

## **COST PARTICIPATION AGREEMENT**

### **CONSTRUCTION**

Livernois Road

Avon Road to Walton Boulevard

City of Rochester Hills

Board Project No. 51631

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, 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 and the COMMUNITY have programmed the joint repair and crack sealing on Livernois Road from Avon Road to Walton Boulevard, 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, which improvements are hereinafter referred to as the PROJECT; and

WHEREAS, the estimated total cost of the PROJECT is \$347,587; and

WHEREAS, said PROJECT involves certain designated and approved Tri-Party Program funding in the amount of \$315,087, which amount shall be paid through equal contributions by the BOARD, the COMMUNITY, and the Oakland County Board of Commissioners, hereinafter referred to as the COUNTY; 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 and in conformity with applicable law, it is hereby agreed between the COMMUNITY and the BOARD that:

1. The COMMUNITY shall forthwith undertake and complete the PROJECT, as above described, under Road Commission for Oakland County permit.

2. The actual total cost of the PROJECT may include preliminary engineering, construction engineering, and total payments to the contractor.
3. The COMMUNITY shall comply with the provisions as set forth in Exhibit "B" attached hereto.
4. The COMMUNITY shall comply with the liability and insurance requirements as set forth in Exhibit "C" attached hereto.
5. The estimated total PROJECT cost of \$347,587 shall be funded as outlined below and detailed in Exhibit A:
  - a. The COMMUNITY shall perform and contribute the preliminary engineering in the amount of \$12,500.
  - b. The BOARD shall perform and contribute the construction engineering in the amount of \$20,000.
  - c. The Tri-Party Program funding is not to exceed \$315,087 for contractor payments.
  - d. However, if due to unforeseen circumstances or authorized change orders the Contractor Payment costs will surpass the \$315,087 limit in paragraph 5c, above, the Board shall, in consultation with the Community and before incurring the additional Contractor Payment cost, determine whether there are any additional Tri-Party program funds available to cover the additional Contractor Payment cost. If additional Tri-Party Program funds are not available or are insufficient to cover the additional Contractor Payment cost, then the additional Contractor Payment cost shall be funded entirely by the Community, provided that the Board and the Community authorizes the funding of such additional Contractor Payment cost before it is incurred.
6. Upon execution of this agreement, the COMMUNITY shall submit two invoices to the BOARD:
  - a. The first invoice shall be payable by the BOARD in the amount of \$105,029 (being 100% of the BOARD'S Tri-Party contribution).

b. The second invoice shall be payable by the COUNTY in the amount of \$105,029 (being 100% of the COUNTY'S Tri-Party contribution).

c. The two invoices shall be sent to:

Ms. Julie Enders, Engineering Aide  
Road Commission for Oakland County  
31001 Lahser Road  
Beverly Hills, MI 48025

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 \_\_\_\_\_  
Bryan K. Barnett

Its Mayor \_\_\_\_\_

By \_\_\_\_\_  
Jane Leslie

Its Clerk \_\_\_\_\_

**EXHIBIT A**  
**TRI-PARTY PROGRAM**  
 Livernois Road  
 Avon Road to Walton Boulevard  
 City of Rochester Hills  
 Board Project No. 51631

Joint repair and crack sealing on Livernois Road from Avon Road to Walton Boulevard.

<b>ESTIMATED PROJECT COST</b>
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Contractor Payments - Construction	\$315,087
Preliminary Engineering	\$12,500
Construction Engineering	<u>\$20,000</u>
Total Estimated Project Cost	<u><u>\$347,587</u></u>

<b>COST PARTICIPATION BREAKDOWN</b>
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	COMMUNITY	COUNTY	BOARD	TOTAL
FY12 Tri-Party Program	\$3,857	\$3,857	\$3,857	\$11,571
FY12 Add'l Tri-Party Program	\$101,172	\$101,172	\$101,172	\$303,516
Contribution	\$12,500	\$0	\$20,000	\$32,500
<b>TOTAL SHARES</b>	<b>\$117,529</b>	<b>\$105,029</b>	<b>\$125,029</b>	<b>\$347,587</b>

## Exhibit B PROVISIONS

**Bidding:** The COMMUNITY shall select the contractor for its share of the work, on a competitive basis by advertising for sealed bids in accordance with its established practices.

**Bonds – Insurance:** The COMMUNITY shall require the contractor provide payment and performance bonds for the PROJECT; said bonds to be in compliance with the provisions of 1963 PA 213 as amended, compiled at MCL 129.201, et seq.

Further, the COMMUNITY shall require the contractor to provide insurance naming the Road Commission for Oakland County as additional named insured's. Coverage's shall be substantial as set forth in Exhibit "C", attached hereto.

**Records:** The parties shall keep records of their expenses regarding the PROJECT in accordance with generally accepted accounting procedures, and shall make said records available to the other during business hours upon request giving reasonable notice. Such records shall be kept for three (3) years from final payment.

Final costs shall be allocated after audit of the records and adjustments in payments shall be invoiced and paid within thirty (30) days thereafter.

**EEO:** The COMMUNITY shall require its contractor to specifically agree that it will comply with any and all applicable State, Federal, and Local statutes ordinances, and regulations, and with RCOC regulations during performance of the SERVICES and will require compliance of all subcontractors and subconsultants.

In accordance with Michigan 1976 PA 453, the COMMUNITY hereto agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, national origin, age, sex, height, weight or marital status. Further, in accordance with Michigan 1976 PA No. 220, as amended, the parties hereby agree 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.

The COMMUNITY further agrees that it will require all subconsultants and subcontractors for this PROJECT comply with this provision.

**Governmental Function, Scope:** It is declared that the work performed under this AGREEMENT is a governmental function. It is the intention of the parties hereto that this AGREEMENT shall not be construed to waive the defense of governmental immunity held by the RCOC, and the COMMUNITY.

**Third Parties:** This AGREEMENT is not for the benefit of any third party.

**EXHIBIT C**  
**LIABILITY AND INSURANCE REQUIREMENTS**

Hold Harmless Agreement: The Contractor shall hold harmless, represent, defend and indemnify the Board of County Road Commissioners of Oakland County, the Road Commission for Oakland County, its officers and employees; the County of Oakland; the Water Resources Drain Commissioner and relevant drainage district(s), if applicable; the Michigan State Transportation Commission; the Michigan Department of Transportation; and the local unit(s) of government, within which the Project is located against all claims for damages to public or private property, for injuries to persons, or for other claims arising out of the performance or non-performance of the contracted work, whether during the progress or after the completion thereof.

Insurance Coverage: The Contractor, prior to execution of the contract, shall file with the Road Commission for Oakland County, copies of complete certificates of insurance as evidence that he carries adequate insurance satisfactory to the Board. Insurance coverage shall be provided in accordance with the following:

- a. Workmen's Compensation Insurance: To provide protection for the Contractor's employees, to the statutory limits of the State of Michigan and \$500,000 employer's liability. The indemnification obligation under this section shall not be limited in any ways by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under worker's disability compensation coverage established by law.
- b. Bodily Injury and Property Damage Other than Automobile: To afford protection against all claims for damages to public or private property, and injuries to persons arising out of and during the progress and to the completion of the work, and with respect to product and completed operations for one year after completion of the work.

1.	Bodily Injury Liability	or:	Single Limit: Bodily Injury and Property Damage
	Each Person: \$1,000,000		Each Occurrence: \$1,000,000
	Each Occurrence \$1,000,000		Aggregate: \$2,000,000
	Aggregate \$2,000,000		

Property Damage Liability:  
Each Occurrence: \$250,000  
Aggregate: \$250,000

Such insurance shall include: 1) explosion, collapse, and underground damage hazards (x,c,u), which shall include, but not be limited to coverage for (a) underground damage to facilities due to drilling and excavating with mechanical equipment; and (b) collapse or structural injury to structures due to blasting or explosion,

excavation, tunneling, pile driving, cofferdam work, or building moving or demolition; (2) products and completed operations; (3) contractual liability; and (4) independent contractors coverage.

2. Bodily Injury Liability and Property Damage Liability - Automobiles (Comprehensive Auto Liability).

The minimum limits of bodily injury liability and property damage liability shall be:

Bodily Injury Liability	or	Single Limit: Bodily Injury and Property Damage Liability
Each Person	\$500,000	Each Occurrence: \$2,000,000
Each Occurrence	\$1,000,000	

Property Damage Liability:  
Each Occurrence: \$1,000,000

Such insurance shall include coverage for all owned, hired, and non-owned vehicles.

- c. Excess and Umbrellas Insurance – The Contractor may substitute corresponding excess and/or umbrella liability insurance for a portion of the above listed requirements in order to meet the specified minimum limits of liability.
- d. The Contractor shall provide for and on behalf of the Road Commission for Oakland County and all agencies specified by the Road Commission, as their interest may appear, Owner’s Protective Public Liability Insurance. Such insurance shall provide coverage and limits the same as the Contractor’s Public Liability Insurance.
- e. Notice – The Contractor shall not cancel, renew, or non-renew the coverage of any insurance required by this Section without providing 30 day prior written notice to the Road Commission for Oakland County. All such insurance shall include an endorsement whereby the insurer shall agree to notify the Road Commission for Oakland County immediately of any reduction by the Contractor. The Contractor shall cease operations on the occurrence of any such cancellation or reduction, and shall not resume operations until new insurance is in force. If the Contractor cannot secure the required insurance within 30 days, the Board reserves the right to terminate the Contract.
- f. Reports – The Contractor or his insurance carrier shall immediately report all claims received which relate to the Contract, and shall also report claims investigations made, and disposition of claims to the County Highway Engineer.