



CITY of NOVI CITY COUNCIL

**Agenda Item 6
July 27, 2015**

SUBJECT: Adoption of resolution and approval of agreement with the Detroit Water and Sewerage Department (DWSD) and the Great Lakes Water Authority (GLWA) to assign the City of Novi's wholesale water service customer contract from DWSD to GLWA.

SUBMITTING DEPARTMENT: Department of Public Services, Water and Sewer Division *TDK GA*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

On June 12, 2015, the City of Detroit and the Great Lakes Water Authority (GLWA) approved an agreement to lease the Detroit Water and Sewerage Department (DWSD) water and sewer systems to the GLWA. Under the terms of the Regional Water Supply System Lease Agreement, the Great Lakes Water Authority has assumed responsibility for the operations of the Detroit-owned water system and will be the provider of future water service to wholesale customers. The lease agreement assigns all DWSD wholesale water service contracts to GLWA; however, Article 13 of the existing water service contracts requires the City's written consent to assign the contract to the GLWA. DWSD must assign all wholesale customers to the GLWA prior to January 1, 2016 so that the lease agreement can become effective on that date.

Johnson, Rosati, Schultz. And Joppich (JRSJ) has reviewed the attached Agreement to Assign Wholesale Customer Water Service Contract and corresponding Resolution Regarding Assignment Agreement with the City of Detroit and the GLWA and has found no legal impediment to their approval. A copy of the JRSJ review letter, the Assignment Agreement, and Resolution are attached for reference. Also attached is a fact sheet regarding the proposed lease agreement for reference.

RECOMMENDED ACTION:

Adoption of resolution and approval of agreement with the Detroit Water and Sewerage Department (DWSD) and the Great Lakes Water Authority (GLWA) to assign the City of Novi's wholesale water service customer contract from DWSD to GLWA.

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

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

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

**RESOLUTION REGARDING ASSIGNMENT AGREEMENT WITH THE CITY OF DETROIT
AND THE GREAT LAKES WATER AUTHORITY**

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 _____, _____, at ____ 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, on September 9, 2014, a Memorandum of Understanding Regarding the Formation of the Great Lakes Water Authority was adopted by the City of Detroit, the State of Michigan and the counties of Wayne, Oakland and Macomb; and

WHEREAS, the Memorandum of Understanding required, among other things, that the City of Detroit and the counties of Wayne, Oakland and Macomb adopt Articles of Incorporation no later than October 10, 2014, and that the City of Detroit and the Great Lakes Water Authority execute a lease agreement regarding the operation and management of the Detroit water supply and sewage disposal systems; and

WHEREAS, on October 10, 2014, the City of Detroit and the counties of Wayne, Oakland and Macomb adopted the Articles of Incorporation of Great Lakes Water Authority; and

WHEREAS, on June 12, 2015, the City of Detroit and the Great Lakes Water Authority executed two 40-year lease agreements regarding (1) the operation and management of the Detroit water supply system ("Water Lease") and (2) the operation and management of the Detroit sewage disposal system; and

WHEREAS, Pursuant to Sections 4.1(a)(i), 4.1(d) and 4.4 of the Water Lease, the City of Detroit assigned and the Great Lakes Water Authority assumed all of Detroit's rights, duties, liabilities, responsibilities and obligations under the wholesale customer water contracts without any impairment to said contracts; and

WHEREAS, Article III of the Water Lease provides that the effective date of the Water Lease is dependent upon the satisfaction of certain conditions precedent, including obtaining the consent of the wholesale water customers to the assignment of their 30-year water service contracts to the Great Lakes Water Authority pursuant to Section 3.2(j) of the Water Lease; and

WHEREAS, pursuant to the Water Lease, and as provided in Article 13 of the Water Service Contract, the City of Detroit has presented an Agreement to Assign Wholesale Customer Water Service Contract between the City of Detroit Water and Sewerage Department, the Great Lakes Water Authority and this community for the assignment of the Water Service Contract with the City of Detroit Water and Sewerage Department to the Great Lakes Water Authority with a request for approval; and

WHEREAS, this City Council finds it is in the best interests of the City of Novi to consent to the assignment of the Water Service Contract to the Great Lakes Water Authority;

NOW THEREFORE BE IT RESOLVED, that the attached Agreement to Assign Wholesale Customer Water Service Contract between the City of Detroit Water and Sewerage Department, the Great Lakes Water Authority, and the City of Novi is approved; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution and the executed Agreement to Assign Wholesale Customer Water Service Contract be returned to the City of Detroit Water and Sewerage Department within seven (7) days of the date of this Resolution.

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 _____, 2015, 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

Agreement to Assign Wholesale Customer Water Service Contract

This Agreement to Assign Wholesale Customer Water Service Contract ("Agreement") is entered into by and between the City of Detroit Water and Sewerage Department, a Michigan municipal corporation ("Detroit"), and the Great Lakes Water Authority, a Michigan municipal authority and public body corporate created pursuant to Act 233 of 1955 ("GLWA"), and the **CITY OF NOVI**, a Michigan municipal corporation ("Customer") (collectively, the "Parties"), and states as follows:

Recitals

A. Detroit and Customer entered into a water service contract dated _____, 2015, as subsequently amended ("Contract"), which is fully incorporated by reference; and

B. On June 12, 2015, Detroit and the GLWA entered into a lease agreement whereby the GLWA was conveyed, amongst other items, a leasehold interest in all Detroit water facilities ("Water Lease Agreement"); and

C. Pursuant to Sections 4.1(a)(i), 4.1(d) and 4.4 of the Water Lease Agreement, Detroit has assigned and the GLWA has assumed all of Detroit's rights, duties, liabilities, responsibilities and obligations (collectively, "Rights and Obligations") under the Contract without any impairment to the Contract; and

D. Article III of the Water Lease Agreement provides that the effective date of the Water Lease Agreement is dependent upon the satisfaction of certain conditions precedent, including obtaining the consent of Customer to the assignment of its Contract to the GLWA as provided in Section 3.2(j); and

E. The Parties intend to achieve a novation of the Contract by the substitution of the GLWA for Detroit with respect to all rights and Obligations under the Contract; and

Accordingly, in consideration for Detroit's agreement to assign its Rights and Obligations under the Contract, and the GLWA's agreement to assume those Rights and Obligations, and the Customer's agreement to accept this substitution, the Parties agree as follows:

1. The GLWA shall be assigned Detroit's Rights and Obligations under the Contract as of the date upon which the conditions precedent to the Water Lease Agreement have been met, which date shall be the effective date of the novation and of this Agreement ("Effective Date"). All terms and conditions of this Agreement shall take effect only upon the Effective Date. In the event that the conditions precedent necessary to effectuate the Water Lease Agreement are not met, then this Agreement shall become null and void and shall have no legal effect.

2. The Rights and Obligations of Detroit under the Contract shall be extinguished and Detroit waives any claims and rights against the Customer that it now has or may have in the future in connection with the Contract and shall not be permitted to bring any such claims against Customer. Any claim brought in violation of this Agreement shall be controlled by the terms of the Water Lease Agreement.

3. The GLWA shall be bound by and perform the Contract in accordance with the terms and conditions of the Contract. The GLWA assumes all Rights and Obligations of, and all claims against, Detroit under the Contract as if the GLWA were the original party to the Contract. The GLWA ratifies all previous actions taken by Detroit with respect to the Contract, with the same force and effect as if the action had been taken by the GLWA.

4. The Customer recognizes the GLWA as Detroit's successor in interest in and to the Contract and that the GLWA is entitled to all rights, titles and interests of Detroit in and to the Contract as if the GLWA were the original party to the Contract.

5. All terms, conditions, and covenants of the Contract shall remain in full force and effect, and the GLWA shall fulfill all such terms, conditions and covenants.

6. This Agreement and all actions arising under it shall be governed by the law of the State of Michigan.

7. This Agreement may be executed and delivered in counterparts, including by facsimile transmission, each of which will be deemed an original.

In Witness Whereof, the Parties, by their duly authorized officers and representatives, indicate their concurrence with the terms and conditions of this Agreement:

City of Detroit, Water and Sewerage Department:

By: _____
Sue F. McCormick
Its: Director

Great Lakes Water Authority:

APPROVED BY GLWA
BOARD OF DIRECTORS ON:

By: _____
Sue F. McCormick
Its: Interim Chief Executive Officer

Date

City of Novi:

By: _____
Robert J. Gatt
Its: Mayor

By: _____
Maryanne Cornelius
Its: City Clerk

APPROVED BY
CUSTOMER CITY COUNCIL ON:

Date



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.jrsjlaw.com

July 6, 2015

Peter Auger, City Manager
City of Novi
45175 Ten Mile
Novi, MI 48375

RE: Great Lakes Water Authority – Agreement to Assign Wholesale Customer Water Service Contract

Dear Mr. Auger:

On June 12, 2015, the Board of the Great Lakes Water Authority (GLWA) approved the Regional Water Supply System Lease transferring authority to operate and maintain the existing Detroit Water and Sewer Department (DWSD) water system, excluding facilities serving residents of the City of Detroit, from DWSD to the GLWA in accordance with the City of Detroit's Bankruptcy Plan of Adjustment. On June 24, 2015, DWSD's Board of Water Commissioners passed Resolution 15-1075 authorizing DWSD's Director to take all actions necessary to effectuate the assignment of DWSD's Wholesale Customer Water and Sewer Service Contracts to the GLWA.

In accordance with the Regional Water Supply System Lease, DWSD must assign all of its rights and obligations in its existing Wholesale Water and Sewer Service Contracts to the GLWA before January 1, 2016 as a condition precedent to the effectiveness of the Lease. In order to complete the Assignment of the City's existing Water Service Contract and subsequent amendments to GLWA, DWSD has prepared the enclosed Agreement to Assign Wholesale Customer Water Service Contract and corresponding Resolution Regarding Assignment Agreement with the City of Detroit and the Great Lakes Water Authority.

We have reviewed the Agreement to Assign the City's existing Wholesale Customer Water Service Contract from DWSD to GLWA. The assignment does not change the terms of the existing Water Service Contract or the calculation of rates based on the City's max day and peak hour usage as set forth in the attached Exhibit B to the City's amended Water Service Contract. Any increase or decrease in rates by the GLWA would not be expected to occur in the 2015/2016 rate season and would be based on preparation of the GLWA budget, rather than any changes to the rate methodology set forth in the existing Water Service Contract. Because the only change to the City's existing Water Service Contract will be the change in the entity

Peter Auger, City Manager
City of Novi
July 6, 2015
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operating the Regional Water System, we see no legal impediment to approval of the Agreement to Assign the City's existing Wholesale Customer Water Service Contract from DWSD to GLWA.

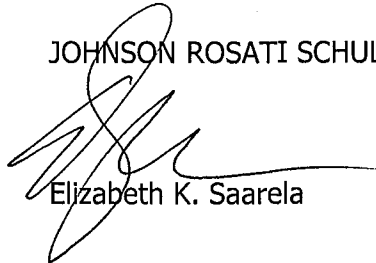
As discussed in prior updates, the Great Lakes Water Authority Board is made up of a representative from Wayne, Oakland and Macomb Counties, as well as two representatives of the City of Detroit and one representative of the State of Michigan. Sue McCormick, DWSD's current Director has been appointed Interim CEO of the GLWA while the GLWA considers an appropriate permanent candidate for the position.

Additionally, we have prepared and enclosed a revised version of the Resolution Regarding Assignment Agreement with the City of Detroit and the Great Lakes Water Authority into the City's standard Resolution format. The Resolution restates the purpose of the Assignment Agreement and is intended to evidence the City's approval of the Agreement. The Resolution will be returned to DWSD for its records.

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

Very truly yours,

JOHNSON ROSATI SCHULTZ & JOPPICH, P.C.



Elizabeth K. Saarela

EKS

Enclosures

C: Maryanne Cornelius, Clerk (w/Enclosures)
Rob Hayes, Public Services Director (w/Enclosures)
Brian Coburn, Engineering Manager (w/Enclosures)
Tim Kuhns, Water and Sewer Manager (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)



CITY OF DETROIT
WATER AND SEWERAGE DEPARTMENT
OFFICE OF THE DIRECTOR

735 RANDOLPH STREET
DETROIT, MICHIGAN 48226
WWW.DETROITMI.GOV
CITY CLERK'S OFFICE

2015 JUN 29 P 12:37

June 25, 2015

City Clerk
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Regarding: Request for Consent to Assignment of Water Contract

Dear Valued Water Customer:

I write to you today with exciting news about the future of your existing water service contract with the City of Detroit Water and Sewerage Department. On June 12, 2015, a historic agreement to lease the assets of the Detroit water supply and sewage disposal systems was reached between the City of Detroit and the Great Lakes Water Authority. Under the terms of the Regional Water Supply System Lease Agreement, the Great Lakes Water Authority has assumed responsibility for the operations of the Detroit-owned water system and will be the provider of future water service to our wholesale customers.

Rest assured that your community will continue to receive the high quality drinking water that you have come to rely on. However, as may be expected in such matters, certain actions must be taken by your community in order to assure that the Great Lakes Water Authority may legally continue to provide your water service. While the Regional Water Supply System Lease Agreement assigned all City of Detroit wholesale water service contracts to the Great Lakes Water Authority, Article 13 of your existing water service contract requires your written consent to this assignment. This letter is intended to serve as the City of Detroit's request to provide your community's consent to the assignment of its contract to the Great Lakes Water Authority. Aside from the change in service provider, the terms of your water service contract will not be changed by this assignment.

As you may imagine, the transition in operating responsibility from the Detroit Water and Sewerage Department to the Great Lakes Water Authority is on a "fast track" for completion and we need your help. Attached to this letter is an Agreement to Assign Wholesale Customer Water Service Contract between the City of Detroit Water and Sewerage Department, the Great Lakes Water Authority and your community, and a form of resolution approving the agreement; which resolution you may choose to utilize in your discretion. We have also attached a summary of both Lease Agreements for your use as background material. If you wish to consent to the assignment of your contract to the Great Lakes Water Authority, please have the attached Agreement to Assign Wholesale Customer Water Service Contract approved by your legislative body as soon as possible. The management and staff of the Detroit Water and Sewerage Department are willing and available to assist you in this process, including providing subject matter experts to meet with and discuss this matter with you and/or your legislative body, if you desire.

Please contact me at (313) 224-4701, or our contracted facilitator, Teresa Newman, at (248) 476-7577 with any questions you may have regarding this request. Finally, thank you for your continued cooperation and support as we move forward to implementing the Lease Agreements between the City of Detroit and the Great Lakes Water Authority.

Sincerely,

Sue F. McCormick
Director, Detroit Water and Sewerage Department
Interim CEO, Great Lakes Water Authority

Agreement to Assign Wholesale Customer Water Service Contract

This Agreement to Assign Wholesale Customer Water Service Contract (“Agreement”) is entered into by and between the City of Detroit Water and Sewerage Department, a Michigan municipal corporation (“Detroit”), and the Great Lakes Water Authority, a Michigan municipal authority and public body corporate created pursuant to Act 233 of 1955 (“GLWA”), and the City of Novi, a Michigan municipal corporation (“Customer”) (collectively, the “Parties”), and states as follows:

Recitals

A. Detroit and Customer entered into a water service contract dated July 21, 2009, as subsequently amended (“Contract”), which is fully incorporated by reference; and

B. On June 12, 2015, Detroit and the GLWA entered into a lease agreement whereby the GLWA was conveyed, amongst other items, a leasehold interest in all Detroit water facilities (“Water Lease Agreement”); and

C. Pursuant to Sections 4.1(a)(i), 4.1(d) and 4.4 of the Water Lease Agreement, Detroit has assigned and the GLWA has assumed all of Detroit’s rights, duties, liabilities, responsibilities and obligations (collectively, “Rights and Obligations”) under the Contract without any impairment to the Contract; and

D. Article III of the Water Lease Agreement provides that the effective date of the Water Lease Agreement is dependent upon the satisfaction of certain conditions precedent, including obtaining the consent of Customer to the assignment of its Contract to the GLWA as provided in Section 3.2(j); and

E. The Parties intend to achieve a novation of the Contract by the substitution of the GLWA for Detroit with respect to all rights and Obligations under the Contract; and

Accordingly, in consideration for Detroit’s agreement to assign its Rights and Obligations under the Contract, and the GLWA’s agreement to assume those Rights and Obligations, and the Customer’s agreement to accept this substitution, the Parties agree as follows:

1. The GLWA shall be assigned Detroit’s Rights and Obligations under the Contract as of the date upon which the conditions precedent to the Water Lease Agreement have been met, which date shall be the effective date of the novation and of this Agreement (“Effective Date”). All terms and conditions of this Agreement shall take effect only upon the Effective Date. In the event that the conditions precedent necessary to effectuate the Water Lease Agreement are not met, then this Agreement shall become null and void and shall have no legal effect.

2. The Rights and Obligations of Detroit under the Contract shall be extinguished and Detroit waives any claims and rights against the Customer that it now has or may have in the future in connection with the Contract and shall not be permitted to bring any such claims against Customer. Any claim brought in violation of this Agreement shall be controlled by the terms of the Water Lease Agreement.

3. The GLWA shall be bound by and perform the Contract in accordance with the terms and conditions of the Contract. The GLWA assumes all Rights and Obligations of, and all claims against, Detroit under the Contract as if the GLWA were the original party to the Contract. The GLWA ratifies all previous actions taken by Detroit with respect to the Contract, with the same force and effect as if the action had been taken by the GLWA.

4. The Customer recognizes the GLWA as Detroit's successor in interest in and to the Contract and that the GLWA is entitled to all rights, titles and interests of Detroit in and to the Contract as if the GLWA were the original party to the Contract.

5. All terms, conditions, and covenants of the Contract shall remain in full force and effect, and the GLWA shall fulfill all such terms, conditions and covenants.

6. This Agreement and all actions arising under it shall be governed by the law of the State of Michigan.

7. This Agreement may be executed and delivered in counterparts, including by facsimile transmission, each of which will be deemed an original.

In Witness Whereof, the Parties, by their duly authorized officers and representatives, indicate their concurrence with the terms and conditions of this Agreement:

City of Detroit, Water and Sewerage Department:

By: _____
Sue F. McCormick
Its: Director

Great Lakes Water Authority:

APPROVED BY GLWA
BOARD OF DIRECTORS ON:

By: _____
Sue F. McCormick
Its: Interim Chief Executive Officer

Date

City of Novi:

By: _____
Robert J. Gatt
Its: Mayor

By: _____
Maryanne Cornelius
Its: City Clerk

APPROVED BY
NOVI CITY COUNCIL ON:

Date

Resolution Regarding Assignment Agreement With The City Of Detroit
And The Great Lakes Water Authority

By Member: _____ :

Whereas, on September 9, 2014, a Memorandum of Understanding Regarding the Formation of the Great Lakes Water Authority was adopted by the City of Detroit, the State of Michigan and the counties of Wayne, Oakland and Macomb; and

Whereas, the Memorandum of Understanding required, among other things, that the City of Detroit and the counties of Wayne, Oakland and Macomb adopt Articles of Incorporation no later than October 10, 2014, and that the City of Detroit and the Great Lakes Water Authority execute a lease agreement regarding the operation and management of the Detroit water supply and sewage disposal systems; and

Whereas, on October 10, 2014, the City of Detroit and the counties of Wayne, Oakland and Macomb adopted the Articles of Incorporation of Great Lakes Water Authority; and

Whereas, on June 12, 2015, the City of Detroit and the Great Lakes Water Authority executed two 40-year lease agreements regarding (1) the operation and management of the Detroit water supply system ("Water Lease") and (2) the operation and management of the Detroit sewage disposal system; and

Whereas, Pursuant to Sections 4.1(a)(i), 4.1(d) and 4.4 of the Water Lease, the City of Detroit assigned and the Great Lakes Water Authority assumed all of Detroit's rights, duties, liabilities, responsibilities and obligations under the wholesale customer water contracts without any impairment to said contracts; and

Whereas, Article III of the Water Lease provides that the effective date of the Water Lease is dependent upon the satisfaction of certain conditions precedent, including obtaining the consent of the wholesale water customers to the assignment of their 30-year water service contracts to the Great Lakes Water Authority pursuant to Section 3.2(j) of the Water Lease; and

Whereas, pursuant to the Water Lease, and as provided in Article 13 of the Water Service Contract, the City of Detroit has presented an Agreement to Assign Wholesale Customer Water Service Contract between the City of Detroit Water and Sewerage Department, the Great Lakes Water Authority and this community for the assignment of the Water Service Contract with the City of Detroit Water and Sewerage Department to the Great Lakes Water Authority with a request for approval; and

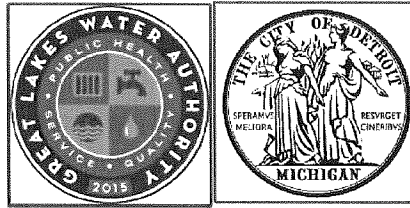
Whereas, this Honorable Body finds it is in the best interests of this community to consent to the assignment of the Water Service Contract to the Great Lakes Water Authority;

NOW THEREFORE BE IT RESOLVED, that the attached Agreement to Assign Wholesale Customer Water Service Contract between the City of Detroit Water and Sewerage Department, the Great Lakes Water Authority, and _____ is approved; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution and the executed Agreement to Assign Wholesale Customer Water Service Contract be returned to the City of Detroit Water and Sewerage Department within seven (7) days of the date of this Resolution.

Adopted by _____

Date: _____, 2015



City of Detroit-Great Lakes Water Authority Water & Sewer Leases & Service Agreement

WATER AND SEWER FACILITIES LEASES:

- GLWA to be conveyed (via a leasehold interest) all regional water and sewerage facilities.
- GLWA to be conveyed interest in all water and sewer system revenues including City of Detroit retail revenues.
- DWSD bonds to be assigned to GLWA and are payable solely from Net Revenues of the System, no full faith and credit pledge.
- GLWA revenue requirements that are targeted not to increase by more than 4 percent per year include \$50M lease payment, \$4.5M Water Residential Assistance Program payment and GLWA employee related frozen Pension Obligation as expenses shared regionally (on a “common-to-all” basis).
 - Per an independent study conducted by Plante & Moran the 4-percent revenue increase cap is sufficient to support these payments and provide funds for “common-to-all” revenue-financed capital.
- The \$50M lease payment may only be used, at City’s discretion, to pay for Detroit local capital improvements or Detroit’s debt service obligations for bonds issued to pay for local or regional improvements.
- A budget stabilization fund to be created and funds set aside from Detroit retail revenues to ensure Detroit meets its customer collection responsibilities.
- GLWA to be assigned existing wholesale service contracts (subject to any required customer approvals not to be unreasonably withheld), vendor contracts, and labor contracts. GLWA is a successor employer.

WATER AND SEWER SERVICES AGREEMENT:

- City of Detroit is delegated, as Authority’s agent, responsibility for setting retail rates, billing, collection and enforcement. Revocable by Authority in event of failure to satisfy requirements.