



# CITY of NOVI CITY COUNCIL

[www.cityofnovi.org](http://www.cityofnovi.org)

Agenda Item F  
August 13, 2007

**SUBJECT:** Approval of Michigan Department of Transportation (MDOT) Performance Resolution that authorizes the City of Novi to determine the depth of the watermain located near the entrance of eastbound I-96, and to perform water and sewer maintenance within the I-96 right-of-way.

**SUBMITTING DEPARTMENT:** Public Works 

**CITY MANAGER APPROVAL** 

**BACKGROUND INFORMATION:**

MDOT has requested that the City determine the depth of the watermain located near the entrance to eastbound I-96 so that MDOT can finish writing the specifications for road improvements scheduled for next year. To provide accurate information, the City must dig up and measure the depth of the watermain near the eastbound I-96 ramp. The dig is anticipated to be completed in one day. MDOT considers this action a maintenance item and requires a permit and a resolution from City Council. By providing the Performance Resolution, the City is not required to provide a \$5,000 performance bond and a certificate of insurance with the permit. The Resolution would be in effect for one year.

The Resolution establishes that MDOT and the City are liable for each one's own actions, guarantees that restoration will be undertaken by the City when required, and confirms that the City will maintain the necessary insurance when and if it is required. It does not serve as an indemnity clause as the City is not agreeing to accept any alleged liability; should an issue arise, it would need to be litigated.

The City Attorney has reviewed the document and believes it to be in order and in the best interest of the City.

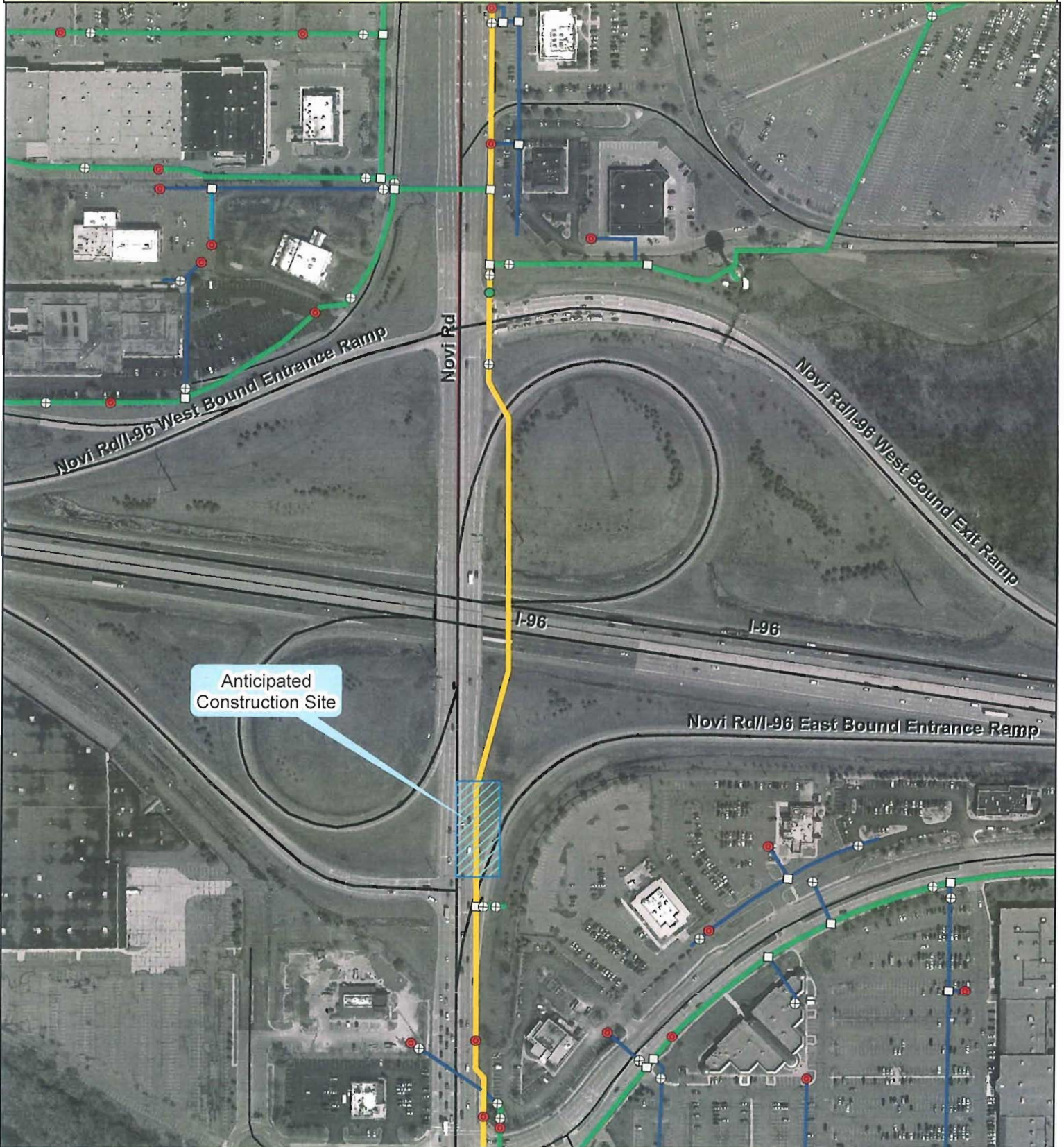
**RECOMMENDED ACTION:** Approval of Michigan Department of Transportation (MDOT) Performance Resolution that authorizes the City of Novi to determine the depth of the watermain located near the entrance of eastbound I-96, and to perform water and sewer maintenance within the I-96 right-of-way.

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

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

# City of Novi - Water Department

## I-96 and Novi Rd Water Mains and Nodes



**CITY OF NOVI**  
 DEPARTMENT OF PUBLIC WORKS &  
 DEPARTMENTS OF WATER & SEWER  
 NOVI CITY DPW OFFICES  
 26300 DELWAL  
 NOVI, MI 48375  
 (248) 735-5640  
 WWW.cityofnovi.org



0      125      250      500      750  
 FEET  
 1 INCH EQUALS 298 FEET

Map Print Date: July 26, 2007

Map Author: Jeff Van Curler

**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.

July 20, 2007

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500  
Fax: 248-851-2158  
www.secrestwardle.com

Tim Sikma, Water and Sewer Manager  
CITY OF NOVI  
45175 West Ten Mile Road  
Novi, Michigan 48375-3024

Elizabeth M. Kudla  
Direct: 248-539-2846  
bkudla@secrestwardle.com

**Re: MDOT Performance Resolution  
Our File No. 55142.NOV**

Dear Mr. Sikma:

As you indicated, MDOT has requested that the City determine the depth of the watermain near the entrance to eastbound I-96 so that MDOT can finish writing the specifications for the improvements they are planning for next year. In order to give MDOT accurate information, the City must dig up a portion of the watermain near I-96 and take a measurement. MDOT considers this a maintenance item will require a permit and a resolution from City Council.

Joe Rios, Statewide Construction Permit Coordinator for MDOT indicated in the e-mail that you attached that if the City of Novi is performing the work, that the City is required to execute a Performance Resolution to be placed on file with MDOT's TSC office. Providing the Performance Resolution is in lieu of providing a \$5000 performance bond and a certificate of insurance with the permit.

We have reviewed the Performance Resolution and see no legal impediment to City Council passing the Resolution. In general, the content of the Resolution contains nothing objectionable from a legal standpoint. It does not reassign any liability between the parties, but instead indicates the parties are liable for each one's own actions. There is no indemnity clause, which is actually preferable to having one. Instead, the State indicates if it is sued for the City's "unlawful" actions, it may sue the City for its actions. This does not amount to an indemnity clause as the City is not agreeing to accept any alleged liability. The issue would have to be litigated.

The primary purpose of the Resolution appears to be to guarantee that restoration is undertaken by the City when required and to confirm that the City and/or its contractors will maintain the necessary insurance, when and if insurance is required. The State must be named as an additional insured on the City's policy and/or its contractor's policy with respect to work performed pursuant to this permit. This is not an unusual request as the City would require it under the same circumstances.

Tim Sikma, Water and Sewer Manager  
July 20, 2007  
Page 2

Prior to placement of the proposed Resolution on City Council's Agenda, you should determine and include the name and time of the City personnel who may seek the MDOT Permit and the last page of the Resolution.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

ELIZABETH M. KUDLA

EMK

Cc Maryanne Cornelius, Clerk  
Benny McCusker, DPW Director  
Clay Pearson, City Manager  
Lynn Norman, Department of Public Works  
Thomas R. Schultz, Esq.

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Michigan Department  
Of Transportation  
2207B (03/04)

# PERFORMANCE

## RESOLUTION FOR GOVERNMENTAL BODIES

*This Performance Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Trunkline Right of Way" (form 2205), or an "Annual Application and Permit for Miscellaneous Operations Within State Trunkline Right of Way" (form 2205B).*

RESOLVED WHEREAS, the \_\_\_\_\_ City of Novi, Michigan \_\_\_\_\_  
(city, village, township, etc.)

hereinafter referred to as the "GOVERNMENTAL BODY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utility or other facilities, or to conduct other activities, on, over, and under state trunkline right of way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL BODY agrees that:

Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law.

This Agreement is not intended to increase either party's liability for, or immunity from, tort claims.

This Agreement is not intended nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.

1. Any work performed for the GOVERNMENTAL BODY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL BODY and not as a contractor or agent of the DEPARTMENT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL BODY. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL BODY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT.

2. The GOVERNMENTAL BODY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

3. It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State trunkline right of way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL BODY'S facilities according to a PERMIT issued by the DEPARTMENT.

4. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL BODY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

5. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

6. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL BODY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL BODY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the Michigan Department of Transportation for the necessary permit to work within state trunkline right of way on behalf of the GOVERNMENTAL BODY.

Name	And/or	Title
William McCusker, DPW Director City of Novi		
Tim Sikma, Water and Sewer Manager		

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by

the \_\_\_\_\_

(Name of Board, etc)

of the City of Novi \_\_\_\_\_ of Oakland County \_\_\_\_\_

(Name of GOVERNMENTAL BODY)

(County)

at a \_\_\_\_\_ meeting held on the \_\_\_\_\_ day of

\_\_\_\_\_ A.D. \_\_\_\_\_.

Signed \_\_\_\_\_ Title \_\_\_\_\_

Michigan Department  
Of Transportation  
2207B (03/04)

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(city, village, township, etc.)

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NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL BODY agrees that:

Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law.

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Name	And/or	Title
William McCusker, DPW Director City of Novi		
Tim Sikma, Water and Sewer Manager		

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by the \_\_\_\_\_ (Name of Board, etc) of the City of Novi (Name of GOVERNMENTAL BODY) of Oakland County (County) at a \_\_\_\_\_ meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_.

Signed \_\_\_\_\_ Title \_\_\_\_\_





**Michigan Municipal League  
Workers' Compensation Fund**

**CERTIFICATE OF MEMBERSHIP**  
Proof of Insurance

The Michigan Municipal League Workers' Compensation Fund, approved by the Director of the  
Workers' Compensation Agency as a group self-insured,  
certifies that

**City of Novi**

Is a member in good standing of the Fund,  
for the year expiring

**June 30, 2008**

and as such is approved by the Agency as a self-insurer.  
Employer's liability coverage of \$500,000 is included.

*Michael J. Forster*

July 1, 2007

Effective Date

NOTE: This certificate is proof that your entity has complied with the Workers' Disability Compensation Act by becoming a Member of the Michigan Municipal League Workers' Compensation Fund. Copies of this certificate may be provided to third parties as evidence that the required workers' compensation coverage is in place.

Policy Number 500371