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CITY of NOVI CITY COUNCIL

Agenda Item: 1
November 9, 2009

SUBJECT: Approval of the 2009-2010 Winter Maintenance Agreement between the City of Novi and the Road Commission for Oakland County for snow and ice control on County owned roads in Novi, and adoption of winter maintenance resolution.

SUBMITTING DEPARTMENT: Department of Public Services – Field Operations Division 

CITY MANAGER APPROVAL:  

EXPENDITURE REQUIRED	Estimated \$223,600 (\$93,390 offset by revenue reimbursement from RCOC)
AMOUNT BUDGETED	\$223,600
LINE ITEM NUMBER	204-204.00-868.500 (Municipal Street Fund)

BACKGROUND INFORMATION:

The following five County roads within Novi will be maintained by DPS this winter and are included in the 2009-2010 Winter Maintenance Agreement:

Road	From	To	Total Miles	County Reimbursement
Beck Road	Grand River Avenue	Twelve Mile Road	0.44	\$2,504.65
Grand River Avenue	Haggerty Road	Twelve Mile Road	5.27	\$29,998.84
Novi Road	Eight Mile Road	Twelve Mile Road	3.96	\$15,818.99
Ten Mile Road	Haggerty Road	Napier Road	6.10	\$24,762.00
Twelve Mile Road	Beck Road	Haggerty Road	4.06	\$20,305.52
	Total		19.83	\$93,390.00

As in past years, the City will be responsible for snow and ice control on these roads as agreed upon by the Road Commission for Oakland County and City of Novi officials. This agreement will become effective upon its signature date for the 2009-2010 winter season.

In 2008-2009, City expenditures totaled \$221,299.74 to clear the 19.83 miles of Oakland County roadway. As in past years, this winter's expense will be partially offset by the County's revenue reimbursement (for this year the reimbursement amount is \$93,390). This table shows the revenue and expenditures for clearing County roads over the past three winters:

	FY 06/07	FY 07/08	FY 08/09
Revenue from RCOC	\$ 89,763	\$ 91,559	\$ 93,390
Expenditures	\$ 102,783	\$ 210,452	\$ 221,300
Shortfall	\$ (13,020)	\$ (118,894)	\$ (127,910)

These shortfalls are directly related to the severity of the winter seasons: 06/07 was relatively mild; but 07/08 and 08/09 were harsher because of the higher number of storms that stretched from November through April. Salt use constituted 57% of expenditures in 07/08; and 50% in 08/09. We will see some salt savings with the implementation of our new salt pre-wetting program, but we still anticipate a shortfall for 09/10.

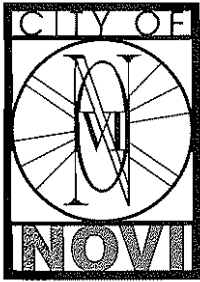
The City's reimbursement will occur in two increments: 35% (32,686.50) in December 2009, and 65% (60,703.50) in March 2010. Reimbursement funding is based on a pro-rated amount of Act 51 gas tax revenue that RCOC receives from the State of Michigan.

The City Attorney's office has reviewed the agreement and finds it to be in an acceptable form (Tom Schultz's November 4 letter, attached).

RECOMMENDED ACTION: Approval of the 2009-2010 Winter Maintenance Agreement between the City of Novi and the Road Commission for Oakland County for snow and ice control on County owned roads in Novi, and adoption of winter maintenance resolution.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				



AUTHORIZING RESOLUTION

2009-2010 WINTER MAINTENANCE AGREEMENT CITY OF NOVI and ROAD COMMISSION FOR OAKLAND COUNTY

CITY COUNCIL

Mayor
David B. Landry

Mayor Pro Tem
Bob Gatt

Terry K. Margolis

Andrew Mutch

Kathy Crawford

Dave Staudt

Brian Burke

City Manager
Clay J. Pearson

City Clerk
Maryanne Cornelius

WHEREAS, the City of Novi has determined that it is desirable to enter into an Agreement with the Road Commission for Oakland County to perform snow and ice removal operations on Beck Road from Grand River Avenue to Twelve Mile Road, Grand River Avenue from Haggerty Road to Twelve Mile Road, Novi Road from Eight Mile Road to Twelve Mile Road, Ten Mile Road from Haggerty Road to Napier Road, and, Twelve Mile Road from Beck Road to Haggerty Road.

WHEREAS, entering into a formal one-year agreement is necessary to facilitate the transfer of jurisdiction from the Road Commission of Oakland County to the City of Novi for said ice and snow removal operations on the designated roadways within the City limits of Novi, and,

WHEREAS, the Road Commission for Oakland County will reimburse to the City of Novi a total of \$93,390.00 for maintaining 19.83 miles, said compensation calculated and agreed to by the Road Commission for Oakland County as fair and equitable compensation for snow and ice removal operations on County roads within the City of Novi.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council for the City authorize the execution of the 2009-2010 Winter Maintenance Agreement with the Road Commission for Oakland County.

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at a regular meeting held this 9th day of November, 2009.

Maryanne Cornelius, City Clerk

November 4, 2009

30903 Northwest Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secrestwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secrestwardle.com

Matt Wiktorowski, Field Operations Senior Manager
City of Novi
26300 Delwal
Novi, MI 48375

**RE: 2009-2010 Winter Maintenance Agreement with Road Commission for
Oakland County
Our File No. 55142 NOV**

Dear Mr. Wiktorowski:

Enclosed please find the final version of the 2009-2010 Winter Maintenance Agreement between the City and the Road Commission for Oakland County (RCOC) for the purpose of winter maintenance of certain Oakland County roads by the City.

As you recall we raised issues with respect to certain new and revised provisions included in the Agreement by RCOC for the 2009-2010 winter maintenance season. The County agreed to make some changes based on the issues we raised. Though not all of the issues were addressed, one of the most significant concerns with respect to language assigning the City additional liability for roadway defects has been addressed in that the language we objected to has been removed.

Based on the elimination of the defect provision, as well as the other changes made, we are able to recommend approval of the 2009/2010 Winter Maintenance Agreement in the revised format.

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,



Elizabeth M. Kudla

cc: Maryanne Cornelius, City Clerk
Rob Hayes, DPS Director
Thomas R. Schultz

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2009-2010 WINTER MAINTENANCE AGREEMENT

CITY OF NOVI

Under 1951 PA 51, As Amended

This Winter Maintenance Agreement ("Agreement") is made this day of _____, 2009, 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 Novi, 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's adopted 2008/2009 Winter Maintenance Guidelines 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 \$93,390.00, 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:

35% in December, 2009
65% in March, 2010

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 districts(s); the Michigan State Department of Transportation and the Transportation Commission; and any and all local units(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/indemnity provision does not apply insofar as any claim or suit is alleged to be, or is demonstrated to be, the result of a defect in highway design or a condition not related to the Winter Maintenance activities set out in Section I. Further, it is the intent of the parties that in performing the Winter Maintenance obligations under this Agreement, the City shall have and retain governmental immunity as a governmental agency, and shall also have and/or receive any immunity conferred by virtue of its performance of the maintenance obligations that are by statute or otherwise the responsibility of the County and for which it is immune.

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 R324.200 I 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 §~S37.1209 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, 2009, 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, 2010, 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 NOVI

A Municipal Corporation

By: _____

Its: _____

By: _____

Its: _____

Witnesses:

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

By: _____

Its: _____

By: _____

Its: _____

WINTER MAINTENANCE

2009-2010

CITY OF NOVI

EXHIBIT A

Beck Road

Extending from Grand River Avenue to
Twelve Mile Road 0.44 miles at \$5,692.38 per mile \$2,504.65

Grand River Avenue

Extending from Haggerty to Twelve Mile Road
5.27 miles at \$5,692.38 per mile \$29,998.84

Novi Road

Extending from Eight Mile Road to Twelve Mile Road
2.61 miles at \$3,252.78 per mile \$ 8,489.76
0.33 miles at \$4,615.14 per mile \$ 1,523.00
1.02 miles at \$5,692.38 per mile \$ 5,806.23
TOTAL \$15,818.99

Ten Mile Road

Extending from Haggerty Road to Napier Road
3.05 miles at \$3,252.78 per mile \$ 9,920.98
2.34 miles at \$4,615.14 per mile \$10,799.43
0.71 miles at \$5,692.38 per mile \$ 4,041.59
TOTAL \$24,762.00

12 Mile Road

Extending from Beck Road to Haggerty Highway
1.15 miles at \$3,252.78 per mile \$ 3,740.70
2.91 miles at \$5,692.38 per mile \$16,564.83
TOTAL \$20,305.53

TOTAL \$93,390.00

CITY OF NOVI
 EXHIBIT A
 (Continued)

TWO LANES

(\$3,252.78 per mile)

2.61 miles	\$ 8,489.76
3.05 miles	\$ 9,920.98
~ miles	<u>\$ 3,740.70</u>
6.81 miles	\$22,151.44

THREE LANES

(\$4,615.14 per mile)

0.33 miles	\$ 1,523.00
2.34 miles	<u>\$10,799.43</u>
2.67 miles	\$12,322.43

FOUR OR FIVE LANES

(\$5,692.38 per mile)

0.44 miles	\$ 2,504.65
5.27 miles	\$29,998.84
1.02 miles	\$ 5,806.23
0.71 miles	\$ 4,041.59
<u>2.91 miles</u>	<u>\$16,564.83</u>
10.35 miles	\$58,916.14

TOTAL 19.83 miles \$93,390.00

35% in December, 2009	\$32,686.50
65% in March, 2010	<u>\$60,703.50</u>
Total	\$93,390.00

EXHIBIT B

2009-2010 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.