



CITY of NOVI CITY COUNCIL

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**Agenda Item D
August 13, 2007**

SUBJECT: Approval of Sewer Abandonment and Sanitary Sewer Cost Sharing Agreement between the City of Novi and Novi Land Company, L.L.C. (Big Boy Property located at Novi Road and Fonda Drive) associated with sanitary sewer improvements to existing service lead.

SUBMITTING DEPARTMENT: Public Works

CITY MANAGER APPROVAL

A handwritten signature in black ink, appearing to be 'A', written over the 'CITY MANAGER APPROVAL' text.

| | |
|-----------------------------|-----------------------------------------------------------|
| EXPENDITURE REQUIRED | \$20,000 (based on agreement estimate) |
| AMOUNT BUDGETED | N/A (this is a capital asset for the W&S Fund) |
| LINE ITEM NUMBER | 592-000.00-150.000 |

BACKGROUND INFORMATION:

Staff has been discussing abandoning the City's sanitary sewer line on Novi Road between I-96 and Fonda Drive for a number of years because it has deteriorated and is in danger of collapsing. Prior to this abandonment, we need to relocate Big Boy's private sewer service lead. They are the only customer connected to this main line.

We have been working with the property owners to control grease related incidents that continue to occur along Novi Road. The sanitary sewer is partially located in the Novi Road right-of-way south of the I-96 freeway. The age of the infrastructure, continual cleaning, and previous sewer failures have negatively impacted this part of the system. The DPW recommends abandoning the existing sewer lead and installing a new grease interceptor and connection to the public sanitary sewer located on the east side of Fonda Drive

We have worked with the City Attorney and Big Boy owners to prepare the attached Sanitary Sewer Cost Sharing Agreement. The Agreement allows for the existing service lead on the Big Boy property to be relocated to another portion of the City's public sanitary sewerage disposal system and permits the abandonment of the City sewer. The estimated cost to relocate the existing service lead and install a new connection is \$50,000. The City will approve the plans and oversee the construction. The Restaurant Owner will pay approximately 60% of the project cost; the City will pay 40% or a not to exceed cost of \$20,000. Sewer abandonment costs are estimated to be \$50,000 and will be the City's responsibility.

We have assisted Big Boy in obtaining quotes and will work with the firm that they select to perform this work. This project is anticipated to begin mid-August and be completed within ten days. Novi Road traffic will not be impacted as the majority of the work will be performed on Fonda Drive and the adjacent greenbelt.

RECOMMENDED ACTION: Approval of Sewer Abandonment and Sanitary Sewer Cost Sharing Agreement between the City of Novi and Novi Land Company, L.L.C. (Big Boy Property located at Novi Road and Fonda Drive) associated with sanitary sewer improvements to existing service lead.

| | 1 | 2 | Y | N |
|-------------------------|---|---|---|---|
| Mayor Landry | | | | |
| Mayor Pro Tem Capello | | | | |
| Council Member Gatt | | | | |
| Council Member Margolis | | | | |

| | 1 | 2 | Y | N |
|----------------------|---|---|---|---|
| Council Member Mutch | | | | |
| Council Member Nagy | | | | |
| Council Member Paul | | | | |

City of Novi - Water Department

The intersection of Crescent Blvd and Novi Rd including Sewer mains and right-of-ways.



CITY OF NOVI
DEPARTMENT OF PUBLIC WORKS &
DEPARTMENTS OF WATER & SEWER
NOVI CITY DPW OFFICES
26300 DELWAL
NOVI, MI 48375
(248) 735-5640
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Map Print Date: July 26, 2007
Map Author: Jeff Van Curler
0 60 120 240 360
FEET
1 INCH EQUALS 140 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 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

SANITARY SEWER COST SHARING AGREEMENT

THIS SANITARY SEWER COST SHARING AGREEMENT (this "Agreement") is made and entered into as of June __, 2007, between **Novi Land Company, L.L.C.**, whose address is 820 Mohawk, Dearborn, MI , 48124 ("Restaurant Owner"), and the **City of Novi**, a Michigan municipal corporation (the "City"), having its principal office at 45175 W. Ten Mile Road, Novi, MI 48375.

R E C I T A L S:

A. Restaurant Owner is the fee owner of property currently used for restaurant purposes located in the City of Novi, State of Michigan, on Novi Road near the I-96 interchange (the "Big Boy Property").

B. The Big Boy Property has a failing sanitary sewer Existing Service Lead in need of improvements (the "Existing Service Lead").

C. The City has an existing public sanitary sewer line under Novi Road between I-96 and Fonda Road (the "City Sewer"). The City Sewer is deteriorating to the point of potential failure and is not reasonably possible to repair or replace without the City incurring great expense and interference with traffic on Novi Road. The City Sewer within Novi Road currently serves only the Big Boy Property. If the Existing Service Lead on the Big Boy Property is relocated and connected to the City's sanitary sewage disposal system in a different location, the City can abandon the City Sewer.

D. The City has determined that reconstructing and relocating the Existing Service Lead on the Big Boy Property will provide a benefit to the general public overall by enabling the City to abandon the City Sewer that would otherwise be costly and dangerous to repair. Therefore, the City desires to enter into a cost sharing agreement with the Restaurant Owner to reconstruct the Existing Service Lead on the Big Boy Property in a different location to allow for connection to another portion of the City's public sanitary sewage disposal system and, thus permit abandonment of the City Sewer.

E. The Restaurant Owner shall provide, and the City shall review and approve proposed plans, subject to the City's reasonable discretion, to relocate the Existing Service Lead on the Big Boy Property. The estimated cost to reconstruct and relocate the Existing Service Lead and replace it with a new service lead (the "New Existing Service Lead") is \$50,000.00. In

accordance with the provisions below, the Restaurant Owner shall pay approximately sixty (60%) percent of the cost of financing, designing, and constructing the New Service Lead facilities, including, without limitation, costs or expenditures (whether incurred before or after execution of this Agreement) related to engineering design and review, legal services, administrative implementation and oversight, and contingency costs (hereafter, "Project Costs"). In turn, the City agrees to pay approximately, 40% of the cost, or a total of \$20,000.00, which will be paid by City funds, representing the benefit to the City at large. In all events, however, the City's share of the costs shall not exceed \$20,000.00, no matter what the actual cost of construction of the New Sewer Lead turns out to be. The Project Costs do not include expenses related to actual abandonment expenses for the City Sewer, which costs shall be incurred by the City alone.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy thereof being expressly acknowledged, Restaurant Owner and City agree as follows:

1. Construction and Design. Restaurant Owner shall, at its sole cost and expense, oversee the design and construction of the New Service Lead on the Big Boy Property, which shall be reviewed and approved by the City. The New Service Lead shall be designed and constructed by Restaurant Owner's Contractor, _____ ("Contractor"). The New Service Lead shall be constructed in accordance with all applicable laws and ordinances. Restaurant Owner shall require Contractor to perform the work in a competent, efficient, timely, good, and workmanlike manner. Contractor shall be properly bonded and insured.

2. Costs and Expenses. The estimated total cost for the installation of the New Service Lead is \$50,000.00. Notwithstanding the actual costs and expenses in connection with the installation of the New Service Lead and the City shall reimburse Owner in the amount of \$20,000.00 upon completion of the construction and approval by the City.

3. Restaurant Owner hereby covenants and agrees that any change, modification, or alteration to the design, plan and/or specifications of the New Service Lead resulting in an increase in the total costs and expenses for the installation of the New Service Lead shall be the responsibility of Restaurant Owner.

4. Governmental Immunity. It is the intention of the parties hereto that this Agreement shall not, in any manner, be construed to waive the defense of governmental immunity, which the parties hereto possess prior to the execution of this Agreement.

5. Scope. It is the intention of the parties hereto that this Agreement is not made for the benefit of any third party. Restaurant Owner shall not assign this Agreement or any part thereof without the written consent of the City.

6. Non Discrimination Covenant. In accordance with Michigan 1976 PA 453, the parties hereto agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, because of race, color,

religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Michigan 1976 PA No. 220, as amended, the parties hereby agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

7. Hold Harmless. Restaurant Owner hereby agrees to indemnify, defend, and save harmless the City, its officers and employees from any and all claims, demands, or suits of any nature whatsoever, whether known or unknown, and whether groundless or not, for damages which may arise from the installation of the New Service Lead by Restaurant Owner or its agents, contractors, or employees, including the Contractor.

8. Amendment. This Agreement may not be amended at any time without the consent of the City and Restaurant Owner, or their respective successors and assigns, as the case may be.

9. Controlling Law. This Agreement shall be controlled, construed, and enforced in accordance with the laws of the State of Michigan.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

OWNER:

NOVI LAND COMPANY, L.L.C.,
a Michigan limited liability company

By: _____
Name: _____
Its: _____

CITY:

CITY OF NOVI,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____