

2010-2011 WINTER MAINTENANCE AGREEMENT  
CITY OF ROCHESTER HILLS

Under 1951 PA 51, As Amended

This Winter Maintenance Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, between the Board of County Road Commissioners of the County of Oakland, State of Michigan, a public body corporate, hereinafter referred to as the "Board," and the City of Rochester Hills, Oakland County Michigan, a Michigan municipal corporation hereinafter referred to as the "City."

WHEREAS, certain county primary and local roads more specifically set forth in Exhibit A, attached hereto, are under the jurisdiction and control of the Board and are located within or adjacent to the City; and

WHEREAS, The City desires to be responsible for certain winter maintenance of said roads under the terms of this Agreement, and the Board is willing to participate in the cost thereof as provided in Section III of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein as provided, it is hereby agreed as follows:

I

The City hereby agrees to be responsible for performing Winter Maintenance of certain roads under the terms of this Agreement, and the Board agrees to participate in the cost thereof as provided in Section III of this Agreement. "Winter Maintenance," herein required to be performed by the City, shall mean snow removal and ice control, on all roads listed in Exhibit A, as follows: Snow removal by blading, plowing and other methods necessary to make the roads reasonably safe for public travel, and ice control by salting, sanding, scraping and other methods necessary to make the roads reasonably safe for public travel, together with such other work and services, such as recordkeeping and insurance, required by this Agreement. All Winter Maintenance work and services performed by the City shall be in accordance with the Board's maintenance guidelines, including the Board adopted Winter Maintenance Guidelines, the Board's standard practices and this Agreement.

II

The City shall keep accurate and uniform records of all Winter Maintenance work performed pursuant to this Agreement. The Board shall have the right to audit City accounts and records insofar as such documents concern this Agreement and the work and services performed and to be performed hereunder.

III

In consideration of the assumption of Winter Maintenance by the City, the Board hereby agrees to pay to the City the sum of \$23,913.53, as set forth in Exhibit A, attached hereto and made a part hereof. Such amounts are to be used by the City for Winter Maintenance. Payments are to be made by the Board to the City as follows:

50% in December, 2010  
50% in March, 2011

The making of said payments shall constitute the Board's entire obligation in reference to Winter Maintenance.

#### IV

The City hereby agrees to hold harmless, represent, defend and indemnify the Board, the Road Commission for Oakland County, its officers, and employees the County of Oakland; the Oakland County Drain Commissioner and applicable drainage district(s); the Michigan State Department of Transportation and the Transportation Commission; and any and all local unit(s) of government within which the roads subject to this Agreement are located, against any and all claims, charges, complaints, damages, or causes of action for (a) public or private property damage, (b) injuries to persons, or (c) other claims, charges, complaints, damages or causes of action arising out of the performance or non-performance of the activities which are the subject matter of this Agreement, specifically those activities set out in Section I, both known and unknown, whether during the progress or after the completion thereof. However, this hold harmless provision does not apply in so far as any claim or suit is alleged to be, or demonstrated to be, the result of a defect in highway design or condition and not related to the Winter Maintenance activities set out in Section I. Further, since the Board has the statutory responsibility for maintenance of the roads under this Agreement, it is the intent of the parties that the delegation by this Agreement of those maintenance responsibilities to the City provide immunity to the City as an agent of the County. Therefore, the City falls within the governmental immunity protection of the County.

During that part of the year that the City is providing Winter Maintenance under Section I, the City agrees to promptly notify the Board as soon as possible, but not longer than 5 days, should it become aware of defects or maintenance requirements in the roads set forth in Exhibit A, if said defects or maintenance requirements are not Winter Maintenance subject to this Agreement.

#### V

The City shall acquire and maintain, during the term of the Agreement, statutory worker's compensation insurance, automobile and comprehensive general liability insurance coverage, as described in Exhibit B attached hereto, covering the Board's liability for any and all claims arising out of the City's performance or non-performance of the activities which are the subject matter of this Agreement.

Without the prior written consent of the Board, the City shall not cancel, reduce, or fail to renew the insurance coverage required by this Agreement. Certificates of insurance for each policy of insurance required by this Agreement shall provide for 30 days actual (not "endeavor to"), prior, written notice to the RCOC by the insurance carrier of any cancellation, termination, reduction or other material change of the policy; and the City shall deliver such certificates to the RCOC.

#### VI

The City further agrees to comply with all applicable laws and regulations, including laws and regulations of the State of Michigan for safeguarding the air and waters of the State. In particular, City facilities and operations must meet the provisions of Part 5 (Spillage of Oil and Polluting Materials) rules promulgated pursuant to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. (Rules R324.2001 through R324.2009 address release prevention planning, secondary containment, surveillance, and release reporting requirements).

#### VII

In accordance with Michigan 1976 Public Acts No. 220 and 453, being MCLA §§37.1209 and 37.2209, as the same may be amended, the City and its subcontractors shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or matter directly or indirectly related to employment, because of race, color, religion, national

origin, age, sex, height, weight, or marital status; or 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 this covenant may be regarded as a material breach of this Agreement.

VIII

It is the intention of the parties hereto that this Agreement is not made for the benefit of any third party.

It is anticipated that subsequent agreements regarding Winter Maintenance activities will be executed annually by the Parties hereto.

The terms and conditions of this Agreement shall become effective on October 1, 2010, and shall continue in full force and effect until a subsequent Winter Maintenance agreement has been executed by the parties hereto or until this Agreement is terminated, as set forth below.

In the event that a subsequent Winter Maintenance agreement has not been executed by the parties hereto on or before September 1, 2011, either party may terminate this Agreement by providing the other party hereto with written notice of intent to terminate, at least thirty (30) days prior to the date of termination.

This Agreement is executed by the Board at its meeting of \_\_\_\_\_, and by the City by authority of a resolution of its governing body, adopted \_\_\_\_\_, (copy attached as Exhibit C).

Witnesses:

CITY OF ROCHESTER HILLS  
A Municipal Corporation

\_\_\_\_\_

By: \_\_\_\_\_  
Bryan K. Barnett  
Its: Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Jane Leslie  
Its: Clerk

Witnesses:

BOARD OF COUNTY ROAD COMMISSIONERS  
OF THE COUNTY OF OAKLAND,  
A Public Body Corporate

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

WINTER MAINTENANCE  
2010-2011

CITY OF ROCHESTER HILLS

EXHIBIT A

Livernois Road

Extending from South Boulevard to Tienken Road

.85 miles at \$3,252.78 per mile	\$ 2,764.86
2.72 miles at \$4,615.14 per mile	\$12,553.18
1.51 miles at \$5,692.38 per mile	<u>\$ 8,595.49</u>
	\$23,913.53

TWO LANES

(\$3,252.78 per mile)

.85 miles	\$ 2,764.86
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THREE LANE

(\$4,615.14 per mile)

2.72 miles	\$12,553.18
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FOUR OR FIVE LANES

(\$5,692.38 per mile)

1.51 miles	<u>\$ 8,595.49</u>
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TOTAL	\$23,913.53
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50% in December, 2010	\$11,956.77
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50% in March, 2011	<u>\$11,956.76</u>
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\$23,913.53

**EXHIBIT B**

**2010-2011 WINTER MAINTENANCE AGREEMENT**

**ROAD COMMISSION FOR OAKLAND COUNTY**

**SPECIAL PROVISION  
FOR  
INDEMNIFICATION, DAMAGE LIABILITY AND INSURANCE**

Section 107.10 of the Michigan Department of Transportation 1996 Standard Specifications for Construction is to be superseded with and replaced by the following:

Indemnification and Damage Liability

See also provisions of the maintenance agreement to which this Exhibit B is attached.

Insurance Coverage:

The City, prior to execution of the maintenance agreement, shall file with the Road Commission for Oakland County, copies of completed 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:** The insurance shall provide protection for the City'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 City under worker's disability compensation coverage established by law.
- b. **Bodily Injury and Property Damage Other than Automobile:** The insurance shall provide 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
Each Person:	\$1,000,000	and Property Damage
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 coverages.

- 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		Single Limit: Bodily Injury
Each Person	\$ 500,000	and Property Damage Liability

Each Occurrence \$1,000,000

Each Occurrence: \$2,000,000

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 City 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 City shall provide for and in 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 City’s Public Liability Insurance.
- e. Notice – The City 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 City. The City 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 City cannot secure the required insurance within 30 days, the Board reserves the right to terminate the Contract.
- f. Reports – The City 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.

See provisions of the maintenance agreement to which this Exhibit B is attached.