



CITY of NOVI CITY COUNCIL

Agenda Item J
May 12, 2008

SUBJECT: Approval of Traffic Control Device Agreement with the Road Commission for Oakland County for the ongoing maintenance of the new traffic signal being installed by Providence Hospital on Beck Road and Providence Parkway/Central Park Blvd.

SUBMITTING DEPARTMENT: Engineering *RJh*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The Road Commission for Oakland County (RCOC) has provided an Agreement for Traffic Control Device for the ongoing maintenance costs associated with the new traffic signal on Beck Road at the south entrance to Providence Hospital and entrance to Central Park Estates. The traffic signal is being funded by Providence Hospital and will be constructed using decorative mast arms. Construction is underway and should be complete in early June.

Once constructed, the agreement anticipates that the City will pay 100% of the maintenance costs for the signal. (Beck Road is under the City's jurisdiction, while the entrance to Central Park and Providence Parkway are private streets). Routine maintenance costs for this intersection average less than \$150 per month.

The revised agreement from RCOC has been reviewed by the Engineering Department and the City Attorney's office (Beth Kudla's letter, attached), and approval is recommended.

RECOMMENDED ACTION: Approval of Traffic Control Device Agreement with the Road Commission for Oakland County for the ongoing maintenance of the new traffic signal being installed by Providence Hospital on Beck Road and Providence Parkway/Central Park Blvd.

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

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

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

Type of Work: Traffic Signal Installation

Location: Beck Road & Providence Hospital South Drive

Signal No.: C0 1282
 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	Estimated Cost	MAINTENANCE
	Percent	\$	Percent
City of Novi	N/A %	\$	100 %
Total	100 %	\$	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

APPROVED:
 City of Novi

Date _____

Date _____

By _____
 Gary Piotrowicz

By _____

DIRECTOR OF TRAFFIC-SAFETY
 Title of Authorized Official

 Title of Authorized Official

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

LOCATION MAP

New Traffic Signal on Beck Road at Providence Parkway/Central Park Blvd.



CITY OF NOVI

ENGINEERING DIVISION

48175 W. TEN MILE ROAD

NOVI, MI 48275-3024

(248) 347-0454

MAP AUTHOR: Brian Coburn, P.E.



0 125 250 500 750

FEET

1 INCH EQUALS 320 FEET

MAP PRINT DATE: 5/1/08

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 136 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

May 6, 2008

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Brian Coburn, Civil Engineer
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

**RE: Agreement with Road Commission for Oakland County
Beck Road and Providence Hospital South Drive
Our File No. 55142 NOV**

Dear Mr. Coburn:

Our office has reviewed the proposed agreement for consideration by City Council prepared by the RCOC for Oakland County with respect to the cost of maintaining a proposed traffic signal at the intersection of Beck Road and Providence Hospital South Drive. It is our understanding that though the Agreement also refers to the cost of "installation," the actual installation of the signal will be paid for by Providence Hospital and completed by Central Park Estates, and this Agreement should be construed only as an Agreement regarding "maintenance."

Under the Agreement it appears that the City will pay the County 100% of the cost to maintain and operate the signal. 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 that 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*. Because Beck Road and Providence Hospital South Drive are not county roads, this provision applies. We note, however, the Michigan Court of Appeals has recently interpreted MCL 691.1402 to provide that the City is immune from liability for traffic signals on *city roads* 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). Therefore in the event of an injury or other damages relating to the traffic control device, the County may be immune as a contractor for the City, and the provision in the Agreement would in that event likely, have no effect on the City.

Brian Coburn, Civil Engineer
May 6, 2008
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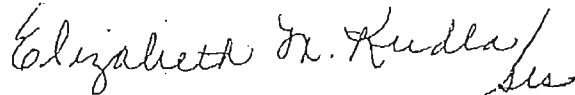
However, in the event that a court did not deem the County immune as a contractor for the City, unlike a third party contractor that typically agrees to indemnify the City, the County is not providing that protection and in fact, is requiring the City to indemnify them for their own mistakes.

The Agreement also requires that if the traffic control device is on a county road and a governmental agency other than the County undertakes maintenance of the traffic control device, that agency acknowledges it is taking the RCOC's duty and will insure the RCOC in that regard. Since this is not a county road and RCOC intends to undertake the maintenance, this provision also has no real effect on the City.

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,



Elizabeth M. Kudla

EMK

cc: Maryanne Cornelius, City Clerk
Rob Hayes, City Engineer
Thomas R. Schultz, Esquire