



CITY of NOVI CITY COUNCIL

Agenda Item E
July 7, 2014

SUBJECT: Approval of a traffic control device maintenance agreement with the Road Commission for Oakland County for the new traffic signal that will be constructed at the intersection of 13 Mile Road and Cabot Drive.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BC*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The change order to construct a new traffic control signal at the intersection of 13 Mile Road and Cabot Drive appears elsewhere on this agenda for consideration by City Council. Although 13 Mile Road and Cabot Drive are both under City of Novi jurisdiction, the City contracts with the Road Commission for Oakland County (RCOC) for the operation and maintenance of City-owned traffic control signals.

RCOC has provided an Agreement for Traffic Control Device for the ongoing maintenance costs associated with the new traffic signal. Once constructed, the City will pay 100% of the maintenance costs for the signal. Routine maintenance for this intersection would average less than \$2,500 per year.

The standard agreement from RCOC has been reviewed by the Engineering Division and the City Attorneys and approval is recommended.

RECOMMENDED ACTION: Approval of a traffic control device maintenance agreement with the Road Commission for Oakland County for the new traffic signal that will be constructed at the intersection of 13 Mile Road and Cabot Drive.

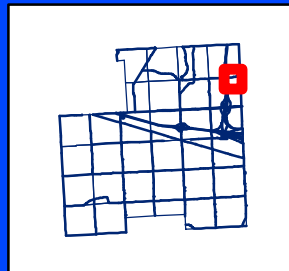
	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

13 Mile Rd. and Cabot Dr. Signal Location Map



Map Author: M. D. McCreddie Jr
 Date: 7/29/13
 Project: 13 Mile Rd. and Cabot Dr. Signal
 Version #: 1



City of Novi
 Engineering Division
 Department of Public Services
 26300 Lee BeGole Drive
 Novi, MI 48375
cityofnovi.org



1 inch = 400 feet

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

**STATE OF MICHIGAN
BOARD OF COUNTY ROAD COMMISSIONERS
OAKLAND COUNTY
AGREEMENT FOR TRAFFIC CONTROL DEVICE**

Type of Work: Traffic Signal Installation & Maintenance

Location: West Thirteen Mile Road and Cabot Drive

**Signal No: 1340
Date Effective:**

Under authority of state law and by virtue of resolution formally adopted by their respective governing bodies, the under-signed hereby agree to participate in the cost of installation, maintenance and operation of the above traffic control device on the basis of the following division of costs. (Title to equipment shall remain with the purchasing agency, unless purchased for roads not under the jurisdiction of the Board of County Road Commissioner.) The proportionate share of all costs are to be billed monthly. This agreement is terminable on thirty days written notice by any party.

DIVISION OF COSTS

AGENCY	INSTALLATION		MAINTENANCE
	Percent	Estimated Cost	Percent
City of Novi	100 %	\$ City Project	100 %
Total	100 %	\$ City Project	100 %

It is further agreed that the agency responsible for payment of energy billings and/or leased line interconnection billings included in maintenance costs, shall be the ROAD COMMISSION FOR OAKLAND COUNTY.

It is further agreed that the agency responsible for making original and replacement installations and performing maintenance shall be the ROAD COMMISSION FOR OAKLAND COUNTY.

"In the event the traffic control device referred to in this agreement is located on a road or street that is not under the jurisdiction of the Road Commission for Oakland County, the authority having the jurisdiction over the road or street hereby agrees to save harmless, indemnify, represent, and defend the Road Commission for Oakland County from any and all claims, demands, or suits arising out of or relating to the installation, maintenance and operation of the traffic control device which is the subject matter of this agreement."

"In the event the traffic control device referred to in this agreement is located on a road or street that is under the jurisdiction of the Road Commission for Oakland County and by virtue of this agreement will be maintained by an agency other than the Road Commission for Oakland County, then and in that event the said agency hereby acknowledges that it is undertaking the Road Commission for Oakland County's duty to maintain the said traffic control device and further agrees to provide insurance coverage protecting the Road Commission for Oakland County."

APPROVED:

ROAD COMMISSION FOR OAKLAND COUNTY

Date _____

By _____
Danielle Deneau, P.E.

DIRECTOR OF TRAFFIC-SAFETY
Title of Authorized Official

APPROVED:

CITY OF NOVI

Date _____

By _____

Title of Authorized Official

*Certified copy of resolution must be submitted with this form for new installations.



JOHNSON ROSATI SCHULTZ JOPPICH PC

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June 30, 2014

Brian Coburn, Engineering Manager
Public Services – DPW Garage
26300 Delwal Drive
Novi, MI 48375

RE: *Agreement for Traffic Control Device with Road Commission for Oakland County- West Thirteen Mile and Cabot Drive*

Dear Mr. Coburn:

Our office has reviewed the proposed Agreement for consideration by City Council prepared by RCOC with respect to installing and maintaining the traffic control device at the intersections of West Thirteen Mile Road and Cabot Drive.

Under the Agreement the City will pay entire cost of installation and the County will maintain and make repairs to the signal and charge the cost to the City. It is likely that a court would construe the Agreement as an agreement retaining the County as a contractor hired by, and working on behalf of, the City to maintain the signal. The RCOC will pay for energy billings and/or leased line interconnection billings.

We note, like previous agreements between the City and RCOC, the Agreement requires the City to indemnify and hold harmless the County for claims relating to the traffic control device in the event that device is located on a road or street *other than a county road*. The County has previously declined to revise or remove the provision. Because both Thirteen Mile Road and Cabot Drive are city roads, this provision applies. As we previously noted, recent case law provides the County and the City are immune from liability pursuant to the governmental immunity statute because traffic signals are not included in the definition of "highway." *Johnson-McIntosh v City of Detroit*, 266 Mich App 318 (2005).

Brian Coburn, Engineering Manager

June 30, 2014

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However, due to the dissenting opinion in *Johnson-McIntosh*, there was still some concern that a *city* may be held liable for improvements, including traffic signals, outside of the improved portion of the highway designed for vehicular travel because the plain language of the provision limiting liability to the "improved portion of the highway designed for vehicular travel," applied only to the state and county road commissions. In response to cases identifying this language, the legislature amended the Governmental Immunity for Tort Liability Act in 2012 (Public Act 50 of 2012) to clarify that cities are also only required to maintain and repair the "improved portion of the highway designed for vehicular travel." To do this, the State Legislature included all *governmental agencies* within the provision. Based on the above statutory amendment, and the current case law, it appears that the City would be immune from liability for the maintenance and repair of traffic signals. Therefore, even though the County is acting as the City's agent like a contractor for the purpose of maintaining the traffic signal to be installed at West Thirteen Mile and Cabot Drive, it is likely that the City would be immune from liability and indemnifying the County would not be required as set forth in the Agreement.

Subject to the above, I see no legal impediment to entry into the Agreement with the RCOC.

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

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth Kudla Saarela

EKS/sls

C: Maryanne Cornelius, Clerk
Rob Hayes, DPS Director
Ben Croy, Civil Engineer
Thomas R. Schultz, Esquire