



## CITY of NOVI CITY COUNCIL

**Agenda Item C**  
**June 2, 2014**

**SUBJECT:** Approval of an agreement with HCP Land, LLC to share costs for the construction of a new traffic signal at the intersection of Cabot Drive and 13 Mile Road (50% to be paid by the City and 50% to be paid by HCP Land, LLC).

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *R# BJC*

**CITY MANAGER APPROVAL:** *[Signature]*

### **BACKGROUND INFORMATION:**

A study of the intersection of Cabot Drive and 13 Mile Road was completed in 2012 and determined that a traffic signal was warranted at the intersection. Northern Equities Group contacted staff in 2013 offering to share in the cost of the signal installation to expedite the installation of the signal, which was shown in the Capital Improvement Program at that time for funding in FY2016-17. A Memorandum of Understanding with Northern Equities was approved by the City in August 2013 such that each party would pay for half of the design fees.

The design of the traffic signal at Cabot Drive and 13 Mile Road was completed and the project was bid with three other intersection projects in March 2014 to get contractor pricing because the traffic signal was not funded at that time. (The contractor is obligated by the Instructions to Bidders to hold its bid for 120 days). The recently approved FY2014-15 budget includes 50% of the construction cost for the signal and anticipated that Northern Equities would agree to pay the other 50% needed for the project.

The attached agreement between the City of Novi and HCP Land, LLC (a subsidiary of Northern Equities) has been prepared by the City Attorney and was executed by HCP Land, LLC to fund 50% of the project cost to install a new traffic signal at Cabot Drive and 13 Mile Road. The attached letter from the City Attorney provides additional discussion regarding the terms of the agreement. Per the agreement, the City will hire and pay all contractors, and HCP Land, LLC will reimburse the City for 50% of the actual project costs upon completion of the project.

A change order for the 2014 Signal Improvements construction contract will be prepared and presented for City Council consideration after July 1, 2014 to add the Cabot and 13 Mile traffic signal to the existing contract. The work is anticipated to be completed in summer 2014.

**RECOMMENDED ACTION:** Approval of an agreement with HCP Land, LLC to share costs for the construction of a new traffic signal at the intersection of Cabot Drive and 13 Mile Road (50% to be paid by the City and 50% to be paid by HCP Land, LLC).

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

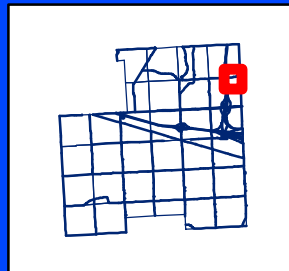
	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				



# 13 Mile Rd. and Cabot Dr. Signal Location Map



Map Author: M. D. McCreddie Jr  
 Date: 7/29/13  
 Project: 13 Mile Rd. and Cabot Dr. Signal  
 Version #: 1



**City of Novi**  
 Engineering Division  
 Department of Public Services  
 26300 Lee BeGole Drive  
 Novi, MI 48375  
[cityofnovi.org](http://cityofnovi.org)



1 inch = 400 feet

**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 232 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.





JOHNSON ROSATI SCHULTZ JOPPICH PC

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Elizabeth Kudla Saarela  
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May 22, 2014

Brian Coburn, Engineering Manager  
Public Services – DPW Garage  
26300 Lee BeGole Drive  
Novi, MI 48375

**RE: *Agreement to Share Costs*  
Thirteen Mile and Cabot Signal**

Dear Mr. Coburn:

Enclosed please find the final draft of the Agreement to Share Costs prepared by our office to reflect the Agreement between the City and HCP Land to share the cost of installation of the traffic signal for the intersection of Thirteen Mile and Cabot Drive. Though the signal will be entirely within the public right-of-way, the signal provides significant benefit to the adjacent office development.

Generally, the Agreement requires the City and HCP Land, the owner of the adjacent office development, to pay an equal share of the cost of installation. Estimated costs have been included in the Agreement. The City is required to update HCP Land with respect to change orders and cost increases though the City has the final discretion to require the changes during construction to ensure that the signal meets minimum required design standards and all applicable laws and ordinances. HCP Land will pay its share of the costs at the end of the project pursuant to invoice issued by the City. Though the City has agreed not to place any liens on HCP Land property for non-payment of the invoice, the City retains the right to all other legal and equitable remedies.

Once constructed, the City will operate and maintain the signal at the City's expense.

The Agreement is acceptable as presented and appears to accurately represent the discussions of both parties. Once executed, a duplicate should be provided to HCP Land for its records. The original should be retained in the City's file.

Brian Coburn, Engineering Manager  
May 22, 2014  
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If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

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



Elizabeth Kudla Saarela

EKS

Enclosure

C: Maryanne Cornelius, Clerk (w/Enclosure)  
Rob Hayes, DPS Director (w/Enclosure)  
Thomas R. Schultz, Esquire (w/Enclosure)

**AGREEMENT TO SHARE COSTS**

**BETWEEN**

**THE CITY OF NOVI**

**AND**

**HCP LAND, LLC**

This Agreement ("Agreement") is entered into this \_\_\_\_ day of 2014, by and between the City of Novi (the "City") and HCP Land, LLC. ("HCP").

HCP owns a development near the intersection of Thirteen Mile Road and Cabot Drive in the City of Novi (the "Intersection").

The City obtained a traffic study showing that a traffic signal is warranted at the Intersection.

For the benefit of the citizens of the City of Novi, the driving public and HCP and its development, the parties determined that the installation of a traffic signal at the Intersection is feasible, cost effective and mutually beneficial.

The City and HCP shared in the costs of designing an appropriate traffic signal consistent with City design standards and all applicable laws and ordinance.

The parties now propose to split the cost of construction, construction engineering and materials testing for the installation of the traffic signal at the Intersection in accordance with the approved plans (the "Project").

NOW, THEREFORE, be it agreed between the parties as follows:

1. The City and HCP will equally participate in the actual cost of construction, construction engineering and materials testing for the installation of the traffic signal at the Intersection in accordance with the approved plans.
2. The cost of construction, construction engineering and materials testing shall be included in the project costs to be shared by the parties (the "Project Costs"). HCP has reviewed and approved Plan Sheets 27 through 34 of the 2014 Signal Improvements Project dated February 12, 2014. The Project Costs are estimated to be as follows:

a. Construction Cost Estimate	\$193,753.00
b. Construction Engineering	
i. Contract Administration (4.5% of construction)	\$ 8,719.00
ii. Inspection Days (24 days @640.00 per day)	\$ 15,360.00
c. Material Testing	\$ 611.00
d. <u>RCOC Force Account Work</u>	<u>\$ 9,311.00</u>

Estimated Project Cost: \$227,754.00

3. The Project is under the jurisdiction of the City and will be operated and maintained by the City at the City's expense. As such, the City shall award, administer and construct the project pursuant to applicable City Ordinances.

HCP shall be responsible for 50% of the actual Project Costs as determined at the completion of construction based on invoices submitted by the City's Contractor as approved by the City. The City shall send copies of all change orders and/or additional costs to the project to HCP. The City shall have the authority to approve or deny change orders or additional costs within its sole reasonable discretion. HCP shall pay its portion of the Project Costs, as estimated, above, upon completion of construction by the City within 30-days of the invoice date.

The City shall make all invoices and accountings for the project available for review by HCP. The City shall pay all invoices due on the project in accordance with the terms and conditions of its construction contract. Neither the City nor the contractor shall place any liens on Property owned by HCP Land, LLC for non-payment relating to this contract. Except as otherwise set forth herein, in the event of a breach of this Agreement, the Parties may pursue all remedies available under the law and in equity.

4. If HCP shall fail to make any payments when due, as specified herein, the City may initiate a lawsuit for purposes of enforcing and achieving full compliance with the terms and provisions of this Agreement. In the event that the City is awarded relief in such suit, HCP shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.
5. The Project is expected to be awarded and completed during the summer 2014 construction season.
6. If necessary, the City and its contractors, agenda and employees are hereby granted to the rights to enter onto lands owned by HCP for purposes of performing work in connection with the Project.
7. General Provisions.
  - A. Entire Agreement. This instrument, together with the attached Schedules, contains the entire Contract between HCP and the City. No verbal agreement, conversation, or representation by or between any officer, agent, or employee of the parties hereto, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
  - B. Compliance with Laws. This Contract and all of City's work and practices shall be subject to all applicable state, federal and local Laws, ordinances, rules or regulations, including without limitation, those which apply because the City is a public governmental agency or body.

- C. Governing Law. This Contract shall be governed by the laws of the State of Michigan.
- D. Assignment. Neither party shall assign this Contract or any part thereof without the written consent of the other party. This Contract shall be binding on the parties, their successors, assigns and legal representatives.
- E. Third Parties. It is the intention of the parties hereto that this Agreement is not made for the benefit of any private third party. HCP and the City agree that no private party or parties will be allowed to hold sway or influence, in any way, over City's performance of the work.
- F. Notices. Written notices under this Contract shall be given to the parties at their addresses contained in this Contract by personal or registered mail delivery to the attention of the following persons:
  - HCP: Matthew S. Sosin, HCP Land, LLC, 39000 Country Club Drive  
Farmington Hills, MI 48331
  - City: Maryanne Cornelius, City Clerk, City of Novi, 45175 Ten Mile, Novi,  
MI 48375
- G. Changes. Any changes in the provisions of this Contract must be in writing and signed by HCP and the City.
- H. Waivers. No waiver of any term or condition of this Contract shall be binding and effective unless in writing and signed by all parties, with any such waiver being limited to that circumstance only and not applicable to subsequent actions or events.
- I. Jurisdiction and Venue of Contract. This Contract shall be considered for all purposes, including the establishment of jurisdiction and venue in any court action between the parties, as having been entered into and consummated in the Owner of Novi, Oakland County, Michigan.

IN WITNESS WHEREOF, HCP and the City have executed this Contract in Oakland County, Michigan, as of the date first listed above.

**THE CITY**

CITY OF NOVI

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

By: \_\_\_\_\_  
Maryanne Cornelius, Its Clerk



**HCP**

HCP LAND, LLC

By: FG 38 Corporation, Manager

By: 

Matthew S. Sosin, Vice-President