



CITY of NOVI CITY COUNCIL

Agenda Item E
March 17, 2008

SUBJECT: Approval of a revised traffic control device maintenance agreement with the Road Commission for Oakland County for the existing traffic signals at the intersection of Novi Road and Flint Street/Main Street.

SUBMITTING DEPARTMENT: Engineering *ELH*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The Road Commission for Oakland County (RCOC) has provided a revised Agreement for Traffic Control Device for the existing traffic signal at the intersection of Novi Road, Flint Street and Main Street for Council's consideration. Under the existing agreement, the City of Novi bears 75% of the maintenance costs for the traffic signal and the previous property owner of the Main Street development, Evergreen III, pays 25% of the maintenance costs. When the original agreement was executed with Evergreen III, Main Street had not yet been accepted as a public street.

The costs under this type of agreement are usually divided between the City and RCOC based on jurisdiction. The new agreement reflects a 50-50 maintenance cost split between the two entities because Main Street has been accepted by the city, two legs of the intersection (Flint Street and Main Street) are under city jurisdiction, and the other two legs (northbound and southbound Novi Road) are under RCOC jurisdiction. Routine maintenance costs for this intersection average less than \$150 per month.

The revised agreement from RCOC has been reviewed by the Engineering Department and the City Attorney's office (Beth Kudla's March 10, 2008 letter, attached), and approval is recommended.

RECOMMENDED ACTION: Approval of a revised traffic control device maintenance agreement with the Road Commission for Oakland County for the existing traffic signals at the intersection of Novi Road and Flint Street/Main Street.

	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				

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

Type of Work: TRAFFIC SIGNAL MAINTENANCE

Location: Novi Road and Main Street/Flint Street

Signal No: C0 979

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	Percent
ROAD COMMISSION FOR OAKLAND COUNTY	%	\$ N/A	50 %
CITY OF NOVI	%	\$ <u>N/A</u>	<u>50 %</u>
Total	100%	\$	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 _____
 Gary Piotrowicz

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.

Road Jurisdiction/Location Map

Traffic Signal at Novi Road and Flint/Main Street



CITY OF NOVI
 ENGINEERING DIVISION
 45175 W. TEN MILE ROAD
 NOVI, MI 48175-3024
 (248) 347-0454
 MAP AUTHOR: Brian Coburn, PE



Legend

- City-Local
- County
- City-Major
- Private

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.



March 10, 2008

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Brian Coburn, Civil Engineer
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

RE: *Agreement with Road Commission for Oakland County*
Novi Road and Main Street/Flint Street Traffic Signal
Our File No. 55142 NOV

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 maintaining the traffic control devices at the intersections of Novi Road, and Main and Flint Streets.

Under the Agreement, RCOC's contribution to the cost of maintenance is 50% and the City's portion is 50%. It is our understanding RCOC will conduct all maintenance and the City will reimburse RCOC for its portion. The Agreement indicates RCOC will pay for energy billings and/or leased line interconnection billings.

We note, like the previous agreement between the City and RCOC for the Beck Road and Grand River Traffic Signal Improvements, that 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*. Because Flint and Main Streets are not county roads, this may apply. As we previously noted, recent case law provides that the County is 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). Therefore, in the event of an injury or other damages relating to the traffic control device, the County would very possibly be immune and this provision would in that event, have no affect on the City.

However, we also previously noted that the dissenting opinion in *Johnson-McIntosh* points out that the plain language of MCL 691.1402a (1) would permit the City to be held liable for injury or damages relating to a traffic signal on a county road with 30 days notice of the defect, even though the City could not be

Brian Coburn, Civil Engineer
March 10, 2008
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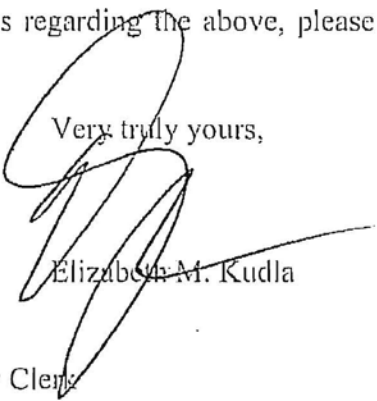
held liable for damages occurring on a city road or street. Because the affect of the recent case has not been tested by the courts with respect to MCL 691.1402a, we recommended that the provision clearly state that the City will only indemnify the County if the actions of the City, not the County, cause the injury or damage. However, RCOC refused to make the recommended change.

The Road Commission's legal counsel previously responded that the hold harmless clause in the Cost Sharing Agreement did not apply in that instance because the right-of-way in question is under the County's jurisdiction. Based on that assertion, though an argument can be made that the City could have some liability pursuant to MCL 691.1402a(1) if the County is acting as the City's agent in maintaining the signal, it is unlikely that a court would enforce the provision against the City. Like the Beck and Grand River intersection, you have confirmed that these intersections are in the County's jurisdiction, so it is likely that RCOC would assert that the hold harmless does not apply in this instance as well. If the City can confirm this, then the risk of liability to the City appears to be minimal

Subject to the above confirmation, we see not impediment to the City entering into the Agreement.

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

Very truly yours,



Elizabeth M. Kudla

EMK/sls

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