

MEMORANDUM

CONFIDENTIAL CORRESPONDENCE ATTORNEY-CLIENT PRIVILEGE

TO: Mayor Gatt and City Council

FROM: Thomas R. Schultz, Esq.

RE: School Swap Agreement – Proposed Revisions

DATE: March 15, 2023

Attached is a marked-up copy of the Property Exchange Agreement with the Novi School District relating to the City's Civic Center and Wildlife Woods properties and the School's Fuerst Park and Bosco Fields properties. The attached is a mix of redlining and highlighting denoting differences from the last time Council saw this, back in November 2022, because the changes have been negotiated over time and some have already been integrated into the document.

The Agreement is mostly unchanged. The changes fall generally within a few categories:

- Dates for title work
- Date by which we would need to close or be obligated to secure new environmental reports (May 4)
- New references to the master plan amendment process and the various zoning approvals that are going to be necessary (we mentioned in earlier correspondence needing to do a text amendment relating to school uses being allowed in the R-4 District)
- Addition of "rights of first refusal" for both parties, should either decide that it doesn't want the property being acquired any longer (the other would have the right to acquire it back)
- Added reference to the City's tree ordinance and a time frame for the Schools to get their personal property out of the Bosco buildings

It's our understanding that the School Board will be looking at this revised document at a meeting on Thursday, March 16. It is unclear whether the Agreement will be *approved* by the Board at that meeting. Once the Board approves the Agreement, we'll bring it forward for City Council approval.

From our perspective, the two main issues to point out for the Council are the fact that:

- At this point, the School District appears poised to ***accept*** the Wildlife Woods property despite the oil and gas issues and the Harvest Lake/Island Lake open space issues that we have written about to the Council recently. This seems like particularly good news.

- The addition of the rights of first refusal paragraphs at the end of the Agreement. These address the concerns of nearby residents that the City's Civic Center parcel (currently leased to the School for athletic fields) might somehow be sold to a developer. These provisions would allow the City to buy the property back for fair market value (as determined at the time exercised) to prevent future development, if that's what the City Council determines to do in the event the School decides it no longer needs the property. The same right would apply to all of the properties.

We understand that there was a significant amount of discussion in recent weeks (after the Planning Commission master plan meeting) about protecting the trees on the property, whether through a conservation easement or by agreement by the School District. As you can see, language has been inserted at the very end of the Agreement stating that the School District will agree to abide by the City's Woodlands Ordinance *if* that ordinance is legally applicable to the School District. As Council is no doubt aware, our expectation is that the School District will be exempt from the City's Woodlands Ordinance, so it's not clear whether this provision actually adds anything to the current situation that the School and the City would find themselves in. That said, it would be extremely unusual for a public entity that is exempt from a regulation to simply agree to abide by such regulation. In that respect, the School District's determination to write the language the way it has is not surprising.

There is a good chance that this actually won't "close" before May 4—given that we still need to finish the master plan process and revise the text of the zoning ordinance to permit schools on the Ella Mae Power Park property. Under the agreement, however, we still have a 90-day "due diligence" period, and we expect to finish those things within that timeframe at least.

We'll keep the Council up to date on what happens at the School Board with regard to the proposed revisions. In the meantime, if you have any questions, please don't hesitate to call.

TRS:jah

Attachment

cc: Victor Cardenas
Cortney Hanson
Jeff Muck
Charles Boulard

PROPERTY EXCHANGE AGREEMENT
BY AND BETWEEN
THE CITY OF NOVI AND NOVI COMMUNITY SCHOOL DISTRICT

This Agreement is made as of the date of the last signature below ("Effective Date") by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 ("City") and Novi Community School District, a Michigan general powers school district organized and operating under the Michigan Revised School Code, MCL 380.1, et seq., whose address is 25345 Taft Road, Novi, Michigan 48374 ("District") (collectively, the City and the District, the "Parties," and individually, a "Party").

RECITALS

WHEREAS, the District owns property shown and legally described as "Parcel C" on the survey in **Exhibit 1** ("District High School Property");

WHEREAS, the City owns property adjacent to the District High School Property, which is shown and legally described as "Parcel B" on the survey in **Exhibit 1** ("City Civic Center Property");

WHEREAS, the District owns property shown and legally described as "Parcel B" on the survey in **Exhibit 2** ("District Middle School Property");

WHEREAS, the City owns property adjacent to the District Middle School Property, which is shown and legally described as "Parcel A" on the survey in **Exhibit 2** ("City Wildlife Woods Park Property");

WHEREAS, the District owns property shown and legally described as "Parcel A" on the survey in **Exhibit 3** ("District Bosco Fields Property");

WHEREAS, the District and the City have used portions of each other's properties referenced above pursuant to various agreements between the Parties concerning those properties ("Past Agreements"); and

WHEREAS, the District and the City desire to terminate the Past Agreements and to instead exchange certain properties pursuant to this Agreement without the payment of any monies by either Party to the other. The intention of the Parties is that the properties exchanged pursuant to this Agreement will constitute full and fair consideration.

NOW, THEREFORE, the Parties agree as follows:

1. District Conveyance. The District shall convey to the City (a) a portion of the District High School Property, specifically the portion shown as "Proposed Parcel 1" on the survey in **Exhibit 1** (the "Added Fuerst Park Area Property") and (b) the District Bosco Fields Property by execution and delivery of a warranty deed in substantially the same form and

containing substantially the same terms, reservations, and provisions as the warranty deed attached hereto as **Exhibit 4**.

2. City Conveyance. The City shall convey to the District (a) a portion of the City Civic Center Property, specifically the portion south and southwest of the "proposed property line" shown within the City Civic Center Property on the survey in **Exhibit 1** (the "Added District High School Property") and (b) a portion of the City Wildlife Woods Park Property, specifically the portion shown as "Proposed Parcel 1" on the survey in **Exhibit 2** (the "Added District Middle School Property") by execution and delivery of a warranty deed in substantially the same form and containing substantially the same terms, reservations, and provisions as the warranty deed attached hereto as **Exhibit 5**.

3. Title Work. The Parties have obtained owner's title insurance commitments for this transaction from Amrock Commercial as follows (collectively, the "Title Commitments"):

- (a) District High School Property – commitment no. C000125567-4 dated November 7, 2022, 8:00 AM.
- (b) City Civic Center Property – commitment no. C000125567-5 dated November 7, 2022, 8:00 AM.
- (c) District Middle School Property – commitment no. C000125567-3 dated November 7, 2022, 8:00 AM.
- (d) City Wildlife Woods Park Property – commitment no. C000125567-2 dated November 7, 2022, 8:00 AM.
- (e) District Bosco Fields Property – commitment no. C000125567-1 dated November 7, 2022, 8:00 AM.

The District shall work with Amrock Commercial before Closing to revise (a) the City Civic Center Property title commitment to provide title insurance only for the property portion being conveyed to the District, specifically the Added District High School Property, and (b) the City Wildlife Woods Park Property title commitment to provide title insurance only for the property portion being conveyed to the District, specifically the Added District Middle School Property.

The City shall work with Amrock Commercial before Closing to revise the District High School Property title commitment to provide title insurance only for the property portion being conveyed to the City, specifically the Added City Fuerst Park Area Property and the District Bosco Fields Property.

The Parties shall agree in writing to the title policy amounts for each Title Commitment no later than 90 calendar days after the Effective Date (the "Due Diligence Period"); if the Parties do not agree on the title policy amount for a Title Commitment, then the Parties shall work in good faith to retain an appraiser mutually agreeable to the Parties to determine the value of the applicable property within the Due Diligence Period, and the appraiser's value shall be used as the title policy amount for that Title Commitment. The Parties shall work together in good faith to ensure that the title company providing title insurance policies for this transaction issues title policies in amounts agreed to by the Parties or the amount determined by the appraiser.

The City Civic Center Property title commitment and the City Wildlife Woods Park Property title commitment currently contain title exceptions. During the Due Diligence Period, the District shall have the right to work with Amrock Commercial to remove or revise those title exceptions that the District determines would unreasonably interfere with the District's intended uses of the properties subject to those title commitments. If the District has made an effort to remove or revise those title exceptions within the Due Diligence Period but has not finalized removing or revising those title exceptions within the Due Diligence Period, then the Parties may agree in writing to extend the Due Diligence Period or the District may terminate this Agreement by providing a written termination notice to the City within 10 calendar days of the expiration of the Due Diligence Period; upon such termination, neither Party shall have any further rights or responsibilities under this Agreement, except that each Party shall remain responsible for ½ of any Transaction Costs (as defined below) for services performed before the termination date.

The District High School Property title commitment and the District Bosco Fields Property title commitment currently contain title exceptions. During the Due Diligence Period, the City shall have the right to work with Amrock Commercial to remove or revise those title exceptions that the City determines would unreasonably interfere with the City's intended uses of the properties subject to those title commitments. If the City has made an effort to remove or revise those title exceptions within the Due Diligence Period but has not finalized removing or revising those title exceptions within the Due Diligence Period, then the Parties may agree in writing to extend the Due Diligence Period or the City may terminate this Agreement by providing a written termination notice to the District within 10 calendar days of the expiration of the Due Diligence Period; upon such termination, neither Party shall have any further rights or responsibilities under this Agreement, except that each Party shall remain responsible for ½ of any Transaction Costs (as defined below) for services performed before the termination date.

4. Environmental. The Parties ordered and reviewed Phase I Environmental Site Assessment reports for the Added Fuerst Park Area Property, the Added District High School Property, the Added District Middle School Property, and the District Bosco Fields Property (the "New Properties"), which assessments are dated May 5, 2022 and which were subsequently updated (collectively, the "Environmental Assessments"). The Parties are satisfied with the Environmental Assessments.

If Closing does not occur on or before May 4, 2023, then the Parties will order new Phase I Environmental Site Assessment reports for the properties listed in the preceding paragraph (collectively, the "New Environmental Assessments"). The Parties shall have until the expiration of the Due Diligence Period to receive and review the New Environmental Assessments. If the New Environmental Assessments are not received before the expiration of the Due Diligence Period or any of the New Environmental Assessments indicate environmental contamination or recommend further investigation, then the Parties may agree in writing to extend the Due Diligence Period or either Party may terminate this Agreement by providing a written termination notice to the other Party within 10 calendar days of the expiration of the Due Diligence Period; upon such termination, neither Party shall have any

further rights or responsibilities under this Agreement, except that each Party shall remain responsible for ½ of any Transaction Costs for services performed before the termination date.

5. Surveys. The Parties obtained boundary surveys depicting the properties subject to this transaction, which surveys are attached as **Exhibits 1-3**. Based on the title exceptions in the Title Commitments, the Parties determined to upgrade the boundary surveys in **Exhibits 1-2** to ALTA surveys, which are dated October 4, 2022.

If those ALTA surveys reveal matters other than those depicted on the boundary surveys in **Exhibits 1-2**, then the Parties may agree in writing to extend the Due Diligence Period or either Party may terminate this Agreement by providing a written termination notice to the other Party within 10 calendar days of the expiration of the Due Diligence Period; upon such termination, neither Party shall have any further rights or responsibilities under this Agreement, except that each Party shall remain responsible for ½ of any Transaction Costs for services performed before the termination date.

6. Transaction Costs. The Parties shall each pay ½ of the due diligence costs for this transaction, which include but may not be limited to the (a) title policies issued pursuant to the Title Commitments, (b) Environmental Assessments, (c) **New Environmental Assessments if ordered by the Parties pursuant to Section 4 above**, (d) the appraiser's fee if an appraiser is used by the Parties pursuant to Section 3 above, (e) Boundary Surveys and ALTA Surveys referenced in Section 5 above, (f) soil borings for properties subject to this transaction; (g) Plante Moran CRESA fees for this transaction, (h) closing fee imposed by the title company facilitating the Closing, and (i) recording of the warranty deeds in **Exhibits 4-5**, the purchaser's statements in **Exhibits 6-7**, and the Termination Agreement in **Exhibit 8** (collectively, all the costs in this Section 6, the "Transaction Costs"). Transaction Costs do not include attorney fees. Transaction Costs shall be paid at Closing, except as otherwise provided in this Agreement.

7. Representations and Warranties.

The City as to the Added District High School Property and the Added District Middle School Property and the District as to the Added Fuerst Park Area Property and the District Bosco Fields Property each represent and warrant to the other Party as follows:

- (a) To the best of its knowledge, there is no pending litigation affecting all or any part of the properties, or its interest therein.
- (b) There are no unrecorded options, rights of first refusal, licenses, rental agreements, leases or other rights of occupancy outstanding in respect of the properties, except those between the City and the District, which the City and the District shall terminate at Closing.
- (c) To the best of its knowledge, there are no uncorrected violations of any building codes and regulations, health codes or zoning ordinances, or county, state or federal laws or regulations, affecting the property or the use or enjoyment thereof.

- (d) Except as may be disclosed in the Title Commitments, the Environmental Assessments, or the surveys conducted pursuant to Section 5 above, to the best of its knowledge there are no underground storage tanks or hazardous or toxic substances existing on, under, above or upon 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 upon the properties.
- (e) There are no real estate broker or agent commissions, fees and other charges involved in or attributable to this transaction and conveyance. Acquiring party shall not be responsible for any such brokerage or agent fees, commissions, or other such charges, and it shall to the extent permitted by law indemnify, defend and hold acquiring Party free and harmless from the claims of any broker(s), representative(s), employee(s), agent(s) or other intermediary(ies) claiming to have represented it, or otherwise to be entitled to compensation, in connection with this Agreement or in connection with the sale of the properties.

8. Prior Agreements.

The City and the District shall sign the termination agreement attached as **Exhibit 8** at Closing, terminating any prior agreements between the District and the City concerning the City Civic Center Property, the City Wildlife Woods Park Property, the District High School Property, the District Middle School Property, and the District Bosco Fields Property (collectively, the "Current Properties").

9. Land Divisions/City Park Master Plan Designation/Zoning.

The Parties acknowledge that a land division of one or more of the Current Properties will be necessary to complete the transaction contemplated by this Agreement. The District and the City will cooperate during the land division process. The Parties acknowledge and agree that this Agreement is conditioned on the land divisions being granted to the satisfaction of each Party, which shall not be unreasonably withheld, before the time of Closing. The Parties acknowledge that such land divisions may not be granted until the expiration of the Due Diligence Period or any extension thereof. If the land division is not approved to such satisfaction before the time of Closing, then either Party may terminate this Agreement and neither Party shall have any liability or responsibility to the other under this Agreement, except that each Party shall remain responsible for 1/2 of any Transaction Costs for services performed before the termination date.

The Parties also acknowledge that the Added District High School Property or the Added District Middle School Property, or parts thereof, may be a required park under the official master plan of the City. The City shall ensure that as of at least 5 days before Closing, no part of the Added District High School Property or the Added District Middle School Property is a required park under the official master plan of the City and the City shall notify the District of any action taken by the City to effectuate that result. If the City fails to meet the obligation in the preceding sentence, then either Party may terminate this Agreement and neither Party

shall have any liability or responsibility to the other under this Agreement, except that each Party shall remain responsible for ½ of any Transaction Costs for services performed before the termination date.

The Parties acknowledge that a zoning confirmation and a zoning approval will be necessary to complete the transaction contemplated by this Agreement. Specifically, the District must receive a confirmation from the City that the Added District Middle School property is entirely within the City of Novi Zoning Ordinance ("Ordinance") R-A zoning district and that the Zoning Ordinance does not preclude public school uses within any portion of that property, subject to compliance with all other applicable provisions of the City Code to which the District is subject by law. Additionally, the Added District High School Property is located within the Ordinance R-4 zoning district, which currently does not permit public school uses without further action from the City. The City must approve the use of the District High School Property for public school uses, through a Zoning Ordinance text amendment, a special land use permit, or other action acceptable to the District. The Parties acknowledge and agree that this Agreement is conditioned on the zoning confirmation and the zoning approval being granted to the satisfaction of the District, which shall not be unreasonably withheld, before the time of Closing. If either is not approved to such satisfaction before the time of Closing, then either Party may terminate this Agreement and neither Party shall have any liability or responsibility to the other under this Agreement, except that each Party shall remain responsible for ½ of any Transaction Costs for services performed before the termination date.

10. Other Terms and Conditions. The following additional terms and conditions apply:

- (a) Legal Descriptions. The District and City shall jointly prepare the final legal descriptions for each property subject to this transaction, including the New Properties. Once the legal descriptions for the New Properties have been finalized and agreed to by the Parties, they shall be included in the deeds in **Exhibits 4** and **5**. Following Closing, the Parties shall reasonably cooperate in executing and recording amendments that are necessary, if any, for purposes of replacing legal descriptions of properties subject to this transaction if they contain mutual mistakes and errors that are discovered at or after the Closing.
- (b) Possession. Possession of the New Properties will be delivered at the Closing. The Warranty Deeds and other documents shall be delivered at the Closing.
- (c) Closing. The Closing shall take place at the office of the District's Superintendent. Subject to other terms in this Agreement, the Closing shall take place on a date and time as is mutually agreeable to the Parties; provided, however, that the Closing shall occur not later than 15 calendar days after the expiration of the Due Diligence Period or any

extension thereof ("Closing"). The Parties agree to the following for the purpose of consummating this transaction:

- (i) Each Party shall deliver to the other evidence satisfactory to establish their authority to enter into and consummate this transaction.
 - (ii) Each Party shall pay for all transfer taxes, fees attributable to any parcel split/combine which may have been assessed, and fees and charges of its own representatives, agents, or contractors, for property conveyed by that Party.
 - (iii) Both Parties shall execute, acknowledge and deliver such other instruments, documents and undertakings (in customary form reasonably acceptable to the District and the City) as shall be reasonably necessary in order to fully consummate this Agreement and to bring into effect its intent and purpose, including any required non-foreign affidavits.
 - (iv) All taxes and assessments that have become a lien upon the land as of the date of Closing (if any) shall be paid by the conveying Party. The acquiring Party shall be responsible for the payment of all property taxes falling due after the date of Closing without regard to lien date. The conveying Party shall pay the cost of all utilities and service charges through and including the date of Closing.
- (d) 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.
- (e) Default. In the event of material default by the City under this Agreement, the District may, at its option, elect to enforce the terms hereof or rescind and terminate this Agreement. In the event of a material default by the District, the City may, at its option, elect to enforce the terms hereof or rescind and terminate this Agreement.
- (f) 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 consent and agree to jurisdiction and venue being in the State of Michigan Circuit Court in Oakland County. In the event any provision of this Agreement or any addendum to this Agreement contains provisions that are contrary to existing law in the State of

Michigan or negate any legal right of a Party under the laws of said state, such provision shall be severed from this Agreement and shall be of no force or effect, but shall not otherwise invalidate the remainder of this Agreement. The Agreement of the Parties in this paragraph shall survive the Closings of this transaction.

- (g) Disclaimer of Warranties. AT CLOSING, EACH PARTY SHALL SIGN A PURCHASER'S STATEMENT. THE PURCHASER'S STATEMENT WILL CONFIRM IN WRITING TO THE OTHER PARTY THAT, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, (A) THE ACQUIRING PARTY HAS INSPECTED THE PARCEL THAT PARTY IS RECEIVING; IS AGREEING TO TAKE THE PARCEL "AS IS" AND IN ITS PRESENT CONDITION; AND THAT THERE ARE NO WRITTEN OR ORAL UNDERSTANDINGS EXCEPT THOSE IN THIS AGREEMENT; AND (B) THE CONVEYING PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND WITH REGARD TO THE PROPERTY THAT PARTY IS TRANSFERRING. THE PURCHASER'S STATEMENT TO BE SIGNED BY THE DISTRICT IS IN EXHIBIT 6 AND THE PURCHASER'S STATEMENT TO BE SIGNED BY THE CITY IS IN EXHIBIT 7.
- (h) Legal document; interpretation. THIS IS A LEGAL AND BINDING DOCUMENT, AND BOTH THE DISTRICT AND THE CITY 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. THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF THIS TRANSACTION.
- (i) All agreements in writing. THE DISTRICT AND THE CITY AGREE THAT THIS AGREEMENT (AND WRITTEN AND SIGNED ADDENDA, IF ANY) CANNOT BE MODIFIED, ALTERED OR OTHERWISE AMENDED WITHOUT A WRITING BEING DULY APPROVED BY AND SIGNED OR INITIALED, AS THE CASE MAY BE, BY BOTH DISTRICT AND THE CITY.
- (j) 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 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, (B) THE DATE WHEN RECEIVED, OR (C) ONE (1) DAY AFTER MAILING IF MAILED IN THE STATE OF MICHIGAN. THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF THIS TRANSACTION.

- (k) 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.
- (l) Entire agreement. THE DISTRICT AND THE CITY AGREE THAT THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THEM REGARDING THE TRANSACTION DESCRIBED HEREIN AND THAT THERE ARE NO AGREEMENTS, REPRESENTATIONS, STATEMENTS OR UNDERSTANDINGS THAT HAVE BEEN RELIED UPON BY THEM THAT ARE NOT STATED IN THIS AGREEMENT.
- (m) Counterparts. The Agreement may be executed in any number of counterparts, none of which need be executed by all the parties hereto, each of which shall be deemed an original, and all of which when taken together shall constitute one in the same instrument. Each Exhibit attached hereto shall be a part of this Agreement, as if the content thereof was fully set forth in the body of the Agreement.
- (n) City First Right of Refusal. If the District determines to sell the Added District High School Property, the Added District Middle School Property, or any part of those properties after Closing (the property to be sold, the "District Transfer Property"), the City shall have a right of first refusal to purchase the District Transfer Property for its then fair market value. If the District determines to sell the District Transfer Property, the District shall provide the City with written notice. The City shall have thirty (30) days after receipt of that written notice to notify the District in writing if it desires to purchase the District Transfer Property for its then fair market value. If so, the Parties will negotiate in good faith to determine the fair market value of the District Transfer Property for a period of ten (10) days following the District's receipt of such notice. If the Parties are

unable to reach an agreement as to the fair market value within such ten (10) day period, the District, at its expense, shall obtain an appraisal from a qualified appraiser (for purposes of this paragraph only, the "District Appraisal") within thirty (30) days of the expiration of such ten (10) day period. If the City disagrees with the District Appraisal, the City shall, at its expense, obtain an appraisal from a qualified appraiser (for purposes of this paragraph only, the "City Appraisal") within thirty (30) days from its receipt of the District Appraisal. If the Parties still fail to agree upon the fair market value of the District Transfer Property, within ten (10) days from the date of the City Appraisal, the Parties agree to jointly hire a third appraiser who will determine the final fair market value of the District Transfer Property. Each Party shall pay one-half (1/2) of the cost of the third appraisal. Upon final determination of the fair market value of the District Transfer Property (either by Party agreement or by the third appraiser), the Parties shall negotiate in good faith a purchase agreement for the sale of the District Transfer Property to the City. If after ninety (90) days following the final determination of fair market value the Parties do not sign a final purchase agreement for the District Transfer Property following such good faith negotiations, then the District may sell the District Transfer Property to a third-party. This right of first refusal shall be included in the deed conveying the District Added Middle School Property and the Added High School Property to the District. This paragraph shall survive Closing.

- (o) District First Right of Refusal. If the City determines to sell the Added Fuerst Park Area Property, District Bosco Fields Property, or any part of those properties after Closing (the property to be sold, the "City Transfer Property"), the District shall have a right of first refusal to purchase the City Transfer Property for its then fair market value. If the City determines to sell the City Transfer Property, the City shall provide the District with written notice. The District shall have thirty (30) days after receipt of that written notice to notify the City in writing if it desires to purchase the City Transfer Property for its then fair market value. If so, the Parties will negotiate in good faith to determine the fair market value of the City Transfer Property for a period of ten (10) days following the City's receipt of such notice. If the Parties are unable to reach an agreement as to the fair market value within such ten (10) day period, the City, at its expense, shall obtain an appraisal from a qualified appraiser (for purposes of this paragraph only, the "City Appraisal") within thirty (30) days of the expiration of such ten (10) day period. If the District disagrees with the City Appraisal, the District shall, at its expense, obtain an appraisal from a qualified appraiser (for purposes of this paragraph only, the "District Appraisal") within thirty (30) days from its receipt of the City Appraisal. If the Parties still fail to agree upon the fair market value of the City Transfer Property, within ten (10) days from the date of the District Appraisal, the Parties agree to jointly hire a third

appraiser who will determine the final fair market value of the City Transfer Property. Each Party shall pay one-half (1/2) of the cost of the third appraisal. Upon final determination of the fair market value of the City Transfer Property (either by Party agreement or by the third appraiser), the Parties shall negotiate in good faith a purchase agreement for the sale of the City Transfer Property to the District. If after ninety (90) days following the final determination of fair market value the Parties do not sign a final purchase agreement for the City Transfer Property following such good faith negotiations, then the City may sell the City Transfer Property to a third-party. This right of first refusal shall be included in the deed conveying the Added Fuerst Park Area Property and the District Bosco Fields Property to the City. This paragraph shall survive Closing.

(p) Tree Ordinances. In using the District Added High School Property and the District Added Middle School Property, the District shall comply with any applicable City tree ordinances, to the extent that the District is legally required to comply with such ordinances. This paragraph shall survive Closing.

(q) Personal Property. For 180 days after Closing, the District shall have the right to enter the District Bosco Fields Property during reasonable times to retrieve District personal property from storage facilities located on the District Bosco Fields property. This paragraph shall survive Closing.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized officers.

CITY OF NOVI

By: Robert Gatt
Its: Mayor
Date: _____, 2023

By: Courtney Hanson
Its: City Clerk
Date: _____, 2023

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged before me by Robert Gatt, Mayor, and Cortney Hanson, Clerk, on behalf of the City of Novi, on the ____ day of _____, 2023.

Notary Public

_____ County, Michigan

Acting in _____ County, Michigan

My Commission Expires: _____

[Signatures Continued on Next Page]

NOVI COMMUNITY SCHOOL DISTRICT,
acting by and through its Board of Education

By: Ben Mainka

Its: Superintendent

Date: _____, 2023

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged before me by Ben Mainka, the Superintendent for Novi Community School District, on the ____ day of _____, 2023.

Notary Public

_____ County, Michigan

Acting in _____ County, Michigan

My Commission Expires: _____

EXHIBIT 1

District High School Property and City Civic Center Property Survey

EXHIBIT 2

District Middle School Property and City Wildlife Woods Park Property Survey

EXHIBIT 3

District Bosco Fields Property Survey

EXHIBIT 4

WARRANTY DEED

Novi Community School District, a Michigan general powers school district organized and operating under the Revised School Code, MCL 380.1, *et seq.*, as amended, whose address is 25345 Taft Road, Novi, Michigan 48374 ("Grantor") conveys and warrants to the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan, 48375 ("Grantee"), property legally described as follows:

[Insert Legal Description]

(the "Property"), which is Parcel No. [Insert], including all tenements, hereditaments, appurtenances, and improvements thereunto belonging or in any way appertaining for the sum of one dollar (\$1.00) and other good and valuable consideration.

This conveyance is subject to:

1. Building and zoning laws, ordinances, and regulations;
2. Rights of the public and any governmental authority in any part of the land taken, deeded, or used as a street, road, or highway;
3. recorded and existing building and use restrictions, or other restrictions relating to the use or improvement of the Property;
4. all other rights, restrictions, reservations, easements, and other matters of record disclosed in the Commitment for Title Insurance issued by _____, Commitment No. _____, dated _____ at _____ a.m./p.m.

The Grantor grants to the Grantee the right to make all permitted divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

The Property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act, MCL 286.471, *et seq.*, as amended.

First Right of Refusal. If the Grantee determines to sell the Property or any part of the Property (the property to be sold, the "City Transfer Property"), the Grantor shall have a right of first refusal to purchase the City Transfer Property for its then fair market value. If the Grantee determines to sell the City Transfer Property, the Grantee shall provide the Grantor with written notice. The Grantor shall have thirty (30) days after receipt of that written notice to notify the Grantee in writing if it desires to purchase the City Transfer

Property for its then fair market value. If so, the parties will negotiate in good faith to determine the fair market value of the City Transfer Property for a period of ten (10) days following the Grantee's receipt of such notice. If the parties are unable to reach an agreement as to the fair market value within such ten (10) day period, the Grantee, at its expense, shall obtain an appraisal from a qualified appraiser (the "City Appraisal") within thirty (30) days of the expiration of such ten (10) day period. If the Grantor disagrees with the City Appraisal, the Grantor shall, at its expense, obtain an appraisal from a qualified appraiser (the "District Appraisal") within thirty (30) days from its receipt of the City Appraisal. If the parties still fail to agree upon the fair market value of the City Transfer Property, within ten (10) days from the date of the District Appraisal, the parties agree to jointly hire a third appraiser who will determine the final fair market value of the City Transfer Property. Each party shall pay one-half (1/2) of the cost of the third appraisal. Upon final determination of the fair market value of the City Transfer Property (either by party agreement or by the third appraiser), the parties shall negotiate in good faith a purchase agreement for the sale of the City Transfer Property to the Grantor. If after ninety (90) days following the final determination of fair market value the parties do not sign a final purchase agreement for the City Transfer Property following such good faith negotiations, then the Grantee may sell the City Transfer Property to a third-party. This transaction is exempt from real estate transfer tax pursuant to MCL 207.505(h)(i) and MCL 207.526(h)(i).

GRANTOR:

**NOVI COMMUNITY SCHOOL DISTRICT,
a Michigan general powers school district**

Dated: _____, 2023

By: **(For Execution at Closing)**
Ben Mainka

Its: Superintendent

Acknowledged before me in _____ County, Michigan, this ____ day of _____, 2023 by Ben Mainka, Superintendent, Novi Community School District, a Michigan general powers school district.

_____(signature)
_____(printed)
Notary Public, _____ County, Michigan
My Commission Expires: _____
Acting in the County of: _____

When Recorded Return To:	Send Subsequent Tax Bills To:	Prepared By (Without Opinion):
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Grantee	Grantee	Piotr M. Matusiak, Esq. Thrun Law Firm, P.C. P.O. Box 2575 East Lansing, MI 48826-2575
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EXHIBIT 5

WARRANTY DEED

The City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan, 48375 ("Grantor") conveys and warrants to Novi Community School District, a Michigan general powers school district organized and operating under the Revised School Code, MCL 380.1, *et seq.*, as amended, whose address is 25345 Taft Road, Novi, Michigan 48374 ("Grantee"), property legally described as follows:

[Insert Legal Description]

(the "Property"), which is Parcel No. [Insert], including all tenements, hereditaments, appurtenances, and improvements thereunto belonging or in any way appertaining for the sum of one dollar (\$1.00) and other good and valuable consideration.

This conveyance is subject to:

1. Building and zoning laws, ordinances, and regulations;
2. Rights of the public and any governmental authority in any part of the land taken, deeded, or used as a street, road, or highway;
3. recorded and existing building and use restrictions, or other restrictions relating to the use or improvement of the Property;
4. all other rights, restrictions, reservations, easements, and other matters of record disclosed in the Commitment for Title Insurance issued by _____, Commitment No. _____, dated _____ at _____ a.m./p.m.

The Grantor grants to the Grantee the right to make all permitted divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967. The Property may be located within the vicinity of farmland or a farm operation.

Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act, MCL 286.471, *et seq.*, as amended.

First Right of Refusal. If the Grantee determines to sell the Property or any part of the Property (the property to be sold, the "District Transfer Property"), the Grantor shall have a right of first refusal to purchase the District Transfer Property for its then fair market value. If the Grantee determines to sell the District Transfer Property, the Grantee shall provide the Grantor with written notice. The Grantor shall have thirty (30)

days after receipt of that written notice to notify the Grantee in writing if it desires to purchase the District Transfer Property for its then fair market value. If so, the parties will negotiate in good faith to determine the fair market value of the District Transfer Property for a period of ten (10) days following the Grantee's receipt of such notice. If the parties are unable to reach an agreement as to the fair market value within such ten (10) day period, the Grantee, at its expense, shall obtain an appraisal from a qualified appraiser (the "District Appraisal") within thirty (30) days of the expiration of such ten (10) day period. If the Grantor disagrees with the District Appraisal, the Grantor shall, at its expense, obtain an appraisal from a qualified appraiser (the "City Appraisal") within thirty (30) days from its receipt of the District Appraisal. If the parties still fail to agree upon the fair market value of the District Transfer Property, within ten (10) days from the date of the City Appraisal, the parties agree to jointly hire a third appraiser who will determine the final fair market value of the District Transfer Property. Each party shall pay one-half (1/2) of the cost of the third appraisal. Upon final determination of the fair market value of the District Transfer Property (either by party agreement or by the third appraiser), the parties shall negotiate in good faith a purchase agreement for the sale of the District Transfer Property to the Grantor. If after ninety (90) days following the final determination of fair market value the parties do not sign a final purchase agreement for the District Transfer Property following such good faith negotiations, then the Grantee may sell the District Transfer Property to a third-party.

This transaction is exempt from real estate transfer tax pursuant to MCL 207.505(h)(i) and MCL 207.526(h)(i).

GRANTOR:

**CITY OF NOVI,
a Michigan municipal corporation**

Dated: _____, 2023

By: **(For Execution at Closing)**
[Printed Name]

Its: _____

Acknowledged before me in _____ County, Michigan, this _____ day of _____, 2023 by _____, _____, City of Novi, a Michigan municipal corporation.

_____(signature)
_____(printed)
Notary Public, _____ County, Michigan

My Commission Expires: _____
Acting in the County of: _____

When Recorded Return To:	Send Subsequent Tax Bills To:	Prepared By (Without Opinion):
Grantee	Grantee	Piotr M. Matusiak, Esq. Thrun Law Firm, P.C. P.O. Box 2575 East Lansing, MI 48826-2575

EXHIBIT 6

PURCHASER'S STATEMENT

Novi Community School District, a Michigan general powers school district organized and operating under the Revised School Code, MCL 380.1, *et seq.*, as amended, whose address is 25345 Taft Road, Novi, Michigan 48374 ("Purchaser") is purchasing from the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan, 48375 (the "Seller"), the following described premises situated in the City of Novi, Oakland County, Michigan:

[Insert Legal Description]

Tax Identification No. _____ (the "Property").

Subject to any terms to the contrary in the Property Exchange Agreement between the Purchaser and Seller dated _____, 2023, the Purchaser confirms, acknowledges, and agrees that:

(1) It has inspected the Property and agrees to take the Property "as is" with all personal property and debris and in its present condition.

(2) There are no other or additional written or oral understandings and that the Seller disclaims any and all warranties of any kind with regards to the Property.

The provisions stated above shall survive closing.

[Signature on the Following Page]

PURCHASER:

**NOVI COMMUNITY SCHOOL DISTRICT, a
Michigan general powers school district**

Signature: **(For Execution at Closing)**

Printed Name: Ben Mainka

Its: Superintendent

Dated: _____, 2023

The foregoing was acknowledged before me in _____, County, Michigan,
this ____ day of _____, 2023, by Ben Mainka, Superintendent, Novi Community
School District, a Michigan general powers school district.

_____(signature)

_____(printed)

Notary Public, _____County, Michigan

My Commission Expires: _____

Acting in the County of: _____

**Prepared by and after
recording return to:**

Piotr M. Matusiak, Esq.

Thrun Law Firm, P.C.

P.O. Box 2575

East Lansing, Michigan 48826-2575

EXHIBIT 7

PURCHASER'S STATEMENT

The City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan, 48375 (the "Purchaser") is purchasing from Novi Community School District, a Michigan general powers school district organized and operating under the Revised School Code, MCL 380.1, *et seq.*, as amended, whose address is 25345 Taft Road, Novi, Michigan 48374 ("Seller"), the following described premises situated in the City of Novi, Oakland County, Michigan:

[Insert Legal Description]

Tax Parcel Identification No. _____ (the "Property").

Subject to any terms to the contrary in the Property Exchange Agreement between the Purchaser and Seller dated _____, 2023, the Purchaser confirms, acknowledges, and agrees that:

(1) It has inspected the Property and agrees to take the Property "as is" with all personal property and debris and in its present condition.

(2) There are no other or additional written or oral understandings and that the Seller disclaims any and all warranties of any kind with regards to the Property.

The provisions stated above shall survive closing.

[Signature on the Following Page]

**CITY OF NOVI,
a Michigan municipal corporation**

Dated: _____, 2023

By: **(For Execution at Closing)**
[Printed Name]

Its: _____

Acknowledged before me in _____ County, Michigan, this _____ day of _____, 2023 by _____, _____, City of Novi, a Michigan municipal corporation.

_____(signature)
_____(printed)
Notary Public, _____ County, Michigan
My Commission Expires: _____
Acting in the County of: _____

Prepared by and after recording return to:

Piotr M. Matusiak, Esq.,
Thrun Law Firm, P.C.
P.O. Box 2575
East Lansing, Michigan 48826-2575

EXHIBIT 8

TERMINATION AGREEMENT

This Termination Agreement is entered into by and between Novi Community School District, a Michigan general powers school district organized and operating under the Revised School Code, MCL 380.1, *et seq.*, as amended, whose address is 25345 Taft Road, Novi, Michigan 48374 ("District") and the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan, 48375 ("City").

WHEREAS, the District owns Property assigned Tax Parcel No. 22-27-100-007 and legally described in Attachment A hereto;

WHEREAS, the City owns property assigned Tax Parcel No. 22-27-100-005 and legally described in Attachment A hereto;

WHEREAS, the District owns Property assigned Tax Parcel No. 22-17-300-017 and legally described in Attachment A hereto;

WHEREAS, the City owns Property assigned Tax Parcel No. 22-17-300-016 and legally described in Attachment A hereto;

WHEREAS, the District owns Property assigned Tax Parcel No. 20-20-200-011 and legally described in Attachment A hereto (the property referenced in this whereas clause and all the preceding whereas clauses, collectively, the "Properties");

WHEREAS, the District and the City have entered into various agreements with each other concerning the Properties, which agreements were entered into before [Insert Closing Date] (the "Prior Agreements");

WHEREAS, the District and the City have entered into a Property Exchange Agreement dated [Insert Date] and have exchanged properties pursuant to that agreement (the "Property Exchange"); and

WHEREAS, given the Property Exchange, the Parties have determined that it is no longer necessary to maintain the Prior Agreements.

NOW THEREFORE, for the consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both the District and the City, the parties agree as follows:

1. Termination. The District and the City hereby terminate the Prior Agreements in their entirety effective immediately and neither the District nor the City shall have any further rights or obligations pursuant to those Prior Agreements.

2. Counterparts. This Termination Agreement may be executed in several counterparts, each of which may be deemed as original, and all of such counterparts together shall constitute one and the same Termination Agreement. Facsimile signatures shall be binding.
3. Governing Terms. In the event of any inconsistency between the terms of this Termination Agreement and the Prior Agreements, this Termination Agreement shall govern.
4. Governing Law. This Termination Agreement shall be construed, interpreted, and enforced under the laws of the State of Michigan.
6. No Construction Against Drafting Party. This Termination Agreement shall not be more strictly construed against, nor shall any ambiguities within this Termination Agreement be resolved against, a Party because that Party's participation in the drafting of this Termination Agreement.
7. Entire Agreement. This Termination Agreement constitutes the entire agreement between the District and the City. None of the terms of this Termination Agreement may be modified or amended in any way except by an instrument in writing executed by an authorized representative of the District and the City.

**NOVI COMMUNITY SCHOOL DISTRICT, a
Michigan general powers school district**

Signature: **(For Execution at Closing)**

Printed Name: Ben Mainka

Its: Superintendent

Dated: _____, 2023

CITY OF NOVI, a Michigan municipal corporation

Dated: _____, 2023

By: **(For Execution at Closing)**
[Printed Name]

Its: _____

Prepared by and after recording return to:

Piotr M. Matusiak, Esq.,
Thrun Law Firm, P.C.
P.O. Box 2575
East Lansing, Michigan 48826-2575

Attachment A to Termination Agreement
Property Legal Descriptions