



CITY of NOVI CITY COUNCIL

Agenda Item 3
February 7, 2011

SUBJECT: Approval of Interagency Agreement between Wayne County and the City of Novi for Rouge River National Wet Weather Demonstration Project Round X – Part B Funding for Regional Basin Retrofit Projects (Leavenworth, Lexington Green and Thornton Regional Stormwater Detention Basins) to allow the award of a federal storm water facility improvement grant. The grant award amount is \$202,500 with a local match of \$202,500 from the City's Drain Fund.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTL*

CITY MANAGER APPROVAL: *[Handwritten signatures]*

EXPENDITURE REQUIRED	\$ 405,000 (\$82,000 for design phase in FY10-11, \$323,000 for construction phase in FY11-12, \$202,500 to be offset by grant)
AMOUNT BUDGETED	\$ 0
APPROPRIATION REQUIRED	\$ 405,000 (\$202,500 Drain Fund—Fund Balance, \$202,500 offset by grant funds)
LINE ITEM NUMBER	To be determined (Drain Fund)

BACKGROUND INFORMATION:

The City of Novi has been awarded a federal grant through the Rouge River National Wet Weather Demonstration Project for improving the Leavenworth, Lexington Green and Thornton Regional Retention Basins. The Leavenworth Basin is located south of Grand River Avenue between Taft Road and Novi Road, the Lexington Green Basin is located south of Nine Mile Road between Taft Road and Beck Road, and the Thornton Basin is located north of Nine Mile Road between Beck Road and Taft Road (see attached location map). Improvements to these basins were recommended by the Phase II Storm Water Master Plan completed in 2007. DPS's Engineering Division staff applied for and the City was notified in June 2010 that it would be awarded a 50% matching grant in June 2010 for improvements to the three basins.

The federal grant is administered by the Rouge Project Office and the Wayne County Department of Environment. The total project cost is estimated to be \$405,000, making the grant amount \$202,500. Similar grant funding was used in recent years for improvements to the following regional detention basins: Taft, Bishop, Dunbarton, and Haggerty. As with past grant projects, an interagency agreement with Wayne County is required to receive the grant.

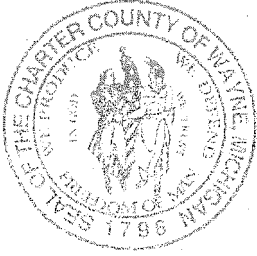
The agreement has been reviewed by the City Attorney's office (Beth Kudla's January 25, 2011 letter, attached).

A Request for Proposals was sent to the City's three pre-qualified firms for public projects and staff is currently reviewing the proposals. The engineering award will be prepared for City Council consideration on a future agenda. It is anticipated that the project will be completed by July 31, 2012.

RECOMMENDED ACTION: Approval of Interagency Agreement between Wayne County and the City of Novi for Rouge River National Wet Weather Demonstration Project Round X – Part B Funding for Regional Basin Retrofit Projects (Leavenworth, Lexington Green and Thornton Regional Stormwater Detention Basins) to allow the award of a federal storm water facility improvement grant. The grant award amount is \$202,500 with a local match of \$202,500 from the City's Drain Fund.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

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



Robert A. Ficano
County Executive

June 24, 2010

Mr. Brian Coburn, P.E.
City of Novi
26300 Delwal Drive
Novi, MI 48375

**RE: Rouge River National Wet Weather Demonstration Project
Round X, Part "B" Grant Program for Storm Water General Permit Activities
Regional Basin Retrofits for Water Quality Improvements Project (RXB-13)**

Dear Mr. Coburn:

The Wayne County Department of Public Services has reviewed your proposal for the above-referenced project under the Rouge River National Wet Weather Demonstration Project (Rouge Project), Round X – Part "B" Grant Program for Storm Water General Permit Activities. Wayne County received 20 proposals requesting \$2.55 million in federal funding under Part B. These projects were reviewed and ranked based on the criteria identified in the March 1, 2010 Rouge Project document "Notice of Grant Availability, Round X for Permit Compliance Activities" and on federal and Rouge Project requirements and goals. Based on the review team's evaluation and recommendation, your proposal dated April 12, 2010 for **the above-referenced project has been selected for funding under the Rouge Project Round X-Part B Grant Program for Storm Water General Permit Activities**. This selection is pending approval of the list of projects recommended for Rouge Project grant funding by the Wayne County Executive and the Wayne County Commission. Additionally, the Executive Committee of the Alliance of Rouge Communities (ARC) will also review the list of projects recommended for Round X Rouge Project grant funding at their June 29, 2010 meeting.

Please note that we had to be selective in the award of projects and we may need you to refine the scope of work and/or cost estimates for this project in order to receive Rouge Project funding for its implementation. Please contact Mr. Razik Alsaigh at (313) 967-2283 to discuss the grant-funded scope of work, budget and schedule for your project and to begin development of the interagency agreement.

As described in the Notice of Grant Availability, please note that the interagency agreement for this project will include a requirement that your community remain a member of good standing in the ARC for the duration of the agreement. If your community chooses not to remain an ARC member during the term of the agreement, Wayne County may terminate the agreement before project completion.

Congratulations on your successful proposal. We look forward to continuing to work with you to restore and protect the Rouge River.

Very truly yours,

Kelly A. Cave, P.E.
Director, Water Quality Management Division

cc: Razik Alsaigh, Wayne County DPS-WQMD



January 25, 2011

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-
3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Mr. Ben Croy, Civil Engineer
Engineering Division
City of Novi
26300 Delwal Drive
Novi, Michigan 48375

**RE: Rouge River National Wet Weather Demonstration Project
Grant Agreement Form
Our File No. 55124 NOV**

Dear Mr. Croy:

Our office has reviewed the proposed Grant Agreement form for the Rouge River National Wet Weather Demonstration Project. We note that the form is similar to the form that has been used for past projects and that the particulars including the amount of the grant and matching share amounts have not yet been included. Generally, as with the form in the past, in administering the Agreement, the appropriate City personnel should have copies of the federal regulations specifically referenced as governing certain procedures throughout the project. The relevant Federal Regulations include:

- (a) 40 CFR Part 31 (Administrative Requirements for Grants And Cooperative Agreements To State And Local Governments).
- (b) 49 CFR Part 24 (Rules Governing Issuance Of And Administrative Hearings On Interim Status Corrective Action Orders).
- (c) 40 CFR Part 31.32 (Equipment).
- (d) 40 CFR Part 31.36 (Procurement).

Our comments with respect to the *Grant Agreement Form* include the following:

1. It appears the reference to "40 CFR 30" in Section 15.3 should be to "40 CFR 31."
2. We question whether Section 10.3.6 regarding Automobile No-Fault Insurance should reference and include "County" vehicles in

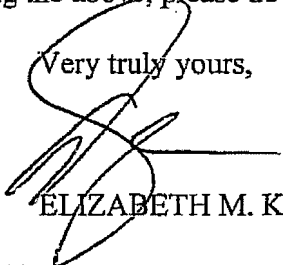
Ben Croy, Civil Engineer
January 25, 2011
Page 2

the second line of that provision. It would be more appropriate as "City" vehicles.

3. We assume that that City's risk manager has reviewed and approved Article X, regarding the City's insurance obligations for the Project. If not, a copy should be provided to him for review.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,

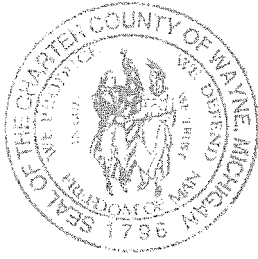


ELIZABETH M. KUDLA

EMK

cc: Maryanne Cornelius, City Clerk
Rob Hayes, City Engineer
Thomas R. Schultz, Esquire

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Robert A. Ficano
County Executive

January 21, 2011

Mr. Benjamin Cory, P.E.
Department of Public Services-Engineering Division
City of Novi
Field Services Complex
26300 Delwal Drive
Novi, MI 48375

**RE: Rouge River National Wet Weather Demonstration Project
Round X, Part "B" Grant Program for Storm Water General Permit Activities
Regional Basin Retrofits for Water Quality Improvements Project (RXB-13)**

Dear Mr. Cory:

Enclosed is the proposed interagency agreement (IAA) between Wayne County and the City of Novi. This agreement will provide federal grant funds for the "Regional Basin Retrofits for Water Quality Improvements Project" under the Round X Part B subgrant program of the Rouge River National Wet Weather Demonstration Project (Rouge Project). Please review this agreement and its attachments. If the agreement is acceptable as presented, please have the appropriate official sign three copies and return them to Mr. Razik Alsaigh at the following address:

Mr. Razik Alsaigh
Wayne County Department of Public Services
Water Quality Management Division
400 Monroe, Suite 400
Detroit, Michigan 48226

Upon receipt of the signed agreement from your office, our department will forward the agreement to the Wayne County Executive for review and approval. After signature by Wayne County, we will return one copy of the executed agreement for your records.

Please note that Article 8.2 of the IAA project specifies that your organization remain a member in good standing of the Alliance of Rouge Communities (ARC) for the duration of the agreement. If your organization chooses not to remain an ARC member during the term of the inter-agency agreement, Wayne County may terminate the agreement before project completion.

We would like to bring to your attention the final project summary report mentioned in article 1.3 of the IAA. This report should be completed at the end of the project. An important aspect of this report is the project evaluation. The evaluation should assess the project in terms of benefits to the Rouge River, project costs, and overall effectiveness of the project. Please work

Mr. Benjamin Cory, P.E.
January 21, 2011
Page 2

with Mr. Alsaigh to identify the details required to complete the final project summary report and the project progress update schedule.

Also, please note article 3.1 of the IAA, which specifies that modifications to the internal distribution of monies allocated among project elements are only allowed upon written agreement of Wayne County. Such request should be made prior to expenditure of any funds related to the proposed modification. Similarly, per article 19.1, requests for changes to the project schedule must also be by written agreement between your organization and Wayne County.

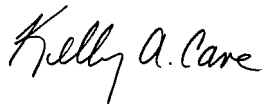
You should carefully review all provisions of the Rouge Project IAA. Recent changes to this document from previous versions include but are not limited to:

- Article 6.4 of the IAA, which specifies **revised fair share goals** for the Rouge Project grant under which this subgrant is funded. The federal regulation regarding Disadvantaged Business Enterprises (DBEs) has been changed and some firms that were considered as DBEs under the old regulation may not qualify as DBEs under the new regulation. All DBE contractors must be certified by Wayne County or an appropriate agency as specified by the Michigan Unified Certification Program (MUCP) (see http://www.michigan.gov/mdot/0,1607,7-151-9625_21539_23108---,00.html). The DBE firm must also be certified as a MBE/WBE by Wayne County or the Michigan Department of Transportation.
- Articles 6.11 and 6.12 of the IAA, which clarify the procurement and contractual requirements for the Rouge Grant per the 40 CFR 31.

Your project schedule is shown on page 6 of Attachment "A" to the IAA and all project costs should be incurred and project deliverables completed before July 30, 2012. If you would like to discuss any of the provisions of this agreement, please contact Mr. Razik Alsaigh via telephone at (313) 967-2283 or via email at ralsaigh@co.wayne.mi.us.

Thank you for your participation in the Rouge River Round X-Part B grant program for storm water general permit activities. We look forward to continuing our support of your efforts to help restore the beneficial uses of the Rouge River.

Sincerely,



Kelly A. Cave, P.E.
Director, Water Quality Management Division

cc: Razik Alsaigh, WCWQMD

**ROUGE RIVER NATIONAL WET WEATHER DEMONSTRATION PROJECT
ROUGE RIVER GENERAL PERMIT PROJECTS
GRANT AGREEMENT
BETWEEN THE COUNTY OF WAYNE AND
THE CITY OF NOVI**

THIS AGREEMENT is entered into this _____ day of _____, _____, between the County of Wayne, Michigan, a body corporate and Charter County ("County") and City of Novi ("*Entity*").

RECITALS

WHEREAS, the County is the recipient of, and is responsible for the administration of certain federal grant funds referred to as the Rouge River National Wet Weather Demonstration Project Grant ("Grant").

WHEREAS, the United States Environmental Protection Agency ("USEPA") has established Grant conditions and regulations that require the County to act as the responsible party with respect to the Grant, including those provisions described within 40 CFR § 31.

WHEREAS, the USEPA will supervise the Grant and Grant conditions in order that the Grant be used in accordance with the requirements of the law.

WHEREAS, the parties have agreed to follow certain administrative procedures and cooperate on the various tasks to be undertaken in order for the County to comply with the Grant's requirements and objectives.

WHEREAS, the Rouge River National Wet Weather Demonstration Project ("Rouge Project") is a comprehensive watershed-wide program addressing wet weather pollution problems ranging from controlling combined sewer overflows ("CSO") to storm water runoff in the Rouge River.

WHEREAS, one of the purposes of the Grant is to enable the County and local units of government within the Rouge River Watershed to evaluate alternative approaches for controlling sources of water pollution.

WHEREAS, implementing the activities and projects for investigating and controlling CSOs and sanitary sewer overflows will further the Grant's goal to protect public health and improve water quality in the Rouge River.

WHEREAS, implementing the National Pollutant Discharge Elimination System (NPDES) Wastewater Discharge General Permit for Storm Water Discharges from Municipal Separate Storm Water Drainage Systems (MS4s) – Watershed General Permit (Permit No. MIG619000) or the NPDES Wastewater Discharge General Permit for Storm Water Discharges from MS4s –

Jurisdictional General Permit (Permit No. MIS049000) (“Storm Water General Permits”) issued by the Michigan Department of Natural Resources and Environment (“MDNRE”) for the local unit will further the Grant’s goal to improve water quality and recreational use of the Rouge River.

WHEREAS, illicit discharge elimination, public education and subwatershed management plan implementation are considered examples of the types of activities included in the Storm Water General Permits which will assist in restoring the water quality of the Rouge River.

WHEREAS, the *Regional Basin Retrofits for Water Quality Improvements Project*, set forth in this Agreement would further the goals of the Grant.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, the parties hereby agree as follows:

**ARTICLE I
SCOPE OF PROJECT**

1.1 The County will provide a portion of the Grant to *Entity* to enable the *Entity* to do the activities described in Attachment “A.”

1.2 The budget presented in Attachment “A” along with the scope of work presented in Attachment “A” specify the performance of the work as anticipated at the time the contract is signed.

1.3 The *Entity* agrees to submit a Final Project Summary Report at the project end to assist the County in the grant close-out process. The Final Project Summary Report should generally include:

- A. A summarized clear description of the project. In addition to the project description, the report should include the following: project objectives; major elements of the project; project products completed (project products are listed in Attachment “A”); and project highlights.
- B. Comments on how the completion of this project benefited or is projected to improve the Rouge River.
- C. A written set of recommendations to other local governments and agencies that evaluates the benefits and cost effectiveness of the project. The evaluation should consider the total project cost. The recommendations should also summarize how the project was evaluated and the evaluation results of the effectiveness of the project.
- D. Comments on how the results of this project are transferable to other communities or agencies.
- E. List of all task products completed. The list should include the official name of the products.

**ARTICLE II
SCHEDULE OF WORK**

2.1 The time frame for completion of the project milestones is contained in Attachment “A.”

**ARTICLE III
FINANCIAL PROVISIONS AND BUDGET**

3.1 The detailed budget is contained in Attachment “A” and will be considered an approximation based on the best information available at the time of this Agreement. The internal distribution of the monies allocated among project elements may be modified by the *Entity* up to a total cumulative transfer among direct cost categories not to exceed 10% of the total budget without written approval by the County. Other modifications to the budget will be only upon written Agreement between the County and the *Entity*.

3.2 The County will provide funds from the Grant to partially fund the approved, allowed, and eligible costs for activities outlined in Attachment “A.” The total amount to be provided by the County from the Grant for this project shall not exceed \$202,500.00. The *Entity* shall provide a minimum match of \$202,500.00 or 50 percent of approved costs, which may be satisfied by demonstrating either cash or in-kind services from non-federal sources.

3.3 The County will hold the final 10 to 20 percent of the total federal funds allowable to the *Entity* until the completion of the project as identified in Attachment “A” by the *Entity*. Upon completion of all the tasks by the *Entity*, the approval of the *Entity’s* task products by the County, and the approval of the *Entity’s* submittal of the documentation of the final project cost by the County, the remaining 10 to 20 percent of the federal funds will be reimbursed to the *Entity*.

**ARTICLE IV
CONTRACT ADMINISTRATION AND PAYMENT**

4.1 This Agreement will be administered on a cost reimbursement basis. The *Entity* shall submit to the County project status reports and invoices on standard forms provided by the County.

4.2 All reports and invoices shall be submitted at least quarterly, no more than forty (40) days after each quarter end date. Reimbursements shall not be allowed without a status report submission.

4.3 Invoices must clearly identify:

- A. Total program outlays to the date of the invoice;
- B. The non-federal share of amount expended;
- C. The federal share of amount expended;
- D. The federal payments previously received;
- E. The reimbursements requested for the billing period;
- F. Project work element detail;
- G. Project direct costs and outside services;
- H. Time sheets for hourly employees and labor distribution sheets for salaried employees; and
- I. Documentation of all contractor costs.

4.4 The invoices must be certified for completeness and correctness by an appropriate *Entity* official.

4.5 All invoices will be paid by the County within thirty (30) days of receipt of funds from the USEPA.

4.6 The *Entity* will provide documentation to the County that demonstrates compliance with federal and state regulations before payments will be processed. The *Entity* will prepare all cost estimates for implementation of the planned activities, including a breakdown of eligible and ineligible cost items, with respect to grant funding. These cost estimates will be provided in a format to be established by the County.

4.7 The *Entity* will exercise the necessary contract oversight and administration of any subcontracts. These duties include, but are not limited to construction inspection and negotiating and executing change orders (where construction is to occur), monitoring project progress, responding to subcontractor or citizen complaints, coordinating between different subcontracts, and overseeing subcontractors' compliance with the approved project plans and specifications. These activities are to be done in accordance with procedures established by the Grant and by 40 CFR § 31.1, *et seq.*

4.8 All reports, invoices, and work products required under this Agreement will be transmitted to the Director of Water Quality Management Division, Department of Public Services, Wayne County, care of Mr. Razik Alsaigh, 400 Monroe Street, Suite 400, Detroit, Michigan 48226.

ARTICLE V AUDIT AND ACCESS TO RECORDS

5.1 The *Entity* will maintain and retain financial records and supporting documentation in accordance with generally accepted accounting procedures and in accordance with the requirements of federal and state regulations.

5.2 The *Entity* will cooperate with and assist the County with respect to federal or state audit review related to the use of Grant funds. This cooperation shall include preservation of the necessary documentation and access to the records until federal and/or state audit resolution processes have been completed and notification of records disposal has been received by the County. The *Entity* will cooperate with the County with respect to evaluating audit findings of this Agreement.

5.3 The *Entity* will be responsible for the reimbursement of any funds required to be returned to the USEPA due to *Entity* actions or omissions, as determined by audit findings, and hold the County harmless from any repayment therefrom.

**ARTICLE VI
GENERAL PROVISIONS**

6.1 This Agreement is expected to be funded in part with funds from the USEPA. The *Entity* will not enter into any agreements with either the United States or any of its departments, agencies, or employees, which are or will be a party to this Agreement or any lower tier sub-agreement for monies related to this specific project. This Agreement is subject to regulations contained in 40 CFR. § 31 in effect on the date of the assistance award for this project.

6.2 The *Entity* understands that the County has no funds other than the Grant funds to pay for the project costs. All costs other than the Grant funds associated with the activities which are the subject matter of this Agreement will be the responsibility of the *Entity*.

6.3 The *Entity* will cooperate with the County to ensure timely completion of the tasks undertaken as part of the project. Cooperation includes, but is not limited to sharing information and records, participation in applicable committees, and assisting in development and evaluation of water quality improvement alternatives.

6.4 The *Entity* warrants that it will comply with the provisions of 40 CFR § 31 and, as applicable, all provisions contained in the Grant. In the event there are any conflicts between the provisions of this Agreement and the terms of the Grant, the Grant terms will prevail. The fair share goals for the Grant as identified in that letter are as follows:

3% Minority Business Enterprise (MBE) 5% Woman Business Enterprise (WBE)

6.5 The *Entity* is responsible for securing all necessary permits from regulatory agencies and is responsible for obtaining any professional services necessary for the project activities. The *Entity* will act at all times in accordance with applicable federal, state, and local regulations, and will secure any permits and negotiate the terms of agreements in accordance with those requirements.

6.6 If the *Entity* secures any interest in lands, including easements, these acquisitions will be in accordance with applicable federal law and regulations including 49 CFR § 24 and state statutes related to the taking of interests in land.

6.7 With respect to construction projects, the *Entity* is responsible for conducting post-project evaluation and certifying that any construction meets the approved design criteria. These certifications will be submitted to Wayne County and the USEPA and MDNRE, where appropriate, in accordance with the Grant requirements and applicable regulations. If the project does not meet the design criteria, the *Entity* will be responsible for taking the necessary corrective measures.

6.8 The ownership of any facilities and/or infrastructure constructed and/or improved under this Agreement will remain with the *Entity*. The *Entity* agrees to operate and maintain the facility and/or infrastructure constructed and/or improved under this Agreement consistent with the Grant project goals and in accordance with the Grant conditions and requirements of applicable federal, state, and local ordinances, statutes and regulations.

6.9 The **Entity** warrants that it will comply with the provisions of 40 CFR § 31.32 relating to any equipment including computers and peripheral computer equipment purchased as part of this Grant assistance project.

6.10 Any amendment to this Agreement must be in writing, and signed and acknowledged by a duly authorized representative of each party.

6.11 The **Entity** warrants that it will comply with the provisions of 40 CFR § 31.36(d) relating to procurement of services as part of this Grant assistance project. For construction contracts the **Entity** shall use bid type contracts. For consulting contracts, the **Entity** shall use any of the four procurement procedures in the 40 CFR § 31. For most of the consulting contracts, the RFQ or RFP procurement procedure is the applicable one. The selection of the consultant can be based on qualification or on qualification and cost proposal. Upon consultant selection, procurement documentation must be submitted to the County. The procurement documentation should include:

- a. Rationale for method of procurement;
- b. Copy of advertisement, where it was published and for how long;
- c. Number of proposals received;
- d. Description of selection process (e.g., pre-established criteria of qualification, cost, or both); and
- e. Selection of type of contract to be used.

6.12 The **Entity** warrants that it will comply with the provisions of 40 CFR § 31.36(f) relating to contract cost or price of services as part of this Grant assistance project. Price/cost analysis must be performed by the **Entity** prior to award of any type of contract. The selected contractor must submit a cost proposal to the **Entity**, with cost identified by task. The cost proposal should consist of the following categories:

- a. Direct labor (with backup that establish this cost (hours and personnel));
- b. Overhead (backup to establish this rate);
- c. Other Direct Expenses (backup to establish this item);
- d. Subconsultant;
- e. Subconsultant Administrative Charge (if applicable);
- f. Total; and
- g. Fee (Fixed for a fixed fee contract).

The cost analysis consists of the **Entity** determining the reasonableness of the selected contractor's proposed cost (i.e., is the allowable overhead rate used, are correct pay rates used for employees, are expense charges accurate). Price analysis consists of the **Entity** comparing proposed prices received with other proposals submitted for this job, an independent estimate from the **Entity's** experience or cost estimate from existing master plan. Copies of price/cost analysis documentation should be submitted to the County. After completing the price/cost analysis, any type of the contracts indicated below can be executed:

- a. Cost plus fixed fee contract;
- b. Fixed price (lump sum) contract;
- c. Catalog price contracts (e.g., geotechnical investigations where the price of the tests are established in the market); or
- d. For certain contracts where the above types are not applicable, the County will allow contracts with proscribed billing rates (per diem contracts), which establishes pay rates for professional categories (e.g., Engineer I, Engineer II, Project Engineer, Field Technical Help, etc.).

These above types of contracts are applicable for the main contractor and for sub-contractors. “Cost plus a percentage of cost” and “percentage of construction cost” methods of contracting shall not be used.

ARTICLE VII WAIVER OF BREACH

7.1 No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any term after a breach, constitutes a waiver of any breach of the term. No waiver of any breach affects or alters this Agreement, but every term of this Agreement remains effective with respect to any other existing or subsequent breach.

ARTICLE VIII TERMINATION

8.1 This Agreement will terminate after the final audit and final resolution of any issues related thereto as described within 40 CFR §104.1, *et seq.*

8.2 This Agreement may be terminated in whole or in part in writing by the County for its convenience and/or if the **Entity** does not remain a Member in good standing (if eligible) or Cooperating Partner of the Alliance of Rouge Communities (ARC), for any reason for the duration of this Agreement. The **Entity** must be given: (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the County prior to termination.

8.3 This Agreement may be terminated in whole or in part in writing by the **Entity** for its convenience. The County must be given: (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the **Entity** prior to termination.

8.4 If termination is effected by the County or the **Entity**, an equitable adjustment in the Agreement price will be made. The equitable adjustment for any termination will provide for payment to the **Entity** for services rendered and expenses incurred prior to termination. Equitable adjustment also will include termination settlement costs reasonably incurred by the **Entity** and approved by the County, relating to personnel hired specifically for activities related to this Agreement, provided such costs are eligible and allowable under the terms of the Grant.

8.5 Upon receipt of a termination notice pursuant paragraphs 8.2 or 8.3, above, the **Entity** will:

(1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the County all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may be accumulated by the *Entity* in performing this Agreement, whether completed or in process.

8.6 Upon termination pursuant to paragraphs 8.2 or 8.3, above, the County may take over the work and prosecute the same to completion by Agreement with another party or otherwise.

8.7 All notices of termination will be sent certified mail, postage prepaid and return receipt requested as follows:

If to the County:

Attn.: Director, Water Quality Management Division
Wayne County Department of Public Services
400 Monroe, Suite 400
Detroit Michigan 48226

If to the *Entity*:

Attn.: City Engineer
City of Novi
26300 Delwal Drive
Novi, MI 48375

**ARTICLE IX
LIABILITY**

9.1 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the *Entity* will be the sole responsibility of the *Entity* and not the responsibility of the County. Nothing herein will be construed as a waiver of any governmental immunity by the *Entity*, its agencies, or employees have as provided by statute or modified by court decisions.

9.2 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the County will be the sole responsibility of the County and not the responsibility of the *Entity*. Nothing herein will be construed as a waiver of any governmental immunity by the County, its agencies, or employees have as provided by statute or modified by court decisions.

9.3 The provisions of Article IX shall survive the expiration or any termination of this Agreement for a period of three (3) years.

**ARTICLE X
INSURANCE**

10.1 The *Entity* or its contractors', at its expense, must maintain during the term of this Agreement the following insurance:

- A. Professional Liability/Errors and Omissions coverage with minimum limits of One Million Dollars (\$1,000,000.00) on a claims made basis and Two Million Dollars (\$2,000,000.00) aggregate with three year tail insurance coverage.
- B. Workers' Compensation Insurance which meets Michigan statutory requirements.
- C. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate for bodily injury and property damage.
- D. Commercial Automobile Liability Insurance (including hired and non-owned vehicles) with minimum limits for bodily injury of One Million Dollars (\$1,000,000.00) per occurrence and with minimum limits for property damage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

10.2 The insurance must be effected under valid and enforceable policies, issued by recognized, responsible Michigan insurers which are well-rated by national rating organizations. Commercial General Liability and Commercial Automobile Liability Insurance policies must name the County as an additional named insured. The additional insured coverage shall be primary, non-contributory coverage and must not be canceled or materially changed without at least thirty (30) days prior notice from the *Entity* to the County. The *Entity* must submit certificates evidencing the insurance to County prior to commencing project services, and at least thirty (30) days prior to the expiration dates of expiring policies.

ARTICLE XI NON-DISCRIMINATION

11.1 In connection with the performance of project services under this Agreement, the *Entity* must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

F. The anti-discrimination provisions of the Wayne County Code governing “Ethics in Public Contracting.”

11.2 *Entity* must notify any contractor of the obligations relative to non-discrimination under this Agreement when soliciting the contractor. *Entity* will include the provisions of this Article in any subcontract agreement.

11.3 The *Entity* is responsible for complying with all federal and state laws and regulations regarding competitive bidding.

ARTICLE XII ASSIGNABILITY

12.1 This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs and assigns.

12.2 Neither of the parties hereto may assign this Agreement without the prior written consent of the other.

ARTICLE XIII VALIDITY

13.1 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 to 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.

ARTICLE XIV ENTIRE AGREEMENT

14.1 This document, including any attachments, contains the entire Agreement between the parties.

14.2 Neither party has made any representations except those expressly set forth herein.

14.3 No rights or remedies are, or will be acquired, by either party by implication or otherwise unless set forth herein.

ARTICLE XV PATENTS, COPYRIGHTS, AND RIGHTS IN DATA

15.1 If this Agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of, or under this Agreement, the

Entity and the County shall retain joint authority to patent or license.

15.2 The parties agree that any plans, drawings, specifications, computer programs, technical reports, operating manuals, and other work submitted, or which are specified to be delivered under this Agreement, or which are developed or produced and paid for under this Agreement are subject to the rights of both parties and both parties shall retain an irrevocable license to reproduce, publish and use in whole or in part and to authorize others to do so.

15.3 This Agreement is funded in part by the USEPA and is therefore subject to the reporting and rights provisions of 40 CFR § 30 Subpart D including Appendix B and Appendix C.

15.4 This clause shall be included in all subcontracts.

ARTICLE XVI JURISDICTION AND GOVERNING LAW

16.1 This Agreement, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan.

ARTICLE XVII EFFECTIVE DATES

17.1 This Agreement becomes effective and shall allow for billing of costs incurred immediately upon signing by both parties. This Agreement, unless extended by mutual written agreement, expires on October 30, 2012. Should the USEPA require reimbursement by the County of funds transferred to the *Entity* for costs incurred prior to this Agreement, the *Entity* shall be responsible for any such reimbursement.

17.2 This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one Agreement.

ARTICLE XVIII PARTY REPRESENTATIVES

18.1 The County's representative for this Agreement is the Director of Water Quality Management Division, Department of Public Services, Wayne County. The *Entity* representative for this Agreement is the City Engineer for City of Novi. Either party may assign alternate representatives upon written notification of the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on the date first above written.

COUNTY OF WAYNE, MICHIGAN

CITY OF NOVI, MICHIGAN

By: _____

ROBERT A. FICANO

Its: Wayne County Executive

By: _____

Its: _____

ATTACHMENT “A”

Rouge River National Wet Weather Demonstration Project Round X – Part B Funding Regional Basin Retrofits for Water Quality Improvements (RXB-13 Sub-grant) City of Novi

1. PROJECT PURPOSE AND OBJECTIVES

The Middle One Subwatershed Management Plan identifies high flow variability, sediment loading, and loss of habitat as key concerns of this Rouge River subwatershed. The goals of the detention basin improvements project are to reduce the frequency of bank full events downstream of the Leavenworth, Lexington Green, and Thornton regional storm water detention basins while also creating habitat and restoring native vegetation.

The proposed project involves designing and constructing detention basin retrofits at the Leavenworth, Lexington Green, and Thornton regional detention basins in the City of Novi. Maps of each site are attached. The Leavenworth Basin is located along Leavenworth Creek, which is tributary to the Walled Lake Branch of the Middle Rouge River. The Lexington Green and Thornton Basins are both located along Thornton Creek, which is also tributary to the Middle Rouge River. This project will include a topographic survey, a hydraulic analysis to evaluate attenuation concerns, and design and construction of improvements. The recommended improvements will be based on the hydraulic evaluation and will also include retrofitting outlet structures to provide additional regional attenuation for the more frequent events (1-year, 2-year recurrence intervals), dam modifications, habitat creation, removal of invasive species, and planting native vegetation buffers.

The lack of attenuation varies based on the storm event and is also specific to each basin. The outlet control structures for each basin will be redesigned to provide attenuation at high frequency events (i.e. 1, 2 and 10-year). By reducing the frequency of bank full events, the stream banks downstream of each basin will naturally reestablish vegetation. As vegetation is reestablished, stream banks will be impacted less by larger storm events. Water quality will be improved for both basins and their associated streams due to a decrease in unnatural sedimentation.

Anticipated Impact/Benefits of the Project to the River/Subwatershed/Watershed

The anticipated benefit of this project is to reduce the excessive storm water flows in order to reduce erosion and sedimentation while increasing habitat for fish and macroinvertebrates. Implementation of the retrofits for each basin will reduce the bank full events which will allow the banks to naturally reestablish vegetation. This will decrease erosion and sedimentation in downstream reaches of each stream. This project should also reduce the high sediment levels that contribute to the degradation of aesthetics and limit light to aquatic plants. By encouraging retrofit applications to existing detention basins, this project will be a showcase for other regional detention basins that are not performing as originally designed.

Project’s Consistency with the Goals and Objectives of the Subwatershed and Watershed Management Plans

The Middle One Subwatershed Management Plan (April 2001) identifies high flow variability, sediment loading, and loss of habitat as key concerns of the subwatershed. The goals of the detention basin improvements project are to reduce the frequency of bank full events downstream of the Leavenworth, Lexington Green, and Thornton regional detention basins while also creating habitat and restoring native vegetation. More specifically, this project is focused on addressing the following goals of the Middle One Subwatershed Management Plan:

- Reduce flow variability
- Reduce nutrient loading, especially with regard to all impoundments of the Middle Rouge River
- Reduce soil erosion and sedimentation
- Protect and mitigate the loss of natural features
- Increase public understanding of their role in protecting water quality

This project also supports the following goals of the overall Rouge River Watershed Management Plan (Draft January 2009):

- Goal II: Reduce runoff impacts through sustainable storm water management strategies and programs.
- Goal III: Inform and educate the public to become watershed stewards.
- Goal IV: Protect, restore and /or enhance natural features to maintain/improve river and watershed ecosystems
- Goal V: Maximize community assets related to the watershed.

Through the efforts of the Rouge River National Wet Weather Demonstration Project, it was determined that habitat restoration, erosion control, and flow variability are some of the many factors that need to be controlled before full restoration of the river can be achieved throughout the watershed. The regional basin retrofits work towards improving these factors, thereby providing a positive impact to the watershed.

This project also fulfills an action identified in the City of Novi’s Stormwater Pollution Prevention Initiative (SWPPI). Page 8 of the SWPPI states the following action: *Construction of New Detention Basins, Dredging, or Retrofitting of Existing Basins.*

Cooperative, Innovative, or Demonstrative Nature of the Project

Since the project involves retrofitting three regional detention basins, it will provide a positive impact not only at each site location, but also on downstream reaches of the Middle Rouge River and its tributaries. This project is unique in that the goal is to not only provide attenuation for higher frequency flow events, but to also provide additional native vegetation and in-stream habitat improvements. At the end of the project, the City will complete a closeout report that documents the project activities, including lessons learned and before and after photographs with the intent that other communities can use this information to help them successfully implement similar projects in the future.

2. TASK DESCRIPTION

Task #1 – Project Administration, External Coordination and Reporting

The purpose of this task is to provide proper oversight and administration of the project in accordance with this Rouge Project subgrant agreement. Under this task, the City will procure professional services of an engineering consultant to provide design as well as construction administration and engineering services. The City of Novi will conduct the following to procure the consultant:

- Acquire a consultant as required by 40 CFR 31 (Code of Federal Regulations Volume #40, Part 31), and
- Evaluate responses according to a predetermined selection process and select the service provider based on qualifications.

Also as part of Task #1, Novi will provide quarterly progress reports with invoice documentation to Wayne County, describing each activity by task along with its status of completion.

Deliverables: Quarterly progress reports to Wayne County, documentation of selection procedures for the engineering consultant.

Task #2 – Field Investigation and Topographic Survey

Under this task, the City of Novi and consultants will perform a field investigation at each detention basin as well as a stream bank inventory upstream and downstream of each basin. Specific work efforts include:

- Visit each basin and conduct a habitat assessment downstream of the Leavenworth, Lexington Green, and Thornton detention basins. Existing site conditions will be documented in field notes and digital photographs.
- Obtain topographic survey cross sections upstream and downstream of the three basins as well as at each basin.

Deliverables: Results of habitat assessment, field notes, digital photographs, topographic survey.

Task #3 – Conceptual Design

Under this task, the City, with assistance from a Consultant, will evaluate the data obtained in Task #2 and develop preliminary plans for the basin retrofits at Leavenworth, Lexington Green, and Thornton Basins. The City and their Consultant will meet with the Michigan Department of Natural Resources and Environment (MDNRE) and other interested parties to obtain input during the conceptual design process. Specific work efforts include:

- The Consultant will develop conceptual design plans for improvements at the Leavenworth, Lexington Green, and Thornton detention ponds which may include retrofitting outlet structures, dam modifications, habitat creation, removal of invasive species, and planting native vegetation buffers. The City will also incorporate “no mow” signs into the design. For the Leavenworth basin, it is anticipated that the design will include corrections to the sedimentation basin and sedimentation basin outlet structure located along 11 Mile Road. Modifications to the basin outlet control structure may be warranted based on the results of the hydraulic analysis. For the Thornton Basin we anticipate the majority of the work to encompass total rebuilding of the outlet control structure. The work on the Lexington Green Basin will primarily involve minor modifications to the outlet control structure.
- The most recent MDNRE inspection reports for the Thornton and Leavenworth basins will be reviewed and comments will be addressed in the design, if applicable.
- The conceptual plans will be provided to project partners, Wayne county, regulatory agency personnel and stakeholders. The plans will be revised based on input and submitted to the MDNRE for initial comments.
- The Consultant will develop preliminary construction cost estimates for all construction elements.

Deliverables:

- Conceptual plans for improvements to the Leavenworth, Lexington Green, and Thornton regional detention basins,
- Initial cost estimates for the proposed improvements, and
- Summaries of meetings.

Task #4 – Hydrologic and Hydraulic Analysis

Under this task, the Consultant will develop a hydraulic model of the existing and proposed conditions at each of the three regional detention basins to determine the sizing of the basin outlet retrofits. Water surface elevations and hydraulic data will be computed to support the project design and permitting process. Stage-discharge relationships will be developed for each existing structure. The proposed retrofits will maximize attenuation by picking the smallest retrofitted outlet size that shows decreased flow rates for the smaller storms (e.g. 1-year, 2-year, 10-year) while maintaining the stage for the 100-year flow. Specific work efforts include:

- The City's Consultant will develop a hydraulic model of the basins and the upstream/downstream channel slated for restoration for both the existing and proposed conditions. The analysis will be developed for the 1, 2, 10, 50 and 100-year storm events.
- Based on the hydraulic results, the Consultant will determine the appropriate channel and floodplain size, channel slope, in-stream habitat structures and sizes of created wetland areas and associated control structure modifications.

Deliverables:

- Completed hydrologic/hydraulic analysis for the Leavenworth, Lexington Green, and Thornton detention basins, under existing conditions and the proposed improved conditions, and
- Summary report of analysis.

Task #5 – Regulatory Coordination and Permitting

Under this task, the City, with assistance of a Consultant, will coordinate activities with the appropriate regulatory agencies. Coordination and regular meetings will be held with regulatory agencies as needed to facilitate close communication. Specific work efforts include:

- Meet with the MDNRE, Wayne County and project partners to set timetables and discuss initial concepts prior to initiating the design.
- Meetings will be held as needed to facilitate communication with the MDNRE.
- Based on the agreed upon conceptual design, the City Consultant will prepare and submit for permits.
- The Consultant will prepare permit application materials as necessary and obtain necessary construction permits.

Deliverables: Approved permits from all applicable agencies for construction of the improvements to the Leavenworth, Lexington Green, and Thornton regional detention basins

Task #6 – Final Engineering Design and Preparation of Contract Documents

Under this task, the Consultant will prepare a final design and contract documents to competitively bid construction of the project. Specific work efforts include:

- The Consultant will finalize the engineering design and apply for necessary permits;
- The Consultant will prepare final engineering plans and contract documents;
- The City of Novi will review the engineering plans and contract documents;
- The Consultant will incorporate City comments into the plans;
- The Consultant will forward engineering plans and contract documents to the MDNRE and Wayne County for review and comment;

- The Consultant will revise engineering plans and contract documents based on MDNRE and Wayne County’s comments;
- The Consultant will develop an Engineer’s Estimate of project costs;
- The City will advertise and bid the project for construction; and
- The Consultant will provide a recommendation of award, and the City will award the construction contract.

Deliverables: Permits and easements required for construction, final plans and contract documents, Engineer’s Estimate

Task #7 – Project Construction and Construction Administration

Under this task, the contractor will construct the improvements to the Leavenworth, Lexington Green, and Thornton regional detention basins. The City, with assistance of a Consultant, will administer and observe construction of the project. Specific work efforts include:

- Once a contractor is accepted by the City, contracts will be processed, and a pre-construction meeting will be conducted and documented;
- Contractor constructs the project per the bid plans and specifications;
- During construction, the City and Consultant will coordinate critical activities and meetings with residents, contractors, and government agencies; and
- The City and Consultant will provide appropriate construction administration and inspection services including maintenance of appropriate construction documentation and provision of overall project supervision.

Deliverables: Completed construction of improvements to the Leavenworth, Lexington Green, and Thornton regional detention basins.

Task #8 – Final Project Report

Under this task, the City, with assistance of a Consultant, will develop a final grant closeout report. The report will include a summary of the project, lessons learned, and before- and after-construction photographs.

Deliverables: One electronic copy of all before- and after-construction photos
Electronic and paper copy of final project report.

3. PROJECT COST

The estimated total project cost for this work is \$405,000. The maximum Rouge Project federal grant funding for this project is \$202,500. A summary of the tasks with associated costs is shown in Table 1.

Table 1: Projected Budget, Regional Basin Retrofits for Water Quality Improvements

Task Number and Description		Task Cost	Type of Effort
1	Project Administration, External Coordination and Reporting	\$15,000	Planning
2	Field Investigation & Topographic Survey	\$12,000	Planning
3	Conceptual Design	\$10,000	Design
4	Hydrologic and Hydraulic Analysis	\$14,000	Design
5	Regulatory Coordination and Permitting	\$10,000	Design
6	Final Engineering Design and Preparation of Contract Documents	\$21,000	Design
7	Project Construction	\$260,000	Construction
8	Construction Administration	\$40,000	Oversight
9	Final Project Report	\$7,000	Evaluation
Total Project Cost*		\$405,000	
Funding Percentage		50%	
Maximum Federal Grant Funds		\$202,500	

*Note: Total project cost includes a 4% contingency.

4. LOCAL MATCH

Local match for the federal grant funds will be provided by the City of Novi through their existing Drain Fund. The minimum amount of local match provided will be 50% of the total project cost or \$202,500.

5. PROJECT SCHEDULE

The project is expected to have a duration of approximately 16 months from authorization to begin work (anticipated to be April 1, 2011) with final grant reporting completion in July 2012. The detailed project schedule by task is shown in Table 2 below.

Table2: Project Schedule, Regional Basin Retrofits for Water Quality Improvements

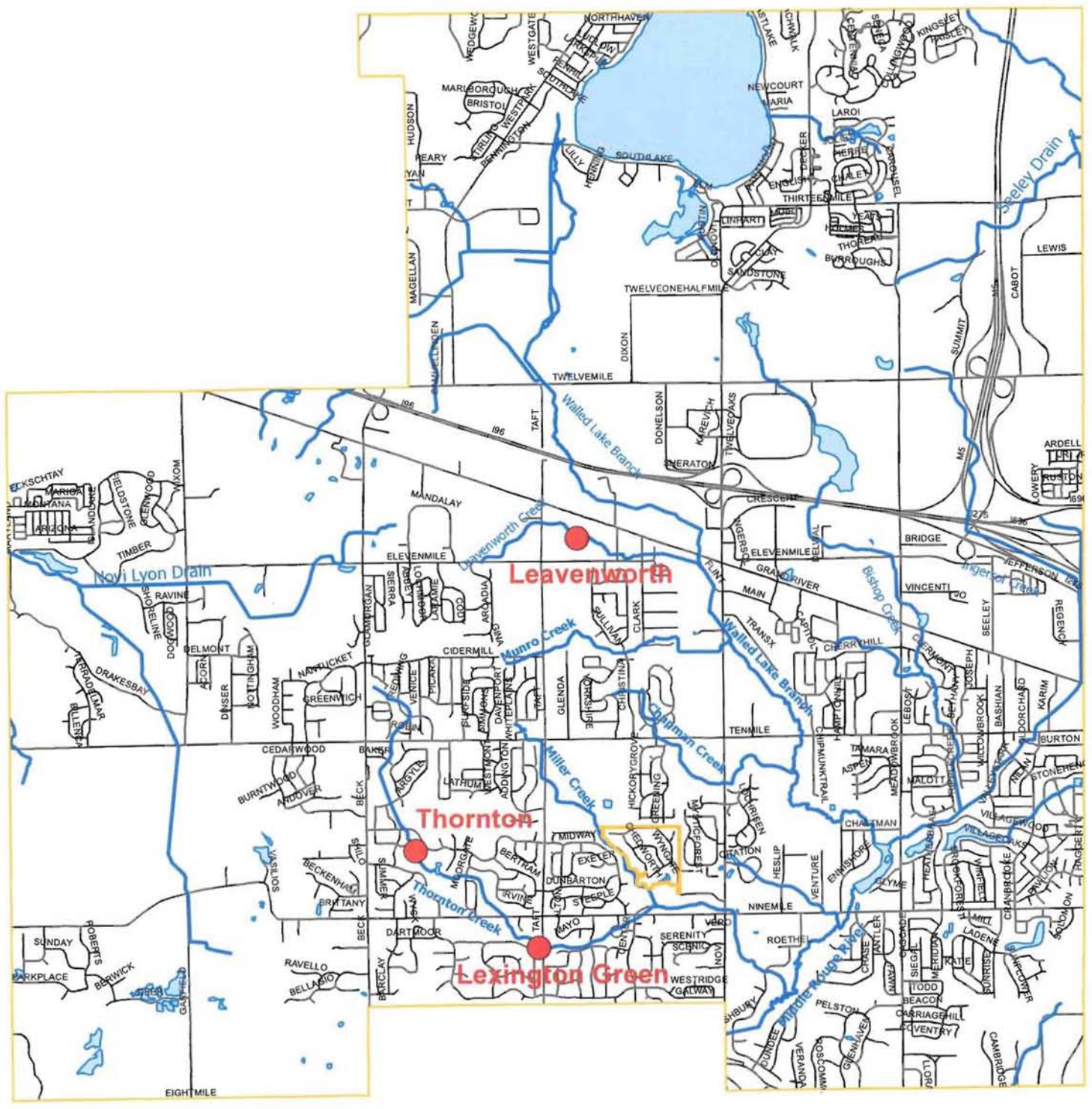
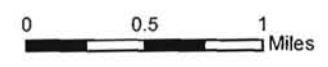
Month:	Apr 2011	May 2011	Jun 2011	Jul 2011	Aug 2011	Sept 2011	Oct 2011	Nov 2011	Dec 2011	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Jul 2012
Task 1: Project Administration, External Coordination and Reporting	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Task 2: Field Investigation & Topographic Survey	■	■														
Task 3: Conceptual Design		■	■													
Task 4: Hydrologic and Hydraulic Analysis		■	■													
Task 5: Regulatory Coordination and Permitting		■	■	■												
Task 6: Final Engineering Design and Preparation of Contract Documents			■	■	■	■										
Task 7: Project Construction and Construction Administration							■	■	■	■	■	■	■	■	■	■
Task 8: Final Project Report															■	■

City of Novi
RPO Round X - Part B
Regional Basin
Retrofits for Water
Quality Improvements

Site Location Map



- Detention Basin Location
- Streams
- Open Water
- City of Novi Boundary





City of Novi

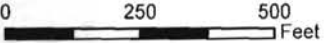
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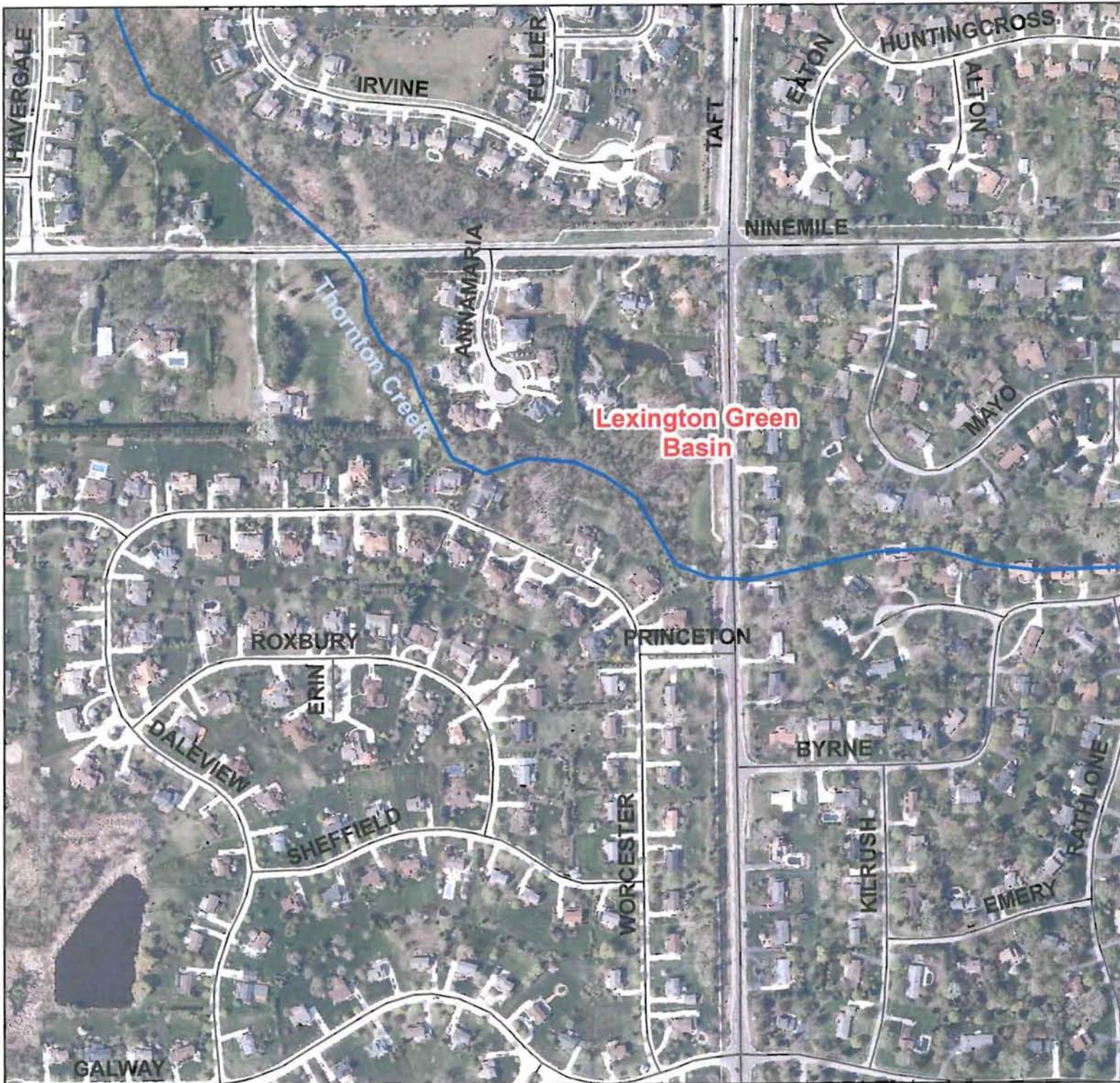
Regional Basin
Retrofits for Water
Quality Improvements

Site Location Map
Leavenworth Basin



- Streams
- Open Water





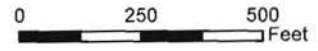
City of Novi
RPO Round X - Part B

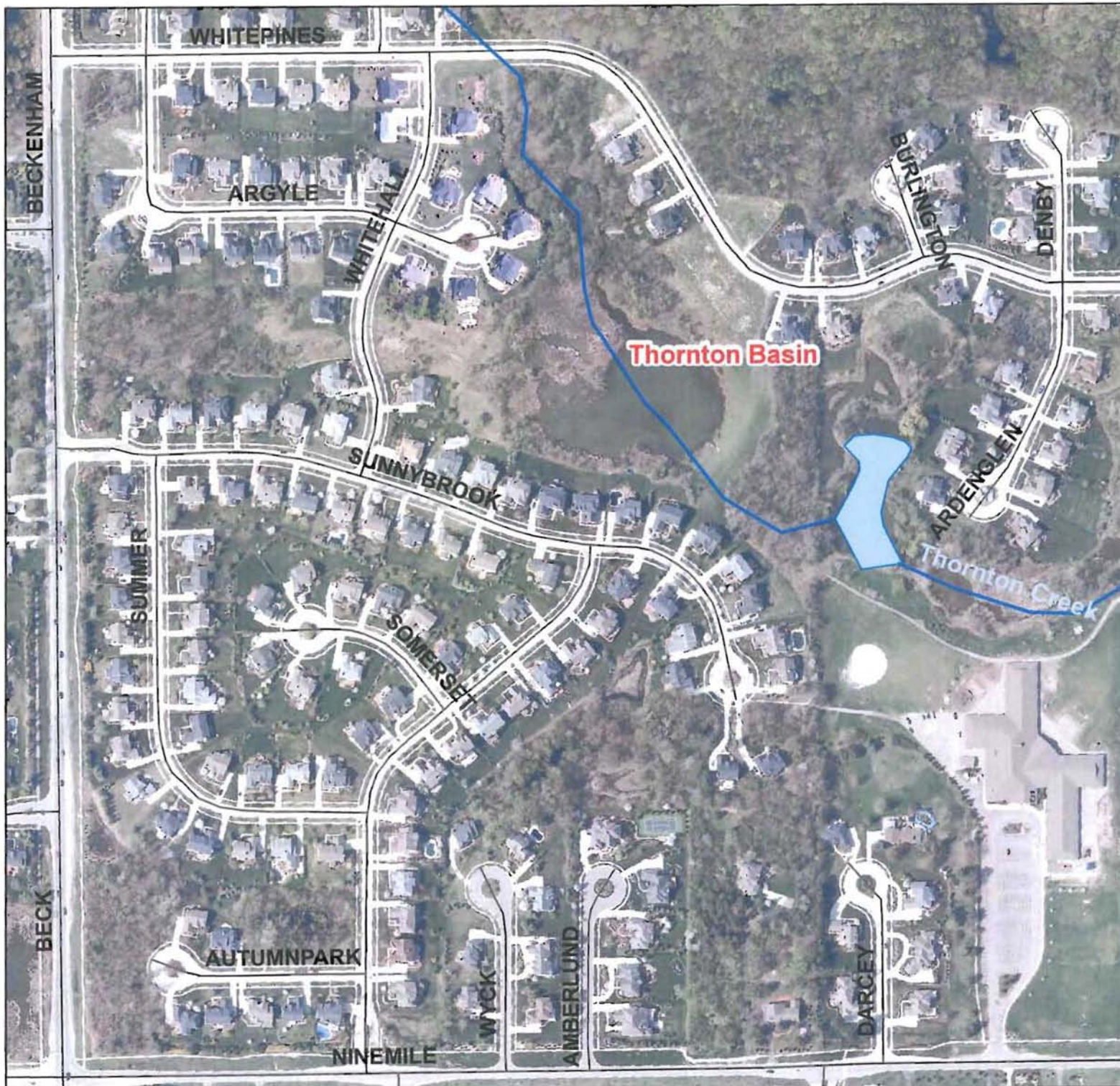
Regional Basin
Retrofits for Water
Quality Improvements

Site Location Map
Lexington Green Basin



- Streams
- Open Water





City of Novi
RPO Round X - Part B
Regional Basin
Retrofits for Water
Quality Improvements

Site Location Map
Thornton Basin

N

— Streams
— Open Water

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