



CITY of NOVI CITY COUNCIL

Agenda Item D
October 9, 2017

SUBJECT: Approval of a License Agreement Regarding Customer Data Connection to GLWA Wholesale Billing Meter, to allow Novi to install data connections for the purpose of collecting information related to the City's water usage.

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

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

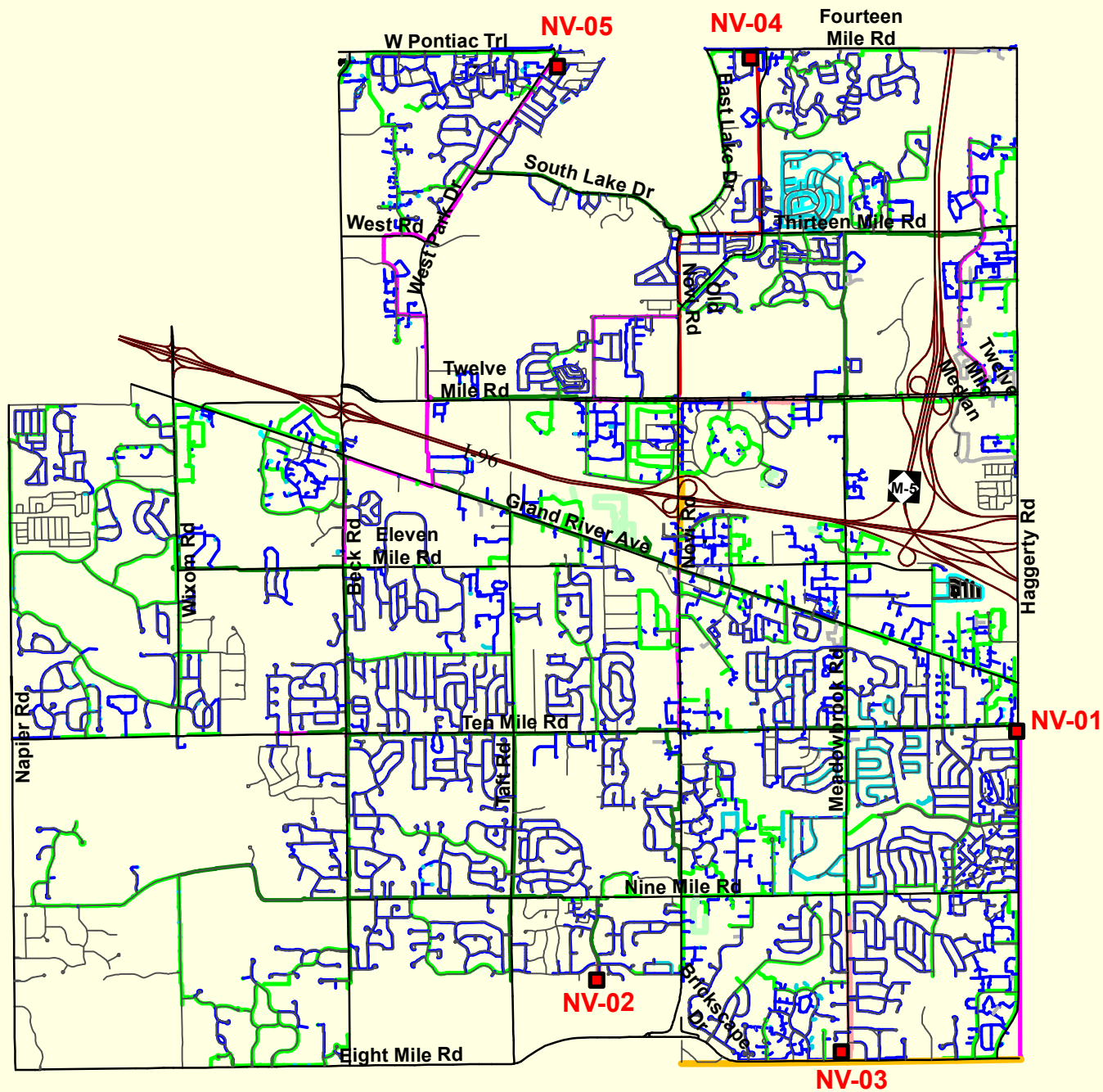
Following the construction of the water storage facility at 12 Mile and West Park Drive, it has become increasingly important to accurately monitor the City's water usage to ensure we do not exceed the flow limit provided in the contract between the City and the Great Lakes Water Authority (GLWA). Currently, the City has access to water usage data at only two of the five connections serving the City, forcing the use of assumptions for flow through three of the metered connections. This agreement would allow Novi to connect to and collect data from the three remaining GLWA meters. Per the attached map showing the locations of the five meters serving the City, we are looking to connect to NV-01, NV-02 and NV-03, and are currently collecting data at NV-04 and NV-05. The City attorney has reviewed the agreement, and sees no legal impediment to entering into the agreement with GLWA (see attached letter from Elizabeth Saarela, dated September 6, 2017).

Costs for installation and any construction required for the retrofits will be part of a future CIP project anticipated for the current FY17-18 budget.

RECOMMENDED ACTION: Approval of a License Agreement Regarding Customer Data Connection to GLWA Wholesale Billing Meter, to allow Novi to install data connections for the purpose of collecting information related to the City's water usage.

City of Novi Master Meter Locations

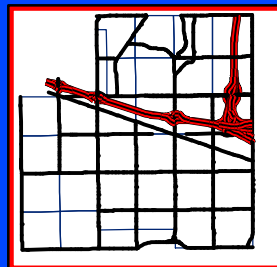
Location Map



Map Author: Croy
 Date: 9/28/17
 Project: GLWA Meter Connections
 Version #: v1.0

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.



City of Novi

Engineering Division
 Department of Public Services
 26300 Lee BeGole Drive
 Novi, MI 48375
cityofnovi.org





JOHNSON ROSATI SCHULTZ JOPPICH PC

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Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
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www.jrsjlaw.com

September 6, 2017

Benjamin Croy, Water & Sewer Senior Manager
CITY OF NOVI
Department of Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

**RE: License Agreement Regarding Customer Data Connection to GLWA
Wholesale Billing Meter**

Dear Mr. Croy:

We have received and reviewed the enclosed License Agreement Regarding Customer Data Connection to GLWA (Great Lakes Water Authority) Wholesale Billing Meter. The Agreement is a standard agreement for the City to install a data connection to GLWA's wholesale meter to obtain real-time data from GLWA's system to assist the City in managing its water system.

The Agreement provides for the City to receive and use the data at its own risk and provides a for release and indemnity for any damages or injuries to the City for using the meter and data being provided. Although the City is required to indemnify GLWA for any damages arising out of use of the connection or data under the License Agreement, the risk to the City for damages is probably low and not likely to involve physical injury or property damage. The risk would more likely relate to exceeding the City's assigned contract flow based on faulty data. The risk is probably not any greater, however, than operating the City's system without the data.

Additionally, the Agreement provides a waiver for exceedances occurring while GLWA temporarily interrupts the connection.

The Agreement is for a 10-year automatically renewable term unless GLWA changes the data system, in which case it will provide the City and other customers with notice of the change and termination of the connection.

Benjamin Croy, Water and Sewer Senior Manager
September 6, 2017
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Subject to the City accepting the limitation of GLWA's liability as set forth in the Agreement, we see no legal impediment to entering into this Agreement with GLWA.

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.

A handwritten signature in black ink, appearing to read 'Elizabeth Kudla Saarela', with a long horizontal line extending to the right.

Elizabeth Kudla Saarela

EKS

C: Cortney Hanson, Clerk
Victor Cardenas, Assistant City Manager
Thomas R. Schultz, Esquire

**License Agreement
Regarding
Customer Data Connection to GLWA Wholesale Billing Meter**

This License Agreement Regarding Customer Data Connection to GLWA Wholesale Billing Meter (“Agreement”) is made between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to Public Act 233 of 1955 (“GLWA”), and _____, a municipal corporation (“Customer”).

Recitals

Whereas, GLWA utilizes its wholesale billing meters to capture real-time data associated with Customer’s water usage; and

Whereas, GLWA has embarked on a system-wide program of meter pit rehabilitation and meter upgrades (the “Upgrade Program”); and

Whereas, Customer has requested permission to install a data connection to the GLWA wholesale billing meter (“Connection”) to capture the same real-time data in order to better manage its own water system; and

Whereas, granting Customer’s request for the Connection will require a modification to the GLWA Upgrade Program schedule; and

Whereas, Customer’s request for the Connection shall be on a cost-neutral basis to GLWA; and

Whereas, GLWA agrees to provide Customer with a license to utilize the Connection subject to the terms and conditions of this Agreement; and

Accordingly, the parties agree as follows:

1. **Magnetic Meter Required; Costs; Time.** Customer is required to have a GLWA magnetic billing meter and associated transmitter to make the Connection. If Customer’s existing meter is not a magnetic meter (“Meter”), Customer shall pay upfront one-half of the cost to have GLWA purchase and install a Meter, transmitter, and any associated piping and equipment (collectively, the transmitter, piping and equipment shall be referred to as “Equipment”). Even if Customer currently has an acceptable Meter installed, there may be costs associated with making the Connection. Customer will be provided in advance a written explanation of the costs for which it shall be responsible. All costs to Customer shall be assessed on a time and materials basis. Purchase and installation of the new Meter and Equipment by GLWA may take up to one (1) year, depending on the size of the Meter and the number of similar requests received by GLWA. Thereafter, GLWA will own and maintain the Meter and Equipment.
2. **Establishing the Connection.** GLWA will provide, at no additional cost to Customer, a set of signal wires for a pulse totalizer output. Any device necessary to read or process the signals is the responsibility of Customer. Customer shall be required to install a separate cabinet/enclosure to house any such device and to complete the Connection. GLWA will establish the wire connection to the transmitter in the GLWA cabinet, drill an access hole in the GLWA cabinet, and extend the wiring through the access hole. Customer will then be permitted to connect the wiring from its cabinet to the GLWA provided access. Customer must provide its own power source to its

cabinet/enclosure. Customer shall be responsible for a backup method of operating its water system (e.g. manual operation) in the event of a Connection failure or malfunction. Once the Connection is established, Customer will directly obtain a pulse totalizer signal from the transmitter on the Meter.

3. **Interruption of Connection.** GLWA reserves the right to temporarily interrupt the Connection for Meter maintenance and other business purposes and will, except in exigent circumstances, provide up to two (2) business days' notice to Customer in the event of such work. Customer acknowledges and agrees that unplanned and unforeseen interruptions in the Connection may occur through no fault of GLWA. GLWA shall bear no liability whatsoever to Customer as a result of any and all interruption to the Connection.
4. **Service Calls.** Customer acknowledges and agrees that interruption of the Connection does not constitute an emergency. In the event of an interruption of the Connection, GLWA will repair the Meter and Equipment within five (5) business days. Should Customer desire restoration of the Connection before the expiration of five (5) business days, Customer may elect to place a service call to GLWA. Customer will be charged a fee for each service call. Costs incurred for service calls will be billed as a line item on Customer's regular GLWA monthly billing statement. All maintenance/service activities will be performed by GLWA and/or its contractors. **Attachment 1** to this Agreement provides detailed information related to placing service calls and the costs therefor. Attachment 1 will be updated periodically by GLWA with written notice thereof to Customer and such updates shall not require amendment of this Agreement. At a minimum, updates to Attachment 1 will appear annually on July 1 on the Wholesale Automated Meter Reading (WAMR) portal. Updates provided in this manner shall constitute satisfaction of the requirement for written notice.
5. **Exceedance of Water Contract Flow Limits.** Customer is required to abide by the maximum day and peak hour flow limits set forth in its Water Service Contract, which contract is fully incorporated by reference herein, provided, however, that if the Connection is interrupted as a result of GLWA work on the Meter (e.g. meter calibration or testing) and Customer exceeds its contract flow limits on the same day(s), Customer shall be held harmless for the exceedance on that day(s).
6. **Termination of Connection.** GLWA reserves the right to permanently discontinue and/or terminate the Connection under circumstances including but not limited to:
 - a. Implementation of an alternative means of communication protocol (e.g. communication upgrade) and the new communication protocol is not compatible with the existing Connection. In such event, GLWA will provide Customer with six (6) months written notice thereof; and
 - b. Failure of the existing communication system requiring replacement with a new system that is not compatible with the existing Connection. In such event, GLWA will provide Customer with as much advance written notice as is practicable under the circumstances.
7. **License to Use Connection.** Customer is granted a license to use the Connection for its convenience only and GLWA does not guarantee the accuracy of the Connection for Customer's operational purposes.
8. **Hold Harmless.** Customer agrees to indemnify, defend, and hold harmless the Great Lakes Water Authority and the City of Detroit, and their respective officers, boards, directors, departments, employees and agents (collectively, the "Indemnitees") against and from any and all damages,

injuries, claims, costs, losses and expenses that may be imposed upon, incurred by, or asserted against the Indemnitees, arising out of the Customer's use of the Connection and/or the performance of the terms of this Agreement.

9. **Waiver and Release of Liability.** Customer agrees to waive and release any claim or liability against the Great Lakes Water Authority and the City of Detroit, and their respective officers, boards, directors, departments, employees and agents (collectively, the "Entities" or individually, an "Entity"), for personal injury or property damage including, without limitation, claims arising from the interruption of the Connection and damage related to its water system, water system facilities or water operations, sustained by Customer, its employees or agents, and third parties, arising out of Customer's use of the Connection and/or the performance of the terms of this Agreement. In the event any action shall be brought against an Entity by reason of any claim covered herein, whether litigated or not, Customer, upon written notice from an Entity, shall at its sole cost and expense defend the same.
10. **Commencement and Termination.** This Agreement shall be effective as of the date of approval by GLWA and shall remain in effect thereafter for a term of ten (10) years unless sooner terminated as follows:
- a. By mutual agreement of the parties;
 - b. By GLWA, upon 30 days' prior written notice to Customer, in the event Customer fails or refuses to perform any of its duties or obligations under this Agreement; provided, however, that in the event a failure to perform can be remedied within 30 days after such notice is given, such notice shall be null and void if the failure is remedied within such period;
 - c. By Customer, upon 30 days' written notice to GLWA for any reason; or
 - d. By virtue of a permanent termination of the Connection in accordance with the provisions of paragraph 6.
 - e. Notwithstanding the foregoing, the provisions of paragraphs 8 (Hold Harmless) and 9 (Waiver and Release of Liability) shall survive any termination of this Agreement.

This Agreement shall be renewable for additional ten (10) year terms under the same terms and conditions, but only upon a future written confirmation signed by both parties.

11. **Notices.** Any notice required or permitted to be given under this Agreement shall be sufficient if provided in writing and sent by U.S. mail, postage prepaid, to the party to whom the same is directed at the address specified herein. Either party may change its address for purposes of this Agreement by giving the other party notice in writing.

If to Customer:

Attention: _____

If to GLWA:

Chief Planning Officer
Great Lakes Water Authority
735 Randolph, Suite 1100
Detroit, Michigan 48226

and

Manager System Analytics & Meter Operations
Great Lakes Water Authority
6425 Huber Street, Suite A-211
Detroit, Michigan 48211

12. **Enforceability.** If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable to the fullest extent permitted by law.
13. **Governing Law.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Michigan.
14. **Entire Agreement.** This Agreement, including Attachment 1 as may be amended from time-to-time, constitutes the entire agreement of the parties with respect to its subject matter and all prior agreements between the parties, whether written or oral, are merged in this Agreement and shall be of no force or effect.
15. **Amendments.** This Agreement cannot be changed, modified, or discharged orally, but only by a written amendment signed and acknowledged by the duly authorized representatives of both parties.
16. **Third Parties.** This Agreement shall be enforceable only by the parties to this Agreement and their successors and assigns, and no other person shall have the right to enforce any of its provisions.
17. **Contract Beneficiaries.** The rights and benefits under this Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their agents, successors, and assigns.

(Signatures appear on next page)

Accordingly, GLWA and Customer, by and through their duly authorized officers and representatives, have executed this Agreement.

[Insert Customer Name]:

By: _____
Signature

Print Name

Title: _____

Great Lakes Water Authority:

By: _____
Sue F. McCormick

Title: Chief Executive Officer

Dated: _____

APPROVED AS TO FORM BY GLWA
GENERAL COUNSEL:

Signature Date

ATTACHMENT 1

SERVICE CALLS

Pursuant to Customer’s License Agreement, GLWA will repair the Meter and Equipment within five (5) business days. Should Customer desire restoration of the Connection before the expiration of five (5) business days, Customer may elect to place a service call to GLWA. Customer will be charged a fee for each service call. Costs incurred for service calls will be billed as a line item on Customer’s regular GLWA monthly billing statement. All maintenance/service activities will be performed by GLWA and/or its contractors. This document provides the information necessary for Customer to place a service call and the cost for such service.

Service calls must be made before 12:00 noon to receive same day service. Calls received after 12:00 noon will be serviced the next calendar day, unless requested otherwise by Customer, and will be billed according to the schedule below. In all cases, a minimum of 4 hours will be charged for each service call.

Service Call Cost List Effective July 1, 2016			
Call Hours	Required Contact Method	Service Call Cost Minimum 4 Hours	Service Call Cost Each Additional Hour Over 4 Hours
Normal business hours (between 8:00AM and 4:00PM)	Call: 313-999-5911 and/or Email: wamr@glwater.org	\$1,000.00	\$250.00
After normal business hours and weekends	Call: 313-267-9000 and Email: wamr@glwater.org	\$1,600.00	\$400.00
Holidays	Call 313-267-9000 and Email: wamr@glwater.org	\$2,150.00	\$537.50

This Attachment 1 may be updated periodically by GLWA with written notice thereof to Customer and such updates shall not require amendment of this Agreement. At a minimum, updates to this Attachment 1 will appear annually on July 1 on the Wholesale Automated Meter Reading (WAMR) portal.