

**AGREEMENT REGARDING CONSTRUCTION
AND REIMBURSEMENT FOR COST OF AUSTIN EXTENSION AND
DEVONDALE PAVING**

This Agreement is made on _____, 2008, 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 believe there are economies, efficiencies and expediciencies to be gained by both parties by permitting Kirco to contract for, construct and manage the extension of Austin Avenue and paving of Devondale in connection with Kirco's development of the Development Site.

THEREFORE, the City and Kirco agree:

1. Kirco shall contract for, construct and manage the extension of Austin Avenue and the pavement of a section of Devondale from the Austin Avenue intersection north to its terminus (hereinafter, the "Road Project") in accordance with plans, design and specifications to be provided by the City.

2. Kirco shall seek a minimum of three (3) competitive bids, subject to review and approval by the City. The City's approval of the awarding of a bid and construction contract shall be in writing signed by the Mayor after authorization by the City Council. Thereafter, Kirco shall enter into a construction contract with the lowest responsible and responsive bidder acceptable to both the City and Kirco. Once the contract is let, the City and Kirco shall do everything reasonably necessary to complete construction of the Road Project as soon as possible. Kirco shall be responsible for payment of the construction contract, subject to reimbursement by the City as provided herein.

3. It is understood by both parties that the Road Project may be constructed in phases. Prior to commencement of construction, the final plans and specifications for any given phase must be approved by the City's Engineering Department and any other governmental agencies as may be required. All necessary easements or right-of-way, if any, have already been, or shall be, acquired by the City, and the City shall make any reasonable payment necessary to obtain necessary easements or rights-of-way. All

necessary permits from other public agencies for the Road Project shall be secured by and in the name of the City.

4. The estimated cost of constructing the Road Project, based on the City's preliminary engineering, is \$1,320,000. The City shall approve the awarding of a bid and the construction contract. If the construction cost is more than ten (10%) percent over the estimated cost, City Council must approve the awarding of the bid before construction commences. The construction costs shall include the cost of labor and materials, Oakland County permit and inspection fees, and administration. Upon acceptance of a bid, and before entering into a construction contract for the Road Project, the Mayor, on the City's behalf, and Kirco, shall execute a written memorandum to be attached to this Agreement setting forth the precise amount to be reimbursed by the City.

5. Once the total construction cost for any or all phases has been agreed to by both the City and Kirco, that cost shall not be exceeded unless unforeseeable circumstances arise resulting in construction costs in excess of the initial construction contract price, in which event Kirco shall certify to the City the necessity and reason for any additional costs. Such additional costs shall not be incurred unless and until consented to in writing by the Mayor or the Mayor's authorized representative, which consent shall not be unreasonably withheld. If any additional cost is caused through any error, omission, act or negligence of a third party, the City and Kirco may elect to cooperate to obtain reimbursement of the additional costs from the third party.

6. The City shall be responsible for paying Kirco for the construction cost on the basis of monthly billing. The City's Engineering Department shall review and approve all invoices, and processing will be completed within 30 days of receipt. If the City's Engineering Department is not satisfied with an invoice, it reserves the right to request additional information or clarification in writing within two weeks of receipt.

7. The City shall not be obligated to pay interest on any part of the Indebtedness created under this agreement

8. A City inspector will oversee the construction of Austin and Devondale to ensure that it will be constructed in accordance with City requirements. Construction of the Road Project shall be considered complete and shall be acceptable to the City upon conformance to the City's plans, design and specifications. Kirco shall require from its sub-contractor a performance bond and payment bond under any construction contract for the Road Project, which bonds shall run in favor of both Kirco and the City. Kirco shall require from its sub-contractor a two- (2) year maintenance bond to guarantee the Road Project from defective materials or workmanship after the road project has been completed and accepted by the City.

9. Once the Road Project is completed and has been accepted by the City, the City shall assume full responsibility for the continued operation, repair and maintenance of the Road Project (subject to the aforesaid two-year maintenance bond).

10. To the fullest extent permitted by law, Kirco shall indemnify, hold harmless and defend the City, its agents and employees against any claims, damages, losses, costs, expenses, recoveries, judgments or punitive or exemplary awards, including attorney fees, arising out of or resulting from injury or damage to persons or property sustained in connection with construction of the Road Project, except to the extent the injury or damage is caused by the negligence of the City, its agents or employees.

11. Kirco shall require in any construction contract that the sub-contractor name the City as an additional insured party on the contractor's liability insurance coverage.

12. This agreement shall bind and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns.

13. Both parties contributed to and participated in the negotiation and drafting of this agreement. Therefore, In the event of a dispute over the meaning or interpretation of terms or provisions of this agreement, the doctrine of construction against the drafter shall not apply.

14. This agreement constitutes the entire agreement between the City and Kirco concerning the Road Project and supersedes any prior understandings or agreements. Any amendment or modification of this agreement shall be in writing signed by both parties.

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