



CITY of NOVI CITY COUNCIL

**Agenda Item E
November 13, 2012**

SUBJECT: Approval of the FY12/13 Winter Maintenance Agreement between the City of Novi and the Road Commission for Oakland County for snow and ice control on selected County roads in Novi; and adoption of resolution authorizing Novi to provide winter maintenance of County roads.

SUBMITTING DEPARTMENT: Department of Public Services – Field Operations Division

CITY MANAGER APPROVAL: 

EXPENDITURE REQUIRED	Estimated \$199,500 (\$98,530.89 to be offset by revenue reimbursement from RCOC)
AMOUNT BUDGETED	\$199,500
LINE ITEM NUMBER	204-204.00-865.500 (Municipal Street Fund)

BACKGROUND INFORMATION:

The following five County roads within Novi will be maintained by DPS this winter and are included in the attached 2012-2013 Winter Maintenance Agreement (see attached map):

Road	From	To	Total Centerline 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	\$20,892.90
Ten Mile Road	Haggerty Road	Napier Road	6.06	\$24,762.00
Twelve Mile Road	Beck Road	Haggerty Road	4.06	\$20,305.52
		Total	19.79	\$98,530.89

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 (RCOC), and City of Novi officials. This agreement will become effective upon its signature date for the 2012-2013 winter season.

In 2011-2012, City expenditures totaled \$98,958.84 to clear the same 19.79 centerline miles of Oakland County roadway. As in past years, this winter's expense will be partially offset by the County's revenue reimbursement, which is \$98,530.89 for this winter.

This table shows the revenue and expenditures for clearing County roads over the past three winters:

	FY 09/10	FY 10/11	FY 11/12
Revenue from RCOC	\$ 93,390	\$ 93,390	\$ 98,530
Expenditures	\$ 135,317	\$ 171,898	\$ 98,958
Variance	\$ (41,927)	\$ (78,508)	\$ (428)

These shortfalls are directly related to the diverse the winter seasons: 11/12 was an abnormally mild winter, 10/11 was one of the snowiest winters in history with record amounts of snow in February, and 09/10 was relatively mild.

The City's reimbursement will occur in two increments: 35% (\$34,485.81) in December 2012, and 65% (\$64,045.08) in March 2013. 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 (Elizabeth Kudla Saarela's October 4 letter, attached).

RECOMMENDED ACTION: Approval of the FY12/13 Winter Maintenance Agreement between the City of Novi and the Road Commission for Oakland County for snow and ice control on selected County roads in Novi; and adoption of resolution authorizing Novi to provide winter maintenance of County roads.

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

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

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION

2012-2013 WINTER MAINTENANCE AGREEMENT

CITY OF NOVI and ROAD COMMISSION FOR OAKLAND COUNTY

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on _____, _____, at ____ o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

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 \$98,530.89 for maintaining 19.79 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, IT IS THEREFORE RESOLVED that the Mayor and Council for the City authorize the execution of the 2012-2013 Winter Maintenance Agreement with the Road Commission for Oakland County.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

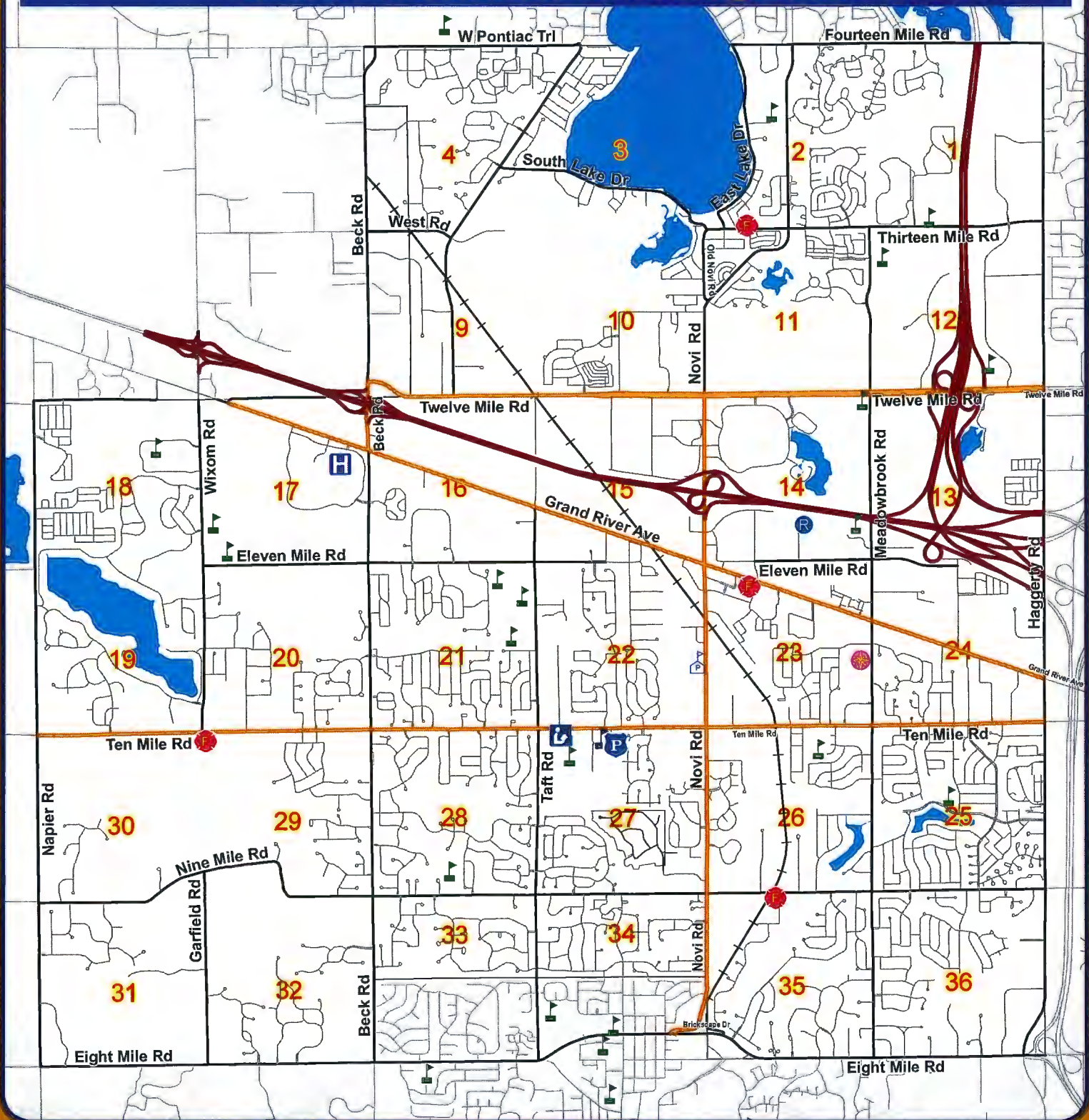
Maryanne Cornelius, City Clerk

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, County of Oakland, and State of Michigan, at a regular meeting held this _____ day of _____, 2012, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

Maryanne Cornelius, City Clerk
City of Novi

Road Commission for Oakland County Roads Maintained by City of Novi Under 2012-13 Winter Maintenance Agreement



Map Authors: Christopher Blough, GIS Manager
 Date: November 5, 2012
 Project: RCOC 11-12 Winter Maintenance Agreement
 Version #: 1.1

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.

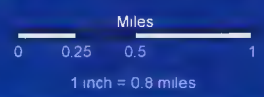
Legend

- RCOC Roads Plowed Under Contract
- Major Roads
- Minor Streets
- Roads Adjoining Novi

Beck Road: 0.44 Miles - Grand River Ave to Twelve Mile Rd
Grand River Ave: 5.27 Miles - Haggerty Rd to Twelve Mile Rd
Novi Road: 3.96 Miles - Eight Mile Rd to Twelve Mile Rd
Ten Mile Road: 6.06 Miles - Haggerty Rd to Napier Rd
Twelve Mile Road: 4.06 Miles - Beck Rd to Haggerty Rd



City of Novi
 Geographic Information Services
 Information Technology Department
 45175 W Ten Mile Rd
 Novi, MI 48375
 cityofnovi.org





JOHNSON ROSATI SCHULTZ JOPPICH PC

34405 W. Twelve Mile Road, Suite 200 ~ Farmington Hills, Michigan 48331-5627
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.johnsonrosati.com

October 4, 2012

Matt Wiktorowski, Senior Manager
Field Operations Division
CITY OF NOVI
Field Services Complex
26300 Lee BeGole Drive
Novi, Michigan 48375

Re: 2012-2013 Winter Maintenance Agreement with Road Commission for Oakland County

Dear Mr. Wiktorowski:

We have received and reviewed the proposed 2012-2013 Winter Road Maintenance Agreement prepared by the Road Commission for Oakland County for the purpose of authorizing payment to the City for the City's maintenance of County roads within the City. We have noted a couple of minor language changes that do not affect the substance of the agreement as follows:

1. The indemnity provision has been modified to clarify that the term "injuries" includes "death." This is not a substantive change because the provision already included "any and all claims" which would presumably already include "death" within its terms.
2. The insurance cancellation policy requirements have been removed from the body of the Agreement but remain in place in the "Exhibit B," "Insurance Provision" page.

We have also noted a couple of substantive changes to the terms of the Agreement:

1. Though it is not listed in the Exhibit B insurance requirements, Section V of the Agreement now includes the requirement to provide "employer's liability insurance." It should be confirmed that the City's insurance agent takes note of this reference in Section V, in addition to the requirements in Exhibit B when preparing the Certificate of Insurance for this Agreement.

October 4, 2012

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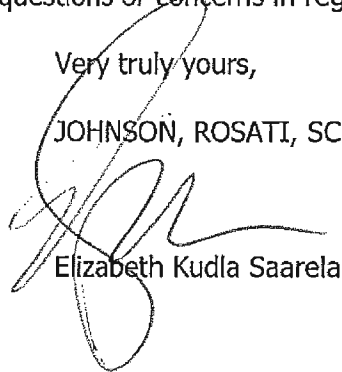
2. The City will receive a slightly increased payment for winter maintenance of Novi Road and Ten Mile Road.

Subject to notification of the City's insurance agent regarding the above changes, we see no legal impediment to the City's approval and execution of the 2012-2013 Winter Road Maintenance Agreement.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

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

A handwritten signature in black ink, appearing to read 'Elizabeth Kudla Saarela', is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Elizabeth Kudla Saarela

EKS

Enclosures

C: Maryanne Cornelius, Clerk (w/Enclosures)
Rob Hayes, Public Services Director (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

2012-2013 WINTER MAINTENANCE AGREEMENT
CITY OF NOVI

Under 1951 PA 51, As Amended

This Winter Maintenance Agreement (“Agreement”) is made this ____ day of _____, 2012, 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 will perform Winter Maintenance of certain roads under the terms of this Agreement, and the Board will 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 2009/2010 or most current Board adopted 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 \$98,530.89, 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, 2012
65% in March, 2013

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 Office of the Oakland County Water Resources 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 (including death), 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, 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 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 employer's liability insurance, automobile and comprehensive general liability insurance coverages, as more fully 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.

VI

The City further agrees to comply with all applicable laws and regulations, including without limitation, 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, 2012, 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, 2013, 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
2012 - 2013
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
1.00 miles at \$3,252.78 per mile \$ 3,252.78
0.45 miles at \$4,615.14 per mile \$ 2,076.81
1.55 miles at \$5,692.38 per mile \$ 8,823.19
0.96 miles at \$7,020.06 per mile \$ 6,740.12
TOTAL \$20,892.90

Ten Mile Road

Extending from Haggerty Road to Napier Road
3.15 miles at \$3,252.78 per mile \$10,246.26
1.84 miles at \$4,615.14 per mile \$ 8,491.86
1.07 miles at \$5,692.38 per mile \$ 6,090.85
TOTAL \$24,828.97

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 \$98,530.89

CITY OF NOVI
EXHIBIT A
(Continued)

TWO LANES

(\$3,252.78 per mile)

1.00 miles	\$ 3,252.78
3.15 miles	\$10,246.26
<u>1.15 miles</u>	<u>\$ 3,740.70</u>
5.30 miles	\$17,239.74

THREE LANES

(\$4,615.14 per mile)

0.45 miles	\$ 2,076.81
<u>1.84 miles</u>	<u>\$ 8,491.86</u>
2.29 miles	\$10,568.67

FOUR OR FIVE LANES

(\$5,692.38 per mile)

0.44 miles	\$ 2,504.65
5.27 miles	\$29,998.84
1.55 miles	\$ 8,823.19
1.07 miles	\$ 6,090.85
<u>2.91 miles</u>	<u>\$16,564.83</u>
11.24 miles	\$63,982.36

SIX OR MORE LANES

(\$7,020.96 per mile)

0.96 miles	\$ 6,740.12
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TOTAL

19.79 miles	\$98,530.89
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35% in December, 2012	\$34,485.81
65% in March, 2013	<u>\$64,045.08</u>
Total	<u>\$98,530.89</u>

EXHIBIT B

2012-2013 WINTER MAINTENANCE AGREEMENT

ROAD COMMISSION FOR OAKLAND COUNTY

**INSURANCE PROVISION
(CITY)**

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. **Worker’s Compensation and Employer’s Liability Insurance:** The insurance shall provide worker’s compensation protection for the City’s employees, to the statutory limits of the State of Michigan, and provide Part B Employers Liability as follows:

Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

The indemnification obligation under this section shall not be limited in any way 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:** 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 operation for one year, after completion of the work.
- 1. **Bodily Injury and Property Damage Other Than Automobile:** The minimum limits of property damage and bodily injury liability covering each contract shall be:

Bodily Injury and Property Damage Liability: Each Person \$1,000,000 Each Occurrence \$1,000,000 Aggregate \$2,000,000	or: Combined Single Limit: Aggregate \$2,000,000
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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 Automobiles: The minimum limits of bodily injury liability and property damage liability shall be:

Bodily Injury and Property Damage Liability: Each Person \$1,000,000 Each Occurrence \$1,000,000	or: Combined Single Limit: Each Occurrence: \$1,000,000
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Such insurance shall include coverage for all owned, hired, and non-owned vehicles.

- a. 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.
- b. 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 General Liability Insurance.
- c. 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.
- d. Reports: The City or its insurance carrier shall promptly report to the Road Commission all of the following events each time as they occur: Claims received, claims investigations made, and disposition of claims.

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