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CITY of NOVI CITY COUNCIL

Agenda Item H
September 8, 2008

SUBJECT: Consideration of Oakland County Drain Commissioner's Interlocal Agreement for Drain Services for the installation of Supervisory Control and Data Acquisition (SCADA) equipment at the Walled Lake Diversion Control Structure in the amount of \$19,560.00.

SUBMITTING DEPARTMENT: Engineering *RH*

CITY MANAGER APPROVAL: *[Signature]*

EXPENDITURE REQUIRED	\$ 19,560
AMOUNT INCLUDED IN CIP	\$ 0
ADDITIONAL AMOUNT REQUIRED	\$ 19,560
LINE ITEM NUMBER	592-000.00-140.000 (Water and Sewer Fund)

BACKGROUND INFORMATION:

As you may recall, the City was notified in March 2006 by the Oakland County Drain Commissioner's Office (OCDC), the operator of the Walled Lake-Novı Wastewater Treatment Plant (WWTP), that the City had exceeded its contractual capacity at the WWTP and that no additional sanitary sewer permits would be issued for that district.

Since that time, the City has constructed a sanitary sewer diversion facility at West Park Drive and West Road to allow the City flexibility in allocating its flows now and in the future, and the hold on issuance of permits has been lifted. The OCDC operates and maintains the portion of the city's sanitary sewer system that is tributary to the Walled Lake-Novı WWTP. As such, OCDC decided, during construction, that they needed to connect the structure to their SCADA system so it can be operated remotely. (The original design was reviewed and approved by OCDC without mention of the additional SCADA equipment needs).

The enclosed interlocal agreement is for the installation of the SCADA equipment and allows OCDC to charge the City of Novi for the costs. The work would be completed using OCDC personnel. Because the equipment would only benefit the City of Novi (and not Walled Lake), the costs are not being included in the overall operation costs of the WWTP.

RECOMMENDED ACTION: Consideration of Oakland County Drain Commissioner's Interlocal Agreement for Drain Services for the installation of Supervisory Control and Data Acquisition (SCADA) equipment at the Walled Lake Diversion Control Structure in the amount of \$19,560.00.

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

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



August 5, 2008

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Brian Coburn, Civil Engineer
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Oakland County Drain Commissioner's Interlocal Agreement
for Drain Services
(Walled Lake-Novı Diversion Valve)
Our File No. 55142 NOV**

Dear Mr. Coburn:

We have received and reviewed the proposed Oakland County Drain Commissioner's Interlocal Agreement for Drain Services. The Agreement is for the purpose of installation of Supervisory Controls and Data Acquisition (SCADA) equipment by Oakland County at the sanitary sewer diversion structure constructed by the City near the intersection of West Park Drive and West Road. The Agreement pertains only to installation of the computer equipment and not continuing operation and maintenance of the equipment.

The proposed Agreement Appears to be a "form" or standard agreement for services used by the Oakland County Drain Commissioner's Office. The body of the Agreement contains mainly the standard "independent contractor" terms that the County requires. The County has indicated that the "form" has been approved by the Oakland County Board of Commissioners and will not be revised.

The specific "scope of services" to be performed by the County is delineated in Exhibit A and includes the purchase of parts and labor to install the SCADA equipment.

We have the following comments regarding the content of the "form" Agreement:

1. We note that Section 5.1, Section 7.3, and Article VIII provide that the City shall be responsible for and shall indemnify the County for any liabilities or damages resulting from or relating to the

“services” provided under this agreement. Generally, agreements for services to be provided by a contractor do not require the City to indemnify the contractor for the contractor’s own actions. This proposed agreement is unusual in that regard. Article VIII provides for one exception for which the City would not be liable for the County’s actions and this specifically in the event a “court ordered judgment or award to a third party for which that the Court has determined that the County or the County Agent was solely negligent or at fault.” This appears to leave open the question of whether the City would be required to indemnify the County for liability determinations made pursuant to a voluntary settlement agreement, liability determinations in which any part of the liability is assigned to the City, and/or whether the City would be required to indemnify the County for awards made pursuant to arbitration or various other means of dispute resolution.

It should be noted however, that despite the above, this Agreement pertains to services that would likely be subject to the protection provided in the governmental immunity statute, therefore there is less likelihood that these indemnity provisions would have an effect on the City. Additionally, it is our understanding that the project is not long term, is not labor intensive and is limited in scope with little potential for injury or damage to persons and/or property.

Though, generally, it would be safest for the City to seek revision of Sections 5.1, 7.3 and Article VIII to provide for the County to accept liability for its own actions; the County has indicated it will not make any revisions to the terms of the “form” agreement. Therefore, the City should determine whether as a business decision it desires to take responsibility for the County’s actions, or whether another contractor could complete the project without the City accepting liability for its actions.

2. Section 7.2 limits the County’s liability to the City for breach of contract by the County to only the amount of fees paid by the City to the County at the time the breach occurs. The provision specifically eliminates the ability of the City to recover damages in the event it must retain another contractor at a higher cost to complete the services. Additionally, this provision prevents the City from recovering for any damage to the City’s property caused by the County.

Though as noted above, we generally recommend asking the County to revise this provision to eliminate the limitation on liability, we note that the County has indicated it will not change the standard terms of this Agreement. The City in considering whether to accept the provisions, may take into consideration whether or not there is a great potential for property damage relating to the services to be provided. Additionally, the City may consider that any property damage caused by the County might be covered by the City's existing insurance policies.

3. It should be noted that Section 7.1 indicates that the County is not providing a warranty for its services or workmanship. Again, it should be noted that it appears that the City would be limited to recovering only the fees it paid to the County in the event the services result in defective equipment for faulty parts and/or labor.

In sum, the "form" Agreement provided by Oakland County for "independent contractor" services to install SCADA equipment is more favorable to the County than the City. Because the County has indicated it will not revise any of the terms, the City must consider whether or not it is willing to accept the Agreement as-is despite the fact that (1) damages for breach of contract are limited to the amount of fees paid, (2) the City could be held liable for the County's actions, and (3) no warranty is provided for labor; Subject also to the understanding that (a) the services are not labor intensive so the chance of physical injury is lower, and (b) the contract price is only \$ 19,560.

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

Very truly yours,



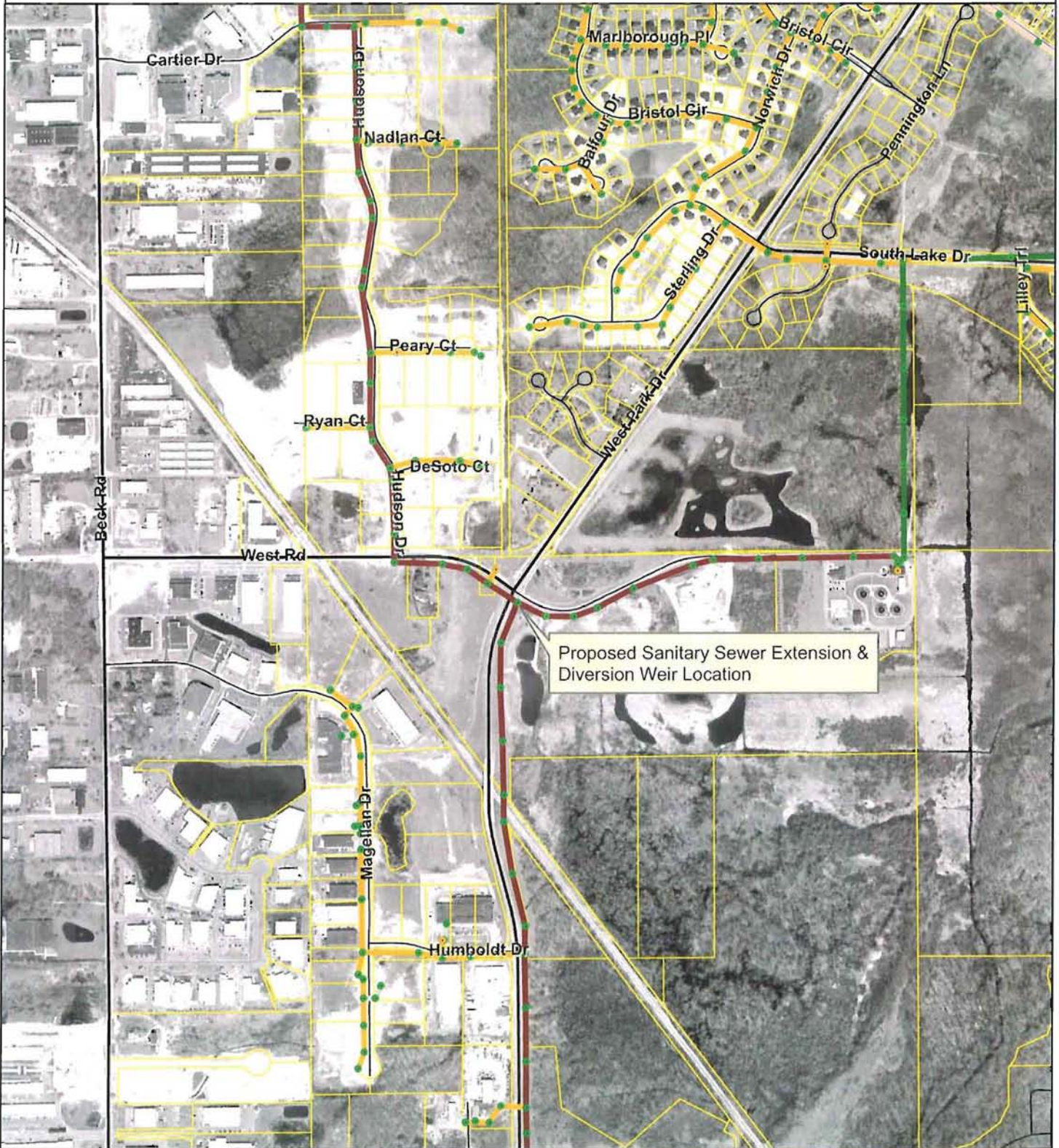
ELIZABETH M. KUDLA

EMK

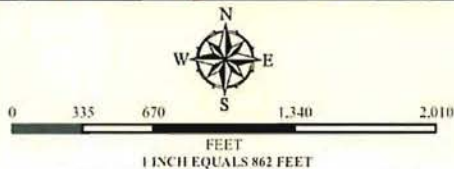
C: Maryanne Cornelius, Clerk
Rob Hayes, City Engineer
Thomas R. Schultz, Esquire

Exhibit B - Location Map

Walled Lake Diversion Sewer



CITY OF NOVI
 GEOGRAPHIC INFORMATION SYSTEMS OFFICE
 DEPARTMENT OF INFORMATION TECHNOLOGY
 NOVI CITY HALL, CIVIC CENTER
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-3279
 WWW.CI.NOVI.MI.US



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.

STANDARD CONTRACT FOR DRAIN SERVICES

OAKLAND COUNTY DRAIN COMMISSIONER'S INTERLOCAL AGREEMENT FOR DRAIN SERVICES

This CONTRACT (hereafter, this "Contract") is made and entered into between the **COUNTY OF OAKLAND**, a Michigan Constitutional and Municipal Corporation, whose address is 1200 North Telegraph Road, Michigan 48341 (hereafter, the "County"), by and through its Drain Commissioner, and the **CITY OF NOVI** whose address 45175 West Ten Mile Road, Novi, Michigan 48375 (hereafter, the "Municipality") in this Contract, either the County and/or the Municipality may also be referred to individually as a "Party" or jointly as "Parties."

WITNESSETH:

WHEREAS, the Municipality has requested the Oakland County Drain Commissioner for assistance in performing the scope of services (as described and defined in this Contract) and has agreed in return to reimburse the County as provided for in this Contract;

WHEREAS, the Oakland County Drain Commissioner's staff has determined, at the present time, that it has sufficient personnel as defined herein, possessing the requisite knowledge and expertise and is agreeable to assisting the Municipality by providing the requested services under the terms and conditions of this Contract.

WHEREAS, the Parties recognize and agree that absent an agreement such as this, the County has no obligation to provide these services for the Municipality.

NOW, THEREFORE, in consideration of these premises and the mutual promises, representations, and agreements set forth in this Contract, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the County and the Municipality mutually agree as follows:

ARTICLE I. DEFINED TERMS. In addition to the above defined terms (i.e., "Contract", "County", "Municipality", "Party" and "Parties"), the Parties agree that the following words and expressions, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall, be defined and interpreted as follows:

- 1.1 "Costs" – shall be defined as the labor, including statutory and customary fringe benefits, overtime, material and supplies, vehicle/equipment rental and subcontractor services devoted specifically to the Services provided.
- 1.2 "Consultant" - shall be defined as an independent contractor engaged by the County or Municipality to perform services/responsibilities necessary to carry out the objectives under this agreement.
- 1.3 "County Agent" or "County Agents" shall be defined as any and all Oakland County elected officials, appointed officials, directors, board members, council members, commissioners, authorities, other boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, and/or any such persons' successors or predecessors, agents, employees, attorneys, or auditors (whether such persons act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them,

excluding the Municipality and/or any Municipality Agents, as defined herein.

- 1.4 "OCDC Personnel" as used in this Contract shall be defined as a specific subset of, and included as part of the larger group of County Agents as defined above, and shall be further defined as any and all County Agents specifically employed and assigned by the County to work in the Office of the Oakland County Drain Commissioner as shown in the current County budget and/or personnel records of the County.
- 1.5 "Municipality Agent" or "Municipality Agents", shall be defined to include any and all Municipality officers, elected officials, appointed officials, directors, board members, council members, authorities, boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, and/or any such persons' successors or predecessors, agents, employees, attorneys, or auditors (whether such persons act or acted in their personal, representative, or official capacities), and/or any and all persons acting by, through, under, or in concert with any of them, except that no County Agent shall be deemed a Municipality Agent and conversely, no Municipality Agent shall be deemed a County Agent.
- 1.6 "Claim(s)" shall be defined to include any and all alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, fines, litigation costs and expenses, including, but not limited to, any reimbursement for reasonable attorney fees, witness fees, court costs, investigation and/or litigation expenses, any amounts paid in settlement, and/or any other amounts, liabilities or Claim(s) of any kind whatsoever which are imposed on, incurred by, or asserted against either the County and/or any County Agent, as defined herein, by any Municipality Agent, or any third party or any Claim(s) for which the County and/or any County Agent may become legally and/or contractually obligated to pay or defend against, or any other liabilities of any kind whatsoever, whether direct, indirect or consequential, whether based upon any alleged violation of the constitution (federal or State), any permit, any statute, rule, regulation or the common law, whether in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened and arising out of this Contract or relating in any way to the County's and/or any County Agent's participation in this Contract, the services provided pursuant to this Contract.
- 1.7 "Overhead" shall be defined to include the following: all allocation of the labor cost, including statutory and customary fringe benefits, of personnel responsible for administering this contract or supervising the work performed in connection with this contract; an allocation of expenses of the Oakland County Drain Commissioner's office; and an allocation of the indirect cost of Oakland County charged to the Oakland County Drain Commissioner for support services, such as (but not limited to) legal, personnel, accounting, computer support, and insurance/risk management.
- 1.8 "State" shall be defined as the "State of Michigan," a sovereign governmental entity of the United States, and shall also include within its definition any and all departments or agencies of State government.

ARTICLE II. OAKLAND COUNTY DRAIN COMMISSIONER'S SERVICES. The Parties agree that the full and complete scope of OCDC services shall be as described in attached Exhibit "A" and

limited in the following subsections (hereinafter defined and referred to as either "OCDC services" or services).

2.1 PURPOSE OF "SERVICES" The Parties agree that the purpose of any and all "OCDC services" or "Services" to be performed under this Contract shall be to assist (e.g., to help, aid, lend support, and/or participate in as an auxiliary, to contribute effort toward completion of a goal, etc.) the Municipality in the performance of Municipality's official functions, obligations, and Municipality's legal responsibilities.

2.2 MANNER COUNTY TO PROVIDE SERVICES The Parties agree that any and all "OCDC services" or "Services" to be provided by the County for the Municipality under this Contract shall be performed by the County's "OCDC Personnel" or consultants as defined herein.

2.2.1 OCDC Personnel or consultants shall be employed and assigned by the County in such numbers and based on such appropriate qualifications and other factors as decided solely by the County.

2.2.2 The Parties agree that the County shall be solely and exclusively responsible for furnishing all OCDC Personnel and consultants with all job instructions, job descriptions and job specifications and shall in all circumstances control, supervise, train or direct all OCDC Personnel in the performance of any and all Services under this Contract.

2.2.3 Except as otherwise expressly provided for herein, the Parties agree and warrant that, at all times and for all purposes relevant to this Contract, the County shall remain the sole and exclusive employer of all County Agents and OCDC Personnel.

2.2.4 This Contract is neither intended, nor shall it be interpreted, to create, change, grant, modify, supplement, supersede, alter, or otherwise affect or control, in any manner, form, or at any time, any right, privilege, benefit, or any other term or condition of employment, of any kind or nature whatsoever, in, upon, or for any County Agent or OCDC Personnel with the County, any applicable County employment and/or union contract, and/or any County rule(s), regulation(s), hours of work, shift assignment, order(s), policy(ies), procedure(s), directive(s), ethical guideline(s), etc., which shall, solely and exclusively, govern and control the employment relationship between the County and any County Agent or OCDC Personnel and/or the conduct and actions of any County Agent or any OCDC Personnel.

2.2.5 The Municipality agrees that except as expressly provided for under the terms of this Contract and/or laws of this State, no County Agent or OCDC Personnel, while such person is currently and/or actively employed or otherwise remains on the payroll of the County as a County Agent shall be employed, utilized, or perform any

other services, of any kind, directly or indirectly, in any manner or capacity, or otherwise be available to perform any other work or assignments by or for the Municipality during the term of this Contract. This section shall not prohibit the Municipality from employing any person who was a former County Agent but is no longer employed in that capacity by the County.

2.2.6 Except as otherwise expressly provided by the Contract and/or applicable State law, the Parties agree and warrant that neither the County, nor any County Agent, nor any OCDC Personnel, by virtue of this Contract or otherwise, shall be deemed, considered or claimed to be an employee of the Municipality and/or a Municipality Agent.

2.2.7 The Municipality shall not otherwise provide, furnish or assign any OCDC Personnel with any job instructions, job descriptions, job specifications, or job duties, or in any manner attempt to control, supervise, train, or direct any OCDC Personnel in the performance of any OCDC Services under the terms of this Contract.

2.3 LIMITS AND EXCLUSIONS ON COUNTY "SERVICES". Except as otherwise expressly provided for within this Contract, neither the County nor any County Agents or consultants shall be responsible for assisting or providing any other "Services " or assistance to the Municipality or assume any additional responsibility for assisting the Municipality in any other way or manner with any Municipality obligations under any and all State or Federal laws or regulations, including, but not limited to, providing any attorney or legal representation to the Municipality or any Municipality Agent at any proceeding before an adjudicative body or court.

2.4 The Municipality understands and agrees that it has obtained or will timely obtain any and all licenses, permits or approvals necessary for the Services to be provided herein, and that it will take such steps as are necessary to insure that all such permits, licenses and approvals remain in effect for the duration of this Contract.

ARTICLE III. TERM OF CONTRACT. The Parties agree that the term of this Contract shall begin on the effective date of this Contract and for a period not to exceed 180 days. This Contract, unless extended by mutual written agreement, shall expire on December 31, 2008. Any and all OCDC Services otherwise provided to the Municipality prior to the effective date of this Contract, shall be subject to the terms and conditions in this Contract.

ARTICLE IV. FEE SCHEDULE.

4.1 In consideration of the promises set forth in this Contract, the Municipality agrees to pay to the County its Costs and Overhead incurred for the Services contained within the "Scope of Services " attached hereto attached as Exhibit "A".

Payment shall be due and payable thirty (30) days after receipt of an invoice from the County. If during the term of this Contract, there are additional services requested of the County, the Parties shall negotiate additional fees to be paid by the Municipality.

- 4.2 The Municipality understands and agrees that if there is any amount due and owing to the County under this Contract, which is still unpaid at the time the County distributes funds to the Municipality from the Delinquent Tax Revolving Fund (DTRF), the County shall be entitled to reduce, set-off, and permanently retain any amount due to the municipality from Delinquent Tax Revolving Fund (DTRF) by any such amount then still due and owing the County pursuant to this Contract.
- 4.3 Municipality understands and agrees that the County has no funds to pay for services under this agreement. All Costs and Overhead associated with the services under this agreement will be the responsibility of the Municipality.
- 4.4 Municipality understands and agrees that if it does not pay the County within thirty (30) days of the receipt of the invoice as required in paragraph 4.1, interest shall accrue on the unpaid balance of any such invoice at the rate of 18% per annum.

ARTICLE V. NO TRANSFER OF MUNICIPALITY LEGAL OBLIGATIONS TO COUNTY. Except as expressly provided for in this Contract, the Municipality agrees that this Contract does not, and is not intended to, transfer, delegate, or assign to the County, and/or any County Agent or ODCD Personnel any civil or legal responsibility, duty, obligation, duty of care, cost, legal obligation, or liability associated with any governmental function delegated and/or entrusted to the Municipality under any applicable State or Federal laws or regulations.

- 5.1 The Municipality shall, at all times and under all circumstances, remain solely liable for any and all costs, legal obligations, and/or civil liabilities associated with the services provided under this agreement.
- 5.2 The Municipality shall not incur or create any debts, liens, liabilities or obligations for the County and shall take all necessary steps to ensure that any debts, liens, liabilities or obligations that the Municipality may incur shall not become a debt, liability, obligation or Claim(s) against the County.
- 5.3 The Parties agree that the Municipality shall at all times remain responsible for the ultimate completion of any Services provided herein. The Municipality and Municipality Agents shall be and remain responsible for compliance with all federal, State, and local laws, ordinances, regulations, and requirements in any manner affecting any work or performance of this Contract or with any Municipality duty or obligation under any applicable State or federal laws and/or regulations.

ARTICLE VI. NO DELEGATION OR DIMINUTION OF ANY GOVERNMENTAL AUTHORITY. The Parties reserve to themselves any rights and obligations related to the provision of any and all of each Party's respective governmental services, authority, responsibilities, and obligations. Except as expressly provided otherwise herein, this Contract does not, and is not intended to, create, diminish, delegate, transfer, assign, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, civil or legal responsibility, obligation, duty of care, liability, capacity, immunity, authority or character of office of either the Party to any other person or Party.

- 6.1 The Parties further agree, notwithstanding any other term or condition in this Contract, that no provision in this Contract is intended, nor shall it be construed, as a waiver of any governmental immunity, as provided by statute or applicable court decisions, by either Party, either for that Party and/or any of that Party's County or Municipal Agents.

ARTICLE VII. LIABILITY. The Municipality further agrees that the County shall not be liable to the Municipality for any and all Claim(s), except as otherwise expressly provided for in this Contract.

- 7.1 The Parties agree that this Contract does not and is not intended to create or include any County warranty, promise, covenant or guaranty, either express or implied, of any kind or nature whatsoever in favor of the Municipality, and/or any Municipality Agents, or any other person or entity.

- 7.2 In the event of any alleged breach, wrongful termination, and/or any default of any term or condition of this Contract by either the County or any County Agent, the County and/or any County Agent shall not be liable to the Municipality for any indirect, incidental, special or consequential damages, including, but not limited to any replacement costs for County Services, any loss of income or revenue, and/or any failure by the Municipality to meet any Municipality obligation under any applicable State and Federal law and regulations, or any other economic benefit or harm that the Municipality may have realized, but for any alleged breach, wrongful termination, default and/or cancellation of this Contract, or damages beyond or in excess of the amount(s) of any amount paid, received or retained by the County at the time of the alleged breach or default in connection with or under the terms of this Contract, whether such alleged breach or default is alleged in an action in contract or tort and/or whether or not the Municipality has been advised of the possibility of such damages. This provision and this Contract is intended by the Parties to allocate the risks between the Parties, and the Parties agree that the allocation of each Party's efforts, costs, and obligations under this Contract reflect this allocation of each Party's risk and the limitations of liability as specified herein.

- 7.3 Notwithstanding any other provision in this Contract, with regard to any and all alleged claims which are imposed on, incurred by, or asserted against the Municipality or any Municipality Agent or by any third person, arising out of any activities or Services to be carried out by any County Agent in the performance of this Contract, the Municipality hereby agrees that it shall have no rights pursuant to or under this Contract against the County and/or any County Agents to or for any indemnification (i.e., contractually, legally, equitably, or by implication) contribution, subrogation, or other right to be reimbursed by the County and/or any of County Agents based upon any and all legal theories or alleged rights of any kind, whether known or unknown, for any and all alleged losses, claims, complaints, demands for relief or damages, judgments, deficiencies, liability, penalties, litigation costs and expenses of any kind whatsoever which are imposed on, incurred by, or asserted against either the Municipality or Municipality Agents and which are

alleged to have arisen under or are in any way based or predicated upon this Contract.

ARTICLE VIII. INDEMNIFICATION. The Municipality shall not be obligated to pay any portion of any court ordered judgment or award to a third party for which a court has determined that the County and/or any County Agent was solely negligent or at fault. However, to the extent permitted by law, the Municipality agrees to, indemnify, defend and hold the County and/or any County Agent harmless from and against any and all Claim(s) which are imposed upon, incurred by, or asserted against the County and/or any County Agent that arise from or relate to the Services provided under this Agreement.

ARTICLE IX. MUNICIPALITY AGENTS AND COOPERATION WITH THE COUNTY. The Municipality agrees that it shall be solely and exclusively responsible, during the term of this Contract, for guaranteeing that all Municipality Agents fully cooperate with OCDC Personnel in the performance of all Services under this Contract.

9.1 Municipality shall obtain and secure the right of access to all public and private property necessary for OCDC personnel or consultants to perform the services under this Contract. Municipality shall be responsible for all costs or claims associated with securing rights of access to public or private property.

9.2 The Municipality agrees that it shall be solely and completely liable for any and all Municipality Agents' past, present, or future wages, compensation, overtime wages, expenses, fringe benefits, pension or retirement benefits, travel expenses, mileage allowances, training expenses, transportation costs, and/or other allowances or reimbursements of any kind, including, but not limited to, workers' disability compensation benefits, unemployment compensation, Social Security Act protection(s) and benefits, any employment taxes, and/or any other statutory or contractual right or benefit based on or in any way related to any Municipality Agent's employment status or any alleged violation of any Municipality Agent's statutory, contractual (e.g., union, employment, or labor contract), constitutional, common law employment right, and/or civil rights by the Municipality. The Municipality agrees to indemnify and hold harmless the County from and against any and all Claim(s) which are imposed upon, incurred by, or asserted against the County or any County Agent by any Municipality Agent and/or which are based upon, result from, or arise from, or are in any way related to any Municipality Agent's wages, compensation, benefits, or other employment-related or based rights, including, but not limited to, those described in this section.

9.3 The Municipality agrees that no Municipality Agent shall, by virtue of this Contract or otherwise, be considered or claimed to be an employee of the County and/or a County Agent. This Contract does not grant or confer, and shall not be interpreted to grant or confer, upon any Municipality Agents or any other individual any status, privilege, right, or benefit of County employment or that of a County Agent.

ARTICLE X. INDEPENDENT CONTRACTOR. The Parties agree that at all times and for all purposes under the terms of this Contract, the County's and/or any and all County Agents' legal status and relationship to the Municipality shall be that of an Independent Contractor. Except as expressly provided herein, each Party will be solely responsible for the acts of its own employees,

Agents, and servants during the term of this Contract. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Contract.

ARTICLE XI. COUNTY PRIORITIZATION OF COUNTY RESOURCES. The Municipality acknowledges and agrees that this Contract does not, and is not intended to, create either any absolute right in favor of the Municipality, or any correspondent absolute duty or obligation upon the County, to guarantee that any specific number(s) or classification of County Agents will be present on any given day to provide County services to the Municipality.

ARTICLE XII. CANCELLATION OR TERMINATION OF THIS CONTRACT. Except as follows, and notwithstanding any other term or provision in any other section of this Contract, either Party, upon a minimum of thirty (30) calendar days written notice to the other Party, may cancel and/or completely terminate this Contract for any reason, including convenience, without incurring any penalty, expense, or liability to the other Party. The effective date for any such termination is to be clearly stated in the notice.

12.1 At 5:00 p.m. on the effective date of the cancellation of this Contract all Municipality and/or County obligations under this Contract, except those rights and obligations expressly surviving cancellation as provided for in this Contract, shall end.

12.2 The Municipality agrees that any and all Municipality obligations, including, but not limited to, any and all indemnification and hold harmless promises, waivers of liability, record-keeping requirements, any Municipality payment obligations to the County, and/or any other related obligations provided for in this Contract with regard to any acts, occurrences, events, transactions, or Claim(s) either occurring or having their basis in any events or transactions that occurred before the cancellation or completion of this Contract, shall survive the cancellation or completion of this Contract.

12.3 In the event the Contract is terminated by the Municipality, it shall be responsible for all Costs and Overhead incurred by the County through the date of termination, as well as the Costs and Overhead incurred thereafter by the County to wind down and end its involvement in the provision of the Services set forth herein.

ARTICLE XIII. EFFECTIVE DATE, CONTRACT APPROVAL, AND AMENDMENT. The Parties agree that this Contract, and/or any subsequent amendments thereto, shall not become effective prior to the approval by resolutions of the Municipality. The approval and terms of this Contract, and/or any possible subsequent amendments thereto, shall be entered in the official minutes and proceedings of the Municipality.

ARTICLE XIV. GOVERNING LAW. This Contract is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Contract is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Contract, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.

ARTICLE XVI. CAPTIONS. The section headings or titles and/or all section numbers contained in this Contract are intended for the convenience of the reader and not intended to have any

substantive meaning and are not to be interpreted as part of this Contract.

ARTICLE XVII. NOTICES. Except as otherwise expressly provided for herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Contract to be delivered to either Party shall be sent to that Party by first class mail. All such written notices, including any notice canceling or terminating this Contract as provided for herein, shall be sent to the other Party's signatory to this Contract, or that signatory's successor in office, at the addresses shown in this Contract. All correspondence or written notices shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the U.S. Postal Service.

ARTICLE XVIII. FORCE MAJEURE

A "force majeure" event is defined for the purposes of this contract, as an occurrence or nonoccurrence arising from cause or causes not foreseeable and without the fault of the County or County Agent or which could not be avoided or overcome by due diligence of the County or the County Agent and any persons controlled by the County or the County Agent performing work under this contract, such as employees, agents, contractors, subcontractors, including but not limited to:

1. an act of God;
2. labor strikes or work stoppages over which the County or County Agent has no control; and
3. acts or omissions of third parties for which the County or County Agent is not responsible; and

If the County or County Agent determine that the force majeure event will cause a delay in meeting any schedule set in performing the Services the County or County Agent shall notify the Municipality in writing within fifteen (15) days of becoming aware of any event that they allege meets the definition of a force majeure event.

The County and the County Agent shall not be liable for any claims which relate to or arise from force majeure events, and the County or County Agent shall be entitled to an extension in the applicable schedule to account for the force majeure event

ARTICLE XX. ENTIRE CONTRACT. This Contract together with Exhibit A, which is incorporated herein by reference, sets forth the entire agreement between the County and the Municipality and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the County and the Municipality in any way related to the subject matter hereof, except as expressly stated herein. This Contract shall not be changed or supplemented orally and may be amended only as otherwise provided herein.

FOR AND IN CONSIDERATION of the mutual assurances, promises, acknowledgments, warrants, representations, and agreements set forth in this Contract, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned hereby execute this Contract on behalf of the Parties, and by doing so legally obligate and bind the Parties to the terms and conditions of this Contract.

IN WITNESS WHEREOF, _____ of the City of Novi, hereby acknowledges that he/she has been authorized by a resolution of the City Council for the City of Novi, a certified copy of which is attached, to execute this Contract on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Contract.

CITY OF NOVI

NAME: _____

TITLE: _____

DATE: _____

WITNESSED: _____

NAME: _____

DATE: _____

IN WITNESS WHEREOF, John P. McCulloch, Oakland County Drain Commissioner, hereby acknowledges that he has been authorized by resolution of the Oakland County Board of Commissioners, on behalf of the Oakland County, and hereby accepts and binds the Oakland County to the terms and conditions of this Contract.

John P. McCulloch,
Oakland County Drain Commissioner

DATE: _____

WITNESSED: _____

NAME: _____

DATE: _____

**EXHIBIT A
SCOPE OF SERVICES**

The initial 1989 contract and subsequent contracts between Oakland County, Commerce Township, the Village of Wolverine Lake, and the Cities of Walled Lake and Novi permit a total of 3,800 Residential Equivalency Units (REUs) in the Walled Lake-Novı System to the City of Novi. Early in 2006, it was determined that Novi had exceeded its contractual capacity; moreover, the City of Novi determined it would need to serve 2,005 REUs beyond its contractual capacity at the time of build-out. In response, the Michigan Departmental Quality (MDEQ) imposed a hold on Part 41 Sewer Permits until the capacity issues could be resolved and a solution could be approved. In addition, the Oakland County Drain Commissioner (OCDC) evaluated conditions at the plant and determined that further study would be required to determine the actual capacity of the plant and whether or not additional REUs could be permitted.

In order to resolve the problem, the OCDC and MDEQ approved Novi’s proposal to construct a diversion valve and meter at the intersection of West Park Drive and West Road that would allow for the diversion of 2,005 REUs from the Walled Lake-Novı System to the North Huron Valley/Rouge Valley System. Construction of the diversion valve was completed on April 24, 2008. Prior to construction of the project, the OCDC and Novi agreed that the OCDC would install Supervisory Controls and Data Acquisition (SCADA) system and other controls to allow for remote monitoring and control of the valve and meter. This agreement is for the installation of SCADA and controls for remote operation and monitoring of the Walled Lake-Novı Diversion Valve and Flume. The Municipality will own the SCADA equipment and valve upon completion of the installation. The description of work under this agreement and cost estimate is set forth below:

**Walled Lake-Novı Diversion
SCADA and Controls Installation
Cost Estimate
2008**

Item No.	Description	Installed By or Purchased From	Price
1	Rotork Control Part No. MOD6JCPT/Folomatic Conversion Kit	Kennedy Industries	\$2,800.00
2	SCADA and Control Installation and Parts	OCDC	\$12,500.00
3	OCDC Labor for Project Management, Administration, etc.	OCDC	<u>\$1,000.00</u>
		Subtotal	\$16,300.00
		Contingency @ 20%	<u>\$3,260.00</u>
		Total	<u>\$19,560.00</u>