



## CITY of NOVI CITY COUNCIL

**Agenda Item J**  
**October 8, 2018**

**SUBJECT:** Approval of the City of Novi of Novi Sewer System Operation and Maintenance Agreement between the City of Novi and the Oakland County.

**SUBMITTING DEPARTMENT:** Department of Public Works, Water & Sewer Division

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

This agreement is considered an update to the current agreement between Novi and Oakland County for the operation and maintenance by the County of the portion of the sanitary sewer system tributary to either the Walled Lake-Novı Wastewater Treatment Plant or the South Commerce Wastewater Treatment Plant. Oakland County has been responsible for the operation and maintenance for this portion of the system since the County acquired and constructed the Huron-Rouge Sewage Disposal System, with includes the Walled Lake-Novı Wastewater Treatment Plant.

The attached *City of Novi of Novi Sewer System Operation and Maintenance Agreement* has been reviewed by the City Attorney (Beth Saarela, September 28, 2018).

**RECOMMENDED ACTION:** Approval of the *City of Novi of Novi Sewer System Operation and Maintenance Agreement* between the City of Novi and the Oakland County.

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ROSATI | SCHULTZ  
JOPPICH | AMTSBUECHLER

September 28, 2018

Jeffrey Herczeg, Director of Public Works  
City of Novi  
Department of Public Works  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

Benjamin Croy, Water & Sewer Senior Manager  
City of Novi  
Department of Public Works  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

**RE: Huron-Rouge Sewage Disposal System – Sewer System Operation and Maintenance Agreement - 2018 Contract**

Gentlemen:

We have reviewed the City of Novi Sewer System Operation and Maintenance Agreement prepared by the Oakland County Water Resources Commissioner's Office (WRC) with respect to the usage, operations, and maintenance of a portion of the City of Novi's the Walled Lake-Novu Wastewater Treatment Plant. Generally, the Agreement is being proposed to update and clarify the relationships between the parties with respect to usage, and operation and maintenance of the sewer facilities tributary to the Walled Lake – Novi Wastewater Treatment Plant.

This Agreement sets forth the rights and obligations of the City and the WRC with respect to the operation and maintenance of small portions of the City of Novi's public sanitary sewer system. Those portions include sewer lines that are tributary to the Walled Lake-Novu Wastewater Treatment Plant and the Commerce Treatment Plant that serve the City, as shown in Exhibit A to the Agreement.

The terms of the Agreement are substantially similar to the terms of the WRC's standard Operation and Maintenance Agreement form. Because the City of Novi is the owner of the facilities in question, rather than the WRC, the City is provided with greater oversight with respect to any expenditures made for repairs and capital improvements. Section 3 of the Agreement provides for oversight of system expenditures by the City as owner of the system.

Jeffrey Herczeg, Director of Public Works  
Benjamin Croy, Water & Sewer Senior Manager  
City of Novi  
September 28, 2018  
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The County will provide insurance for the actions of its contractors and employees working on City-owned facilities. The insurance is the same policy provided and is shared with respect to other water and sewer facilities that the WRC operates and maintains. The costs and policy limits will be divided among all of the communities that the WRC provides operation and maintenance services to.

The WRC acts as an independent contractor providing operation and maintenance services to the City pursuant to this Agreement. The Agreement will remain in place for a period of ten (10) years, and will automatically renew for additional periods of ten (10) years unless either party gives 180 days' notice of termination.

Generally, we see no legal impediment to entering into the Agreement. Subject to your review and approval of the Exhibits to the Agreement, the Agreement may be placed on an upcoming City Council Agenda for approval.

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

Very truly yours,

ROSATI SCHULTZ JOPPICH  
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

EKS

Enclosure

C: Cortney Hanson, Clerk (w/Enclosure)  
Pete Auger, City Manager (w/Enclosure)  
Victor Cardenas, Assistant City Manager (w/Enclosure)  
Carl Johnson, Finance Director (w/Enclosure)  
Tina Glenn, Assistant City Treasurer (w/Enclosure)  
Thomas R. Schultz, Esquire (w/Enclosure)

**CITY OF NOVI**  
**SEWER SYSTEM**

**OPERATION AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the COUNTY OF OAKLAND, a Michigan constitutional corporation ("County"), whose address is 1200 N. Telegraph, Pontiac, Michigan, 48341 and the CITY OF NOVI, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 ("City"). In this Agreement, either the County and/or the City may also be referred to individually as a "Party" or jointly as "Parties."

**Recitals:**

**WHEREAS**, pursuant to Michigan Public Act 185 of the Public Acts of 1957, as amended, MCL 123.731 et seq., ("Act 185") and Michigan Public Act 342 of the Public Acts of 1939, as amended, MCL 46.171 et seq., ("Act 342") the County Board of Commissioners established a county system of sewage disposal system improvements to serve the City (and the City of Walled Lake), commonly known as the "Huron-Rouge Sewage Disposal System" ;<sup>1</sup> and,

**WHEREAS**, the County subsequently acquired and constructed the "Huron-Rouge Sewage Disposal System – Walled Lake Arm" which consists, in part, of a wastewater treatment plant to serve the City (and the City of Walled Lake), commonly known as the "Walled Lake – Novi Wastewater Treatment Plant" and designated the Oakland County Water Resources Commissioner (formerly known as the Oakland County Drain Commissioner) pursuant to Act 342 as the "County Agency" for the "Huron-Rouge Sewage Disposal System – Walled Lake Arm"<sup>2</sup> with all powers and duties with respect thereto as are provided by Act 342; and,

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<sup>1</sup> The County, Novi Township and Village of Novi entered into a contract establishing, acquiring and improving the Huron-Rouge Sewage Disposal System, dated April 20, 1962. The terms of this contract were agreed to by the City of Walled Lake when it approved the contract establishing, acquiring and improving the Huron-Rouge Sewage Disposal System – Walled Lake Arm.

<sup>2</sup> The County and the Cities of Walled Lake and Novi, entered into the following contracts establishing, acquiring and improving the Huron-Rouge Sewage Disposal System – Walled Lake Arm: contract dated September 1, 1966, as amended February 1, 1969 and April, 1969, commonly understood as the "Base Contract"; contract dated March 1, 1989 identified as the "Huron-Rouge Sewage Disposal System Walled Lake-Novı Wastewater Treatment Plant 1989 Enlargement Contract", and contract dated October 1, 2014 identified as "Huron-Rouge Sewage Disposal System Walled Lake-Novı Wastewater Treatment Plant 2014 Retention Basin and Capacity Improvements Contract."

**WHEREAS**, pursuant to the contracts and amendments thereto establishing the “Huron-Rouge Sewage Disposal System – Walled Lake Arm” between the County and City, the City is responsible for constructing, operating and maintaining a sewage collection system and transporting wastewater from the individual property owners and users within the City to the Walled Lake – Novi Wastewater Treatment Plant and to a wastewater facility owned by Charter Township of Commerce (known as the “Commerce Wastewater Treatment Plant”), which is known as the City of Novi Sewer System, as it may be expanded or altered from time to time (the “System”); and,

**WHEREAS**, the County, through its Board of Public Works pursuant to Act 185, and the City entered into an agreement dated August 16, 1971 (“City of Novi Sewage Disposal System Operating Agreement”), whereby the County agreed to operate and maintain the portion of the System that is tributary to the Walled-Lake Novi Wastewater Treatment Plant as the agent of and for the City; and,

**WHEREAS**, the City desires to engage the County to operate and maintain portions of the System identified in **Exhibit A** (“Service Area”) that are tributary to the Walled Lake-Novı Wastewater Treatment Plant and the Commerce Township Wastewater Treatment Plant on behalf of the City on a non-profit basis and in accordance with the terms and conditions set forth for in this Agreement; and,

**WHEREAS**, the County, by and through the Office of the Oakland County Water Resources Commissioner (“WRC”), has qualified personnel capable of providing sewer operations and maintenance services; and,

**WHEREAS**, the Michigan Constitution of 1963, Article 7, § 28, Act 342 of 1939, and the Urban Cooperation Act of 1967, being MCL 124.501, et. seq. (the “Act 7 of 1967”), authorizes a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common with which each might exercise separately; and,

**WHEREAS**, in order to promote the public health and welfare of the residents and property owners, and to efficiently operate and maintain the System, the Parties have been

authorized to execute this Agreement for the Services according to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the County and the City mutually agree as follows:

#### **Article I. Statement of Authority and Purpose.**

- 1.1 Authority. Pursuant to Act 342 of 1939, Act 7 of 1967, and any other applicable laws of the State of Michigan, the County and the City enter into this Agreement to establish terms and conditions for the operation and maintenance of the System. Each Party agrees to take all actions reasonably necessary to effectuate the objectives set forth in this Agreement.
- 1.2 Purpose. The purpose of this Agreement is to authorize the County to operate and maintain a portion of the City's Sewer System, identified in **Exhibit A** ("Service Area"), on behalf of the City on a non-profit basis and in accordance with the Services detailed in **Exhibit B** attached hereto. In exchange for the Services, the County shall be reimbursed for its Costs and Overhead from the Revenue collected and deposited in the System Enterprise Fund maintained by the County on behalf of and for the benefit of the City. This Agreement shall supersede and replace City of Novi Sewage Disposal System Operating Agreement dated August 16, 1971. However, nothing in this Agreement shall supersede the conditions and obligations of the Parties, including but not limited to the obligations concerning the types of sewage to be collected by the System and transported to the Walled-Lake Novi Wastewater Treatment Plant and/or the Commerce Township Wastewater Treatment Plant, the condition and state of repair of the System, the regulation of connections to the System, or financing obligations, as set forth in the agreements and amendments thereto establishing Huron-Rouge Sewage Disposal System and Huron-Rouge Sewage Disposal System – Walled Lake Arm between the Parties.<sup>3</sup>

#### **Article II. Definitions.**

In addition to the above defined terms (i.e. "County", "City", "WRC", "Party" and "Parties") and any terms defined in other sections of this Agreement (e.g., "Services"), the Parties agree that the following words and expressions, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 2.1 "Agreement" 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 the Parties.

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<sup>3</sup> See footnotes 1 and 2 for reference.

- 2.2 "Cost(s)" shall be defined as the cost of all labor, including actual or indirect cost allocations for statutory and customary fringe benefits, overtime, material and supplies, power and utility services, vehicle/equipment rental and subcontractor services, and other services as set forth in this Agreement and devoted to the Services as defined in this Agreement.
- 2.3 "Contractor" shall be defined as an independent contractor engaged by the County to perform the Services and responsibilities necessary to carry out the objectives under this Agreement.
- 2.4 "County Agent" or "County Agents" shall be defined as any and all Oakland County elected officials, appointed officials, directors, board members, commissioners, authorities, other boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them, excluding the City and/or any City Agents, as defined herein.
- 2.5 "City Agent" or "City Agents", shall be defined to include any and all City officers, elected officials, appointed officials, directors, board members, council members, authorities, boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, consultants, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal, representative, or official capacities), and/or any persons acting by, through, under, or in concert with any of them, excluding the County and/or any County Agents, as defined herein.
- 2.6 "Claim(s)" shall be defined to include any and all alleged claims, complaints, demands for relief or damages, lawsuits, and causes of action, whether in law or equity, tort, contract, or otherwise, by third parties, arising out of the ownership, operation, maintenance of the System, but does not include claims between the Parties.
- 2.7 "Overhead" shall be defined to include the following: all allocations of the labor cost, including statutory and customary fringe benefits, of personnel responsible for administering this contract or supervising the work performed in connection with this Agreement; an allocation of expenses of the WRC; and an allocation of indirect costs of Oakland County charged to the WRC for support services, such as (but not limited to) legal, personnel, accounting, computer support, and insurance/risk management.
- 2.8 "Rates and Charges" shall be defined as the charges and other fees, such as late fees, connection charges, capital charges, meter charges, that the City charges to and paid by the users of the System for the services provided by the City, including without limitation the Services provided pursuant to this Agreement, as periodically established by ordinance and/or resolution of the City.
- 2.9 "Revenue" shall be defined as the funds derived from the Rates and Charges assessed against and paid by customers or users of the System, and other sources of revenue, such as grants.
- 2.10 "State" shall be defined as the "State of Michigan," a sovereign governmental entity of the United States, and shall also include within its definition any and all departments or agencies of State government.

- 2.11 "System" shall be defined as the sanitary sewer system identified in **Exhibit A** ("Service Area") that is tributary to the Walled Lake-Novu Wastewater Treatment Plant and the Commerce Township Wastewater Treatment Plant
- 2.12 "System Enterprise Fund" shall be defined as the account for the System established and maintained by the County on behalf of the City.

### **Article III. County Responsibilities; WRC Operation and Maintenance Services.**

- 3.1 Services. The County agrees to perform the operation and maintenance services for the System (all of the following being referred to in this Agreement as the "WRC Services" or "Services") as set forth in **Exhibit B** attached to this Agreement.
- (a) The Services to be provided by the County to the City under this Agreement shall be performed by County Agent(s) and/or Contractor. The County will maintain and designate a sufficient number of County Agents, having sufficient qualifications, in order to carry out and provide the Services under and in accordance with this Agreement. However, the County will give due consideration to any input received from the City concerning the number and charges of Contractors and County Agent(s) assigned to provide Services for the System.
- (b) The County shall be responsible for furnishing all County Agent(s) and Contractors with all job instructions, job descriptions and job specifications and shall in all circumstances control, supervise, train or direct all County Agent(s) in the performance of any and all Services under this Agreement. The County shall remain the sole and exclusive employer of all County Agents.
- (c) This Agreement is neither intended, nor shall it be interpreted, to create, change, or otherwise affect or control, in any manner any employment right, privilege, benefit, or any other term or condition of employment, of any kind or nature whatsoever, in, upon, or for any County Agent. Except as expressly provided for under the terms of this Agreement and/or laws of this State, no County Agent, while such person is currently and/or actively employed by the County shall be employed or utilized to perform any other services by or for the City during the term of this Agreement. This section shall not prohibit the City from employing any person who was a former County Agent but is no longer employed in that capacity by the County.
- 3.2 System Capital Replacement Expenditures. The County shall not expend funds from the System Enterprise Fund for capital replacement or improvement projects without prior approval from the City.
- 3.3 Establish Reserves. The County may establish a reserve for system emergencies, system replacement, or other purposes with the consent of the City.
- 3.4 Independent Contractor. At all times and for all purposes under the terms of this Agreement, the County and/or any and all County Agents' legal status and relationship to the City shall be that of an Independent Contractor.



- 3.5 Insurance - County. The County will endeavor to obtain and to maintain for the duration of this Agreement the following insurance coverages with insurance companies licensed to do business in the State of Michigan, but only if such insurance coverage is commercially available. It is understood and agreed, that all costs, including the premium, self-insured retention or deductible, shall be included as a System Cost:
- (a) Public Liability or Professional Liability or Errors and Omissions with limits of \$10,000,000.00 per occurrence and \$15,000,000 aggregate.
  - (b) Commercial General Liability – with limits of \$10,000,000 per occurrence and \$15,000,000 aggregate.
  - (c) Certificates of Insurance. So long as the City maintains current on its annual premium for the coverage outlined herein, it shall be a Named Insured under the policy.
  - (d) Non-Exclusivity and Limitations of Insurance Coverage. It is understood by the City, that the insurance coverages set forth herein and obtained and maintained by the County is not exclusive to this Agreement. Meaning, that the County may purchase and maintain the insurance coverages to insure the County (its respective elected officials, officers, employees, and agents) against such Claims arising from the County Services provided under this Agreement, as well as similar Services the County provides to other municipal public corporations. As such, the City, along with other municipal corporations, will share in the cost of the insurance premium paid by the County. To this end, the County agrees to reasonably allocate the premium paid for the insurance to the various water and sewer systems operated and maintained by the County, including the City's System, and provide reasonable justification for the allocation of said cost to the City. In addition, it is understood and agreed, that the purchase of insurance and payment of the premium (as a System Cost), does not guarantee insurance coverage for any Claim. All policies set forth herein are subject to the terms, conditions, and limitations set forth in the insurance policies. As such, uninsured Claims shall be and remain a System Cost. Moreover, insured Claims arising from the County's Services to a municipal water and sewer system, other than the City's System, may limit or possibly eliminate coverage of a Claim arising from the County's Services under this Agreement. In the event of such an occurrence, it is understood that an otherwise insured Claim that is in excess of any valid and collectible insurance rights/policies, shall be and remain a System Cost.
- 3.6 Permit Assistance. The County will assist the City in the procurement of all permits, guarantees, warranties, easements, licenses, and other similar approvals and consents necessary to operate and maintain the System received by or granted to the City as the owner of the System.
- 3.7 Regulatory Compliance. The County will supervise all regulatory compliance and financial transactions, except for the enforcement of the City's ordinances or regulations.
- 3.8 Disbursing Funds. Upon request from the City for the dispersal of funds from the System Enterprise Fund, the County shall promptly disburse funds to the City in the amount and manner requested, provided that the balance remaining in the System Enterprise Fund is adequate for the operation and maintenance of the System.

#### **Article IV. City's Responsibilities.**

- 4.1 Ordinance – Rates and Charges. The City has adopted or shall hereafter adopt one or more ordinances or resolutions as are necessary under the terms of the Agreement, which provides the Rates and Charges sufficient to provide the Revenue necessary to reimburse the County for its Costs and Overhead related to the Services provided by the Agreement; and provide for the billing and collection of the Rates and Charges pertaining to the System.
- 4.2 Ordinance – Enforcement. The City is responsible for enforcement of the City's ordinances and regulations. The City has adopted or shall hereafter adopt one or more ordinances regulating or prohibiting the discharge of fats, oils and grease, or industrial waste to the System, including those pertaining to user pretreatment standards; and, the billing and collection of Costs related thereto.
- 4.3 Capital Replacement of System. The City shall be responsible for expenditures for all capital replacement of System components.
- 4.4 Testing and Sampling Fees; Consultant Fees. The City agrees that the term Costs includes, but not limited to, fees for testing, sampling, engineering services or studies, master planning, capital improvements, as well as all of the costs related to procurement of the same, are a Cost which may be accounted for in the Rates and Charges.
- 4.5 Permits - City. The City will be responsible for procuring, and in accordance with their respective terms, all permits, guarantees, warranties, easements, licenses, and other similar approvals and consents necessary to operate and maintain the System received by or granted to the City as the owner of the System.
- 4.6 City - Insurance.
- (a) It shall be the responsibility of the City to determine and obtain real and personal property insurance with limits that the City in its discretion, deems necessary and appropriate for the System and components of the System. To the extent permitted by law, and subject to the availability of funds necessary for the County to operate and maintain the System, the City may include as a System Cost, the City's cost of insurance set forth herein, including any premium, self-insured retention or deductible. The County shall disburse funds to the City from the System Enterprise upon request from the City to pay for the cost of real and personal property insurance. In lieu of the City purchasing real and personal property insurance described herein, if commercially available to the County, the County, on behalf of the City, may purchase and maintain real and personal property, and charge the same as System Cost.
- (b) It shall be the responsibility of the City to determine and obtain General Liability Insurance or self-insurance to protect the City's liabilities and exposures set forth in Article VI.
- 4.7 Property Access. City will be responsible for and will secure the right of access necessary for County Agent(s) or Contractors to perform the Services under this Agreement. The City will be responsible for all costs or Claims associated with securing rights of access.

- 4.8 Compliance with State and Federal Law and Regulations. The City will be and remain responsible for Costs associated with compliance with all federal, State, and local laws, ordinances, regulations, and requirements in any manner affecting any work or performance of this Agreement or with any City duty or obligation under any applicable State or federal laws and/or regulations.
- 4.9 System Ownership. Notwithstanding any other term or condition in this Agreement, no provision in this Agreement is intended, nor shall it be construed, as constituting a divestiture or forfeiture of the City's absolute ownership of and authority over the System.

#### **Article V. Compensation for Services.**

- 5.1 Compensation from System Revenue. The County's Costs and Overhead incurred for the Services shall be compensated from the Revenue from the System. In the event that the Costs and Overhead exceed the Revenue in any one year, then any deficiency may be recovered by adjusting the Rates and Charges charged to customers of the System or from the general fund of the City. In the event that annual Costs and Overhead are less than the annual Revenue, then upon the sole discretion and direction of the City, future rates to the customers may be adjusted to balance the account. The County shall be required to perform an audit of its procedures with respect to the manner of the computation and assignment of Costs and Overhead to the City within one (1) year of the date of this Agreement, and shall provide the City with a copy of the results, including any recommendations regarding Cost and Overhead computation and/or assignment formulas and practices. Additionally, the City shall be entitled to conduct, and/or may request the County to conduct, an independent audit of the County's records relating to the computation and assignment of the City's Costs and Overhead at anytime. The cost of conducting such a review or audit shall be a Cost of the System.
- 5.2 County Services Performed Non-Profit Basis. The City acknowledges and agrees that the County will assist the City in the operations and maintenance of the System on a non-profit basis for the benefit of the users of the system and therefore the County is without funds to finance, operate and maintain the System except for the Revenue derived from the System users. Therefore, it is understood and agreed that in no event shall the County or its general fund be charged with or liable for the cost of operating, maintaining, repairing, replacing, or administering the System. All Costs and Overhead associated with the Services under this Agreement will be the responsibility of the City.

#### **Article VI. Standard of Care; Warranty Waiver; Consequential Damages; Liability; and PA 222 Liability.**

- 6.1 Standard of Care; Waiver of Warranty and Consequential Damages. The County will perform the Services under this Agreement in accordance with the standard of care and diligence normally provided by other professional firms providing similar Services. However, the County makes no warranty, express or implied, with respect to any Services provided. SPECIFICALLY, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR TO BE IMPLIED BY THE COUNTY WITH RESPECT TO SERVICES PROVIDED UNDER THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER UNDER CONTRACT, TORT OR OTHERWISE.

- 6.2 Liability for Claims. Except as otherwise provided in this Agreement, it is understood that each Party shall be responsible for any Claims made against that Party and for the acts or omissions of its respective employees or City/County Agents. With respect to Claims that arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation including attorney fees. Except as otherwise provided in this Agreement, neither Party shall have any right under any legal principle to be indemnified by the other Party or any of its employees or Agents in connection with any Claim. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of the privileges and immunities as provided by law afforded to the Parties. The Parties expressly reserve all privileges and immunities as provided by law.
- 6.3 PA 222 Liability for Third-Party Claims Caused by Defects or Infiltration and Inflow of System. To the extent permitted by law, the City agrees to pay any and all Claims, including the defense of and claims asserted against the County, for sewage disposal system events as defined in Section 16 of Act 170 or the Public Acts of 1964, as amended (by Public Act 222 of the Public Acts of 2001), MCL 691.1416, arising from design or construction defects, or from the infiltration and/or inflow of storm water to the System.
- 6.4 Force Majeure; System Malfunction; Misuse or Vandalism of System. The City will be responsible for damage and liability to the System or components thereof caused by flood, fire, Acts of God or other force majeure, civil disturbance, Acts of War, terrorism or misuse of property. In addition, the City will be responsible for all Claims, damages and liability caused by design and/or construction defects, malfunction or failure of the System or any component thereof, sewer breaks, and vandalism provided the same is not directly caused by the acts or omissions of County Agents.
- 6.5 No Third Party Beneficiary. This Agreement does not create any rights or benefits to parties other than the City and the County.

## **Article VII. Cooperation and Communication; Dispute Resolution.**

- 7.1 Cooperation. The County agrees to ensure that all County Agents fully cooperate with City and City Agents in the performance of all Services under this Agreement. The City agrees to ensure that City Agents cooperate with County Agent(s) in the performance of the Services under this Agreement.
- 7.2 Communication. There shall be an open and direct line of communication established and maintained between the Parties in order to promote the handling of both routine and emergency situations in a timely and cooperative manner according to the circumstances as they exist or become known. Each Party will designate one or more liaisons for such purposes, and will notify the other Party of such designee(s). The liaisons shall also be used for purposes of communicating and coordinating specific needs, plans, instructions, issues, concerns and other matters relating to the System or Services.

- 7.3 Dispute Resolution. The Parties agree that any and all claims alleging a breach of this Agreement or with respect to the Services provided under this Agreement, shall first be submitted to an alternative dispute resolution process. Such an alternative dispute resolution process may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. If the matter is not resolved through an alternative dispute resolution process, or if the Parties cannot agree upon the form and procedures for the alternative dispute resolution process, the Parties may seek legal recourse in a court of competent jurisdiction. For claims requiring immediate relief to prevent irreparable harm, either Party may seek relief directly from a court of competent jurisdiction without submitting the matter to the alternative dispute resolution process.

**Article VIII. Agreement Approval; Effective Date; and Amendments; Changes to Scope of Services. Term; and Termination.**

- 8.1 Agreement Approval; Amendments; and Effective Date. Except as otherwise provided herein, this Agreement, and/or any subsequent amendments thereto, shall not become effective prior to the approval by resolutions of both the City and the County. The Effective Date of this Agreement, and any amendments hereto, shall be the date as reflected in the opening paragraph of this Agreement.
- 8.2 Amendment to Scope of Services. During the term of this Agreement, the Scope of Services attached hereto as Exhibit B, may be amended by the WRC and approved by resolution of the City during the term of this Agreement without requiring a resolution from the County Board of Commissioners.
- 8.3 Term. The Parties agree that the term of this Agreement shall begin on the Effective Date of this Agreement as set forth in Section 8.1. This Agreement shall be effective for an initial term of ten (10) years from the effective date, and shall be automatically extended for additional ten (10) year terms, unless terminated as provided herein, or otherwise agreed to in writing by the Parties.
- 8.4 Termination. Notwithstanding any other term or provision in any other section of this Agreement, either Party, upon a minimum of One Hundred and Eighty (180) calendar days written notice to the other Party, may terminate this Agreement for any reason, including convenience, without incurring any penalty, expense, or liability to the other Party. The effective date for any such termination is to be clearly stated in the notice.
- 8.5 Survival of Certain Terms and Conditions Following Termination or Expiration of Agreement. The Parties agree that record-keeping and audit requirements, any payment obligations to the other Party, and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions, or Claim(s) either occurring or having their basis in any events or transactions that occurred during the term of this Agreement, shall survive the termination or expiration of this Agreement.
- 8.6 Cooperation Following Termination of Agreement. In the event the Agreement is terminated as provided herein, the Parties agree to cooperate in all respects and assist in the wind down from the County's operation and maintenance of the System. The City will be responsible for all Costs and Overhead incurred by the County through the date of termination, including the Costs and Overhead incurred by the County during the

termination notice period referenced above to wind down and end of the County's involvement in the provision of the Services.

**Article IX. General Provisions.**

- 9.1 Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
- 9.2 Reservation of Rights; Governmental Function. This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. In addition, the Parties maintain that the obligations set forth in this Agreement will be in the exercise or discharge of a governmental function.
- 9.3 Severability. If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision of persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.
- 9.4 Binding Contract; Assignment; and Amendments. This Agreement will be binding upon and for the benefit of the Parties hereto and their respective successors and assigns, subject to any assignment requiring the prior written consent of the non-assigning Party by an amendment to this Agreement signed by all Parties, and the assignee binding the assignee to the terms and provisions of this Agreement.
- 9.5 Captions. The section headings or titles and/or all section numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- 9.6 Notices. Except as otherwise expressly provided for herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Agreement to be delivered to the following:

COUNTY OF OAKLAND:

OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER  
1 Public Works Drive  
Waterford, Michigan 48328

CITY OF NOVI:

City Clerk  
CITY OF NOVI  
45175 W. Ten Mile Road  
Novi, Michigan 48375

- 9.7 Notice Delivery. Except with respect to notices of termination, all correspondence and written notices shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the U.S. Postal Service. Notices of termination shall be personally delivered or sent by certified mail, return receipt requested, and shall be considered delivered to a party on the date of receipt as represented by the return receipt or by a proof of personal service.
- 9.8 Entire Agreement. This Agreement sets forth the entire agreement between the County and the City and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the County and the City in any way related to the subject matter hereof, except as expressly stated herein. This Agreement shall not be changed or supplemented orally and may be amended only as otherwise provided herein.
- 9.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which shall constitute one and the same instrument.
- 9.10 Recitals. The recitals shall be considered an integral part of the Agreement.

**IN WITNESS WHEREOF**, this Agreement if executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.

COUNTY OF OAKLAND

By: \_\_\_\_\_  
Michael J. Gingell, Chairperson  
Oakland County Board of Commissioners

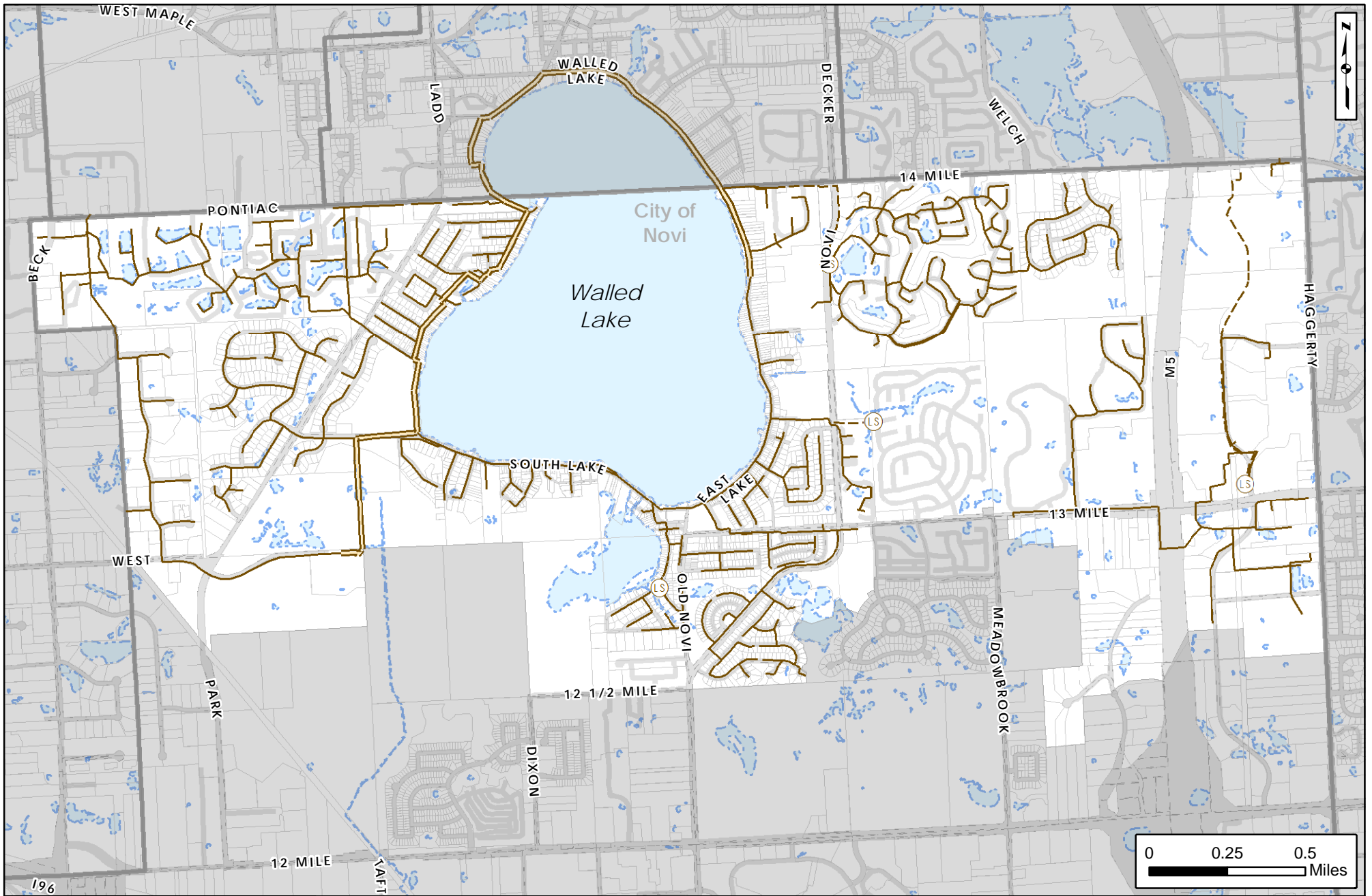
CITY OF NOVI

By: \_\_\_\_\_  
Robert J. Gatt, Mayor

By: \_\_\_\_\_  
Cortney Hanson, City Clerk

EXHIBIT "A"  
SERVICE AREA





One Public Works Drive  
 Building 95 West  
 Waterford, Michigan  
 48328-1907

**DISCLAIMER:**  
 The information displayed in this map is compiled from recorded deeds, plats, tax maps, surveys and other public records. Although this information is intended to accurately reflect public information, it is not a legally recorded map or survey and is not intended to be used as one. Users should consult primary/original information sources where appropriate.

## Exhibit A City of Novi Service Area

### Legend

- City of Novi Lift Station
- Walled Lake - Novi WWTP Main
- City of Novi Gravity Sanitary Main
- City of Novi Non-Gravity Sanitary Main

**EXHIBIT B**  
**Scope of Services**  
**Sewer System Operation and Maintenance**

The County agrees to perform the following operation and maintenance services of the portion of the City of Novi Sewer System ("System") that is tributary to the Walled Lake-Novu Wastewater Treatment Plant and the Commerce Township Wastewater Treatment Plant (all of the following being referred as the "WRC Services" or "Services") on behalf of the City:

1. Operation and maintenance of pump stations and appurtenances, including the payment of power costs and lawn and landscape maintenance.
2. Operation and maintenance of the System, including all System force mains, meters, valves, and all other facilities, equipment and appurtenances that are part of the System.
3. If requested by the City, and provided the County has the capabilities for doing so, the County will compute and bill quarterly, the charges for the Services rendered to each user connected to the System in accordance with the Rates and Charges established by the City. The charges will be payable in accordance with time period as established by the City by ordinance or resolution, and shall bear such penalties and late charges, as the City by ordinance shall provide.
4. Provide house lead connection inspections in accordance with City issued permits.
5. Respond to requests from customers and City for maintenance, inspections and repairs, both emergency and routine.
6. Establish, maintain, manage, and administer a System Enterprise Fund. Revenue collected by the County shall be deposited and maintained in the System Enterprise Fund. On a quarterly basis, the County shall determine the costs and overhead incurred during said quarter in performing the Services under this Contract and deduct such amount from the System Enterprise Fund as payment for such Services. The County may establish a reserve for system emergencies or system replacement.
7. Keep all necessary records and books of account pertaining to its dealings with the users of the System within the City and the System Enterprise Fund, and make same available to the City upon request.
8. Comply with applicable laws and governmental accounting standards in the keeping, management, administration, use and auditing of the System Enterprise Fund. Upon request of the City, provide City a quarterly accounting statement, a quarterly operation and maintenance activity report and annual report for the City's review in accordance with the County's fiscal year. Upon request, allow the City or City agents to audit the System Enterprise Fund accounts, books and statements, and provide City with supporting documentation and copies of such materials if requested.
9. The County will provide, maintain and monitor a Supervisory Control and Data Acquisition System (SCADA) to provide alarms on System facilities operated and maintained by the County.
10. The County will provide a 24-hour, 7-day per week dispatch center to receive alarms from the SCADA system and any other reports of System emergencies, and will dispatch emergency service crews to respond to such alarms and reports.

11. All Services provided by the County under this Contract will be performed in accordance with all applicable County, State and Federal permits and regulations, all applicable State and Federal laws and all applicable City ordinances.
12. The County shall establish, provide and implement sewer system operation and maintenance related programs, studies, reports, testing, sampling, inspections and surveys in accordance with City, State, and Federal mandates..
13. The County will, replace or repair existing components of the System which are identified by the County or City to be in need of repair or replacement. Upon completion of such repairs and replacements, if the System has been altered in any material way the County will provide to the City as-builts and update the GIS infrastructure mapping and database. Unless otherwise agreed in writing by the Parties, the County's obligation to repair or replace shall be limited to the fund balance contained in the System Enterprise Fund.
14. The County will maintain, and update as necessary, GIS infrastructure mapping and database of the System. The County will also provide City hard and digital copies of the mapping, and updates as requested, in a manner compatible with City's GIS system, and will provide interconnectivity between the City and County GIS systems when in place. The County will update the GIS mapping and database of the System upon being provided as-builts or other information from the City identifying corrections and/or modifications of the System and upon the County performing Services that result in modifications of the System. The City is responsible for providing accurate "as-built" information.
14. MISS DIG. The County will conduct MISS DIG operations, in accordance with Public Act 53 of the Public Acts of 1974, as amended, (MCLA 460.701 et seq) on behalf of the City as they pertain to the operations and maintenance of the Sewer System.
15. PA 222 Notification. In the event that either the City or the County receives notice from a user of the Sewer System of a possible claim and such notice is governed by the provisions of Act 222 of 2002, then the party receiving the notice agrees to: (i) provide the potential claimant with the information required by Act 222, (ii) notify the other party to this Agreement of the potential claim, and (iii) fully comply with the requirements of Act 222.
16. In the event System repairs or replacement is deemed attributable to outside parties, (i.e. Contractor damage or customer negligence), consistent with applicable City ordinances, the WRC will bill the responsible party at the City's direction. If any, or the entire bill is deemed uncollectible, the uncollected amount will be charged directly to the System Enterprise Fund.