



CITY of NOVI CITY COUNCIL

Agenda Item C
October 22, 2018

SUBJECT: Approval of the City of Novi - Charter Township of Commerce Sanitary Sewer Capacity Exchange Agreement between the City of Novi, Commerce Township, the City of Walled Lake, and Oakland County.

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

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Since 1991, the City of Novi and Commerce Township have had an agreement in place to accept a small amount of each other's sanitary sewer flow for treatment at the Walled Lake-Novu Wastewater Treatment plant in Novi and the South Commerce Wastewater Treatment Plant in Commerce. This new agreement is considered an update to the current agreement, which is intended to better reflect the flows from each community. The new agreement would be based on metered flows, which is expected to be a much more accurate method when compared to current method using residential equivalency units.

The agreement would remain in effect for ten years, with the option to renew for another ten years if both communities agree to the extension.

The attached *City of Novi - Charter Township of Commerce Sanitary Sewer Capacity Exchange Agreement* has been reviewed by the City Attorney (Beth Saarela, October 12, 2018).

RECOMMENDED ACTION: Approval of the City of Novi - Charter Township of Commerce Sanitary Sewer Capacity Exchange Agreement between the City of Novi, Commerce Township, the City of Walled Lake, and Oakland County.

ELIZABETH KUDLA SAARELA
esaarela@rsjalaw.com

27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331
P 248.489.4100 | F 248.489.1726
rsjalaw.com



ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

October 12, 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 – Walled Lake-Novi Wastewater Treatment Plant – Capacity Exchange Agreement with Commerce Township

Gentlemen:

We have reviewed the City of Novi – Charter Township of Commerce Sanitary Sewer Capacity Exchange Agreement prepared by the Oakland County Water Resources Commissioner’s Office (WRC). The Agreement is being provided for the purpose of updating how fees are charged with respect to the exchange of capacity between the City and Commerce Township.

Since 1991, Novi and Commerce Township have agreed to send small (approximately .5 MGD) sanitary sewage flow to each other’s sanitary sewage treatment plants due to the proximity of each one’s residents to the other party’s treatment plant. The proposed City of Novi – Charter Township of Commerce Sanitary Sewer Capacity Exchange Agreement is an update and restatement of the same Agreement. The primary change in the terms of the Agreement is that the manner which each community collects connection fees for its residents connecting to the other party’s system is changing. Under the existing Agreement, each community charges its residents tap units of residential equivalent units. Once the new Agreement is approved, the connection charges will be based on metered allocation of wastewater flow based on each community’s own ordinance fee schedule.

The terms and conditions of the Agreement appear to be acceptable for the purposes provided. The Agreement will remain in effect for a ten (10)-year term and will renew for one additional

Jeffrey Herczeg, Director of Public Works
City of Novi
Benjamin Croy, Water & Sewer Senior Manager
City of Novi
October 12, 2018
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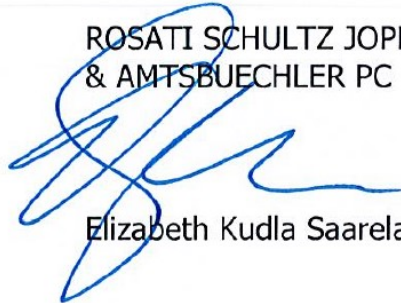
ten (10)-year term unless either party gives notice of termination at least five (5) years prior to the end of the initial term.

Subject to your review and approval of the Exhibit 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 – CHARTER TOWNSHIP OF COMMERCE
SANITARY SEWER CAPACITY EXCHANGE
AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2018 (“Effective Date”), by and between the Charter Township of Commerce (“COMMERCE”), a Michigan municipal corporation, whose address is, 2009 Township Drive, Commerce Township, Michigan 48382, the City of Novi (“NOVI”), a Michigan municipal corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375; and the City of Walled Lake (“WALLED LAKE”), a Michigan municipal corporation, whose address is 1499 East West Maple Road, Walled Lake, Michigan 48390; and the County of Oakland, a Michigan constitutional corporation (“COUNTY”), by and through its WATER RESOURCES COMMISSIONER in his capacity as “County Agency”, pursuant to Michigan Public Act 342 of the Public Acts of 1939, as amended, MCL 46.171 et seq., (“Act 342”), whose address is 1 Public Works Drive, Waterford, Michigan 48343. In this Agreement, COMMERCE, NOVI, WALLED LAKE or the COUNTY, may be referred individually as “Party”, or collectively as “Parties”.

Recitals:

WHEREAS, COMMERCE is the owner of the South Commerce Wastewater Treatment Facility located at 649 Welch Road, Walled Lake, Michigan 48390 and has a total wastewater treatment capacity of 8.5 million gallons per day; and,

WHEREAS, pursuant to Michigan Public Act 185 of the Public Acts of 1957, as amended, MCL 123.731 et seq., (“Act 185”), Act 342, and by contract with the NOVI and WALLED LAKE, the County Board of Commissioners established a County system of sewage disposal improvements to serve Novi and Walled Lake, commonly known as the “Huron-Rouge Sewage Disposal System”¹; and,

WHEREAS, the County subsequently acquired and constructed the “Huron-Rouge Sewage Disposal System – Walled Lake Arm” which includes a wastewater treatment plant to serve the WALLED LAKE and NOVI, commonly known as the “Walled Lake – Novi Wastewater

¹ The County, the 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.

Treatment Plant” (“WL-N WWTP”) and designated the WATER RESOURCES COMMISSIONER as the “County Agency” for the “Huron-Rouge Sewage Disposal System – Walled Lake Arm”² pursuant to Act 342, with all powers and duties with respect thereto as are provided by Act 342; and,

WHEREAS, the WL-N WWTP is located at 46351 West Road, Novi, Michigan 48377 and has a total wastewater treatment capacity of 8.8 million gallons per day; and,

WHEREAS, pursuant to the contracts with the COUNTY, NOVI has the exclusive right to use 65.35% of the total treatment capacity or 5.751 million gallons per day (“MGD”) available capacity at the WL-N WWTP; and,

WHEREAS, on November 1, 1991, and as amended by an subsequent agreement dated February 28, 2006 (“1991 Agreement”), the Parties entered into an agreement authorizing the exchange of sewer capacity between COMMERCE and NOVI in order to better serve properties located within each community; and,

WHEREAS, said 1991 Agreement authorized the exchange of two thousand (2,000) tap units between COMMERCE and NOVI such that wastewater flow from properties within Commerce were transported for treatment and disposal at the WL-N WWTP using capacity allocated to Novi, and in exchanged, wastewater flow from properties within Novi were transported for treatment and disposal at the South Commerce Wastewater Treatment Facility; and,

WHEREAS, the COUNTY, WALLED LAKE, and NOVI have entered or will enter into a new Wastewater Treatment Plant Service Agreement allocating capacity at the WL-N WWTP between NOVI and WALLED LAKE, and establishing the use of sewage flow meters to measure wastewater flow for the purposes of billing, instead of tap units of residential equivalent units; and,

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28, Act 342, 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

² 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-Nowi Wastewater Treatment Plant 1989 Enlargement Contract”, and contract dated October 1, 2014 identified as “Huron-Rouge Sewage Disposal System Walled Lake-Nowi Wastewater Treatment Plant 2014 Retention Basin and Capacity Improvements Contract.”

authority which such political subdivisions share in common with which each might exercise separately; and,

WHEREAS, as a matter of public health and in order to better serve certain properties located within municipal boundaries of Commerce and Novi, COMMERCE and NOVI desire to continue the exchange of sewer capacity based on the allocation of wastewater flow instead of tap units for residential equivalent units, and replace the terms and conditions of the 1991 Agreement with 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 Parties agree as follows:

1. Authority. Pursuant to Act 342, Act 7 of 1967, and any other applicable laws of the State of Michigan, the Parties enter into this Agreement to establish terms and conditions for the exchange of sewer capacity between COMMERCE and NOVI. Each Party agrees to take all actions reasonably necessary to effectuate the objectives set forth in this Agreement.
2. Purpose. The purpose of this Agreement is to authorize and provide for the exchange of capacity between COMMERCE and NOVI, such that wastewater flow from certain properties located in COMMERCE are transported for treatment and disposal at the WL-N WWTP using capacity allocated to NOVI, and in exchanged, wastewater flow from properties located in NOVI are transported for treatment and disposal at the South Commerce Wastewater Treatment Facility using available capacity at said facility. It is understood that COMMERCE is using capacity from NOVI solely as a customer of NOVI and not as a party to the Huron-Rouge Sewage Disposal System Walled Lake Arm Agreement and amendments thereto. It is also understood that NOVI is using capacity from COMMERCE solely as a customer of Commerce. This Agreement shall supersede and replace the 1991 Agreement (and amendments related thereto) between the Parties.
3. Permanent Service Areas. The service areas within COMMERCE and NOVI to be served on a permanent basis by capacity exchanged pursuant to this Agreement shall be within the boundary limits depicted on the attached Exhibit A. The specific properties to receive treatment and disposal services within those limits shall be determined exclusively by the municipality in which the properties are located. The foregoing shall be defined as "Permanent Service Areas."
4. Capacity Assigned. COMMERCE and NOVI shall each be entitled to send 0.54 MGD of wastewater to the other party's wastewater treatment facility from properties located within the Permanent Service Areas depicted on Exhibit A. Except as provided herein, neither COMMERCE nor NOVI is authorized or obligated by this Agreement to provide sewer facilities or wastewater disposal services outside the respective Permanent Service Areas. It is understood, however, that the properties located along 14 Mile Road in NOVI and not within the Permanent Service Area for NOVI described in Exhibit A, are

an exception to the foregoing, and are currently, and may continue to be serviced by COMMERCE in accordance with the applicable agreement between Commerce and Novi.

5. Connection Charges, Tap Fees and Capital Charges. NOVI and COMMERCE shall collect and retain connection charges, tap fees, and capital charges from the customers located within their respective municipal boundaries. Each municipality will charge the customers located within their respective municipal boundaries, in accordance with their respective ordinance or fee schedule and as provided in Section 6.
6. Calculation of Wastewater Services Costs Novi and Commerce Exchange.
 - (a) NOVI will charge and COMMERCE will pay all costs related to the wastewater services, including, operation and maintenance expenses, based on wastewater flow from the permanent service area located in COMMERCE and tributary to the WL-N WWTP. The charges shall be calculated based on the metered annual average flow from the permanent service area located in COMMERCE as a percentage of total annual average flow metered at the WL-N WWTP. The calculation formula is as follows: Commerce Flow divided by the Total WL-N WWTP Flows, then multiplied by the total amount of the wastewater treatment costs at the WL-N WWTP Flow, equals the charges to COMMERCE for wastewater treatment services.
 - (b) COMMERCE will charge and NOVI will pay all costs related to the wastewater services, including, operation and maintenance expenses, based on wastewater flow from the permanent service area located in NOVI and tributary to the South Commerce Wastewater Treatment Facility. The charges shall be calculated based on the metered annual average flow from the permanent service area located in NOVI as a percentage of total annual average flow metered at the South Commerce Wastewater Treatment Facility. The calculation formula as follows: Novi Flow divided by the Total Commerce WWTP Flows then multiplied by the total amount for wastewater treatment costs at the South Commerce Wastewater Treatment Facility, equals the charges to NOVI for wastewater treatment services.
 - (c) Except as provided herein, COMMERCE and NOVI shall be responsible for billing customers within their respective boundaries. It is understood by COMMERCE and NOVI, that the properties located along 14 Mile Road in NOVI are an exception to 6(b), and COMMERCE shall continue to service and bill those properties directly for service in accordance with existing agreements executed on June 12, 2001 and August 1, 2007.
7. Operation and Maintenance of Sewers Transporting Flow. The length of sanitary sewer that carries NOVI and COMMERCE flows in COMMERCE is approximately the same length as the sanitary sewer that carries NOVI and COMMERCE flows in NOVI. Accordingly, COMMERCE and NOVI agree to not charge each other for the operation and maintenance costs for sanitary sewers that transport flow originating from each other's service areas.

8. Contribution for Capital Projects.

- a. It is understood that any capital improvement costs incurred by NOVI to operate and maintain the WL-N WWTP, a portion of such capital improvement costs (that is proportionate to the annual average flow from the COMMERCE permanent service area as a percentage of the total average annual flow at the WL-N WWTP), will be included as a component of the rate charged to COMMERCE by NOVI.
- b. It is understood that any capital improvement costs incurred by COMMERCE to operate and maintain the South Commerce Wastewater Treatment Facility, a portion of such capital improvement costs (that is proportionate to the annual average flow from the NOVI permanent service area as a percentage of the total average annual flow at the South Commerce Wastewater Treatment Facility), will be included as a component of the rate charged to NOVI by COMMERCE.

9. Sewer Construction. COMMERCE and NOVI shall be responsible for the construction of all collection and transmission sewer facilities (collectively, "sewer facilities") within their respective municipal boundaries. COMMERCE agrees to provide NOVI with the location of the point of discharge into NOVI's sewer facilities as shown on Exhibit A. NOVI agrees to provide COMMERCE with the location of the point of discharge into COMMERCE'S sewer facilities as shown on Exhibit A. All sewer connections shall be constructed in accordance with plans approved by the COUNTY, and if necessary, the Michigan Department of Environmental Quality. The cost of connecting to the discharge points shall be borne by that party making the connection to the other party's sewer main. Each party shall be responsible for the installation of any meters necessary for the measurement of sewage flows from the users within respective Permanent Service Areas.

10. Metering. The wastewater discharge points from either COMMERCE or NOVI community shall be metered in accordance with the standards established by the COUNTY. The COUNTY shall own, operate, and maintain the sewage meters in accordance with the agreement between the COUNTY and COMMERCE, and the agreement between the COUNTY, NOVI and WALLED LAKE.

11. Compliance with Ordinance. COMMERCE and NOVI have adopted or shall hereafter adopt one or more ordinances requiring the users within each municipality to comply with the provisions of the other's ordinance(s) relating to the treatment of wastewater, including but not limited to:

- (a) the regulation or prohibition concerning the discharge of fats, oils and grease or industrial waste to the wastewater collection systems; and,
- (b) the billing and collection of charges to recover the cost of sewer operation, maintenance and wastewater treatment and disposal.

12. Compliance with Regulations. To the extent permitted by law, COMMERCE and NOVI shall be responsible for the character of the wastewater flow originating within their

respective boundaries and shall comply with standards, rules and regulations controlling the design standards for sewers and the terms and conditions for the discharge of wastewater into WL-N WWTP or Commerce WWTP, including any federal, state or local rule, regulation or ordinance controlling the discharge of industrial and/or commercial type wastes or Industrial Pretreatment Program governing wastewater into the WL-N WWTP or Commerce WWTP. The Parties agree to cooperate in the enforcement thereof. "Industrial Pretreatment Program" means the program operated and enforced by the Parties, by which discharges from industrial users are regulated in accordance with the requirements of regulations established by U.S. EPA pursuant to 40 CFR Part 403.

13. System ownership. COMMERCE and NOVI agree that the infrastructure, including sewer lines, located within the primary service areas are owned by the municipality in which the infrastructure is located.
 - (a) The portion of COMMERCE that is tributary to the WL-N WWTP shall be treated as part of the South Commerce Wastewater Treatment System for the purposes of operation and maintenance pursuant to COMMERCE's agreement with the COUNTY, dated March 10, 1987 "Sewage Disposal Operating Agreement for South Commerce Wastewater Treatment Facility", as the same may be amended.
 - (b) The portion of NOVI that is tributary to the South Commerce Wastewater Treatment System shall be treated as part of the City of Novi Sewer System for the purpose of operation and maintenance pursuant to NOVI's agreement with the COUNTY, as the same may be amended.
14. Availability of Capacity. COMMERCE agrees to provide treatment capacity in the South Commerce Wastewater Treatment Facility sufficient to meet the commitments made to NOVI pursuant to this Agreement. NOVI, WALLED LAKE and COUNTY, agree to provide treatment capacity in the WL-N WWTP sufficient to meet the commitments made to COMMERCE in this contract. Neither Party shall do any act or enter into any agreement which will jeopardize the availability of capacity actually committed to the other Party, pursuant to this Agreement. By this Agreement, WALLED LAKE and COUNTY consent to the exchange of service area and wastewater disposal capacity between COMMERCE and NOVI.
15. Agreement Approval; Amendments; and Effective Date. This Agreement, and/or any subsequent amendments thereto, shall become effective upon approval by resolution of the governing bodies of COMMERCE, NOVI and WALLED LAKE, and signed by WRC on behalf of 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, which shall become the date the last Party approves and signs the Agreement.
16. Term and Termination. The Parties agree that this Agreement shall begin on the Effective Date of this Agreement, and shall terminate as provided herein, or unless, prior to the termination date, either the South Commerce Wastewater Treatment Facility or the WL-N WWTP shall cease to operate for a period of one year.

- (a) Initial Term. The term of this Agreement shall be for ten (10) years from the Effective Date of this Agreement.
 - (b) Renewal. At the conclusion of the first ten (10) year term, this Agreement shall automatically renew for an additional ten (10) year term, unless one of the Parties provides Notice of its intent to terminate the Agreement at least five (5) years prior to the end of Initial Term in accordance.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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:

CHARTER TOWNSHIP OF COMMERCE:

Township Clerk
Charter Township of Commerce
2009 Township Drive,
Commerce Township, Michigan 48382

CITY OF NOVI:

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

COUNTY OF OAKLAND:

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

CITY OF WALLED LAKE:

City Clerk
CITY OF WALLED LAKE
1499 E. West Maple
Walled Lake, Michigan 48390

23. 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.
24. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. This Agreement shall not be changed or supplemented orally and may be amended only as otherwise provided herein.
25. Recitals. The recitals shall be considered an integral part of the Agreement.

[Signatures and acknowledgements on following page]

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

CHARTER TOWNSHIP OF COMMERCE

By: _____
David E. Scott, Supervisor

By: _____
Melissa Creech, Township Clerk

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Cortney Hanson, City Clerk

COUNTY OF OAKLAND

By: _____
Jim Nash
Oakland County Water Resources Commissioner
In his capacity as "County Agency" pursuant to 1939 PA 342, as amended

CITY OF WALLED LAKE

By: _____
L. Dennis Whitt, City Manager

By: _____
Jennifer A. Stuart, City Clerk