



CITY of NOVI CITY COUNCIL

**Agenda Item 3
February 26, 2018**

SUBJECT: Approval of form of Water Service Agreement with Commerce Township and Production Tool Supply Company, L.L.C., d/b/a Berkshire eSupply, and Watermain Extension Agreement, Including Design and Construction Standards (DCS) waiver, relating to a proposed development located south of Fourteen Mile between the M-5 Freeway and Haggerty Road, and authorization of Mayor and City Clerk to sign.

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: JA

BACKGROUND INFORMATION:

The Berkshire eSupply development involves an approximately 57.12-acre parcel of property located on the southeast corner of M-5 and Fourteen Mile Road. The applicant is proposing a two-story headquarters office building of approximately 11,410 sq. ft., and a single-story warehouse with mezzanine of approximately 169,640 sq. ft., along with associated site improvements, such as parking, loading, and landscaping. The use is a permitted use, so the site plan review will be conducted at the Planning Commission. Wetlands, woodlands, and stormwater management plans will also be reviewed by the Planning Commission.

City Council's role in the process for this development is necessitated by two things. The first is the applicant's need to connect temporarily to the Commerce Township water supply system, because City of Novi water is not yet available to the property. In addition, the applicant seeks a waiver from the City ordinance requirement that it bring water to and through its property as part of the site plan and development process. The City administration and Department of Public Services have reviewed the request for the temporary connection to the Commerce Township water supply system, and have no objections or concerns. The attached Water Service Agreement between Commerce Township and the applicant makes clear that if and when Novi water becomes available to the property, either Novi or Commerce can require the applicant to connect to the Novi water system, and disconnect from the Commerce Township system.

In addition to authorizing the connection to the Commerce Township water supply system, City Council is also required to address the fact that the applicant is not extending public watermain improvements to and through its property in connection with its proposed development. The reasons for that are practical and logistical. There is not currently an easement for a watermain extension across the property to the south; in addition, the topography of the applicant's property and the property to the south make the extension potentially difficult and expensive. Moreover, the City, as part of its master utility plan, would like the watermain, when eventually extended to and through the applicant's property to be a larger 24-inch watermain (as opposed to the 12-inch watermain that a property owner would normally be required to construct). At this time, the City is not proposing to, nor is it prepared to, construct the 24-inch watermain.

The City administration and the applicant have discussed an alternative to the immediately extension of Novi City water to and through the applicant's parcel. The attached Agreement for Watermain Extension addresses the issue by breaking the watermain extension into three segments:

Segment A: Extending from the southern property line of the Property to the southern edge of the parking lot to be constructed by Developer with this current site plan. This segment of the watermain extension would be located within the existing easement across the Property. This 24-inch watermain would be built by the City at its cost, sometime **in the future**, as and when determined by the City.

Segment B: Extending underneath the parking lot to the north to the northern edge of the Property where it touches the Great Lakes Water Authority/City of Detroit water storage facility property, Parcel No. 22-01-200-034. This segment of the watermain extension would be located partially within the existing easement across the Property, and partially within a new easement. This segment would be built as a 24-inch watermain **now**, by Developer, at its sole cost.

Segment C: Extending outside the western edge of the Great Lakes Water Authority/City of Detroit water storage facility property to Fourteen Mile Road to Commerce. This would be the connection to Commerce. It would be a 12-inch main, built by Developer **now** at its sole cost, and would remain in place as a possible redundant connection to the Township system.

Because the applicant is being required to pay a significant connection fee to Commerce Township for the right to connect to its water system, the proposed Agreement contemplates that the applicant would not—even when required in the future to connect to the City's water supply system—pay a connection fee to the City. This is also in consideration for the applicant's construction, at its cost, of the Segment C portion of the watermain, which will remain in place for potential use by the City in the future, even if the applicant is required to disconnect from the Commerce Township system. The applicant is also essentially funding the "upsizing" of Segment B under its parking lot from a 12-inch main to the City's desired 24-inch main. (Note also that the applicant has indicated a willingness to consider a potential conservation easement across at least a portion of its property as part of the final development approval process.)

On the basis of the foregoing, and in light of the overall beneficial development of the property by the applicant as proposed, City administration has determined to bring these two proposed agreements forward for Council's consideration. The Watermain Extension Agreement would include the DCS waiver related to the requirement for extending the watermain across the applicant's site.

RECOMMENDED ACTION: Approval of form of Water Service Agreement with Commerce Township and Production Tool Supply Company, L.L.C., d/b/a Berkshire eSupply, and Watermain Extension Agreement, including Design and Construction Standards (DCS) waiver, relating to a proposed development located south of Fourteen Mile between the M-5 Freeway and Haggerty Road, and authorization of Mayor and City Clerk to sign, subject to final minor amendments to the agreements and exhibits as approved by the City Manager and City Attorney's office.

Council Draft 2.22.18

WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT made this ____ day of _____, 2018, by and among the CITY OF NOVI whose address is 45175 Ten Mile, Novi, MI, 48375, hereinafter referred to as "Novi"; the CHARTER TOWNSHIP OF COMMERCE, whose address is 2009 Township Drive, Commerce, MI 48390, hereinafter referred to as "Commerce"; and PRODUCTION TOOL SUPPLY COMPANY, LLC, d/b/a Berkshire eSupply, whose address is 8655 E. Eight Mile Rd., Warren, MI 48089, hereinafter referred to as "Customer."

WHEREAS, the property of Customer is located within the boundaries of the City of Novi, Oakland County, Michigan, as per the legal description attached as **Exhibit A** ("Property");

WHEREAS, water service to the Property is not yet available from Novi;

WHEREAS, Commerce owns and operates a public water supply system ("Commerce Water System") capable of serving Customer's Property.

WHEREAS, as part of a property development project in Novi on the Property, Customer intends to construct, install, and convey and dedicate to Novi certain publicly-owned water service infrastructure consisting of, but not limited to, pipes, hydrants, pumps, valves, back flow preventers, meters, and other equipment (collectively "Novi Site Piping") necessary to convey water from a Commerce water main to the structures and improvements on the Property;

WHEREAS, the parties desire to connect Novi Site Piping to the Commerce Water System subject to those terms and conditions set forth in this Agreement;

WHEREAS, Commerce has agreed to enter into this Agreement with Novi and Customer to supply water to said Property of Customer until such time as Novi makes a public water supply available to said Property, or as otherwise provided herein; and

WHEREAS, Commerce is willing to permit the Property to be connected to the Commerce Water System provided Novi and Customer agree to abide by the terms and conditions set forth in this Agreement.

NOW, THEREFORE, based upon the foregoing recitals and in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. **Permission to Connect.** Commerce agrees to permit Customer to connect Novi Site Piping described on **Exhibit B** to the Commerce Water System, subject to those terms and conditions set forth in this Agreement and in compliance with those ordinances, regulations, and policies of Commerce, as amended or changed from time to time.

2. **Permits and Inspections.** Customer shall apply to Commerce and Novi for permits necessary under Commerce and Novi ordinances to construct the piping improvements and tap into the Commerce Water System in the area and under the specifications described in the attached **Exhibit B**, including plumbing permits and land improvement permits. Commerce and Novi shall issue necessary permit(s) to Customer upon receipt of all documentation and permit fees, tap fees, and meter fees required in accordance with applicable ordinances and resolutions, as amended from time to time. Customer shall be responsible for and bear all costs and expenses incurred by all the parties in the administration of this permit procedure, and any other costs or expenses incurred by the parties completing the improvements and in connecting Customer to the Commerce Water System. Commerce and the Oakland County Water Resources

Commissioner ("WRC") will inspect all improvements at the 14 Mile connection point to the Commerce water supply system including all testing. Novi will inspect all improvements in Novi south of the 14 Mile connection point, including improvements under 14 Mile (which shall be made by bore, not open cut). Commerce may, at its request, also inspect the improvements south of the 14 Mile connection point.

3. **Plans.** Plans and specifications for installation of the Novi Site Piping shall be submitted to Commerce and Novi for approval prior to installation of such infrastructure within Novi. All costs and expenses related to review of the plans and specifications by Novi, Commerce, the WRC or by the Great Lakes Water Authority ("GLWA") shall be paid by Customer.

4. **Operations.** Customer shall utilize and operate its connection in a manner consistent with all requirements imposed upon Commerce by its July 2015 contract with the GLWA and any other additions, amendments, revisions, or deletions thereto that may be agreed upon between Commerce and the GLWA.

5. **Responsibility for Novi Site Piping.** Upon inspection and approval of the improvements by Commerce and Novi as required herein, Customer shall take all actions necessary to convey and dedicate the Novi Site Piping to Novi as part of and in compliance with Novi's development approval requirements. Thereafter, Novi shall be fully responsible for the costs of maintenance, repair, and necessary replacement of the Novi Site Piping located on the Property. The Novi Site Piping shall be at all times maintained in compliance with the ordinances, regulations, and policies of both Commerce and Novi as applicable within each municipality. Domestic water service supply lines and fire suppression lines that are connected to the Novi Site Piping or directly to the Commerce Water System and that serve structures or improvements on the Property are not subject to the terms of this Agreement and shall remain the responsibility of the Customer.

6. **Access.** Customer shall permit Commerce and Novi, and their employees and agents, to enter upon the Property for purposes of inspection of the Novi Site Piping in accordance with this Agreement. If the Property is gated, access to the Property shall be available to Commerce and Novi through Knox Box or by similar means (including provision of access codes).

7. **Disconnection for Non-Compliance with Agreement and Public Safety.** Commerce shall have the right to disconnect the Novi Site Piping located on the Property from the Commerce Water System in the event that the Novi Site Piping is not maintained in accordance with the terms and conditions of this Agreement and according to the ordinances, regulations, and policies of Commerce as they now exist and as they may be amended from time to time or in the event that circumstances arise such that it imposes a public health or safety threat to the Commerce Water System and its users; provided that before taking such action, Commerce shall give Novi sixty (60) days' notice and reasonable opportunity to cure the alleged defects or violations identified by Commerce. No notice is required in the case of an emergency. Emergency includes, but is not limited to, urgent public health or safety threats to the Commerce Water System and its users.

8. **Changes to Novi Site Piping.** Customer shall not, without the prior permission of Commerce, alter or change the Novi Site Piping located on the Property; provided, however, that prior permission of Commerce shall not be required in connection with maintenance and repair activities conducted by Novi unless such activities directly involve the point of connection to the Commerce Water System.

9. **As-Built Drawings.** Novi shall provide Commerce (and Novi) with As-Built drawings of Novi Site Piping within 90 days of final construction of the Novi Site Piping in accordance with Novi's site development procedures.

10. **Term of Agreement.** This Agreement shall remain in effect so long as the Property is served by the Commerce Water System, subject to the terms and conditions of this Agreement.

11. **Billing and Payment.** WRC, on behalf of Commerce, shall bill Customer directly for water services furnished to the Property described on Exhibit "A" at the rate fixed for like quantities of water and water service furnished to other consumers of the Commerce Water System located outside of the boundaries of Commerce, said rate being subject to change by Commerce at any time. Charges for water service furnished by the Commerce Water System shall be billed and collected in accord with Commerce ordinances as amended from time to time. In the event that Customer is delinquent with respect to payment for water service, Commerce shall have the right to shut off and discontinue the supply of water service to the subject Property for nonpayment of water rates when due in accordance with the procedure set forth within Commerce's ordinance and/or state law. Water services so discontinued shall not be restored until all sums then due and owing are paid plus a turn on charge as set forth in the Commerce Fee Ordinance. Novi shall assist Commerce and/or its agent in collecting delinquent water services charges to the extent permitted by state law and local ordinance.

12. **Disconnection on Novi's Request if Novi Water Becomes Available.** In the event that a water extension is constructed within Novi in the future to serve the Property, Novi may decide to disconnect Customer from the Commerce Water System and connect Customer to the Novi water extension. In such event, Customer shall pay all fees, charges, and assessments related to connecting to the Novi water extension as Novi requires. Novi shall notify Commerce in writing sixty (60) days in advance of the disconnection. Customer shall be responsible for the cost of disconnecting from the Commerce Water System and any necessary restoration of the Commerce Water System resulting from the disconnection. Notwithstanding the foregoing, Novi

and Commerce may enter into a future written agreement to maintain a connection to the Commerce System through the Novi Site Piping (but not the connection to Customer's building) as a system redundancy, with the connection remaining closed unless and until needed by Novi or Commerce. Once the connection is closed, approval by both Novi and Commerce shall be required to reopen it.

13. **Disconnect on Commerce's Request.** If Novi water becomes available, Commerce reserves the right to require Customer to disconnect from the Commerce Water System if and when Novi makes water extension available to Customer's facility. In the event that Commerce does require such disconnection from its system, Customer shall have one hundred and twenty (120) days from the date of notification (weather permitting) to make alternate arrangements for water service. In that event, Commerce shall not be required to reimburse or repay either Novi or Customer for costs incurred by Novi or Customer as a result of connection to Novi or disconnections from the Commerce Water System. Customer is responsible for and shall pay for the costs of disconnection and any necessary restoration of the Commerce Water System resulting from disconnection from Commerce. Notwithstanding the foregoing, Novi and Commerce may enter into a future written agreement to maintain a connection to the Commerce System through the Novi Site Piping (but not the connection to Customer's building) as a system redundancy, with the connection remaining closed unless and until needed by Novi or Commerce. Once the connection is closed, approval by both Novi and Commerce shall be required to reopen it.

14. **Indemnification.** At all times until the connection to the Commerce Water System is disconnected and a connection is made to the Novi water extension, Customer shall and hereby agrees to release, hold harmless and indemnify Commerce and all of its officials (elected and appointed), officers, directors, employees, consultants, agents, volunteers, boards,

and commissions from and against any and all claims, actions, suits, liability and responsibility related in any way whatsoever to this Agreement and/or the temporary water connection described and permitted herein.

15. **Cancellation on Court Order.** This Agreement will be subject to cancellation in the event a court of competent jurisdiction restricts or limits, directly or indirectly, any of the rights of Commerce to obtain, sell, contract for or distribute water service. Commerce shall give notice to Customer and Novi within a reasonable time after receiving notice of commencement of any court proceedings affecting the right of the Customer to receive water services under this Agreement.

16. **Service Disruption.** Commerce and Novi shall not be responsible for damages for any interruption or failure to supply water service and shall be held harmless by Customer, from all damages of any kind, nature and description, that may arise as a result of making this Agreement and furnishing water service as provided herein. In addition, at all times until the Customer is no longer connected to the Commerce Water System and/or using Commerce's water, Customer shall and hereby agrees to release, hold harmless and indemnify Commerce and Novi and all of their officials (elected and appointed), officers, directors, employees, consultants, agents, volunteers, councils, boards, and commissions from and against any and all claims, actions, lawsuits, liability, damages, and responsibility of any kind or nature related in any way whatsoever to this Agreement and/or the Customer's connection to and use of the Commerce Water System.

17. **Liability.** Notwithstanding anything set forth in this Agreement, each party shall be responsible for the claims made against that party and for the acts of its employees or agents. Neither Commerce nor Novi shall have any rights under any legal principle to be indemnified by each other for any act of each one's employees or agents in connection with any claim. Further,

this Agreement does not and is not intended to impair, divest, delegate or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Commerce or Novi.

18. **Governing Law & Severability.** This Agreement is to be construed in accordance with the laws of the State of Michigan. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Michigan or the United States, the validity of the remaining portion or provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

19. **Breach.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

20. **Successors and Assigns.** This Agreement shall be binding upon the parties hereto, their successors and assigns, and transferees, and the obligations contained herein shall be binding upon and run with the land described herein and shall be assigned by the Customer to the subsequent purchaser of the land.

21. **Recording.** This Agreement shall be recorded with the Oakland County Register of Deeds.

22. **No Claim of Interest.** Commerce agrees not to attempt to make any claim of interest in or legal entitlement to the Property to which it is providing water services. The Parties acknowledge and understand that this is an agreement to provide water service, only, and not an agreement to transfer property, and is specifically not to be construed as an agreement under Public Act 425 of 1984.

23. **Entire Agreement, Third Party Beneficiaries, and Amendments.** This Agreement constitutes full agreement of the parties. The parties hereto have entered into this Agreement with no intention of conferring any benefit upon or creating any obligation to any party other than the signatories hereto, their successors and assigns. Any amendments to this Agreement shall be in writing executed by all of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in triplicate on the date and year recited above.

{Signatures Begin on the Following Page}

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Dawn Spaulding, Acting City Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this _____ day of _____, before me, a Notary Public, personally appeared Robert Gatt and Dawn Spaulding, who, being duly sworn, did say that they are the Mayor and Clerk of the City of Novi and that they executed this Agreement in their capacity as Mayor and Acting Clerk for the City of Novi.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

CHARTER TOWNSHIP OF COMMERCE

By: _____
David Scott, Supervisor

By: _____
Melissa Creech, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this ____ day of _____, before me, a Notary Public, personally appeared _____, who, being duly sworn, did say that they are the Township Supervisor and Clerk of the Commerce Township and that they executed this Agreement in their capacity as and Clerk for the Commerce Township.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

CUSTOMER

By: _____

By: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this _____ day of July, 2017, before me, a Notary Public, personally appeared, _____, who, being duly sworn, did say that they executed this Agreement.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

Drafted by: :
Elizabeth K. Saarela, Esquire
JOHNSON ROSATI SCHULTZ & JOPPICH, P.C.
27555 Executive Drive, Suite 250
Commerce, Michigan 48331

When recorded return to:

Cortney Hanson, Clerk
City of Commerce
45175 Ten Mile
Novi, Michigan 48375

EXHIBIT A

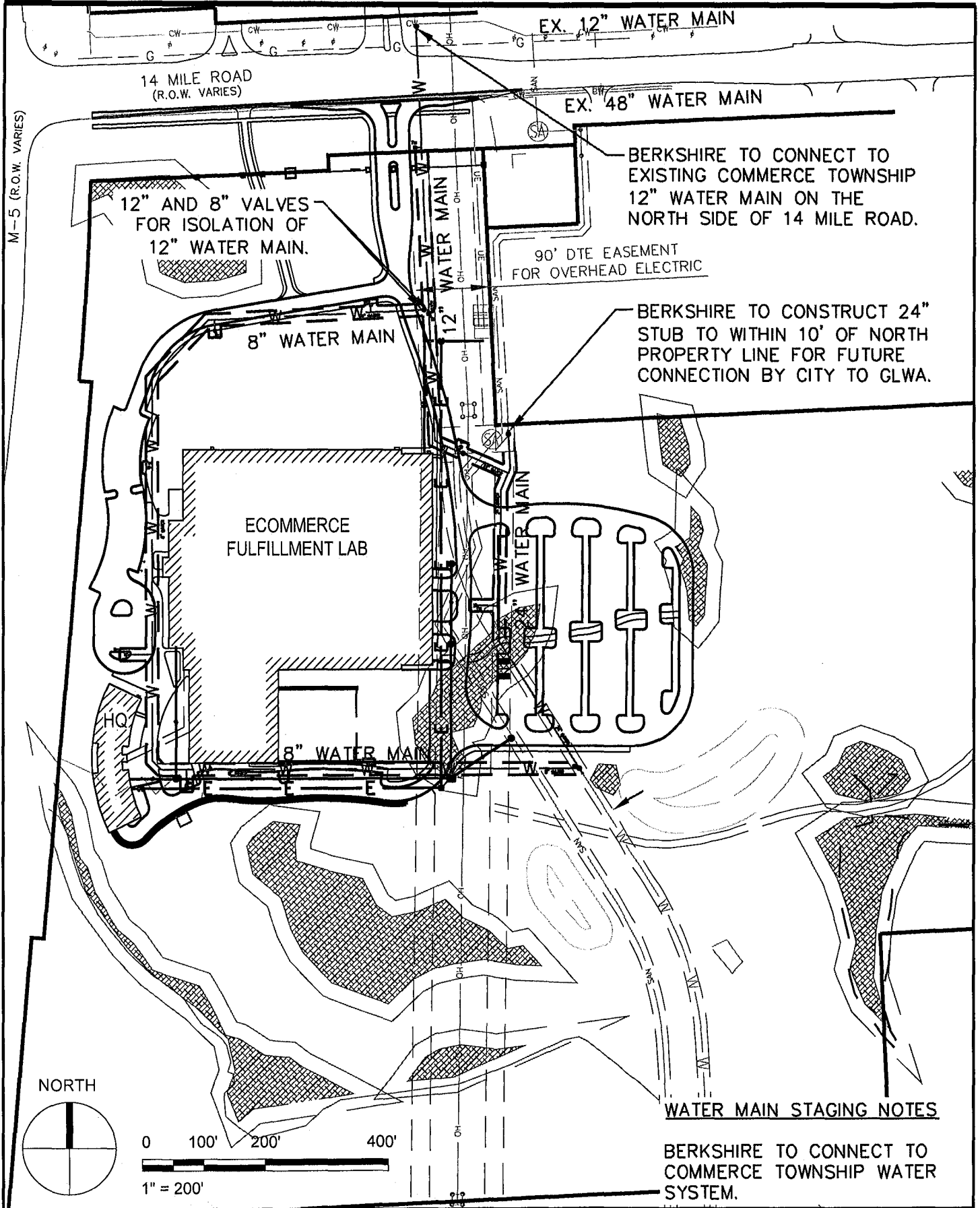
LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 1, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 1; THENCE NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 1550.97 FEET; THENCE SOUTH 02 DEGREES 46 MINUTES 30 SECONDS EAST 115.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 14 MILE ROAD AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 02 DEGREES 46 MINUTES 30 SECONDS EAST 446.09 FEET; THENCE NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST 1242.66 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 1; THENCE SOUTH 02 DEGREES 30 MINUTES 15 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 748.77 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 30 SECONDS WEST 250.00 FEET; THENCE SOUTH 02 DEGREES 30 MINUTES 15 SECONDS EAST 100.00 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 30 SECONDS WEST 400.00 FEET; THENCE SOUTH 02 DEGREES 30 MINUTES 15 SECONDS EAST 400.00 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 30 SECONDS WEST 1439.30 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MICHIGAN HIGHWAY 5 (RIGHT-OF-WAY VARIES); THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF MICHIGAN HIGHWAY 5 THE FOLLOWING SIX (6) COURSES: 1) NORTH 04 DEGREES 53 MINUTES 41 SECONDS EAST 461.90 FEET; 2) SOUTH 85 DEGREES 06 MINUTES 19 SECONDS EAST 20.00 FEET; 3) NORTH 04 DEGREES 53 MINUTES 41 SECONDS EAST 900.00 FEET; 4) NORTH 85 DEGREES 06 MINUTES 19 SECONDS WEST 20.00 FEET; 5) NORTH 04 DEGREES 53 MINUTES 41 SECONDS EAST 49.91 FEET; 6) ALONG A CURVE TO THE LEFT 271.40 FEET, A RADIUS OF 3958.72 FEET, A DELTA OF 03 DEGREES 55 MINUTES 41 SECONDS AND A CHORD BEARING AND DISTANCE OF NORTH 02 DEGREES 55 MINUTES 51 SECONDS EAST 271.35 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 14 MILE ROAD; THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF 14 MILE ROAD THE FOLLOWING THREE (3) COURSES: 1) NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST 385.72 FEET; 2) NORTH 02 DEGREES 35 MINUTES 30 SECONDS WEST 25.00 FEET; 3) NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST 251.34 FEET TO THE POINT OF BEGINNING. CONTAINS 57.12 ACRES. SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE EASTERLY 33 FEET FOR HAGGERTY ROAD. ALSO SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

Property Tax ID # _____

EXHIBIT B
WATER MAIN SERVICE PLAN
 BERKSHIRE e-SUPPLY HQ & FULFILLMENT CENTER, NOVI, MI



Council Draft 2.22.18

**STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI**

**AGREEMENT REGARDING EXTENSION OF WATERMAIN/DESIGN AND
CONSTRUCTION WAIVERS**

AN AGREEMENT by and between the CITY OF NOVI, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, MI 48375 ("City"), and PRODUCTION TOOLS SUPPLY COMPANY, L.L.C., d/b/a Berkshire eSupply, whose address is 8655 E. Eight Mile Road, Warren, MI 48089 ("Developer").

RECITALS

WHEREAS, Developer is proposing to improve an approximately 57.12-acre parcel of property located at the southeast corner of the M-5 Freeway and West Fourteen Mile Road (Parcel Nos. 22-01-200-027 and 22-01-200-018) (the "Property," as depicted and described on **Exhibit A**), with a two-story headquarters office building of 11,410 square feet and a single-story fulfillment center and warehouse with mezzanines of approximately 169,640 square feet, with associated site improvements, such as parking, loading, and landscaping (the "Improvements"); and

WHEREAS, as part of the Property improvements, municipal water is required to be brought to and through the Property through the extension of water mains; and

WHEREAS, more specifically, under the City of Novi Code of Ordinances, Section 11-68, Developer would be obligated to bring water to and through the Property by constructing a 12-inch watermain from its current location to the south of the Property through to the north to the Fourteen Mile property line, at Developer's expense, or alternatively, to deposit the cost of such extension with the City for future City use; and

WHEREAS, the City several years ago acquired easements for construction of both sanitary sewer and water across the Property; and

WHEREAS, at the same time the City also acquired a sanitary sewer easement, only, across the neighboring property to the south (i.e., did not acquire a watermain easement); and

WHEREAS, the City subsequently constructed or caused to be constructed a public sanitary sewer force main across the Property and the neighboring property to the south, which sanitary sewer main is currently in use; and

WHEREAS, the City did not extend a public watermain across either the Property or the neighboring property to the south; and

WHEREAS, the absence of a watermain easement across the neighboring property to the south makes it impossible for the Developer to extend a 12-inch water line through the adjacent property to and across its own Property, as required by ordinance; and

WHEREAS, regardless of the Developer's current ability to extend a 12-inch water line to and through its Property, the City desires the public watermain extension across such properties to be a 24-inch watermain to allow the main to be a part of the City's broader distribution system; and

WHEREAS, Developer would have no obligation to pay for the cost of "upsizing" the watermain from a 12-inch main to a 24-inch main, such additional cost being the obligation of the City to pay for; and

WHEREAS, because the City in any event does not currently have an easement across adjacent property to the south and therefore cannot, at this time, construct either a 12-inch watermain or a 24-inch watermain; and

WHEREAS, to facilitate Developer building the Improvements described above before the watermain can be extended to the Property from the south, the City has agreed to allow the Property to connect temporarily to the Commerce Township water system to the north across Fourteen Mile, subject to the terms and conditions of a written agreement to that effect to be separately entered into between the City, Developer, and Commerce Township; and

WHEREAS, the City and Developer have separately agreed upon what the parties believe to be a fair and equitable cost-sharing approach to construction of the watermain on the Property by reference to the following segments, as depicted in the attached **Exhibit B**:

Segment A: Extending from the southern property line of the Property to the southern edge of the parking lot to be constructed by Developer pursuant to Site Plan SP 17-72, dated January 22, 2018, as submitted to the City and Novi Planning Commission for approval. This segment of the watermain extension shall be located within the existing easement to the City across the Property, and shall be constructed as and when determined by the City in its sole discretion;

Segment B: Extending underneath the parking lot to the north to the northern edge of the Property where it touches the Great Lakes Water Authority/City of Detroit water storage facility property, Parcel No. 22-01-200-034. This segment of the watermain extension shall be located partially within the existing easement across the Property and partially within proposed easement to City;

Segment C: Extending outside the western edge of the Great Lakes Water Authority/City of Detroit water storage facility property to Fourteen Mile Road in a new easement to City to be provided;

and to describe the various rights and responsibilities with regard payment for each.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing, the parties agree as follows:

1. The parties agree that the watermain will be constructed in segments over time and that the parties shall be responsible for such construction in accordance with the following:

- a. Segment A shall be the responsibility of the City to construct or cause to be constructed at such time as the watermain across the adjacent property to the south is constructed. The City shall be responsible for the cost of construction of Segment A of the watermain extension. The watermain in Segment A will be a 24-inch watermain constructed so as to comply with at least the minimum City standards for a 24-inch watermain. The City shall have the sole discretion to determine if and when watermain will be extended to the property and to determine if and when this Segment of watermain is built.
- b. Developer shall construct or cause to be constructed the watermain in Segment B, and which will be constructed at the time of the improvements on the site pursuant to Site Plan 17-72 are constructed. This segment of the watermain is located under proposed parking lot improvements, and Developer is being required to build the watermain now so as to avoid disturbance of the parking lot and related improvements in the future when the portions of the watermain to the south are constructed. This segment shall be stubbed to the general location of the City's planned meter vault. This segment of the watermain shall be constructed to at least the minimum standards required by the City for a 24-inch watermain. Developer shall be responsible for all costs in connection with the construction of this segment.
- c. Developer shall be responsible for constructing or causing to be constructed the improvements for Segment C. Segment C shall be built to at least the minimum City standards required by the City for a 12-inch watermain. Developer shall be responsible for the cost of all such improvements. Developer agrees to execute any and all documents required to confirm that the watermain extension in this Segment C is within an easement in favor of the City.

2. Developer shall pay any and all connection fees, tap fees, water availability fees, or the like, to be charged by Commerce Township for connection to the Commerce Township water supply system.

3. In consideration of the costs of upsizing the size of the pipe in Segment B across the Property, and the installation of a connection to the Commerce Township water system, which provides a beneficial water service redundancy within the City of Novi, if and when the connection to Commerce Township is removed, and Developer or its successor connects to the City of Novi water system, as well as Developer's consideration to grant a conservation easement or similar dedication with respect to a portion of the property at the time of site plan approval, no water connection fee, tap fee, or water availability fee shall be charged by the City for connection of the Property.

4. Upon completion of the watermain improvements in Segments B and C, and upon Novi acceptance by the City, Developer will execute all paperwork required to confirm that the

City is the owner of the improvements and is responsible for their maintenance and repair (i.e., a bill of sale).

5. The parties acknowledge that the foregoing arrangement constitutes a deviation from the requirement that the Developer extend the watermain to and through its Property, pursuant to City Code of Ordinance Section 11-68. The City's approval of this Agreement shall, therefore, also constitute the grant of a design and construction waiver pursuant to Section 11-10 of the ordinance, recognizing that this alternative arrangement described above, under all circumstances, avoids a situation that would result in a practical difficulty to the Developer, since water is not currently available to the Property, nor is there an easement across the adjacent property to the south in order to allow extension of water on a timely basis; because the increase in pipe size constitutes a benefit to the City; and because the connection across Fourteen Mile constitutes a water service supply redundancy that is beneficial to the City.

6. This Agreement does not address or relate to the watermain extension(s) to the remainder of the development as shown on the site plan (e.g., around the building).

7. This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

8. The covenants and conditions contained in this Agreement shall apply to and bind the successor's legal representatives, assigns of the parties to this Agreement, and successors-in-interest to the Property, and all covenants are to be construed as conditions of this Agreement.

9. This Agreement is not intended to confer any benefit on any person or entity that is not a Party to this Agreement.

10. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be considered a separate, distinct and independent portion of this Agreement, and the remaining portions of this Agreement shall remain in full force and effect.

11. This Agreement may be amended at any time, in writing, by mutual consent of the Parties. No amendment to this Agreement shall be effective and binding upon the Parties unless it expressly makes reference to this Agreement, is in writing, and is signed and acknowledged by duly authorized representatives of both Parties.

12. It is declared that the actions of the City under this Agreement are a governmental function. It is the intention of the Parties hereto that this Agreement shall not, in any manner, be construed to waive the defense of governmental immunity, which the City possessed prior to the execution of this Agreement.

CITY OF NOVI

By: Robert J. Gatt
Its: Mayor

By: Dawn Spaulding
Its: Acting City Clerk

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2018, by Robert J. Gatt, Mayor, and Dawn Spaulding, Acting City Clerk, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
_____ County, MI
Acting in Oakland County
My Commission Expires: _____

PRODUCTION TOOLS SUPPLY COMPANY, L.L.C.,
a Michigan limited liability company
d/b/a Berkshire eSupply

By:
Its:

The foregoing instrument as acknowledged before me in Oakland County, Michigan, on this ____ day of _____, 2018, by _____, the _____ of Production Tools Supply Company, L.L.C., a Michigan limited liability company, on behalf of the company.

Notary Public
_____ County, MI
Acting in Oakland County
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

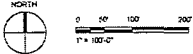
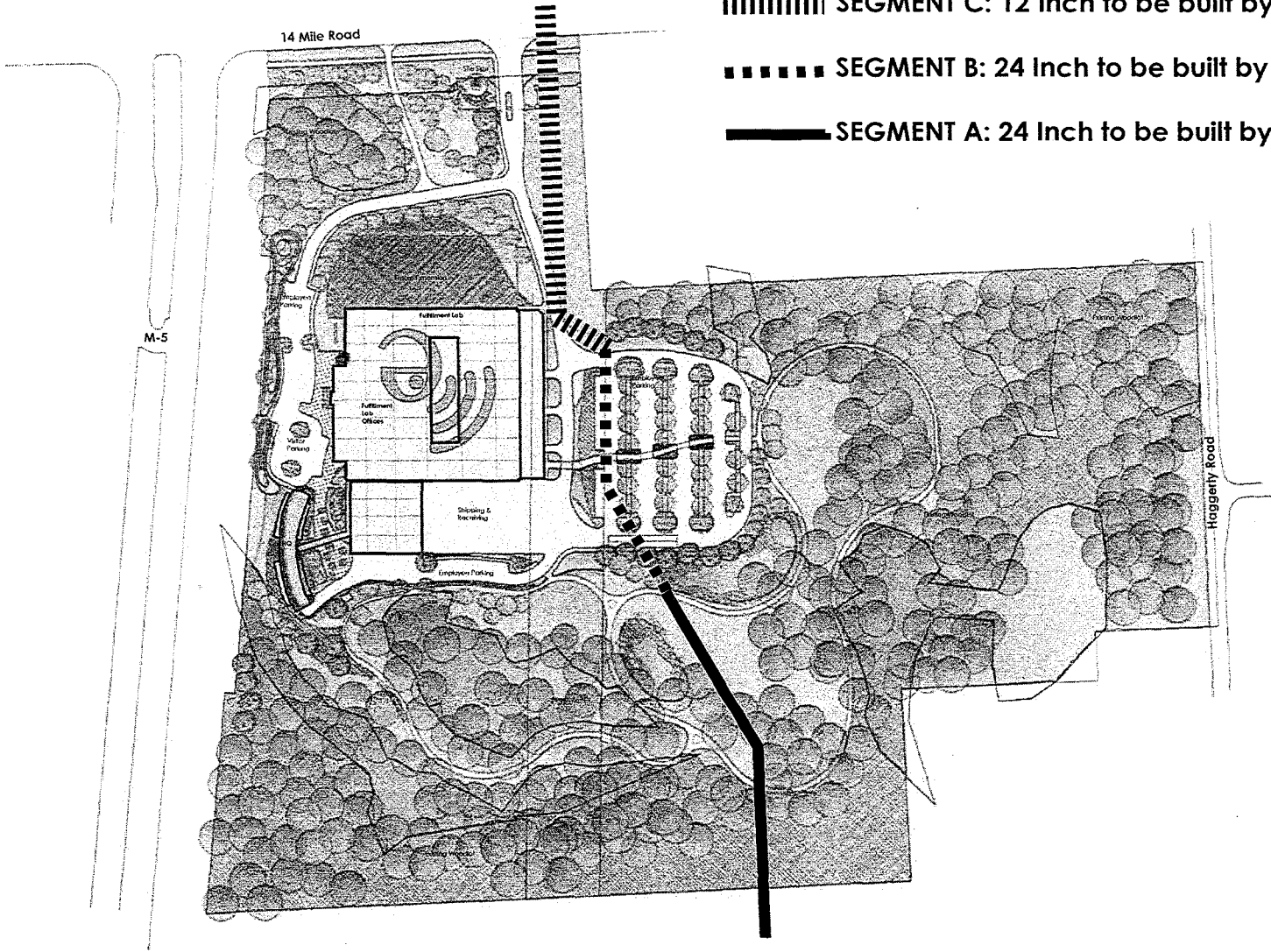
A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 1, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 1; THENCE NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 1550.97 FEET; THENCE SOUTH 02 DEGREES 46 MINUTES 30 SECONDS EAST 115.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 14 MILE ROAD AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 02 DEGREES 46 MINUTES 30 SECONDS EAST 446.09 FEET; THENCE NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST 1242.66 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 1; THENCE SOUTH 02 DEGREES 30 MINUTES 15 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 748.77 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 30 SECONDS WEST 250.00 FEET; THENCE SOUTH 02 DEGREES 30 MINUTES 15 SECONDS EAST 100.00 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 30 SECONDS WEST 400.00 FEET; THENCE SOUTH 02 DEGREES 30 MINUTES 15 SECONDS EAST 400.00 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 30 SECONDS WEST 1439.30 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MICHIGAN HIGHWAY 5 (RIGHT-OF-WAY VARIES); THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF MICHIGAN HIGHWAY 5 THE FOLLOWING SIX (6) COURSES: 1) NORTH 04 DEGREES 53 MINUTES 41 SECONDS EAST 461.90 FEET; 2) SOUTH 85 DEGREES 06 MINUTES 19 SECONDS EAST 20.00 FEET; 3) NORTH 04 DEGREES 53 MINUTES 41 SECONDS EAST 900.00 FEET; 4) NORTH 85 DEGREES 06 MINUTES 19 SECONDS WEST 20.00 FEET; 5) NORTH 04 DEGREES 53 MINUTES 41 SECONDS EAST 49.91 FEET; 6) ALONG A CURVE TO THE LEFT 271.40 FEET, A RADIUS OF 3958.72 FEET, A DELTA OF 03 DEGREES 55 MINUTES 41 SECONDS AND A CHORD BEARING AND DISTANCE OF NORTH 02 DEGREES 55 MINUTES 51 SECONDS EAST 271.35 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 14 MILE ROAD; THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF 14 MILE ROAD THE FOLLOWING THREE (3) COURSES: 1) NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST 385.72 FEET; 2) NORTH 02 DEGREES 35 MINUTES 30 SECONDS WEST 25.00 FEET; 3) NORTH 87 DEGREES 24 MINUTES 30 SECONDS EAST 251.34 FEET TO THE POINT OF BEGINNING. CONTAINS 57.12 ACRES. SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE EASTERLY 33 FEET FOR HAGGERTY ROAD. ALSO SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

Property Tax ID # _____

EXHIBIT B: Water Main Segment Conceptual Layout

- ||||||| SEGMENT C: 12 Inch to be built by Developer
- SEGMENT B: 24 Inch to be built by Developer
- SEGMENT A: 24 Inch to be built by City in Future



PLA-100 PRELIMINARY LANDSCAPE PLAN - RENDERING

EXHIBIT B: Water Main Segment Conceptual Layout

||||||| SEGMENT C: 12 Inch to be built by Developer

..... SEGMENT B: 24 Inch to be built by Developer

———— SEGMENT A: 24 Inch to be built by City in Future

