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CITY of NOVI CITY COUNCIL

**Agenda Item J
June 20, 2011**

SUBJECT: Approval to amend the authorized contract amount related to the cost sharing agreement with Michigan Department of Transportation (MDOT) for the M-5 Non-Motorized Pathway Project (13 Mile to 14 Mile Road) from \$24,400 to an estimated final amount of \$29,206, which represents 2.25% of final project costs per the agreement with MDOT.

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

CITY MANAGER APPROVAL: *[Signature]*

EXPENDITURE REQUIRED	\$ 4,806
AMOUNT BUDGETED	Budget committed (additional cost included in 4th quarter budget amendment)
APPROPRIATION REQUIRED	\$ 4,806
LINE ITEM NUMBER	204-204.00-974.416

BACKGROUND INFORMATION:

On September 28, 2009, the Novi City Council approved a cost participation agreement with Michigan Department of Transportation (MDOT) for the engineering and construction costs for a non-motorized pathway along the west side of M-5 from 13 Mile Road to 14 Mile Road. At that time, it was anticipated that Novi's share of the project costs would be \$24,400 (11.25% of the matching amount of the grant, or 2.25% of the overall cost of the project).

The project is nearing final completion and the latest estimate from MDOT indicates that Novi's share will be approximately \$29,206, an increase of \$4,806 from the original amount in the contract. This amount still represents 2.25% of the final project costs as reflected in the cost sharing agreement and as required by statute (see agreement and MCL.651c, attached).

RECOMMENDED ACTION: Approval to amend the authorized contract amount related to the cost sharing agreement with Michigan Department of Transportation (MDOT) for the M-5 Non-Motorized Pathway Project (13 Mile to 14 Mile Road) from \$24,400 to an estimated final amount of \$29,206, which represents 2.25% of final project costs per the agreement with MDOT.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

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

FEDERAL AID PROGRESS PAYMENT

DAB
Control Section CM 63192
Job Number 88080A; 88080C
Federal Project CM 0963(229);
CM 0684(086)
Federal Item RR 6929; RR 5262
Contract 09-5331

THIS CONTRACT is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF NOVI, a Michigan municipal corporation, hereinafter referred to as the "CITY"; for the purpose of fixing the rights and obligations of the parties in agreeing to construction improvements located within the corporate limits of the CITY.

WITNESSETH:

WHEREAS, the parties hereto anticipate that payments by them and contributions by agencies of the Federal Government or other sources will be sufficient to pay the cost of construction or reconstruction of that which is hereinafter referred to as the "PROJECT" and which is located and described as follows:

Construction work for a non-motorized pathway along the west side of Highway M-5 from 13 Mile Road to 14 Mile Road; together with necessary related work, located within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT presently estimates the PROJECT COST as hereinafter defined in Section 1 to be: \$1,086,300; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The term "PROJECT COST", as herein used, is hereby defined as the cost of construction or reconstruction of the PROJECT including the costs of preliminary engineering, plans and specifications; acquisition costs of the property for rights of way, including interest on awards, attorney fees and court costs; physical construction necessary for the completion of the PROJECT as determined by the DEPARTMENT; and construction engineering, legal, appraisal, financing, and any and all other expenses in connection with any of the above.

2. The cost of alteration, reconstruction and relocation, including plans thereof, of certain publicly owned facilities and utilities which may be required for the construction of the PROJECT, shall be included in the PROJECT COST; provided, however, that any part of such cost determined by the DEPARTMENT, prior to the commencement of the work, to constitute a betterment to such facility or utility, shall be borne wholly by the owner thereof.

3. The CITY shall make available to the PROJECT, at no cost, all lands required thereof, now owned by it or under its control for purpose of completing said PROJECT. The CITY shall approve all plans and specifications to be used on that portion of this PROJECT that are within the right of way which is owned or controlled by the CITY. That portion of the PROJECT which lies within the right of way under the control or ownership by the CITY shall become part of the CITY facility upon completion and acceptance of the PROJECT and shall be maintained by the CITY in accordance with standard practice at no cost to the DEPARTMENT. The DEPARTMENT assumes no jurisdiction of CITY right of way before, during or after completion and acceptance of the PROJECT.

4. The parties will continue to make available, without cost, their sewer and drainage structures and facilities for the drainage of the PROJECT.

5. The PROJECT COST shall be met in part by contributions from agencies of the Federal Government. The balance of the PROJECT COST shall be charged to and paid by the DEPARTMENT and the CITY in the following proportions and in the manner and at the times hereinafter set forth:

DEPARTMENT -	88.75%
CITY -	11.25%

The PROJECT COST and the respective shares of the parties, after Federal-aid, is estimated to be as follows:

	TOTAL ESTIMATED COST	FEDERAL AID	BALANCE AFTER FEDERAL AID	DEPT'S SHARE	CITY'S SHARE
Constr. & CE	\$836,300	\$669,100	\$167,200	\$148,400	\$18,800
PE	\$250,000	\$200,000	\$50,000	\$44,400	\$5,600
TOTAL	\$1,086,300	\$869,100	\$217,200	\$192,800	\$24,400

Participation, if any, by the CITY in the acquisition of trunkline right-of-way shall be in accordance with 1951 P.A. 51 Subsection 1d, MCL 247.651d. An amount equivalent to the federal highway funds for acquisition of right-of-way, as would have been available if application had been made thereof and approved by the Federal government, shall be deducted from the total PROJECT COST prior to determining the CITY'S share. Such deduction will be established from the applicable Federal-Aid matching ratio current at the time of acquisition.

6. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT. The DEPARTMENT may submit progress billings to the CITY on a biweekly basis for the CITY'S share of the cost of work performed to date, less all payments previously made by the CITY. No biweekly billings of a lesser amount than \$1,000 shall be made unless it is a final or end of fiscal year billing. All billings will be labeled either "Progress Bill Number _____", or "Final Billing". Upon completion of the PROJECT, payment of all items of PROJECT COST and receipt of all Federal Aid, the DEPARTMENT shall make a final billing and accounting to the CITY.

7. In order to fulfill the obligations assumed by the CITY under the provisions of this contract, the CITY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. The CITY shall be billed for their share of the preliminary engineering costs upon award of the PROJECT. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the CITY will be based upon the CITY'S share of the actual costs incurred less Federal Aid earned as the work on the PROJECT progresses.

8. Pursuant to the authority granted by law, the CITY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its required payments as specified herein.

9. If the CITY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the CITY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such moneys thereafter allocated by law to the CITY from the Michigan transportation Fund sufficient moneys to remove the default, and to credit the CITY with payment thereof, and to notify the CITY in writing of such fact.

10. The DEPARTMENT shall secure from the Federal Government approval of plans, specifications, and such cost estimates as may be required for the completion of the PROJECT; and shall take all necessary steps to qualify for Federal Aid such costs of acquisition of rights of way, construction, and reconstruction, including cost of surveys, design, construction engineering, and inspection for the PROJECT as deemed appropriate. The DEPARTMENT may elect not to apply for Federal Aid for portions of the PROJECT COST.

11. It is understood that the CITY is the owner of, or has control of the facilities constructed as the PROJECT, and that said facilities may require special or unusual operation and/or maintenance. The CITY certifies, by execution of this contract, that upon completion of construction and at no cost to the PROJECT or the DEPARTMENT, it will properly maintain or provide for the maintenance and operation of the PROJECT, making ample provisions each year for the performance of such maintenance work as may be required.

On projects for the construction of non-motorized facilities, the CITY will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such facilities constructed as the PROJECT except those for maintenance purposes.

On projects which include landscaping, the CITY shall maintain all plantings following completion of the two-year establishment period.

12. This contract is not intended to increase or decrease either party's liability, or immunity from, tort claims.

13. All of the PROJECT work shall be done by the DEPARTMENT.

14. In connection with the performance of the PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

15. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the CITY and for the DEPARTMENT; upon the adoption of a resolution approving said contract and authorizing the signatures thereto of the respective officials of the CITY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

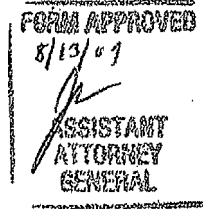
CITY OF NOVI

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees 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. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

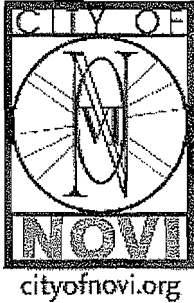
Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.



MEMORANDUM

TO: ROB HAYES, P.E.; DIRECTOR OF PUBLIC SERVICES
KATHY SMITH-ROY, FINANCE DIRECTOR

FROM: BRIAN COBURN, P.E.; SENIOR CIVIL ENGINEER *BTC*

SUBJECT: M-5 PATHWAY COST SHARE AGREEMENT WITH MDOT

DATE: AUGUST 27, 2009

We have received the attached cost share agreement from the Michigan Department of Transportation. City staff has been in discussions with MDOT for months regarding the design of the project. It was our understanding that the project was entirely funded by MDOT and a federal Congestion Mitigation/Air Quality (CMAQ) grant. It was not until we received the cost share agreement for the project from MDOT that we became aware of a cost share requirement for the project.

We have discussed the agreement with MDOT staff who have advised us that the cost share requirements under Act 51 that apply to trunkline projects (such as the I-96/696 project currently underway) also apply to construction of non-motorized pathways within those rights-of-way. Although the statute does not specifically state that cost sharing is required for non-motorized pathways, MDOT has traditionally applied the Act 51 cost share formula to these improvements as if they were trunklines.

The estimated total cost of the project including engineering is \$1,086,300 of which 80% is funded by a federal CMAQ grant leaving a 20% share amount of \$217,200. The share amount is split according to the Act 51 formula such that MDOT is responsible for \$192,800 or 88.75% of the grant match and Novi is responsible for \$24,400 or 11.25% of the grant match. The table below shows the project funding by source.

	Costs	% of Total Project Cost
Total Project Cost	\$1,086,300	100%
Federal Aid	\$869,100	80%
Grant Match Required	\$217,200	20%
MDOT Share	\$192,800	17.7%
Novi's Share	\$24,400	2.2%

Since there is no funding budgeted currently for the project, we are requesting that \$24,400 for Novi's required local match under Act 51 be added for consideration on the next budget amendment. We will place this cost share agreement along with the required resolution on the September 14, 2009 City Council agenda for consideration.

STATE TRUNK LINE HIGHWAY SYSTEM (EXCERPT)
Act 51 of 1951

247.651c Cost of opening, widening, and improving state trunk line highways.

Sec. 1c. The state transportation department shall bear the cost of opening, widening, and improving, including construction and reconstruction, in accordance with standards and specifications of the department, all state trunk line highways, subject to all of the following provisions:

(a) Incorporated cities and villages shall participate with the department in the cost of opening, widening, and improving, including construction and reconstruction of state trunk line highways within cities and villages to which may be added, subject to the approval of the state transportation commission, streets that are connecting links of trunk line highways or streets as are made connecting links of trunk line highways, according to the following schedule subject to the definition of population as provided in section 13:

(i) In cities and villages having a population of 50,000 or more, 12.5% of the cost shall be borne by the city or village, and 87.5% by the state transportation department.

(ii) In cities and villages having a population of 40,000 or more and less than 50,000, 11.25% of the cost shall be borne by the city or village, and 88.75% by the state transportation department.

(iii) In cities and villages having a population of 25,000 or more and less than 40,000, 8.75% of the cost shall be borne by the city or village, and 91.25% by the state transportation department.

(iv) In cities and villages having a population of less than 25,000, the state transportation department shall bear the entire cost.

(b) As used in this act, "opening, widening, and improving, including construction and reconstruction, of state trunk line highways" includes, but is not limited to, the cost of right of way; the cost of removal and replacement of sidewalks, street lighting, curbing, where removal and replacement is made necessary by construction or reconstruction of a trunk line highway; and the cost of bridges and structures, including that part of the cost of grade separation structures not paid by the railroad companies.

(c) In a city or village, the width of a state trunk line highway shall be the width required to serve anticipated future traffic needs for a 20-year period as determined by a department transportation survey, which width, except as prescribed by this subdivision, shall not be less than the currently accepted standards prescribed for a 4-lane highway; the width as may be built on the same trunk line route immediately beyond and adjacent to either legal boundary of the city or village; or on trunk lines eligible for federal highway funds, a width as may be prescribed by the federal government, whichever width is greater. However, the department and the governing body of a city or village by mutual agreement may determine that the width of a state trunk line highway shall be less than the width otherwise prescribed by this subdivision.

(d) If a city or village shall desire to widen a state trunk line highway for local purposes beyond the width prescribed in subdivision (c), the entire cost of the extra width, less the federal highway funds which may be allocated to the portion of the project by the department, shall be borne by the city or village.

(e) The state transportation commission and the boards of county road commissioners may enter into agreements with townships or private persons for the improvement or widening of state trunk line highways or county roads. The state transportation commission and the boards of county road commissioners may require full or partial participation in the cost of the improvement or widening by the requesting party as considered appropriate.

History: Add. 1957, Act 262, Eff. July 1, 1957;—Am. 1967, Act 298, Eff. Jan. 1, 1968;—Am. 1967, Ex. Sess., Act 4, Eff. Jan. 1, 1968;—Am. 1976, Act 263, Imd. Eff. Oct. 1, 1976;—Am. 1982, Act 436, Imd. Eff. Dec. 29, 1982;—Am. 1982, Act 438, Eff. Jan. 1, 1983.

Popular name: McNitt Act

Popular name: Michigan Transportation Fund Act