

**CITY of NOVI CITY COUNCIL**

**Agenda Item G  
February 4, 2008**

**SUBJECT:** Approval of adoption by City Council of form agreement to provide police traffic enforcement service on private property.

**SUBMITTING DEPARTMENT:** Police Department *DEM*

**CITY MANAGER APPROVAL:** *PWA for CP*

**BACKGROUND INFORMATION:**

The City has been asked to provide traffic enforcement services on the Twelve Oaks Mall property, which has not been dedicated for public use. Under Section 33-795 of the Code of Ordinances, the Chief of Police is authorized to enter into such an agreement for police services on private property, provided the City Council has approved the form of agreement.

The City Attorney's office has developed a form of agreement, which form has been reviewed and approved by the Police Department, Lt. Wuotinen. Accordingly, approval is being sought from Council for the proposed form of agreement.

Upon approval of the form of agreement, the Chief of Police would be authorized to enter into individual agreements, without the necessity of having to bring each one back to Council for approval. Further, the Chief would be authorized to negotiate minor amendments to the form agreement at his or her discretion, so long as those amendments did not affect the substance or intent of the agreement.

**RECOMMENDED ACTION:** approval of the form agreement for traffic enforcement on private property, granting authority to the Chief of Police execute individual agreements, and to further negotiate minor amendments that do not affect the substance or intent of the form agreement.

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

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

January 25, 2008

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P.O. Box 3040  
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Lt. Keith Wuotinen  
City of Novi Police Department  
45125 West Ten Mile Road  
Novi, Michigan 48375

**Re: Proposed Private Property Traffic Enforcement Agreement  
Our File No. 55142.NOV**

KRISTIN BRICKER KOLB  
Direct: 248-539-2837  
kkolb@secretwardle.com

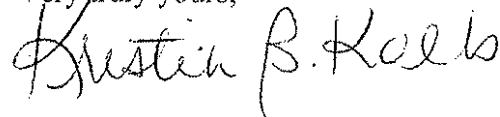
Dear Lt. Wuotinen:

Enclosed, per your request, please find the final version of the proposed Traffic Enforcement Agreement. As we have discussed, the Police Department has received requests to provide traffic enforcement services on private property in various places throughout the City. The Uniform Traffic Code for the State of Michigan, found at MCL 257.1 *et seq.*, specifically authorizes the City to enter into such an agreement for police enforcement services on private property. Additionally, Section 33-795 of the Novi Code of Ordinances specifically authorizes the Chief of Police to execute such agreements, once the "form" agreement has been approved by City Council.

Accordingly, we have requested this matter be placed on the agenda for consideration by Council at their February 4, 2008, regular meeting. The proposed motion sheet we are providing specifies that Council is approving the form of agreement, but that the Chief of Police will have the authority to execute each individual agreement, and further to negotiate minor amendments at his discretion, so long as the amendments do not affect the substance or intent of the agreement. Assuming this motion is passed as proposed, it will not be necessary to take each separate agreement to the City Council for approval.

Thank you for your input into this agreement. If you have any questions, please feel free to contact me. Tom Schultz will be present at the meeting on February 4<sup>th</sup> to discuss this matter with the Council, should they have any questions.

Very truly yours,



Kristin Bricker Kolb

KBK:jw

Enclosure

cc: Mayor David E. Landry  
City Council  
Clay J. Pearson, City Manager  
Pamela W. Antil, Assistant City Manager  
David E. Molloy, Chief of Police  
Thomas R. Schultz, Esq.

**TRAFFIC ENFORCEMENT AGREEMENT**

THIS AGREEMENT is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF NOVI, MICHIGAN, a Michigan municipal corporation, through its Chief of Police, whose address is 45125 West Ten Mile Road, Novi, Michigan 48375, hereinafter referred to as "CITY", and \_\_\_\_\_, a Michigan \_\_\_\_\_, whose address is \_\_\_\_\_, Michigan \_\_\_\_\_, hereinafter referred to as "PROPERTY OWNER".

**RECITATIONS**

WHEREAS, the CITY is empowered to enforce the Uniform Traffic Code provisions in the City of Novi under MCL 257.1 *et seq.* and Chapter 33 of the Novi Code of Ordinances;

WHEREAS, MCL 257.951(2) authorizes the CITY to contract with PROPERTY OWNER to enforce the provisions of the Uniform Traffic Code and City ordinances on the PROPERTY OWNER'S property located in the City of Novi; and

WHEREAS, Section 33-795 authorizes the Chief of Police to enter into an agreement for security services by the Police Department in exchange for payment of the costs of providing such services; and

WHEREAS, the CITY and the PROPERTY OWNER, in the interest of the public health, safety, and welfare, desire to establish terms and conditions for the enforcement of the Uniform Traffic Control provisions on the private roads owned and controlled by the PROPERTY OWNER.

**NOW, THEREFORE**, in consideration of the mutual understandings and agreements set forth herein, the CITY and the PROPERTY OWNER agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to establish the terms and conditions under which the CITY will provide Uniform Traffic Control enforcement over the private roads under the ownership and control of the PROPERTY OWNER, including all roads shown and listed on Exhibit "A" (the "PROPERTY") attached hereto.

SECTION 2. TERM. This Agreement shall become effective upon execution by both parties, and shall run through \_\_\_\_\_, 20\_\_\_\_, and may be renewed thereafter for successive periods not to exceed five (5) years each upon mutual agreement of the Chief of Police and the PROPERTY OWNER, unless earlier terminated as provided herein.

SECTION 3. PRIVATE ROADS. The CITY shall enforce the Uniform Traffic Code provisions over the private roads under the ownership and control of the PROPERTY

OWNER as identified on the attached Exhibit A that is incorporated by reference into this Agreement.

#### SECTION 4. TRAFFIC SIGNAGE.

a. In accordance with MCL 257.951, PROPERTY OWNER shall acquire and install, at its sole cost, the street/traffic signage meeting the requirements of the Michigan Manual of Uniform Traffic Control Devices to be installed at the locations listed in Exhibit "B." The PROPERTY OWNER shall also provide for maintenance of the signage at its sole cost.

b. The CITY reserves the right to make any and all final decisions for all street/traffic signage installations such as, by way of example and not limitation, multi-way stop locations, stop locations, reduction or increase of speed limits. Requests for permission to install the above-referenced signage must be made in writing by the PROPERTY OWNER to the CITY and the following information must be included in the request:

1. The type of signage requested;
2. The requested location of the signage; and
3. The authorized signature of the person making the request on behalf of the PROPERTY OWNER.

c. It shall be the PROPERTY OWNER's sole and exclusive obligation to replace lost, stolen or damaged traffic signage with replacement traffic signage.

d. The PROPERTY OWNER shall provide to the CITY the proposed design plans and specifications for all traffic signs to be installed and the CITY shall review the plans and specifications for conformance to the Michigan Manual for Uniform Traffic Control Devices and respond appropriately. The CITY shall be the sole and exclusive party with approval authority as to all final plans and specifications. Prior to commencement of any installation activities by the PROPERTY OWNER, the CITY's Chief of Police or his/her designee and Public Works Director or his/her designee written approval must be obtained.

e. The PROPERTY OWNER shall comply with all CITY standards for signage installation. The CITY's Chief of Police or his/her designee and Public Works Director or his/her designee shall be solely responsible for all signage determinations.

SECTION 5. TRAFFIC ENFORCEMENT. The CITY shall exercise its jurisdiction for municipal traffic control and enforcement on the private roads identified on the attached Exhibit "A." Traffic control and enforcement shall include applicable provisions of MCL 257.1 *et seq.*, and all applicable Ordinances of the CITY.

SECTION 6. MAINTENANCE AND OPERATION. Upon the completion of the installation of the signage, if any, the PROPERTY OWNER shall maintain full

responsibility for the maintenance and operation of the signage subject to the provisions of this Agreement. The CITY may, upon the PROPERTY OWNER'S written request and reimbursement from the PROPERTY OWNER, provide for the signage. If the PROPERTY OWNER fails to maintain the signage required in this Traffic Enforcement Agreement and fails to authorize the CITY to provide said signage, then upon the CITY's notice to the PROPERTY OWNER, the CITY may, but is in no way obligated to, provide for the required signage.

SECTION 7. LEVEL OF MAINTENANCE. The PROPERTY OWNER shall maintain the signage in accordance with all CITY policies. In this regard the PROPERTY OWNER shall record all maintenance activities relative to said street/traffic signage on a CITY approved log sheet and shall routinely furnish copies of said log to the Chief of Police or his/her designee.

SECTION 8. REPAIR, MODIFICATION AND REPLACEMENT. The PROPERTY OWNER shall not make any modifications (except for normal maintenance activities) to the signage or replace any of the signage without the CITY's Chief of Police or his/her designee and Public Works Director or his/her designee prior written approval or in clear emergency situations in which case the CITY shall be immediately notified.

SECTION 9. LEVEL OF SERVICE. It is expressly understood and agreed by the parties hereto that the effect of the signage must be such that traffic will be properly handled. Necessary modifications or replacements may be made by the PROPERTY OWNER, after written approval by the CITY's Chief of Police or his/her designee and Public Works Director or his/her designee, to accommodate the changing needs of traffic.

SECTION 10. COMPENSATION.

a. The PROPERTY OWNER shall reimburse the CITY for all actual costs, if any, resulting to the CITY from the installation of the PROPERTY OWNER's traffic signage, emergency signage requirements, or other CITY costs related to the private roads.

b. If private detail traffic enforcement services are requested in writing by the PROPERTY OWNER, the CITY shall have the right to charge the PROPERTY OWNER for all actual costs resulting to the CITY from the provision of private detail traffic enforcement services over the private roads. Upon execution of this Traffic Enforcement Agreement, the rate for private detail traffic enforcement shall be charged at the then-current rates charged by the CITY.

c. The actual cost for signage and signage services provided by the CITY and the actual cost for provision of traffic enforcement services provided by the CITY shall be adjusted as necessary when determined by the City.

SECTION 11. PAYMENT AND BILLING.

a. The CITY shall render to the PROPERTY OWNER, at the close of each calendar month if services have been rendered, an invoice describing the services rendered, the cost of the services, and other information required by this Agreement.

b. The costs of services of the CITY shall be invoiced to the PROPERTY OWNER. Payment by the PROPERTY OWNER shall be made to the CITY within thirty (30) days of receipt of the CITY's invoices.

## SECTION 12. INDEMNIFICATION.

a. The PROPERTY OWNER shall, at all times hereafter, indemnify, hold harmless and defend the CITY, its officers, agents, servants, volunteers and employees, individually and collectively, from and against any claims, damages, injuries, losses, liability, causes of action, costs and expenses, including attorneys fees and costs, arising out of, resulting from, or in any way connected with any negligent and wrongful acts or omissions of the PROPERTY OWNER, its officers, agents, servants or employees in the performance of duties and obligations under this Traffic Enforcement Agreement, the services provided by the PROPERTY OWNER pursuant to this Agreement, the condition of the private roads including any signage, or the performance of operations under this Traffic Enforcement Agreement.

b. For purposes of liability, the CITY is subject to governmental immunity in accordance with state law and any applicable federal laws. This Agreement shall not constitute a waiver of governmental immunity by the CITY nor the PROPERTY OWNER's consent to the CITY's waiver of governmental immunity as to any matter to which such immunity would apply.

## SECTION 13. INSURANCE.

a. GENERAL. The PROPERTY OWNER shall, at the PROPERTY OWNER's own cost, procure the insurance required under this section and maintain such insurance in effect during the term of this Agreement.

1. The PROPERTY OWNER shall furnish the CITY with a Certificate of Insurance signed by an authorized representative of the insurance company evidencing the insurance required by this section (Workers' Compensation/Employer's Liability, if applicable, Comprehensive General Liability, Comprehensive Automobile Liability, Property Damage). The Property Owner shall provide the CITY not less than thirty (30) days written notice prior to the cancellation, nonrenewal, amendment or restriction of coverage. Until such time as the insurance is no longer required to be maintained by the PROPERTY OWNER, the PROPERTY OWNER shall provide the CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

2. In addition to providing the Certificate of Insurance, if required by the CITY, the PROPERTY OWNER shall, within thirty (30) days after receipt of the request, provide the CITY with a copy of each of the policies of insurance providing the coverage required by this section.

3. Neither approval by the CITY nor failure to disapprove the insurance furnished by the PROPERTY OWNER shall relieve the PROPERTY OWNER of the PROPERTY OWNER's full responsibility for liability, damages and accidents.

b. INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

1. Companies issuing policies, other than Workers' Compensation, must be authorized to conduct business in the State of Michigan.

2. In addition, such companies shall have and maintain a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

3. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) become no longer authorized to conduct business in the State of Michigan, or 2) fail to maintain the Best's Rating and Financial Size Category, the PROPERTY OWNER shall, as soon as the PROPERTY OWNER has knowledge of any such circumstance, immediately notify the CITY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the PROPERTY OWNER has replaced the unacceptable insurance company with an insurance company acceptable to the CITY, the PROPERTY OWNER shall be deemed to be in default of this Agreement.

c. SPECIFICATIONS. Without limiting any of the other obligations or liability of the PROPERTY OWNER, the PROPERTY OWNER shall, at the PROPERTY OWNER's sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this subsection. Except as otherwise specified in this Agreement, the insurance shall become effective prior to the commencement of work by the PROPERTY OWNER and the CITY and shall be maintained in force until the termination date of this Agreement. The amounts and types of insurance shall conform to the following minimum requirements.

1. Workers' Compensation/Employer's Liability.

(A) The PROPERTY OWNER, if acting as an employer or contractor, shall obtain insurance to cover the PROPERTY OWNER and its

subcontractors of every tier for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed with the Commissioner of Insurance, State of Michigan for use in Michigan or by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Michigan Workers' Compensation Act, if applicable, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state law.

(B) In such amounts as required by law and subject to the restrictions of coverage found in the standard Workers' Compensation Policy for liability, to the extent applicable, for the Michigan Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be the minimum statutory requirement, as amended from time to time.

## 2. Comprehensive General Liability.

(A) The PROPERTY OWNER's insurance shall cover the PROPERTY OWNER for those sources of liability which would be covered by the latest edition of the standard Comprehensive General Liability Coverage Form as filed for use in the State of Michigan by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

(B) The PROPERTY OWNER shall maintain coverage applicable to the work performed under this Agreement. The PROPERTY OWNER shall maintain the minimum limits (inclusive of any amounts provided by an Umbrella or Excess policy) as follows:

### LIMITS:

General Aggregate \$2,000,000.00

Personal & Advertising Injury Limit \$1,000,000.00

Each Occurrence Limit \$1,000,000.00

3. Comprehensive Automobile Liability. The PROPERTY OWNER shall provide coverage for all owned, if applicable, and non-owned vehicles for limits of not less than \$1,000,000.00 Combined Single Limits or its equivalent.



4. OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve the PROPERTY OWNER, its officers, employees, servants or agents, of liability from any obligation under a section or any other portions of this Traffic Enforcement Agreement.

SECTION 14. TERMINATION. This Traffic Enforcement Agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) days' written notice delivered to the other party or, at the option of the CITY, immediately in the event any of the terms, covenants or agreements of this Agreement have been violated.

SECTION 15. ASSIGNMENT. No party to this Traffic Enforcement Agreement shall assign this Agreement, or any interest arising herein, without the written consent of the other party.

SECTION 16. INDEPENDENT CONTRACTOR. It is agreed by the parties that, at all times and for all purposes within the scope of this Traffic Enforcement Agreement, the relationship of the PROPERTY OWNER to the CITY is that of independent contractor and not that of agent or employee. No statement contained in this Traffic Enforcement Agreement shall be construed so as to find the PROPERTY OWNER an agent or employee of the CITY, and the PROPERTY OWNER shall be entitled to none of the rights, privileges or benefits of CITY employees.

SECTION 17. EMPLOYEE STATUS. Persons employed by the PROPERTY OWNER in the performance of services and functions pursuant to this Traffic Enforcement Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the CITY's officers and employees either by operation of law or by the CITY.

SECTION 18. ENTIRE AGREEMENT.

a. It is understood and agreed that the entire agreement of the parties is contained herein and that this Traffic Enforcement Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

b. Any alterations, amendments, deletions, or waivers of the provisions of this Traffic Enforcement Agreement, except the annual actual cost adjustment set forth in Section 10(c) of this Traffic Enforcement Agreement, shall be valid only when expressed in writing and duly signed by the parties.

SECTION 19. NOTICES. Whenever either party desires to give notice to the other, notice shall be sent by certified mail, return receipt requested, to:

FOR CITY: Chief of Police  
City of Novi  
45125 West Ten Mile  
Novi, Michigan 48375

FOR PROPERTY OWNER: President

\_\_\_\_\_  
\_\_\_\_\_  
Novi, Michigan \_\_\_\_\_

and

\_\_\_\_\_, Registered Agent  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change, by written notice as provided herein, the address or person for receipt of notices.

SECTION 20. FREEDOM OF INFORMATION ACT. The parties acknowledge the obligations under the Freedom of Information Act ("FOIA"), MCL 15.321 *et seq*, to release public records to members of the public upon request. The parties acknowledge that the CITY is required to comply with the FOIA, in the handling of the materials created under this Traffic Enforcement Agreement and that said statute controls over the terms of this Traffic Enforcement Agreement.

IN WITNESS WHEREOF, the parties have executed this Traffic Enforcement Agreement on the dates indicated below.

\_\_\_\_\_  
\_\_\_\_\_  
("Property Owner")

By: \_\_\_\_\_  
\_\_\_\_\_, President

Attest: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

CITY OF NOVI, a  
Michigan municipal corporation  
("City")

By: David E. Molloy  
Its: Chief of Police

Date: \_\_\_\_\_

**Exhibit "A"**

Private Roads

Exhibit "B"

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**Inventory of Street Signs**

- Stop** signs located on the following streets that intersect \_\_\_\_\_:
- Stop** signs located on the following streets that intersect \_\_\_\_\_:
- Stop** sign located \_\_\_\_\_ that intersects \_\_\_\_\_.
- Stop** sign at intersection of \_\_\_\_\_.
- Speed Limit 25 MPH** signs located on \_\_\_\_\_.
- Curve Ahead** sign on \_\_\_\_\_.
- Curve Ahead** signs ( ) within \_\_\_\_\_.
- Keep Right** sign at \_\_\_\_\_.
- Keep Right** sign in median \_\_\_\_\_.
- Slow Children Playing** sign \_\_\_\_\_.
- Speed Strictly Enforced** sign \_\_\_\_\_.
- No Outlet** sign located on \_\_\_\_\_.

## Exhibit "C"

### **PROTOCOL FOR INQUIRIES REGARDING ACQUIRING THIS AGREEMENT**

- PROPERTY OWNER representative contacts Police Department regarding enforcement.
- PROPERTY OWNER representative provided form traffic enforcement agreement by Police Department.
- PROPERTY OWNER identifies the private streets on which they are requesting traffic enforcement and completes the list for Exhibit A to the form agreement.
- PROPERTY OWNER discusses with Police Department and the Public Works representatives the adequacy of existing signage and identifies any new signage that will be included in the comprehensive list on Exhibit B to the form agreement pursuant to a Police Department Traffic Survey.
- PROPERTY OWNER provides to the Police Department the form agreement with the additional written information needed to complete the form agreement.
- City Attorney's office produces a final agreement or reviews agreement as submitted by PROPERTY OWNER and delivers to Police Department and Public Works Department for final comments, if any, and then delivers to PROPERTY OWNER for signature.
- PROPERTY OWNER delivers signed document to Police Department.
- Upon receipt, the Police Chief may sign the agreement.