



CITY COUNCIL ACTION REPORT

March 29, 2010

TO: John Szerlag, City Manager

FROM: Mark Miller, Acting Assistant City Manager/Economic Development Services
Steven J. Vandette, City Engineer *SV*

SUBJECT: 2010 Tri-Party Program

Recommendation:

Staff recommends that City Council approve the attached Cost Participation Agreement between the City of Troy and the Board of Road Commissioners for Oakland County (Board) for the 2010 Tri-Party Program to be used for concrete slab replacements on County Roads at an estimated cost to the City of Troy of \$132,053. Furthermore, staff recommends that the Mayor and City Clerk be authorized to execute the agreements.

Background:

Portions of Big Beaver, Dequindre, John R, Crooks, Long Lake and Livernois, all county roads, have numerous pothole patches and broken concrete pavement that have gotten worse during the spring pothole season. The Engineering Department proposed to the Board that concrete slab replacements be completed under the 2010 Tri-Party program. Tri-Party Program funds have been directed to slab replacements on County roads within the City of Troy for the past two years.

The 2010 Tri-Party Program funding amount was cut by over 50% as compared to the 2009 allocation due to budget shortfalls at the County. It is anticipated that 2010 will be the last year of the program.

The 2010 Tri-Party Program amount for Troy is \$277,399. Savings from past Tri-Party projects in 2008 and 2009 will provide an additional \$118,760 to be used in 2010 for a total amount of \$396,159. These funds are not sufficient to complete all necessary repairs on County Roads, but will be used to address only the worst locations. Specific locations would be identified in the field in coordination with the RCOC prior to work commencing.

The 2010 Tri-Party program includes an additional caveat in that Troy's County Commissioner(s) must support the proposed project by submitting a resolution authorizing the appropriation of the County's 1/3 share of the project to the Board of Commissioners General Government and Finance Committee. This resolution must be approved by both Committees and the full Board before any funds may be released from the Tri-party Program fund at the County. This action takes place after approval by Troy and subsequent approval by the RCOC Board.

The City of Troy includes Districts 13, 19, 20 and 24 as represented by Robert Gosselin, Tim Burns, David Potts and Gary McGillivray, respectively. An email was forwarded to our Commissioners to introduce them to our request as well as ask for their future support for the work after approval by City Council and the RCOC Board.

Financial Considerations:

The City of Troy's share of the Tri-Party program is one-third (1/3) or \$132,053 of the total amount. The remaining two-thirds (2/3) or \$264,106 is shared equally by the Board and the Oakland County Board of Commissioners (County).

Funds for the City of Troy's share are included in the proposed 2010-11 Major Road fund, account number 401.447.479.7989.101036. Funds would not be expended until after July 1, 2010.

Legal Considerations:

The format and content of the agreement is consistent with previously approved Cost Participation Agreements between the city and Board as approved by the Legal Department and City Council.

Policy Considerations:

Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues (Goal II)

COST PARTICIPATION AGREEMENT

2010 CONCRETE PROGRAM
Big Beaver Road, Dequindre Road, John R Road,
Crooks Road, Long Lake Road & Livernois Road

City of Troy

BOARD Project Number 50341

This Agreement, made and entered into this _____ day of _____, 2010, by and between the Board of Road Commissioners for the County of Oakland, Michigan, hereinafter referred to as the BOARD, and the City of Troy, hereinafter referred to as the COMMUNITY, provides as follows:

WHEREAS, the BOARD and the COMMUNITY have programmed the concrete slab replacement on various county roads, 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 \$396,159; and

WHEREAS, portions of said PROJECT costs involve certain designated and approved funding in accordance with the Tri-Party Program in the amount of \$396,159, 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; and shall perform or cause to be performed all preliminary engineering services and administration in reference thereto. The BOARD shall perform the inspection for the PROJECT.

2. The actual total cost of the PROJECT may include total payments to the contractor.
3. The COMMUNITY shall comply with the provisions as set forth in Exhibit B attached hereto.
4. The estimated total PROJECT cost of \$396,159 shall be funded as detailed below:
 - a. The Tri-Party Program funding is not to exceed \$396,159.
5. The COMMUNITY agrees that any PROJECT costs above the Tri-Party Program funding of \$396,159 will be funded 100% by the COMMUNITY.
6. Upon execution of this agreement, the COMMUNITY shall submit an invoice to the BOARD in the amount of \$66,026.50 (being 50% of the BOARD'S Tri-Party contribution).
 - a. The invoice shall be sent to:

Ms. Sina Escoe, Construction Accountant
Road Commission for Oakland County
31001 Lahser Road
Beverly Hills, MI 48025
7. Upon execution of this agreement, the COMMUNITY shall submit an invoice to the COUNTY in the amount of \$66,026.50 (being 50% of the COUNTY'S Tri-Party contribution).
 - a. The invoice shall be sent to:

Mr. Tim Soave, Manager of Fiscal Services
Executive Office Building
2100 Pontiac Lake Road, Building 41 West
Waterford, MI 48328
8. As costs of the PROJECT are incurred, the COMMUNITY shall invoice the BOARD for the remaining 50% of the BOARD'S Tri-Party contribution, not to exceed \$66,026.50.

9. As costs of the PROJECT are incurred, the COMMUNITY shall invoice the BOARD for the remaining 50% of the BOARD'S Tri-Party contribution, not to exceed \$66,026.50
10. Upon receipt of said invoice(s), the BOARD and the COUNTY shall pay to the COMMUNITY the full amount thereof, within thirty (30) days of such receipt.
11. Within 90 days of completion of the PROJECT, the COMMUNITY shall submit to the BOARD one copy of the complete set of the As-built construction plans containing the adjusted quantities of the PROJECT.

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 TROY

By _____

Its _____

By _____

Its _____

EXHIBIT A

TRI-PARTY PROGRAM

2010

County Supported Road Improvements

In the

City of Troy

Project No.	Location	Type of Work
50341	Big Beaver Road Dequindre Road John R Road Crooks Road Long Lake Road Livernois Road	Concrete Slab replacement

TOTAL ESTIMATED PROJECT COST

Contractor Payments	\$396,159
Total Estimated Project Cost	<u>\$396,159</u>

COST PARTICIPATION BREAKDOWN

	COMMUNITY	BOARD	COUNTY	TOTAL
2009 Tri-Party Program	\$ 39,587	\$ 39,587	\$ 39,586	\$118,760
2010 Tri-Party Program	92,466	92,466	92,467	\$277,399
TOTAL SHARE(S)	\$132,053	\$132,053	\$132,053	\$396,159

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.