>	<u>CITY'S SHARE (includes betterment)</u>
PART A -						
Constr. & CE	\$50,317,700	\$32,100	\$50,285,600	\$ 0	\$ 0	\$ 32,100
PART A -						
EPE & PE	\$ 3,613,100	\$ 0	\$ 0	\$3,613,100	\$3,161,500	\$451,600
PART B -						
Constr. & CE	<u>\$ 2,200</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 2,200</u>	<u>\$ 0</u>	<u>\$ 2,200</u>
TOTAL	\$53,933,000	\$32,100	\$50,285,600	\$3,615,300	\$3,161,500	\$485,900

Participation, if any, by the CITY in the acquisition of trunkline right-of-way for PART A of the PROJECT shall be in accordance with 1951 P.A. 51 Subsection 1d, MCL 247.651d. An amount equivalent to the federal highway funds for acquisition of right-of-way, as would have been available if application had been made thereof and approved by the Federal government, shall be deducted from the total PROJECT COST prior to determining the CITY'S share. Such deduction will be established from the applicable Federal-Aid matching ratio current at the time of acquisition.

The EPE and PE costs will be apportioned in the same ratio as the actual construction award and the CE costs will be apportioned in the same ratio as the actual direct construction costs.

8. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT. The DEPARTMENT may submit progress billings to the CITY on a biweekly basis for the CITY'S share of the cost of work performed to date, less all payments previously made by the CITY. No biweekly billings of a lesser amount than \$1,000 shall be made unless it is a final or end of fiscal year billing. All billings will be labeled either "Progress Bill Number _____", or "Final Billing". Upon completion of the PROJECT, payment of all items of PROJECT COST and receipt of all Federal Aid, the DEPARTMENT shall make a final billing and accounting to the CITY.

9. In order to fulfill the obligations assumed by the CITY under the provisions of this contract, the CITY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be

made within 30 days of receipt of billings from the DEPARTMENT. Billings to the CITY will be based upon the CITY'S share of the actual costs incurred less Federal Aid earned as the work on the PROJECT progresses.

10. Pursuant to the authority granted by law, the CITY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified herein. If the CITY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the CITY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the CITY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the CITY with payment thereof, and to notify the CITY in writing of such fact.

11. Upon completion of construction, the watermain portion of PART A and all of the facilities constructed as the PART B portion of the PROJECT shall be operated and maintained by the CITY at no cost to the DEPARTMENT.

12. With respect to that portion of the PROJECT under the jurisdiction of the CITY:

- A. 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 CITY. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the CITY of its ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability control or jurisdiction.
- B. 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.

13. The CITY certifies, by execution of this contract, that, upon completion of construction of the PROJECT and at no cost to the PROJECT or the DEPARTMENT, it will properly maintain or provide for the maintenance and operation of the PART B portion of the PROJECT, making ample provisions each year for the performance of such maintenance work as may be required.

14. The CITY, in conformance with Federal Aid Policy Guide (FAPG) Chapter I, Subchapter G, Part 630, Subpart C: Project Agreements, stipulates the following with respect to its specific jurisdiction of the PROJECT:

- A. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
- B. That it agrees to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
- C. That as a condition of Federal aid pursuant to this contract the CITY shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under, or to benefit from this contract, is under consideration to be listed on the EPA List of Violating Facilities.

15. Failure of the CITY to fulfill its responsibilities as outlined herein may disqualify the CITY from future Federal-Aid participation in projects on roads or streets for which it has maintenance responsibility. Federal-aid may be withheld until such time as deficiencies in regulations have been corrected and the improvements constructed as the PROJECT are brought to a condition of maintenance satisfactory to the DEPARTMENT and the FHWA.

16. The DEPARTMENT shall secure from the Federal Government approval of plans, specifications, and such cost estimates as may be required for the completion of the PROJECT; and shall take all necessary steps to qualify for Federal Aid such costs of acquisition of rights of way, construction, and reconstruction, including cost of surveys, design, construction engineering, and inspection for the PROJECT as deemed appropriate. The DEPARTMENT may elect not to apply for Federal Aid for portions of the PROJECT COST.

17. In connection with the performance of the 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 the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

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 CITY and for the DEPARTMENT; upon the adoption of a resolution approving said contract and authorizing the signatures thereto of the respective officials of the CITY, 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.

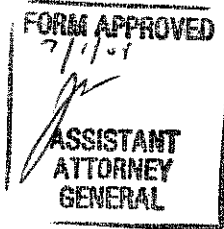
CITY OF ROCHESTER HILLS

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



**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

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.