

produced about 10,400 cases for their court last year. They had approximately 164 drunk driving cases, just under 1,000 traffic misdemeanors, and about 500 non-traffic misdemeanors, such as shoplifting or retail fraud. Novi is a safe place to live and to work. Judge Law said the misdemeanor cases are handled on Mondays; state law matters and felony matters are handled on Wednesdays for Novi. They want the community to be safe, and they want the court to be accessible. Judge Law said people will not always agree with their decision, but they will know it was handled fairly. We want residents to know they can come to the court to watch. You can come in any day; Novi is typically heard on Mondays. The most interesting cases are handled in the morning.

Member Breen arrived at 7:08 p.m.

Judge Law said they appreciated it when residents come in to court watch. Judge Reeds said they also appreciate giving the tour. Judge Law said the stages of a case. With a misdemeanor matter starts an arraignment stage. That is where the defendant is told what the charge that is being brought against them. It would move to a pre-trial stage when the defendant and the defense attorney and the prosecutor can talk and resolve the matter short of a trial. The defendant may enter a plea at that time or it may go forward to a trial. If that person ends up getting convicted or enter a plea of guilty they would then have a sentencing date in the future. He said he gets asked often what his favorite thing is about being a judge. He also gets the question on how he comes up with the sentence that he does. He sends the defendant to the probation interview when they get convicted or admit they did something wrong. He gets a report back from probation a few weeks later that lists the defendant's life story. It will pinpoint any issue that defendant might have such as an alcohol issue, drug issue or mental health issue. It makes recommendations of counseling that they can put in place to help that person going forward. That is the process they go by. Judge Reeds said that in the criminal world that is a lot of what they see. Almost every case they have will have some ties to substance abuse or a mental health issue. We have to balance all of that to make the community safer, but also to help these individuals get their lives on track. If they can accomplish that it would be best for everybody. Giving them the tools that they need to get their life on track is how you will have long-term results. They do not like to have to put them in jail, they do it, but they do try to help them. On a typical probation case, they typically do not see them again. They have sobriety court, drug sobriety and vet court. It is very intensive and beneficial to see someone transform their life. Judge Reeds said it can be very emotional. Lives are turned around. The graduates and the family relationships are rebuilt. Job history is transformed. Some have bought houses, had children, their lives are under control. The programs have been around for a while, but they tweak and improve them. They work. Most people you don't see again. A small percentage comes back over and over again. These programs can help stop that cycle. They also mentioned a program that remained dormant for a while which the Consequences of Decision Making Program. It was a court in school program where they take real court cases into high schools. They now go into the middle schools. They are trying to reach out to young people before they come to them on a case. Try to help them understand by seeing real cases. They

hand pick to try to be relatable. It is very impactful in the middle school. If they can reach out maybe one or two young person's lives can be changed. They wondered what they could do as judges to do some kind of impact on the number of young people coming through the court. Mayor Gatt thanked the judges for coming out and spending some time with them. He wondered if they will ever build a courthouse. He said he knew it was a rented building. The courthouse would have to be, by law, in the largest jurisdiction, which is Novi.

Mayor Gatt asked if there was anything as a Council that they could do to help the court? Judge Law replied no. Judge Reeds said they can keep lines of communication open. Take a tour. He said that County Commissioner Markham commented about the lack of recycling. They are trying to work a program into place. It doesn't have to be law related. Judge Law mentioned that the attorneys do a great job letting them know what administration is thinking. They would love to have them come in. Mayor Gatt asked for information on those. Judge Reeds said they will bring them into community centers. Maybe they could work it out to come here to the City offices. Mayor Gatt said they can work on that. Mayor Gatt said they will work on bringing the graduations back to the City. The judges said they would appreciate that very much.

Member Breen said she listened to an update at Fox Run not long ago where they mentioned their involvement with human trafficking victims and trying to work on some criminal justice reform. She asked that they give some more information on their involvement with that. Judge Reeds said they participate in other outreach programs. They are involved with the Lakes Area Youth Assistance and Novi Youth Assistance. They are both are on the board there. Judge Law opened lines of communication. They go to organizations and talk about issues that affect the community. Opioids, vaping, et cetera; doesn't matter rich or poor. Judge Law said he has seen cases with victims of human trafficking. When they sentence people they do consider their background and what is really going on behind the scenes.

Member Poupard commented about the professionalism of our police and our attorneys, but wanted to say back at them that they are awesome. She thanked them for being there. She thanked the judges for their accessibility in the community.

2. Legislative Update – Representative Haley Stevens, 11th District

Representative Haley Stevens said it was a delight to be in front of this City Council. She said they also have a lot of respect for City Managers and those who push the day in and day out of our economic development. She bestowed the City with a flag that was flown over the Capital in honor of the City of Novi. She said she has gotten two unique appointments in this congress. One is an appointment to the Committee for Education and Labor and to the House Science Space and Technology Committee. She said she also had the privilege of holding a gavel and was a Sub-Committee Chair for Research and Development. The reason why she shared that with them was that those committees and the work of those committees really fit the need of our district. She came from the U.S. Department of Commerce and the Economic Development

Administration. She is a big believer of doing things from the bottom up. She wants to listening to our locally elected and the stakeholders in our communities. She didn't want to be a top down actor from Washington, but a strategic and effective partner with all of you. Novi is certainly one of our hubs for innovation. She wanted to be an open line for all of Novi. She admired the work and the leadership of this City. She was just over at Novi Schools and she met the girls' soccer team that was number one in the nation. She said Novi had a fabulous school system. She stated that one of the projects that she has been involved with and one of the pieces of legislation that will be coming out of this in part with science, technology, engineering, and mathematics (STEM) education. We need to streamline. She mentioned a bill that she proposed, the Building Blocks of STEM Act, which is a bipartisan, both bodies of Congress being introduced in a bipartisan way. It has already passed the House; they feel excited making its way through the Senate and all the way up to the President's desk. What will that do for Novi? That certainly positions our educational institutions for grants from the National Science Foundation. In a role that she has as a chair on the Sub-Committee on Research and Technology with direct oversight with the National Science Foundation (NSF), she wanted to make sure all of our community leaders know if you are going after an NSF Grant, please be sure to reach out to them. They would love to walk you through that. She said they were having a grants workshop in Troy on August 27. She wants to make sure that our District gets their fair share of federal funding. That was a big priority of hers. She wants to be part of streamlining government and making sure that it is effective for all of us. She said they see it a lot that Oakland County gets overlooked because we do things right, but we pay those taxpayer dollars. We want to make sure that when we put up our hand that they come back into our communities. Another exciting thing that she had the privilege of dedicating her time in Congress to doing is what she called "Manufacturing Monday". She said people want to locate here in Novi because Novi is a great place to live, raise a family, and to work. She said she does Manufacturing Monday to go and see those suppliers. As a member of Congress, one of the 14 members of Congress, going into that body from Michigan, she represents the largest, most robust automotive supply chain in the country. She wants to make sure that Congress knows the voice of the manufacturer and the voice of the supplier needs and wants. She needs to be listening to them. She is doing that work and connecting with those individuals. She said she is pushing for infrastructure needs; she would like to see us do it in an effective way. While we are in communities as well listening and engaging with the infrastructure needs, not only the ones that effect you as municipal leaders, but our everyday stakeholders, the businesses. She said she had a feeling that Novi in another 50 years will still hold on to old traditions, but connected to the modern and transforming economy, helping to lead Michigan as a way for it. As a member of Congress she joins forces with Novi in that charge. It is a sincere privilege and honor. She said Novi has a friend and partner in her.

Mayor Gatt said he was impressed. It has opened his eyes to her love for this district and her knowledge of Novi. Fifty years from now he hopes to be the Mayor that is his goal. He said she talked about infrastructure; there is one road in Novi that connects two interstates. In a national emergency, this road would be critical. That road would be Beck Road. We need to widen Beck Road to a four or five lane road. We are

talking in our dollars \$40 to \$50 million dollars, that is a ton. He said he would appreciate it very much if she would work with City Manager Auger and his staff and maybe we can get some federal money behind that. It does connect two interstates and it really is a critical national issue if there was indeed an emergency. She said they hear him loud and clear. She said the City of Wixom has also come to her. She said roadway expansions are done federally; this is not state issue, particularly for our highways. We are here for you. She said we need to reach out to them, she has a full team.

Member Poupard commented that she loved the fact that she said she is a friend and partner of Novi. She thought her energy and enthusiasm is amazing. We welcome that in Novi. School system and recognizing that we do things right, we get overlooked. You got us and it's comforting to know she is in Washington. Ms. Stevens thanked her for her generous comments.

Member Breen thanked her for working with the schools prior to election; she mentioned the tiny robots computer coding equipment.

MANAGER/STAFF REPORT:

City Manager Auger said they had one report. He said that City Council had asked City Administration to come up for possible framework for two committees that you were interested in. Both of these committees are different in makeup and nature because of the topic matter that they will be covering. The Roads Committee will deal more with facts, science, and dollars. The second one, will be a little larger and more things to pull apart. The Roads Committee they are recommending be comprised of the Mayor and two City Council Members, a couple citizens at large, any staff on these committees will be there as an advisory or to get information as subject matter experts to the Council. The second committee is for the Community Recreation Center Committee. Here they wanted to break it down into two committees. One would be the Steering Committee to focus on leading the process. The second group will be a larger group. It will be a work group so that if the Steering Committee has any issues they will work through prior authorizations, questions, sounding board type things, go through that larger committee. Under the Community Recreation Center Steering Committee they recommend the Mayor, two City Council Members, a Parks, Recreation and Cultural Service Commissioner, a couple citizens at large, and augmented by staff to help do research and leg work. The Recreation Center Work Group would be a larger group to bounce ideas off. Members could possibly come from the Ambassador Academy Alumni, HOA's, the business community, Novi Youth Council, Fox Run, Meadowbrook Commons, and again using staff as necessary. Mayor Gatt said this is the way to go. He said that he and Mr. Auger had discussed this. He said this is in the infant stage. After the election in November they hope to pick up steam and move forward. He stated they would like to get this on a ballot next spring. He said the Council people he has chosen for the Roads Committee were Member Casey and Member Mutch. For the Community Recreation Center, it will be Mayor Pro Tem Staudt and Member Breen. He didn't assign Member Poupard or Member Verma

because they will not be here after the election. We are going with what we have now. He said he would expect these committees to meet soon; he is on both of them. He did that on purpose, as the Mayor he wants to be involved, he wants to know what is going on. This is going to be a very large bond issue that we will take to the voters; we all have a lot at stake here.

Member Poupard asked who will chair the Community Center Working Group. That will be a large group. Mayor Gatt said members are still to be chosen, including the chair.

ATTORNEY REPORT: None

AUDIENCE COMMENT: None

CONSENT AGENDA REMOVALS AND APPROVALS:

- A. Approve Minutes of:
 - 1. August 12, 2019 – Regular meeting
- B. Enter Executive Session immediately following the regular meeting of August 26, 2019 in the Council Annex for the purpose of discussing privileged correspondence from legal counsel.
- C. Approval of the 2020 Suburban Mobility Authority for Regional Transportation (SMART) Municipal Credit Fund Contract and Resolution for the Older Adult Transportation Program in the amount of \$54,454. **REMOVED/LATER APPROVED**
- D. Approval of Claims and Accounts – Warrant No. 1042

CM 19-08-152 Moved by Casey, seconded by Poupard; CARRIED UNANIMOUSLY

To approve the Consent Agenda as amended.

Roll call vote on CM 19-08-152

**Yeas: Breen, Casey, Mutch, Poupard, Verma,
Gatt, Staudt**

Nays: None

MATTERS FOR COUNCIL ACTION

- 1. Consideration of a Completion Agreement with Hunter Pasteur Homes Dunhill Park for JSP15-0013, the Dunhill Park Site Condominium development located west of Beck Road and north of Eight Mile Road, and request by the developer for a reduction in the required financial guarantees in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

Mr. Seth Herkowitz, Partner with Hunter Pasteur Homes, along with him was Andy Milia, President of Franklin Property Corporation, as well as a Partner with Hunter Pasteur Homes. They appreciated the opportunity to speak before Council. Mr. Herkowitz said he was there to respectfully request that the City Council reduce their site work related financial guarantee from the \$160,080 as proposed to \$31,050. He stated that he has spent the last several months working with Mr. Boulard. He said he appreciated the time and effort that has been spent on their behalf. They asked to be placed on the Agenda that evening because they believed strongly that this is an issue of reasonableness, unfair burden, and a matter of principle. Hunter Pasteur Homes is a builder/developer of single/multi-family communities throughout southeast Michigan. He noted that they are very proud of the Dunhill Park development. Having taken a site with substantial environmental challenges and turned it into one of the premier developments for the City. They believed the planning and development of the neighborhood has and will continue to bring value to their homeowners, the residents of Novi, and the City of Novi. They hoped all of the City of Novi's stakeholders share their sentiments. They have built and developed in many municipalities they remain a regional builder and operate still as a small business. Many of their team members have been with the company for ten plus years. Unlike other national builders that participate in their market, should their homeowners have an issue or concern, they can just pick up the phone and call the owners of Hunter Pasteur at any time of day. He was highlighting the decisions made by this Council in respect to business issues such as the whole back up of financial guarantees can have a real and material impact on their business and other regional builders and developers. He said such funds held for purposes of financial guarantees can be better applied to further community, business, and people investment. He noted in a letter to City Council that they understand and appreciated that Novi wanted sufficient financial protects, should remedial efforts to the asphalt and curb be necessary. Such protections must be reasonable. The Dunhill Park Road both the base and wearing course were installed in the fall of 2016. Any significant failure in the road or curb would have likely have been present by now. He said the Agenda referenced a development, Tuscany that recently required significant road repair. He rebutted, and said how many developments in this municipality have been built without major repairs needed to the roads, especially three plus years after installation. He was willing to bet that Tuscany is an extreme outlier. Further the letter notes that the significant remediation efforts at Tuscany were limited to Phase II. He said at Dunhill, the calculations done by the City Engineering Consultant was calculated based upon 100 percent removal and replacement of the wearing course. Therefore it would seem the City is using an extreme and rare precedent as a basis for the recommendation. He believed that such an approach is flawed and the worst case scenario is applied to all perspective developments without further evaluation of fact or circumstance. He stated other than a further reduction regarding curbs, which they appreciate, the City is not taking into account the current condition of the road when determining the site work financial guarantee. One would think the current condition of the road would be an important consideration. He did not believe the City's assessment takes into consideration the roads current condition. As such they asked a third party paving contractor to assess the current condition of the asphalt and the curb. They selected Cadillac Asphalt, one of the largest and most respected

paving companies in southeast Michigan. Their independent assessment noted \$20,700 of repairs currently needed. The Cadillac Asphalt quote was included in Council's documents. Therefore their proposed holdback is predicated on the current needed repairs as set forth by that independent analysis of \$20,700 x 150 percent multiplier per City Ordinance equals \$31,050. It is equally important to clarify that they are not seeking to dedicate the roads. They understand that the Ordinance requires 90 percent close out before dedication. As such, they acknowledge that they remain responsible for the maintenance and the condition of the roads until the time of turnover. He said to address the City's concern that a reduction in the bond would limit the City's ability to enforce non-performance he noted the following: First) \$31,050 is still sufficient incentive enough for them, as a developer to uphold their obligations. Second) would be the City's ability to hold and issue certificates of occupancy. Third) a reasonable approach would take into account the developer's prior track record as a factor in the analysis. Throughout their history of a developer they have never failed to uphold their performance obligation. Information based on the aforementioned reasoning he believed the City's recommendation to hold \$160,080 places an unfair burden on them as a developer. A reasonable reduction in the financial guarantee does not prevent the Council from protecting the interests of its current and future property owners. A reasonable and rationale approach will protect the interest in all the City's stakeholders. As such they asked the City Council to reduce their site work related financial guarantee to \$31,050 inclusive of the 150 percent multiplier.

Mayor Gatt wondered if they were aware of the Ordinances when they started this project. He replied yes, they were aware of the ordinance and the financial guarantees that were required. It was their understanding at the time as they performed those guarantees would be reduced, no different than other guarantees for landscaping or other related work at the development. They believe they upheld their obligation to a large extent. He said they are asking for a reasonable reduction based on work that is already done in coordination with City Ordinance. Mayor Gatt confirmed that he understood that the roads are going to be private roads, not dedicated. Mr. Herkowitz said they will not be private, they will eventually be dedicated. They were not asking for dedication that evening. There is a process and that 90 percent completion is required for dedication. They were asking for credit for what they have done based on current conditions of the roads today.

Mayor Gatt asked City Manager Auger to weigh in on this. He asked him what is typical, and what is not. City Manager Auger said staff is following Chapter 26.5 in the City Ordinances and we do not have the authority to lower or reduce any of the dollar amounts they are requesting to do. That is why they requested to come before City Council because Council is the only one that has the power to reduce those as you see fit. Normally these projects we try to get them in on time where we can get to the 90 percent level in a matter of years. That is why the schedule is laid out like it is. This has taken a little longer to fill up and get done. They have the road in a good condition right now. There are several lots to build in there and we don't know what it will look like in the future. Mayor Gatt asked if Hunter Pastuer has built in the City of Novi before. Mr. Herkowitz replied yes. They were a builder before, not a developer. They have

developed in many municipalities in southeast Michigan and they have a strong track record and they stand behind that. Mayor Gatt said this is a matter for City Council to decide because it is an Ordinance that only we can deviate from. Mayor Gatt asked what the exact amount of the deviation was. Mr. Herkowitz said what was proposed in the completion agreement was \$160,050 based upon not including the multiplier. They are asking for \$31,050 based including the multiplier. That being said, if Council felt there was another reasonable recommendation they would be open to that. For them this was taking a reasonable approach, they want to work collectively with Novi.

Member Mutch asked Director Boulard to come down to answer some questions. Member Mutch mentioned that this particular ordinance was put in place to address situations that have arisen in this community where we had subdivisions and condominiums developed and through whatever circumstances it resulted in developers not being able to complete the improvements necessary. We have seen examples of that. Mr. Boulard said no developer ever intends to not complete a project. The reality is that during down times some communities saw projects, especially residential, where the first phase was built, but do to outside impacts, the builder was unable to finish that. Tuscany was a project that the developer chose to put in the final asphalt, which is an option. Another option is wedging the edges because it protects the curbs and they don't get beaten up when folks are doing construction, plowing, things like that. In the case of Tuscany certainly no one intended for that project to take as long as it did to build out. The reality was that this spring, the entire Phase II of that project, the entire top lift of asphalt had to come up. There were a number of cracks and defects. Member Mutch asked where the funding came from for that repair. Mr. Boulard said the developer paid for that work, we had financial guarantees in place. He also said we have to make sure that the work is done and to have that incentive for the developer to do that. Lenox Park was another project that we had some very frank discussions with the developer because those roads the entire the upper lift of asphalt had to come out and a portion of the base because of the time it took to get it done. Nobody intends that. Residents need to be made whole and get a good road in good condition when the project is closed out. He understood this is a lot of money, but depending on how the sales go it could be a few years and deterioration can take place and it may cost that much. Member Mutch followed up on the timeline. In the information that was provided to Council in the proposed completion agreement the development was first issued permits in May of 2016, then there was a two-year period, the City granted administratively a 12 month extension through May of 2019. This project has been under development for a little over three-years. In the information that was provided, there are 31 lots, eight of them have been completed, and five of them are in process for a total of 13. He noted that 18 lots are vacant. Member Mutch asked Mr. Herkowitz what the projected timeline was for the overall development; realistically when would this development reach a 90 percent build out. Mr. Herkowitz said he would disagree on the numbers. They have nine lots delivered or in process of delivery, another nine lots that are under construction now that are sold. Homes are either under construction or in the planning, preparation stage for permitting. He understood his point. He said the example with Knightsbridge in that situation the roads were not topped which they are here at Dunhill. That is an

important distinction. He said they are not arguing conceptually with the idea that money should be withheld to protect the citizens of Novi. We support that position. He said it is the amount of money that is being held because 100 percent of the topcoat is being held and thought it was unrealistic to think that the entire topcoat needs to be replaced regardless if that is a 12 month cycle until we are done or an 18 month cycle. He understood that the City could not always predict the future, but he would say that we are also looking at this slightly in a narrow context and that financial guarantee is the City's only remedy. He said the City will still be holding a substantial amount of money, but there are other tools in your toolbox. One of those is probably one of the most powerful tools is the ability to withhold certificates of occupancy. In addition to that you still have to accept dedication, and they remain responsible for the repair or replacement we acknowledge and accept that and will remain our responsibility to remedy those issues prior to dedication. Member Mutch appreciated that perspective. Member Mutch said he still sees a significant additional amount of time before we reach that 90 percent point that at which they get an opportunity to close that out. Whatever the condition the road is today that isn't relevant to what we need to consider looking out. We need to consider having enough money set aside for future damage that may occur overtime. He understood his point that he felt it was unreasonable to have the City set aside 100 percent replacement. He said sitting up on Council for as long as he has, he has seen times where the residents were left holding the bag because there wasn't enough money set aside for whatever reason. We don't know what is going to happen 12 to 18 months from now. Ultimately that cost has come back on residents. The only thing that has worked for a remedy for the City is having those financial guarantees on hand. We can talk about withholding certificates of occupancy, but from his experience that hasn't been effective. Some of these other potential tools have not been effective. We have gotten to the point where residents who have bought new homes in a development were left being asked to come up with additional thousands of dollars to cover costs that should have been covered by the developer. He said that as a general statement, he recognized that they are going to present their reputation as a developer. The perspective he was looking at is who does this benefit when looking at this specific development. If Council was to reduce those guarantees and at some point they find that it was not sufficient to cover the costs, it didn't help the current residents of that development and doesn't help the future residents, and it didn't help the City. It does benefit you as the developer and he understood financially why you would want to see these reduced. From the City's perspective it looks like the City has already reduced these down from the original amount. There has been some discussion as things are completed additional financial guarantees will be released which is what they requested and he thought that was fair. If we go back to the original approval of this project, City Council already waved a significant amount of woodland fees that they would have otherwise owed for the project to have been approved. Member Mutch said what is reasonable, what is fair, and what the right thing to do here is. What the City has been presented meets all criteria. He was not inclined to wave those at this point, absent someone making a really compelling case that we should take the chance that this money won't be needed and what do we do in the alternative if it is needed. He would rather have the

money in hand and ensure that when this development is completed, we have those funds on hand to complete those improvements if needed.

Member Verma asked them to explain what makes them want to go from \$160,050 to \$31,050. Mr. Herkowitz said they did third party independent quote by Cadillac Asphalt. They lined itemed what it would cost to remedy the roads in the condition they were in today, took that amount and applied the multiplier which is 150 percent per City Ordinance and came up with their number. Member Verma commented that when you took the project, you knew you would give this amount. Mr. Herkowitz replied yes, actually more, but they have performed substantially. They understand it will be duration of time it will take to dedicate. The bond should match the current condition and the 90 percent threshold needs to be met for dedication. They have nine lots with certificate of occupancy and nine lots that are in the planning process. They need to get to 27 for dedication. They estimate that to take 12-18 months from reaching that timeline. Member Verma asked what percentage have certificate of occupancy. Mr. Herkowitz said less than a third. He said nine of out of 31. Member Verma understood that they knew the detail of those specifications at the beginning. He totally agreed with his colleague, and didn't want to come down. Mr. Herkowitz said he was trying to be objective and reasonable. If there is alternative option, they would be open to that.

Mayor Pro Tem Staudt said this isn't a good way to see numbers. He wanted to know the current financial guarantee being held. Mr. Boulard said it was \$481,065 based in part on reductions that can take place. Pending this discussion and agreement, they didn't want it reduced to less and then place more than was needed. Mayor Pro Tem Staudt asked where the \$423,000 was mentioned. Mr. Boulard replied that it was in the completion agreement document which he apologized was sent out after the Agenda. He said there are street trees, \$33,000. Those are not subject to the 1.5 multiplier because if they do not perform, we take the money and plant the trees. Woodlands fence and woodlands, \$79,900 which is also not applicable to the multiplier because if the trees aren't planted then the dollars go to the tree fund. There are a certain number of trees that go on each lot and those lots until the houses are built then the trees aren't installed. It happens over time. What is being proposed right now for total financial guarantees? Mr. Boulard said \$423,098.50. Mayor Pro Tem Staudt wondered what the \$31,050 was. Mr. Herkowitz said within that completion agreement there was a specific line item identified as incomplete site work, that \$30,000 is within that number. Essentially what they are saying is number shows \$160,080, their argument is that they believe that number should be \$31,050. They have worked together with the City on all other line items. There is no disagreement with those. Mayor Pro Tem Staudt said the base number is \$230,120 is the recommended amount by the consultant that we hold. Mr. Boulard said of the \$423,000 the incomplete site work portion is \$240,000, so the \$160,000 is the \$240,000 before the multiplier. Mayor Pro Tem Staudt asked if they are asking to go from \$240,000 to \$30,000 and if they think that is reasonable? Mayor Pro Tem Staudt said listening to Council he didn't think they thought it was reasonable. Mayor Pro Tem Staudt understood they were trying to get that to the lowest possible number for cash flow purposes, but we also like to consider fairness. In this case it seems like there is a gap between \$240,000 and \$31,000. It seems

a little unreasonable that our staff couldn't work out a number that is more reasonable for both parties. We are going strictly by the book which we always do. This is one of the issues that we did in our heels and never give in. In this situation he thought there is some kind of a number that is reasonable. Is the multiplier required? That drops it from \$240,000 to \$160,000 that is real money. We haven't been given any alternative by staff. They have said all we want is everything. Everything we have under the statute, if there any reasonable compromise? Mr. Boulard said here is the challenge. He like anyone else desperately hopes that come this time next year the project is sold out at 90 percent and all the houses are built, the road does not require more than the \$20,000 in repairs. He said he would like to be here in less than a year and requesting these to be dedicated and having these folks get a check back or a release of letter of credit. He doesn't want to stand before Council several years from now saying we don't have the dollars if this stretches on a number of years the prices go up. The walked the site with the engineering consultant and engineering department, that is why they got a reduction in the curbs. The curbs are in better shape then what he would expect a typical project of this age and time. He said if Council decides to reduce this, that is fine, that is your prerogative. He said in all fairness to our residents he did his best to protect them while being reasonable. Mayor Pro Tem Staudt made a final point that this is our fall back on everything that we are trying to do what is best for the residents and the City, but this is the issue of partnership with us and the developers. We are using absolute worst case scenario in this situation to come up with the estimates. Maybe that is really good for the City; it makes people think we are living by the letter of the law. These are real dollars, the City doesn't have to put up the money, and they do. This appears to be that the City is digging in their heels and there are no options.

Casey asked what the background on the multiplier was. Mr. Boulard said his understanding was a) project gets older, and b) prices go up. He said that Lenox Park was example, prices went up. Council said it needed to be adjusted to a 1.2 multiplier and a 1.5 multiplier with completion agreement. He understood that it is a lot of money. His goal is not for the City to have it. He wants to ensure residents get what is expected. Mr. Herkowitz said that respected and understood Mr. Boulard's position. He wanted a reasonable solution that benefits residents, Council, City, but also them as developer. Member Casey asked what the \$160,000 is based on. Mr. Boulard said that number is based on 100 percent replacement of top lift of asphalt. In this case 100 percent of the road area, 1 1/2 inches, 8,722 square yards at \$12 a square yard. That is also based on leveling the layer underneath, approximately 20 percent of that. We are assuming even if the top lift needs to be milled off completely that the failures will be very limited in the lower level. That is 20 percent of the road area at 2 1/2 inches deep because that is a thicker section, that is \$21 a square yard, removal and installation. It would be the same for the top that would be removal and installation. The curb repairs we originally we were looking at 20 percent of the curb, that is our standard amount; we took that down to 10 percent of the curb length. There is 4670 linear feet of curb at about \$40 per linear foot for removal and installation. That is the \$18,680 is in the Motion Sheet. Member Casey asked if these were 2019 numbers, updated for today. Mr. Boulard replied yes, general what we do is to ask our consulting engineer to call and

talk to several contractors to verify and take an average. Member Casey asked City Attorney Schultz if they as a Council have the ability to change the multiplier. City Attorney Schultz replied yes, he is asking for relief. However you arrive at the number, as long as you can state it, it is fine. Member Casey said she drove through the development. The challenge is that we have had situations where residents suffered. She is willing to be lenient on the multiplier, understanding that this is a 2019 figure. She is not willing to go from \$240,000 to \$31,000. She suggested maybe a 120 multiplier if staff said that was sufficient, she would be a little more inclined to think about that. As it stood at that time she would not give her support in going from the \$240,000 to the \$31,000. Mr. Herkowitz asked the Council if they were able to meet separately from this meeting to work through a possible reasonable resolution if that would be a potential option. Member Casey said she wasn't sure if she was ready to make a motion just yet, she wasn't sure what that number would be. She wanted to let other colleagues comment first.

Mayor Gatt thought that we have talked about the City keeping bonds. Haven't we concluded that it's easier to deviate from an ordinance with developers who have shown history of fulfilling their obligations? City Attorney Schultz said he thought he was referring to amendments of the ordinance that talked about it. Mr. Schultz said if they are large developers with a number of project underway they could combine financial guarantees, but the City Council is allowed to accept a deviation which is what you are being asked to that evening. He thought they were permitted to take that into consideration. As a larger discussion of whether or not to do the reduction, it is not in the ordinance as a concept, that concept was just for those with multiple projects.

Member Verma asked if the \$160,000 is standard. City Attorney Schultz said communities are all over the place on what they require for financial guarantees. There are other communities that do essentially the 100 percent plus the multiplier. Some communities don't. City Attorney Schultz said this ordinance was approved in 2008 when the City had an awful lot of developments that stalled. We had a lot of developer input, met with developers and came up with the standards. He would not call it the ordinary or unreasonable there was a lot of thought that went into it. We have not had it challenged. If there was an actual legal challenge we would be able to defend it. This is a PRO Agreement and one of the things that the developer agreed to in the PRO Agreement was that our ordinances were reasonable.

Member Breen said there are currently nine homes under construction. Mr. Herkowitz said yes, nine with certificates of occupancy. They have another nine that are sold and are under construction or in planning phase. Member Breen wondered how many that are pending belong to them. Mr. Herkowitz replied that they build homes, but also sell finished lots. Have variety of builders that are building in the Dunhill Park Community. They think builder diversity is good for the neighborhood. They have companies such as Toll Brothers, AP Builders, etc., a variety of different builders. Member Breen asked if the homes in progress may not be theirs, they are under the other builders. He said they have lots that they are building which are Lot 25 and Lot 26, but there are other lots building built by other builders. Mr. Herkowitz felt that it would take approximately 12-18

months from 90% complete for dedication. He said sales have accelerated in the community within the last six to eight months. There is a lot of activity in the subdivision. He said they are proud of how it's coming together. Member Breen agreed with staff. You knew what you were getting into and understood ordinances. She felt that they had already got some significant breaks, with the woodlands and the Brownfield. Residents of Knightsbridge were left with a bad taste. Eventually these roads will be our responsibility. She said she would like to see some other type of proposal. She was not comfortable with this falling to residents. Mr. Herkowitz said with respect to Knightsbridge they were not the developer, but the builder. We are not disputing the ordinance. They are disputing the amount of money that is being held for the guarantee. Specifically the one they contest the most is the 100 percent holdback of road area. Very unlikely that 100 percent of topcoat would have to be taken off. It is possible that some leveling course might need to be repaired, yes. Even if that were the case, you would not need to take out 100 percent of the topcoat. They disagree with the way in which the numbers are calculated, not with the ordinance itself.

Member Mutch said they have a memo from Spalding DeDecker indicating amounts he felt were necessary for completion. He went and walked the site to determine what level of repairs. Mr. Boulard said prior to the completion agreement, and as part of the work he looks at the site and evaluates the condition as well as what is there. They went out again with Mr. Meadows and Mr. Staup from our engineering department a second time and that's where they decided they could back down on the curb aspect. Member Mutch commented that Mr. Meadows, from Spalding DeDecker has seen a number of these under development. We expect he is giving a reasonable estimate. Mr. Boulard agreed. He said from his standpoint the estimate may look high at the time, but doesn't look that high when push comes to shove when we actually close out the project how many years down the road. Member Mutch said this is the recommendation that they are expected to rely on; we are not construction experts here. He asked City Attorney Schultz if what they as a Council are being asked to consider that evening would be the completion agreement as presented to City Council with the amounts recommended by staff. Understanding the applicant wants us to make some changes to those numbers. What is in the packet is what staff has recommended. Mr. Schultz said yes, that was correct. They would be approving the completion agreement without any reduction or exception. Member Mutch said if they voted on this that evening and approved it tonight it would be the completion agreement presented with the amounts that staff recommended with no reduction. Mr. Schultz confirmed he was correct. Member Mutch said he was ready to go ahead with that that evening. He will support it as presented with those amounts. He would be very leery of getting into a situation of Council substituting their judgement for the appropriate amount in place of the folks they have asked to provide us with that. He didn't want to get into a practice of creating a potential problem down the road of setting up a situation that there isn't enough money set aside to do the improvements. When that happens, it is not City Council that is held to account for that, it is not the City to come up with the dollars, it will be the residents or they will get substandard conditions at the end of the process. He was not comfortable doing that. He has seen enough developments for whatever reason not go the way they should have and we

did not have enough money set aside to complete the improvements as necessary when the developer was not available or unwilling to do that.

City Manager Auger said he is trying to listen and get to a point where a decision can be made. He said building off of what Member Casey mentioned when she asked if there was a way to reduce 150 percent and maybe an option is that since the numbers are updated from 2016 to 2019 numbers and the wear course if in place, which a lot of times it wasn't the case. A number would be \$160,080 of 100% replacement in hopes that this moves forward. He said we are holding all other bond money as well. He is looking for a way to resolve this; staff has worked very hard with the developer to try to get to this point. The staff is just following the ordinance that is why the recommendation came forward like it did. Mayor Gatt said the 2019 numbers is the \$160,080 instead of the \$240,000 if that times 150 percent. If we made a motion with the 2019 number of \$160,080 we would be fulfilling the ordinance in total and providing some relief to the petitioner. Mr. Auger said yes, that would be a way if you were giving relief. He wasn't sure that would be satisfactory to the developer, but he is trying to come up with a way to resolve this. Mayor Gatt thought that was reasonable.

Member Verma understood that we could change the multiplier. Mr. Auger said yes, in this instance that would be a way to resolve. Member Verma said that would establish it for the next time. Member Verma didn't feel that we should change the multiplier.

Member Casey said she wanted to clarify her comments and said that she wasn't suggesting that we forego a multiplier at all on that \$160,080; she was open to conversation if staff felt comfortable at a certain number. She would expect a multiplier to account for future cost increases. She wanted to explore other options. Director Boulard explained that these multipliers are built into the ordinance. A completion agreement is between City Council and the developer saying our project has taken more than three-years, and City Council has to protect. The ordinance says City Council has the right to make changes at this point. It is up to City Council. He is asking if City Council is inclined to consider, or give some guidelines. If we add everything up certain things are subject to the multiplier, some are not. Maybe the solution is to not apply in this particular case based on this project and the specifics on this project, the sales, and the conditions of the road. He said that in this specific case, maybe it's appropriate to reduce that. It's still full replacement cost at current value. There are risks involved, but hopefully small.

Mayor Gatt reminded everyone that this ordinance was created in 2008 when developers were failing left and right and we were in recession. We have come a long way since then. Hunter Pasteur has done business in our City before. This Council is torn right now. We want to do something. He is waiting for someone to come up with the motion.

Member Mutch thought what was presented by staff was appropriate. To be consistent with all developers, sticking to the original amount is appropriate. He believed that they should rely on staff, and consultants to provide us that information. If we do this once, it

will come up again. He thought other developers with come forward. He said what was before them was the original completion agreement with the amounts that staff recommended. He said that was the direction he was comfortable going.

CM 19-08-153 Moved by Mutch, seconded by Poupard; MOTION CARRIED: 4-3

Consideration of Completion Agreement with Hunter Pasteur Homes Dunhill Park for JSP15-0013, the Dunhill Park Site Condominium development located west of Beck Road and north of Eight Mile Road and confirmation of the standard financial guarantee amounts, in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

**Roll call vote on CM 19-08-153 Yeas: Mutch, Poupard, Verma, Breen
 Nays: Casey, Gatt, Staudt**

2. Consideration of Approval to amend a unit price contract with B&B Landscaping Inc. for Snow Removal Services – City Streets & Municipal Sites from an estimated annual amount of \$256,980 to \$325,455.

CM 19-08-154 Moved by Casey, seconded by Breen; CARRIED UNANIMOUSLY

Approval to amend a unit price contract with B&B Landscaping Inc. for Snow Removal Services – City Streets & Municipal Sites from an estimated annual amount of \$256,980 to \$325,455.

**Roll call vote on CM 19-08-154 Yeas: Mutch, Poupard, Verma, Gatt, Staudt,
 Breen, Casey,
 Nays: None**

3. Consideration of Approval to award design engineering services to OHM Advisors associated with the Lee BeGole Drive Reconstruction project, in the amount of \$95,523.

CM 19-08-155 Moved by Verma, seconded by Casey; CARRIED UNANIMOUSLY

Approval to award design engineering services to OHM Advisors associated with the Lee BeGole Drive Reconstruction project, in the amount of \$95,523.

Member Mutch said he did have correspondence with the City Manager's office specifically in regards with what's been proposed. He mentioned when this was discussed previously at City Council one of their concerns was the scope of project. They were not looking to do the entire length for a connection to Crescent Boulevard What he wasn't expecting that this was going to be narrowed down to a two lane road

with curb and gutter on both sides. Realistically what they were looking for is the future buildout of this area west of the road. That is our hope that it happen. To have a developer come back in and add an entire new lane and replacing the curb with a significant amount of reconstruction of the roadway to add the third lane in would be expensive. He thought it makes more sense to construct it as a three lane road. He felt it made sense knowing that in the future there will be development. What has been proposed is the two lane cross section and Mr. Auger said there is possibility of the consultant to providing an alternative amount based on a three lane cross section. He didn't know if that fell within the scope of the proposal or how do we address that issue. City Manager Auger explained that he could add that consideration to the motion to the OHM package so we can move it forward and give an alternative. DPW Director Herczeg clarified the question and explained that the scope is for design and it is for the entire three lanes. The estimate was only two lanes based on what they heard, they scaled it back. They will bring back the full package when they go to the bid process to reflect three lanes. He said that they didn't need to add anything to the scope currently. Member Mutch asked if the design was for three lanes and they can provide pricing for three lanes. Mr. Herczeg replied yes, that was correct.

Roll call vote on CM 19-08-155

**Yeas: Poupard, Verma, Gatt, Staudt, Breen,
Casey, Mutch**

Nays: None

4. Consideration of Approval to award a unit price contract to Ellsworth Industries, Inc., for as-needed aggregate materials, in the estimated annual amount of \$153,402. The contract term is for two years with a one-year renewal option.

CM 19-08-156

Moved by Casey, seconded by Breen; CARRIED UNANIMOUSLY

Approval to award a unit price contract to Ellsworth Industries, Inc., for as-needed aggregate materials, in the estimated annual amount of \$153,402. The contract term is for two years with a one-year renewal option.

Roll call vote on CM 19-08-156

**Yeas: Verma, Gatt, Staudt, Breen, Casey,
Mutch, Poupard,**

Nays: None

5. Appointments to Boards and Commissions

City Clerk Hanson read the results of the ballots and the results were Member Verma was appointed to the term ending in 2022. There were no other applicants that received four votes as required to be appointed. She said that we can bring that back to the next meeting for another vote. Mayor Gatt explained that we do not have a consensus. He asked Council if they wanted to revote or move this to the next meeting. City Council agreed to postpone until the next meeting.

AUDIENCE COMMENT: None

COMMITTEE REPORTS: None

MAYOR AND COUNCIL ISSUES: None

CONSENT AGENDA REMOVALS FOR COUNCIL ACTION:

Member Breen removed Item C from the Consent Agenda. She stated that this refers to municipal credits that are available to Cities that currently do not opt into SMART and she believed it was awarded on a per capita basis. She was happy that we were expanding Senior Transportation services, but we haven't seen any action taken to explore transit options for the broader community. She understood that they have different opinions on Council. She said the bottom line is that they made it a short-term goal to establish a public transit system that will reduce traffic and smog and ensure Novi residents, employees, and visitors have a stable route to and from destinations. We have funds that are available to us through legislation at the state level and we are using it to enhance Senior Transit Services, but we are not using it to explore additional options right now through SMART. During the last several months we have discussed this in various places and she has received correspondence to and from the City Manager's office there have been references to the RTA and nobody is sure what will happen. We do not know if it will be on the ballot in 2020, what the specifics will be. It is her understanding that talks with SMART has been tabled at this time. She didn't think this was the appropriate thing to do to the residents. We made them a promise and a commitment to establish a transit system. It is not just limited to our Novi residents. She said that Mayor Gatt said himself that there has to be a better way to get the folks walking along 12 Mile from Haggerty to the 12 Oaks Mall to their job. There is no continuous sidewalk and in the winter it is hazardous. Whether or not we opt into SMART she believed it was up to the residents to decide with a vote. We promised them that choice. If they choose not to opt in that is how it is. She stated whether or not RTA ends up on the ballot that is outside our control. We can control whether we work with SMART. We can control whether we give the residents a choice. She believed as a Council and City staff needs to keep working towards that short-term goal completions. No matter whether or not the RTA proposal gets put on the ballot it was incumbent upon us to educate the residents on their options and that it is their right to vote on whatever ballot measure comes before them. She didn't want to vote this item down, but she wanted to ask the City Manager what happens next and how he plans on working towards the short-term goal of establishing a transit system.

Mayor Gatt said he did bring forward the SMART option a few years ago. In the last several months so many things have changed that he believed Councils first obligation is to protect the citizens of Novi and look out for their welfare and protect their investments. He said that L. Brooks Patterson has died. The new County Executive has come out in the paper and television and he was 100 percent in favor of the RTA. The RTA is going to be on the 2020 ballot and it will be a regional vote. The citizens of Novi can vote it down, and yet we still may be forced to pay 1.5 to 2 mills. That is almost \$6

million. It is his intention now to wait until, but he is just one person; if the others want to bring up SMART they can do so. We do not have any control over the RTA, but we would have control over SMART. The worst scenario would be that RTA would pass and we would be forced to pay 2 mills, and then SMART would pass and we would be forced to pay 1 mill and that means the citizens of Novi would be on the hook for \$9 million a year for a bus that would come down Grand River or 12 Mile Road or both. He was all for protecting the people who are walking on 12 Mile Road. He is more for protecting the 60,000 residents of Novi and the taxpayers of the City. He said because things have changes so dramatically at the County level and because the RTA will be fully embraced and fought like L. Brooks Patterson did, it is his opinion that the RTA will certainly be on the ballot in 2020. Then the voters will decide. Unfortunately the voters of Novi could say no, but the voters in Wayne County or the rest of Oakland County or whatever Counties that will be involved can override what they want. He wants to see transit, but he does not want to see both. He said to pay \$9 million a year is not even an option.

Mayor Pro Tem Staudt said he supported what the Mayor said. Frankly we have an election season coming up here. That was a goal setting done by a City Council that at that time set that as a short-term goal. He has been on Council for 12-years. He has had a lot of short-term goals that didn't get any traction for many reasons. It is great that some members feel strongly about opting into SMART. He didn't see any proposals during the past year to put that on the ballot. If they felt strongly about it they could be it on the ballot. This isn't the appropriate time for us to do; we will not get it on the ballot for November. We may or may not have a different Council in November and we may have different goals in January for goal setting. He said short-term goals are goals, not promises. The Council didn't promise anything, they set goals. He said he didn't support a full blown SMART implementation in Novi for many reasons. He objected to that kind of language being placed on the record. We have a goal, we don't have a promise.

Member Breen said she fully understood their points of view. What she is saying as far as putting SMART on the ballot, she knows it wouldn't be this year. She said they need information relayed to them as far as options, proposals are. The voters need to understand what the possible total amount will be if they were to vote on the RTA and/or SMART. They cannot make that educated decision without that information. What she is looking for is some information from the City Manager's office and City staff as to what the options are so that we can make sure we are telling the residents these are the options, it could get very expensive or the RTA could fail. She would like to see us make some forward progress. Just because in the past Council set short-term goals and they have fallen to the wayside it doesn't mean that it should be a continuing pattern. We should stick with what we discussed at the budget sessions and what we set at goal setting sessions and try to move forward.

Member Mutch said he understood some of the concerns expressed by the Councilmembers. He expressed that at the same time, the question of how we allocate these funds and how we spend these funds will tie back into the question of

what are the short-term goals that Council approved, along with the long-term vision of the City in terms of providing transit support. He said our goal that we adopted which was to establish a public transit system that would reduce traffic and smog and ensure residents, employees and visitors would have stable routes to and from destinations is a good one. It is something we should be working towards as a community. The older adult transportation component is a component of that, but it is not the end all be all. We wouldn't be doing what we are doing today if we thought that was sufficient. It is important, but this goal spells out a broader image. Member Breen has a legitimate question which is where are we in the process to accomplish this goal that we as a Council have adopted. How are we going to make that happen? SMART millage is one option, RTA is another option. We as a City need to have a vision on getting there and that requires City Administration to step up and put together a framework for Council to consider and ask what the ways to make this happen are. This money is a piece of it. This money is from the State of Michigan to provide transportation services through SMART, we also have to provide our money and rider fares. We need to grow that pot and grow that service. He was ready to support and approve this item because it is an important piece and it is also a valuable discussion. He asked City Administration to keep this process moving forward.

Member Casey said she said City Administration has heard from Council seeking an update on the status of that goal. She believed that was the intent of the discussion.

City Manager Auger said this credit does not have anything to do with the Council goal. This credit is for senior transportation services. That \$54,454 is dedicated towards that. He said Member Mutch was right, there will be City funds involved in that. We are currently in conversation with a developer with a PRO agreement that would donate two buses that would be a public value, which is a significant start moving forward. He said they brought forward to City Council a full-time scheduler position for our transit system to start working on to start working on our computer models and things of that nature. The local circulator as it was called at the time when we were talking about the goal is talking to the hub areas that may help facilitate this or be a destination to the place. A lot of people think that if you own a business you would be happy to bet a bus to drop people off in front of your business. That is not necessarily true. In our conversations that are continuing we are making progress in that regard, but we have to have all the components moving together, and yes, the timing of the SMART millage or RTA millage would also play into that because we are talking about a significant amount of money that we probably wouldn't pay if we were going to do our local transit of \$6 million a year. That is significant for moving a lot of people around. When they come out with their plan it was his understanding from the last RTA they are going back to the state legislature to actually try to change the law on who gets taxed and who gets to vote. That is out of our hands, but the conversations are continuing. We are hoping that the developer comes through and does offer that because we don't know until they go before Council on what they will offer and that would be a good start to that program. Member Casey thanked him for the update.

CM 19-08-157

Moved by Casey, seconded by Poupard; CARRIED UNANIMOUSLY

Roll call vote on CM 19-08-157

**Yeas: Gatt, Staudt, Breen, Casey , Mutch,
Poupard, Verma,
Nays: None**

Mayor Gatt said they were entering Executive Session and that they did not expect to return to Open Session.

ADJOURNMENT – There being no further business to come before Council, the meeting was adjourned at 9:07 P.M.

Cortney Hanson, City Clerk

Robert J. Gatt, Mayor

Transcribed by Deborah S. Aubry

Date approved: September 9, 2019