

CITY COUNCIL ACTION REPORT

September 5, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Timothy L. Richnak, Public Works Director

SUBJECT: Agenda Item: Winter Maintenance Agreement, Road Commission for Oakland County

Background:

- Attached is a copy of the proposed 2008/2009 Winter Maintenance Agreement between the Road Commission for Oakland County and the City of Troy.
- Since 2001 the City of Troy has serviced all county roads in Troy for snow and ice control.
- The amount of compensation to the City has increased by approximately two percent (2%) over last season's contract, which does not cover our cost but a higher level of service is provided and the Road Commission for Oakland County is in concurrence.
- It continues to be evident that this agreement is beneficial to both the RCOC and the City of Troy by allowing the City to administer Snow & Ice Control in a more timely and uniform manner to it's high priority roads and allowing the County to concentrate on it's highest priority roads, I-75 and M-59.

Financial Considerations:

- No additional staffing or equipment is required.

Legal Considerations:

- Legal counsel has reviewed the contract for form and legality.

Policy Considerations:

- Troy has enhanced the health and safety of the community.

Options:

- City management is in agreement with the measured lane mile figures as has been presented, and with the level of compensation for each road configuration; therefore we recommend that the proposed maintenance agreement be approved as printed.

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney



QUALITY LIFE THROUGH GOOD ROADS.
ROAD COMMISSION FOR OAKLAND COUNTY
"WE CARE"

Board of Road Commissioners

Larry P. Crake
Chairman

Richard G. Skarritt
Vice-Chairman

Eric S. Wilson
Commissioner

Brent O. Bair
Managing Director

Dennis M. Kolar
Deputy Managing Director
County Highway Engineer

Highway Maintenance
Department

2420 Pontiac Lk. Rd.
Waterford, MI
48328

248-858-4881

FAX
248-858-7607

TDD
248-858-8005

www.rcocweb.org

July 22, 2008

Mr. Timothy Richnak
Director of Public Works
City of Troy
500 West Big Beaver Road
Troy, Michigan 48084-5285

RE: 2008-2009 Winter Maintenance Agreement

Dear Mr. Richnak:

Attached are two copies of a Winter Maintenance Agreement between the Road Commission for Oakland County and the City of Troy.

If this agreement is satisfactory, please return the two-signed copies and the resolution of approval by your City Council. One fully signed copy will be returned to you upon approval by the Board of Road Commissioners.

Please note that the insurance provisions in Section V have been updated to include the Road Commission's current standard insurance requirements (see Exhibit C). If you have any comments on these provisions, you may contact Thomas Reiss, Legal Counsel, at 248-645-2000. Please furnish proof that your liability insurance covers this agreement, and particularly covers your personnel and equipment working on county roads under the jurisdiction of the Board of Road Commissioners. If there are any changes in this coverage during the term of this agreement, we must be notified of these changes. We will also need a current certificate of membership in the Michigan Municipal Workers Compensation Fund.

The Board of Road Commissioners and I extend our appreciation to you, the City Council, and your personnel for the fine work that has been done. We will continue to cooperate in anyway to provide our citizens with the best road system possible.

Sincerely,

Darryl M. Heid, P.E.
Director of Highway Maintenance

/sll

Attachment



July 29, 2008

Mr. Timothy Richnak
Director of Public Works
City of Troy
500 West Big Beaver Road
Troy, Michigan 48084-5285

RE: 2008-2009 Winter Maintenance Agreement - Exhibit C

Dear Mr. Richnak:

Enclosed is the Exhibit C Insurance Requirement, which was not included with the 2008-2009 Winter Maintenance Agreement that was mailed to you recently.

Please attach a copy of this exhibit to both copies of the agreement.

I am sorry for any inconvenience this may have caused.

Sincerely,

Jay Carter, P.E.
Maintenance Operations Engineer

/sll

Attachment

Board of Road Commissioners

Larry P. Crake
Commissioner

Richard G. Skarritt
Commissioner

Eric S. Wilson
Commissioner

Brent O. Bair
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WINTER MAINTENANCE AGREEMENT

Under 1951 PA 51, As Amended

This Agreement made this _____ day of November, 2008, 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 Troy, Oakland County Michigan, a Municipal Corporation hereinafter referred to as the "CITY", witnesseth as follows to-wit:

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 the 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 the winter maintenance of said 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 ("Winter Maintenance"), as herein required to be performed by City, shall include the following minimum requirements:

SNOW AND ICE CONTROL: Snow removal by blading, plowing and other methods necessary to make the roads reasonably safe for public travel. Ice control by salting, sanding, scraping and other methods necessary to make the roads reasonably safe for public travel.

II

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 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.

Only during that part of the year that the City is providing snow removal or ice control under Section I, the City agrees to notify the Board within 30 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.

III

In consideration of the assumption of Winter Maintenance by the City, the Board hereby agrees to pay to the City the sum of \$249,691.36, 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 2008
65% in March 2009

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

IV

The usual maintenance guidelines and standard practices utilized by the Board, including but not limited to, the Board adopted Winter Maintenance Guidelines, shall control. Should any dispute arise as to the character or extent of Winter Maintenance or to City's performance hereunder, the controversy may be referred to an arbitration board consisting of the Road Commission for Oakland County Director of Highway Maintenance, the Public Works Director and a third person to be chosen by them for settlement thereof.

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 C 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.

Certificates of insurance for each policy providing for 30 days notice of cancellation, termination or material change shall be provided to the Board, and are attached as Exhibit D.

VI

The City further agrees to comply with all relevant 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 1976 PA 453, as amended, and 1976 PA 220, as amended, the City covenants not to discriminate against any 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 race, color, religion, national origin, age, sex, height, weight, marital status or because of a handicap that is unrelated to the individual's ability to perform the duties of the particular job or position and to require a similar covenant on the part of any subcontractor employed in the performance of the 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, 2008, 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, 2009, either party may terminate this Agreement by providing the other party hereto with written notice of intent to terminate, at least thirty 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 B).

Witnesses:

CITY OF TROY
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
2008-2009
CITY OF TROY

EXHIBIT A

Long Lake Road

Extending from Adams to Dequindre

1.54 miles at \$3,252.78 per mile	\$ 5,009.28
0.16 miles at \$4,615.14 per mile	\$ 738.42
3.47 miles at \$5,692.38 per mile	\$ 19,752.56
0.86 miles at \$7,020.96 per mile	<u>\$ 6,038.03</u>
TOTAL	\$ 31,538.29

John R Road

Extending from Fourteen Mile Road to South Boulevard

1.15 miles at \$3,252.78.00per mile	\$ 3,740.70
0.32 miles at \$4,615.14 per mile	\$ 1,476.84
4.37 miles at \$5,692.38 per mile	\$ 24,875.70
0.38 miles at \$7,020.96 per mile	<u>\$ 2,667.96</u>
TOTAL	\$ 32,761.20

Big Beaver

Extending from Adams to Dequindre

3.40 miles at \$5,692.38 per mile	\$ 19,354.09
2.61 miles at \$7,020.96 per mile	<u>\$ 18,324.71</u>
TOTAL	\$ 37,678.80

Crooks Road

Extending from Maple Road to South Boulevard

0.38 miles at \$3,252.78 per mile	\$ 1,236.06
0.26 miles at \$4,615.14 per mile	\$ 1,199.94
3.08 miles at \$5,692.38 per mile	\$ 17,532.53
1.40 miles at \$7,020.96 per mile	<u>\$ 9,829.34</u>
TOTAL	\$ 29,797.87

Livernois Road

Extending from Maple Road to South Boulevard

1.31 miles at \$3,252.78 per mile	\$ 4,261.14
0.34 miles at \$4,615.14 per mile	\$ 1,569.15
3.05 miles at \$5,692.38 per mile	\$ 17,361.76
0.43 miles at \$7,020.96 per mile	<u>\$ 3,019.01</u>
TOTAL	\$ 26,211.06

WINTER MAINTENANCE
2008-2009
CITY OF TROY

EXHIBIT A

Maple Road

Extending from Dequindre to Coolidge
5.01 Miles at \$5,692.38 per mile

\$ 28,518.83

South Boulevard

Extending from Dequindre to Adams
5.96 Miles at \$3,252.78 per mile

\$ 19,386.57

Dequindre Road

Extending from Fourteen Mile to South Boulevard

2.16 Miles at \$3,252.78 per mile

\$ 7,026.00

3.98 Miles at \$5,692.38 per mile

\$ 22,655.67

TOTAL

\$ 29,681.67

Adams Road

Extending from South Troy City Limits to South Boulevard

4.34 Miles at \$3,252.78 per mile

\$ 14,117.07

TOTAL

\$249,691.36

CITY OF TROY
 EXHIBIT A
 (Continued)

TWO LANES

(\$3,252.78 per mile)

1.54 miles	\$ 5,009.28
1.15 miles	\$ 3,740.70
0.38 miles	\$ 1,236.06
1.31 miles	\$ 4,261.14
5.96 miles	\$ 19,386.57
2.16 miles	\$ 7,026.00
<u>4.34 miles</u>	<u>\$ 14,117.07</u>
16.84 miles	\$ 54,776.82

THREE LANES

(\$4,615.14 per mile)

0.16 miles	\$ 738.42
0.32 miles	\$ 1,476.84
0.26 miles	\$ 1,199.94
<u>0.34 miles</u>	<u>\$ 1,569.15</u>
1.08 miles	\$ 4,984.35

FOUR OR FIVE LANES

(\$5,692.38 per mile)

3.47 miles	\$ 19,752.56
4.37 miles	\$ 24,875.70
3.40 miles	\$ 19,354.09
3.08 miles	\$ 17,532.53
3.05 miles	\$ 17,361.76
5.01 miles	\$ 28,518.83
<u>3.98 miles</u>	<u>\$ 22,655.67</u>
26.36 miles	\$150,051.14

SIX OR MORE LANES

(\$7,020.96 per mile)

0.86 miles	\$ 6,038.03
0.38 miles	\$ 2,667.96
2.61 miles	\$ 18,324.71
1.40 miles	\$ 9,829.34
<u>0.43 miles</u>	<u>\$ 3,019.01</u>
5.68 miles	\$ 39,879.05

TOTAL 49.96 miles \$249,691.36

35% in December, 2008	\$ 87,391.98
65% in March, 2009	<u>\$162,299.38</u>
	\$249,691.36

EXHIBIT C

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 or replaced by the following:

Insurance Coverage:

The Contractor, prior to execution of the contract, 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:** 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
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
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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 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 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.
- g. A sample copy of the Road Commission for Oakland County Certificate of Insurance (Form 92) is included in the proposal. A certificate will be forwarded to the successful bidder along with the Contract and bond forms. The Insurance Certificate, properly executed, must be provided to the Road Commission for Oakland County, before the award of the contract by the Board of County Road Commissioners, County of Oakland.

RISKMichigan Municipal
**MANAGEMENT
AUTHORITY****CERTIFICATE OF COVERAGE**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder except to the extent shown below. This certificate does not amend, extend or alter the coverage contained in the Authority's Joint Powers Agreement and coverage attachments thereto.

This is to certify that a Self-Insured Program has been undertaken by the member listed below through the Authority pursuant to Act 138 P.A. 1982.

The coverage provided by the Authority is as follows:

1. Liability coverage for general liability, automobile (including Michigan no-fault) law enforcement and public officials liability; in the sum of \$15,000,000 each occurrence inclusive of loss adjustment and defense costs.
2. Property Coverage including loss to real & personal property, to amounts stipulated in coverage documents and overview for this member.
3. Motor Vehicle Physical Damage Coverage for the vehicles stipulated in the Coverage Document.
4. Information only:
5. The entity named below is included in the scope of protection as additional insured and loss payee, only as respects claims arising from the purchase or lease of vehicles or other property. Losses, if any, will be adjusted with the member and payable to the member and the following, as their interest may appear:
6. Other (as described here): **The scope of protection includes the Road Commission for Oakland County as additional insured, only as respects claims which may arise from work done by the City of Troy in conjunction with the Winter Road Maintenance Agreement.**

Authority membership and coverage are continuous in nature, and bear no expiration or termination date, however, should the member identified below withdraw from the Authority, or its Authority Membership be otherwise terminated, the Authority will endeavor to notify the certificate holder in writing thirty (30) days in advance thereof, but failure to furnish such notice will impose no obligation or liability of any kind upon the Authority, or its representatives.

Certificate Holder:

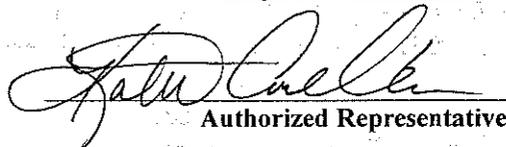
Road Commission for Oakland County
2420 Pontiac Lake Road
Waterford, MI 48328

Member:

City of Troy
500 West Big Beaver
Troy, MI 48084

Distribution:

MMRMA Underwriting

Member Number: 137**Effective Date of Membership: 11/8/1990****Date Issued: September 11, 2008**

Authorized Representative



michigan municipal league

**Michigan Municipal League
Workers' Compensation Fund**

CERTIFICATE OF MEMBERSHIP

The Michigan Municipal League Workers' Compensation Fund, approved by the Director
of the Workers' Compensation Agency as a group self-insured,
certifies that

Troy, City Of

is a member in good standing of the Fund,
for the year expiring

July 1, 2009

and as such is approved by the Agency as a self-insurer.
Employer's Liability coverage of

\$500,000

is included.

Michael J. Forster

July 1, 2008

Effective Date

NOTE: This certificate is proof that your entity has complied with The Workers'
Compensation Agency by becoming a Member of the Michigan Municipal League
Workers' Compensation Fund. Copies of this certificate may be provided to third parties
as evidence that the required workers' compensation coverage is in place.