



CITY of NOVI CITY COUNCIL

Agenda Item 5
October 9, 2017

SUBJECT: Consideration to approve Offer to Purchase property located at 25460 Novi Road, at the intersection of Novi Road and Trans-X Drive to Raven Investments, L.L.C., and to authorize the City Manager and City Attorney's Office to make minor non-substantive amendments to the form of the Purchase Agreement as required prior to signing and to proceed to closing if all conditions to the purchase are appropriately satisfied.

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION: This proposed Purchase Agreement relates to an approximately 3.64-acre parcel of property at the intersection of Novi Road and Trans-X Drive. The owner is Raven Investments, L.L.C. The property is zoned I-2. The City is considering the purchase of the property potentially for park use (though the use would not necessarily be limited to that in the future), with the funding for the purchase coming from funds derived from the recent Capital Improvement Program (CIP) millage approved by the voters. The property is unique in that it abuts a watercourse (Walled Lake branch of the Little Rouge River), and also contains the iconic local water tower, which although privately owned has often contained Novi-themed artwork (currently the Novi Special).

The proposed Purchase Agreement is a generally standard version of an acquisition agreement used by the City for other property purchases. There are a couple of unique things about this property, however. The first is that it is very likely contaminated, although the City does not yet know how contaminated. The City has informal evidence of the contamination in connection with the acquisition of a portion of the land by the Road Commission for Oakland County for Novi Road improvements several years ago. The City has also seen a Phase I Environmental Report, which indicates some contamination. The proposed Agreement allows the City 120 days to do a full and complete environmental assessment of the property before determining whether to close.

The property is also apparently subject to leases for cellular/wireless communication antennas that are located on the water tower. The proposed Agreement requires the current owner to provide those documents. The City would need to evaluate its options once it sees those documents and speaks with the affected wireless communication carriers. The Agreement as written requires the transfer of any interest in the leases and rents from the current owner to the City as purchaser.

The contemplated purchase price of \$300,000 is less than the property is currently listed for sale. However, depending on the City's due diligence, there may be additional discussions as to that price.

Finally, the City Council will note the inclusion in the packet and in the motion language a reference to an "Addendum" to the proposed Agreement. The Addendum addresses the current owner's obligation to remove building slabs and foundations that remained in

place after the structure located on the property was demolished. The demolition occurred in 2012, and the current owner was given time to remove the slabs and foundations under an Agreement with the City dated September 11, 2012, requiring those materials to be removed no later than September 11, 2017. The purpose of the Addendum is to confirm for the current owner that, if the City purchases the property, the current owner will no longer be obligated to remove the slabs and foundations. The Addendum also provides that if the City fails to close on the property, or terminates its right to purchase the property, the current owner will have a year from the termination of the Purchase Agreement to remove the slabs and foundations.

RECOMMENDED ACTION: Approve Offer to Purchase and related Addendum to Purchase Agreement for an approximately 3.64-acre parcel of property located at 25460 Novi Road, at the intersection of Novi Road and Trans-X Drive to Raven Investments, L.L.C., and to authorize the City Manager and City Attorney's Office to make minor, non-substantive amendments to the form of the Purchase Agreement as required prior to signing and to proceed to closing if all conditions to the purchase are appropriately satisfied.

PURCHASE AGREEMENT

BY SIGNING THIS PURCHASE AGREEMENT (Agreement), **Raven Investments, L.L.C.**, a Michigan limited liability company, whose address is 25460 Trans-X Drive, Novi, MI 48376 (Seller), and the **City of Novi**, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 (Buyer), agree to sell and purchase the following real estate located in the City of Novi, Oakland County, Michigan, described as follows:

See Exhibit A, attached

commonly known as 25460 Trans-X Drive, Novi, MI 48376 (the Property), together with all improvements and appurtenances, with Buyer to pay Three Hundred Thousand Dollar (\$300,000.00) (the Purchase Price), subject to the existing building and use restrictions and easements of record, and zoning ordinances, if any, on the following conditions:

CASH SALE

Seller shall convey title to the Property to Buyer by delivery of a warranty deed conveying marketable title (Deed) on tender of the Purchase Price. Payment of the Purchase Price is to be made in cash, bank cashier's check, or wire transfer at the time of closing.

EVIDENCE OF TITLE

As evidence of title, Seller, at Seller's expense, agrees to furnish Buyer within ten (10) days of the Effective Date (as defined below), a commitment for title insurance issued by a reputable title company licensed to do business in the State of Michigan, in good standing (the Title Company), in an amount not less than the Purchase Price and bearing a date later than the acceptance date of this Agreement, with the owner's policy to be issued pursuant to the commitment insuring marketable title (as defined below) to the Property in Buyer.

Seller agrees that the commitment for title insurance and the subsequent policy to be issued shall be *without* standard exceptions and shall be recertified and updated at the closing of this transaction as of the date of such closing or the most recent date through which the county register of deeds has completed the recording and indexing of real estate instruments and documents in order to eliminate the "gap" period between the date of such title commitment and the closing of this transaction, and that the policy issued will be updated to close any "gap" period between the date of closing and the date of the recording of the deed to Buyer. Seller shall also arrange to provide Buyer with a marked-up commitment for title insurance at the closing of this transaction guaranteeing that title is in the condition required under this paragraph.

Seller shall execute an owner's affidavit and such other documents as the title insurance company or its agent typically requires for the issuance of a policy without standard exceptions; provided, however, that Buyer shall pay for the cost of any survey required for the deletion of the standard exceptions. For purposes of this Agreement, marketable title shall mean fee simple title free and clear of any and all liens and encumbrances whatsoever, excepting only recorded and

enforceable building and use restrictions, public utility easements of record, and zoning ordinances, which shall not constitute title defects or render the title to the Property unmarketable, provided, however, that Buyer, at Buyer's sole option, may elect to accept title in whatever condition it may be in, notwithstanding such condition would not meet the above definition of "marketable title" and, in such event, marketable title shall mean the condition of title which Buyer has elected to accept.

TITLE OBJECTIONS

If objection to the title is made in the commitment for title insurance or based on a written opinion of Buyer's attorney that the title is not in the condition required for performance of this Agreement, Seller, at Seller's sole option, shall have thirty (30) days from the date Seller is notified in writing of the particular defects claimed, either (1) to fulfill the requirements in the commitment or to remedy the title defects set forth in Buyer's attorney's opinion or (2) to refund the deposit in full termination of this Agreement. If Seller is able to comply with such requirements or remedy such defects within the time specified, as evidenced by written notification, revised commitment, or endorsement to commitment, Buyer agrees to complete the sale as provided herein, subject to any other contingency contained in this Agreement. If, after reasonable efforts, Seller is unable to furnish satisfactory title within the time specified, the deposit shall be immediately refunded in full termination of this Agreement, unless Buyer elects to proceed with the sale accepting such title as Seller is able to convey.

EARNEST MONEY DEPOSIT

On the Effective Date (as defined below) of this Agreement, Buyer shall make an earnest money deposit of Five Thousand Dollars (\$5,000.00) which shall be held by the Title Company and which shall be applied toward the Purchase Price at closing if the sale is consummated.

TAXES AND PRORATED ITEMS

All taxes and assessments which have become a lien on the land as of the date of closing shall be paid by Seller, except that: (a) all current property taxes shall be prorated and adjusted between Seller and Buyer as of the date of closing on a due-date basis, without regard to lien date, as if paid prospectively (e.g., taxes due July 1 will be treated as if paid for the period July 1 through the following June 30, and taxes due December 1 shall be treated as if paid for the period December 1 through the following November 30); and (b) Buyer shall be responsible for the payment of all property taxes falling due after the date of closing without regard to lien date. Capital or lateral charges and special assessments which have become a lien on the Property shall be paid in full by Seller on or before closing. Capital or lateral charges and special assessments which have not become a lien on the Property shall be paid by Buyer either in full at closing, or, if applicable, in installments, and Seller shall pay all association dues, if any, during any post-closing occupancy period to the date of delivery of possession to Buyer. Seller shall pay the cost of all utilities and service charges for the entire Property through and including the date of transfer of possession and occupancy to Buyer.

CLOSING

Closing shall take place at the office of the Title Company or at the Buyer's offices. If the closing takes place anywhere other than at the office of the Title Company, Seller shall arrange for a Title Company representative with authority to update and mark up the commitment for title insurance as required under this Agreement to be present at the closing. If title can be conveyed in the condition required under this Agreement and all contingencies have been satisfied or waived, closing shall take place on a date and time as is mutually agreeable to the parties and as dictated by the ability and availability of Buyer's lender, if any, to close, provided, however, that closing shall occur not later than **January 31, 2018**. Seller shall provide a complete package of every document (other than loan documents) to be executed by Buyer to Buyer's attorney at least 48 hours before closing.

PAYMENT OF FEES, CLOSING COSTS, ETC.

Seller shall pay all closing fees and all costs associated with recording the required Deed and any loan documents. The parties agree that the Title Company shall prepare the required Deed and closing documents necessary to complete this transaction, that the Title Company shall conduct the closing, and that the cost of same, together with any settlement, document preparation, or disbursement fee, shall be borne by Seller. Seller shall also pay the required transfer tax, the cost of an owner's commitment and policy of title insurance, and recording fees relative to the discharge of Seller's mortgage, if any. At closing, the parties shall execute closing statements prepared by the Title Company and all income or other tax reporting documents as required by the Title Company.

BUYER'S CONTINGENCIES

Buyer's obligations under this Agreement shall be contingent on the following:

Survey. At Buyer's sole option and expense, Buyer obtaining a survey (of any type, e.g., mortgage report, ALTA/ASCM survey with any Table A options Buyer desires) of the Property within ninety (90) days after the Effective Date (as defined below). If Buyer is not satisfied with the results of the survey for any reason related to title, marketability, or Buyer's use of the Property, or if, for any reason, the survey is insufficient to cause the survey exception to be deleted from the standard exceptions to the policy of title insurance, Buyer shall so notify Seller in writing at any time within fourteen (14) business days after the expiration of the ninety (90) day survey period. On receipt of written notice of same, Seller shall immediately refund to Buyer all sums deposited by Buyer and this Agreement shall be terminated and of no further force and effect. If no written objection is made by Buyer within the stated period, this survey contingency shall be deemed to be waived by Buyer and the parties shall proceed to closing in accordance with the terms of this Purchase Agreement and Buyer shall be deemed to have purchased the Property in an "AS IS" condition.

Environmental. Buyer obtaining satisfactory inspections and testing of the Property for radon, asbestos, toxic mold, and/or environmental contamination, including a Phase I Environmental Site Assessment (ESA), Phase II ESA, and if applicable a Baseline

Environmental Assessment (BEA) of the Property, by a qualified person acceptable to Buyer, at Buyer's sole option and expense, within one hundred and twenty (120) days after Buyer's receipt of an accepted copy of this Purchase Agreement from Seller. If this inspection or testing shows any type of Environmental Condition, Buyer shall have the option to terminate this Agreement by written notice to Seller at any time within fourteen (14) days after expiration of the one hundred and twenty (120) day inspection period. In such event, upon written notice of same to Seller, Buyer shall be immediately refunded all sums deposited by Buyer hereunder and this Agreement shall be terminated and of no further force and effect. Nothing contained herein, however, shall be construed to mean the Buyer is indemnifying or otherwise holding Seller harmless from third-party actions or suits in regard to asbestos, toxic mold and/or environmental contamination of the Property or any other matter. When used herein, the term "Property" shall include all aspects of the Property, such as, but not limited to, any buildings on the Property and the soil and groundwater beneath the Property. When used herein, "Environmental Condition" shall mean any condition or conditions affecting or relating to the air, soil, groundwater, or surface water at or about the Property and any failure to comply with governmental requirements, including environmental protection laws, relating to such condition or conditions, which could or does require remediation, including abatement, investigation, containment, or removal and/or which could result in Environmental Claim(s). If no written objection is made by Buyer within the stated period, this survey contingency shall be deemed to be waived by Buyer and the parties shall proceed to closing in accordance with the terms of this Purchase Agreement and Buyer shall be deemed to have purchased the Property in an "AS IS" condition. However, Buyer's obligation to purchase any or all of the Property is subject to and contingent upon Buyer's satisfaction that the Property can be feasibly and economically used for the intended uses with any environmental remediation deemed necessary by Buyer, in its sole and absolute discretion.

Suitability for purpose. At Buyer's sole option and expense, within ninety (90) days after receipt of an accepted copy of this Purchase Agreement from Seller, of satisfactory soil borings and other tests, information, and reports of consultants indicating that the Property is, in the Buyer's sole opinion, suitable for the Buyer's intended use of and improvements to the Property. If Buyer, in Buyer's sole discretion, is not satisfied with the results of such inspections, borings, tests, reports, or other information for any reason, Buyer shall so notify Seller in writing at any time within fourteen (14) days after the expiration of the ninety (90) day inspection period. In the event that such inspections, borings, tests, reports, or other information are not satisfactory to Buyer, upon written notice of same to Seller, Buyer shall be immediately refunded all sums deposited by Buyer hereunder and this Agreement shall be terminated and of no further force and effect. If no written objection is made by the Buyer within the stated period, this contingency shall be deemed to be waived by the Buyer and the parties shall proceed to closing in accordance with the terms of this Purchase Agreement and Buyer shall be deemed to have purchased the Property in an "AS IS" condition.

Seller shall not be liable for any damage, loss, or injury caused by or resulting from any action or nonaction of Seller due to its inspection of the Property. Buyer shall indemnify and hold Seller harmless from any damage, loss, or injury, including, without limitation, costs and expenses of investigating, defending, and settling or litigating any claim, including reasonable attorney fees, arising out of Buyer's (or Buyer's representatives, agents, employees, associates,

and divisions) presence on the Property before the closing date. On completion of all inspections and evaluations by Buyer, Buyer shall return the premises to their prior condition if the closing on this Property does not take place for any reason and will provide Seller with copies of any documentation relating to the results of Buyer's inspection of the Property.

Disclosure and review of Leases. If there are any leases, licenses, or other encumbrances on the property with respect to wireless communications, telecommunications, cellular towers or antennas, or the like, and/or related equipment. Seller shall provide any and all documentation in its possession and control related to same. Buyer shall have ninety (90) days after receipt of all such documentation to review same. If Buyer, in Buyer's sole discretion, is not satisfied with the results of such review for any reason, Buyer shall so notify Seller in writing at any time within fourteen (14) days after the expiration of the ninety (90) day inspection period. In the event that such review is not satisfactory to Buyer, upon written notice of same to Seller, Buyer shall be immediately refunded all sums deposited by Buyer hereunder and this Agreement shall be terminated and of no further force and effect.

This Purchase Agreement includes the assignment of any and all such leases and licenses from the Seller to the Buyer, together with all right and authority to collect rents and payments thereunder. At Closing, Seller shall retain no interest in any lease, license, or encumbrance, and no right to receive payment thereunder, all of which shall transfer to Buyer.

SELLER'S REPRESENTATIONS

Buyer acknowledges that Seller has never lived at or on the Property and has no personal knowledge as to the condition or status of the Property.

Seller represents to Buyer as follows:

To the best of Seller's knowledge, there is no pending litigation affecting all or any part of the Property, or Seller's interest in it.

To the best of Seller's knowledge, there are no unrecorded interests of any person(s) or entity(ies) in and to the Property whatsoever (including, but not limited to, easements, profits, and licenses).

To the best of Seller's knowledge, there are no easements, either above the surface, at grade, or subsurface, other than utility easements of record, which would affect or interfere with Buyer's use and enjoyment of the Property, as determined by Buyer.

To the best of Seller's knowledge, there are no underground storage tanks or hazardous or toxic substances existing on, under, or above the Property as defined in any federal, state, or local law, regulation, rule, statute, or directive, nor is there any asbestos or urea formaldehyde foam insulation installed in or on the Property.

Seller will transfer all division rights available to Buyer with the Deed.

POSSESSION/RIGHT OF OCCUPANCY

Buyer shall be entitled to possession of the Property at the time of closing.

CONDITION OF PROPERTY

Seller agrees that the Property will remain in substantially the same condition in which it existed as of the date of this Agreement for the period through the last date of Seller's ownership and possession of the Property. Seller and Buyer agree that Buyer shall be permitted to conduct a walk-through inspection of the premises and Property within 48 hours of the date of closing to enable the Buyer to confirm that the Property is in substantially the same condition as existed upon the date of Buyer's physical inspection(s). If Buyer is not then satisfied that the premises and Property have been maintained by Seller as required, Buyer shall have the right to delay the closing until Seller returns the premises and Property to the required condition at Seller's expense. If the Seller fails or refuses to return the premises and Property to the required condition within fourteen (14) days of Buyer's demand for same, Buyer shall have the right (but not the obligation) to declare this agreement to buy and sell the Property null and void and immediately thereafter all deposits paid by Buyer shall be returned to Buyer.

LEGAL DESCRIPTION

The Buyer and Seller acknowledge and agree that the legal description for the Property attached hereto is a close approximation, and that the final legal description in the Warranty Deed shall be that as set forth in the commitment for title insurance to be obtained by Seller and furnished to Buyer pursuant to the Agreement.

BROKER

Seller and Buyer acknowledge that Seller has retained the services of a Broker, Tige Reader, of Re/Max, 800 Milford Road Ste 100, Milford, MI 48381. Seller shall be responsible for the payment of any commission or compensation for services to the Broker, and Buyer shall have no responsibility, liability, or obligation with regard to the payment of a commission or other compensation to the Broker.

EXPIRATION

It is contemplated, but not required, that this Agreement will be signed by the Buyer first, with the Earnest Money Deposit given to the Title Company. In such event, Seller shall have five (5) business days from the date of receipt of the Agreement after it has been executed by Buyer to accept and deliver a countersigned original of this Agreement to Buyer or Title Company; otherwise this Agreement shall constitute an expired offer to purchase and the Earnest Money Deposit shall be immediately returned to the Buyer.

TIME IS OF THE ESSENCE

At all times under this agreement where certain time constraints are set forth, the parties have agreed that TIME IS OF THE ESSENCE and that no extensions of said time limits are expected or agreed to unless specifically agreed to in writing.

RISK OF LOSS

Seller and Buyer agree that the Michigan Uniform Vendor and Buyer Risk Act (MCLA § 565.701, et seq.) shall be applicable to this Agreement, except that Buyer shall have the sole uncontrolled discretion to determine and define what constitutes “material” damage or destruction.

DUE ON SALE

Seller understands that consummation of the sale or transfer of the Property described in this agreement shall not relieve the Seller of any liability that Seller may have under the mortgage(s) to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation.

BUYER’S DEFAULT

In the event of material default by the Buyer under this Agreement, Seller may, as Seller’s sole option, declare a forfeiture hereunder and retain the deposit as liquidated damages.

SELLER’S DEFAULT

In the event of material default by Seller under this Agreement, Buyer may, at Buyer’s option, elect to enforce the terms of this agreement, or be entitled to an immediate refund of the entire deposit in full termination of this agreement.

CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan that are applicable to Agreements made and to be performed in that State. Should any court action be commenced at any time involving or concerning this Agreement, the parties hereto consent and agree to jurisdiction and venue being in the State of Michigan Circuit Court in Oakland County. The agreement of the parties in this paragraph shall survive the Closing of this transaction.

LEGAL DOCUMENT; INTERPRETATION

This is a legal and binding document, and both Buyer and Seller acknowledge that they have been advised to consult an attorney to protect their interests in this transaction. Where the transaction involves financial and tax consequences, the parties acknowledge that they have been advised to seek the advice of their accountant or financial adviser. No provision in this

Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted the provision.

NOTICES

All notices and demands required or permitted under this agreement shall be in writing and shall be served personally or by postage prepaid United States first class, certified (return receipt requested), or registered mail, addressed to the party at the address indicated on page 1 hereof or to such other place as may be designed by notice given in accordance with this section. It is agreed to by the parties that offers, acceptances and notices required hereunder may, but are not required to, be delivered by facsimile (fax) copy to the parties or their agents provided a hard copy (originally signed copy) is mailed or delivered in a timely manner. If faxed, the date and time of the receipt of the fax shall be the date and time of said offer, acceptance or notice. If not faxed, notice shall be deemed to have been given on the earlier of (a) the date of personal delivery, (c) the date when received, or (c) one (1) day after mailing if mailed in the State of Michigan.

GRAMMAR AND HEADINGS

Whenever words herein are used in the masculine, they shall be read in the feminine or neuter whenever they would so apply and vice versa, and words in this Agreement that are singular shall be read as plural whenever the latter would so apply and vice versa. The headings contained herein are for the convenience of the parties and are not to be used in construing the provisions of this Agreement.

BINDING EFFECT

The covenants, representations and agreements herein are binding upon and inure to the benefit of the parties hereto, their respective heirs, representatives, successors and assigns, and shall survive the Closing where indicated.

DATE OF EXECUTION

The date of execution of this agreement shall be the date on which the last person to sign this document (in its final form) shall have signed the document. In the event the parties fail to insert the date of execution beneath their signatures below, then the date of execution shall be the date on which Seller actually signed the document. **IT IS THEREFORE VERY IMPORTANT FOR EACH PERSON SIGNING THIS DOCUMENT TO PLACE THE DATE OF SIGNING IN THE SPACE PROVIDED BELOW THEIR SIGNATURE.**

ENTIRE AGREEMENT/WRITTEN AGREEMENTS ONLY

This Agreement contains the entire agreement between Seller and Buyer. There are no

agreements, representations, statements, or understandings which have been relied on by Seller or Buyer which are not stated in this Agreement. IT IS THE PARTIES' INTENT IN THEIR DEALINGS THAT IF IT IS NOT IN WRITING, IT IS NOT ENFORCEABLE. This Agreement (and written and signed addenda, if any) cannot be modified, altered, or otherwise amended without a writing being duly signed or initialed, as the case may be, by both Seller and Buyer. The parties agree that facsimile signatures and duly initialed changes are legally enforceable provided the applicable writing contains such signature or initials of all parties to this Agreement.

ACCORDINGLY, Seller and Buyer have executed this Purchase Agreement as of the date written below.

RAVEN INVESTMENTS, L.L.C.,
a Michigan limited liability company

By:
Its:
Dated: _____, 2017

CITY OF NOVI

By: Robert J. Gatt
Its: Mayor
Dated: _____, 2017

By: Cortney Hanson
Its: Clerk
Dated: _____, 2017

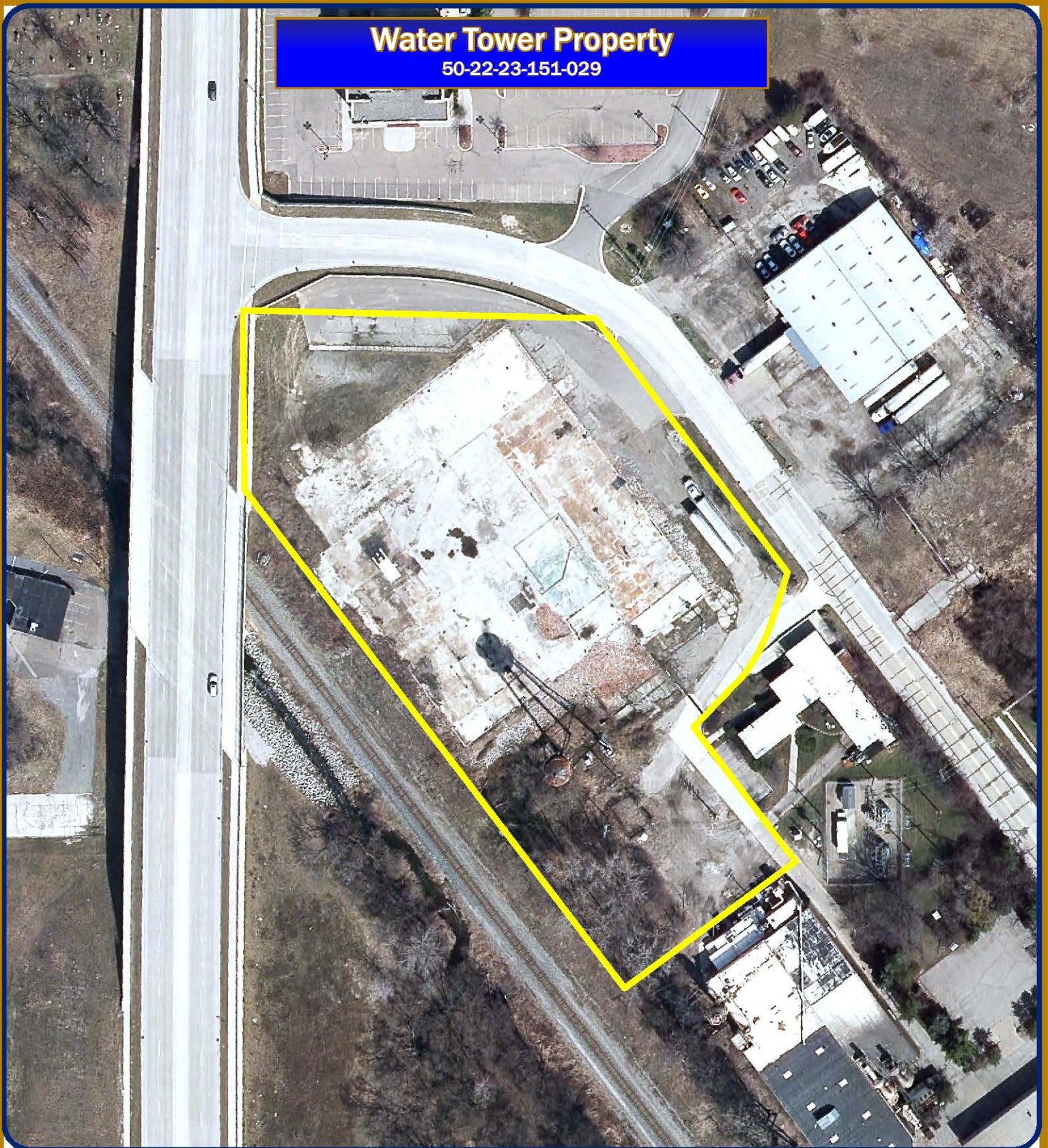
Exhibit A

[Legal Description]



Water Tower Property

50-22-23-151-029



Map Author: Jon Gartha, GIS Technician
Date: 10/4/17
Project: Water Tower
Version #: 1.0

Amended By:
Date:
Department:

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

Map Legend

 Water Tower Parcel



City of Novi

Integrated Solutions
Geospatial Resources Division
45175 Ten Mile Road
Novi, MI 48375
cityofnovi.org

Feet
0 20 40 80 120

1 inch = 110 feet

