



## CITY of NOVI CITY COUNCIL

**Agenda Item K**  
**October 8, 2018**

**SUBJECT:** Approval of the Walled Lake – Novi Wastewater Treatment Plant Wastewater Disposal Services Agreement between the City of Novi, Oakland County, and the City of Walled Lake.

**SUBMITTING DEPARTMENT:** Department of Public Works, Water & Sewer Division

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

The Oakland County Water Resources Commissioner owns and operates the Walled Lake- Novi Wastewater Treatment Plant for the benefit of the City of Novi and the City of Walled Lake. This agreement is considered an update to the current agreement between the three parties. This agreement would remain in effect until 2030.

The attached *Walled Lake – Novi Wastewater Treatment Plant Wastewater Disposal Services Agreement* has been reviewed by the City Attorney's office (Beth Saarela, September 28, 2018).

**RECOMMENDED ACTION:** Approval of the *Walled Lake – Novi Wastewater Treatment Plant Wastewater Disposal Services Agreement* between the City of Novi, Oakland County, and the City of Walled Lake.

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ROSATI | SCHULTZ  
JOPPICH | AMTSBUECHLER

September 28, 2018

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Department of Public Works  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

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City of Novi  
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26300 Lee BeGole Drive  
Novi, MI 48375

**RE: Huron-Rouge Sewage Disposal System – Walled Lake-Novı Wastewater Treatment Plant – 2018 Contract**

Gentlemen:

We have reviewed the Walled Lake – Novi Wastewater Treatment Plant Wastewater Disposal Services Agreement prepared by the Oakland County Water Resources Commissioner’s Office (WRC) with respect to the usage, operations, and maintenance of the Walled Lake-Novı Wastewater Treatment Plant. Generally, the Agreement is being proposed to update and clarify the relationship between the parties with respect to usage, and operation and maintenance of the Walled Lake - Novi Wastewater Treatment Plant (WWTP)

The Walled Lake – Novi Wastewater Treatment Plant Wastewater Disposal Services Agreement sets forth the rights and obligations of the City and the WRC with respect to usage, operation and maintenance of the Walled Lake Novi Wastewater Treatment Plant. The WRC owns and operates the Walled Lake-Novı Wastewater Treatment Plant (WWTP) for the benefit of the City of Novi and the City of Walled Lake. The Agreement assigns Novi with approximately 65% of the capacity of the treatment plant facilities, while Walled Lake is allotted 35%. The costs of operating and maintaining the plant are divided between Novi and Walled Lake proportionately.

The terms of the Agreement are similar to other agreements provided by the WRC with respect to the ownership and operation of other city-owned systems to the extent that the WRC operates and maintains the facilities at the cost of the users, passed on through water and sewer rates. In this case, although the WRC recognizes itself as the owner/operator of the

Jeffrey Herczeg, Director of Public Works  
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City of Novi  
September 28, 2018  
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treatment plant, the cities of Novi and Walled Lake are the only two cities with rights to use the capacity.

Because WRC is the owner of the treatment plant, the Agreement provides the WRC with authority under the Agreement to make repairs, upgrades and improvements to the treatment plant without direct approval or oversight by the City. However, the City is authorized to conduct or require an audit of the WWTP finances pursuant to Section 5.1 of the Agreement.

Additionally, the agreement provides for terms limiting each city's flow to the plant and provides for remedies in the event that the flow rates are exceeded by either community. Remedies could range from system operation changes to financial penalties and would be determined on a case-by-case basis, with the goal of any corrective action plan being compliance with the treatment plant's capacity limitations and permits.

Generally, we see no legal impediment to entering into the Agreement. It should be noted that the WRC is now providing liability insurance with respect to the actions of WRC employees and contractors, which is an aspect of this agreement that is new and is beneficial to the cities since it reduces the potential risk to the City's enterprise funds and/or overall general fund for sewer events related to the treatment plant operations. The treatment plant property itself is insured with property liability insurance separate from the general liability policy.

The Agreement will remain in effect until 2030 or at the earliest, until all bonds relating to the construction improvement of the treatment plant are paid off.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

ROSATI SCHULTZ JOPPICH  
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

EKS

Enclosure

C: Cortney Hanson, Clerk (w/Enclosure)  
Pete Auger, City Manager (w/Enclosure)  
Victor Cardenas, Assistant City Manager (w/Enclosure)  
Carl Johnson, Finance Director (w/Enclosure)  
Tina Glenn, Assistant City Treasurer (w/Enclosure)  
Thomas R. Schultz, Esquire (w/Enclosure)

**WALLED LAKE – NOVI WASTEWATER TREATMENT PLANT  
WASTEWATER DISPOSAL SERVICES AGREEMENT**

Between the County of Oakland

and the

City of Novi and the City of Walled Lake

Dated: \_\_\_\_\_, 2018

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**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the COUNTY OF OAKLAND, a Michigan constitutional corporation ("County"), by its OAKLAND COUNTY WATER RESOURCES COMMISSIONER, in his capacity as "County Agency" pursuant to Michigan Public Act 342 of the Public Acts of 1939, as amended, MCL 46.171 et seq., ("Act 342"), whose address is 1 Public Works Drive, Waterford, Michigan 48328-1907, and the CITY OF WALLED LAKE, a Michigan municipal corporation, whose address is 1499 E. West Maple, Walled Lake, Michigan 48390, and the CITY OF NOVI, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (collectively referred as the "Cities"). In this Agreement, either the County, WRC and/or the Cities may also be referred to individually as a "Party" or jointly as "Parties."

**RECITALS:**

**WHEREAS**, pursuant to Michigan Public Act 185 of the Public Acts of 1957, as amended, MCL 123.731 et seq., ("Act 185"), Act 342, and by contract with the Cities, the County Board of Commissioners established a County system of sewage disposal improvements to serve the Cities, commonly known as the "Huron-Rouge Sewage Disposal System";<sup>1</sup> and,

**WHEREAS**, the County subsequently acquired and constructed the "Huron-Rouge Sewage Disposal System – Walled Lake Arm" which includes a wastewater treatment plant to serve the Cities, commonly known as the "Walled Lake – Novi Wastewater Treatment Plant" ("WWTP") and designated the Oakland County Water Resources Commissioner (formerly known as the Oakland County Drain Commissioner) as the "County Agency" for the "Huron-Rouge Sewage Disposal System – Walled Lake Arm"<sup>2</sup> pursuant to Act 342 with all powers and duties with respect thereto as are provided by Act 342; and,

**WHEREAS**, the Cities have requested and the County has agreed to provide wastewater disposal services on a non-profit basis and in accordance with the terms and conditions set forth for in this Agreement; and,

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<sup>1</sup> The County, the Novi Township and Village of Novi entered into a contract establishing, acquiring and improving the Huron-Rouge Sewage Disposal System, dated April 20, 1962. The terms of this contract were agreed to by the City of Walled Lake when it approved the contract establishing, acquiring and improving the Huron-Rouge Sewage Disposal System – Walled Lake Arm.

<sup>2</sup> The County and the Cities of Walled Lake and Novi, entered into the following contracts establishing, acquiring and improving the Huron-Rouge Sewage Disposal System – Walled Lake Arm: (1) contract dated September 1, 1966, as amended February 1, 1969 and April, 1969, commonly understood as the "Base Contract"; (2) contract dated March 1, 1989 identified as the "Huron-Rouge Sewage Disposal System Walled Lake-Novu Wastewater Treatment Plant 1989 Enlargement Contract"; and (3) contract dated October 1, 2014 identified as "Huron-Rouge Sewage Disposal System Walled Lake-Novu Wastewater Treatment Plant 2014 Retention Basin and Capacity Improvements Contract."

**WHEREAS**, the County, by and through the Office of the Oakland County Water Resources Commissioner (“WRC”), has qualified personnel capable of providing wastewater disposal services; and,

**WHEREAS**, in order to promote the public health and welfare of the residents and property owners, and in order to properly treat and dispose wastewater collected within the Cities, the Parties have been authorized to execute this Agreement for the Wastewater Disposal Services according to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the County and the Cities mutually agree as follows:

**Article I. Statement of Authority and Purpose.**

- 1.1 Authority. Pursuant to Act 342 of 1939, and any other applicable laws of the State of Michigan, the County and the Cities enter into this Agreement to establish terms and conditions for the treatment and disposal of wastewater transported to the WWTP. Each Party agrees to take all actions reasonably necessary to effectuate the objectives set forth in this Agreement.
- 1.2 Purpose. The purpose of this Agreement is to authorize the Cities to transport wastewater from their respective local sewage collection systems for treatment at the Walled Lake-Novı Wastewater Treatment Plant, owned and operated by the County, in accordance with the wastewater flow limitations set forth herein. The County, through its WRC, agrees to provide Sewage Disposal Services (as defined herein) on a non-profit basis as further detailed in this Agreement. In exchange for the Sewage Disposal Services, the County shall be reimbursed for its Costs and Overhead from the Revenue collected from the Charges to the Cities. Nothing in this Agreement shall supersede the conditions and obligations of the Parties, including but not limited to the obligations concerning the types of sewage transported to the WWTP for treatment and disposal as set forth in the agreements and amendments thereto establishing Huron-Rouge Sewage Disposal System and Huron-Rouge Sewage Disposal System – Walled Lake Arm between the Parties.<sup>3</sup>

**Article II. Definitions.**

In addition to the above defined terms (i.e. "County", "Cities", "WRC", "Party" and "Parties") and any terms defined in other sections of this Agreement (e.g., "Services"), the Parties agree that the following words and expressions, whether used in the singular or plural,

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<sup>3</sup> See footnotes 1 and 2 for reference.

possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 2.1 “Agreement” shall mean each of the various provisions and parts of this document, including all attached Exhibits and/or any amendments to this Agreement, as may be executed and approved by the Parties.
- 2.2 “Cost(s) or System Cost(s)” means all costs and expenses incurred in the administration, operation, maintenance and treatment of Wastewater. Costs include, but are not limited to the following:
  - (a) the County’s costs and expenses for the treatment and disposal of Wastewater, and for operating and maintaining the WWTP and other reasonable and necessary costs and expenses relating to the operation of the WWTP, including WRC Personnel salaries or labor costs, and statutory and customary fringe benefits, overtime; material and supplies (such as chemicals required for treatment of wastewater); power and utility services; permitting; testing; vehicle/equipment rental and subcontractor services; insurance; and other services as set forth in this Agreement and/or devoted to the Services as defined in this Agreement.
  - (b) all costs and expenses necessary to comply with all applicable federal and state laws, rules and regulations, including improvements that extends the useful life of the WWTP or a WWTP component;
  - (c) a reserve and or replacement fund in such amount as shall be determined by the County for the repair, replacement and improvements of the physical assets of the WWTP; and,
  - (d) the costs and expenses for defending and settling/satisfying claims and judgments against the County related to the administration, operation, and maintenance of the WWTP, including claims for sewage disposal system events as defined in Section 16 of Act 170 or the Public Acts of 1964, as amended (by Public Act 222 of the Public Acts of 2001), MCL 691.1416, arising from the operation, maintenance, design or construction defects of the WWTP.
- 2.3 “Contractor” shall be defined as an independent contractor engaged by the County to perform the Services and responsibilities necessary to carry out the objectives under this Agreement.
- 2.4 “Corrective Action Plan” or “CAP” means a document which identifies the steps needed to be taken by the Cities to attain compliance with the requirements of Article VII and a schedule for completing those steps.
- 2.5 “County Agent” or “County Agents” shall be defined as any and all Oakland County elected officials, appointed officials, directors, board members, commissioners, authorities, other boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, and/or any such persons’ successors or predecessors (whether such persons act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in



concert with any of them, excluding the Cities and/or any Cities Agents, as defined herein.

- 2.6 “Cities’ Agent”, shall be defined to include any and all officers, elected officials, appointed officials, directors, board members, council members, authorities, boards, committees, commissions, employees, managers, departments, divisions, volunteers, agents, representatives, consultants, and/or any such persons’ successors or predecessors (whether such persons act or acted in their personal, representative, or official capacities), and/or any persons acting by, through, under, or in concert with any of them, excluding the County and/or any County Agents, as defined herein.
- 2.7 “Claim(s)” shall be defined to include any and all alleged claims, complaints, demands for relief or damages, lawsuits, and causes of action, whether in law or equity, tort, contract, or otherwise, by third parties, arising out of the ownership, operation, maintenance of the WWTP, but does not include claims between the Parties.
- 2.8 “Charges” shall be defined as the charges and other fees, such as late fees, that are assessed against and paid by the Cities to the County to reimburse the County for the Costs and Overhead related to Wastewater Disposal Services.
- 2.9 “Exhibit A” entitled :Service Area”, which shall consist of a depiction of the Service Area for each of the Cities from which Flow may be delivered to the WWTP, and identifies each City’s Service Area, the specific location of Meters, and connection to the Walled Lake-Novı Interceptor.
- 2.10 “Exhibit B” entitled, “Maximum Allowable Flow Limits” shall identify the Maximum Allowable Flow Limits from the Service Area for each of the Cities.
- 2.11 “Flow or Wastewater Flow” means Wastewater delivered by the Cities from their respective Service Areas identified in Exhibit A to the WWTP. Flow includes Wastewater from: residents, businesses, commercial establishments, industries, governmental, nonprofit or quasi-public users, and Infiltration and Inflow.
- 2.12 “Industrial Pretreatment Program” means the program operated and enforced by the County by which discharges from industrial users are regulated in accordance with the requirements of regulations established by U.S. EPA pursuant to 40 CFR Part 403, and amendments thereto, or successor federal and/or state statute or regulation of industrial discharges to the WWTP.
- 2.13 “Infiltration” means groundwater that regularly enters a sanitary system through, by way of example, damaged pipe sections, cracks or erosion in pipes, leaky joints, and/or poor manhole connections.
- 2.14 “Inflow” means the stormwater that enters a sanitary sewer system in direct response to rainfall/snowmelt through, by way of example, direct connection of downspouts, sump pumps, foundation drains and/or storm sewers.
- 2.15 “Local Sewer System” means those sewer collection systems that are connected to the WWTP but which are owned, operated or maintained by the Cities. Local Sewer Systems may include collector sewers, trunk sewers, manholes, junction chambers, pumping stations, and other appurtenances.

- 2.16 "Maximum Allowable Flow Limit" shall mean the maximum allowable Wastewater Flow that a City may deliver to the WWTP. Maximum Allowable Flow Limits shall be expressed as a peak rate in units MGD. This limit shall be expressed in units of MGD and shall be determined by calculated at the percentage of maximum hour plant capacity that is allocated to each City. The Maximum Allowable Flow Limits for each City are set forth in Exhibit B.
- 2.17 "Meter" shall mean Wastewater billing meter that is used to measure Wastewater for billing purposes.
- 2.18 "MGD" shall mean million gallons per day.
- 2.19 "Notice" shall mean all notices, consents, approvals, requests and other communications required to be given under the terms of this Agreement.
- 2.20 "Overhead" shall be defined to include the following: all allocations of the labor cost, including statutory and customary fringe benefits, of personnel responsible for administering this contract or supervising the work performed in connection with this Agreement; an allocation of expenses of the WRC; and an allocation of indirect costs of Oakland County charged to the WRC for support services, such as (but not limited to) legal, personnel, accounting, computer support, and insurance/risk management.
- 2.21 "Revenue" shall be defined as the funds derived from Charges assessed against and paid by the Cities, and other sources of revenue, such as grants.
- 2.22 "Service Area" shall mean the geographic area of each City from which Wastewater may be delivered to the WWTP as designated in Exhibit A to this Agreement.
- 2.23 "Wastewater Disposal Services or Services " shall mean the County wastewater disposal services set forth in Article IV of this Agreement.
- 2.24 "Sewer Use Rules and Regulations" means the County's Rules and Regulations, as may be adopted and amended by the County or WRC from time-to time that establishes design standards for sewers and other terms and conditions for the for transportation, treatment and disposal of Wastewater.
- 2.25 "State" shall be defined as the "State of Michigan," a sovereign governmental entity of the United States, and shall also include within its definition any and all departments or agencies of State government.
- 2.26 "System Enterprise Fund" shall be defined as the account for the WWTP established and maintained by the County.
- 2.27 "Term" shall have the meaning set forth in Article VIII.
- 2.28 "Wastewater" shall mean wastewater flow from residential, commercial and industrial sewer system users, and may include sanitary flow, dry weather infiltration and inflow, and a wet weather component delivered by the Cities from Cities' Service Area to the WWTP.

- 2.29 “WWTP” shall mean Walled Lake – Novi Wastewater Treatment Plant located at 46351 West Road, Novi, Michigan 48377.

**Article III. Delivery of Wastewater Flow; City Responsibilities.**

- 3.1 Delivery of Wastewater Treatment and Disposal Services Each City agrees to deliver all Wastewater Flow from the Cities’ Service Area identified in Exhibit A, up to each City’s respective Maximum Allowable Flow Limit to the Walled Lake-Novu Interceptor as set forth in Exhibit B for treatment and disposal at the WWTP. Each City’s Wastewater Flow shall not exceed the Maximum Allowable Flow Limit assigned to each City as set forth in Exhibit B.
- 3.2 Local Sewer System Connections to the System. Each City must deliver all Flow at the Walled Lake-Novu Interceptor for transportation to and treatment at the WWTP. It is understood and agreed by the Parties, that the WWTP is to serve the Cities and not the individual property owners and users.
- 3.3 Local Sewer System Operation and Maintenance. Each City will operate and maintain, at its expense, the Local Sewer System by which Flow is collected and delivered to the WWTP. Each City will properly operate and maintain their respective Local Sewer Systems including, but not be limited to the removal of debris or excess Infiltration and Inflow from Local Sewer System. The County shall have no responsibility for operating and maintaining any portions of the Cities’ Local Sewer System, except as may be provided by separate agreement with the Cities. From time to time the County may request and each City agrees to provide, its annual operation and maintenance reports or data, if any, as requested by the County for the necessary operation of the WWTP.
- 3.4 Character of Wastewater from Local Sewer System.
- (a) Each City shall be responsible for the character of the Flow originating within its respective Service Area, and shall comply with standards, rules and regulations controlling the discharge of Wastewater to the WWTP.
  - (b) Each City, by the adoption of appropriate ordinances, shall enforce such Rules and Regulations, including those pertaining to industrial pretreatment, and provide for and collect appropriate charges and expenses, associated therewith.
  - (c) Each City shall not deliver Flow to the WWTP that causes an unreasonable or additional burden upon the WWTP (as determined solely by the County), including Flow that: (i) causes physical damage to the WWTP; and/or (ii) causes or contributes to an event of noncompliance with its permit.
  - (d) Any City that delivers Flow to the WWTP that causes an unreasonable or additional burden as determined solely by the County, may be deemed by the County to be in non-compliance with this Agreement and subject to compliance action under Article VII and the remedies set forth therein.
- 3.5 Storm Water Sewers/Drains. The Cities agree that no strictly storm water sewers or drain will be permitted to connect to or to flow into the WWTP, directly or indirectly, and shall take all necessary action to prevent the same.

- 3.6 Acceptance of Flow from Outside the Service Area. The County shall not be obligated by this Agreement to convey, store or treat Flow that originates outside the Service Areas shown on Exhibit A, or to construct new facilities. No City shall deliver any Flow to the WWTP that originates outside of the Cities' Service Area without the consent of the County. The WRC may, within its reasonable discretion, approve the acceptance of Flow originating outside a City's Service Area when temporary discharges of Flow are necessary in connection with maintenance of Local Sewer Systems, or other emergency as determined by the WRC.
- 3.7 Construction of New Sewer Facilities within the Service Area. No City shall construct or permit the construction of any sanitary sewer in the Service Areas that do not connect directly or indirectly to the WWTP. Any new sanitary sewer facilities within the Service Area shall require the written consent of the County, and shall conform to the standards adopted by the County, including those which are set forth in its Rules and Regulations.
- 3.8 Changes in Service Area. The boundaries of the Service Area may only be changed with the written consent of the WRC, which shall not be unreasonably withheld.
- 3.9 Compliance with Applicable Rules and Regulations. Each City will comply with all permit requirements, rules and regulations applicable to sewer design, construction permits and allowable wastes, including but not limited to the County's Industrial Pretreatment Program, the County's Sewer Rules and Regulations, and any other standards adopted by the County.
- 3.10 City Ordinances for Cost Recovery. The Cities have adopted or shall hereafter adopt one or more ordinances or resolutions as are necessary under the terms of the Agreement, which provides rates and charges sufficient to provide the Revenue necessary to reimburse the County for its Costs and Overhead related to the Services provided by the Agreement.
- 3.11 Ordinance – Compliance. The Cities are responsible for compliance of the Cities' ordinances and regulations. The Cities have adopted or shall hereafter adopt one or more ordinances regulating or prohibiting the discharge of storm water within their respective jurisdictional boundaries, regulating or prohibiting the discharge of fats, oils and grease, or industrial waste to the WWTP, including those pertaining to user pretreatment standards; and, the billing and collection of Costs related thereto.
- 3.12 Capital Replacement of System. The Cities shall be responsible for expenditures for all capital replacement of WWTP components.
- 3.13 Testing and Sampling Fees; Consultant Fees. The Cities agree that the term Costs includes, but not limited to, fees for testing, sampling, engineering services or studies, master planning, capital improvements, as well as all of the costs related to procurement of the same, are a Cost which may be accounted for in the Charges.
- 3.14 Property Access; Rights-of-Way. If necessary, Cities will be responsible for and will secure the right of access necessary for WRC Personnel or Contractors to perform the Services under this Agreement. The Cities shall assist the County to obtain permission to use streets, highways, alleys and/or easement within the Service Areas for the purpose of constructing, operating and maintaining the WWTP to provide service to the

Cities. This assistance shall include assisting with regard to obtaining the consent of the Cities, as necessary, and as provided in Article 7, Section 29, Michigan Constitution of 1963.

#### **Article IV. Wastewater Treatment and Disposal Services.**

4.1 Wastewater Disposal Services ('Services'). The County will administer, operate and maintain the WWTP and will:

- (a) Provide Sewage Disposal Services for the treatment and disposal of Flow delivered by the Cities to the WWTP up to each Cities' Maximum Allowable Flow; and,
- (b) Perform other necessary duties and tasks relating to the administration, management, operation, maintenance, improvement, replacement and repair of the WWTP.

4.2 County Personnel.

- (a) The Services to be provided by the County to the Cities under this Agreement shall be performed by County Agent(s) and/or Contractor. The County will maintain and designate a sufficient number of County Agents having sufficient qualifications in order to carry out and provide the Services under and in accordance with this Agreement. However, the County will give due consideration to any input received from the Cities concerning the number and charges of Contractors and County Agents assigned to provide Services.
- (b) The County will be responsible for furnishing all County Agents and Contractors with all job instructions, job descriptions and job specifications and shall in all circumstances control, supervise, train or direct all County Agents in the performance of any and all Services under this Agreement. The County shall remain the sole and exclusive employer of all County Agents.
- (c) This Agreement is neither intended, nor shall it be interpreted, to create, change, or otherwise affect or control, in any manner any employment right, privilege, benefit, or any other term or condition of employment, of any kind or nature whatsoever, in, upon, or for any County Agent. Except as expressly provided for under the terms of this Agreement and/or laws of this State, no County Agent, while such person is currently and/or actively employed by the County shall be employed or utilized to perform any other services by or for the Cities during the term of this Agreement. This section shall not prohibit the Cities from employing any person who was a former County Agent but is no longer employed in that capacities by the County.

4.3 Sewer Meters; and Billing. The County will utilize sanitary sewer meters as the basis and methodology for computing the Charges and bill the Cities either monthly or quarterly for the Services based on its portion of wastewater (including sanitary flow, dry weather infiltration and inflow, and a wet weather component) metered and delivered to the WWTP.

- 4.4 WWTP Capital Replacement Expenditures. The County shall have the right to expend funds from the System Enterprise Fund for capital replacement or improvement projects without prior approval from the Cities.
- 4.5 Establish Reserves. The County may establish a reserve for system emergencies, system replacement, or other purposes from the Revenue.
- 4.6 Independent Contractor. At all times and for all purposes under the terms of this Agreement, the County and/or any and all County Agents' legal status and relationship to the Cities shall be that of an Independent Contractor.
- 4.7 Insurance - County. The County will endeavor to obtain and to maintain for the duration of this Agreement the following insurance coverages with insurance companies licensed to do business in the State of Michigan, but only if such insurance coverage is commercially available. It is understood and agreed, that all costs, including the premium, self-insured retention or deductible, shall be included as a System Cost:
- (a) Public Liability with limits of \$10,000,000.00 per occurrence and \$15,000,000 aggregate.
  - (b) Commercial General Liability with limits of \$10,000,000 per occurrence and \$15,000,000 aggregate.
  - (c) Certificates of Insurance. So long as each City maintains current on its annual premium for the coverage outlined herein, it shall be a Named Insured under the policy.
  - (d) Non-Exclusivity and Limitations of Insurance Coverage. It is understood by the Cities, that the insurance coverages set forth herein and obtained and maintained by the County is not exclusive to this Agreement. Meaning, that the County may purchase and maintain the insurance coverages to insure the County (and County Agents) against such Claims arising from the County Services provided under this Agreement, as well as similar Services the County provides to other municipal public corporations. As such, the Cities, along with other municipal corporations, will share in the cost of the insurance premium paid by the County. To this end, the County agrees to reasonably allocate the premium paid for the insurance to the various water and sewer systems operated and maintained by the County, and provide reasonable justification for the allocation of said cost to the Cities. In addition, it is understood and agreed, that the purchase of insurance and payment of the premium (as a System Cost), does not guarantee insurance coverage for any Claim. All policies set forth herein are subject to the terms, conditions, and limitations set forth in the insurance policies. As such, uninsured Claims shall be and remain a System Cost. Moreover, insured Claims arising from the County's Services to a municipal water and sewer system, other than the WWTP, may limit or possibly eliminate coverage of a Claim arising from the County's Services under this Agreement. In the event of such an occurrence, it is understood that an otherwise insured Claim that is in excess of any valid and collectible insurance rights/policies, shall be and remain a System Cost.
- 4.8 Permit Assistance. The County will procure of all permits, guarantees, warranties, easements, licenses, and other similar approvals and consents necessary to operate and maintain the WWTP.

- 4.9 Regulatory Compliance. The County will supervise all regulatory compliance and financial transactions, except for the compliance of the Cities' ordinances or regulations.

**Article V. Compensation for Services.**

- 5.1 Compensation from WWTP Revenue; Audit. The Cities agree to pay for all Services provided by the County based on the Charges established by the County. The County's Costs and Overhead incurred for the Services shall be compensated from the Revenue derived from Charges to the Cities. The Charges shall be reasonable in relation to the Costs incurred by the County for the provision of Services. The County's methodology for the Charges, may include allocations for certain Costs and/or Overhead, or the County may charge a flat fee, or combination thereof, rather than directly accounting for specific Costs. In the event that the Costs and Overhead exceed the Revenue in any one year, then any deficiency may be recovered by adjusting the Charges to the Cities. In the event that annual Costs and Overhead are less than the annual Revenue, then upon the sole discretion of the County, Charges to the City may be adjusted to balance the account. The Cities shall be entitled to conduct, and/or may request the County to conduct, an independent audit of the County's records relating to the computation and assignment of the County's Costs and Overhead anytime during the term of this Contract.
- 5.2 County Services Performed Non-Profit Basis. The County agrees to the WWTP on a non-profit basis for the benefit of the Cities. It is understood that the County is without funds to finance, operate and maintain the WWTP except for the Revenue derived from Charges to the City for the Wastewater Disposal Services. The Parties understand and agree, and notwithstanding any term or condition set forth in the Agreement, that in no event shall the County or its general fund be charged with or liable for the cost of administering, operating, maintaining, improving, repairing or replacing the WWTP. All Costs and Overhead associated with the Services under this Agreement will be the responsibility of the Cities.

**Article VI. Standard of Care; Warranty Waiver; Consequential Damages; Liability.**

- 6.1 Standard of Care; Waiver of Warranty and Consequential Damages. The County will perform the Services under this Agreement in accordance with the standard of care and diligence normally provided by other professional firms providing similar Services. However, the County makes no warranty, express or implied, with respect to any Services provided. SPECIFICALLY, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR TO BE IMPLIED BY THE COUNTY WITH RESPECT TO SERVICES PROVIDED UNDER THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER UNDER CONTRACT, TORT OR OTHERWISE.
- 6.2 Liability for Claims. Except as otherwise provided in this Agreement, it is understood that each Party shall be responsible for any Claims made against that Party and for the acts or omissions of its respective employees or Cities/County Agents. With respect to Claims that arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation including

attorney fees. Except as otherwise provided in this Agreement, neither Party shall have any right under any legal principle to be indemnified by the other Party or any of its employees or Cities/County Agents in connection with any Claim. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of the privileges and immunities as provided by law afforded to the Parties. The Parties expressly reserve all privileges and immunities as provided by law.

- 6.3 No Third Party Beneficiary. This Agreement does not create any rights or benefits to parties other than the Cities and the County.

## **Article VII. Compliance Actions.**

- 7.1 Non-Compliance. Any City determined by the WRC to be in non-compliance under Article III shall be so notified by the WRC in accordance with this Agreement, provided that the WRC shall have the discretion to waive a violation it deems to be minor and/or temporary. Any City that disagrees with the WRC's finding of non-compliance shall have the opportunity to dispute that determination under the Dispute Resolution provisions contained in this Agreement. Any requirement to prepare a Corrective Action Plan shall be deferred until the dispute is resolved.

- 7.2 Corrective Action Plans ("CAP"). The WRC may require the City that is in noncompliance under Article III to prepare and implement a CAP to eliminate its non-compliance. If required by the County to develop a CAP, the City shall develop the required CAP and submit the CAP to the WRC for approval within six (6) months after receipt of notification from the County of the non-compliance or within six (6) months after resolving the dispute if the City invokes the Dispute Resolution process. An extension of up to six (6) additional months may be granted by the WRC if necessary due to technical or financial constraints that preclude the preparation of the CAP in six months. The City shall implement the CAP upon approval of the CAP by the WRC, in such timeline as deemed appropriate by the WRC.

- 7.3 Additional Remedies. In addition to requiring a CAP, the WRC may take additional compliance action and/or assess other appropriate sanctions against any City in non-compliance under Article III including, but not limited to, the following:

7.3.1 Prevent the City from delivering additional Flow to the WWTP from development projects that would result in the discharge of additional Flow and/or non-compliant Flow to the WWTP. Such actions may, without limitation, include: (i) requiring a City to restrict new sewer construction within the City's Local Sewer System; (ii) requiring the City to limit sewer taps for new industrial, commercial or residential users within the City's Local Sewer System;

7.3.2 Requiring the City to implement specific additional corrective actions prior to and/or in addition to implementing a CAP as provided in 7.2, which may include without limitation: (i) design and install Flow restriction measures within the Local Sewer System in the vicinity of a City's connection to the Walled Lake-Novu Interceptor; (ii) design and install treatment measures to treat the City's Flow before delivery to the WWTP; and/or (iii) Implement other corrective actions necessary to mitigate the City's non-compliance;



- 7.3.3 Deny a City's the right to deliver its Flow to the WWTP, in whole or in part, if necessary for the protection of the WWTP or the public health or safety;
- 7.3.4 Assess an additional charge over and above the regular charge for Services, as a result of the City's non-compliance, and/or, legal actions necessary to enforce the provisions of this Agreement.
- 7.4 Dispute Resolution of Compliance Actions. The WRC's decision to take any of the above compliance actions listed herein, including the assessment of sanctions, shall be made on a case by case basis after providing opportunity for the subject City to present information and evidence in support of its position. Any City may contest any compliance action including the assessment of sanctions pursuant to the Dispute Resolution provisions in Article VIII of this Agreement.
- 7.5 Sewer Use Ordinance/Part 41 Permits. Nothing contained in this Agreement is intended to limit the County's right to enforce its Rules and Regulations, if any, or to assess sanctions as set forth therein. Similarly, nothing in this Contract shall limit the County's authority to review and approve/deny any application for any permit required under Part 41 of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.4101 et seq., or to enforce any permit issued under Part 41, or as provided by any successor statute or regulation.

#### **Article VIII. Cooperation and Communication; Dispute Resolution.**

- 8.1 Cooperation. The County agrees to ensure that all County Agents fully cooperate with Cities and Cities' Agents in the performance of all Services under this Agreement. The Cities agrees to ensure that Cities Agents cooperate with County Agents in the performance of the Services under this Agreement.
- 8.2 Communication. There shall be an open and direct line of communication established and maintained between the Parties in order to promote the handling of both routine and emergency situations in a timely and cooperative manner according to the circumstances as they exist or become known. Each Party will designate one or more liaisons for such purposes, and will notify the other Party of such designee(s). The liaisons shall also be used for purposes of communicating and coordinating specific needs, plans, instructions, issues, concerns and other matters relating to the WWTP or Services.
- 8.3 Dispute Resolution. The Parties agree that any and all claims alleging a breach of this Agreement or with respect to the Services provided under this Agreement, shall first be submitted to an alternative dispute resolution process. Such an alternative dispute resolution process may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. If the matter is not resolved through an alternative dispute resolution process, or if the Parties cannot agree upon the form and procedures for the alternative dispute resolution process, the Parties may seek legal recourse in a court of competent jurisdiction. For claims requiring immediate relief to prevent irreparable harm, either Party may seek relief directly from a court of competent jurisdiction without submitting the matter to the alternative dispute resolution process.

## **Article IX. Effective Date; Term; and Termination.**

- 9.1 Agreement Approval; Amendments; and Effective Date. Except as otherwise provided herein, this Agreement, and/or any subsequent amendments thereto, shall not become effective prior to the approval by resolutions of both the Cities and signed by WRC on behalf of the County. The Effective Date of this Agreement, and any amendments hereto, shall be the date as reflected in the opening paragraph of this Agreement.
- 9.2 Term. Unless otherwise agreed between the Parties, this Agreement shall have an initial term and terminate on the May 31, 2030 (“Initial Term”) which is the termination date set forth in the contract dated June 1, 1990 identified as the “Second Amendment to the Huron-Rouge Sewage Disposal System Walled Lake-Novı Wastewater Treatment Plant 1989 Enlargement Contract”. However, in the event the County issues bonds, refinances existing bonds or other debt for improvements on behalf of the Huron-Rouge Sewage Disposal System – Walled Lake Arm, it is understood that this Agreement shall automatically, and without further action of the Parties, be extended to such date beyond May 31, 2030, to coincide with the date on which all of the principal and interest of the bonds or other debt, together with issuance costs and charges, have been fully paid by the Cities. If bonds are not issued, or there has been no refinancing of debt prior to termination date as provided herein, then this Agreement shall automatically be extended for an additional ten (10) year term beyond the Initial Term or the term extended by the issuance of debt, whichever is later; and thereafter, automatically extended at ten (10) year intervals, unless terminated as provided herein.
- 9.3 Termination. Following the Initial Term or the full payment of the principal and interest of any all bonds or other debt, together with issuance costs and charges, by the Cities, whichever is later (as provided in Section 9.2), this Agreement may be terminated by any Party upon a minimum three hundred sixty (360) calendar days’ written notice to each of the other Parties to this Agreement. The notice shall indicate the effective date of the termination.
- 9.4 Survival of Certain Terms and Conditions Following Termination or Expiration of Agreement. The Parties agree that record-keeping and audit requirements, any payment obligations to the other Party, and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions, or Claim(s) either occurring or having their basis in any events or transactions that occurred during the term of this Agreement, shall survive the termination or expiration of this Agreement.
- 9.5 Cooperation Following Termination of Agreement. In the event the Agreement is terminated as provided herein, the Parties agree to cooperate in all respects and assist in the wind down from the County’s operation and maintenance of the WWTP. The Cities will be responsible for all Costs and Overhead incurred by the County through the date of termination, including the Costs and Overhead incurred by the County during the termination notice period referenced above to wind down and end of the County’s involvement in the provision of the Services.

## **Article X. General Provisions.**

- 10.1 Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
- 10.2 Reservation of Rights; Governmental Function. This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. In addition, the Parties maintain that the obligations set forth in this Agreement will be in the exercise or discharge of a governmental function.
- 10.3 Severability. If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision of persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.
- 10.4 Binding Contract; Assignment; and Amendments. This Agreement will be binding upon and for the benefit of the Parties hereto and their respective successors and assigns, subject to any assignment requiring the prior written consent of the non-assigning Party by an amendment to this Agreement signed by all Parties, and the assignee binding the assignee to the terms and provisions of this Agreement.
- 10.5 Captions. The section headings or titles and/or all section numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- 10.6 Notices. Except as otherwise expressly provided for herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Agreement to be delivered to the following:

COUNTY OF OAKLAND:

OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER  
1 Public Works Drive  
Waterford, Michigan 48328-1907

CITY OF WALLED LAKE:

City Clerk  
CITY OF WALLED LAKE  
1499 E. West Maple  
Walled Lake, Michigan 48390

CITY OF NOVI:

City Clerk  
CITY OF NOVI  
45175 W. Ten Mile Road  
Novi, Michigan 48375

- 10.7 Notice Delivery. Except with respect to notices of termination, all correspondence and written notices shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the U.S. Postal Service. Notices of termination shall be personally delivered or sent by certified mail, return receipt requested, and shall be considered delivered to a party on the date of receipt as represented by the return receipt or by a proof of personal service.
- 10.8 Entire Agreement. This Agreement sets forth the entire agreement between the County and the Cities and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the County and the Cities in any way related to the subject matter hereof, except as expressly stated herein. This Agreement shall not be changed or supplemented orally and may be amended only as otherwise provided herein.
- 10.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which shall constitute one and the same instrument.
- 10.10 Recitals. The recitals shall be considered an integral part of the Agreement.

*[Signatures on following pages]*

**IN WITNESS WHEREOF**, this Agreement is executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.

COUNTY OF OAKLAND

By: \_\_\_\_\_  
Jim Nash  
Oakland County Water Resources Commissioner  
In his capacity as "County Agency" pursuant to 1939 PA 342, as amended

CITY OF WALLED LAKE

By: \_\_\_\_\_  
Linda S. Ackley, Mayor

By: \_\_\_\_\_  
Jennifer A. Stuart, City Clerk

CITY OF NOVI

By: \_\_\_\_\_  
Robert J. Gatt, Mayor

By: \_\_\_\_\_  
Cortney Hanson, City Clerk

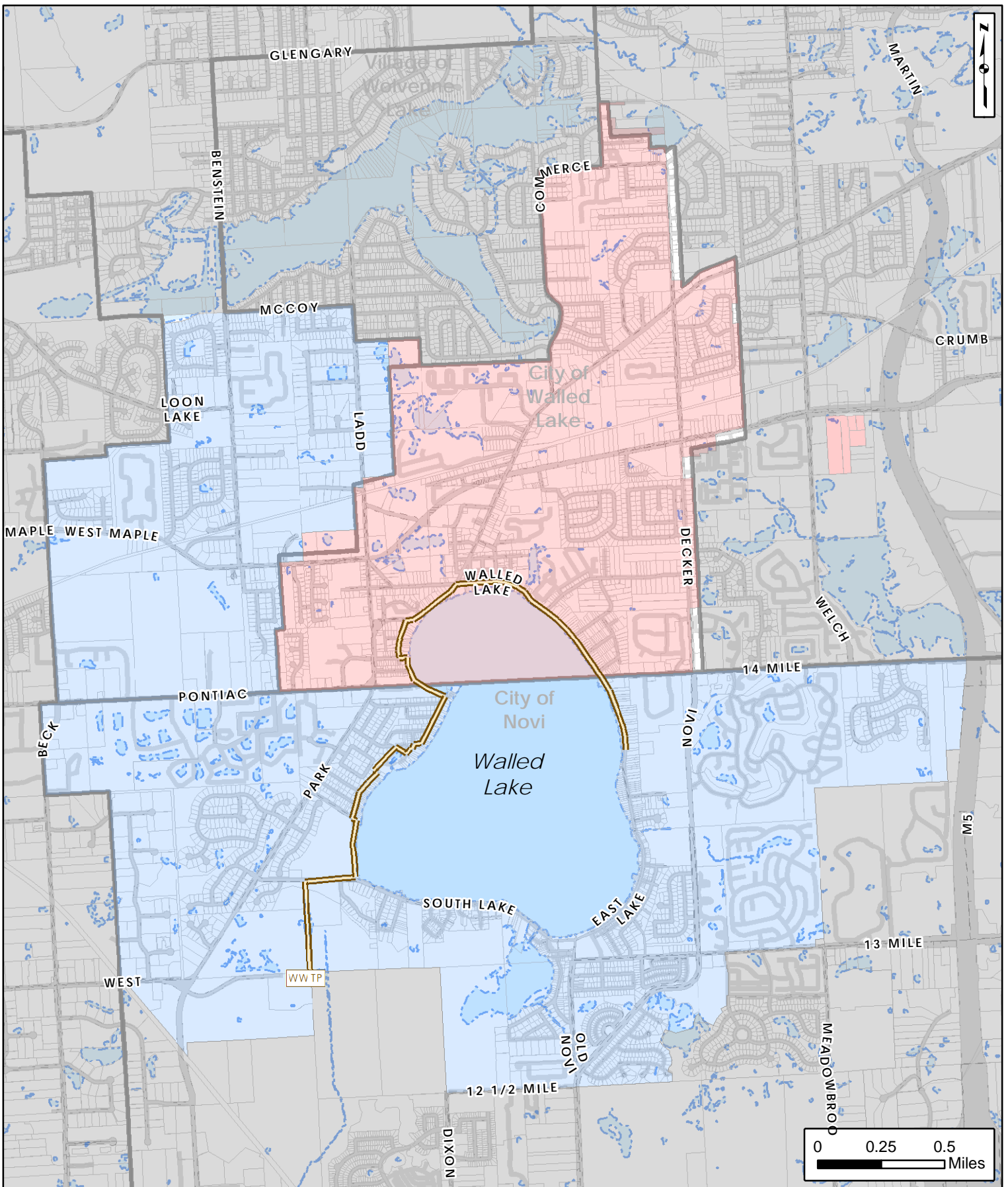
EXHIBIT "A"  
SERVICE AREAS

**EXHIBIT "B"**  
**MAXIMUM FLOW LIMITATIONS**

It is understood between the Parties, that the maximum day capacity at the Walled Lake-  
Novi Wastewater Treatment Plant is **8.80 MGD**. Maximum Allowable Flow Limit for the Cities is  
set forth below:

1. City of Novi: Maximum Allowable Flow Limit for the City of Novi (including the capacity  
provided to its customer, Charter Township of Commerce), is allocated 65.35% capacity of the  
WWTP which equates to **5.751 MGD**.

2. City of Walled Lake: Maximum Allowable Flow Limit for The City of Walled Lake, is  
allocated 34.65% capacity of the WWTP which equates to **3.049 MGD**.




**WATER RESOURCES COMMISSION**  
 One Public Works Drive  
 Building 95 West  
 Waterford, Michigan  
 48328-1907  
*Jim Nash*

**DISCLAIMER:**  
 The information displayed in this map is compiled from recorded deeds, plats, tax maps, surveys and other public records. Although this information is intended to accurately reflect public information, it is not a legally recorded map or survey and is not intended to be used as one. Users should consult primary/original information sources where appropriate.

## Exhibit A Walled Lake-Novi WWTP Service Area

- Legend**
- WWTP Walled Lake-Novi WWTP
  - Walled Lake - Novi WWTP Main
  - Novi Service Area
  - Walled Lake Service Area