




CITY of NOVI CITY COUNCIL

Agenda Item D
January 7, 2013

SUBJECT: Adoption of a Resolution to approve Amendment No. 2 to the Water Service Contract with the Detroit Water and Sewerage Department to adjust the contract values related to maximum day water demand and peak hour water demand, and to make language amendments requested by Detroit in all contract amendments with customer communities.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division 

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

In June 2009, the City of Novi approved a new 30-year contract with the Detroit Water and Sewerage Department (DWSD) to supply potable water to Novi. The agreement permits periodic, proactive reviews and negotiations to adjust key water use parameters in the contract that are ultimately used to determine the bulk water rates. Amendment No. 1 to the Water Service Contract was approved by City Council on November 22, 2010 to adjust the original contract's values for annual volume, maximum day flow rate and peak hour flow rate.

As a mid-year opportunity to proactively look at water use in Novi before the next round of rate setting by DWSD, staff examined water use over the past several months and discovered that there were some errors in what had been reported previously. Specifically, the Water & Sewer Division's water use reports for June and July 2012 understated the City's actual peak hour use during this period because of one DWSD's largest metering stations that supplies water to the City was inoperative.

Staff met with DWSD representatives to discuss the key water use parameters in the contract (annual volume, maximum day flow rate and peak hour flow rate). Based on this meeting, staff recommends reopening the contract with DWSD now so that it reflects a realistic upper limit for peak hour use as well as the other parameters. There would be no change to the current rate structure until July 1, 2013 when new higher rates would be set based on the new parameters. This proactive approach will result in a lower rate than if the City waited until the next fiscal year to address the exceedances during year-end negotiations.

There are two types of DWSD wholesale water customers: peak hour and maximum day. A community is deemed a peak hour customer when its peak hour flow rate (i.e., the largest hourly flow rate in a year extrapolated over 24 hours and expressed in million gallons per day) exceeds the maximum day flow rate (i.e., the largest amount of water supplied on any given day of the year, also expressed in million gallons per day). Because it is much more expensive for DWSD to meet peak hour demands (primarily because of high energy costs during periods of peak demand), peak hour customers are charged a much higher rate than maximum day customers.

The City of Novi is currently a peak hour DWSD customer and is therefore charged a higher wholesale water rate. The City's ultimate goal is to become a maximum day DWSD customer to realize lower water rates in the future. The water storage facility currently being designed will accomplish this goal once constructed and once the City demonstrates that its maximum day consumption is greater than or equal to peak hour use. Given the estimated cost savings in future bulk water purchases of approximately \$1.7 million per year, the \$5.3 million estimated capital cost of the water storage facility would result in a payback period of roughly 3.2 years.

The table below summarizes Amendment No. 1 values and the proposed Amendment No. 2 revisions to water use parameters in the contract:

Parameter	Amendment No. 1 Value (FY 2013)	Amendment No. 2 Value (FY 2013)
Projected Maximum Volume (MCF)	281,800	303,000
Maximum Day Flow Rate (MGD)	16.8	17.5
Peak Hour Flow Rate (MGD)	24.5	28.0

MCF = Thousand cubic feet
MGD = Million gallons per day

In addition to the proposed changes in the water use parameters, DWSD has requested that the City agree to amend certain sections of the original 30-year Water Service Contract. The proposed language amendments pertain to the procedure for reviewing exceedances of contract maximum day and peak hour values and removes references to the Detroit City Council as ordered by the US District Court. The City Attorney has reviewed the language for Amendment No. 2 and has no objections (see December 20, 2012 letter from Beth Saarela, attached).

According to DWSD, the revised contract would need to be approved by the Novi City Council by January 18, 2013 in order to have an effect on the 2013 water rates.

RECOMMENDED ACTION: Adoption of a Resolution to approve Amendment No. 2 to the Water Service Contract with the Detroit Water and Sewerage Department to adjust the contract values related to maximum day water demand and peak hour water demand, and to make language amendments requested by Detroit in all contract amendments with customer communities.

	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 OF APPROVAL

AMENDMENT NO. 2 TO WATER SERVICE CONTRACT

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 January 7, 2013 at 7 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 Detroit owns and operates a public water supply system that supplies potable water to the City of Novi; and,

WHEREAS ; on June 1, 2009, the City of Novi approved a Water Service Contract with the City of Detroit that reflects the terms and conditions governing the purchase and delivery of potable water, as amended by approval of the Novi City Council on November 22, 2010; and,

WHEREAS ; the Water Service Contract provides a means for all customers to have a long-term supply of potable water that meets or exceeds State of Michigan and federal regulatory requirements for drinking water quality and safety, and at the lowest reasonable rates; and,

WHEREAS ; the proposed Amendment No. 2 to the Water Service Contract adjusts three parameters (annual volume, maximum day usage, and peak hour usage) to reflect a better estimate of actual usage; and,

WHEREAS ; in October 2011, the Technical Advisory Committee made up of DWSD customer communities recommended that DWSD consider certain modifications to the Contract terms, including the addition of a new defined term in Section 1.01, the revision of Article 5, and modifications to Sections 21.01 and 22.01, which are now reflected in the proposed Amendment No. 2 to the Water Service Contract; and,

WHEREAS ; Article 15 of the Contract permits the Parties to amend the Contract by mutual agreement, and;

NOW THEREFORE, IT IS THEREFORE RESOLVED that that the City Council of the City of Novi requests that the terms of the Water Service Contract with the City of Detroit define and include Amendment No. 2.

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 _____, 2013, 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



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

December 20, 2012

*Privileged and Confidential Correspondence
From City Attorney*

Rob Hayes, Public Services Director
CITY OF NOVI
Department of Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: Amendment No. 2 to Water Service Contract between the City of Detroit and City of Novi

Dear Mr. Hayes:

The City's Engineering Division recently met with representatives of the Detroit Water and Sewerage Department (DWSD) to adjust the City's max day and peak hour contract values to more closely reflect the City's actual water usage demonstrated during the summer of 2012. The City's regularly scheduled contract reopener will occur in 2013 and will enable the City to discuss additional adjustments to the max day and peak hour values based on additional data collected over the 2013 summer demand season.

In addition to the max day and peak hour amendments, DWSD has requested that the City agree to amend certain sections of the original 30-year Water Service Contract between the City of Novi and the City of Detroit. The proposed language amendments pertain to the following issues:

1. The procedure for review of exceedances of contract max day and peak hour values has been modified as the result of difficulties encountered during the 2010 review of contract exceedances.
2. References to "Detroit City Council" have been removed as a result of the Order issued by the US District Court for the Eastern District of Michigan, finding, in part, that Detroit City Council is not required to approve wholesale water contracts and rates.

Rob Hayes, Public Services Director
December 20, 2012
Page 2

The new procedure for review of exceedances has already been implemented and applies to all wholesale water contract customers. Our office participated in the initial review of the proposal to amend the procedure. Though the amended procedure eliminated some ambiguous language that tended to favor the wholesale water customer in the event of a dispute over an exceedance, the amended procedure has benefits that outweigh the benefits of the previous language in that the new procedure allows the wholesale customer and DWSD to meet first and negotiate a resolution to an exceedance prior to the Technical Advisory Committee (TAC) providing its recommendation to impose an amended peak hour value usually resulting in an increased water rate. This may allow the customer to avoid a rate increase otherwise recommended by the TAC by implementing other corrective action without a rate increase. In the event that DWSD and the customer are unable to mutually agree on a resolution, both the customer and DWSD can present their side of the argument to the TAC and get a recommendation. We have no objection to the City agreeing to the amended language attached.

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

Very truly yours,

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



ELIZABETH KUDLA SAARELA

EMK

Enclosures

C: Maryanne Cornelius, Clerk (w/Enclosures)
Clay Pearson, City Manager (w/ Enclosures)
Victor Cardenas, Assistant City Manager (w/Enclosures)
Brian Coburn, Engineering Manager (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)



CITY OF DETROIT
LAW DEPARTMENT

FIRST NATIONAL BUILDING
660 WOODWARD AVENUE, SUITE 1800
DETROIT, MICHIGAN 48226-3535
PHONE 313•224•4550 TTY:311
FAX 313•224•5505
WWW.DETROITMI.GOV

December 20, 2012

Brian

FYI
- RB

Maryanne Cornelius, City Clerk
City of Novi
45175 West Ten Mile Road
Novi, Michigan 48375

RE: Amendment No. 2 to Water Service Contract

Dear Ms. Cornelius:

Enclosed please find two copies of the Amendment No. 2 to Water Service Contract Between City of Detroit and City of Novi. Please ensure that:

1. Each of the two original Amendments enclosed are executed by the appropriate person(s);
2. The date on which your legislative body approved the Amendment is entered on the signature page;
3. Both of the original Amendments are returned to my attention;
4. A copy of your legislative body's resolution or other similar certification evidencing approval of the Amendment accompanies the documents; and
5. The original documents are not stapled.

Once the Detroit Board of Water Commissioners approves the Amendment, I will return one fully executed, original Amendment to your attention.

Should you have any questions regarding these matters, please contact me at your convenience at 313-237-5032.

Sincerely,

Laurie A. Koester
Assistant Corporation Counsel

Cc: DPS Director (without attachment)
26300 Lee BeGole Drive
Novi, MI 48375

**AMENDMENT NO. 2 TO WATER SERVICE CONTRACT
BETWEEN
CITY OF DETROIT
AND
CITY OF NOVI**

This Amendment Agreement No. 2 (“Amendment”) is made between the City of Detroit, a municipal corporation, by its Water and Sewerage Department and Board of Water Commissioners (the “Board”), and the City of Novi, a municipal corporation (“Customer”). The Board and Customer are collectively referred to as the “Parties”.

Whereas, the City of Detroit owns a public water supply system (“System”) operated by the Board; and

Whereas, on July 21, 2009, the Parties entered into a Water Service Contract (“Contract”) reflecting the terms and conditions governing the delivery and purchase of potable water, as amended on February 22, 2011; and

Whereas, the purpose of the Contract is to provide for the long-term service of potable water to Customer; and

Whereas, Article 15 of the Contract permits the Parties to amend the Contract by mutual agreement; and

Whereas, in October 2011, the Technical Advisory Committee recommended that the Board consider certain modifications to the Contract terms, including the addition of a new defined term in Section 1.01, the revision of Article 5, and modifications to Sections 21.01 and 22.01; and

Whereas, on November 4, 2011, the United States District Court, Eastern District of Michigan, issued an order in Case No. 77-71100 that provides the Board full and final authority to approve contracts with its wholesale customers such that the approval of the Detroit City Council is no longer legally required; and

Whereas, it is the mutual desire of the Parties to enter into this Amendment to amend the Contract as set out in detail in the following sections; and

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

1. Section 1.01 of the Contract is amended to add the following definition:

“Allocation Flow Rate” shall mean the value that is established as a result of a breach of Section 5.03 herein and which value shall replace the contractual Maximum Flow Rate in the rate calculation process in the event that Section 5.04(C) herein is applied by the Board.

2. Section 1.01 of the Contract is amended by deleting the existing definition of “Contract” in its entirety and substituting the following definition in its place:

“Contract” shall mean each of the various provisions and parts of this document, including all attached Exhibits and any amendments thereto, as may be executed and approved by Customer’s governing body and the Board.

3. Section 2.01 of the Contract is amended by deleting in its entirety the existing language and substituting the following language in its place:

Term. The Board shall sell and supply water to Customer from the System in accordance with the terms of this Contract for a period of thirty years from the effective date of this Contract and any ten-year renewal terms (collectively the “Contract Term”), subject to Article 3 herein. The effective date of this Contract shall be the date that this Contract is approved by Customer’s governing body or the Board whichever is later. This Contract replaces and supersedes any prior water service contracts between the Parties.

4. Section 3.04 of the Contract is amended by deleting in its entirety the existing language and substituting the following language in its place:

Formation of Water Authority. Customer may join with another authority, city, township, village or other municipal corporation recognized by the State of Michigan to form a water authority for the sole purpose of collectively contracting for water service from the Board. The exercise of this right shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new water service contract by Customer’s governing body and the Board.

5. Article 5 of the Contract is amended by deleting in its entirety the existing Article 5 and substituting the following revised Article 5 in its place:

Article 5.

Pressure; Maximum Flow Rate; Minimum Annual Volume

- 5.01 Pressure Range. The Board shall use its best efforts to deliver water at the Water Distribution Points at a pressure range (“Pressure Range”) adequate to meet the reasonable requirements of Customer. For purposes of evaluating this effort, water pressure shall be determined by reviewing the average hourly pressure measured from top-of-the-hour to top-of-the-hour (e.g. 7:00 a.m. to 8:00 a.m.). The Pressure Range to be provided by the Board to Customer’s Water Distribution Points is specified in Exhibit B. The location at which the water pressure will be measured shall be specified in Exhibit A and identified as point “P”. A Pressure Range will not be established for water meters that are not located on a DWSD transmission main, or which are located on a DWSD transmission main and are downstream of and subject to the flow demands of a water meter for another Board customer.

5.02 Remedy for Non-Compliance with Pressure Range. If the water pressure at Customer's Water Distribution Points is above or below the Pressure Range, at Customer's request the Parties shall meet within thirty (30) calendar days to discuss the reasons for the non-compliance and, if agreed necessary, develop and implement a mutually agreeable written corrective action plan within sixty (60) calendar days of the meeting, or as otherwise agreed. The corrective action plan shall include a timetable for resolution of the non-compliance issue(s).

- A. If it is determined that another customer's exceedance of the rates of flow established by that customer's Maximum Flow Rate caused or contributed to the Board's inability to meet its Pressure Range agreement with Customer, then the corrective action plan shall provide for the resolution of the issue.
- B. If Customer is exceeding the rates of flow established by its Maximum Flow Rate on a day other than the DWSD Maximum Day at the time Customer experiences a variation from the Pressure Range, then the Board shall be relieved from its obligation to provide water to Customer within the Pressure Range for that period of time during which Customer is exceeding the rates of flow established by its Maximum Flow Rate.

5.03 Maximum Flow Rate. Customer's Maximum Flow Rate is specified in Exhibit B. Customer shall not exceed the Maximum Flow Rate specified in Exhibit B, as measured in million gallons on the DWSD Maximum Day and during the DWSD Peak Hour.

- A. The Board shall notify all customers in writing on or before October 1 of each calendar year if Customer or any other wholesale customer is alleged to have exceeded its Maximum Flow Rate in a given calendar year. The notice shall state the day and/or hour that Customer or any other wholesale water customer is alleged to have exceeded its Maximum Flow Rate.
- B. If Customer is alleged to be in breach of its obligations under this Section 5.03, the Board and Customer shall endeavor to meet before November 1 of the then current calendar year, or as soon as practicable, for the purposes of validating the breach, reviewing and analyzing the causes, and to negotiate a possible remedy pursuant to Sections 5.04 and 5.05 herein.
- C. The Technical Advisory Committee's Analytical Work Group, or its successor shall review any alleged breach of this Section 5.03.
 - i. The Analytical Work Group shall meet once, at a minimum, on or before November 1 of each calendar year to review the alleged breaches, if any, and may thereafter schedule subsequent meetings as necessary to conclude its review.

- ii. The Board will seek a recommendation from the Analytical Work Group on (1) an Allocation Flow Rate, if any, and/or (2) concurrence with the remedy tentatively negotiated between Customer and the Board, if any. Customer and the Board shall have the right to present any information related to the alleged breach a Party deems necessary to the deliberations.
- iii. Any recommendation submitted by the Analytical Work Group shall be received by the Board on or before December 1 of each calendar year.

5.04 Remedy for Non-Compliance with Maximum Flow Rate. The Board has no obligation to supply to Customer more than the Maximum Flow Rate. If Customer exceeds its Maximum Flow Rate on the DWSD Maximum Day or during the DWSD Peak Hour, the Board and Customer may, as needed, take one or more of the following actions set forth in this Section 5.04. The applicability of any particular action shall be evaluated by the Board on a case-by-case basis.

- A. The Board may require that Customer take all reasonable steps to reduce its consumption to the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation.
- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the rate associated with the new Maximum Flow Rate in the subsequent rate year.
- C. For ratemaking and cost allocation purposes only, the Board may recalculate Customer's rate for the current and/or subsequent fiscal years utilizing a revised cost allocation formula as follows:
 - i. The Board shall, as set forth below, establish an Allocation Flow Rate to replace the contractual Maximum Flow Rate in the rate calculation process.
 - ii. The Allocation Flow Rate shall be applied from no earlier than the first exceedance date forward.
 - iii. The Allocation Flow Rate will be at least equal to the flow rate demonstrated by Customer on the DWSD Maximum Day, and may be higher than the actual flow rate demonstrated by Customer.
 - iv. Pursuant to Section 5.03(C), if the Board receives a recommendation on the Allocation Flow Rate to be applied from the Analytical Work Group and the recommendation is higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then the Board shall be limited to establishing an Allocation Flow Rate that is at least equal to the

flow rate demonstrated by Customer on the DWSD Maximum Day and no higher than the recommendation provided by the Analytical Work Group.

- v. If no recommendation on the Allocation Flow Rate to be applied is received by the Board, or if the Board receives a recommendation and the recommendation is less than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then the Board shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on the DWSD Maximum Day and no higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate.
- vi. The Allocation Flow Rate will continue to be applied to each subsequent year's rate calculation process until the Maximum Flow Rate is renegotiated.
- vii. If a rate has been approved for the subsequent fiscal year (July 1st to June 30th) but the rate has not yet been applied, the Board may modify Customer's rate for that subsequent fiscal year to account for an exceedance of its Maximum Flow Rate.
- viii. If the Board has built capital facilities based upon Customer's negotiated Maximum Flow Rate and Customer consistently exceeds its Maximum Flow Rate, then the Board may re-calculate the amount of Customer's percentage of the capital cost of such facilities

5.05 Procedure for Non-Compliance with Maximum Flow Rate. In addition to the remedies specified in Section 5.04, if Customer has failed in its obligations under Section 5.03, the Parties shall meet to discuss the reasons for the non-compliance and if agreed necessary, develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed. Any corrective action plan required under this Section 5.05 shall include a timetable for resolution of the non-compliance issue(s).

- A. If the Parties determine that a corrective action plan is not required and an incident of non-compliance occurs in the subsequent calendar year, the Parties shall meet to develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed.
- B. In the event the reason for Customer's non-compliance under Section 5.03 is due to a Customer water main break, fire or meter calibration performed by DWSD, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified in Section 5.04 should apply.

- 5.06 Minimum Annual Volume. Customer shall purchase from the Board not less than the Minimum Annual Volume of water specified in Exhibit B. If Customer's Annual Volume is less than the Minimum Annual Volume, Customer shall pay to the Board an amount computed by applying the current rate to the Minimum Annual Volume less any amounts already billed to the Customer by the Board.
- 5.07 Periodic Review. For Customer and System planning purposes and, with regard to the Minimum Annual Volume, enforcement of the provisions of Article 3, a Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume shall be established by mutual agreement for the Contract Term. A contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume shall be established by mutual agreement for first two years of the Contract Term. Not later than the second year of the Contract Term, the Board and Customer shall negotiate a contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume for the succeeding three years of the Contract Term. Not later than the fifth year of the Contract Term, and every five years thereafter, the Board and Customer shall negotiate a contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume for the succeeding five years of the Contract Term. If the Parties do not negotiate new or revised Maximum Flow Rates, Pressure Ranges, Projected Annual Volumes and Minimum Annual Volumes according to the aforementioned schedule, then the figures established for planning purposes (as shown in italicized type in Exhibit B) shall become contractually binding for the then-current three or five year term.
- 5.08 Remedy for Excessive Rate(s) of Flow Causing Pressure Problem(s). Customer acknowledges that Customer's rates of flow may cause and/or contribute to the Board's inability to meet its Pressure Range agreements with Customer and/or the Board's other customers (hereinafter, "Pressure Problem"). The Board may review or monitor Customer's daily rates of flow if a Pressure Problem occurs and the Board's Pressure Range agreement with Customer and/or another customer of the Board is alleged to have been breached. The approximate rate of flow by individual meter location used to establish the Pressure Range and Maximum Flow Rate is specified in Exhibit B. If a Pressure Problem occurs, the Parties shall meet to discuss the reasons for the Pressure Problem and develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the Pressure Problem, or as otherwise agreed. The corrective action plan may require one or both of the following steps:
- A. The Board may require that Customer take all reasonable steps to reduce its consumption to the rate of flow established by the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation. In addition, the Board may require that Customer adjust its rate of flow at individual meters, including the establishment of a not-to-exceed flow rate for individual meters.

- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the rate associated with the new Maximum Flow Rate in the subsequent rate year.

If the Parties determine that a corrective action plan is not required and a subsequent Pressure Problem occurs, the Parties shall meet to develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the subsequent Pressure Problem, or as otherwise agreed. Any corrective action plan required under this Section 5.08 shall include a timetable for resolution of the Pressure Problem. In the event the reason for the Pressure Problem is due to a Customer water main break, fire or meter calibration performed by DWSD, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified above in this Section 5.08 should apply.

- 5.09 Board Costs for Corrective Action Plan. If at any time the Board is required under the terms of this Article 5 to develop and implement a corrective action plan and the plan involves incurring capital costs, the Board will determine whether the costs will be charged as a System cost or whether the cost will be borne by a specific customer or customers. If the Board determines that all or part of the costs should be borne by a specific customer or customers, the Board will seek a recommendation from the Technical Advisory Committee on the assessment of the costs.
- 5.10 Customer Costs for Corrective Action Plan. If at any time Customer is required under the terms of this Article 5 to develop and implement a corrective action plan, Customer shall be so informed in writing and Customer will pay all costs related to the corrective action plan.
6. Section 15.02 of the Contract is amended by deleting in its entirety the existing language and substituting the following language in its place:

No amendment to this Contract shall be effective and binding upon the Parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both Parties, and is approved by Customer's governing body and the Board.

7. Section 21.01 of the Contract is amended by deleting in its entirety the existing language and substituting the following language in its place:

The Board shall have the right to review and approve Customer's construction plans for Meter Facilities at new Water Distribution Points, water mains sized twenty-four inches and larger, pump stations, reservoirs, water towers, and any other construction that will cross, or be within close proximity to, or have influence upon the Board's infrastructure. The Board's approval of construction plans shall be timely and shall not be unreasonably withheld.

8. Section 22.01 of the Contract is amended by deleting in its entirety the existing language and substituting the following language in its place:

Prior to Customer's operation of any new or existing water storage facility, Customer shall seek the Board's written approval of the filling schedule ("Filling Schedule") of the storage facility. The Board may periodically require Customer to change or adjust a previously approved Filling Schedule. The Parties shall collaborate on devising a mutually beneficial Filling Schedule. If the Parties are unable to agree upon a Filling Schedule, the Board's determination of a Filling Schedule shall be final. All Filling Schedules shall be for a period of six consecutive hours. Customer shall at all times abide by the then-current Board approved Filling Schedule. The Board shall act promptly in approving Filling Schedule requests. Nothing in this Article 22 shall prevent Customer from operating its storage facility at any time, provided that any storage operation that falls outside of the approved Filling Schedule shall not be exempt from the terms of Article 5 herein.

9. Exhibit B of the Contract is amended by deleting in its entirety the existing First Amended Exhibit B and substituting the attached Second Amended Exhibit B in its place.
10. With the exception of the provisions of the Contract specifically contained in this Amendment, all other terms, conditions and covenants contained in the Contract shall remain in full force and effect and as set forth in the Contract.
11. This Amendment to the Contract shall be effective and binding upon the Parties when it is signed and acknowledged by the duly authorized representatives of both Parties, and is approved by Customer's governing body and the Board.

(Signatures appear on next page)

In Witness Whereof, the City and Customer, by and through their duly authorized officers and representatives, have executed this Amendment.

City of Novi:

By: _____
Robert J. Gatt
Its: Mayor

By: _____
Maryanne Cornelius
Its: City Clerk

City of Detroit:

By: _____
Sue F. McCormick
Its: Director, Water and Sewerage Department

APPROVED BY
NOVI CITY COUNCIL ON:

Date

APPROVED BY DETROIT
BOARD OF WATER COMMISSIONERS ON:

Date

SECOND AMENDED EXHIBIT B

Projected Annual Volume and Minimum Annual Volume (Table 1)
Pressure Range and Maximum Flow Rate (Table 2)
Flow Split Assumptions (Table 3)
Addresses for Notice (Table 4)

Table 1 and Table 2 set forth the agreed upon Projected Annual Volumes, Minimum Annual Volumes, Pressure Ranges and Maximum Flow Rates for the term of this Contract provided that figures in bold type face are immediately enforceable pursuant to the terms of Section 5.07 and italicized figures are contained for planning purposes only but will become effective absent the negotiated replacements anticipated in Section 5.07.

The approximate rate of flow by individual meter set forth in Table 3 is the assumption upon which the Pressure Range commitments established in Table 2 have been devised. Should Customer deviate from these assumptions at any meter(s), the Board may be unable to meet the stated Pressure Range commitments in this Contract or in the contract of another customer of the Board and Section 5.08 of this Contract may be invoked.

SECOND AMENDED EXHIBIT B

Table 1
 Projected Annual Volume and Minimum Annual Volume

Fiscal Year Ending June 30	Projected Annual Volume (Mcf)	Minimum Annual Volume (Mcf)
2010	325,000	162,500
2011	281,800	140,900
2012	281,800	140,900
2013	281,800	140,900
2014	303,000	151,500
2015	<i>303,000</i>	<i>151,500</i>
2016	<i>303,000</i>	<i>151,500</i>
2017	<i>303,000</i>	<i>151,500</i>
2018	<i>303,000</i>	<i>151,500</i>
2019	<i>303,000</i>	<i>151,500</i>
2020	<i>303,000</i>	<i>151,500</i>
2021	<i>303,000</i>	<i>151,500</i>
2022	<i>303,000</i>	<i>151,500</i>
2023	<i>303,000</i>	<i>151,500</i>
2024	<i>303,000</i>	<i>151,500</i>
2025	<i>303,000</i>	<i>151,500</i>
2026	<i>303,000</i>	<i>151,500</i>
2027	<i>303,000</i>	<i>151,500</i>
2028	<i>303,000</i>	<i>151,500</i>
2029	<i>303,000</i>	<i>151,500</i>
2030	<i>303,000</i>	<i>151,500</i>
2031	<i>303,000</i>	<i>151,500</i>
2032	<i>303,000</i>	<i>151,500</i>
2033	<i>303,000</i>	<i>151,500</i>
2034	<i>303,000</i>	<i>151,500</i>
2035	<i>303,000</i>	<i>151,500</i>
2036	<i>303,000</i>	<i>151,500</i>
2037	<i>303,000</i>	<i>151,500</i>
2038	<i>303,000</i>	<i>151,500</i>
2039	<i>303,000</i>	<i>151,500</i>

SECOND AMENDED EXHIBIT B

Table 2
Pressure Range and Maximum Flow Rate

Calendar Year	Pressure Range (psi)		Pressure Range (psi)		Pressure Range (psi)		Pressure Range (psi)		Pressure Range (psi)		Maximum Flow Rate (mgd)	
	Meter NV-01		Meter NV-02		Meter NV-03		Meter NV-04		Meter NV-05		<u>Max Day</u>	<u>Peak Hour</u>
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>		
2009	54	82	52	79	55	82	81	109	72	100	18.57	34.53
2010	54	82	52	79	55	82	81	109	72	100	18.57	34.53
2011	54	82	52	79	55	82	81	109	72	100	17.30	25.50
2012	54	82	52	79	55	82	81	109	72	100	16.80	24.50
2013	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2014	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2015	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2016	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2017	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2018	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2019	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2020	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2021	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2022	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2023	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2024	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2025	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2026	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2027	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2028	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2029	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2030	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2031	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2032	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2033	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2034	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2035	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2036	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2037	54	82	52	79	55	82	81	109	72	100	17.5	28.0
2038	54	82	52	79	55	82	81	109	72	100	17.5	28.0

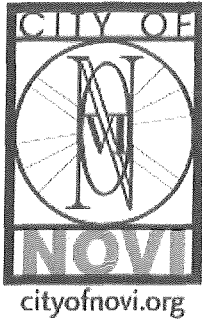
SECOND AMENDED EXHIBIT B

Table 3
Flow Split Assumptions

Meter	Assumed Flow Split (2011-2013)
NV-01	0 – 10%
NV-02	0 – 10%
NV-03	0 – 15%
NV-04	45 – 65%
NV-05	25 – 40%

Table 4
Addresses for Notice

If to the Board:	If to Customer:
Director Detroit Water and Sewerage Department 735 Randolph Detroit, Michigan 48226	City Clerk City of Novi 45175 West Ten Mile Road Novi, Michigan 48375 Cc: DPS Director 26300 Lee BeGole Drive Novi, Michigan 48375



MEMORANDUM

TO: CLAY PEARSON, CITY MANAGER
FROM: ROB HAYES, P.E; PUBLIC SERVICES DIRECTOR/CITY ENGINEER
SUBJECT: DWSD WATER CONTRACT REVISIONS
DATE: DECEMBER 19, 2012

*12/20/12
To: Mayor & Council Members
Similar discussions taking place with DWSD in Northville and Auburn Hills*

As a mid-year opportunity to proactively look at our water use before the next round of rate negotiations with the Detroit Water & Sewerage Department (DWSD), we recently examined water use over the past several months and discovered that there were some errors in what had been reported previously. Specifically, the Water & Sewer Division's water use reports for June and July 2012 understated the City's actual peak hour use during this period because one of DWSD's largest metering stations that supplies water to the City was inoperative. Also, the reports cited the wrong contract value for maximum peak hour use (34.53 million gallons per day instead of 24.50 MGD), and as a consequence they incorrectly indicated peak hour compliance.

We recently met with DWSD representatives to discuss this issue, which they were unaware of in part because of the inoperative meter. Based on this meeting, we recommend re-opening our contract with DWSD now so that it reflects a realistic upper limit for peak hour use. According to DWSD's legal staff, there would be no change in the current rate structure until July 1, 2013; however, if we were to wait to address the exceedances during year-end negotiations, any rate increase that would go into effect after July 1st would be substantially higher.

A draft revised contract is currently under review by the City Attorney. According to DWSD, the revised contract would need to be approved by City Council by January 18, 2013, therefore we propose to have its consideration on the agenda for the January 7th City Council meeting.

Please let me know if you have any questions, comments or concerns in regard to this matter.

cc: Victor Cardenas, Assistant City Manager
Nevrus Nazarko, Finance Director
Scott Roselle, Water & Sewer Asset Manager
Tina Glenn, Assistant Treasurer
Debbie Peck, Water & Sewer Financial Services Specialist
Brian Coburn, Engineering Manager