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CITY of NOVI CITY COUNCIL

Agenda Item K
May 9, 2011

SUBJECT: Approval of a 5-year Installment Contract and a Monitoring Agreement with Windward Bay Condominiums for water tap fees in connection with the Pontiac Trail watermain.

SUBMITTING DEPARTMENT: Finance/Water & Sewer

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Pursuant to an intergovernmental agreement with Walled Lake, certain Walled Lake customers are to disconnect from the Walled Lake System and connect to Novi's water system when water service in Novi is available.

With the completion of the Pontiac Trail watermain Windward Bay is now connecting to Novi's water system and as part of the agreement is required to pay Novi the related tap fees for this connection. Windward Bay has requested an installment agreement for a five-year term (20 quarterly installments) versus the standard agreement for a period of four years (16 quarterly installments). Similar agreements have been approved by City Council for Novi Square, Waterview Farm Apartments and Westgate VI Apartments for connection to the same system. Additionally, Windward Bay has requested to pay an estimated tap fee and enter into a Monitoring Agreement based on an average of 12-quarter periods versus the standard Monitoring Agreement which is based on the highest four consecutive quarters. A similar agreement was approved by City Council for the Suburban Collection Showplace. The City Attorney's office was instrumental in the negotiations and developing this agreement.

Staff recommends the approval of the 5-year Installment Contract and the Monitoring Agreement with Windward Bay Condominiums for the water tap fees in connection with the Pontiac Trail watermain.

RECOMMENDED ACTION: Approval of the 5-year Installment Contract and the Monitoring Agreement with Windward Bay Condominiums for water tap fees in connection with the Pontiac Trail watermain.

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

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

April 28, 2011

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Elizabeth M. Kudla
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Tina Glenn, Water & Sewer Financial Services Manager
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

**RE: Windward Bay Condominium
Water Debt Service Installment Agreement
Our File No. 55142 NOV**

Dear Ms. Glenn:

We have received and reviewed, and enclosed please find the following original documents:

1. Check in the amount of \$9,010.12 from the Windward Bay Condominium Association for the initial installment of the Water Debt Service Installment Agreement.
2. Debt Service Payment Agreement Installment Contract.
3. Monitoring Agreement.

As previously discussed, the terms of the City's form Monitoring Agreement have been modified with respect to this property as follows:

1. The Agreement acknowledges that the City is able to utilize the Association's existing meters to measure water usage rather than installing new meters for this purpose.
2. A tap unit will be measured at 115,000 gallons per tap unit per year based on the City's calculations for the term of the Agreement. The tap unit calculation is based on average use rather than the highest of four consecutive quarters. An average was similarly used in the Monitoring Agreement for Rock Financial Showplace.

The terms of the City's form Installment Agreement have also been modified from the standard four year term to a five year term. This has been done

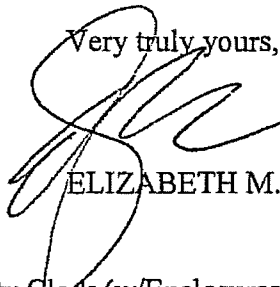
Tina Glenn, Water & Sewer Financial Services Manger
April 28, 2011
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under similar circumstances for the Waterview Apartments, Westgate Apartments, and Novi Square.

The Agreements may be placed on an upcoming City Council agenda for approval. Upon approval, it should be recorded with the Oakland County Register of Deeds in the usual manner.

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

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosures

cc: Maryanne Cornelius, City Clerk (w/Enclosures)
Kathy Smith-Roy, Finance Director (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

**CITY OF NOVI
DEBT SERVICE PAYMENT AGREEMENT
INSTALLMENT CONTRACT
20 Quarterly Installments**

Notice to the user: Do not sign this contract before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. You are entitled to a partial return of the finance charge if you prepay the balance.

This agreement made this 17th day of March, 2011 by and between the City of Novi, a municipal corporation, and Windward Bay Condominium Association (hereinafter referred to as User), as follows:

Whereas, the City of Novi has adopted the Oakland County Department of Public Works Unit Factor Chart for the method of establishing unit factors for water and sewer debt charges, and connection charges; and,

Whereas, the City of Novi Code of Ordinances, Sections 34-76 and 34-145 provides that the owner of certain property may elect to pay one fifth (1/5) of service charges, connection charges, debt service charges, lateral availability fees and availability connection charges (with exception of those imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the City is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of such charges and fees in twenty (20) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay, the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes.

Whereas, the User has the option of entering into this agreement if he elects to pay the above said service charges over four years;

Now therefore, it is agreed as follows:

1. That the City of Novi will assign 24,176 tap unit(s) to Buildings 1-7 of Windward Bay Condominiums whose address is 45000, 44700, 44750, 44800, 44850, 44900 & 44950 Bayview Drive, Novi, Michigan 48375.
2. The User hereby agrees to pay for the determined service charges as detailed on page 6 of this document.
3. The User hereby agrees to pay said installments by the due date set on each quarterly bill issued by the City of Novi, and acknowledges that failure to make said payment will cause the full amount to become due and payable. Late payments will result in a penalty of ten percent (10%).
4. The User has the option to pay said service charges in full at any time, provided interest is paid to date on the installment balance. Upon the User's request, the City of Novi will make available for examination by User a statement or table showing how the partial refund of the time price charge is to be computed if any balance of the contract should be prepaid.
5. This obligation to pay the said service charges shall be a lien against the User's property, as provided in Section 21, Act 94, of the Public Acts of Michigan, 1933, as amended.

Windward Bay Condominium Association

User - Corporation Name

Anne E. Dyer
Authorized Signature

President
Title

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

ON this 17th day of March, 2011 before me personally appeared Anne E. Dyer, to me personally known, who by me sworn for himself/herself say that he/she is the ^{President} ~~owner~~ of the, Windward Bay Condominium Association and acknowledge said executed instrument within to be the free act and deed of the Corporation.

[Signature]

, Notary Public

Oakland County, MI

My Commission Expires: 3/17/2015

-or-

Kelly S. Laga-Davis
Notary Public, Oakland County, MI
Acting In Oakland County, Michigan
My Commission Expires on 03-17-2015

Windward Bay Condo Assoc.

User - Corporation Name

Jodi L. Gerken

Authorized Signature Jodi L. Gerken

Secretary

Title

Tom McCampbell

Authorized Signature Tom McCampbell

OWNER - Authorized

Title

STATE OF MICHIGAN)

)SS

COUNTY OF OAKLAND)

ON this 17th day of March, 2011 before me personally appeared Jodi L. Gerken, and Tom McCampbell, to me personally known, who by me worn each for himself/herself say that they are respectively the Secretary and Authorized Owner of the above named Corporation, which executed the foregoing instrument by authority of the Board of Directors and acknowledge said instrument to be the free act and deed of said Corporation.

Kelly S. Laga-Davis

, Notary Public

Oakland

County, MI

My Commission Expires: 3/17/2015

Kelly S. Laga-Davis
Notary Public, Oakland County, MI
Acting In Oakland County, Michigan
My Commission Expires on 03-17-2015

CITY OF NOVI, a Michigan municipal corporation,

By: _____
David B. Landry
It's: Mayor

By: _____
Maryanne Cornelius
It's: City Clerk

STATE OF MICHIGAN)
)SS
COUNTY OF)

ON this _____ day of _____, _____ before me personally appeared **David B. Landry and Maryanne Cornelius** to me personally known, Who being by me sworn each for himself/herself say that they are respectively the **Mayor and Clerk** of the City of Novi, a Municipal Corporation, which executed the within instrument by authority of the City Council and acknowledge said instrument to be the free act and deed of said Municipal Corporation.

, Notary Public

_____ County, MI

My Commission Expires: _____

Parcel Description:

Units 1 through 51, Windward Bay Condominium, a Condominium according to the Master Deed recorded in Liber 11356, Page 870, Oakland County Records and designated as Oakland County Condominium Subdivision Plan No. 669, together with rights in general common elements and limited common elements as set forth in the Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

Installment Schedule

TOTAL CHARGE	\$ 44,725.60	17-Nov-10
1/5 DOWN	<u>8,945.12</u>	
AMOUNT TO BE FINANCED	\$ 35,780.48	
RATE	8.0%	
TERM IN YEARS	5	
PAYMENT	\$2,188.22	

<u>PAYMENT NUMBER</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>TOTAL PAYMENT</u>	<u>UNPAID BALANCE</u>
1	\$ 715.61	\$ 1,472.61	2,188.22	\$ 34,307.87
2	686.16	1,502.06	2,188.22	32,805.81
3	656.12	1,532.10	2,188.22	31,273.71
4	625.47	1,562.75	2,188.22	29,710.96
5	594.22	1,594.00	2,188.22	28,116.96
6	562.34	1,625.88	2,188.22	26,491.08
7	529.82	1,658.40	2,188.22	24,832.68
8	496.65	1,691.57	2,188.22	23,141.11
9	462.82	1,725.40	2,188.22	21,415.71
10	428.31	1,759.91	2,188.22	19,655.80
11	393.12	1,795.10	2,188.22	17,860.70
12	357.21	1,831.01	2,188.22	16,029.69
13	320.59	1,867.63	2,188.22	14,162.06
14	283.24	1,904.98	2,188.22	12,257.08
15	245.14	1,943.08	2,188.22	10,314.00
16	206.28	1,981.94	2,188.22	8,332.06
17	166.64	2,021.58	2,188.22	6,310.48
18	126.21	2,062.01	2,188.22	4,248.47
19	84.97	2,103.25	2,188.22	2,145.22
20	35.90	2,145.22	2,181.12	-
	<u>\$ 7,976.82</u>	<u>\$ 35,780.48</u>	<u>\$ 43,757.30</u>	

MONITORING AGREEMENT

THIS AGREEMENT made this 17th day of March, 2011 by and between the **City of Novi**, a Michigan municipal corporation and Windward Bay Condominium Association, 11750 Highland Road, Suite 500, Hartland, MI 48353,
(property owner's legal corporate name & address)

(hereinafter referred to as **USER**) as follows:

WHEREAS, the **City of Novi** has adopted by resolution unit factors for water and sewer debt service charges, connection charges, availability charges, and lateral availability fees; and

WHEREAS, the condition marked below exists:

- The user believes that the unit factor is unfair to the **USER**, or
- The **City of Novi**'s unit factor chart does not show this type of user; and/or
- Addition, or change in operation

WHEREAS, pursuant to Resolution dated February 24, 1992 the **USER** has the option of entering into this agreement if he believes that said unit factor, adopted by resolution is unfair; or the **City of Novi** may request the user to enter into an agreement if there is no unit factor for said type of user; or a building addition, or change in operation is taking place.

NOW, THEREFORE, it is agreed as follows:

1. That the **City of Novi** will assign 24.176 estimated tap unit(s) to Buildings 1 - 7 at Windward Bay Condominiums at 45000, 44700, 44750, 44800, 44850, 44900, and 44950 Bayview Drive, Novi, Michigan 48377.
2. That the **City of Novi**, will utilize existing meters for measuring the water used by the **USER**.
3. That when three (3) full years of meter readings have been obtained, or at a sooner time if the **City of Novi** requests it, the **City** will re-assess the tap units assigned to said facility. The tap unit assignment will be based on the average usage of the 12-quarter period.
4. That the number of tap units will be based upon the equivalent of 115,000 gallons per year for one tap unit for the term of this Agreement

5. That the **USER** agrees to pay for the determined tap unit difference at such time notice is given to the **USER** by the **City of Novi**. The tap unit cost shall be determined based on average metered usage under Paragraph 2 hereof for the period identified in Paragraph 3 hereof, utilizing the tap unit equivalent listed in paragraph 4 hereof. If the re-assessment results in reduction to the number of tap units paid by the **USER**, the **City of Novi** will refund to the **USER** the difference at a cost.
6. That this obligation to pay the determined tap unit difference shall be a lien against the **USER'S** property as provided in Section 21, Act 94, of the Public Acts of Michigan, 1933, as amended.
7. That anything herein to the contrary notwithstanding, the **City of Novi** shall have the right to re-meter the water so as to re-assess the tap units assigned to said facility on the same terms and conditions as provided in this Agreement if the **USER** or the use of the aforesaid property is changed subsequent to the re-assessment of the tap units assigned to said facility.
8. This Agreement contains the entire agreement of the parties, and no statement, promises, or inducements made by either party that is not contained in this written contract shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.
9. It is expressly understood and agreed by the parties that this Agreement, and all stipulations and provisions contained herein, shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.
10. This Agreement shall be recorded with the Oakland County Register of Deeds.
11. The cost for recording with the Register of Deeds shall be collected from the **USER**.

CITY OF NOVI, a Michigan municipal corporation,

 David B. Landry
 It's: Mayor

 Maryanne Cornelius
 It's: City Clerk

STATE OF MICHIGAN)
)SS
 COUNTY OF)

On this _____ day of _____, _____, before me personally appeared **David B. Landry** and **Maryanne Cornelius**, to me personally known, who being by me sworn each for himself/herself say that they are respectively the **Mayor** and **City Clerk** of the **City of Novi**, a **Municipal Corporation**, which executed the within instrument by authority of the **City Council** and acknowledge said instrument to be the free act and deed of said **Municipal Corporation**.

 , Notary Public

 County, MI

My Commission Expires: _____

Windward Bay Condominium Association,
a Michigan nonprofit corporation

By: Anne E. Dyer, President

By: Jodi L. Gerken, Secretary

OR,

By: Tam M. Campbell, Owner

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

On this 17th day of March, 2011, before me personally appeared Anne E. Dyer and Jodi L. Gerken, to me personally known, who by me sworn each for himself/herself say that they are respectively the President and Secretary of the Corporation, which executed the within instrument by authority of the Board of Directors and acknowledge said instrument to be the free act and deed of said Corporation.

[Signature]
Notary Public

Oakland County, MI

My Commission Expires: 3/17/2015

OR,

Kelly S. Laga-Davis
Notary Public, Oakland County, MI
Acting In Oakland County, Michigan
My Commission Expires on 03-17-2015

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

ON this 17th day of March, 2011, before me personally appeared Tom Mc Campbell, to me personally known, who by me sworn for himself/herself say that he/she is ^{an authorized} ~~the~~ owner of the Windward Bay Condominium, and acknowledge said executed instrument within to be the free act and deed of the Windward Bay Condominium Association.

[Signature]
Notary Public

Oakland County, MI

My Commission Expires: 3/17/2015

Kelly S. Laga-Davis
Notary Public, Oakland County, MI
Acting In Oakland County, Michigan
My Commission Expires on 03-17-2015

Parcel Description:

Units 1 through 51, Windward Bay Condominium, a Condominium according to the Master Deed recorded in Liber 11356, Page 870, Oakland County Records and designated as Oakland County Condominium Subdivision Plan No. 669, together with rights in general common elements and limited common elements as set forth in the Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

Drafted By & Return To:
Tina Glenn
City of Novi-Water Department
45175 W. Ten Mile Rd.
Novi, Michigan 48375