



CITY OF NOVI CITY COUNCIL
OCTOBER 7, 2019

SUBJECT: Consideration of approval of an Intergovernmental Water Service Agreement with the City of Wixom to allow the property at 48900 West 12 Mile Road, Wixom, Michigan, to connect to the City of Novi's public water system.

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

BACKGROUND INFORMATION: A property owner in the City of Wixom at 48900 West 12 Mile Road has requested the opportunity to connect their proposed facility to Novi's water system because there is currently no public water available from Wixom in the area. Wixom does have plans to extend their water system to this area, and at that time the interconnection would remain in place as a closed emergency connection between Novi and Wixom. Four of these connections currently exist between Novi and Wixom (eight total between all surrounding communities), which can be very beneficial in the event of a loss of water service for either community.

Novi and Wixom have worked together to develop the attached Water Service Agreement. The City Attorney has reviewed the agreement and sees no legal impediment to entering into this agreement (Tom Schultz, September 27, 2019). The agreement states that this is a temporary connection, and in the event that water does become available to the property from Wixom's water system, this property will be required to connect to that system and disconnect from Novi's system. Included in the proposed agreement are provisions for Wixom to assist Novi in collecting any delinquent water services charges to the extent permitted by state law and local ordinance.

RECOMMENDED ACTION: Approval of an Intergovernmental Water Service Agreement with the City of Wixom to allow the property at 48900 West 12 Mile Road, Wixom, Michigan, to connect to the City of Novi's public water system.

48900 West 12 Mile Road Water Service Agreement

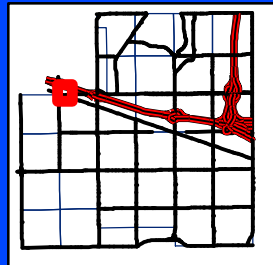
Location Map



Map Author: Croy
Date: 9/25/19
Project: 48900 W 12 Mile Road
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 Works
26300 Lee BeGole Drive
Novi, MI 48375
cityofnovi.org

Feet
0 55 110 220 330

1 inch = 263 feet



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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

September 27, 2019

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

RE: Intergovernmental Water Service Agreement with City of Wixom

Dear Mr. Croy:

Enclosed for placement on an upcoming City Council Agenda for approval, please find the Water Service Agreement between the City of Novi, the City of Wixom, and a Wixom property owner requesting temporary water service from the City of Novi until such time as water service is available from Wixom. The property owner will be responsible for the payment of all required permit fees, tap fees, and meter fees to the City for the water connection. The property owner will also be responsible for the payment of all water bills directly to Novi. The connection will remain in place until water service becomes available within the City of Wixom and Wixom elects to have the property owner disconnect from Novi water service. Novi may also require disconnection in the event that Wixom water service becomes available, or in the event that a court order restricts or limits the City's right to obtain, sell, contract for, or distribute water service.

The Water Service Agreement was prepared by the City and has been reviewed and approved by Wixom as to format and content. We see no legal impediment to entering into the Agreement as requested. Once approved, the City may execute the Agreement in the usual manner and return it to the Wixom property owner and the City of Wixom for execution.

Please feel free to contact me with any questions or concerns you may have with respect to this matter.

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

Thomas R. Schultz

TRS/jah
Enclosure

WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT made this _13th_ day of August, 2019, by and among the CITY OF NOVI whose address is 45175 Ten Mile, Novi, MI, 48375, hereinafter referred to as "Novi"; the CITY OF WIXOM, whose address is 49045 Pontiac Trail, Wixom MI. 48393, hereinafter referred to as "Wixom"; and CT Wixom, LLC, whose address is 48900 West 12 Mile, Wixom, Michigan 48393, hereinafter referred to as "Customer."

WHEREAS, the property of Customer is located within the boundaries of the City of Wixom, Oakland County, Michigan, as per the attached legal description referred to as Exhibit "A";

WHEREAS, water service to said property is not yet available from Wixom; and

WHEREAS, Novi has agreed to enter into this Agreement with Wixom and Customer to supply water to said property of Customer until such time as Wixom makes a public water supply available to said property of Customer, or as otherwise provided herein;

WHEREAS, the Intergovernmental Contracts Between Municipal Corporations Act, MCL 124.1, et seq., grants any municipal corporation the power to join with any other municipal corporation by contract for the joint operation of any property, facility, or service which each would have the power to own, operate, or perform separately.

NOW, THEREFORE, based upon the foregoing recitals and in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Customer shall apply to Novi for permits necessary under Novi's ordinances to tap into Novi's water main. Novi shall issue a permit to Customer upon receipt of all documentation and permit fees, tap fees and meter fees required in accordance with applicable ordinances and resolutions, as amended from time to time. Customer shall be responsible for and bear all costs and expenses incurred by the parties in the administration of this permit procedure, and any other costs or expenses incurred by the parties in connecting Customer to Novi's water system.

2. Customer shall also apply for a plumbing permit from Wixom. Upon receipt of all documentation and permit fees required by applicable City ordinance, Wixom shall inspect and test any equipment installed within the City of Wixom up to and into Customer's residence to ensure it meets Wixom standards. Upon completion of inspection and approval of the improvements by Wixom, Novi will install its meter at Customer's business.

3. Novi shall bill Customer directly for water services furnished to the property described on Exhibit "A" at the rate fixed for like quantities of water and water service furnished to other consumers of the Novi water System, said rate being subject to change by Novi at any time.

4. Novi shall add a water service fee charge for any and all services that Novi renders to Customer or Wixom. The added water service fee charge shall be substantiated for the sole purpose of reimbursing Novi for the cost of administrative services. The amount of 10% of the total billed cost shall be charged as the water service fee.

5. Charges for water service furnished by the Novi System shall be collected on a quarterly basis, and bills shall be sent to Customer immediately after the end of the period and

shall be due and payable at the office of the city treasurer 30 days after the date of the bill. For all bills not paid within 30 days of the date of the bill, a one-time penalty of ten percent shall be added to the bill. In the event that Customer is delinquent with respect to payment for water service, Novi shall have the right to shut off and discontinue the supply of water service to the subject Property for nonpayment of water rates when due in accordance with the procedure set forth within Novi's ordinance. Water services so discontinued shall not be restored until all sums then due and owing shall be paid, plus a turn-on charge as set from time to time by resolution of the Novi City Council. Wixom shall assist Novi in collecting delinquent water services charges to the extent permitted by state law and local ordinance.

6. In the event that a water extension is constructed within Wixom in the future to serve the property, the Customer shall connect to the Wixom water extension, at Customer's expense, and shall pay all fees, charges and assessments related to connecting to the Wixom water extension. Customer shall be responsible for the cost of disconnecting from and any necessary restoration of the City of Novi water system resulting from the disconnection. At the time of connection to the City of Wixom extension, the connection to the Novi Water System will remain in place as an emergency connection.

7. In the event that the Wixom water extension is constructed and becomes available in the future to serve the property and the cost thereof is levied by way of special assessment, connection charge or otherwise against properties benefited, including the above-described property, the Customer, agrees to pay such special assessment, connection charge or other charge to Wixom in accordance with the ordinance or resolution establishing the same whether or not the property is actually connected to said Wixom water main.

8. In the event the Wixom water main is installed through a payback arrangement or payback district, the Customer agrees to pay Wixom the proportionate share of the water

extension installation attributed to the property by Wixom in one lump sum upon notification from the City.

9. In the event a petitioning effort is ever initiated regarding the installation of said Wixom water main by way of a special assessment, this Agreement shall constitute and will be considered an unconditional "YES" vote – with respect to the property and the owners of the property at the time of the petition – in favor of the establishment of the special assessment district, the water extension installation project, and the special assessment amount whether or not an actual petition is ever signed. This includes any such efforts, whether initiated by surrounding property owners or Wixom. Additionally, it is hereby agreed that no objection shall be made with respect to the establishment of such a special assessment district, water extension installation project, or the special assessment amount for such project by or on behalf of the property or any of the owners of the property at the time.

10. Once Customer is able to connect to a Wixom water main extension and the connection remains in place for emergency use, in the event of an emergency within either City, including but not limited to severe low water pressure, a need for additional water pressure for fire suppression, a system break or failure, or some other loss of capacity or flow, the Parties agree to act in good faith with one another by providing treated water service to each other by way of opening the valve connections.

11. Upon reasonable notice, the Parties each specifically reserve the right to terminate the supply of treated water to the other, if deemed necessary to protect the public health, safety and welfare within its own geographic limits. Any water obtained under this Agreement shall be used and provided to persons or entities solely within the recipient City's geographic limits.

12. The charge for any treated water service provided by one Party to the other shall be the prevailing rate set by each Party. Any charge for emergency usage shall be paid by the City receiving the emergency service within thirty (30) days of receipt of an invoice from the City providing the emergency service. This rate shall be reviewed by the Parties every two (2) years during the term of this Agreement. If the water service provided is not metered, the Parties shall bill each other on the basis of a reasonable estimate made and agreed to by both Parties based on historical data for water usage for that area.

13. Neither City makes any representation as to the quality of the treated water that it will provide in the event of an emergency, other than that the water that is provided will be treated and will be of the same quality that the City provides to its own customers.

14. This Agreement will be subject to cancellation in the event a court of competent jurisdiction restricts or limits, directly or indirectly, any of the rights of Novi to obtain, sell, contract for or distribute water service. Novi shall give notice to Customer and Wixom within a reasonable time after receiving notice of commencement of any court proceedings affecting the right of the Customer to receive water services under this Agreement. Novi reserves the right to require Customer to disconnect from the Novi water main if and when Wixom makes water extension available to the residence of Customer. In the event that Novi does require Customer to disconnect from its water main, Customer shall have ninety (90) days from the date of notification (weather permitting) to make alternate arrangements for water service. In that event, Novi shall not be required to reimburse or repay either Wixom or Customer for costs incurred by Wixom or Customer as a result of connection to Wixom or disconnections from the Novi water supply system. Customer is responsible for and shall pay for the costs of disconnection and any necessary restoration of the Novi water system resulting from disconnection to Novi.

15. Novi will not be responsible for damages for any interruption or failure to supply water service and shall be held harmless by the Customer, from all damages of any kind, nature and description, which may arise as a result of making this Agreement and furnishing water service as provided herein. In addition, at all times until the Customer is no longer connected to the Novi water main /water system and/or using Novi's water, Customer shall and hereby agrees to release, hold harmless and indemnify Novi and all if its officials (elected and appointed), officers, directors, employees, consultants, agents, volunteers, councils, boards, and commissions from and against any and all claims, actions, lawsuits, liability, damages, and responsibility of any kind or nature related in any way whatsoever to this Agreement and/or the Customer's connection to and use of the Novi water system.

16. Notwithstanding anything set forth in this Agreement, each party shall be responsible for the claims made against that party and for the acts of its employees or agents. Neither Novi, nor Wixom, shall have any rights under any legal principle to be indemnified by each other for any act of each one's employees or agents in connection with any claim. Further, this Agreement does not and is not intended to impair, divest, delegate or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Novi or Wixom.

17. This Agreement is to be construed in accordance with the laws of the State of Michigan. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Michigan or the United States, the validity of the remaining portion or provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

18. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

19. This Agreement shall be binding upon the parties hereto, their successors and assigns, and transferees, and the obligations contained herein shall be binding upon and run with the land described herein and shall be assigned by the customer to the subsequent purchase of the land.

20. This Agreement shall be recorded with the Oakland County Register of Deeds.

21. This Agreement constitutes full agreement of the parties. The parties hereto have entered into this Agreement with no intention of conferring any benefit upon or creating any obligation to any party other than the signatories hereto, their successors and assigns. Any amendments to this Agreement shall be in writing executed by all of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in triplicate on the date and year recited above.

{Signatures Begin on the Following Page}

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Cortney Hanson, City Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

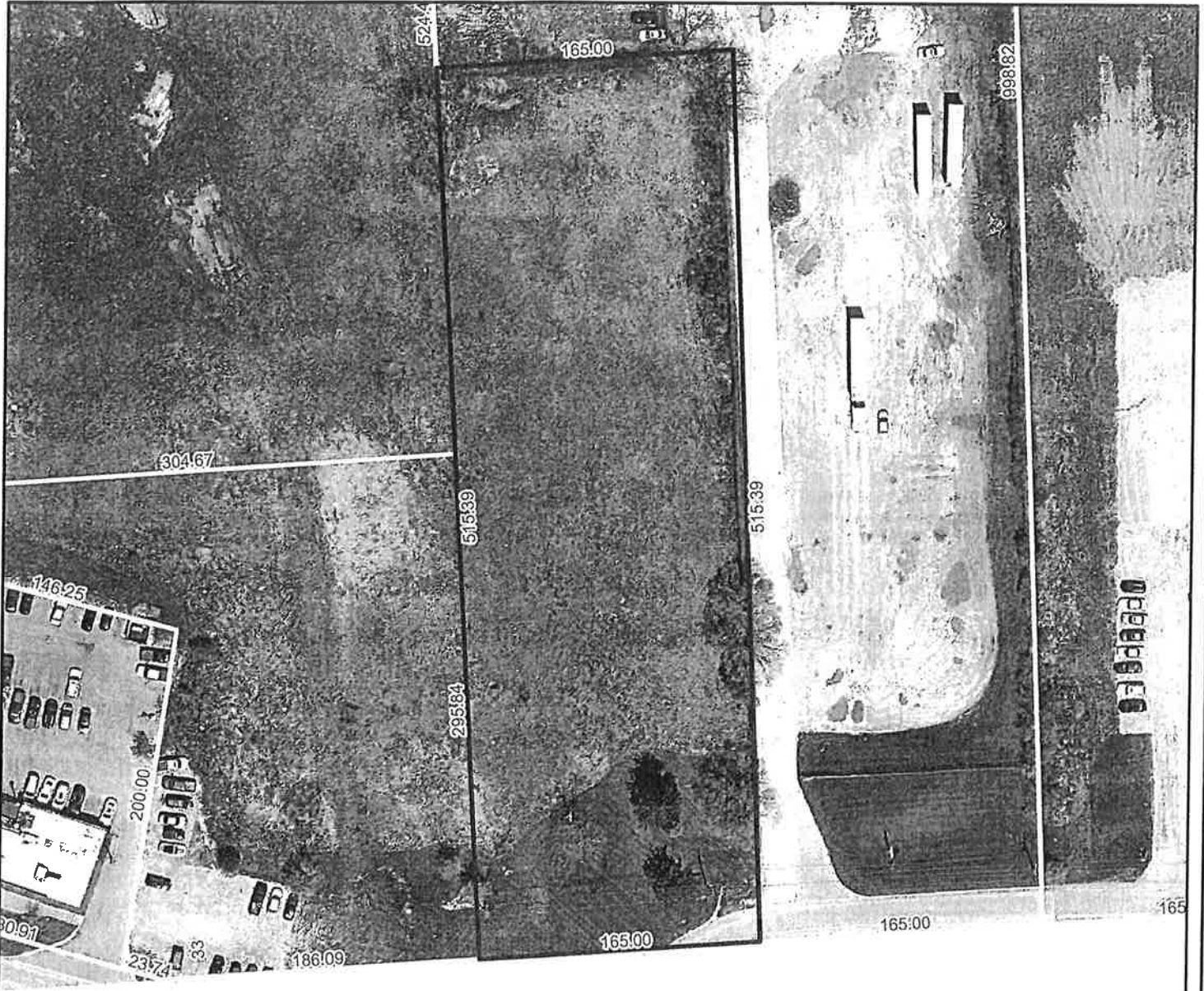
On this _____ day of _____, before me, a Notary Public, personally appeared Robert Gatt and Cortney Hanson, who, being duly sworn, did say that they are the Mayor and Clerk of the City of Novi and that they executed this Agreement in their capacity as Mayor and Clerk for the City of Novi.

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

EXHIBIT A

Property Tax ID

Property Summary Report: 2208376018



Legal Description:

T1N, R8E, SEC 8 PART OF SW 1/4 BEG AT PT DIST N 85-44-27 E 873.92 FT FROM SW SEC COR, TH N 02-49-27 W 515.39 FT, TH N 85-44-27 E 165.00 FT, TH S 02-49-27 E 515.39 FT, TH S 85-44-27 W 165.00 FT TO BEG 1.95 A

City of
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