



CITY of NOVI CITY COUNCIL

**Agenda Item F
July 27, 2015**

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Novi Food Center, LLC, for Novi Food Center located south of Grand River Avenue and east of Novi Road (parcels 22-23-104-010 and 22-23-104-009).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC RJA*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The owner of Novi Food Center, Novi Food Center, LLC, requests approval of the Storm Drainage Facility Maintenance Easement Agreement for the redevelopment a commercial property located on Grand River Avenue east of Novi Road as shown on the attached map.

The Storm Drainage Facility Maintenance Easement Agreement is a requirement of the Storm Water Management Ordinance and details the responsibilities of the property owner to properly maintain their privately owned on-site storm water system. The agreement also contains a provision that permits the City to perform maintenance on the privately owned on-site storm water system should the property owner fail to do so at the expense of the property owner. In this particular case, the property owner owns and agrees to maintain the on-site pipes and manholes.

The enclosed agreement has been favorably reviewed by City Staff and the City Attorney (Beth Saarela's June 4, 2015 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Novi Food Center, LLC, for Novi Food Center located south of Grand River Avenue and east of Novi Road (parcels 22-23-104-010 and 22-23-104-009).

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

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

Location Map

Novi Food Center



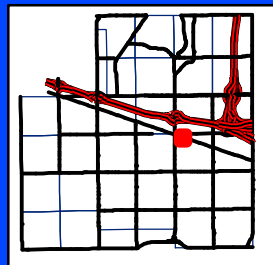
Novi Food Center

Map Author: A. Wayne
 Date: July 20, 2015
 Project:
 Version #:

Amended By:
 Date:
 Department:

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 232 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

0 25 50 100 150
 Feet

1 inch = 136 feet





JOHNSON ROSATI SCHULTZ JOPPICH PC

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

Elizabeth Kudla Saarela
esaarela@jrslaw.com

www.jrslaw.com

June 4, 2015

Rob Hayes, Public Services Director
City of Novi, Department of Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: Novi Food Center SP09-18B
Review for Acceptance

Dear Mr. Hayes:

We have received and reviewed the following documents relating to the recent parking lot improvements constructed for Novi Food Center:

- Cross Access Easement Agreement (***Approved***)
- Storm Drainage Facility Maintenance Easement Agreement (***Approved***)
- Title Commitment

License Agreement

1. Because the driveway and pedestrian improvements serving the site have been constructed within the public right-of-way, the enclosed License Agreement is the appropriate document to allow the property owner install and maintain the improvements. The License Agreement provides the City protection from liability for the improvements constructed by the property owner. In the event that it is necessary in the future to expand the travelled portion of the road or do other work in the right-of-way that is inconsistent with the improvements, the License Agreement is terminable by the City. The License Agreement should be recorded with the Oakland County Register of Deeds so that purchasers are on notice of the limitations regarding the improvements in the right-of-way. The attached Exhibits have been reviewed and approved by the City's Engineering Division.

Storm Drainage Facility Maintenance Easement Agreement

2. The Storm Drainage Facility Maintenance Easement Agreement is in the City's standard format. It requires the property owner to maintain the culverts and other storm water improvements installed in connection with the recent parking lot improvements. Some of the storm water improvements are in the public right-of-way. The locations of the improvements to be maintained are shown in Exhibit B to the Agreement. The Exhibits have been reviewed and approved by the City's Engineering Division. An access easement has not been included with the Storm Drainage Facility Maintenance Agreement because most the improvements can be accessed by entering the public right-of-way. A general right-of-entry has been provided to the City to undertake maintenance in the event that the property owner fails to do so in accordance with the terms of the Agreement. The Agreement may be placed on an upcoming City Council Agenda for approval prior to recording with the Oakland County Register of Deeds.

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

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Elizabeth K. Saarela

EKS/sls
Enclosures

- C: Maryanne Cornelius, City Clerk (w/Original Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
Barb McBeth, Deputy Community Development Director (w/Enclosures)
Sheila Weber and Kristin Pace, Treasurer's Office (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Adam Wayne, Construction Engineer (w/Enclosures)
Kristin Pace, Treasurer's Office (w/Enclosures)
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Robert Kachman, Design & Construction (w/Enclosures)
Thomas R. Schultz, Esq. (w/Enclosures)

STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this ____ day of _____, 2015, by and between Novi Food Center, LLC, and Sami and Latifa Poota, husband and wife, individually, whose address is 31100 Wixom Road, Wixom, Michigan 48393 (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 (hereinafter the "City").

RECITATIONS:

- A. Owner is the owner and developer of a certain parcel of land situated in Section 23 of the City of Novi, Oakland County, Michigan, described on the attached and incorporated Exhibit A (the "Property"). Owner has received final site plan approval for construction of parking lot improvements on the Property.
- B. The parking lot improvements, shall contain certain storm drainage facilities, including but not limited to catch basins and two oil gas separators for the collection, conveyance, storage, treatment and/or discharge of storm water from the Property in accordance with all approved plans, and all applicable ordinances, laws and regulations.

NOW, THEREFORE, the Owner hereby covenants and agrees that the Owner shall, at its own expense, perpetually preserve, maintain, and repair all storm drainage facilities to insure that the same continue to function as intended. The Owner shall establish a regular and systematic program of maintenance (the "Schedule of Maintenance") for such facilities and areas to insure that the physical condition and intended function of such areas and facilities shall be preserved and maintained. The Schedule of Maintenance and the annual estimated costs for maintenance and repairs for the first three (3) years are described in the attached Exhibit B.

In the event that the Owner shall at any time fail to carry out the responsibilities specified within this agreement, and/or in the event of a failure to preserve and/or maintain the storm water drainage, detention and retention facilities in reasonable order and condition, the City may serve written notice upon the Owner setting forth the deficiencies in maintenance and/or preservation along with a demand that the deficiencies be cured within a stated reasonable time period, and the

date, time and place for a hearing before the City for the purpose of allowing Owner an opportunity to be heard as to why the City should not proceed with the correction of the deficiency or obligation which has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If, following such hearing, the person conducting the hearing shall determine that the obligation has not been fulfilled or failure corrected within the time specified in the notice, as determined by the City in its reasonable discretion, the City shall thereupon have the power and authority, but not the obligation, to enter upon the Property, or cause its agents or contractors to enter the Property over and through the public right-of-way as shown in **Exhibit B** and perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary with respect to the catch basins and oil/gas separators, for the purposes described above. The cost and expense of making and financing such actions by the City, including notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in an amount equivalent to twenty-five (25%) percent of the total of all such costs and expenses incurred, shall be paid by Owner within thirty (30) days of a billing to the Owner. All unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the Owner, and, in such event, the Owner shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

The parties hereto make this Agreement on behalf of themselves, their heirs, successors, assigns and transferees, and hereby warrant that they have the authority and capacity to execute this Agreement and bind the property as described in the terms and conditions of this agreement.

Invalidation of any of these covenants or conditions by Judgment or Court Order shall in no way affect the validity of any other provision which shall remain in full force and effect.

This agreement shall run with the land and be binding upon all owners, their agents, heirs, successors, assigns and transferees.

IN WITNESS WHEREOF, Owner has executed this Agreement as of the day and year first above set forth.

{Signatures Begin on Following Page}

OWNER

Novi Food Center, L.L.C.,
A Michigan limited liability company

Sam Poota
By: *Sam Poota*, Its President

Sam Poota
Sami Poota
Latifa Poota
Latifa Poota

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me 14 day of May, 2015 by *Rajaa T. Bashi*, the _____ of a Novi Food Center, L.L.C., a Michigan limited liability company on its behalf.

RAJAA T BASHI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission Expires March 3, 2019
Acting in the County of *Oakland*

Rajaa T. Bashi
Notary Public
Acting in *Oakland* County, Michigan
My commission expires: *03-03-2019*

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me 14 day of May, 2015 by Sami Poota and Latifa Poota, husband and wife.

RAJAA T BASHI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission Expires March 3, 2019
Acting in the County of *Oakland*

Rajaa T. Bashi
Notary Public
Acting in *Oakland* County, Michigan
My commission expires: *03-03-2019*

CITY OF NOVI
A Municipal Corporation

By:
Its:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this ____ day of _____ 201____, by, _____, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

Drafted by: Elizabeth M. Kudla Johnson, Rosati, Schultz & Joppich, P.C. 27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331	And when recorded return to: Maryanne Cornelius, City Clerk City of Novi 45175 W. Ten Mile Rd Novi, MI 48375
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EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

In the City of Novi, Oakland County, Michigan, to wit:
Lots 3, 4 and 5, "Novi Gardens Sub.", of part of the Northwest ¼ of Section 23, Town 1
North, Range 8 East; City of Novi, Oakland County, Michigan, as recorded in Liber 60,
Page 18 of Plats, Oakland County Records.

SIDWELL NOS.; 50-22-23-104-010.

In the City of Novi, Oakland County, Michigan, to wit:
Lots 6, 7 and 8, "Novi Gardens Sub.", of part of the Northwest ¼ of Section 23, Town 1
North, Range 8 East; City of Novi, Oakland County, Michigan, as recorded in Liber 60,
Page 18 of Plats, Oakland County Records.

SIDWELL NOS.; 50-22-23-104-009.

EXHIBIT B
SCHEDULE OF MAINTENANCE

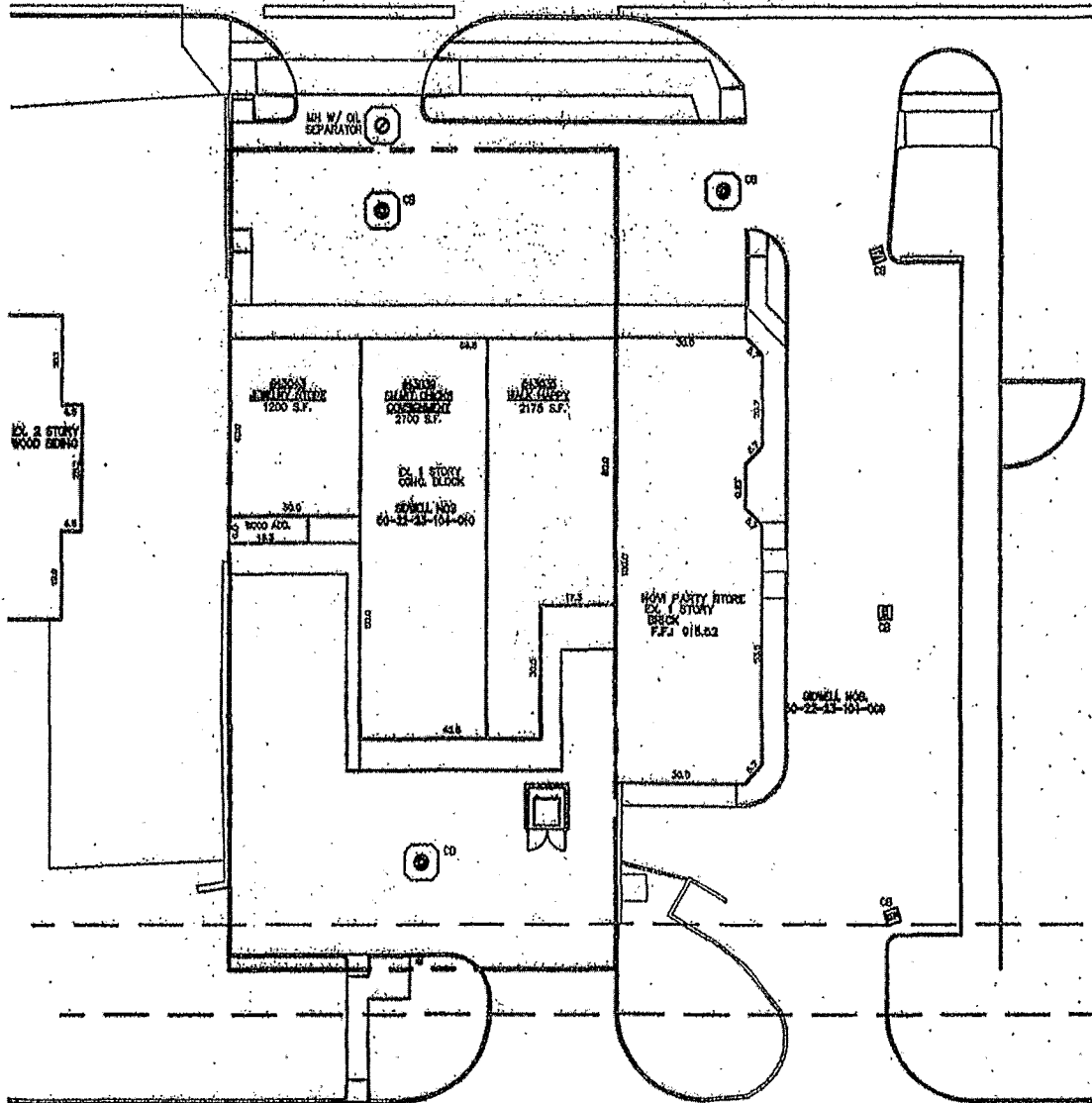
EXHIBIT B

SCHEDULE OF MAINTENANCE

Schedule maintenance of the storm sewer system; as required by City of Novi will be done by POWERVAC of Michigan, Inc. The storm sewer system consists of 6- catch basins and 2 manhole oil/gas separators are to be cleaned.

Vactor	\$ 178.75/hr. x 4 hours	= \$ 715.00
Disposal in Yards	Three (3) yards x \$ 85/yd	= \$ 255.00
Total Cost of Maintenance		= \$ 970.00

GRAND RIVER AVENUE



SCHEDULE MAINTENANCE SKETCH
SCALE 1" = 40.00'

