

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item H
October 17, 2011

SUBJECT: Approval of a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the amount of \$858 for a permanent easement and temporary grading permit on the Shaffer property (parcel 50-22-23-376-004) for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and the CSX Railroad.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *PK*

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

EXPENDITURE REQUIRED	\$858
AMOUNT BUDGETED	\$8,300
APPROPRIATION REQUIRED	\$858 (to be included in 2nd quarter budget amendment)
LINE ITEM NUMBER	204-204.00-974.417

BACKGROUND INFORMATION:

This project will include a five foot wide pathway segment along the north side of Ten Mile between Catherine Industrial Road and the CSX Railroad and includes the crossing of the railroad tracks. The design of the project is nearing completion and five permanent pathway easements and four temporary grading permits are required to facilitate construction. One of the permanent easements was donated by Joe Trudeau and accepted by City Council.

For the past several months, staff has worked to contact the property owners to secure an easement. Part of this process involved requesting not only the easement for the sidewalk construction, but a permanent highway easement for the master planned right-of-way. The property owner was contacted to request a donation of a highway easement, which would allow for the construction of the pathway as well as future right-of-way maintenance and construction activities.

Staff has had multiple discussions with the property owner, but has been unable to obtain an easement. Therefore it would be prudent to begin the required proceedings to acquire the easements through eminent domain. This will result in the acquisition of a 7-foot wide pathway easement, rather than the original 27-foot wide highway easement hoped for (the eminent domain process requires proof of necessity of the easement, and only the smaller pathway easement can be proven necessary for this specific project). Based on the assessed value of the land, the property owner is entitled to compensation for the permanent easement and temporary grading permit in the amount of \$858 (\$653 for the pathway easment and \$205 for the grading permit).

The attached resolution is being requested at this time to allow the city to begin proceedings to acquire the easements through eminent domain. Staff will continue to

pursue donation of the easement, and in the event that the property owner decides to donate the easement, this resolution will not be needed.

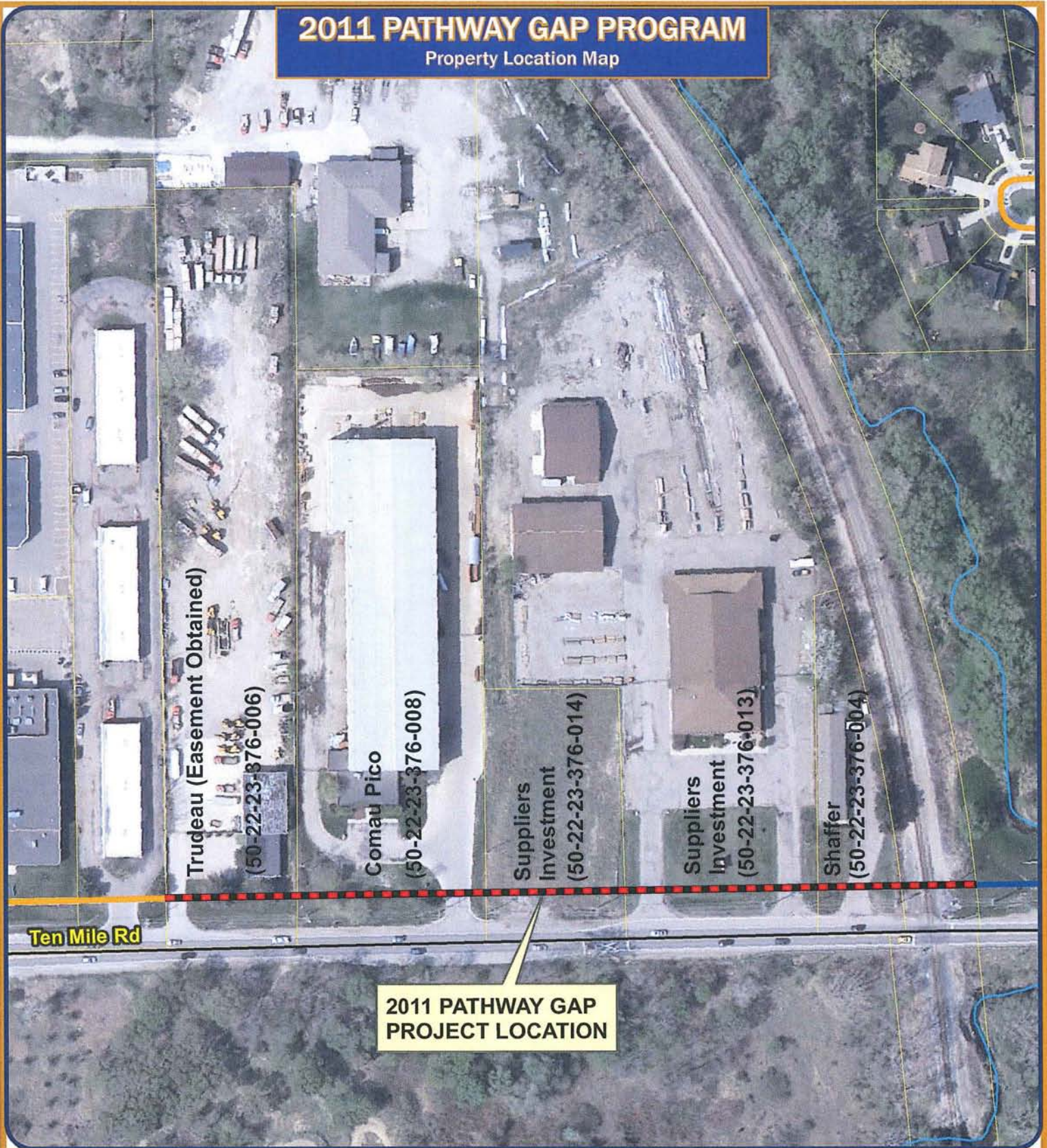
RECOMMENDED ACTION: Approval of a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the amount of \$858 for a permanent easement and temporary grading permit on the Shaffer property (parcel 50-22-23-376-004) for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and the CSX Railroad.

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

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

2011 PATHWAY GAP PROGRAM

Property Location Map



Map Author: Croy
 Date: 10/7/11
 Project: 2011 Pathways
 Version #: 1.0

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

— Existing Pathways



City of Novi

Engineering Division
 Department of Public Services
 26300 Delwal Drive
 Novi, MI 48375
cityofnovi.org



1 inch = 150 feet

**RESOLUTION CONCERNING THE ACQUISITION
OF PROPERTY AND APPROVING DECLARATION OF NECESSITY AND TAKING**

City of Novi
County of Oakland, Michigan

Minutes of a _____ Meeting of the City Council of the City of Novi,
County of Oakland, Michigan, held in the City Hall in said City on August __, 2011, at 7:00
o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____
_____ and supported by Councilmember _____.

WHEREAS, present conditions in the City of Novi, Oakland County, Michigan,
necessitate the construction of a non-motorized pathway/sidewalk on Ten Mile Road in, over,
upon and through a portion of the following described premises situated in the City of Novi,
Oakland County, State of Michigan, to-wit:

PARCEL DESCRIPTION (50-22-23-376-004):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 89 37'40" E 745.50 FT FROM SW
COR OF 1/2 OF SW 1/4, TH N 01 00'00" E 388.17 FT, TH N 74 46'40" E 27.50 FT TO WLY
LINE PMRR R/W, H SLY ALG SD LINE TO S SEC LINE, TH S 89 37'40" W 97.90 FT TO
BEG 0.56 AMN441B

WHEREAS, proposed plans showing said improvements have been prepared and are on
file with the City Clerk's Office; and

WHEREAS, it has been determined that said improvements are necessary for the use and benefit of the public; and

WHEREAS, in order to construct said improvements, it is necessary that the City acquire a permanent easement and other interests in that portion of the above-described real estate described as follows:

A) A permanent sidewalk easement more fully described as follows:

PATHWAY EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 7 FEET OF THE SOUTHERLY 54.0 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 652.5 SFT (0.015 ACRES), MORE OR LESS.

B) A temporary grading easement more fully described as follows:

SOUTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 5.0 FEET OF THE SOUTHERLY 47.0 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 468.8 SFT (0.0108 ACRES), MORE OR LESS.

NORTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 6.0 FEET OF THE SOUTHERLY 60 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 555.7 SFT (0.013 ACRES), MORE OR LESS..

WHEREAS, the City has caused a valuation of the subject property to be prepared by its City Assessor or the basis of assessment records and related information;

WHEREAS, the City has determined that it is in the best interests of the City to offer to purchase the subject property from the owners of such property, and to take such other actions as

are deemed necessary to acquire the subject property for the purposes of constructing the improvements;

NOW, THEREFORE, BE IT RESOLVED, by the authority vested in the City of Novi by law, that it is hereby declared and determined that it is necessary to construct a non-motorized pathway/sidewalk along Ten Mile Road in, over, upon, and through the above-described property within the City of Novi in accordance with the plans prepared by the City Consulting Engineers, and that said improvements are necessary for the use and benefit of the public; and

BE IT FURTHER RESOLVED, that the Mayor of the City is hereby authorized to execute, on behalf of the City, a good faith Offer to Purchase, a copy of which is attached hereto as Exhibit A, calling for the payment of Eight Hundred and Fifty-Eight (\$858.00) Dollars for the permanent Sidewalk Easement and Temporary Grading Permit acquisition, The above amounts have been established as just compensation for the acquisition of the property, based upon an appraisal of the property by the City Assessor.

BE IT FURTHER RESOLVED, that after the execution of the good faith Offer to Purchase by the Mayor, the good faith Offer to Purchase shall be submitted to the owners of the property;

BE IT FURTHER RESOLVED, that in the event the Sellers fail to accept the good faith Offer to Purchase within fourteen (14) days of the date of delivery, the City Manager is hereby authorized to execute the Declaration of Taking, which is attached hereto;

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, the Mayor, City Clerk, and City Attorney are authorized to take all actions required to obtain a permanent Sidewalk Easement and Temporary Grading Permit in the subject property by eminent domain.

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, and the Declaration is executed, the City finance officer is authorized and directed to place an amount equal to the amount contained in the good faith offer that was made to the property owners (\$858.00) into a separate account and to hold such money on deposit as the estimated amount of just compensation to be paid in connection with the eminent domain proceedings.

BE IT FURTHER RESOLVED, that all resolutions and part of resolutions insofar as they conflict with the provisions of this Resolution be and the same hereby are rescinded.

AYES: Councilmembers _____

NAYES: Councilmembers _____

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at _____ meeting held this _____ day of _____, 2011.

MARYANNE CORNELIUS, CITY CLERK

DECLARATION OF TAKING

A Resolution of Necessity having been adopted by the City of Novi setting forth that present conditions necessitate the construction of a non-motorized pathway/sidewalk on Ten Mile Road (the "Improvements") in the City of Novi, Oakland County, Michigan, in the interest of the public health, safety, and welfare, and that it is necessary to acquire easements over certain property within the City of Novi for said Improvements, and that a good faith written offer to purchase said property has heretofore been made.

NOW, THEREFORE, by virtue of the authority vested in the City of Novi, by Act 279 of the Public Acts of 1909, as amended, and/or Act 149 of the Public Acts of 1911, as amended, or other applicable statutes, and in accordance with the provisions of Act 87 of Public Acts of 1980, as amended, it is now declared and determined that the real property hereinafter described shall be taken for the purpose of constructing a non-motorized pathway/sidewalk on Ten Mile Road, in accordance with prepared plans showing said Improvements which are on file with the City Clerk's Office.

A statement of the estate of interest in the property being taken; a description of the property to be acquired, sufficient for its identification; the name of each known owner of said property; the name of each known person, other than the owner, having an interest in said property; a statement of the sum of money estimated by the City of Novi as just compensation

for the property being acquired; and a statement whether the City of Novi reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property are as follows:

1. Statement of the Estate of Interest Being Taken and Description of the Property.

PARCEL DESCRIPTION (50-22-23-376-004):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 89 37'40" E 745.50 FT FROM SW COR OF 1/2 OF SW 1/4, TH N 01 00'00" E 388.17 FT, TH N 74 46'40" E 27.50 FT TO WLY LINE PMRR R/W, H SLY ALG SD LINE TO S SEC LINE, TH S 89 37'40" W 97.90 FT TO BEG 0.56 AMN441B

- A) **A permanent sidewalk easement more fully described as follows:**

PATHWAY EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 7 FEET OF THE SOUTHERLY 54.0 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 652.5 SFT (0.015 ACRES), MORE OR LESS.

- B) **A temporary grading easement more fully described as follows:**

SOUTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

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CONTAINS 468.8 SFT (0.0108 ACRES), MORE OR LESS.

NORTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

THE NORTHERLY 6.0 FEET OF THE SOUTHERLY 60 FEET OF THE ABOVE DESCRIBED PARENT PARCEL.

CONTAINS 555.7 SFT (0.013 ACRES), MORE OR LESS..

2. Names of Property Owner: James Shaffer and Paulette Shaffer, husband and wife
3. Names of each person, other than the Owners, having a potential interest in the property:

Oakland County, CSXT

4. Estimated Just Compensation: \$ 858.00
5. The City of Novi reserves its rights to bring Federal or State cost recovery actions against the present owner of the property.

CITY OF NOVI

BY: _____
CLAY J. PEARSON
City Manager

Dated: _____, 2011

The foregoing Declaration of Taking was acknowledged before me this ____ day of _____, 2011, by Clay J. Pearson, as the City Manager, on behalf of the City of Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

Prepared by and when recorded return to:
Elizabeth M. Kudla (P 60265)
Secrest, Wardle, Lynch, Hampton, Truex & Morley
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
(248) 851-9500
Tax Identification No. 50-22-23-376-004

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AGREEMENT OF SALE
OFFER TO PURCHASE EASEMENTS OVER REAL PROPERTY

1. The City of Novi, a Michigan municipal corporation (hereinafter "City"), hereby offers and agrees to purchase easements in, over, upon, and through real property within the City of Novi, described as:

PARCEL DESCRIPTION (50-22-23-376-004):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 89 37'40" E 745.50 FT FROM SW COR OF 1/2 OF SW 1/4, TH N 01 00'00" E 388.17 FT, TH N 74 46'40" E 27.50 FT TO WLY LINE PMRR R/W, H SLY ALG SD LINE TO S SEC LINE, TH S 89 37'40" W 97.90 FT TO BEG 0.56 AMN441B

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CONTAINS 555.7 SFT (0.013 ACRES), MORE OR LESS..

and to pay therefore the sum One Thousand Eight Hundred and Fifty-Eight (\$858.00) Dollars, subject to the existing building and use restrictions, easements, and zoning ordinances, if any, upon the following conditions:

- (i) Delivery of the permanent Sidewalk Easement to the City as described above.
- (ii) Delivery of the Temporary Grading Permit to the City as described above.

2. Upon Seller's acceptance of this Offer to Purchase, as evidence of title, the City agrees to obtain a commitment for the title insurance with policy pursuant thereto to be issued insuring the City. The City will pay the cost of the title insurance policy premium.

3. If this offer is accepted by the Seller and if title can be conveyed in the condition required hereunder, the City agrees to complete the sale within fifteen (15) days after the receipt of the commitment for title insurance.

4. If objection to the title is made, based on a written opinion of the City Attorney that the title is not in the condition required for the performance hereunder, the Sellers shall have thirty (30) days from the date they are notified in writing of the particular defects claimed, to fulfill the requirements in the commitment for title insurance or to remedy the title defects set forth in the City Attorney's opinion. If the Seller is able to comply with such requirements or remedy such defects within the time specified, as evidenced by written notification, revised commitment or endorsement to commitment, the City agrees to complete the sale within twenty (20) days of receipt thereof. If the Seller is unable to furnish satisfactory title within the time specified, the City will commence condemnation proceedings to acquire the Property.

5. The Seller shall deliver and the City shall accept possession of said Property upon the date of closing.

6. It is understood that the Property is being acquired in connection with the Ten Mile Pathway Program to construct a non-motorized pathway system along Ten Mile Road over, across, upon and through the above-described premises in the City of Novi, Michigan.

7. The City shall pay the cost of recording the easement and the cost of all Michigan Real Estate Transfer Tax.

8. The City reserves its right to bring Federal or State cost recovery actions against the present owners of the Property arising out of a release of hazardous substances at the Property.

9. The covenants herein shall bind and inure to the benefit of the executors, administrators, successors, and assigns of the respective parties.

10. If this Offer to Purchase is not accepted by Seller within Fourteen (14) days from the date of its mailing to Seller, this Offer to Purchase shall be considered withdrawn and of no further force and effect.

11. This Offer to Purchase may be executed in one or more counterparts as one Agreement and shall be binding upon the City and the hereafter named Seller when executed by the City of Novi and all of the hereafter named Seller.

The closing of this sale shall take place at the City of Novi offices located at 45175 West Ten Mile Road, Novi, Michigan.

WITNESSES:

PURCHASER:

CITY OF NOVI, a Michigan
municipal corporation

By: DAVID LANDRY
Its: Mayor

By: MARYANNE CORNELIUS
Its: City Clerk

Dated: _____, 2011

To the Above Named Purchaser:

The foregoing offer is hereby accepted and the Seller agrees to sell the Property upon the terms stated:

By the execution of this instrument, the Seller acknowledges the receipt of a copy of this Agreement.

IN THE PRESENCE OF:

SELLERS:

By: _____
James Shaffer

By: _____
Paulette Shaffer

PURCHASER'S RECEIPT OF ACCEPTED OFFER

The Purchaser hereby acknowledges receipt of the Seller's signed acceptance of the foregoing Offer to Purchase.

CITY OF NOVI, a Michigan
municipal corporation, Purchaser

BY: _____

Its: _____

Dated: _____, 2011

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PATHWAY EASEMENT

KNOW ALL PERSONS THAT JAMES AND PAULETTE SHAFFER, HUSBAND AND WIFE (“GRANTOR”), WHOSE ADDRESS IS 24507 NANTUCKET, NOVI, MI, for and in consideration of \$653.00, receipt and sufficiency of which is hereby acknowledged, hereby grant and convey to the City of Novi, a Michigan Municipal Corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375, being exempt pursuant to MCLA 207.505(a), and MCLA 207.526 (a) a permanent easement for a public walkway over across and through property located in Section 17, T.1N., R.8E., City of Novi, Oakland County, State of Michigan, more particularly described as follows:

Parcel No. 50-22-23-376-004

{See attached and incorporated Exhibit A}

The permanent easement for the public walkway is more particularly described as follows:

{See attached and incorporated Exhibit A}

Grantee may enter upon sufficient land adjacent to said easement for the purpose of exercising the rights and privileges granted herein.

Grantee may install, repair, replace, improve, modify and maintain the easement area as shown in the attached and incorporated Exhibit A.

Grantor agrees not to build or to convey to others permission to build any structures or improvements on, over, across, in, through, or under the above-described easement.

This instrument shall run with the land first described above and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

This easement shall allow public pedestrian and non-motorized traffic and shall permit maintenance, repair and replacement of the paving in the easement area.

Exempt pursuant to MCLA 207.505(a)
And MCLA 207.526(a)

This instrument shall be binding and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns.

Dated this _____ day of _____, 20__.

GRANTOR

BY: _____
JAMES SHAFFER

BY: _____
PAULETTE SHAFFER

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing consent to easement was acknowledged before me this _____ day of _____, 20__, by James Shaffer and Paulette Shaffer.

Notary Public

County, __
My Commission Expires: _____

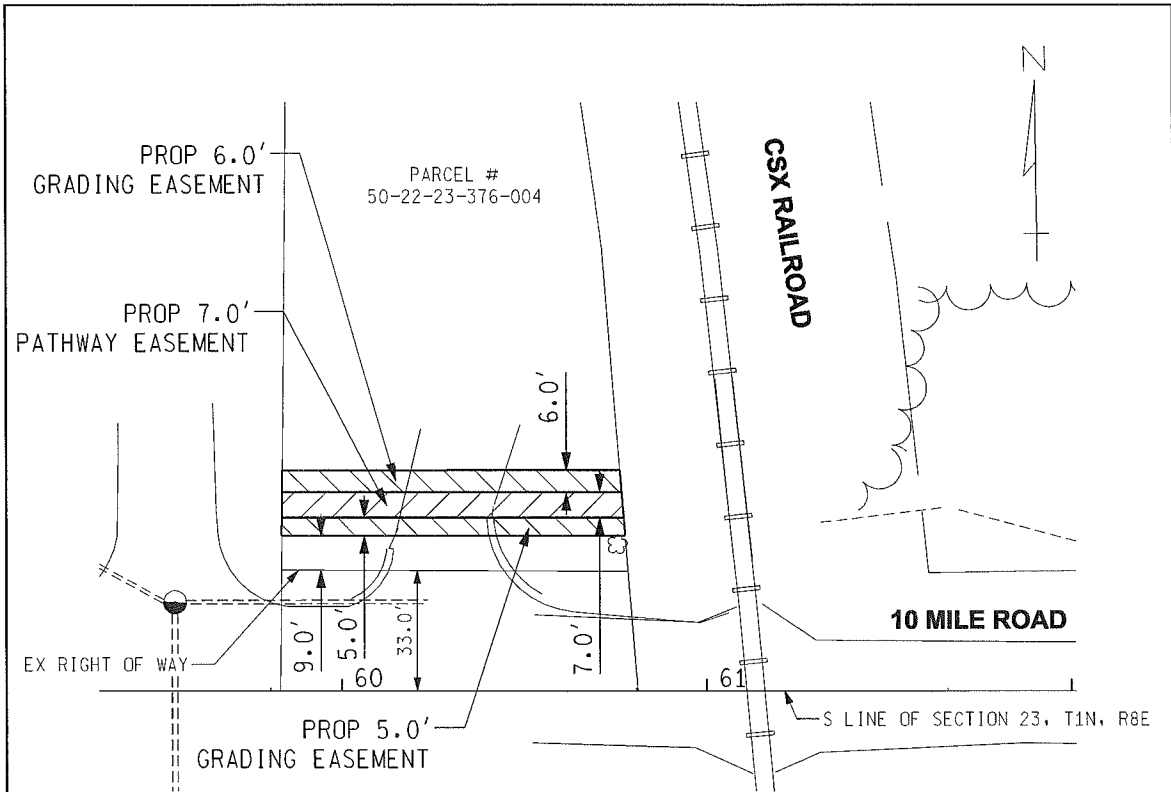
Parcel No.

Drafted by:
Elizabeth M. Kudla, Esq.
30903 Northwestern Highway
Farmington Hills, MI 48334

When recorded return to:

Maryanne Cornelius, Clerk
City of Novi
45175 W. Ten Mile Rd.
Novi, MI 48375

RECORDING FEE _____ REVENUE STAMPS _____
1716282_1.doc



PARENT PARCEL DESCRIPTION:

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST S 89 37'40" E 593.62 FT FROM SW COR OF E 1/2 OF SW 1/4, TH N 01 00'00" E 388.17 FT, TH N 74 46'40" E 27.50 FT TO WLY LINE PMRR R/W, TH SLY ALG SD LINE TO S SEC LINE, TH S 89 37'40" W 97.90 FT TO BEG 0.56 ACRES

PROPERTY OWNER:

JAMES AND PAULETTE SHAFFER
24507 NANTUCKET
NOVI, MI 48374

PROPERTY ADDRESS:

42700 TEN MILE ROAD
NOVI, MI 48375

TAX ID:

50-22-23-376-004

PATHWAY EASEMENT LEGAL DESCRIPTION:

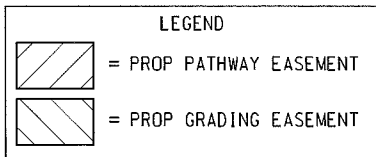
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PATHWAY & GRADING EASEMENT

DESIGNED BY:
URS
Surface Transportation
Grand Rapids . Southfield .
Traverse City



EXHIBIT A



HIGHWAY & GRADING EASEMENT PARCEL 50-22-23-376-004

DRAWN BY: JB	CHECKED BY: LND	DATE 08/18/11	SCALE 1" = 40'	PROJECT NUMBER 12942755
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VALUATION STATEMENT

PROPOSED SIDEWALK EASEMENT

Property Owner(s): James and Paulette Shaffer

Address: 42700 Ten Mile Road

Novi, MI 48375

Area to be acquired: 653 SF (Permanent) / 1,025 SF (Temporary).

Price per square foot/acres x \$ 2.00

Total \$ N/A Fee (Permanent)

x 50% \$ 653.00 Easement (Permanent)

x 10% \$ 205.00 Grading Permit (Temporary)

Just Compensation \$ 858.00

ADDITIONAL INFORMATION: