



CITY OF NOVI CITY COUNCIL
APRIL 25, 2022

SUBJECT: Approval of a Michigan Department of Transportation Performance Resolution that authorizes the City of Novi to use state highway right of way for water and sewer replacement and maintenance within the I-96 right of way.

SUBMITTING DEPARTMENT: Department of Public Works, Engineering Division

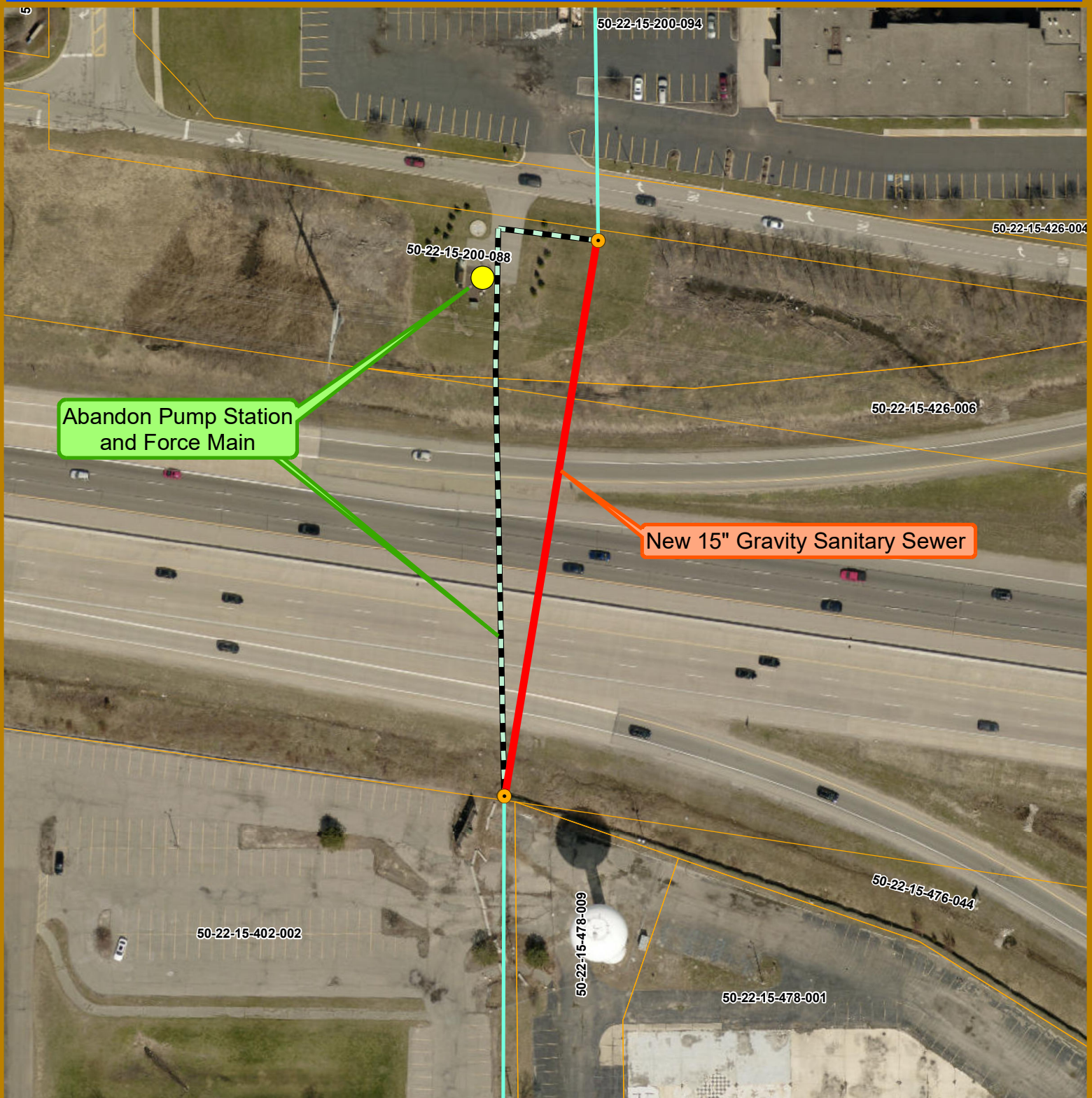
BACKGROUND INFORMATION:

The City obtained a permit from MDOT in 2021 to install a new sanitary gravity main under I-96, just west of Novi Road. Construction on the sanitary sewer is expected to begin this summer. The permit requires the City have an updated resolution (MDOT Form 2207B) on file with MDOT. City Council previously approved the resolution in August 2007. MDOT has since updated the form, which necessitated the re-approval of the resolution.

The resolution states that MDOT and the City are responsible for their own actions, that MDOT will be held harmless for work performed by the City, and that the City will promptly restore or correct any damages which result from the City's construction, operation and/or maintenance. The City Attorney favorably reviewed the resolution (Beth Saarela, April 14, 2022). MDOT requested that only the titles of authorized positions be listed on the form and not individual's names so that the form will not need to be updated whenever there is a change in position.

RECOMMENDED ACTION: Approval of a Michigan Department of Transportation Performance Resolution that authorizes the City of Novi to use state highway right-of-way for water and sewer replacement and maintenance within the I-96 right-of-way.

I-96 Sanitary Sewer Crossing and West Oaks Pump Station Abandonment

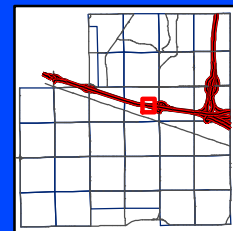


Map Author: Humna Anjum
 Date: 1/12/2021
 Project: I96 SS/West Oaks PS
 Version #: 1.1

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.

Map Legend

- Sanitary Lift Station
- Sanitary Manhole
- Force Main**
- 8"
- Gravity Main**
- 15"



City of Novi

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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

April 14, 2022

Rebecca Runkel, Civil Engineer
City of Novi
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: MDOT Performance Resolution – Work in MDOT ROW

Dear Ms. Runkel:

We have received and reviewed the form of MDOT's Performance Resolution that the City must sign in order to work in MDOT's right-of-way for the I-96 Sanitary Sewer crossing project. The Resolution is similar to a right-of-way permit and includes provisions relating to insurance and liability. The terms of the Resolution are standard. Requirements include the following:

1. The City shall remain liable for its own actions and those of its contractors.
2. City contractors must indemnify MDOT in addition to the City in each contract.
3. MDOT shall not be liable for the acts of City contractors.
4. The City shall not take any unlawful actions under the Permit.
5. The City's contractors must also insure MDOT for projects in MDOT right-of-way.
6. The City must restore any disruption it causes to the MDOT right-of-way.

We see no legal impediment to the City approving the Resolution.

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

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

A handwritten signature in blue ink, appearing to read 'Elizabeth Kudla Saarela', is written over a white rectangular background.

Elizabeth Kudla Saarela

Enclosures

C: Cortney Hanson, Clerk (w/Enclosures)

Rebecca Runkel, Civil Engineer
City of Novi
April 14, 2022
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Jeffrey Herczeg, Director of Public Works (w/Enclosures)
Ben Croy, City Engineer (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

PERFORMANCE RESOLUTION FOR MUNICIPALITIES

This Performance Resolution (Resolution) is required by the Michigan Department of Transportation for purposes of issuing to a Municipality an "Individual Permit for Use of State Highway Right of Way", and/or an "Annual Application and Permit for Miscellaneous Operations within State Highway Right of Way".

RESOLVED WHEREAS, the _____ City of Novi _____
(County, City, Village, Township, etc.)

hereinafter referred to as the "MUNICIPALITY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utilities or other facilities, or to conduct other activities, on, over, and under State Highway Right of Way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the MUNICIPALITY agrees that:

1. Each party to this *Resolution* shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this *Resolution*, as provided by law. This *Resolution* is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.
2. If any of the work performed for the MUNICIPALITY is performed by a contractor, the MUNICIPALITY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the MUNICIPALITY Failure of the MUNICIPALITY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.
3. Any work performed for the MUNICIPALITY by a contractor or subcontractor will be solely as a contractor for the MUNICIPALITY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the MUNICIPALITY, or their subcontractors or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the MUNICIPALITY.
4. The MUNICIPALITY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.
5. The MUNICIPALITY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the MUNICIPALITY'S facilities according to a PERMIT issued by the DEPARTMENT.

- 6. With respect to any activities authorized by a PERMIT, when the MUNICIPALITY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.
- 7. The incorporation by the DEPARTMENT of this *Resolution* as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.
- 8. This *Resolution* shall continue in force from this date until cancelled by the MUNICIPALITY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the MUNICIPALITY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED that the following position(s) are authorized to apply to the DEPARTMENT for the necessary permit to work within State Highway Right of Way on behalf of the MUNICIPALITY.

Title and/or Name:

Director of Public Works

City Engineer

Project Engineer

Construction Engineer

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by

the City Council
(Name of Board, etc.)

of the City of Novi of Oakland County
(Name of MUNICIPALITY) (County)

at a 7:00 PM meeting held on the 25th day

of April A.D. 2022.

Signed

Title

Print Signed Name