



CITY of NOVI CITY COUNCIL

Agenda Item G
June 7, 2010

SUBJECT: Approval of Facility Encroachment Agreement with CSX Transportation, Inc., to use and maintain a City-owned water main within railroad right-of-way near Novi Road.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *B/C*

CITY MANAGER APPROVAL: *[Signature]* *74*

BACKGROUND INFORMATION:

The Novi Road Link project is tentatively scheduled to begin in fall 2010 and will include the reconstruction of Novi Road between Ten Mile Road and Main Street as a five lane road with a bridge over the CSX railroad. As part of the construction several utilities near the railroad, including an existing City-owned 24-inch water main, must be relocated to facilitate construction of the bridge. CSX Transportation, Inc. (CSXT) is the owner of the railroad and requires that the City of Novi, as owner of the water main, execute a new Facility Encroachment Agreement (attached) for the relocated water main. The water main within the northern half of the project limits (shown on the attached map) will be replaced as part of the road reconstruction.

As with the previous agreement with CSX for the water main in this location and other utility crossings of the railroad within the City of Novi, there are several requirements in the agreement that should be noted and considered. A summary of these items is listed in the attached May 7, 2010 letter from Beth Kudla. These concerns have been discussed with CSXT and they are unwilling to amend their standard agreement.

The attached May 26, 2010 letter from Beth Kudla notes that subject to the conditions noted in the May 7, 2010 letter and confirmation that the City can meet the insurance requirements in the agreement, that the City Attorney sees no legal impediment to the City's entry into the agreement. The City's risk manager has confirmed that the City's insurance coverage meets the requirements listed in the agreement. The \$1,000 license fee required by CSXT agreement will be paid by Road Commission for Oakland County (which holds jurisdiction over Novi Road) as part of the project cost.

The Road Commission for Oakland County has submitted final plans to Michigan Department of Transportation in advance of an August 2010 bid letting. It is anticipated that the contractor would commence work in September 2010 with the initial components of work, including stream relocation and construction of water main, storm sewer, and temporary roadways. The full closure of Novi Road is anticipated when construction of the bridge begins in or around February 2011. A more detailed schedule will be known once the construction contract is awarded.

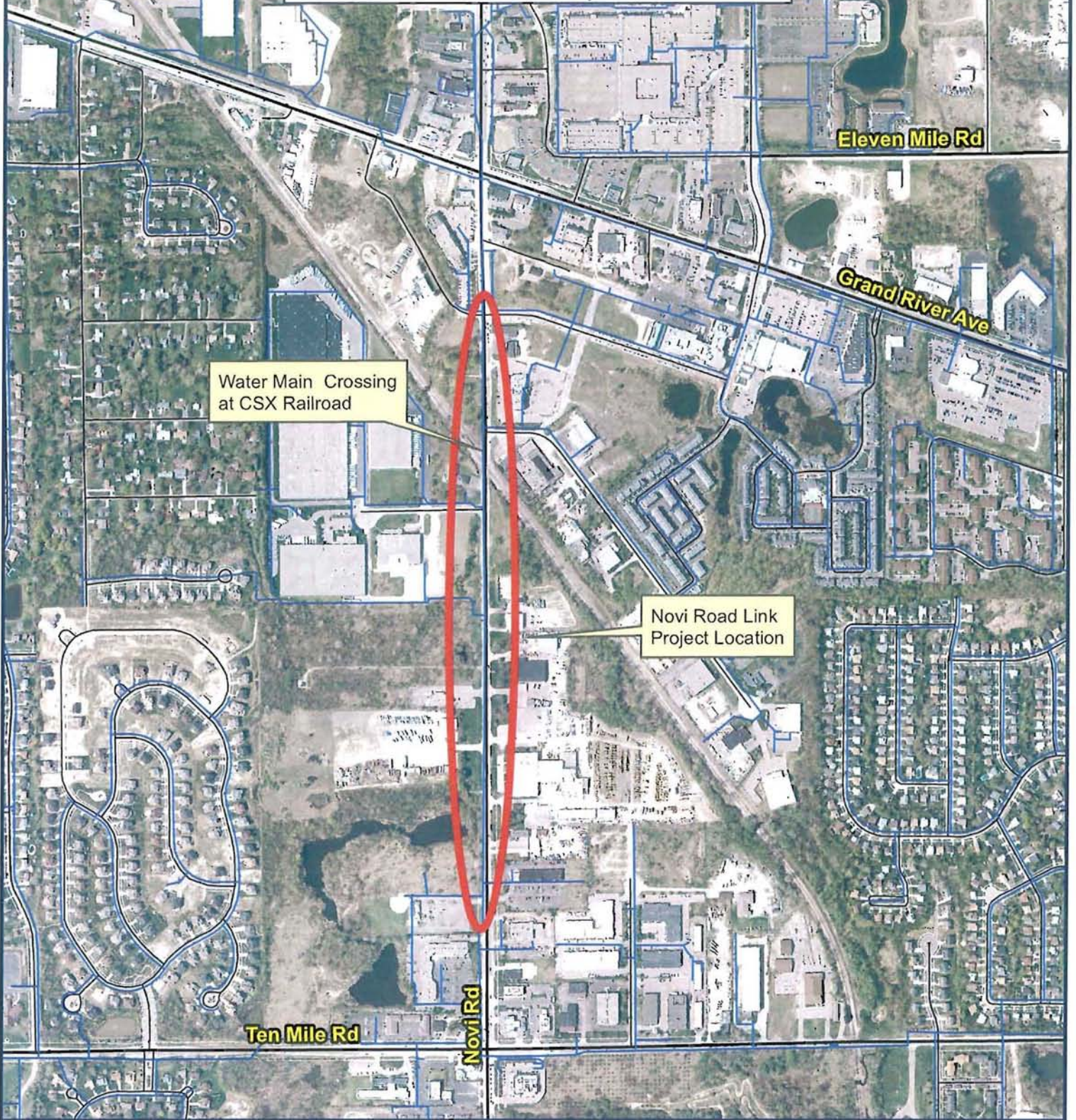
RECOMMENDED ACTION: Approval of Facility Encroachment Agreement with CSX Transportation, Inc., to use and maintain a City-owned water main within railroad right-of-way near Novi Road.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

Novi Road Link Project

Location Map



Map Author: Brian Coburn, PE
Date: 5/27/10
Project: Novi Road Link
Version #: 1.0

Map Legend

— Water Mains

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.



City of Novi
Engineering Division
Department of Public Services
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org



1 inch = 800 feet



May 7, 2010

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Elizabeth M. Kudla
Direct: 248-539-2846
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Brian Coburn, Senior Civil Engineer
City of Novi
Public Services – DPW Garage
26300 Delwal Drive
Novi, MI 48375

Re: **CSXT Facility Encroachment Agreement**
Our File No. 55142 NOV

Dear Mr. Coburn:

At your request, we have reviewed the proposed license agreement between CSX Railroad (CSX) and the City involving a water main proposed to cross the CSX tracks at Novi Road. Though CSX may be reluctant to amend its agreement form, the following items should be noted and considered:

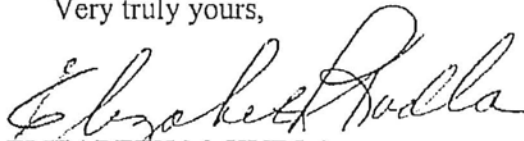
1. A license agreement is not recorded like an easement and is not generally permanent in nature. Though CSX includes provisions that it will only terminate the license for, (1) the City's breach of the terms of the Agreement; (2) if the City decides to remove the main; or (3) with the mutual agreement of the parties, if the property is sold to a purchaser without notice, or CSX ceases to exist, the City's rights may terminate. This could result in the requirement that the City remove the water main. The Agreement would provide the City 30 days for removal.
2. It should be noted that a \$1,000 license fee must be paid for the license. If CSX merges, changes names, or ceases to exist, the agreement provides that additional fees may be required.
3. Section 3.5 requires the City to make repairs of the water main as directed by CSX within 30 days. Section 3.9 assigns liability to the City for train delays as a result of improper maintenance or failure to repair or maintain in accordance with CSX's direction pursuant to Section 3.5.
4. Section 5.3 assigns liability to the City for any subsistence or failure of lateral or subadjacent support in the area of the water main resulting from the project.
5. Section 7.1 requires the City to periodically monitor and verify the depth of the water main and may be required to relocate the depth from time to time to meet requirements of CSX.

Mr. Brian Coburn, Senior Civil Engineer
May 7, 2010
Page 2

6. Any revision, renewal or relocation of the water main requires prior approval from CSX.
7. Section 9 contains the risk, liability, and indemnity provisions, which are substantial. Essentially the City accepts, with this License, all risk of loss and waives all claims to damages **even for acts and losses that are the fault of CSX**. The City also holds CSX harmless from and indemnifies CSX from any loss or damage of any kind or nature arising out of a water main leak, spill or break, regardless of fault.
8. The City should confirm the existence and/or ability to provide the insurance in the amounts set forth in Section 10.
9. The City is required to give CSX 30-days notice of any work on the water main, except in emergencies. Emergencies require the City to follow specific notification protocol listed in Section 15.1.b.
10. CSX is not guaranteeing that it has the right to grant the City the use of this area and assigns the City any liability in the event CSX does not have fee simple title or other necessary rights to grant this license, including punitive and special damages. The City should verify what review RCOC did to verify that CSX has title in this location.

As a general proposition, the agreement is very favorable to CSX, but that is not unusual under the circumstances. The primary issues to address are the verification of proper title and insurance, ability to relocate the main within 30 days if the license it terminated, and the indemnification issues, which CSX may be reluctant to vary. Let me know if we can be of assistance in this regard. If you have any questions regarding the foregoing, please call me.

Very truly yours,



ELIZABETH M. KUDLA

EMK

cc: Clay Pearson, City Manager
Rob Hayes, DPS Director
Thomas R. Schultz, Esquire

May 26, 2010

30903 Northwestern Highway
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Farmington Hills, MI 48333-3040
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Brian Coburn, Senior Civil Engineer
City of Novi
Public Services – DPW Garage
26300 Delwal Drive
Novi, MI 48375

Re: **CSXT Facility Encroachment Agreement**
Our File No. 55142 NOV

Dear Mr. Coburn:

We have received and reviewed the final executed CSXT Facility Encroachment Agreement. We note that with the exception of added exhibits showing the construction plan and RCOC's request for permission to install facilities in CSX's railroad right-of-way, the executed Agreement has the same format and content as the initial draft. The City's acceptance of the terms of the Agreement would be subject to the conditions detailed in our May 7, 2010 review letter. Subject to confirmation by the City's risk manager that the City meets the insurance requirements set forth in the Agreement, we see no legal impediment to the City's entry into this agreement, which is a form agreement that CSX is apparently reluctant to amend.

Very truly yours,


ELIZABETH M. KUDLA

EMK

cc: Clay Pearson, City Manager
Rob Hayes, DPS Director
Thomas R. Schultz, Esquire

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FACILITY ENCROACHMENT AGREEMENT

This **FACILITY ENCROACHMENT AGREEMENT** ("Agreement"), is made and effective May 19, 2010, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and the CITY OF NOVI, a Michigan municipal corporation, whose mailing address is 45175 West Ten Mile Road, Novi, Michigan 48375-3024, hereinafter called "Licensee."

WITNESSETH:

WHEREAS, Licensee desires to operate, use and maintain the below described facility, hereinafter called "Facility," over, under or across property owned or controlled by Licensor, at the below described location(s):

One (1) twenty-four inch (24") diameter sub-grade pipeline crossing, solely for the conveyance of potable water, located at or near Novi, Oakland County, Michigan, Chicago Division, Saginaw Subdivision, Milepost CC-75.13

hereinafter, collectively, called the "Encroachment," as shown on print(s) labeled Exhibit "B," attached hereto and made a part hereof; other details and data pertaining to said Facility being as indicated on Exhibit "A," also attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Section 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to maintain, repair, renew, operate, use, alter or change the Facility at the Encroachment above until terminated as herein provided, and to remove same upon termination.

1.2 The term "Facility," as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Facility Application Form and plan(s).

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable "Encroachment Fee" of ONE THOUSAND AND 00/100 U.S. DOLLARS AND 00/100 U.S. DOLLARS (\$1,000.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facility or Encroachment.

2.3 Unless this Agreement is terminated as otherwise herein provided, it shall terminate upon: (a) Licensee's cessation of use of the Facility or Encroachment for the purpose(s) above; (b) removal of the Facility; or (c) subsequent mutual consent.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the operation of said Facility and appurtenances, and/or maintenance thereof.

3. OPERATION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall operate, use, maintain, relocate, repair, renew, alter, and/or remove the Facility, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (A.R.E.M.A. Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and any new construction of Facility shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto. In accord with such elimination or minimization of any impact on or interference with the safe use and operation of Licensor's property and the appurtenances thereto, Licensor will cooperate with

Licensee and its employees, agents, contractors and subcontractors in facilitating and expediting the maintenance, repair and/or removal of the Facility.

3.4 In the maintenance, repair and/or removal of said Facility, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facility, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensor has given written notice to Licensee as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from imminent damage or injury, may request Licensee to immediately repair or renew the Facility, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations as outlined in the Licensor's Special Conditions.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facility or Encroachment.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

(A) support track(s) and roadbed in a manner satisfactory to Licensor;

(B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and

(C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facility, Licensee shall:

(A) Restore any track(s), roadbed and other disturbed property; and

(B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facility or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area caused by or arising from the Facility or by work done by or at the request of Licensee in connection with the Facility.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facility or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facility or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facility or Encroachment in relation to the existing tracks and facilities, and shall relocate the

Facility or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facility (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change; provided, however if Licensor does not approve the new location, either party may seek legal remedy through the Court having jurisdiction. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facility/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facility, in the reasonable judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facility, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facility, Licensor hereby reserves the right to inspect same and to require Licensee to undertake reasonable repairs, maintenance or adjustments to the Facility, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

9.1 Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facility in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.2 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facility; (b) any

claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facility leakage.

9.3 Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facility or the required depth and encasement for any underground Facility.

9.4 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.5 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

10. INSURANCE:

10.1 Prior to commencement of surveys, or occupation of premises pursuant to this Agreement, Licensee or its contractor shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of Commercial General Liability Insurance (CGL), naming Licensor, and/or its designee, as additional insured and covering liability assumed by Licensee under this Agreement. A coverage limit of not less than THREE MILLION AND 00/100 U.S. DOLLARS (\$3,000,000.00) Combined Single Limit per occurrence for bodily injury liability and property damage liability is currently required as a prudent minimum to protect Licensee's assumed obligations. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to Speed Code C907 at the address listed above.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations as applicable, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor (CSXT Form 7422).

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facility, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for the fees set forth on the Statement of Fees which will be attached as Exhibit A at the time of the request.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 In the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within one hundred twenty (120) days after receiving written notice from Licensor to do so, Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Section 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

13.4 In the event Licensee or its contractor fail to comply with the safety rules of Licensor, then all work and access will be suspended until such time as Licensee or its contractor comply with these requirements. Licensee shall be deemed in breach of the agreement and no work will commence until the safety breach is cured.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination as provided in this Agreement, (b) revocation in accordance with Section 13.1 above, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facility from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall complete and submit Licensor's Outside Party Number Request Form (Form # OP) by facsimile, to facsimile numbers: (904) 245-3692 and (904) 633-3450. Licensee may also scan and email a completed form to email address: OP_Request@csx.com. A blank form, as well as additional instructions and information, can be obtained from Licensor's web site.

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 248-735-5606 (office); 248-343-4169 (cell).

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder by the Licensee, then the Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of rail corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any rail corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the rail corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the rail corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the rail corridor, with dominion and control over such portion of the rail corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of rail corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the rail corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the rail corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the rail corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the rail corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the rail corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, or similar claims arising out of or based upon the Facility

placement, or the presence of the Facility in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facility.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with any construction, repair, maintenance or operation of the Facility in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable federal, state, county, municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facility and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid within thirty (30) days of receipt of a written notice of that the amount was not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance.

19. STATUTORY COMPLIANCE:

19.1 It is anticipated that the PROJECT is to be financed in part from funds appropriated by a government agency and expended under applicable laws and regulations, which laws and regulations are hereby incorporated in and made a part of this Agreement.

19.2.1 In connection with the performance of the work under this Agreement, the RAILROAD (hereinafter in Exhibit "C" referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Exhibit "C", dated August, 1998, attached hereto and made a part hereof and will require a similar covenant on the part of any contractor or subcontractor employed in the performance of this Agreement.

19.3 During the performance of this Agreement, the RAILROAD for itself, its assigns, and successors in interest (hereinafter in Exhibit "D" referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Exhibit "D", dated March 1992, as amended, attached hereto and made a part hereof and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this Agreement.

19.4 Notwithstanding any of the provisions or terms of Exhibit D as contained within this Agreement, it is agreed that the RAILROAD does not waive any of its substantive or procedural rights or any of its legal, procedural, or factual defenses, which it may have under any present or subsequently enacted or modified federal or state statute, regulation, or order.

19.5 The parties hereto further agree that they accept the MDOT'S Minority Business Enterprises/ Women's Business Enterprises (MBE/WBE) Program with respect to the work performed by contractors under the PROJECT and will abide by the provisions set forth in Exhibit "E" attached hereto and made a part hereof, being an excerpt from Title 42 CFR Part 26, more specifically §26.13 thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

Willie Brown

By: [Signature]

Print/Type Name: Marie A. Musfeldt
Director

Print/Type Title: _____

Witness for Licensee:

CITY OF NOVI

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____



DATE



Mail To: CSX Transportation, Inc.
 ATTN: Corridor Occupancy Services
 500 Water Street, J-180
 Jacksonville, FL 32202

FORM CSXT #AD1.03/30/09
 Page 1 of 2

Submittal Must Include Drawing(s) and Review Fee(s)

APPLICATION FOR FACILITY/UTILITY INSTALLATIONS

Application Date: Oct 9, 2009

CSXT File/Agreement Number: CSX642933 *CS4656125*

SECTION 1: FACILITY OWNER INFORMATION TO BE COMPLETED BY APPLICANT

General Facility/Company Identification (Required)

Owner's Complete Legal Company Name: Road Commission for Oakland County

Legal Address (1): 31001 Lahser Road

Legal Address (2):

City: Beverly Hills State: MI Zip: 48025

Business Type: Corporation Limited Liability Company Limited Partnership
 Municipality Limited Liability Partnership General Partnership

State of Incorporation: MI Other Business Type - Describe:

Billing Address

(Check box if same as above; if not, please complete below)

Billing Address (1):

Billing Address (2):

City: State: Zip:

CSX West State
 Engineering Design Approved
 By: *[Signature]*
 Date: *[Date]*

Owner Contact Information

Contact Name: Jeff O'Brien Contact Title: Design Engineer

Office Phone: 248-646-2000 Ext: Mobile Phone:

Email: jobrien@rocc.org Emergency Phone:

SECTION 2: PROJECT CONTACT INFORMATION TO BE COMPLETED BY APPLICANT

Check here if address is the same as legal address above.
 If not the same as above, check here if agreement should be mailed to this address.

Project Engineer/Consultant Information

Engineer/Consultant Agent Company Name: Orchard, Hiltz & McClinton

Contact Name: Craig Dashner or John Kalers

Mailing Address: 34000 Plymouth Road

City: Livonia State: MI Zip: 48160

Office Phone: 734-672-6711 Mobile Phone:

Email: craig.dashner@ohm-advlors.com OR john.kalers@ohm-advlors.com

EXHIBIT A
 Sheet *1* of *2*
 CSXT File No. *CSX 642933*



SECTION 3: PROJECT INFORMATION/LOCATION TO BE COMPLETED BY APPLICANT

Project Reference

Is this covered by an existing CSX permit/agreement or master agreement:
[checked] Yes Provide Agreement # and/or date: PML 18335, January 1, 1979
[] No

Is this project related to another transaction/project with CSX:
[checked] Yes Describe: Novi Road Grada Separation
[] No

Provide utility owner project reference number: RCOC Project #41531

Project Scope

Check box to indicate type of installation request:
[] New Installation Request
[checked] Upgrade/Replacement/Relocation of Existing Facilities

Exhibit "A"
Sheet 2 of 2
CSXT File No. 2702642933

Will proposed installation connect to an existing facility within railroad corridor:
[] Yes Provide name of connecting facility owner:
[checked] No

Check all boxes that apply to indicate type of installation request:
[checked] Sub-grade
[] Aerial

If "Sub-grade," check all boxes that apply to indicate proposed method of installation:
[checked] Jack & Bore
[] Horizontal Directional Drill
[] Other Describe:
CSX West Karate Engineering
Engineering Design Approved
By: [Signature]
Date: 2/2/09

Project Description

Description / Scope (Include: purpose, scope of work, materials, equipment, geographic features, special conditions):

As a part of the Novi Road Grada Separation Project, new storm sewer and water main facilities will be installed. The following describes the scope of each facility:

STORM SEWER: As a part of the project, the drainage system of Novi Road will be enclosed. The proposed drainage system will collect storm water north of the railroad track and outlet it into the Middle Rouge River, which runs parallel to the railroad track on the south side, within CSX right-of-way. The proposed 24" C76 CI V storm pipe will cross underneath the railroad track with a jack and bore, encased in 36" steel casing. Bore pits will be constructed on either side of the railroad track. Any existing storm sewer that crosses the railroad or is within the influence of the railroad track will be abandoned and filled with cement grout. The existing 5.5' x 7' culvert that currently carries the Middle Rouge River underneath Novi Road will be removed. The Middle Rouge River will be re-channeled and armored with riprap.

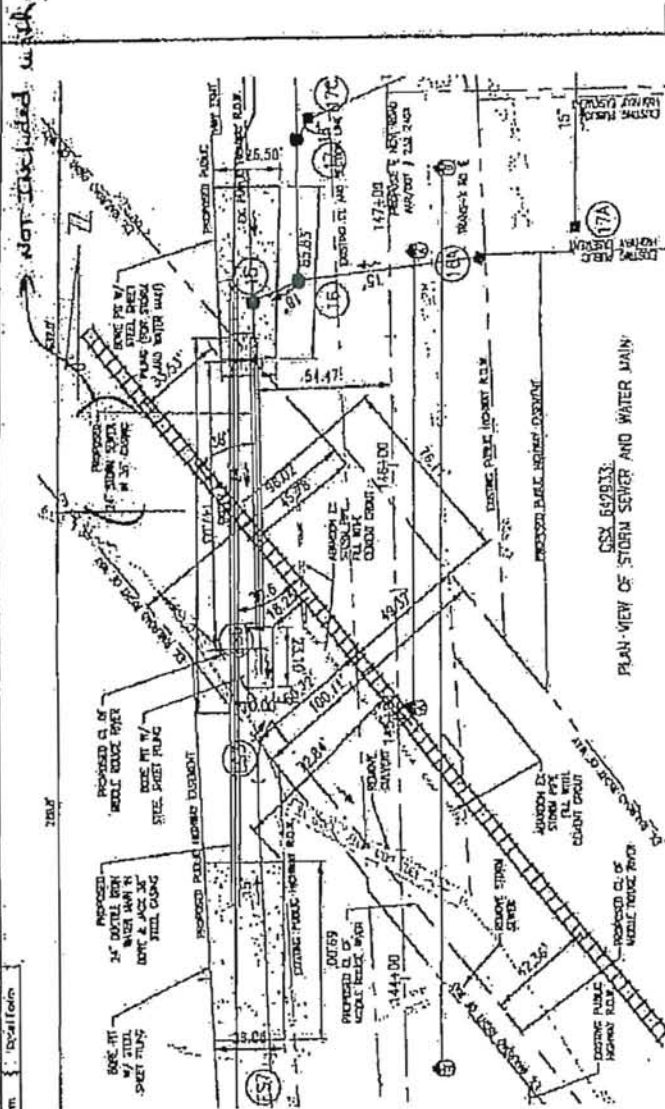
WATER MAIN: A new ductile iron water main will be installed across the railroad right-of-way by jack and bore method with a 36" steel casing pipe. The existing 24" asbestos-concrete water main will be abandoned in place with flowable fill. The angle of crossing between the pipeline/utility and railroad is approximately 40 degrees. Meeting the CSX specification of nearly 90 degree crossings is not possible due to property constraints (geometry) and hard obstructions (new bridge). All other CSX specifications have been met.

Project Location

Table with 4 columns: City (Novi), County (Oakland), State (Michigan)

Will facility installation be located entirely within public road right-of-way:
[checked] Yes Provide AAR/DOJ Crossing Inventory Number of Road (posted at crossing): 232 240X
[] No

NOT INCLUDED WITH THIS ENCUMBRANCE AGREEMENT



OHM
 OREGON HYDRA-MECHANICAL

Engineering Division
 Location: No. 1 - (Noted by Grand River & H. Hill)
 Latitude: 41° 20' 34.84"
 Longitude: 81° 36' 31.23"
 Drawing No: 0107-11007 - See Inset
 Drawing Date: 08/11/08
 Drawing Scale: 1" = 40' - 1/2"

Exhibit "B"
 Sheet of 3
 CSXT File No. 0022

CSX Mechanical Corporation
 Encumbrance Design Agreement
 By: [Signature]
 Date: 08/11/08

Water Main Encumbrance Agreement
 City of Novi
 Novi, Michigan

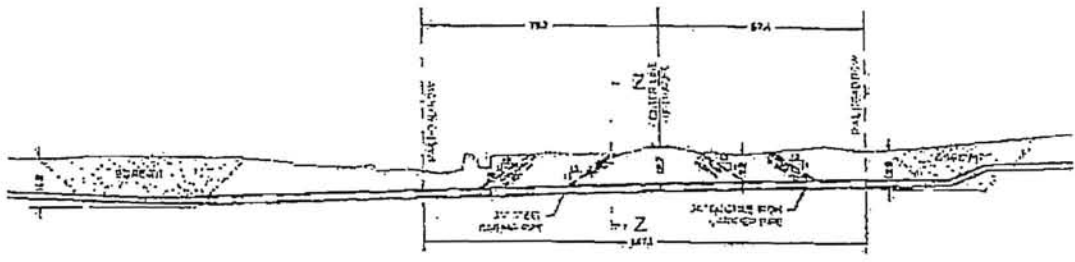
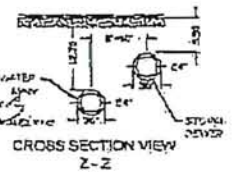


Exhibit "B"
Sheet 2 of 3
CSXT File No. 05051001



PIPELINE PROFILE VIEW E-B
CSX 512931
PROFILE VIEW OF WATER MAIN

CSX Root Cause Investigation
Engineer/Design Approved
By: [Signature]
Date: [Date]

THE FRONT OF THE CASING PIPE SHALL BE PROVIDED WITH MECHANICAL ARRANGEMENTS OR DEVICES THAT WILL POSITIVELY PREVENT THE ANGER PERSON LEADING THE PIPE SO THAT NO UNSUPPORTED EXCAVATION IS AHEAD OF THE PIPE.
CSXT PIPELINE SPECS PAGE 19, 20
CASING PIPE ENDS WILL BE SEALED IN ACCORDANCE WITH CSXT SPECS
CSXT PIPELINE SPECS PAGE 19, 21

Additional Notes/Information:
SECTION Z-Z IS NOT TO SCALE

CSXT Pipeline Spec. Reference	PIPELINE CONTENT DETAILS	
	System/Description	Municipal Water
	Maximum Operating Pressure	120 psi
	Is Corrosion Flammable	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	CARRIER/CASING PIPE DETAILS	
Part 11.01.01	Carrier Pipe	Ductile Iron
Part 11.01.01	Casing Pipe	Steel
Part 11.01.01	Material Specification & Grade	ANSI Z1.51/AWWA C-151, C156
Part 11.01.01	ASTM A252, Gr. 2	
Part 11.01.01	Specified Minimum Yield Strength	42,000 psi
Part 11.01.01	Specified Minimum Yield Strength	35,000 psi
Part 11.01.01	Nominal Size Outside Diameter (Inches)	24"
Part 11.01.01	Nominal Size Outside Diameter (Inches)	26"
Part 11.01.01	Wall Thickness (Inches)	0.50"
Part 11.01.01	Wall Thickness (Inches)	0.512"
Part 11.01.01	Type of Socket	N/A
Part 11.01.01	Type of Socket	N/A
Part 11.01.01	Type of Joint	Push on Joint
Part 11.01.01	Type of Joint	Welded
Part 11.01.01	Turned Lower Plates Required	<input type="checkbox"/> No <input type="checkbox"/> Yes
Part 11.01.01	Carthage Protection	<input type="checkbox"/> No <input type="checkbox"/> Yes Type:
Part 11.01.01	Pressure Clamping	<input type="checkbox"/> No <input type="checkbox"/> Yes Type:
Part 11.01.01	Temp. Tack Support or Rip-Rap Row	<input type="checkbox"/> No <input type="checkbox"/> Yes Must Describe & Show on Drawing

OHM
Advanced Engineering

Location: Post Mile - Next Rd W Grand River @ 10 Mile
Latitude: 42° 28' 34.10"
Longitude: 83° 28' 31.23"

Drawing No: _____ Sheet 2 of 2
Drawing Date: Oct 9, 2009 Issued: Oct 9, 2009
Drawing Scale: 1" = 30' Feet
Drawing Scale: 1" = 10' Feet

EXHIBIT C

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract, the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

EXHIBIT D

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as following:

1. Compliance with Regulations: The contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities, as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the state, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

EXHIBIT E

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE
AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make
(Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

MEMORANDUM



TO: ROB HAYES, P.E.; DIRECTOR OF PUBLIC SERVICES
FROM: BRIAN COBURN, P.E.; SENIOR CIVIL ENGINEER *BTC*
SUBJECT: NOVI ROAD LINK PROJECT UPDATE
DATE: MAY 11, 2010

5/12/10
To Mayor & City Council Meeting
FYI

Finally!
The Road Commission for Oakland County (RCOC) hosted a utility coordination meeting today to finalize the utility relocation schedule for the Novi Road Link (Ten Mile to Main Street) project. The project is on schedule for final construction plan completion and submittal to MDOT by May 28. This will put the project in line for an August 2010 bid letting with the contractor commencing work in mid to late September 2010. It is anticipated that the stream relocation and construction of the water main, storm sewer, and temporary roadways would begin this fall. The contractor will likely use lane closures on Novi Road to complete the stream/utility relocation work. The full closure of Novi Road is required once the construction of the bridge begins, which is anticipated in or around February. This estimated schedule is subject to change once the contract is awarded based on the contractor's schedule. *←**

In advance of RCOC's project commencement in September, Detroit Edison, Consumers Energy and AT&T will be working along Novi Road to relocate their utilities. The Novi Road right-of-way near the cemetery and railroad contains several utilities that require temporary and permanent relocation to complete the bridge and embankment work. One such temporary relocation will require the temporary installation of overhead electrical along Main Street from Novi Road to Main Street Village and then south through the Main Street Village site to Trans-X. (An alternate location was investigated on the west side of Novi Road, but conflicted with the cemetery and the railroad). The temporary overhead line installation will be in place for approximately one year to facilitate bridge construction.

RCOC reports that all right-of-way has been acquired with the exception of CSXT (for the railroad crossing), but it is anticipated this week. *||**

I will keep you posted on schedule refinements once the plan submittal has been made to MDOT for bidding and when a contractor has been selected.

cc: Matt Wiktorowski, Field Operations Senior Manager
Tim Sikma, Water & Sewer Manager
Aaron Staup, Construction Engineering Coordinator
Ben Croy, Civil Engineer
Lindon Ivezaj, Staff Engineer