

**CITY of NOVI CITY COUNCIL**

**Agenda Item H  
February 4, 2008**

**SUBJECT:** Approval of entry into sanitary sewer system connection agreement between the Charter Township of Commerce, City of Novi, Speedway Super America, LLC, and the Oakland County Drain Commissioner for property located on the southwest corner of the intersection of Fourteen Mile Road and Haggerty Road, for an existing gas station.

**SUBMITTING DEPARTMENT:** Engineering *RH*

**CITY MANAGER APPROVAL:** *PWA  
GMP*

**BACKGROUND INFORMATION:**

This is a proposed intergovernmental agreement between the City, Commerce Township, and the Oakland County Drain Commissioner relating to the Speedway gas station on the corner of 14 Mile and Haggerty Roads. The form of an agreement was approved by the Township legal counsel and the City's former attorneys back prior to 2000; the gas station has in fact been connected to the sanitary sewer system since approximately 1998. For reasons that are not entirely clear, the agreement was never actually signed, and in fact Speedway never paid any capital charges to Commerce for the ability to connect to the Township sanitary sewer system (the City does not provide sanitary sewer service in this area of the City).

The agreement confirms the originally-intended arrangement by which Speedway would pay the Township's capital charges. It also includes payment to Commerce for various sewer services for which Speedway has not paid since September, 1998.

Once Novi establishes a sanitary sewer system in its area, the service through the Township can be disconnected at the option of either Novi or Commerce. Consistent with the original expectation, there would be no separate capital connection paid by Speedway to Novi, although obviously sewer service rate charges and ongoing costs would be payable to the City of Novi.

To formalize the intended arrangement at the time of the development of this property, the City Staff recommends approval by the Council of this proposed agreement.

**RECOMMENDED ACTION:** approval of intergovernmental agreement between Charter Township of Commerce, the City of Novi, Speedway Super America, LLC, and the Oakland County Drain Commissioner relating to temporary sanitary sewer services.

	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 28, 2008

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Mr. Clay J. Pearson, City Manager  
City of Novi  
45175 West Ten Mile Road  
Novi, MI 48375-3024

Re: *Sewer Agreement between the Charter Township of Commerce, City of Novi, Speedway Super-America, L.L.C and the Oakland County Drain Commissioner*

Dear Mr. Pearson:

The Speedway Station at 14 Mile Road and Haggerty has been connected to the Commerce Sanitary Sewer System since September 2, 1998. At the time of connection a formal agreement regarding tap charges and usage fees was contemplated, but for various reasons one was never completed. The attached agreement formalizes the relationship between the parties and sets forth the terms and conditions for sanitary sewerage treatment services to Speedway. Oakland County is added as a signatory to the Agreement solely to effectuate its permission for this temporary service.

The agreement provides that Speedway will pay capital charges to Commerce in the amount of \$11,284.00 and that, when sewer service becomes available to Speedway from the City of Novi, Novi agrees to waive capital charges for connection to the sewer system. Speedway will also pay the sum of \$4,753.80 to Commerce, representing services unpaid since September of 1998. Commerce is responsible for all costs associated with the operation and maintenance of the infrastructure.

When Novi establishes sewer service to Speedway through its system, temporary service may be discontinued at the option of either Novi or Commerce by providing the other party with written notice. When this occurs, Novi will be required to service this area upon discontinuance of service by Commerce.

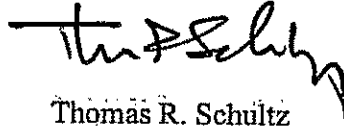
We perceive no impediment to entry into the agreement by the City, which will in fact simply finalize the parties' understanding at the time of connection. We recommend placement of this agreement on an upcoming Council Agenda for consideration.

Clay Pearson, City Manager  
January 28, 2008  
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If you have questions or comments regarding the above, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Schultz". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas R. Schultz

TRS/JTC/eam

956029v1

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**SEWER AGREEMENT BETWEEN THE CHARTER TOWNSHIP OF  
COMMERCE, CITY OF NOVI, SPEEDWAY SUPER-AMERICA, L.L.C.  
AND THE OAKLAND COUNTY DRAIN COMMISSIONER**

**I. BACKGROUND**

This Agreement is effective as of August 1, 2007, between the Charter Township of Commerce ("Commerce"), a Michigan Municipal Corporation, whose address is 2840 Fisher Avenue, Commerce Township, Michigan, 48390, and the City of Novi ("Novi"), a Michigan Municipal Corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375 and Speedway Superamerica, L.L.C., ("Speedway"), a limited liability company, whose address is P.O. Box 1500, Springfield, Ohio 45501, and The Oakland County Drain Commissioner (Oakland County) whose address is One Public Works Drive, Waterford Michigan 48328.

The property of Speedway is located within the City, and is described on Exhibit A.

Commerce and Novi each have wastewater treatment facilities to serve properties within their boundaries. Commerce and Novi entered into an agreement dated January, 15, 1992 to exchange capacity in their facilities in order to more efficiently serve property within their respective boundaries. Although Speedway is within the area designated by the agreement to be served by Novi from the Commerce Facility, Novi has not yet constructed sewer infrastructure necessary to enable Speedway to utilize sewage treatment capacity reserved to Novi under the January 15, 1992 agreement.

Speedway has been connected to the Commerce sanitary sewer system since September 2, 1998, but has not paid required capital charges, connection fees, or service fees.

Novi and Commerce desire to enter into an agreement which confirms temporary service to Speedway from Commerce, provides for payment of charges and fees in arrears by Speedway, and sets forth the terms and conditions for permanent sanitary sewage treatment services to

Speedway when Novi has installed sanitary sewer infrastructure as provided by the January 15, 1992 agreement.

This service will take the form of a temporary use of capacity and service in which Speedway, located in Novi, will be permitted to connect directly to sanitary sewers within Commerce in order to be served by the South Commerce Wastewater Treatment Facility.

## **II. AGREEMENT**

In consideration of the mutual obligations and covenants set forth in this contract the parties agree as follows:

1. **LIMITATION AS TO OAKLAND COUNTY.** Oakland County is a signatory to this Agreement solely to effectuate its permission for temporary service; this Agreement is not intended to impose additional obligations on it.

2. **TEMPORARY SERVICE AREA.** The area within Novi to be served on a temporary basis is described in Exhibit A. The temporary service area will be connected directly to sewer infrastructure within Commerce for service from the South Commerce Wastewater Treatment Facility. The purpose of the temporary service provisions of this agreement is to permit Speedway to direct such flows to the South Commerce Wastewater Treatment Facility on a temporary basis until such time as Novi has the ability and deems it efficient to install sanitary sewer infrastructure and utilize capacity in that facility pursuant to the January 15, 1992 agreement.

3. **TEMPORARY SERVICE COSTS.** Speedway agrees to pay capital charges to Commerce in the amount of \$11,284.00. When sewer service becomes available to Speedway from Novi, Novi agrees to waive capital charges for connection to the Novi sewer system. From and after the date of this agreement Speedway agrees to pay Commerce for temporary use of the Commerce Sewage Treatment System at the same rate established by ordinance by Commerce for similarly situated users of the facility located in Commerce, plus a surcharge of fifty percent (50%) of said rate. The proceeds from the surcharge shall be applied toward operating and maintenance expenses of the South Commerce Wastewater Treatment Facility. Commerce shall be responsible for billing Speedway for the usage and capital charges. Speedway agrees to pay the sum of \$4,753.80 representing service fees unpaid since September 2, 1998.

4. **OPERATION AND MAINTENANCE COSTS.** Commerce shall be responsible for all costs associated with the operation and maintenance of the infrastructure, within its jurisdiction necessary to serve Speedway.

5. **DISCONTINUATION OF TEMPORARY SERVICE.** When Novi establishes sewer service to Speedway through its sewer system, temporary service may be discontinued at the option of either Novi or Commerce by providing the other party with written notice of its intent to discontinue the service thirty (30) days in advance of the date of such discontinuance. Novi acknowledges that Novi will be required to service such area upon discontinuance of service by Commerce.

6. **COMPLIANCE WITH ORDINANCE.** Speedway agrees to comply with the ordinances of Commerce relating to treatment of sewage.

7. **CONSENT.** Oakland County hereby consents to the temporary service area and capacity provided under this Agreement.

8. **BINDING AGREEMENT.** This Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

9. **ENTIRE AGREEMENT; MODIFICATION IN WRITING.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and the agreement shall supersede all provisions communications, representations, or agreements, either verbal or written, between the parties. There may be no modification of this agreement, except in writing.

10. **TERMS OF AGREEMENT.** This Agreement shall be and remain in full force and effect from its date until February 1, 2049, or until such earlier date when Novi has the ability to provide sewer service to Speedway and after thirty days written notice has been given to both Novi and Commerce to cease service pursuant to this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year indicated.

**SIGNATURES APPEAR ON NEXT PAGE.**

**DATED:**

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**SIGNED:**  
**CHARTER TOWNSHIP OF COMMERCE**

\_\_\_\_\_  
THOMAS K. ZONER, Supervisor

\_\_\_\_\_  
SANDRA ABRAMS, Clerk

**CITY OF NOVI**

\_\_\_\_\_  
DAVID LANDRY, Mayor

\_\_\_\_\_  
MARYANNE CORNELIUS, Clerk

**DRAIN COMMISSIONER  
COUNTY OF OAKLAND**

\_\_\_\_\_  
JOHN P. MCCULLOCH

**SPEEDWAY SUPERAMERICA, LLC.**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_



EXHIBIT "A"

LEGAL DESCRIPTION

A 0.70 acre (30,625 SF) parcel of land in the NE 1/4 of Section 1, T1N, R8E, City of Novi, Oakland County, Michigan, being described as commencing at the NE corner of said Section 1; Thence S 00 degrees 05 minutes 34 seconds W 235.00 feet (recorded as S 00 degrees 03 minutes 30 seconds E) along the East line of said Section 1 and the centerline of Haggerty Road; Thence S 90 degrees 00 minutes 00 seconds W 60.00 feet to the point of beginning; Thence S 90 degrees 00 minutes 00 seconds W 175.00 feet; Thence N 00 degrees 05 minutes 34 seconds E 175.00 feet (recorded as N 00 degrees 03 minutes 30 seconds E); Thence N 90 degrees 00 minutes 00 seconds E 175.00 feet along the South line of Fourteen (14) Mile Road; Thence S 00 degrees 05 minutes 34 seconds W 175.00 feet (recorded as S 00 degrees 03 minutes 30 seconds W) along the West line of Haggerty Road to the point of beginning, being subject to easements and restrictions of record, if any.