

**PARK AVENUE RETAINING WALL REPLACEMENT PROJECT
COST SHARING AGREEMENT IN LIEU OF SPECIAL ASSESSMENTS**

This Cost Sharing Agreement (“Agreement”) is made and entered into this ____ day of _____, 2024, by and between the **VILLAGE OF LAKE ORION**, a Michigan municipal corporation, located at 21 East Church Street, Lake Orion, Michigan (“Village”), 48362-3212 and **RANDALL GILBERT and SUE DELGADO**, whose address is 359 Park Avenue, Lake Orion, MI 48362, and **BENJAMIN McKENZIE and LISA McKENZIE**, whose address is 365 Park Avenue, Lake Orion, MI, 48362, and **TIMOTHY McMAKEN and D. CLAIRE BEAUDET**, whose address is 354 Park Avenue, Lake Orion, MI 48362 (“Property Owners”).

R E C I T A L S

1. Property Owners own property on Park Avenue in the Village of Lake Orion (“Premises”).
2. The Village will be undergoing a retaining wall replacement project along Park Avenue, which includes the retaining wall replacement, Park Avenue roadway repair, and guardrail installation.
3. The Village and Property Owners have come to an agreement on a cost sharing arrangement for the retaining wall replacement project under the terms and conditions set forth herein, in lieu of a special assessment.

AGREEMENT

The parties agree as follows:

1. The total project involves the replacement of the retaining wall along Park Avenue. The project also includes paving costs to the road, guardrail installation, and retaining wall construction (see Attachment “A,” As-Bid Base Cost Summary).
2. This Cost Sharing Agreement is specifically in lieu of any special assessments to the Property Owners as it relates to this retaining wall replacement project.
3. The Village shall pay One Hundred Percent (100%) of the cost of the retaining wall replacement, and shall pay One Hundred Percent (100%) of any cost of any change orders approved by the Village Council in excess of the contractual base bid amount.
4. The Property Owners shall pay One Hundred Percent (100%) of the costs associated with the roadway repair and guardrail installation. The Property Owners’ cost shall be spread

equally between the three (3) Property Owners and payment by each Property Owner is due in full to the Village prior to the award of the contract on August 26, 2024.

5. The Village has engaged Nowak and Fraus Engineers, and they provided the lowest base bid tabulation (see Attachment “B). They have set forth what is entailed for the replacement of the retaining wall, including the cost which will be split in accordance with the parties’ respective portions identified above.

6. The Village’s Engineers, Nowak and Fraus, will complete its review of the retaining wall replacement project to ensure that it will be constructed in such a way that the Village and Property Owners will accept ownership of the retaining wall replacement at the completion of the Project. The cost of said design engineering will be paid by the Village.

7. As to all costs identified above, the Village shall make payment of all such costs. Upon completion of the Project and acceptance by the Village, the Village will reimburse Property Owners of any amounts not used from their portion for the purpose provided. If the Project is not completed and/or approved, the Village shall not have any payment or reimbursement obligations.

8. Upon completion of the Project and acceptance by the Village, the Village shall take over ownership and maintenance of the portion of the project located in the Village’s right-of-way. Any warranties and/or performance guarantees of third parties working on the Project shall include the Village as a beneficiary with all rights thereunder transferred at acceptance.

9. In entering into this Agreement, all parties represent and warrant to the other that their signatories, have the authority and capacity to do so and to bind each parties’ successors and assigns.

10. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 52/3rd District Court or by arbitration. If all parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party’s claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. This Agreement shall be governed by the laws of the State of Michigan and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 52/3 District Court.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

The parties have executed this Agreement as of the day and year first above written.

VILLAGE OF LAKE ORION:

Date: By: _____
Darwin D.P. McClary, Village Manager

Date: By: _____
Sonja Stout, Clerk

PROPERTY OWNERS:

Date: By: _____
Randall Gilbert

Date: By: _____
Sue Delgado
359 Park Avenue
Lake Orion, MI 48362

Date: By: _____
Benjamin McKenzie

Date: By: _____
Lisa McKenzie
365 Park Avenue
Lake Orion, MI 48362

Date: By: _____
Timothy McMaken

Date: By: _____
D. Claire Beaudet
354 Park Avenue
Lake Orion, MI 48362

ATTACHMENT A

NOWAK AND FRAUS ENGINEERS



48680 Van Dyke, Shelby Township, MI 48317
(586) 739-0939

PROJECT: Park Avenue Retaining Wall - BASE BID AS-BID COST
PROJECT NO: M718

DATE: 8/6/2023

PREPARED BY: WES

AS-BID BASE COST SUMMARY

Paving-Only Costs	\$20,422.00
Contingency	<u>\$3,063.30</u>
Total Paving-Only Costs	\$23,485.30
Retaining Wall Remaining Costs	\$61,200.00
Contingency	<u>\$9,180.00</u>
Total Retaining Wall Construction Costs	\$70,380.00
PROJECT TOTAL IMPROVEMENTS	\$93,865.30

THE ABOVE IS AN ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS FOR THE SITE. NO GUARANTEE IS EXPRESSED OR IMPLIED CONCERNING THEIR ACCURACY OR COMPLETENESS. FINAL/ACTUAL CONSTRUCTION COSTS WILL VARY FROM THE NUMBERS PRESENTED HEREIN SINCE ACTUAL CONSTRUCTION COSTS WILL BE DETERMINED BY CONTRACTORS THROUGH A BIDDING PROCESS OR OTHER OWNER SELECTION PROCESS.

ATTACHMENT B

VILLAGE OF LAKE ORION PARK AVENUE RETAINING WALL REPLACEMENT				JB CONTRACTORS, INC. 2933 MILITARY DETROIT, MI 48209 313-995-8301 jbcontractors@outlook.com			HIGHLAND SERVICES, LLC 10031 BERGIN RD. HOWELL, MI 48843 810-623-1088 carl.pictlla@highlandservicesllc.com			DALCO SERVICES 59187 NORTH AVE. RAY, MI 48096 586-876-4326 zwilliams@dalcoservicesllc.com			(ENGINEER'S ESTIMATE) NOWAK & FRAUS ENGINEERS 48680 VAN DYKE (586) 739-0939		AVERAGE UNIT PRICE (BIDDER 1-3 ONLY)
BID DATE: 30-Jul-24 PROJECT # M718				BIDDERS -----> 3 BIDDERS 19 ITEMS											
ITEM NO	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	BIDDER'S AMOUNT	COMPUTED AMOUNT	UNIT PRICE	BIDDER'S AMOUNT	COMPUTED AMOUNT	UNIT PRICE	BIDDER'S AMOUNT	COMPUTED AMOUNT	UNIT PRICE	AMOUNT	
1	MOBILIZATION (3% max)	1	LS			\$2,200.00			\$2,310.00			\$2,550.00			
2	PAVEMENT REMOVAL	55	SY	\$36.00		\$1,980.00	\$58.77		\$3,232.35	\$32.00		\$1,760.00	\$32.50	\$1,787.50	\$2,353.33
3	REMOVE EX. WOOD RETAINING WALL	1	LS	\$4,600.00		\$4,600.00	\$6,500.00		\$6,500.00	\$2,650.00		\$2,650.00	\$4,500.00	\$4,500.00	\$4,583.33
4	REMOVE GUARDRAIL	14	LF	\$10.00		\$140.00	\$450.00		\$6,300.00	\$20.00		\$280.00	\$30.00	\$420.00	\$160.00
5	REMOVE, SALVAGE AND REPLACE BLOCK RETAINING WALL	1	LS	\$4,225.00		\$4,225.00	\$4,500.00		\$4,500.00	\$1,750.00		\$1,750.00	\$2,570.00	\$2,570.00	\$3,491.67
6	2.0" MDOT 5EML HMA Wearing	55	SY	\$92.00		\$5,060.00	\$72.00		\$3,960.00	\$120.00		\$6,600.00	\$72.00	\$3,960.00	\$94.67
7	2.0" MDOT 4EML HMA Leveling	55	SY	\$92.00		\$5,060.00	\$72.00		\$3,960.00	\$120.00		\$6,600.00	\$72.00	\$3,960.00	\$94.67
8	6" 21AA AGGREGATE BASE	55	SY	\$65.00		\$3,575.00	\$42.93		\$2,361.15	\$90.00		\$4,950.00	\$31.50	\$1,732.50	\$65.98
9	GRAVEL SHOULDER	4	CY	\$50.00		\$200.00	\$150.00		\$600.00	\$150.00		\$600.00	\$48.00	\$192.00	\$116.67
10	TYPE A GUARDRAIL	39	LF	\$113.00		\$4,407.00	\$113.00		\$4,407.00	\$88.00		\$3,432.00	\$100.00	\$3,900.00	\$104.67
11	NYLOPLAST DRAIN BASIN	1	EA	\$3,000.00		\$3,000.00	\$2,500.00		\$2,500.00	\$3,250.00		\$3,250.00	\$2,100.00	\$2,100.00	\$2,916.67
12	4" HDPE SUBGRADE UNDERDRAIN	13	LF	\$25.00		\$325.00	\$100.00		\$1,300.00	\$275.00	\$275.00	\$3,575.00	\$20.00	\$260.00	\$133.33
13	POP-UP DRAINAGE EMITTER	1	EA	\$200.00		\$200.00	\$150.00		\$150.00	\$250.00		\$250.00	\$45.00	\$45.00	\$200.00
14	BLOCK RETAINING WALL INC. 6A, GEOTEX, FABRIC & UNDERDRAIN	1	LS	\$40,250.00		\$40,250.00	\$27,884.00		\$27,884.00	\$49,750.00		\$49,750.00	\$40,850.00	\$40,850.00	\$39,294.67
15	SOIL EROSION AND SEDIMENTATION	1	LS	\$500.00		\$500.00	\$3,500.00		\$3,500.00	\$1,250.00		\$1,250.00	\$590.00	\$590.00	\$1,750.00
16	FINAL RESTORATION AND CLEANUP	1	LS	\$1,000.00		\$1,000.00	\$3,500.00		\$3,500.00	\$2,450.00		\$2,450.00	\$3,160.00	\$3,160.00	\$2,316.67
	TOTAL BASE BID ----->					\$76,722.00		\$76,960.84	\$76,964.50		\$88,397.00	\$89,247.00		\$69,867.00	
	BID ALTERNATE														
1	COLD MILL HMA SURFACE (2")	52	SY	\$138.00		\$7,176.00	\$52.80		\$2,745.60	\$90.00		\$4,680.00	\$85.00	\$4,420.00	
2	2.0" MDOT 5EML HMA Wearing	52	SY	\$92.00		\$4,784.00	\$79.20		\$4,118.40	\$120.00		\$6,240.00	\$85.00	\$4,420.00	
3	SUBGRADE UNDERCUT	2	CY	\$50.00		\$100.00	\$100.00		\$200.00	\$150.00		\$300.00	\$100.00	\$200.00	
	TOTAL ALTERNATE ----->					\$12,060.00			\$7,064.00			\$11,220.00		\$9,040.00	
	TOTAL ----->					\$88,782.00		\$84,024.84	\$84,028.50		\$99,617.00	\$100,467.00		\$78,907.00	
BID SECURITY (5% MINIMUM) ADDENDA ACKNOWLEDGED COMPLETION TIME (DAYS) REMARKS				X X Redi-Wall LLC: Tan Ledges:one			X X Used old bid form - did not specify block Math error			X X Redi-Wall LLC: Tan Ledges:one Math error - did not calculate underdrain					