



# CITY of NOVI CITY COUNCIL

**Agenda Item G**  
**April 7, 2014**

**SUBJECT:** Approval of traffic control device maintenance agreement with the Road Commission for Oakland County for the new traffic signal that will be constructed in the intersection of Wixom Road and Glenwood Drive/Deerfield Elementary.

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *PLS*

**CITY MANAGER APPROVAL:** *VK*

**BACKGROUND INFORMATION:**

The construction contract for a new traffic control signal at the intersection of Wixom Road and Glenwood Drive/Deerfield Elementary appears elsewhere on this agenda for consideration by City Council. Although Wixom Road and Glenwood Drive are both under City of Novi jurisdiction, the City contracts with the Road Commission for Oakland County (RCOC) for the operation and maintenance of City owned traffic control signals.

The RCOC has provided an Agreement for Traffic Control Device for the ongoing maintenance costs associated with the new traffic signal. Once constructed, the City will pay 100% of the maintenance costs for the signal. Routine maintenance for this intersection would average less than \$2500 per year.

The standard agreement from RCOC has been reviewed by the Engineering Division and the City Attorney's and approval is recommended.

**RECOMMENDED ACTION:** Approval of traffic control device maintenance agreement with the Road Commission for Oakland County for the new traffic signal that will be constructed in the intersection of Wixom Road and Glenwood Drive/Deerfield Elementary.

|                        | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Mayor Gatt             |   |   |   |   |
| Mayor Pro Tem Staudt   |   |   |   |   |
| Council Member Casey   |   |   |   |   |
| Council Member Fischer |   |   |   |   |

|                        | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Council Member Markham |   |   |   |   |
| Council Member Mutch   |   |   |   |   |
| Council Member Wrobel  |   |   |   |   |

**STATE OF MICHIGAN  
BOARD OF COUNTY ROAD COMMISSIONERS  
OAKLAND COUNTY  
AGREEMENT FOR TRAFFIC CONTROL DEVICE**

**Type of Work: Traffic Signal Installation & Maintenance**

**Location: Wixom Road and Glenwood Drive / Deerfield Elementary School Driveway**

**Signal No: 1341  
Date Effective:**

Under authority of state law and by virtue of resolution formally adopted by their respective governing bodies, the under-signed hereby agree to participate in the cost of installation, maintenance and operation of the above traffic control device on the basis of the following division of costs. (Title to equipment shall remain with the purchasing agency, unless purchased for roads not under the jurisdiction of the Board of County Road Commissioner.) The proportionate share of all costs are to be billed monthly. This agreement is terminable on thirty days written notice by any party.

**DIVISION OF COSTS**

| AGENCY       | INSTALLATION |                       | MAINTENANCE |
|--------------|--------------|-----------------------|-------------|
|              | Percent      | Estimated Cost        |             |
| City of Novi | 100 %        | \$ City Project       | 100 %       |
|              | Total        | 100 % \$ City Project | 100 %       |

It is further agreed that the agency responsible for payment of energy billings and/or leased line interconnection billings included in maintenance costs, shall be the ROAD COMMISSION FOR OAKLAND COUNTY.

It is further agreed that the agency responsible for making original and replacement installations and performing maintenance shall be the ROAD COMMISSION FOR OAKLAND COUNTY.

"In the event the traffic control device referred to in this agreement is located on a road or street that is not under the jurisdiction of the Road Commission for Oakland County, the authority having the jurisdiction over the road or street hereby agrees to save harmless, indemnify, represent, and defend the Road Commission for Oakland County from any and all claims, demands, or suits arising out of or relating to the installation, maintenance and operation of the traffic control device which is the subject matter of this agreement."

"In the event the traffic control device referred to in this agreement is located on a road or street that is under the jurisdiction of the Road Commission for Oakland County and by virtue of this agreement will be maintained by an agency other than the Road Commission for Oakland County, then and in that event the said agency hereby acknowledges that it is undertaking the Road Commission for Oakland County's duty to maintain the said traffic control device and further agrees to provide insurance coverage protecting the Road Commission for Oakland County."

APPROVED:

**ROAD COMMISSION FOR OAKLAND COUNTY**

Date \_\_\_\_\_

By \_\_\_\_\_  
Danielle Deneau, P.E.

DIRECTOR OF TRAFFIC-SAFETY  
Title of Authorized Official

APPROVED:

**CITY OF NOVI**

Date \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Title of Authorized Official

\*Certified copy of resolution must be submitted with this form for new installations.



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April 1, 2014

Brian Coburn, Engineering Manager  
Public Services – DPW Garage  
26300 Delwal Drive  
Novi, MI 48375

**RE: *Agreement with Road Commission for Oakland County*  
Wixom Road and Glenwood Drive / Deerfield Elementary School  
Driveway**

Dear Mr. Coburn:

Our office has reviewed the proposed Agreement for consideration by City Council prepared by RCOC with respect to sharing the cost of installing and maintaining the traffic control devices at the intersections of Wixom Road and Glenwood Drive.

Under the Agreement it appears that the City will pay the County 100% of the cost to maintain and operate the signal. It is likely that a court would construe the Agreement as an agreement retaining the County as a contractor hired by, and working on behalf of, the City to maintain the signal. The RCOC will pay for energy billings and/or leased line interconnection billings.

We note, like previous agreements between the City and RCOC, the Agreement requires the City to indemnify and hold harmless the County for claims relating to the traffic control device in the event that device is located on a road or street *other than a county road*. The County has previously declined to revise or remove the provision. Because both Wixom Road and Glenwood Drive are city roads, this provision applies. As we previously noted, recent case law provides the County and the City are immune from liability pursuant to the governmental immunity statute because traffic signals are not included in the definition of "highway." *Johnson-McIntosh v City of Detroit*, 266 Mich App 318 (2005).

Brian Coburn, Engineering Manager

April 1, 2014

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However, due to the dissenting opinion in *Johnson-McIntosh*, there was still some concern that a *city* may be held liable for improvements, including traffic signals, outside of the improved portion of the highway designed for vehicular travel because the plain language of the provision limiting liability to the "improved portion of the highway designed for vehicular travel," applied only to the state and county road commissions. In response to cases identifying this language, the legislature amended the Governmental Immunity for Tort Liability Act in 2012 (Public Act 50 of 2012) to clarify that cities are also only required to maintain and repair the "improved portion of the highway designed for vehicular travel." To do this, the State Legislature included all *governmental agencies* within the provision. Based on the above statutory amendment, and the current case law, it appears that the City would be immune from liability for the maintenance and repair of traffic signals. Therefore, even though the County is acting as the City's agent like a contractor for the purpose of maintaining the traffic signal to be installed at Wixom Road and Glenwood Avenue, it is likely that the City would be immune from liability and indemnifying the County would not be required as set forth in the Agreement.

Subject to the above, I see no legal impediment to entry into the Agreement with the RCOC.

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

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



Elizabeth Kudla Saarela

EKS/sls

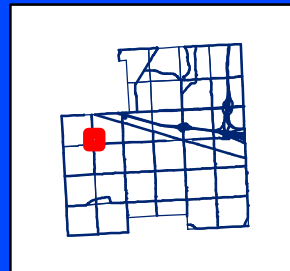
C: Maryanne Cornelius, Clerk  
Rob Hayes, DPS Director  
Thomas R. Schultz, Esquire

# Wxom Road and Glenwood Drive Signal

Location Map



Map Author: Croy  
Date: 8/2/13  
Project: Wxom Rd. and Glenwood Dr. Signal  
Version #: v2.0



City of Novi

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



1 inch = 250 feet

#### 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.