

LOCAL ROAD IMPROVEMENT MATCHING FUND PROGRAM**STATEMENT OF PURPOSE**

Oakland County Government recognizes that Michigan law places the primary responsibility for road funding on the State and non-county local units of government. However, the County also recognizes that the law does permit a limited, discretionary role for the County in assisting a road commission and local units within a county by supporting some road maintenance and improvement efforts.

Accordingly, for many years Oakland County has voluntarily provided limited assistance to its cities, villages and townships (CVT's) and to the Road Commission of Oakland County (RCOC) by investing in a discretionary Tri-Party Road Program. Authorized under Michigan law, the County's tri-party funding contributions primarily facilitate safety improvement projects on CVT roads under the jurisdiction of the RCOC. By law, tri-party funds cannot be used to fund projects on roads solely under the jurisdiction of CVT's.

Recognizing a continuing need to better maintain local CVT streets and roads, yet being ever mindful of the County's limited responsibility for and jurisdiction over non-County roads and streets, Oakland County Government is continuing the success of the pilot program launched in 2016 that was more flexible than the current Tri-Party Road Program; one that allowed Oakland County to assist its cities and villages with maintenance and safety projects on non-County roads.

Not being the funding responsibility of County government, local CVT roads generally cannot be maintained or improved using County funds because doing so would be considered to be the "gifting" of County resources. However laudable the purpose, Michigan law generally forbids the gifting of government resources. To avoid application of the constitutionally-based gifting restriction, the state legislature must, and in this arena has, determined that a public benefit results from a taxpayer investment, one that provides a *quid pro quo* sufficient to avoid application of the gifting prohibition. Here, the legislature has determined that the economic development benefit presumed to accrue to a county as a result of local street and road investments can provide a sufficient *quid pro quo* to county taxpayers justifying a discretionary county investment in a non-county road, a benefit that constitutes a fair exchange for value and not a gift.

This legislative determination is set forth in 1985 P.A. 9, which amended 1913 P.A. 380, by adding a new section 2, which in pertinent part provides:

"(1) ...A county may grant or loan funds to a township, village or city located within that county for the purpose of encouraging and assisting businesses to locate and expand within the county...

(2) A loan or grant made under subsection (1) may be used for local public improvements or to encourage and assist businesses in locating or expanding in this state, to preserve jobs in this state, to encourage investment in the communities in this state, or for other public purposes."

Communities that wish to attract, retain and grow business, retain jobs and encourage community investment, needs a safely maintained road infrastructure. This road infrastructure must include both residential and commercial roads as workers and consumers need to get to and from work, shopping, schools and recreation. In a fiscally prudent and limited manner, the County wishes to

help its cities and villages accomplish this through its Local Road Improvement Matching Fund Program, commonly known as the Local Road Improvement Program (LRIP).

Any such program must be mindful of the limits imposed under Public Act 9. One important restriction Public Act 9 imposed on grants or loans made pursuant to Subsection 2 of the Act is the mandate that, "A grant or loan under this Subsection shall not be derived from ad valorem taxes except for ad valorem taxes approved by a vote of the people for economic development." This means that funding for an expanded local road assistance program cannot utilize proceeds from any of Oakland County's ad valorem tax levies since no levy has been approved by voters specifically for economic development.

Given this limitation, it appears that the state statutory revenue sharing appropriated to the County can provide a non-ad valorem source of funds that legally can be used to support the program. Competition for those funds, which are limited in amount, is fierce and their yearly availability is subject to the state legislative process. In the recent past, the State stripped all of those funds away from Michigan counties. Understanding that reality, it shall be the policy of the Oakland County Board of Commissioners that the Board shall not appropriate any County funds for a local road improvement matching fund program for non-County roads in any year where the State of Michigan fails to appropriate statutory revenue sharing funds to Oakland County in an amount sufficient to allow the County to first prudently address its core functions.

Act 9 imposes additional conditions on grants and loans. These include requirements that the loan or grant shall be administered within an established application process for proposals; that any grant or loan shall be made at a public hearing of the county board of commissioners and that the Board shall require a report to the county board of commissioners regarding the activities of the recipient and a report as to the degree to which the recipient has met the stated public purpose of the funding.

Understanding all of the above, the Oakland County Board of Commissioners hereby establishes the following Local Road Improvement Matching Fund Program:

PROGRAM SUMMARY

The Board of Commissioners established a Pilot Local Road Improvement Matching Fund Program through Miscellaneous Resolution #16103 for the purposes of improving economic development in Oakland County cities and villages. The County intends to continue this Program to assist its municipalities by offering limited matching funds for specific, targeted road maintenance and/or improvement projects on roadways under the jurisdiction of cities and villages.

A city or village participating in the Local Road Improvement Matching Fund Program shall match any fund authorized by the Board of Commissioners in an amount equal to a minimum of 50% of the cost of the total project award. County participation shall be limited to a maximum of 50% of the cost of the total project budget. Funding shall be utilized to supplement and enhance local road maintenance and improvement programs. Funding is not intended to replace existing budgeted local road programs or to replace funding already committed to road improvements.

PROJECT GUIDELINES

Program funding shall be utilized solely for the purposes of road improvements to roads under the jurisdiction of local cities and villages. Road improvements may include, but not be limited to, paving, resurfacing, lane additions or lengthening, bridges, or drainage as such improvements relate to road safety, structure or relieving congestion.

Program funding:

- **May** be utilized to supplement a local government's matched funding for the purposes of receiving additional federal transportation funding;
- **May not** be utilized to fulfill a local government's responsibility to fund improvements to state trunklines;
- **Shall be limited to** real capital improvements to roadways and shall not be utilized for other purposes, such as administrative expenses, personnel, consultants or other similar purposes;
- **Shall not be** utilized for non-motorized improvements, unless these improvements are included in a project plan for major improvements to a motorized roadway;
- **Shall be** utilized for projects that will result in a measurable improvement in the development of the local economy and contribute to business growth. Recipients shall be responsible for providing an outline of the economic benefits of the project prior to approval and for reporting to the Board of Commissioners after the completion of the project on the benefits achieved as a result of the projects.

ADMINISTRATION

Local Road Improvement Matching Fund Program projects may be appropriated by the Board of Commissioners in compliance with the County budget process. The amount of funds to be dedicated for the Program shall be determined by the Board of Commissioners on an annual basis. Program funding may be reduced or eliminated based upon the ability of the County government to meet primary constitutional and statutory duties. The Board of Commissioners expressly reserves the right to adjust the County matching funds share at any time based upon County budget needs.

In accordance with MCL 123.872, funds dedicated to the Local Road Improvement Matching Fund Program shall not be derived from ad valorem tax revenues. Program funding shall be limited to funds derived from the County's distribution from the Michigan General Revenue Sharing Act. Reduction or elimination of the County's distribution of revenue sharing funds may result in the elimination or suspension of the program.

Funding availability shall be distributed based upon a formula updated annually. The formula will consist of:

1. A percentage derived from the number of certified local major street miles in each city and village divided by aggregate total of certified local major street miles of all cities and villages in the County.
2. A percentage derived from the population of each city and village as determined by the last decennial census conducted by the U.S. Census Bureau divided by the aggregate total population of cities and villages in the County.

3. A percentage derived from the three-year rolling total of the number of crashes on city and village major local streets divided by the aggregate three-year rolling crash numbers for all city and village major local streets, using the most recent data available. The crash data will be supplied by the South East Michigan Council of Governments (SEMCOG).

Each city and village's percentage allocation shall be determined by adding each factor percentage and dividing that total by three. The amount of funds available for match shall be determined by the total amount of funds allocated by the Board of Commissioners added to an equal amount representing the match provided by local cities and villages.

The Chairman of the Board of Commissioners shall establish a Special Committee on the Local Road Improvement Program. This Special Committee shall consist of three members, with two members representing the majority caucus and one member representing the minority caucus. It shall be the responsibility of the Special Committee to direct the administration of this program, receive applications for program funding, and make recommendations of acceptance to the Board of Commissioners. The Special Committee may consult with County departments, staff, the South East Michigan Council of Governments (SEMCOG), and the Road Commission for Oakland County in the conduct of its business.

DISBURSEMENT

The Special Committee shall forward recommendations for approval of Local Road Improvement Matching Fund Program projects to the Chairman of the Board of Commissioners. This recommendation shall include a cost participation agreement between the County and participating municipality. Minimally, cost participation agreements shall include: responsibility for administering the project, the project location, purpose, scope, estimated costs including supporting detail, provisions ensuring compliance with project guidelines, as well as disbursement eligibility requirements. The cost participation agreement shall also require the maintenance of supporting documentation to ensure compliance with the following provisions:

1. Any and all supporting documentation for project expenditures reimbursed with appropriated funding shall be maintained a minimum of seven years from the date of final reimbursement for actual expenditures incurred.
2. The Oakland County Auditing Division reserves the right to audit any and all project expenditures reimbursed through the program.
3. The participating community understands and agrees that if it does not expend the entire Cost Participation Award under this Agreement on approved projects, then the remainder will be reimbursed to the County. The amount of any remainder shall be determined upon cancellation or completion of the approved project. Reimbursable funds shall be returned to the County within 90 days of such determination that the project has been cancelled, or the entire award has not been spent upon project completion.
4. In any case where the participating community is required to return money to the County under this Agreement, the participating community agrees that the County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other funds of the participating community that are in the County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by the County shall be deemed a voluntary assignment of that amount by the participating community to the County. The participating

community waives any claims against the County or its officials for any acts related specifically to the County offsetting or retaining such amounts. This paragraph shall not limit the participating community's legal right to dispute whether the underlying amount retained by the County was actually due and owing under this Agreement.

5. Nothing in this Section shall operate to limit the County's right to exercise any other legal rights or remedies under this Agreement or at law to secure reimbursement of funds which are due should they not be used by the participating community for the approved projects in the time frame set forth above. If the County pursues any legal action in any court against the participating community to secure repayment of unused funds, the participating community agrees to pay all costs and expenses incurred by the County, including court costs and attorney fees.

Upon receipt of recommendation of project approval from the Special Committee, the County Commissioner or Commissioners representing the area included in the proposed project may introduce a resolution authorizing approval of the project and the release of funds. Resolutions shall be forwarded to the Economic Development and Infrastructure Committee of the Board of Commissioners, who shall review and issue a recommendation to the Board on the adoption of the resolution. A public hearing shall be scheduled before the Board of Commissioners prior to consideration of final approval of the resolution.

The deadline for projects to be submitted for consideration shall be established by the Special Committee. The Special Committee may work with participating municipalities to develop a plan for projects that exceed that municipality's annual allocation amount. This may include a limited plan to rollover that municipality's allocation for a period of years until enough funding availability has accrued to complete the project, subject to funding availability.

Upon completion of project plans and execution of the cost participation agreement by the County and governing authority of the local municipality, the participating municipality shall submit an invoice in accordance with the terms and conditions included in the agreement. The Oakland County Department of Management and Budget Fiscal Services Division shall process payments in accordance with policies and procedures as set forth by the Department of Management and Budget and the Oakland County Treasurer.

In the event an eligible local unit of government chooses not to participate in the Local Road Improvement Matching Fund Program, or an approved project is cancelled, any previously undistributed allocated funding may be reallocated to all participating local units of government at the discretion of the Local Road Improvement Program Special Committee.

At the completion of each project, the participating local government shall provide a report to the Board of Commissioners regarding the activities of the recipient and the degree to which the recipient has met the stated public purpose of the funding as required by MCL 123.872.