



CITY of NOVI CITY COUNCIL

**Agenda Item O
August 24, 2015**

SUBJECT: Approval of Community Single Use License with International Transmission Company (ITC) in connection with the City of Novi 5K Emergency Challenge Run.

SUBMITTING DEPARTMENT: Public Safety *DEM*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The Novi Police and Fire Departments will be hosting an Emergency Challenge Run on October 10, 2015. Compared to years past when the run was held solely on the concrete ring road around St. John's Providence Park Hospital, the new route incorporates obstacles and dirt surfaces, consistent with area events. Although the new route will incorporate portions of ring road, it necessitates the addition of two additional partners from the Novi Community School District and ITC. The Novi Community School District has already approved the inclusion of their property. ITC has tentatively approved the route which crosses their property behind, and adjacent to the Medilodge facility.

ITC has indicated they require a license for the use of its property. The attached Community Single Use License is generally similar to the existing license agreement between ITC and the City of Novi that created the pathway adjacent to the Medilodge development.

City Administration recommends approval and entry into the License Agreement in connection with the event.

RECOMMENDED ACTION: Approval of Community Single Use License with International Transmission Company (ITC) in connection with the City of Novi 5K Emergency Challenge Run, and authorization for the City Manager to execute the License Agreement.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Markham				

	1	2	Y	N
Council Member Mutch				
Council Member Poupard				
Council Member Wrobel				

MEMORANDUM



TO: DAVID E. MOLLOY
DIRECTOR OF PUBLIC SAFETY / CHIEF OF POLICE

FROM: JERROD S. HART *JH*
ASSISTANT CHIEF OF POLICE

SUBJECT: POLICE AND FIRE 5K EMERGENCY CHALLENGE RUN

DATE: AUGUST 14, 2015

Consistent with our long-standing tradition of community engagement, members of the Novi Police and Fire Departments would like to host a Novi Police and Fire 5K Emergency Challenge Run on October 10, 2015.

The first "Emergency Run" was held in May 2010 with runners circling the concrete surface of the St. John Providence Park Hospital ring road two times. Consistent with other area races, staff members proposed varying the running surfaces, utilizing obstacles to challenge runners, and holding the event during the month of October.

Their proposed route requires additional partnerships with the Novi Community School District and International Transmission Corporation (ITC). The Novi Community School District has granted permission to utilize their property but ITC has a licensing mechanism in place for such events.

Staff members provided ITC with all required paperwork and they (ITC) have verbally approved the request. The final step in the process is the issuance of a "Community Single Use License" which requires the signature of City Manager Peter E. Auger. Once signed, ITC will complete the license process and we can begin promoting the event through Neighborhood and Community Relations.

As with all agreements of this nature, the License was reviewed by our City Attorney. Mr. Schultz opined there was no legal impediment to enter into the License in conjunction with this race. This item will require City Council approval.

I have attached the License, attorney review, certificate of liability insurance, proposed race flyer and route for your review.



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331
Phone: 248.489.4100 | Fax: 248.489.1726

Thomas R. Schultz
tschultz@jrsjlaw.com

www.jrsjlaw.com

August 13, 2015

Assistant Police Chief Jerrod Hart
Novi Police Department
45125 West Ten Mile Road
Novi, MI 48375

RE: ITC License – 5K Emergency Challenge Run

Dear Assistant Chief Hart:

You have asked us to look at a draft License Agreement provided by ITC in connection with the proposed 5K Emergency Challenge Run, to be held in Novi on October 10, 2015. The race course is primarily in the area of Providence Hospital, adjacent school property, and on area sidewalks, but in two places the runners will cross the ITC corridor.

As an initial matter, we raise the question whether, with respect to the area of the ITC corridor over which the City already has a license agreement (secured in connection with the Medilodge development), this license is even necessary. (There is a smaller area to the north of the currently licensed section over which the City clearly does not have an existing license.) As I understand it, you spoke with a representative of the ITC Legal Department, who indicated his belief that the City's existing license does not cover this sort of event. While we disagree, we do not believe that it merits a protracted legal argument back and forth with ITC.

As for the license itself, it is generally consistent with the City's existing license with ITC in the Medilodge area. There are a couple of points to note, however.

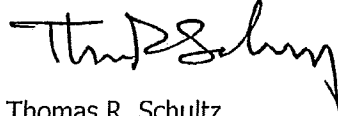
- Paragraph 1 says that you are required to maintain a minimum distance of 20 feet horizontally and vertically from their physical improvements.
- Paragraph 9 states that the grant of the license does not preclude ITC from performing any of its normal activities in the licensed area during the event. The way the language is framed, it could theoretically do so during the race, though presumably it has no intention of doing so. (Note that similar language is contained in the existing license.)
- Under paragraph 10, the City agrees to have in force the insurance coverages set forth in the attached insurance certificate. Note that these are in some respects higher than the insurance requirements in the existing license.
- The liability/indemnity language in Paragraph 12 is generally the same as in the existing license agreement, though the language is stated somewhat differently.

August 13, 2015
Page 2

Given the fact that the City has agreed to similar provisions in connection with the existing license agreement, our office sees no legal impediment to entry into this license in connection with the race.

Sincerely yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

A handwritten signature in black ink, appearing to read "Thomas R. Schultz". The signature is written in a cursive style with a large, stylized "S" at the end.

Thomas R. Schultz

TRS:jah
Enclosure

cc. Pete Auger, City Manager
Maryanne Cornelius, City Clerk

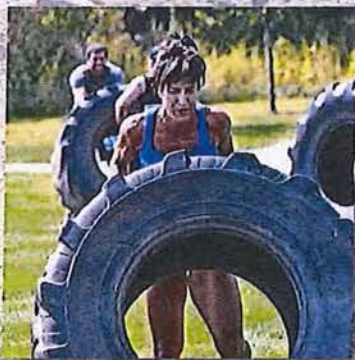
Emergency CHALLENGE

2015 NOVI 5K OBSTACLE RACE

SATURDAY, OCTOBER 10 at 9am

Providence Park Hospital and ITC Corrdior

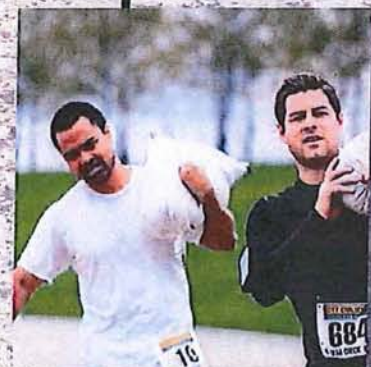
**Three
Mile Race**



**10
Obstacles**



**Unique
Experience**



\$35 before October 5

Are you ready for the challenge?

For more information or to register, please visit
cityofnovi.org/5Kchallenge



COMMUNITY SINGLE USE LICENSE
(Novi 5K Race)

Licensors: International Transmission Company, a Michigan corporation, 27175 Energy Way, Novi, MI 48377 d/b/a ITCransmission ("ITC"),

Licensee: City of Novi
45175 West Ten Mile Road
Novi, MI 48375

Premises: Part of the SW 1/4 of Section 17, Town 1 North, Range 8 East, City of Novi, Oakland County, Tax ID 22-17-300-15, as shown on Exhibits A & B.

Cost: No charge

Term: This license is effective immediately upon signature and shall be automatically terminated on October 12, 2015, unless terminated earlier by ITC (**after the rain date**).

ITC hereby grants this Community Single Use License (the "License") to Licensee to use the Premises (defined above and as shown on the aerial photograph attached as Attachment A hereto) for the purpose of a pedestrian 5K race. The Premises may be used by Licensee as part of a racecourse, on the following terms and conditions:

1. Any portion of the racecourse on the Premises must be configured to ensure that all race participants, facilitators, moderators, aids, medical teams and/or EMT workers, hydration stations, spectators and all other persons, whether invitees of Licensee or otherwise, will maintain a minimum distance of 20 feet horizontally and vertically from any tower leg, pole, conductor, wire, guy, or other utility facility. **Licensee specifically acknowledges and agrees that allowing any person access closer than 20 feet vertically and/or horizontally to any utility facility may cause injury or death and Licensee has read, acknowledges and agrees to the liability provisions set forth in Paragraph 12 below.**
2. No motorized equipment may be stored on the Premises. Any motorized equipment operated anywhere on the Premises shall at all times maintain a minimum vertical separation of 20 feet from any energized conductor, and a minimum horizontal separation of 20 feet from any tower leg, pole, guy, or other utility facility. If more stringent, MIOSHA standards shall be observed.
3. Licensee will not plant any trees, shrubs or other vegetation anywhere on the Premises. No forest products may be cut or removed from the Premises without ITC's prior consent. Within 3 business days after the race is completed, pursuant to this License, Licensee shall replace or restore the Premises, including but not limited to restoration of any trees and brush, landscaping, lawn areas and pavement, as nearly as possible to the condition that existed before the race occurred on the Premises. Any trash and/or refuse remaining on the Premises after that date will be subject to the terms of Paragraph 13 below.
4. **ITC must pre-approve in writing the location of any temporary fencing installed on the Premises for the race.** If ITC grants approval for any fencing, such fence must be located more than 15 feet outside the wire zone. Under no circumstances will any fencing be allowed within 15 feet of the wire zone.
5. No use of the Premises, other than those listed above, is permitted under this License.
6. No berm or other grade change may be made on the Premises without ITC's prior written approval.
7. Licensee shall not be entitled to be reimbursed for the cost of Licensee's activities or to be compensated for the value, if any, of Licensee's activities on the Premises, despite any benefit to ITC.

8. No substance that is hazardous to human health or the environment, or the storage, treatment, or disposal of which is regulated by any governmental authority, may be used, stored, or disposed of on the Premises. Licensee shall indemnify Licensor from and against any and all claims, including fines and other penalties, resulting from violation of this paragraph by Licensee or Licensee's agents, invitees, employees, or contractors, and such agreement shall survive the termination of this License.

9. The granting of this License shall in no means impair ITC's existing rights as the owner of the Premises, including ITC's right at any time to use and possess the Premises for any purpose, for example, including, but not limited to inspecting, maintaining, repairing, improving, enlarging, and removing its existing utility facilities, clearing trees and brush from the Premises, including by chemical spraying, and constructing new facilities or allowing third parties to construct new facilities on the Premises. Licensee's use of the Premises shall at all times be subordinate to ITC's use, and ITC may at any time suspend this License and temporarily evict Licensee or limit Licensee's use of the Premises without liability. Licensee assumes the risk of damage to or removal of Licensee's property or improvements on the property resulting from ITC's use of the Premises and waives all claims against ITC and agrees to hold ITC harmless for any such damage.

10. Licensee and its contractors shall maintain in force at all times while this License is in effect the liability insurance approved by ITC, insurance certificate dated 5/8/2015, which was presented to ITC when requesting this License.

11. Licensee accepts the License with the Premises in its condition at present and from time to time hereafter and waives any and all claims Licensee may at any time have against ITC related to the condition of the Premises.

12. **Liability.** To the fullest extent permitted by law, Licensee shall defend, indemnify and hold ITC, its employees, officers and directors, agents, representatives, parents, subsidiaries, corporate affiliates, or assignees (collectively, the "ITC Indemnitees"), harmless from and against any and all loss, cost, claim, liability, damage, fine, settlement or expense (including, without limitation, attorneys' fees, disbursements and out-of-pocket costs) caused by or arising out of any and all of the following:

- a) Licensee's use of the Premises during the term of this License;
- b) The personal injury, bodily injury or death of any Licensee's directors, officers, employees, subcontractors, agents, assignees, representatives, invitees, licensees or consultants, caused by, or arising out of the negligence, gross negligence, or willful misconduct of Licensee or Licensee's representatives, notwithstanding any measure of contributing or comparative negligence by ITC;
- c) The breach by Licensee and/or Licensee's representatives of its or their obligations to ITC under this License;
- d) The damage, loss or destruction of any real or personal property, including ITC furnished materials and/or facilities and property of ITC on the Premises, caused by the breach of License, breach of warranty, negligence, gross negligence or willful misconduct of Licensee or Licensee's representatives;
- e) That Licensee or any of Licensee's representatives, was negligent, grossly negligent or committed an intentional act during the term of this License that caused injury to a third party, or caused damage to a third party's property.

Licensee agrees that Licensee's obligations as set forth in this Paragraph 12 shall survive the termination of this License.

13. Upon termination of this License, Licensee shall promptly remove Licensee's property and/or any trash or refuse from Licensee and/or any of Licensee's invitees from the Premises and cease using the Premises. Licensee will be deemed to have abandoned personal property that Licensee has not removed within 3 business days following termination. If all trash and/or refuse is not removed within 3 business days following the race, ITC will commence maintenance and cleaning of the Premises. Licensee specifically agrees to promptly pay all of ITC's costs for removal of trash and/or refuse, without dispute.

14. This License is given subject to any existing leases, licenses, easements and other interests in the Premises, whether or not of record. Licensee is responsible to give required notices, to secure necessary consents and permits from existing lessees, licensees, easement owners, and owners of other interests relating to the Premises, and to comply with other requirements of such existing leases, licenses, easements, and other instruments.

LICENSOR:

INTERNATIONAL TRANSMISSION COMPANY, a Michigan corporation, d/b/a ITCransmission

By: ITC Holdings Corp., a Michigan corporation, its sole owner

By: Matthew S. Carstens
Its: Vice President and General Counsel – Utility Operations

LICENSEE:

City of Novi

By: _____
[Printed Name]

Its: _____

Date

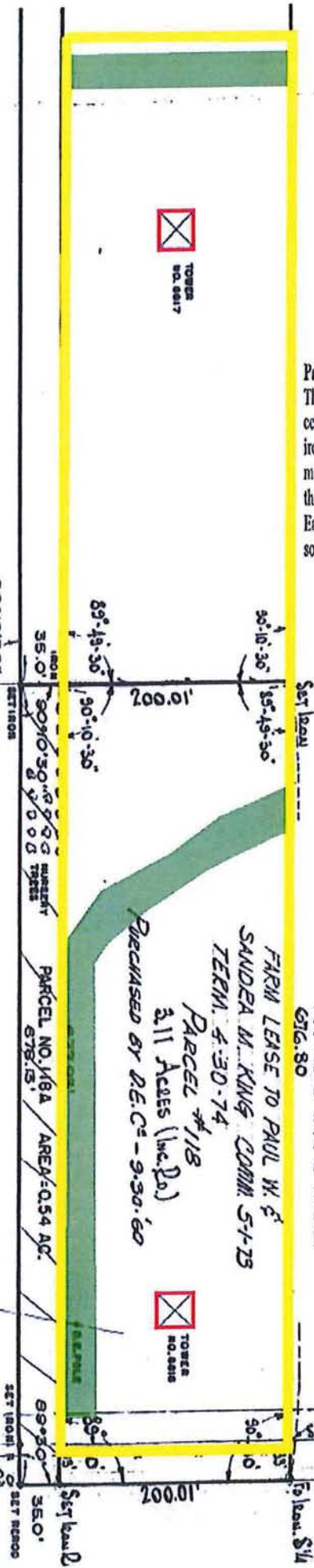
Records Center File No.: 1016-8D & 1016-8E

EXHIBIT A

NON-PRODUCTIVE
SURFACE/SUBSURFACE
DIL & GAS LEASE
FROM D.E. CO. TO SOMOCO
11-31-88 PROCEEDS 117-119

SURVEY BY G. FLOWERDAY 8-15-60

Parcel 118A not
owned by ITC



Parcel No. 119 (Liber 4118 Pg. 539, Oakland County Records)
That part of the Southwest 1/4 of Section 17, Town 1 North, Range 8 East, described as: Beginning at the center of said Section; thence southerly along the North and South 1/4 line, 1,958.45 feet to an iron, said iron being 676.80 feet northerly of the South 1/4 corner of said Section; thence westerly along a line making a northwesterly angle of 90°10'30" with the said North and South 1/4 line, 200.01 feet to an iron; thence northerly along a line parallel with the said North and South 1/4 line, 1,957.93 feet to an iron in the East and West 1/4 line of said Section; thence easterly along the said East and West 1/4 line and making a southeasterly angle of 90°19'30" with the said parallel line, 200 feet to the point of beginning. REF # 1014-8D

Parcel No. 118 (Liber 4121 Pg. 503, Oakland County Records)
That part of the Southwest 1/4 of Section 17, Town 1 North, Range 8 East, described as: Beginning at the South 1/4 corner of said Section; thence northerly along the North and South 1/4 line of said Section, 676.80 feet to an iron; thence westerly along a line making a southwesterly angle of 89°49'30" with the said North and South 1/4 line, 200.01 feet to an iron; thence southerly along a line parallel to the said North and South 1/4 line, 677.93 feet to an iron in the South line of said Section, said South Section line also being the centerline of Eleven Mile Road; thence easterly along the said South Section line and making a northeasterly angle of 89°30' with the said parallel line, 200.01 feet to the point of beginning. (Subject to the rights of the public in and to a public highway over that part of the above described parcel known as Eleven Mile Road.) REF # 1014-8E

POSSIBLE FUTURE WIDENING
S. LINE OF SEC. 17
MATCH LINE

REV-C

EXHIBIT B

Novi Emergency Challenge Run

5K Map Route



Map Author: Jason Porter
Date: 6/10/15
Project: Emergency Challenge Run
Version #: 1.1

Amended By:
Date:
Department:

MAP INTERPRETATION NOTICE

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

Map Legend

 Route Direction

 Start/Finish



City of Novi

Novi Police Department
45125 Ten Mile Rd
Novi, MI 48375
cityofnovi.org



1 inch = 1,840 feet





CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
8/17/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Stevenson Company 43422 West Oaks Drive, # 300 Novi, Michigan 48377	CONTACT NAME: Bob Bucko	FAX (A/C, No): (248) 650-2740
	PHONE (A/C, No, Ext): (248) 650-2736	E-MAIL ADDRESS: RBucko6067@aol.com
INSURER(S) AFFORDING COVERAGE		NAIC#
INSURED City of Novi 45175 West Ten Mile Road Novi, MI 48375	INSURER A: U.S. Specialty Insurance	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	


OVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

R	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
*	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			PKG81010059	7-1-15	7-1-16	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ include
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ included
	GEN'L AGGREGATE LIMIT APPLIES PER: * POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						
*	AUTOMOBILE LIABILITY ANYAUTO * ALL OWNED AUTOS * HIRED AUTOS * SCHEDULED AUTOS * NON-OWNED AUTOS			PKG81010059	7-1-15	7-1-16	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
*	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$ 10,000			PKG81010059	7-1-15	7-1-16	EACH OCCURRENCE \$ 9,000,000
							AGGREGATE \$ 9,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The certificate holder is considered an additional insured with respects to a sponsored race by the City of Novi for the period October 9-11, 2015 including the race and other events, setups, etc.... The event will take place on property owned by the certificate holder including the trails and parking lot at Providence.

CERTIFICATE HOLDER ITC Real Estate Attn: Steve Cooper Real Estate Manager 27175 Energy Way Novi, Michigan 48377	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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