

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item G
October 17, 2011

SUBJECT: Approval of a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the amount of \$2,434 for a permanent easement and temporary grading permit on the Suppliers Investment Co. L.L.C. property (parcel 50-22-23-376-013) for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and the CSX Railroad.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *b7c*

CITY MANAGER APPROVAL: *[Handwritten signatures]*

| | |
|-------------------------------|--|
| EXPENDITURE REQUIRED | \$2,434 |
| AMOUNT BUDGETED | \$8,300 |
| APPROPRIATION REQUIRED | \$2,434 (to be included in 2nd quarter budget amendment) |
| LINE ITEM NUMBER | 204-204.00-974.417 |

BACKGROUND INFORMATION:

This project will include a five foot wide pathway segment along the north side of Ten Mile between Catherine Industrial Road and the CSX Railroad and includes the crossing of the railroad tracks. The design of the project is nearing completion and five permanent pathway easements and four temporary grading permits are required to facilitate construction. One of the permanent easements was donated by Joe Trudeau and accepted by City Council.

For the past several months, staff has worked to contact the property owners to secure an easement. Part of this process involved requesting not only the easement for the sidewalk construction, but a permanent highway easement for the master planned right-of-way. The property owner was contacted to request a donation of a highway easement, which would allow for the construction of the pathway as well as future right-of-way maintenance and construction activities.

Staff has had multiple discussions with Suppliers Investment Co. L.L.C., but has been unable to obtain an easement. Therefore it would be prudent to begin the required proceedings to acquire the easements through eminent domain. This will result in the acquisition of a 7-foot wide pathway easement, rather than the original 27-foot wide highway easement hoped for (the eminent domain process requires proof of necessity of the easement, and only the smaller pathway easement can be proven necessary for this specific project). Based on the assessed value of the land, the property owner is entitled to compensation for the permanent easement and temporary grading permit in the amount of \$2,434 (\$1,549 for the pathway easement and \$885 for the grading permit).

The attached resolution is being requested at this time to allow the city to begin proceedings to acquire the easements through eminent domain. Staff will continue to pursue donation of the easement, and in the event that the property owner decides to donate the easement, this resolution will not be needed.

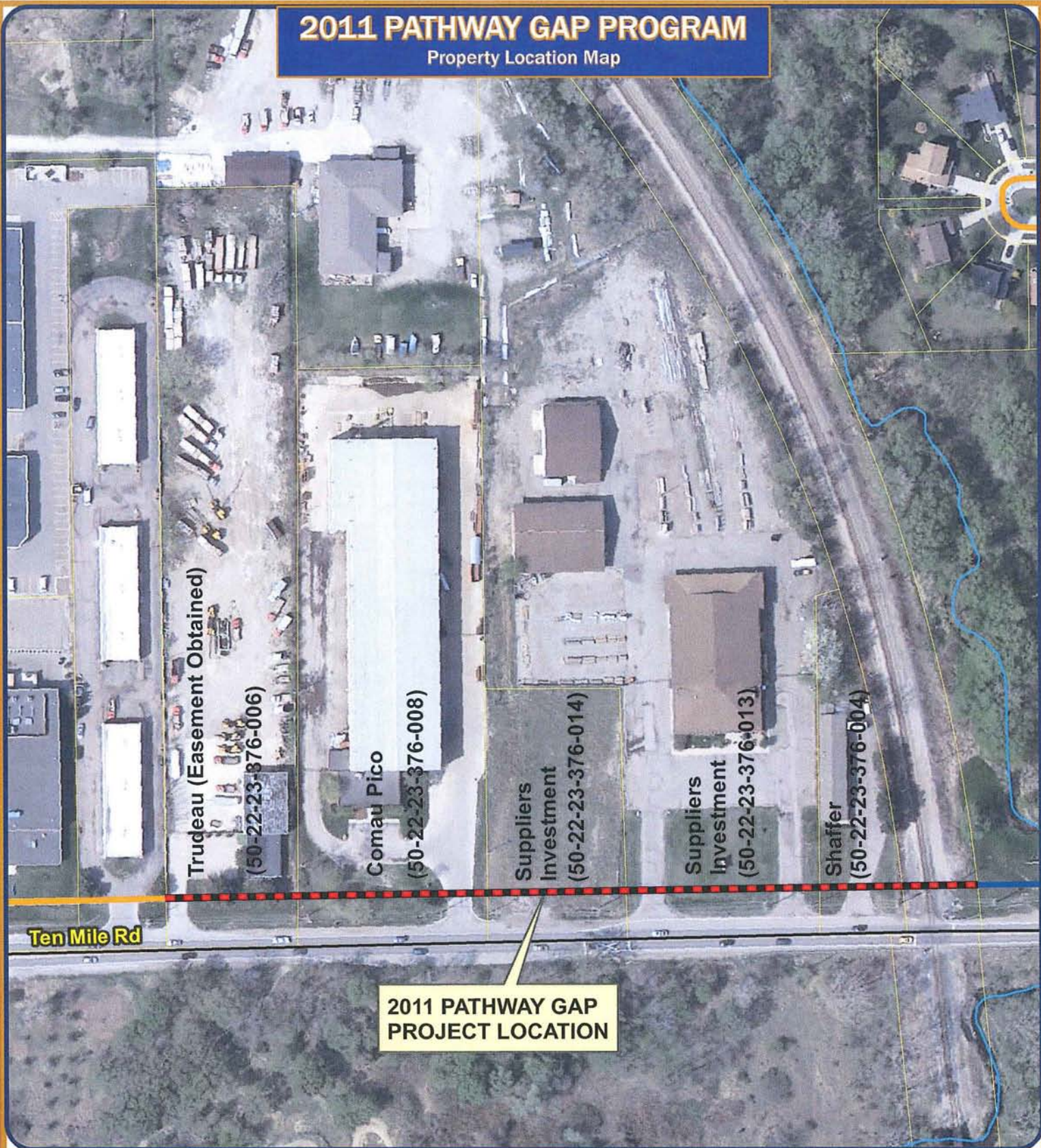
RECOMMENDED ACTION: Approval of a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the amount of \$2,434 for a permanent easement and temporary grading permit on the Suppliers Investment Co. L.L.C. property (parcel 50-22-23-376-013) for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and the CSX Railroad.

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

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

2011 PATHWAY GAP PROGRAM

Property Location Map



Trudeau (Easement Obtained)
(50-22-23-376-006)

Comau Pico
(50-22-23-376-008)

Suppliers
Investment
(50-22-23-376-014)

Suppliers
Investment
(50-22-23-376-013)

Shaffer
(50-22-23-376-004)

Ten Mile Rd

2011 PATHWAY GAP
PROJECT LOCATION

Map Author: Croy
Date: 10/7/11
Project: 2011 Pathways
Version #: 1.0

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.

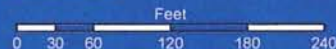
Map Legend

— Existing Pathways



City of Novi

Engineering Division
Department of Public Services
26300 Delwal Drive
Novi, MI 48375
cityofnovi.org



1 inch = 150 feet

**RESOLUTION CONCERNING THE ACQUISITION
OF PROPERTY AND APPROVING DECLARATION OF NECESSITY AND TAKING**

City of Novi
County of Oakland, Michigan

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 October __, 2011, 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, present conditions in the City of Novi, Oakland County, Michigan,
necessitate the construction of a non-motorized pathway/sidewalk on Ten Mile Road in, over,
upon and through a portion of the following described premises situated in the City of Novi,
Oakland County, State of Michigan, to-wit:

PARCEL DESCRIPTION (50-22-23-376-013):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 86 27'28" W 593.62 FT FROM S
1/4 COR, TH S 86 27'28" W 220.22 FT, TH N 04 03'05" W 287.11 FT, TH S 87 05'08" W
154.78 FT, TH N 02 54'52" W 836.88 FT, TH S 39 44'12" E 69.96 FT, TH SELY ALG
CONCAVE CURVE CHORD BEARS S 31 31'03" E 762.77 FT, DIST OF 768.22 FT, TH S 70
51'48" W 27.50 FT, TH S 02 54'52" E 388.17 FT TO BEG 5.45 ACRES

WHEREAS, proposed plans showing said improvements have been prepared and are on
file with the City Clerk's Office; and

WHEREAS, it has been determined that said improvements are necessary for the use and benefit of the public; and

WHEREAS, in order to construct said improvements, it is necessary that the City acquire a permanent easement and other interests in that portion of the above-described real estate described as follows:

A) A permanent Sidewalk Easement in certain real estate described as follows:

PATHWAY EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 7 FEET OF THE SOUTHERLY 54 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 1548.7 SFT (0.036 ACRES), MORE OR LESS.

B) A Temporary Grading Permit described as follows:

NORTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 6 FEET OF THE SOUTHERLY 60 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 1328.2 SFT (0.030 ACRES), MORE OR LESS.

SOUTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 14 FEET OF THE SOUTHERLY 47 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 3094.4 SFT (0.071 ACRES), MORE OR LESS.

WHEREAS, the City has caused a valuation of the subject property to be prepared by its City Assessor or the basis of assessment records and related information;

WHEREAS, the City has determined that it is in the best interests of the City to offer to purchase the subject property from the owners of such property, and to take such other actions as

are deemed necessary to acquire the subject property for the purposes of constructing the improvements;

NOW, THEREFORE, BE IT RESOLVED, by the authority vested in the City of Novi by law, that it is hereby declared and determined that it is necessary to construct a non-motorized pathway/sidewalk along Ten Mile Road in, over, upon, and through the above-described property within the City of Novi in accordance with the plans prepared by the City Consulting Engineers, and that said improvements are necessary for the use and benefit of the public; and

BE IT FURTHER RESOLVED, that the Mayor of the City is hereby authorized to execute, on behalf of the City, a good faith Offer to Purchase, a copy of which is attached hereto as Exhibit A, calling for the payment of Two Thousand Four Hundred and Thirty-Four (\$2,434.00) Dollars for the permanent Sidewalk Easement and Temporary Grading Permit acquisition, The above amounts have been established as just compensation for the acquisition of the property, based upon an appraisal of the property by the City Assessor.

BE IT FURTHER RESOLVED, that after the execution of the good faith Offer to Purchase by the Mayor, the good faith Offer to Purchase shall be submitted to the owners of the property;

BE IT FURTHER RESOLVED, that in the event the Sellers fail to accept the good faith Offer to Purchase within fourteen (14) days of the date of delivery, the City Manager is hereby authorized to execute the Declaration of Taking, which is attached hereto;

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, the Mayor, City Clerk, and City Attorney are authorized to take all actions required to obtain a permanent Sidewalk Easement and Temporary Grading Permit in the subject property by eminent domain.

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, and the Declaration is executed, the City finance officer is authorized and directed to place an amount equal to the amount contained in the good faith offer that was made to the property owners (\$2,434.00) into a separate account and to hold such money on deposit as the estimated amount of just compensation to be paid in connection with the eminent domain proceedings.

BE IT FURTHER RESOLVED, that all resolutions and part of resolutions insofar as they conflict with the provisions of this Resolution be and the same hereby are rescinded.

AYES: Councilmembers _____

NAYES: Councilmembers _____

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 _____, 2011.

MARYANNE CORNELIUS, CITY CLERK

DECLARATION OF TAKING

A Resolution of Necessity having been adopted by the City of Novi setting forth that present conditions necessitate the construction of a non-motorized pathway/sidewalk on Ten Mile Road (the “Improvements”) in the City of Novi, Oakland County, Michigan, in the interest of the public health, safety, and welfare, and that it is necessary to acquire easements over certain property within the City of Novi for said Improvements, and that a good faith written offer to purchase said property has heretofore been made.

NOW, THEREFORE, by virtue of the authority vested in the City of Novi, by Act 279 of the Public Acts of 1909, as amended, and/or Act 149 of the Public Acts of 1911, as amended, or other applicable statutes, and in accordance with the provisions of Act 87 of Public Acts of 1980, as amended, it is now declared and determined that the real property hereinafter described shall be taken for the purpose of constructing a non-motorized pathway/sidewalk on Ten Mile Road, in accordance with prepared plans showing said Improvements which are on file with the City Clerk’s Office.

A statement of the estate of interest in the property being taken; a description of the property to be acquired, sufficient for its identification; the name of each known owner of said property; the name of each known person, other than the owner, having an interest in said property; a statement of the sum of money estimated by the City of Novi as just compensation

for the property being acquired; and a statement whether the City of Novi reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property are as follows:

1. Statement of the Estate of Interest Being Taken and Description of the Property.

PARCEL DESCRIPTION (50-22-23-376-013):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 86 27'28" W 593.62 FT FROM S 1/4 COR, TH S 86 27'28" W 220.22 FT, TH N 04 03'05" W 287.11 FT, TH S 87 05'08" W 154.78 FT, TH N 02 54'52" W 836.88 FT, TH S 39 44'12" E 69.96 FT, TH SELY ALG CONCAVE CURVE CHORD BEARS S 31 31'03" E 762.77 FT, DIST OF 768.22 FT, TH S 70 51'48" W 27.50 FT, TH S 02 54'52" E 388.17 FT TO BEG 5.45 ACRES

A) A permanent Sidewalk Easement in certain real estate described as follows:

PATHWAY EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 7 FEET OF THE SOUTHERLY 54 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 1548.7 SFT (0.036 ACRES), MORE OR LESS.

B) A Temporary Grading Permit described as follows:

NORTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 6 FEET OF THE SOUTHERLY 60 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 1328.2 SFT (0.030 ACRES), MORE OR LESS.

SOUTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 14 FEET OF THE SOUTHERLY 47 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 3094.4 SFT (0.071 ACRES), MORE OR LESS.

2. Names of Property Owner: Suppliers Investment Co., LLC

3. Names of each person, other than the Owners, having a potential interest in the property:

4. Estimated Just Compensation: \$ 2,434.00

5. The City of Novi reserves its rights to bring Federal or State cost recovery actions against the present owner of the property.

CITY OF NOVI

BY: _____
CLAY J. PEARSON
City Manager

Dated: _____, 2011

The foregoing Declaration of Taking was acknowledged before me this ____ day of _____, 2011, by Clay J. Pearson, as the City Manager, on behalf of the City of Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

Prepared by and when recorded return to:
Elizabeth M. Kudla (P 60265)
Secret, Wardle, Lynch, Hampton, Truex & Morley
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
(248) 851-9500
Tax Identification No. 50-22-23-376-013

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AGREEMENT OF SALE
OFFER TO PURCHASE EASEMENTS OVER REAL PROPERTY

1. The City of Novi, a Michigan municipal corporation (hereinafter "City"), hereby offers and agrees to purchase easements in, over, upon, and through real property within the City of Novi, described as:

PARCEL DESCRIPTION (50-22-23-376-013):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 86 27'28" W 593.62 FT FROM S 1/4 COR, TH S 86 27'28" W 220.22 FT, TH N 04 03'05" W 287.11 FT, TH S 87 05'08" W 154.78 FT, TH N 02 54'52" W 836.88 FT, TH S 39 44'12" E 69.96 FT, TH SELY ALG CONCAVE CURVE CHORD BEARS S 31 31'03" E 762.77 FT, DIST OF 768.22 FT, TH S 70 51'48" W 27.50 FT, TH S 02 54'52" E 388.17 FT TO BEG 5.45 ACRES

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CONTAINS 3094.4 SFT (0.071 ACRES), MORE OR LESS.

and to pay therefore the sum Two Thousand Four Hundred and Thirty-Four (\$2,434.00) Dollars,
subject to the existing building and use restrictions, easements, and zoning ordinances, if any,
upon the following conditions:

- (i) Delivery of the permanent Sidewalk Easement to the City as described above.
- (ii) Delivery of the Temporary Grading Permit to the City as described above.

2. Upon Seller's acceptance of this Offer to Purchase, as evidence of title, the City agrees to obtain a commitment for the title insurance with policy pursuant thereto to be issued insuring the City. The City will pay the cost of the title insurance policy premium.

3. If this offer is accepted by the Seller and if title can be conveyed in the condition required hereunder, the City agrees to complete the sale within fifteen (15) days after the receipt of the commitment for title insurance.

4. If objection to the title is made, based on a written opinion of the City Attorney that the title is not in the condition required for the performance hereunder, the Sellers shall have thirty (30) days from the date they are notified in writing of the particular defects claimed, to fulfill the requirements in the commitment for title insurance or to remedy the title defects set forth in the City Attorney's opinion. If the 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, the City agrees to complete the sale within twenty

(20) days of receipt thereof. If the Seller is unable to furnish satisfactory title within the time specified, the City will commence condemnation proceedings to acquire the Property.

5. The Seller shall deliver and the City shall accept possession of said Property upon the date of closing.

6. It is understood that the Property is being acquired in connection with the Ten Mile Pathway Program to construct a non-motorized pathway system along Ten Mile Road over, across, upon and through the above-described premises in the City of Novi, Michigan.

7. The City shall pay the cost of recording the easement and the cost of all Michigan Real Estate Transfer Tax.

8. The City reserves its right to bring Federal or State cost recovery actions against the present owners of the Property arising out of a release of hazardous substances at the Property.

9. The covenants herein shall bind and inure to the benefit of the executors, administrators, successors, and assigns of the respective parties.

10. If this Offer to Purchase is not accepted by Seller within Fourteen (14) days from the date of its mailing to Seller, this Offer to Purchase shall be considered withdrawn and of no further force and effect.

11. This Offer to Purchase may be executed in one or more counterparts as one Agreement and shall be binding upon the City and the hereafter named Seller when executed by the City of Novi and all of the hereafter named Seller.

The closing of this sale shall take place at the City of Novi offices located at 45175 West Ten Mile Road, Novi, Michigan.

WITNESSES:

PURCHASER:

CITY OF NOVI, a Michigan
municipal corporation

By: DAVID LANDRY
Its: Mayor

By: MARYANNE CORNELIUS
Its: City Clerk

Dated: _____, 2011

To the Above Named Purchaser:

The foregoing offer is hereby accepted and the Seller agrees to sell the Property upon the terms stated:

By the execution of this instrument, the Seller acknowledges the receipt of a copy of this Agreement.

IN THE PRESENCE OF:

SELLER:

SUPPLIERS INVESTMENT CO., LLC, a
Michigan limited liability company

By: _____

By: _____

By: _____

PURCHASER'S RECEIPT OF ACCEPTED OFFER

The Purchaser hereby acknowledges receipt of the Seller's signed acceptance of the foregoing Offer to Purchase.

CITY OF NOVI, a Michigan
municipal corporation, Purchaser

BY: _____

Its: _____

Dated: _____, 2011

1716264_1.doc

PATHWAY EASEMENT

KNOW ALL PERSONS THAT SUPPLIER INVESTMENT CO., L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY (“GRANTOR”), WHOSE ADDRESS IS 42780 TEN MILE, NOVI, MI, for and in consideration of \$1,549.00, receipt and sufficiency of which is hereby acknowledged, hereby grant and convey to the City of Novi, a Michigan Municipal Corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375, being exempt pursuant to MCLA 207.505(a), and MCLA 207.526 (a) a permanent easement for a public walkway over across and through property located in Section 17, T.1N., R.8E., City of Novi, Oakland County, State of Michigan, more particularly described as follows:

Parcel No. 50-22-23-376-013

{See attached and incorporated Exhibit A}

The permanent easement for the public walkway is more particularly described as follows:

{See attached and incorporated Exhibit A}

Grantee may enter upon sufficient land adjacent to said easement for the purpose of exercising the rights and privileges granted herein.

Grantee may install, repair, replace, improve, modify and maintain the easement area as shown in the attached and incorporated Exhibit A.

Grantor agrees not to build or to convey to others permission to build any structures or improvements on, over, across, in, through, or under the above-described easement.

This instrument shall run with the land first described above and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

This easement shall allow public pedestrian and non-motorized traffic and shall permit maintenance, repair and replacement of the paving in the easement area.

Exempt pursuant to MCLA 207.505(a)
And MCLA 207.526(a)

This instrument shall be binding and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns.

Dated this _____ day of _____, 20__.

GRANTOR

SUPPLIER INVESTMENT CO., L.L.C., A MICHIGAN
LIMITED LIABILITY COMPANY

BY: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing consent to easement was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of Supplier Investment Co., L.L.C., a Michigan limited liability company .

Notary Public
_____ County, ___
My Commission Expires: _____

CONSENT TO EASEMENT

As the holder of a mortgagee interest in and to the property referenced in the Pathway Easement, dated _____, attached hereto, whereby Supplier Investment Company, LLC grants and conveys said easement to the City of Novi, the undersigned hereby evidences its consent to the grant, conveyance, existence and recordation of said easement, which easement is hereby acknowledged and agreed to be superior to the interest of the undersigned and shall bind the undersigned and the heirs, successors and assigns of the undersigned.

IN WITNESS WHEREOF the undersigned has caused its signature to be placed on the ____ day of _____, 20__.

By: _____

By: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

The foregoing Consent to Easement was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a Michigan _____.

Notary Public
_____ County, MI
My commission expires: _____

Parcel No.

Drafted by:

Elizabeth M. Kudla, Esq.
30903 Northwestern Highway
Farmington Hills, MI 48334

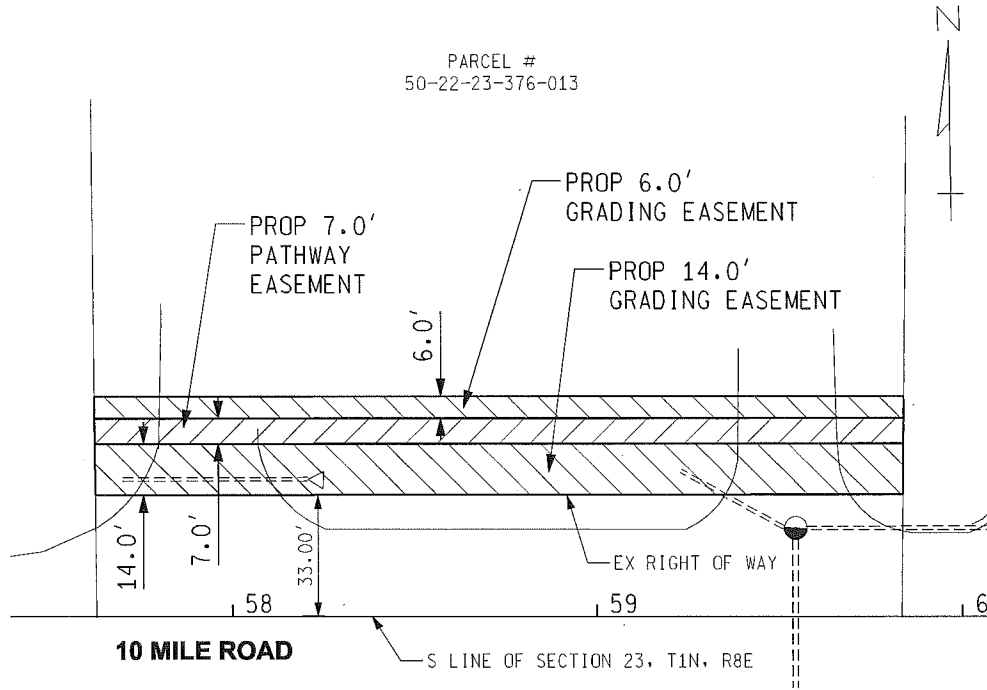
When recorded return to:

Maryanne Cornelius, Clerk
City of Novi
45175 W. Ten Mile Rd.
Novi, MI 48375

RECORDING FEE _____
1716286_1.doc

REVENUE STAMPS _____

PARCEL #
50-22-23-376-013



PARENT PARCEL DESCRIPTION:

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 86 27'28" W 593.62 FT FROM S 1/4 COR,
TH S 86 27'28" W 220.22 FT, TH N 04 03'05" W 287.11 FT, TH S 87 05'08" W 154.78 FT,
TH N 02 54'52" W 836.88 FT, TH S 39 44'12" E 69.96 FT, TH SELY ALG CONCAVE CURVE CHORD
BEARS S 31 31'03" E 762.77 FT, DIST OF 768.22 FT, TH S 70 51'48" W 27.50 FT, TH S 02 54'52" E 388.17 FT
TO BEG 5.45 ACRES

PROPERTY OWNER:

SUPPLIER INVESTMENT CO.
42780 TEN MILE ROAD
NOVI, MI 48375

PROPERTY ADDRESS:

42780 TEN MILE ROAD
NOVI, MI 48375

TAX ID:

50-22-23-376-013

PATHWAY EASEMENT LEGAL DESCRIPTION:

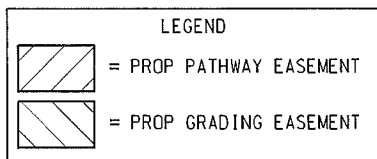
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CONTAINS 3094.4 SFT (0.071 ACRES), MORE OR LESS.



PATHWAY & GRADING EASEMENT

DESIGNED BY:

URS
Surface Transportation
Grand Rapids, Southfield,
Troy, Eastland



EXHIBIT A

1"=40' 0 20 40

PATHWAY & GRADING EASEMENT PARCEL 50-22-23-376-013

| DRAWN BY: | CHECKED BY: | DATE | SCALE | PROJECT NUMBER |
|-----------|-------------|----------|----------|----------------|
| JB | LND | 08/18/11 | 1" = 40' | 12942755 |

VALUATION STATEMENT

Property Owner(s): Supplier Investment Co. (22-23-376-013)

Address: 42780 Ten Mile Road

Novi, MI 48375

Area to be acquired: 1,549 SF (Permanent) / 4,423 SF (Temporary).

Price per square foot/acres x \$ 2.00

Total \$ N/A Fee (Permanent)

x 50% \$ 1,549.00 Easement (Permanent)

x 10% \$ 885.00 Grading Permit (Temporary)

Just Compensation **\$ 2,434.00**

ADDITIONAL INFORMATION: