



## CITY of NOVI CITY COUNCIL

Agenda Item F  
December 6, 2010

**SUBJECT:** Adoption of resolution changing the term for posting a site restoration bond in the amount of \$80,191.25 for public streets in Beck North Corporate Park II (specifically Nadlan Court and portions of Cartier Drive and Hudson Drive) from no specified end date to April 1, 2012.

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

**CITY MANAGER APPROVAL:** *[Signature]* *R24*

### BACKGROUND INFORMATION:

On April 16, 2007, the City Council accepted certain streets in the Beck North Corporate Park II as public streets under Act 51. The developer of the park, Nadlan II, LLC, had requested the City Council to accept the streets before the time under the applicable ordinance, Chapter 26.5 of the City Code. The project at the time was only approximately 5% complete with regard to the areas affected by the road (substantially less than the 90% threshold contemplated in the ordinance).

Consistent with the City's ordinances, the City Council required Nadlan II to post a two-year Maintenance and Guarantee bond in the amount of \$80,000 to guarantee for the physical construction of the roadway as being in accordance with appropriate public road standards (reasonable and normal wear and tear accepted). But because it was accepting the streets early, the City Council also required the posting of a **site restoration bond**. The purpose of the site restoration bond was to guarantee the condition of the streets not as a matter of construction quality, but against damage from construction activity for eventual development. There was no time limit on the additional site restoration bond requirement. Nadlan II has posted that site restoration bond and has regularly renewed it as necessary.

Nadlan II, LLC has now requested that the requirement of the site restoration bond be removed because it is a financial burden and because the roads have been in place since 2004 and have not exhibited structural deterioration. The Department of Public Services has evaluated the request and has noted that there were no claims under the Maintenance and Guarantee bond related to the condition of the street as a public street, and no claims under the site restoration bond since its posting on April 16, 2007. The Department of Public Services does not object to the removal of the site restoration bond as a cost to the developer, inasmuch as the ordinance will still require the posting of a site restoration bond by a **builder** in connection with the actual construction of a new building along the affected roadway. In addition, under Section 26.5-33(2) of Chapter 26.5, regardless of the extent or percentage of completion, the streets would have been eligible for acceptance after four years.

**RECOMMENDED ACTION:** Adoption of resolution changing the term for posting a site restoration bond in the amount of \$80,191.25 for public streets in Beck North Corporate Park II (specifically Nadlan Court and portions of Cartier Drive and Hudson Drive) from no specified end date to April 1, 2012.

	1	2	Y	N
<b>Mayor Landry</b>				
<b>Mayor Pro Tem Gatt</b>				
<b>Council Member Fischer</b>				

	1	2	Y	N
<b>Council Member Margolis</b>				
<b>Council Member Mutch</b>				
<b>Council Member Staudt</b>				

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

**RESOLUTION AMENDING REQUIREMENT FOR  
POSTING OF SITE RESTORATION BOND IN  
CONNECTION WITH STREET ACCEPTANCE  
(BECK NORTH CORPORATE PARK II)**

Minutes of a \_\_\_\_\_ Meeting of the City Council of the City of Novi,  
County of Oakland, Michigan, held in the City Hall in said City on \_\_\_\_\_, 2010,  
at 7:00 o'clock P.M., Prevailing Eastern Time.

PRESENT: Councilmembers \_\_\_\_\_  
\_\_\_\_\_

ABSENT: Councilmembers \_\_\_\_\_  
\_\_\_\_\_

The following preamble and Resolution were offered by Councilmember \_\_\_\_\_  
\_\_\_\_\_ and supported by Councilmember \_\_\_\_\_.

WHEREAS, on April 16, 2007, the City Council agreed, on petition from Nadlan II, LLC  
to accept the streets in Beck North Corporate Park II, specifically Nadlan Court and the  
remaining portions of Cartier Drive and Hudson Drive, as public streets under Act 51; and

WHEREAS, Nadlan II, LLC had requested that the City Council accept the streets earlier  
than would otherwise be required under the applicable ordinance, Chapter 26.5 of the City Code.  
The project at the time was only approximately 5% complete with regard to the areas affected by  
the road, which was substantially less than the 90% threshold contemplated in the ordinance; and

WHEREAS, the City Council determined to accept the streets, but required the posting of  
a two-year Maintenance and Guarantee bond in the amount of \$80,000 as a performance  
guarantee to ensure that the physical construction of the roadway was in accordance with

appropriate public road standards (reasonable and normal wear and tear accepted). The Maintenance and Guarantee bond is normally required at the time of acceptance of streets as public; and

WHEREAS, in addition to the normal Maintenance and Guarantee bond, the City Council also required the posting of a site restoration bond. The purpose of the site restoration bond was to guarantee the condition of the streets not as a matter of construction quality, but against damage from construction activity caused by construction of buildings in the Beck North II development over time. No “end date” was set by City Council on the requirement for posting the additional bond; and

WHEREAS, Nadlan II, LLC has requested that the requirement of the site restoration bond be removed because it is a financial burden and because the roads have been in place since 2004 and have not exhibited structural deterioration; and

WHEREAS, the Department of Public Services has evaluated the request and has noted that there have been no claims under the maintenance and guarantee bond related to the condition of the street as a public street, and no claims under the site restoration bond since its posting in April 2007; and

WHEREAS, the Department of Public Services does not object to the removal of the site restoration bond as a cost to the developer, because Chapter 26.5 of the City Code will still require the posting of a site restoration bond by a *builder* in connection with the actual construction of a new building along the affected roadways and also because under Section 26.5-33(2) of Chapter 26.5, the streets would have been eligible for acceptance after four years in any event; and

WHEREAS, if the site restoration bond requirement is removed effective April 2012, such bond will have been in place for a 5-year period without incident or without being required to be drawn on by the City; and

WHEREAS, in consideration of the economic development in the City, and given the existence of other methods for guaranteeing against damage to the roadways in the event of future construction, the City Council has determined to grant the request for the removal of the site restoration bond requirement.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the foregoing, the City Council hereby determines that effective April 1, 2012, the site restoration bond requirement imposed in connection with the acceptance of the Beck North Corporate Park Phase II streets on April 16, 2007, be and hereby is removed, in light of the fact that the City's ordinances will require the posting of other appropriate performance guarantees in connection with the construction of any new buildings related to such streets.

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

RESOLUTION DECLARED ADOPTED.

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at \_\_\_\_\_ meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK



November 29, 2010

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500  
Fax: 248-851-2158  
www.secretwardle.com

THOMAS R. SCHULTZ  
Direct: 248-539-2847  
tschultz@secretwardle.com

Rob Hayes, Director of Public Services  
City of Novi  
Public Services – DPW Garage  
26300 Delwal Drive  
Novi, MI 48375

Re: ***Beck North Phase II—Removal of Site Restoration Bond Requirement***  
Our File No. 55142 NOV

Dear Mr. Hayes:

Attached is the draft proposed resolution removing the \$80,191.25 site restoration bond requirement that was imposed by City Council in connection with the acceptance of the Beck North Phase II streets as public streets. If you recall, back in 2007 the City Council agreed to accept the streets early—well before the 90 percent build out of buildings adjacent to the streets—on the condition that the developer post a site restoration bond in addition to the normal two-year maintenance and guarantee bond. The developer has at various points since then argued that it believed that the site restoration bond was also only required for a two-year period. The City has taken a position to the contrary, and at this point the site restoration bond is still in place, with no end-date or sunset contemplated (except completion of the development at some unknown future date). The developer has asked that the site restoration bond be removed as a condition from the street acceptance.

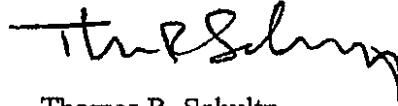
The developer has pointed out that, under the City's ordinances, another site restoration bond would need to be posted in connection with the actual construction of any buildings adjacent to the streets. The developer has also pointed to the generally good condition of the streets at this point, which your office acknowledges. Finally, we note that under Chapter 26.5, the streets would have been eligible for acceptance after four years in any event under Section 26.5-33(2).

As I understand it, you have no objection to the site restoration bond requirement being removed effective April, 2012. At that point, the bond will have been in place for 5 years, without having been drawn on. I have prepared the attached draft resolution for Council's consideration at an upcoming meeting on the basis of that understanding.

Rob Hayes, Director of Public Services  
November 29, 2010  
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If you have any questions regarding the above, please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Schultz". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Thomas R. Schultz

TRS/jec

Enclosure

cc: Clay Pearson, City Manager  
Maryanne Cornelius, City Clerk  
Charles Boulard, Community Development Director

1526207



# CITY of NOVI CITY COUNCIL

[www.cityofnovi.org](http://www.cityofnovi.org)

**Agenda Item 7**  
**April 16, 2007**

**SUBJECT** Consideration of a request from Nadlan II, LLC to accept Beck North Corporate Park Phase II streets, and adoption of Act 51 New Street Resolution accepting Nadlan Court and the remaining portions of Cartier Drive and Hudson Drive as public, adding 3,199 linear feet or 0.61 miles of roadway to the City's street system.

**SUBMITTING DEPARTMENT:** Engineering *EA*

**CITY MANAGER APPROVAL:** *PWA for CJP*

<b>EXPENDITURE REQUIRED</b>	N/A
<b>AMOUNT BUDGETED</b>	N/A
<b>APPROPRIATION REQUIRED</b>	N/A
<b>LINE ITEM NUMBER</b>	N/A

**BACKGROUND INFORMATION:**

The developer of Beck North Corporate Park Phase II, Nadlan II, LLC, has dedicated the streets within this development and requests they be made public. The locations of dedicated streets are shown on the attached map. You may recall that Council accepted Beck North Phase II site utilities on January 22, 2007.

An inspection conducted by Engineering Division and Department of Public Works staff members in November 2006 revealed several areas of pavement and curb/gutter with severely pitted surfaces and some spalled areas (representative photographs are attached). Because it was only a visual inspection, a determination of the street's structural integrity could not be made at that time. As a result of this inspection, the Engineering Division determined that testing needed to be performed to prove the structural soundness of the pavement. Given the surface conditions, our concern was that the pavement beneath the surface might be substandard, which would shorten the useful life of the streets and result in additional maintenance and capital expenditures for the City in the future should the streets be accepted as-is.

Nadlan II retained Soil and Material Engineers, Inc. (SME) to complete testing after the City reviewed and approved a sampling plan. SME collected and analyzed eight concrete pavement cores, and had one of the eight cores analyzed microscopically by Construction Petrographics, Inc. SME's test results reveal that - despite the pavement's irregular surface conditions - the concrete appears to be structurally sound. Testing of all eight cylinders revealed relatively high compressive strengths exceeding 5,500 pounds per square inch (the City's standard is 3,500 psi). Construction Petrographics' testing showed that (with the exception of the uppermost 4mm of the core) the concrete exhibited no other deterioration and had a uniform distribution of aggregate, sand and cement paste. SME's and Construction Petrographics' reports are attached.

In accordance with Section 26.5-33(2)d, street acceptance is not to occur before the development achieves 90% build-out, and Beck North Phase II is currently less than 5% built-out. A Maintenance and Guarantee Bond (attached) in the amount of \$80,191.25 (or 25% of the total value of the concrete streets) has been posted and will be in effect for two years hence. Per Sections 26.5-33(2) d and e, if it is determined that the developer would endure a substantial hardship should the streets not be accepted now, a site restoration guarantee must be posted and remain in effect until the 90% threshold is achieved "to guarantee the physical integrity of the



roads to be accepted in light of continuing construction activity." We recommend a site restoration guarantee (separate from or an extension to the existing Maintenance and Guarantee Bond) in the amount of \$80,191.25 that would take effect after the 2-year maintenance period and remain in effect until 90% build-out occurs.

A requirement for inclusion in Act 51 certification is the submittal of a formal Resolution confirming Council acceptance of specific streets listing the length of each. The attached Resolution satisfies the Michigan Department of Transportation requirement for adding 3,199 lineal feet or 0.61 miles of roadway to Act 51 funding.

According to the City Attorney, the streets' acceptance documents are in a form so as to permit acceptance by Council (Secret-Wardle review letter dated September 27, 2006, attached).

**RECOMMENDED ACTION:** Consideration of a request from Nadlan II, LLC to accept Beck North Corporate Park Phase II streets, and adoption of Act 51 New Street Resolution accepting Nadlan Court and the remaining portions of Cartier Drive and Hudson Drive as public, adding 3,199 linear feet or 0.61 miles of roadway to the City's street system.

	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 Nagy				
Council Member Paul				



**CITY COUNCIL**

Mayor  
*David B. Landry*

Mayor Pro Tem  
*Kim Capello*

*Bob Gatt*

*Terry K. Margolis*

*Andrew Mutch*

*Toni Nagy*

*Lynne Paul*

City Manager  
*Clay J. Pearson*

City Clerk  
*Maryanne Cornelius*

**CITY OF NOVI**

**NEW STREET ACCEPTANCE RESOLUTION**

**BECK NORTH CORPORATE PARK – PHASE II**

**WHEREAS,** Nadlan II, LLC, the developer of Beck North Corporate Park-Phase II has requested the acceptance of Nadlan Court and the remaining portions of Cartier Drive and Hudson Drive by the Novi City Council; and,

**WHEREAS,** said streets within Beck North Corporate Park-Phase II are now located within rights-of-way under the control of the City of Novi, have been constructed to City standards, and are open to public

**WHEREAS,** Nadlan Court is 501 linear feet, and the remaining portions of Cartier Drive and Hudson Drive are 939 linear feet and 1,759 linear feet, respectively, adding a total of 3,199 linear feet or 0.61 miles of roadway surface to Novi's public street system.

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Novi City Council hereby accept Nadlan Court and the remaining portions of Cartier Drive and Hudson Drive, and direct such be included in the City's public street system.

**CERTIFICATION**

I, Maryanne Cornelius, duly appointed City Clerk of the City of Novi, do hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at a Regular meeting held this 16th day of April, 2007.

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Maryanne Cornelius  
City Clerk





April 11, 2007

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-  
3040  
Tel: 248-851-9500  
Fax: 248-851-2158  
www.secretwardle.com

Thomas R. Schultz  
Direct: 248-539-2847  
tschultz@secretwardle.com

Clay J. Pearson, City Manager  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

Re: *Request of Nadlan II, LLC to Accept Beck North Corporate Park  
Phase II Streets (Cartier Drive, Hudson Drive, Nadlan Court)*

Dear Mr. Pearson:

This updates the letter from our office, signed by Beth Kudla, dated September 27, 2006. That letter addressed the status of the documentation for the acceptance of both streets and utilities for Beck North Corporate Park, Phase II. It indicated that the documentation for the acceptance of both streets and utilities was in acceptable form.

Since the date of that initial letter, the City Council has accepted the utilities for the Beck North Phase II project, but not the streets. There have been two outstanding issues with regard to the streets. The first was the fact that the project is not 90 percent complete nor have the streets been installed for four years, which are the usual benchmarks for acceptance of streets upon substantial completion under Chapter 26.5, Performance Guarantees, and specifically Section 26.5-33(2)(a). The owner is seeking early acceptance under Section 26.5-33(2)(d), which states that:

. . . in unusual circumstances presenting a substantial hardship to the applicant (such as commencement of the development before the effective date of this provision), Council may accept the streets before either such event [90 percent completion/4 years after installation], but in such case shall require a site restoration guarantee for the purposes set forth in Section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. The amount of the guarantee shall be established by the City Engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue.

Since the project is not 90 percent complete and four years have not passed, the developer essentially seeks the exercise of Council's discretion. Note that the project was commenced before Section 26.5 was adopted in May, 2005.

Clay J. Pearson, City Manager  
April 11, 2007  
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The City Engineer is recommending that, if acceptance occurs, the Council require a site restoration bond in the amount of \$80,191.25, which represents 25 percent of the total value of the streets. He further recommends that this site restoration bond remain in place until the 90 percent build-out occurs. Our office has no objection to that condition.

We note that the maintenance and guarantee bond—which is the typical two-year bond to cover the roads separate and apart from the site restoration bond—was signed back on January 23, 2006. Although the bond does state that it becomes effective for a period of two years upon formal acceptance of the roadways, we would suggest that the bond be updated or that the surety acknowledge the beginning date following acceptance by City Council in some manner.

The other issue that needed to be addressed before bringing this dedication proposal forward to City Council was the condition of the streets. The Engineering Department raised questions about the structural integrity of the streets based on concerns about the appearance of the surface of the streets. Apparently, the structural concerns have been resolved. With regard to the aesthetic appearance of the streets, we note that there is no specific standard in the City's ordinance governing that issue, and that the Engineering Department's letter does not identify the surface condition of the streets as a basis for rejection of the streets separate from the timing of the request.

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

Very truly yours,



Thomas R. Schultz

TRS/jes

cc: Pam Antil, Assistant City Manager  
Rob Hayes, City Engineer  
Benny McCusker, DPW Director  
Maryanne Cornelius, City Clerk