



## CITY of NOVI CITY COUNCIL

**Agenda Item B**  
**May 7, 2012**

**SUBJECT:** Approval of a Construction Agreement with CSX Transportation, Inc. related to the construction of the portion of the Ten Mile Road Pathway project (CSX Railroad to Catherine Industrial Road) located within the CSX railroad right-of-way at an estimated cost of \$29,460.

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *Rly* *Brc*

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

|                             |                                 |
|-----------------------------|---------------------------------|
| <b>EXPENDITURE REQUIRED</b> | <b>\$29,460</b>                 |
| <b>AMOUNT BUDGETED</b>      | <b>\$108,000 (Construction)</b> |
| <b>LINE ITEM NUMBER</b>     | <b>204-204.00-974.418</b>       |

### BACKGROUND INFORMATION:

The Ten Mile Road Pathway Project will include a 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. Once completed, a continuous non-motorized route will exist between Novi Road and Haggerty Road along the north side of Ten Mile, with the exception of one area approximately 230 feet long at the northeast corner of Meadowbrook and Ten Mile that is paved but not a constructed sidewalk. This pathway gap project was approved for the 2010-11 fiscal year in the Capital Improvement Program (CIP) based on the recommendations in the latest version of the Pathway & Sidewalk Prioritization Analysis and Process report by the Walkable Novi Committee. A location map has been included for reference. The attached memo from Ben Croy dated April 30, 2012 provides additional background on this project.

The enclosed Construction Agreement is required by CSX as part of their inspection and oversight for any work within the railroad's right-of-way (a Preliminary Engineering Agreement, also required by CSX as part of their engineering design review, was approved by Council at the June 20, 2011 meeting). The agreement requires submission of a payment in the amount of \$29,460 for CSX's inspection of the work, flagging operations, a small amount of construction to be performed by CSX's contractor directly adjacent to the railroad tracks, and other related tasks. Given the relatively high fee being requested, CSX was contacted to scrutinize the fees and discuss the actual effort to be expended by CSX. The proposed CSX fee represents approximately 60% of the current construction cost estimate for the pathway. CSX asserts that the oversight they are proposing is necessary, but also explained that this fee is held in escrow, and any unused funds will be reimbursed to the City upon completion of the project. The work in the CSX right-of-way cannot proceed without this agreement. The agreement has been reviewed and approved by Johnson Rosati (see attached letter from Tom Schultz, dated May 2, 2012).

The Ten Mile Pathway project is proposed for bidding this spring along with the West Oaks Area road projects to recognize savings as part of a larger project that also involves pathway work. Staff will continue to work with the City Attorney and the property owner to acquire the remaining easements. Construction is scheduled to begin in summer 2012 and completion is anticipated by summer 2012, but is contingent on the acquisition of the remaining permanent and temporary easements (see attached memo for further information regarding the status of easement acquisition). Furthermore, this pathway project cannot commence until CSX has completed improvements to the Ten Mile/Railroad crossing to add crossing arms and new crossing signals, which is scheduled to be completed in June.

**RECOMMENDED ACTION:** Approval of a Construction Agreement with CSX Transportation, Inc. related to the construction of the portion of the Ten Mile Road Pathway project (CSX Railroad to Catherine Industrial Road) located within the CSX railroad right-of-way at an estimated cost of \$29,460.

|                               | 1 | 2 | Y | N |
|-------------------------------|---|---|---|---|
| <b>Mayor Gatt</b>             |   |   |   |   |
| <b>Mayor Pro Tem Staudt</b>   |   |   |   |   |
| <b>Council Member Casey</b>   |   |   |   |   |
| <b>Council Member Fischer</b> |   |   |   |   |

|                                | 1 | 2 | Y | N |
|--------------------------------|---|---|---|---|
| <b>Council Member Margolis</b> |   |   |   |   |
| <b>Council Member Mulch</b>    |   |   |   |   |
| <b>Council Member Wrobel</b>   |   |   |   |   |

## MEMORANDUM



**TO:** BRIAN COBURN, P.E.; ENGINEERING MANAGER  
**FROM:** BEN CROY, P.E.; CIVIL ENGINEER *bc*  
**SUBJECT:** TEN MILE PATHWAY PROJECT UPDATE  
**DATE:** APRIL 30, 2012

The Ten Mile Road Pathway Project includes the construction of a pathway segment along the north side of Ten Mile between Catherine Industrial Road and the CSX Railroad including the railroad crossing of the railroad. Once completed, a continuous non-motorized route will exist between Novi Road and Haggerty Road along the north side of Ten Mile.

There have been two challenges throughout the design phase of this project that have delayed the construction (originally anticipated in 2011). The first challenge to garner approval from CSX for the railroad crossing has been resolved—a proposed agreement with CSX in this regard is proposed for consideration on the May 7, 2012 City Council agenda. The second challenge has been the acquisition of easements necessary to construct the project. For each of the four property owners involved (5 parcels total), a permanent pathway easement and one or more temporary grading easements are necessary. To date, easements have been acquired from three of the property owners (one donated, and two provided for a fee).

We are still negotiating with the owner of the two remaining properties for the remaining easements (one entity owning two parcels). Discussions with this property owner were initiated in April 2011, and staff has been working diligently with this property owner to resolve any outstanding concerns presented. The owner was very cooperative initially but recently notified the City that a large fee is being requested to reimburse the owner for the attorney and appraisal fees he claims to have incurred. We are still waiting to hear the final amount of these fees. Staff has been working with the City Attorney to determine how best to proceed with acquisition of the final easement. One option is to use eminent domain. If so, a complaint will then be filed with the court, and the City could take possession of the easements within 28 days of filing the complaint if the property owner does not file a motion challenging the necessity of the easement. If they do challenge necessity, that motion would have to be filed by the property owner within that first 28 days and then the hearing would be held 30 days after the filing.

The Ten Mile Pathway project is proposed for bidding this spring along with the West Oaks Area road projects to recognize savings as part of a larger project that also involves pathway work. Staff will continue to work with the City Attorney and the property owner to acquire the remaining easements.

cc: Tom Schultz; Johnson Rosafi

# JOHNSON | ROSATI | SCHULTZ | JOPPICH

A Professional Corporation

34405 W. Twelve Mile Road Suite 200 ~ Farmington Hills, Michigan 48331-5627  
Phone: 248.489.4100 / Fax: 248.489.1726  
[www.johnsonrosati.com](http://www.johnsonrosati.com)

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Thomas R. Schultz  
[tschultz@jrsjlaw.com](mailto:tschultz@jrsjlaw.com)

May 2, 2012

Mayor Robert J. Gatt  
City of Novi  
45125 W. Ten Mile Road  
Novi, MI 48375

City Council Members  
City of Novi  
45125 W. Ten Mile Road  
Novi, MI 48375

RE: Ten Mile Road Pathway – CSX Construction Agreement

Dear Mayor Gatt and Council:

Our office has reviewed the proposed Construction Agreement with CSX for the pathway across the CSX railroad track. The Agreement is generally the CSX form of agreement and required attachments. Unlike in some of the City's past dealings with CSX, our office (Beth Saarela) was able to get CSX to make a number of changes to the Agreement to make it more palatable to the City. As it stands now, we see no legal impediments to the City entering into this Agreement.

There are a couple of things to note. The first is the language regarding indemnification in Section 11. The indemnification proposed is mutual, and the City's indemnification does not include the sole negligence/willful misconduct of CSXT or its affiliates.

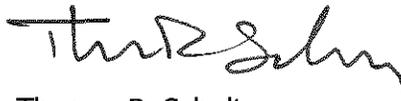
The second is the insurance requirements in Section 9. According to the City's risk manager, the City is able to comply with the insurance requirements in the Agreement.

If you have any questions regarding the above, please do not hesitate to call.

May 2, 2012  
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Very truly 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, sweeping initial "T".

Thomas R. Schultz

TRS:jah

cc: Clay Pearson, City Manager  
Maryanne Cornelius, City Clerk  
Victor Cardenas, Assistant City Manager  
Rob Hayes, City Engineer  
Brian Coburn, Engineering Manager  
Ben Croy, Engineer

**Novi, Oakland County, Michigan  
10 Mile Road at CSXT Railroad  
Construct Sidewalk across track  
on north side of the crossing.  
DOT 232238W  
RR MP CC-75.90  
CSXT OP# MI0375**

### **CONSTRUCTION AGREEMENT**

This Construction Agreement (“**Agreement**”) is made as of \_\_\_\_\_, 20\_\_\_\_, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and **City of Novi**, a body corporate and political subdivision of the **State of Michigan** (“**Agency**”).

### **EXPLANATORY STATEMENT**

1. Agency has proposed to construct or cause to be constructed **10 Mile Road at CSXT Railroad Construct Sidewalk across track on north side of the crossing DOT 232238W; RR MP CC-75.90** (the “**Project**”), as shown on the attached and incorporated Exhibit A. Agency or its Contractors and CSXT will each construct separate portions of the Project. The approved plan for the Project will delineate which portions of the Project will be constructed by CSXT and which portions of the Project will be constructed by Agency and/or its Contractor. Agency will reimburse CSXT for its portion of the Project in accordance with Paragraph 4 of this Agreement. With respect to the requirement for a flag man to be present for any work within 25 feet of the rails, Agency and CSXT shall cooperate to the greatest extent possible to cause both parties’ work to occur simultaneously when physically possible to reduce the time frame in which a flag man is needed.
2. Agency has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including Agency), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. Agency acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other Agency contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of Agency or its contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
4. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Project Plans and Specifications

- 1.1 Preparation and Approval. Pursuant to Exhibit A of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at Agency's sole cost and expense, by Agency or CSXT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of Agency shall be subject, at CSXT's election, to the review and approval of CSXT. Such plans, specifications and drawings, as prepared or approved by CSXT, are referred to as the "**Plans**", and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by CSXT as of the date of this Agreement are set forth in Exhibit B to this Agreement.
- 1.2 Effect of CSXT Approval or Preparation of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance with such Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans.
- 1.3 Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

- 2.1 CSXT Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, CSXT shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. Agency agrees that CSXT shall provide all services that CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.
- 2.2 Agency Work. Agency shall perform, or cause to be performed, all work as set forth by Exhibit A, at Agency's sole cost and expense.
- 2.3 Conduct of Work. CSXT shall commence its work under this Agreement following: (i) delivery to CSXT of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by

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CSXT or on CSXT property shall conclude no later than 12 calendar months from the date of this agreement unless the parties mutually agree to extend such date.

3. Special Provisions. Agency shall observe and abide by, and shall require its contractors (“**Contractors**”) to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the “Special Provisions”). To the extent that Agency performs Project work itself; Agency shall be deemed a Contractor for purposes of this Agreement. Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor’s agreement to observe and abide by the terms and conditions of this Agreement.
  
4. Cost of Project and Reimbursement Procedures
  - 4.1 Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Project, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to CSXT’s consultants and subcontractors, and (6) CSXT labor in connection with the Project, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, “**Reimbursable Expenses**”). Reimbursable Expenses shall also include expenses incurred by CSXT prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.
  
  - 4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the “**Estimate**”, as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for Agency’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further work on the Project, unless and until Agency provides such approval and confirmation.
  
  - 4.3 Payment Terms.
    - 4.3.1 Agency shall pay CSXT for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the “Payment Schedule”, as revised pursuant to Section 4.2). CSXT agrees to submit invoices to Agency for such amounts and Agency shall remit payment to CSXT at the later of thirty (30) days following delivery of each such invoice to Agency or, the payment date (if any) set forth in the Payment Schedule.
  
    - 4.3.2 Following completion of the Project, CSXT shall submit to the Agency, a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. Subject to confirmation that outstanding amounts invoiced by CSXT are within Estimates or amended Estimates approved by Agency,

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Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice.

4.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

4.3.4 All invoices from CSXT shall be delivered to Agency in accordance with Section 16 of this Agreement. All payments by Agency to CSXT shall be made by certified check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

CSX Transportation, Inc.  
P.O. Box 116651  
Atlanta, GA 30368-6651

4.4 Effect of Termination. Agency's obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement for any reason.

5. Appropriations: Agency represents to CSXT that: (i) Agency has appropriated funds sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such appropriations.

6. Easements and Licenses

6.1 Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

6.2 Temporary Construction Licenses. Insofar as it has the right to do so, CSXT hereby grants Agency a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT.

6.3 Permanent Easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to Agency, easements for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions and at a price acceptable to the parties. Upon request by CSXT, Agency shall furnish to CSXT descriptions and plat plans for the easements.

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7. Permits: At its sole cost and expense, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.
8. Termination
  - 8.1 By Agency. For any reason, Agency may, as its sole remedy, terminate this Agreement by delivery of notice to CSXT. Agency shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or Work on the Project by either party.
  - 8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to Agency in the event Agency or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to Agency.
  - 8.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. Agency shall reimburse CSXT pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning CSXT's property to its former condition, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 4.
9. Insurance: In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Neither Agency nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.
10. Ownership and Maintenance
  - 10.1 By Agency. Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of sidewalk pavement up to the outer ends of the railroad cross ties, guardrails, or any other pavement fixtures in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable

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notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT, that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.

- 10.2 By CSXT. CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the crossing, at Agency's sole cost and expense.
- 10.3 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration.

## 11. Indemnification

- 11.1 Generally. To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including but not limited to employees of CSXT, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to any property owned by or in the care, custody, or control of CSXT, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property; provided, however, that the foregoing indemnification obligation shall not be applicable to any liability caused by or resulting from the sole negligence or willful misconduct of CSXT or its affiliates, agents, employees, invitees, contractors, or its contractors' agents, employees or invitees. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.
- 11.2 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 11.3 "CSXT Affiliates". For the purpose of this Section 11, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common

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control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.

- 11.4 Notice of Incidents. Agency and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. Independent Contractor: The parties hereby acknowledge and agree that neither Agency nor its Contractors shall be deemed either agents or independent contractors of CSXT. Likewise, neither CSXT, nor its affiliates, agents, contractors or employees shall be deemed either agents or independent contractors of Agency or its Contractors. The parties to this agreement will perform each one's obligations with respect to the Project on its own behalf. Except as otherwise provided by this Agreement, neither CSXT, nor Agency, shall exercise control over the employment, discharge, compensation of, or services rendered by the other party's contractors, agents, or employees. Furthermore, no liability or responsibility with respect to benefits of any kind, including without limitation, medical benefits, worker's compensation, pension rights, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party as a result of the performance of this Agreement. Neither CSXT nor Agency shall exercise control over the construction practices, procedures, and professional judgment employed by the other party's contractor, employees, or agents in completing the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of CSXT to prohibit Agency or its Contractors or anyone from entering CSXT's Property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards, in, on or about the Project exist.
13. Entire Agreement: This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
14. Waiver: If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
15. Assignment: CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption of CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligation under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior consent, which consent may be withheld for any reason.
16. Notices: All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days

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following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT: CSX Transportation, Inc.  
1717 Dixie Highway, Rm 400  
Ft. Wright, KY 41011  
Attention: Amanda Decesare

If to Agency: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 17. Severability: The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.
  
- 18. Applicable Law: This Agreement shall be governed by the laws of the State of Michigan. With respect to all acts or omissions occurring within the State of Michigan, the parties further agree that the venue of all legal and equitable proceedings shall be situated in Oakland County, Michigan, and the parties agree to submit to the personal jurisdiction of any State or Federal Court situated in or serving Oakland County, Michigan. All other disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal Court situated in Duval County, Florida.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

**CITY OF NOVI**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Dale W. Ophardt  
Assistant Vice President Engineering

**EXHIBIT A**  
**ALLOCATION OF WORK**

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

- A. Agency shall let by contract to its Contractors:
  - 1. Construct Sidewalk on CSXT Property up to the ends of the ties on each side of the track, in accordance with City of Novi/URS plan dated 10/06/11.
  - 2. Install Drain pipe and drain structures on CSX property in accordance with City of Novi/URS plan dated 10/06/11.
  - 3. Asphalt paving approaches to within 10' each side of the track and over track between crossing surface timbers.
  
- B. CSXT or its representative shall perform or cause to be performed:
  - 1. Install Timber Crossing surface for the new sidewalk.
  - 2. Furnish Railroad Flagging protection for contractor when working on CSXT property.
  - 3. Provide Construction Engineering and Inspection services to oversee work on CSXT property.

## **EXHIBIT B**

### **PLANS AND SPECIFICATIONS**

#### Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications and drawings have been submitted by Agency to CSXT for its review and approval:

**City of Novi Michigan/URS Plan set dated 10/06/11.**

**INDEX OF SHEETS**

**SHEET NO.**

TITLE ..... 1  
 TYPICAL CROSS SECTIONS ..... 2  
 GENERAL NOTES AND DETAILS ..... 3  
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# CITY OF NOVI

## 2011 PATHWAY GAP PROGRAM 10 MILE RD FROM CATHERINE INDUSTRIAL DR TO CSX RAILROAD

PROJECT NO: 12942755

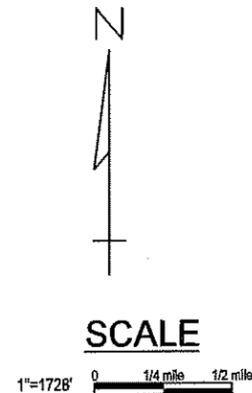
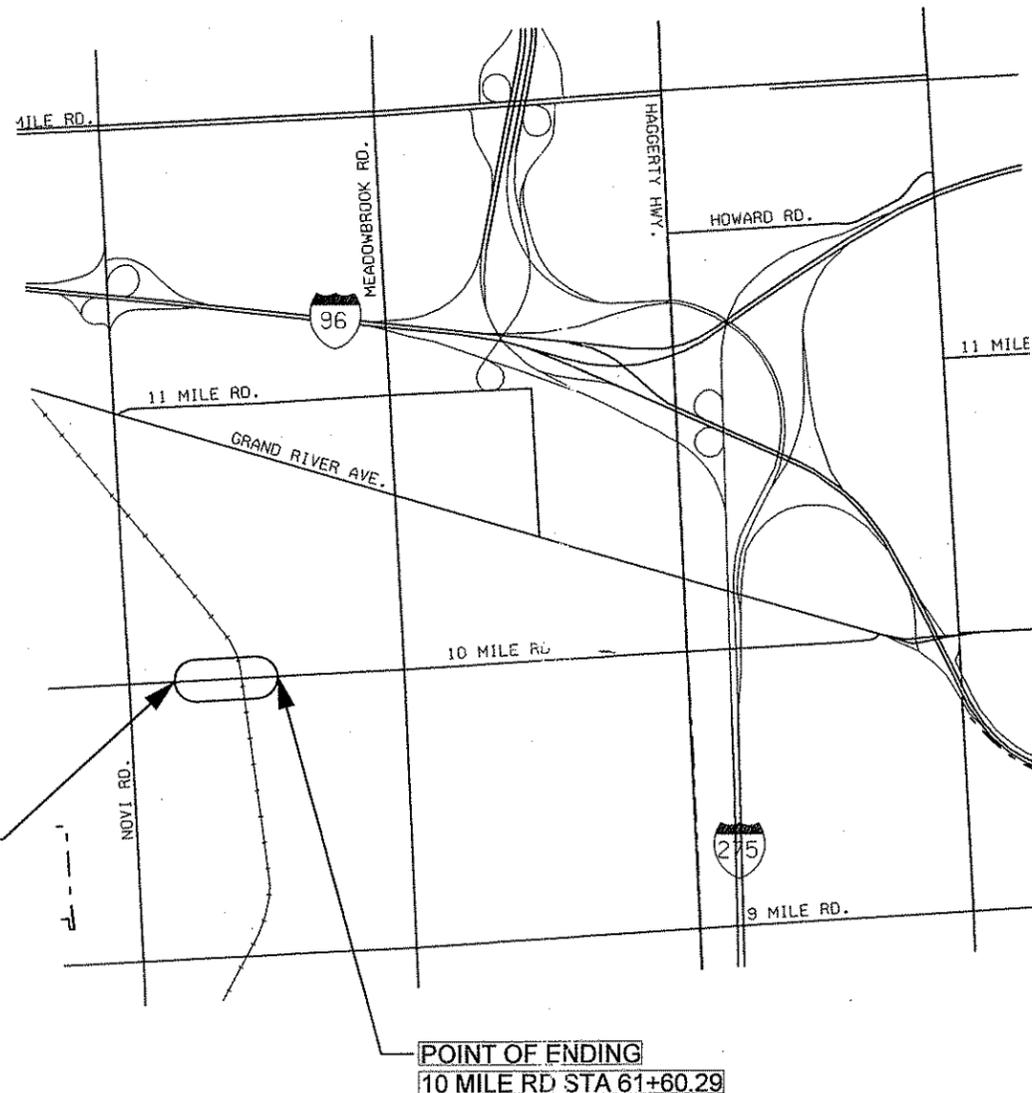
CITY OF NOVI  
 OAKLAND COUNTY, MI

**EXHIBIT B**

1 of 7

**UTILITIES**

|   |                 |
|---|-----------------|
| CONSUMER'S ENERGY<br>ATTN: BRIAN SWISHER<br>11801 FARMINGTON ROAD<br>LIVONIA, MI 48150<br>734-513-6258<br>bdswhisher@cmsenergy.com            | GAS             |
| DTE ENERGY<br>ATTN: XXXXXXXX<br>2000 SECOND AVE., RM 518 S.B.<br>DETROIT, MI 48226<br>313-235-8811<br>xxxx@dteenergy.com                      | STREET LIGHTING |
| DTE ENERGY<br>ATTN: ROBIN O'CONNELL<br>2000 SECOND AVE., RM 518 S.B.<br>DETROIT, MI 48226<br>313-235-5632<br>dtefacilityrequest@dteenergy.com | ELECTRIC        |
| BRIGHTHOUSE NETWORKS<br>ATTN: BOB HENDZELL<br>25000 CAPITOL<br>REDFORD, MI 48239<br>313-538-3911 EXT 71258<br>bob.hendzell@mybighthouse.com   | CABLE           |
| AT&T<br>ATTN: STEVE ALLSHOUSE<br>550 SOUTH MAPLE RD, 2ND FLOOR<br>ANN ARBOR, MI 48103<br>734-996-5381<br>sa3146@att.com                       | TELEPHONE       |
| CITY OF NOVI<br>ATTN: TIM SIKMA<br>26300 DELWAL<br>NOVI, MI 48375<br>248-735-9661   | WATER & SEWER   |
| CITY OF NOVI<br>ATTN: MATT WIKTOROWSKI<br>26300 DELWAL<br>NOVI, MI 48375<br>248-735-0040  | ROADS & DRAINS  |



**CALL MISS DIG**  
 3 WORKING DAYS BEFORE YOU DIG  
 (EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS)  
 (800) 482-7171

**POINT OF BEGINNING**  
 10 MILE RD STA 52+58.75

**POINT OF ENDING**  
 10 MILE RD STA 61+60.29

- MAYOR  
DAVID LANDRY
- MAYOR PRO-TEM  
BOB GATT
- CITY COUNCIL  
JUSTIN FISCHER  
TERRY MARGOLIS  
ANDREW MUTCH  
DAVID STAUDT  
WAYNE WROBEL
- CITY MANAGER  
CLAY PEARSON
- CITY ENGINEER  
ROB HAYES, PE

LENGTH OF PROJECT: 0.17 MILE  
 CONTRACT FOR: SIDEWALK EXTENSION ON 10 MILE ROAD.

PREPARED UNDER THE SUPERVISION OF:

Approved \_\_\_\_\_ Date \_\_\_\_\_  
 PROFESSIONAL ENGINEER

**URS**  
 Surface Transportation  
 Grand Rapids, Southfield,  
 Traverse City



JOB NO.  
12942755  
 DATE  
10/06/11  
 SHEET NO.  
1

URS JN 12942755

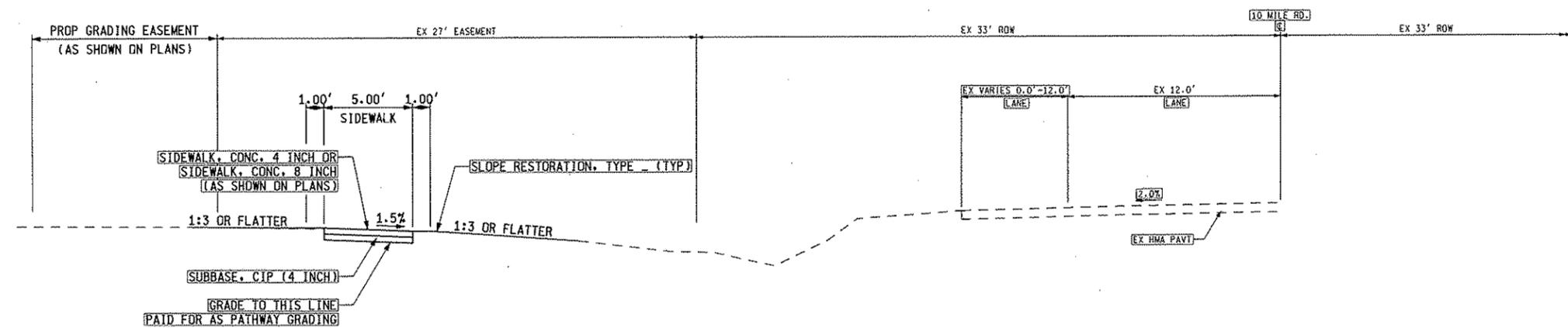
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WORKED ON BY: JSB

DATE: 10/06/11

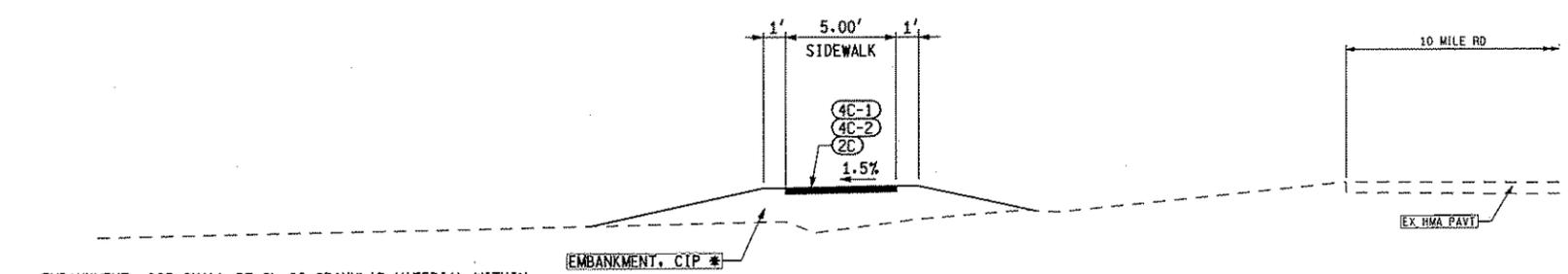
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FILE NAME: 42755.TTL



PROPOSED PATHWAY TYPICAL SECTION

SCALE: 1"=4'  
 TO APPLY:  
 10 MILE RD. STA 52+39.44 (POB) TO STA 60+25.00  
 10 MILE RD. STA 61+25.00 TO STA 61+60.29 (POE)



\* EMBANKMENT, CIP SHALL BE CL II GRANULAR MATERIAL WITHIN RAILROAD ROW, AND 6AAA WITHIN 10 FEET OF RAILROAD TRACKS.

PROPOSED PATHWAY TYPICAL SECTION

SCALE: 1"=4'  
 TO APPLY:  
 10 MILE RD. STA 60+75.00 TO STA 61+25.00  
 NOTE: WORK BETWEEN STA 61+07.28 TO STA 61+12.47 WILL BE COMPLETED BY CSX RAILROAD

HMA APPLICATION ESTIMATE

| IDENT NO. | ITEM        | RATE PER SYD | PERFORMANCE GRADE | REMARKS              |
|-----------|-------------|--------------|-------------------|----------------------|
| 4C-1      | HMA, 4C     | 165 (1.5")   | 64-22             | TOP COURSE (AWI=260) |
| 4C-2      | HMA, 4C     | 165 (1.5")   | 64-22             | LEVELING COURSE      |
| 2C        | HMA, 2C     | 330 (3")     | 58-22             | BASE COURSE          |
|           | * BOND COAT | 0-0.10 GAL   |                   |                      |

\*FOR INFORMATION ONLY

FINAL R.O.W. REVISION

NOV 11 10 06 AM '11

URR  
 Surface Transportation  
 Grand Rapids, Southfield, Traverse City

CITY OF  
 NOV 11 10 06 AM '11

10 MILE RD FROM CATHERINE INDUSTRIAL DR TO CSX RAILROAD

TYPICAL CROSS SECTIONS

JOB NO. 12942755

DATE 10/06/11

SHEET NO. 2

FILE NAME: 42755 01.TYP

CHECKED BY: SNK

WORKED ON BY: JSB

DATE: 10/06/11

NOTES APPLYING TO STANDARD PLANS

WHERE THE FOLLOWING ITEMS ARE CALLED FOR ON PLANS, THEY ARE TO BE CONSTRUCTED ACCORDING TO THE MOST STANDARD PLAN GIVEN BELOW OPPOSITE EACH ITEM UNLESS OTHERWISE INDICATED.

|   |         |
|---|---------|
| DRAINAGE STRUCTURES                                   | R-1-E   |
| COVER G   | R-12-D  |
| UTILITY TRENCHES                                      | R-83-B  |
| SIDEWALK RAMP AND DETECTABLE WARNING DETAILS          | R-28-G  |
| DRIVEWAY OPENINGS & APPROACHES AND CONCRETE SIDEWALKS | R-29-G  |
| SODDING, SEEDING, AND TREE PLANTING                   | R-100-F |

QUANTITY ESTIMATES

THE FOLLOWING ITEMS OF WORK SHALL BE USED AS THEY APPLY THROUGHOUT THE PROJECT:

|      |     |   |
|------|-----|---|
| 1    | LS  | Mobilization, Modified                              |
| 1    | Ea  | Tree, Rem. 6 inch to 18 inch                        |
| 1    | Ea  | Tree, Rem. 19 inch to 36 inch                       |
| 10   | Ft  | Curb and Gutter, Rem                                |
| 62   | Syd | Pavt. Rem   |
| 9    | Sta | Pathway Grading                                     |
| 3    | Ea  | Erosion Control, Inlet Filter, Geotextile and Stone |
| 36   | Ft  | Erosion Control, Check Dam, Stone                   |
| 3    | Ea  | Erosion Control, Sediment Trap                      |
| 3    | Ft  | Erosion Control, Silt Fence                         |
| 530  | Ft  | Erosion Control, Silt Fence                         |
| 1    | Cyd | Erosion Control, Maintenance, Sediment Removal      |
| 1    | Ea  | Culv End Sect, Conc. 18 inch                        |
| 18   | Ft  | Sewer, CI IV, 18 inch, Tr Det B                     |
| 30   | Ft  | Sewer, CMP, 18 inch, Tr Det B                       |
| 1    | Ea  | Dr Structure, 48 inch dia                           |
| 200  | Lb  | Dr Structure Cover                                  |
| 15   | Ft  | Culvert Cleanout                                    |
| 65   | Cyd | Subbase, CIP  |
| 5    | Cyd | Aggregate, 6AAA                                     |
| 3    | Ea  | Sanitary Structure Cover, Adj. Case 1               |
| 1    | Ea  | Dr Structure Cover, Adj. Case 1                     |
| 5    | Ton | HMA, 2C   |
| 5    | Ton | HMA, 4C   |
| 3720 | Sft | Sidewalk, Conc. 4 inch                              |
| 780  | Sft | Sidewalk, Conc. 8 inch                              |
| 20   | Sft | Detectable Warning Surface                          |
| 1    | LS  | Slope Restoration                                   |
| 15   | Syd | Geotextile Separator                                |
| 1    | LS  | Maintaining Traffic                                 |
| 1    | LS  | Pre-Construction Audio visual                       |
| 12   | Day | Crew Days   |

GENERAL NOTES

1. ALL WORK WITHIN CSX RAILROAD ROW SHALL BE COMPLETED IN STRICT COMPLIANCE WITH THE RAILROAD REQUIREMENTS INCLUDED IN THE PROJECT MANUAL.
2. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE MICHIGAN DEPARTMENT OF TRANSPORTATION 2003 STANDARD SPECIFICATIONS FOR CONSTRUCTION AND THE PROJECT MANUAL.
4. TRAFFIC MUST BE MAINTAINED AT ALL TIMES DURING CONSTRUCTION.
5. ALL UTILITY LOCATION INFORMATION IS APPROXIMATE AND IS BASED ON INFORMATION PROVIDED BY THE OWNERS.
6. STREET SWEEPING AND DUST CONTROL ARE THE RESPONSIBILITY OF THE CONTRACTOR.
7. CONTRACTOR PARKING AREAS WILL BE LIMITED TO PUBLIC ROW AREAS ONLY. DO NOT OCCUPY OPEN ROADWAYS WITH PARKED VEHICLES.

SOIL EROSION AND SEDIMENTATION CONTROL

SEQUENCE OF CONSTRUCTION

1. PRIOR TO STARTING GRADING OPERATIONS, PLACE TEMPORARY SESC MEASURES. ENGINEER'S APPROVAL OF SESC MEASURES MUST BE OBTAINED PRIOR TO EXCAVATION. APPROVAL BY THE ENGINEER IS ALSO REQUIRED FOR MATERIAL STOCKPILE AND STAGING AREA LOCATIONS. MATERIAL STOCKPILES SHALL BE RINGED WITH SILT FENCING.
2. DURING CONSTRUCTION, MAINTAIN ALL TEMPORARY SESC MEASURES. ADDRESS ANY DEFICIENCIES IN SESC MEASURES IMMEDIATELY.
3. WITHIN FIVE DAYS OF THE COMPLETION OF PAVING, PERMANENT SLOPE RESTORATION SHALL BE PLACED.
4. REMOVE TEMPORARY SESC MEASURES WITHIN ONE WEEK OF PLACING PERMANENT SLOPE RESTORATION.

SESC NOTES

1. CONTRACTOR IS RESPONSIBLE FOR INSTALLATION AND MAINTENANCE OF ALL SOIL EROSION AND SEDIMENTATION CONTROL MEASURES AND FOR FULL COMPLIANCE WITH THE SOIL EROSION AND SEDIMENTATION CONTROL PERMIT TO BE ISSUED FOR THE PROJECT.
2. TEMPORARY SOIL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL INCLUDE SILT FENCE, SEDIMENT TRAPS, AND CHECK DAMS.
3. ALL SESC MEASURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE OAKLAND COUNTY DETAILS INCLUDED IN THE PLANS.
4. SESC MEASURES SHALL BE INSTALLED AT LOCATIONS DETERMINED BY THE ENGINEER.
5. TEMPORARY PUMPS, IF REQUIRED, SHALL BE DISCHARGED INTO A FILTER BAG OR SIMILAR DEVICE. CONTRACTOR SHALL OBTAIN ADVANCE APPROVAL FROM OF THE ENGINEER FOR ALL DEWATERING OPERATIONS AND THE FILTER DEVICES TO BE USED.

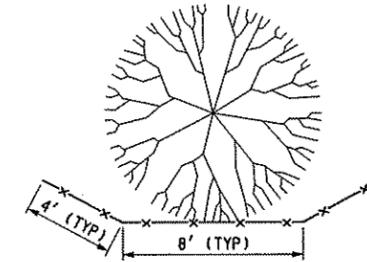
TREE PROTECTION NOTES

ROOT PROTECTION

1. ANY DAMAGE TO TREE ROOTS IS TO BE REPORTED TO THE ON-SITE CONSTRUCTION OBSERVER OR OWNER.
2. DO NOT DRIVE OR PARK ANY VEHICLE OR EQUIPMENT, STORE ANY MATERIALS, OR WASH ANY EQUIPMENT OR MATERIALS WITHIN THE DRIP LINE OF ANY TREE. THESE OR OTHER ACTIONS WITHIN THE DRIP LINE MAY BE CONSIDERED DAMAGE BY THE ENGINEER.
3. CONDUCT OPERATIONS TO MINIMIZE EXCAVATIONS ADJACENT TO TREES. WHERE REQUIRED WORK EXPOSES TREE ROOTS, PLACE WET MULCH OR OTHER APPROVED MATERIALS AS SOON AS POSSIBLE. CONSULT WITH ENGINEER OR CITY FORESTER PRIOR TO BEGINNING WORK.

TREE PROTECTION BARRIER

1. ALL TREES WITHIN THE WORK ZONE TO HAVE TREE PROTECTION BARRIER INSTALLED PRIOR TO CONSTRUCTION UNLESS OTHERWISE DIRECTED BY THE ENGINEER. TREE PROTECTION BARRIER ORDERED BY THE ENGINEER WILL BE MEASURED AND PAID FOR AS SILT FENCE.
2. BARRIER TO BE SILT FENCE MATERIAL PLACED FOR USE AS VISUAL AND PHYSICAL TREE PROTECTION BARRIER. IT IS NOT REQUIRED THAT TOE BE BURIED OR SECTIONS BE OVERLAPPED AS FOR SOIL EROSION CONTROL.
3. ANY DAMAGE TO ANY TREE IS TO BE REPORTED TO THE ON-SITE CONSTRUCTION OBSERVER OR OWNER.
4. CONTRACTOR IS RESPONSIBLE FOR ANY TREE DAMAGE. TREES DETERMINED TO BE DAMAGED IN THE OPINION OF THE ENGINEER SHALL BE REPLACED AT THE CONTRACTOR'S EXPENSE.



TREE PROTECTION BARRIER DETAIL

NOT TO SCALE

FINAL R.O.D.W.

NO. REVISION

DATE

AUTH

**URS**  
Surface Transportation  
Group  
Grand Rapids, MI



10 MILE RD FROM CATHERINE INDUSTRIAL DR TO CSX RAILROAD

GENERAL NOTES AND DETAILS

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| JOB NO.   | 12942755 |
| DATE      | 10/06/11 |
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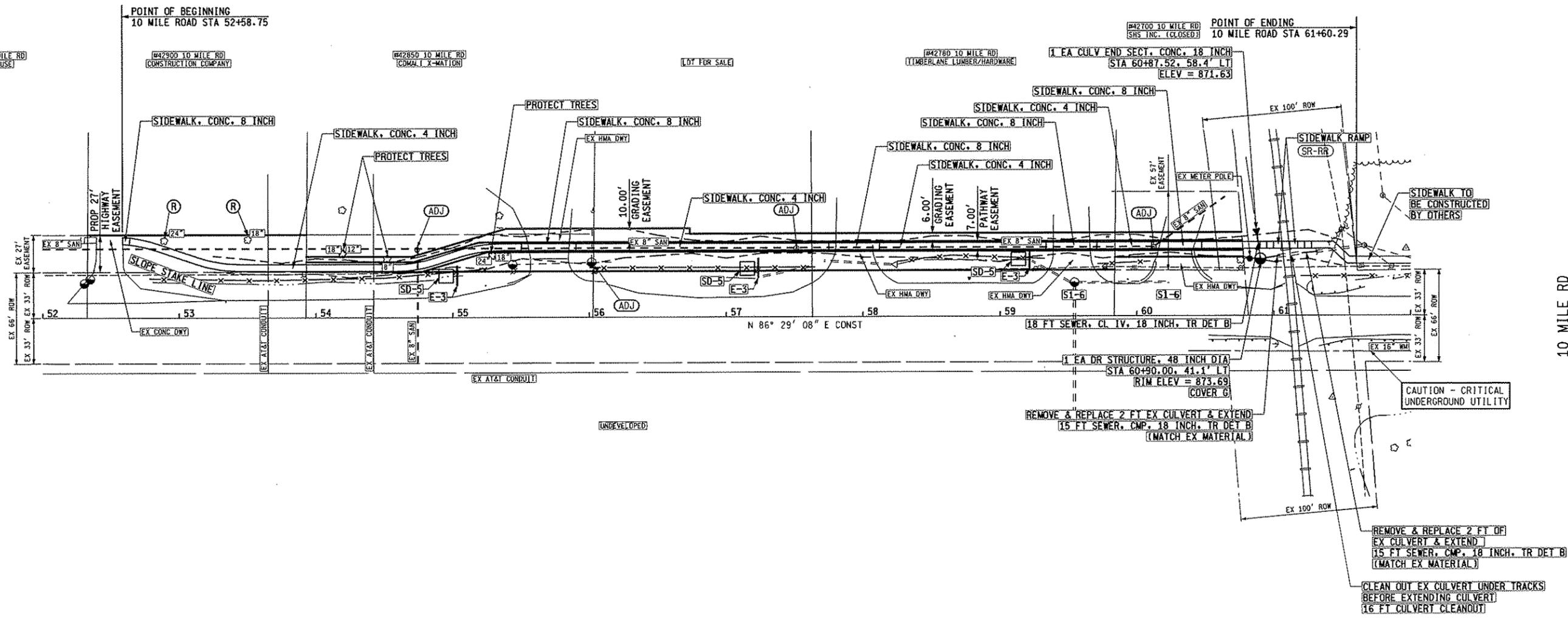
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WORKED ON BY: JSB  
DATE: 10/06/11  
CHECKED BY: SNK

NOTE: WORK BETWEEN STA 61+07.28 TO STA 61+12.47 WILL BE COMPLETED BY CSX RAILROAD



10 MILE RD

10 MILE RD



| LEGEND   |       |
|--|-------|
| CURB & GUTTER INLET FILTER<br>OCDC DETAIL S1-6 | SI-6  |
| DITCH SEDIMENT TRAP<br>OCDC DETAIL SD-5        | □     |
| CHECK DAM<br>OCDC DETAIL E-3                   | —     |
| SILT FENCE<br>OCDC DETAIL SP-1                 | —x—x— |

| FINAL R.O.N. | REVISION |
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**URS**  
Surface Transportation  
Grand Rapids, Southfield,  
Troy, MI

**CITY OF NOVI**

10 MILE RD FROM CATHERINE INDUSTRIAL DR TO CSX RAILROAD

PLAN

DATE: 10/06/11

WORKED ON BY: JSB

CHECKED BY: SNK

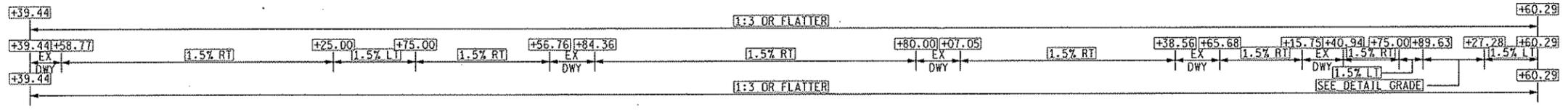
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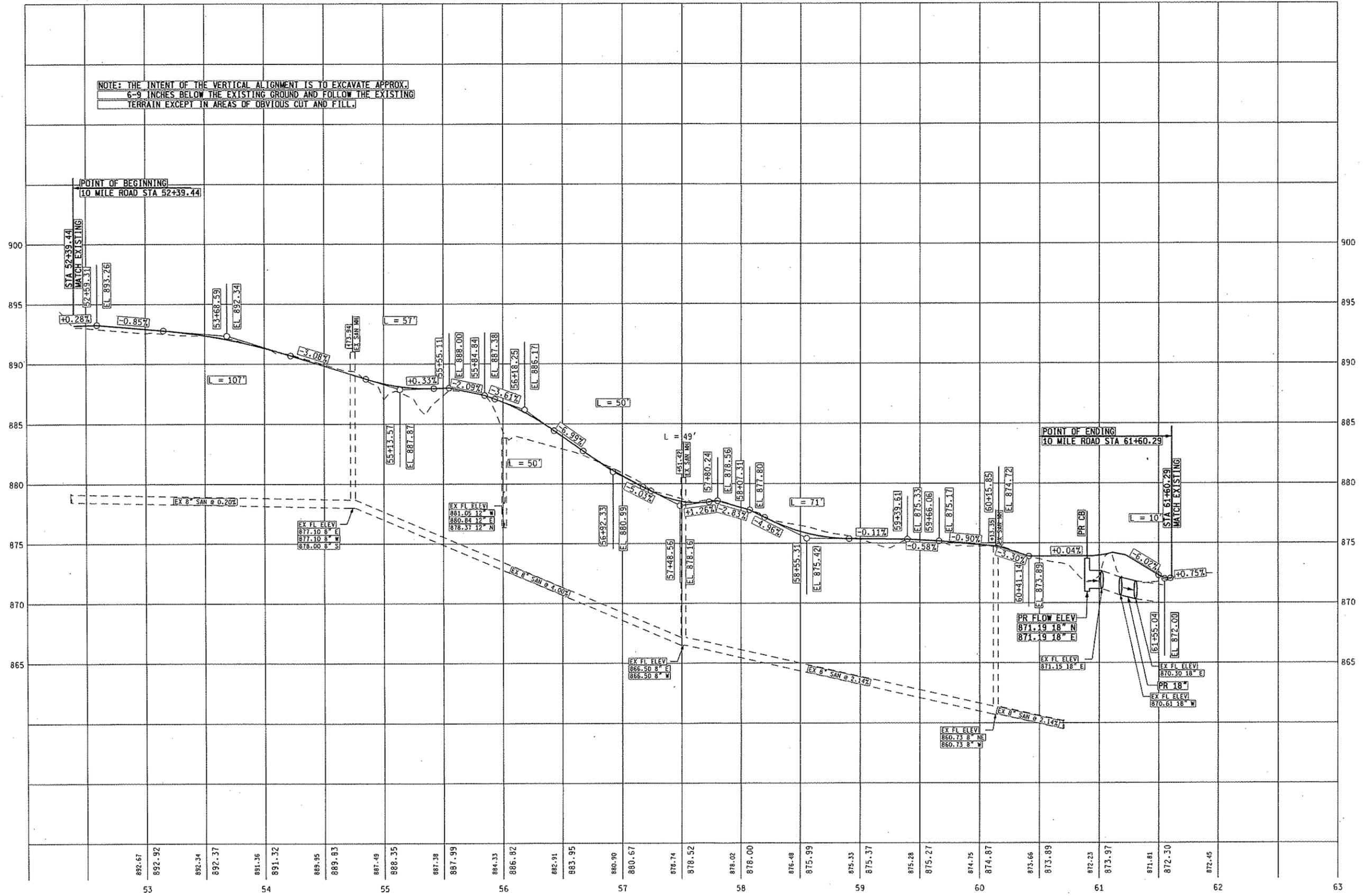
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SHEET NO. 4

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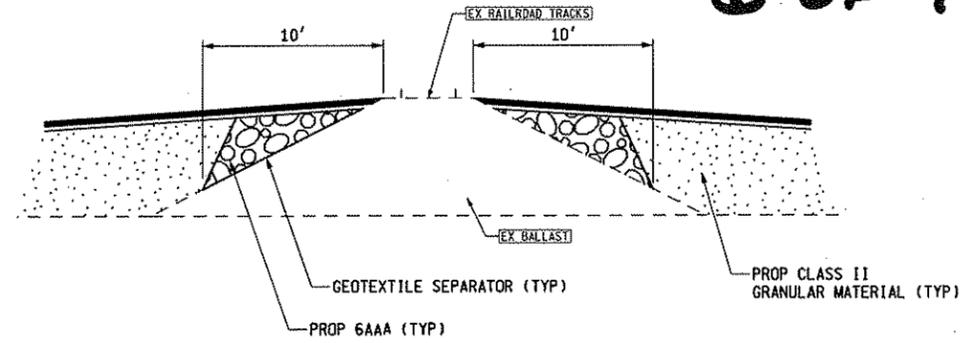
NOTE: THE INTENT OF THE VERTICAL ALIGNMENT IS TO EXCAVATE APPROX. 6-9 INCHES BELOW THE EXISTING GROUND AND FOLLOW THE EXISTING TERRAIN EXCEPT IN AREAS OF OBVIOUS CUT AND FILL.



--- EX GROUND PROFILE (PROP. FACE OF SW)  
 ——— PROP. SIDEWALK PBL

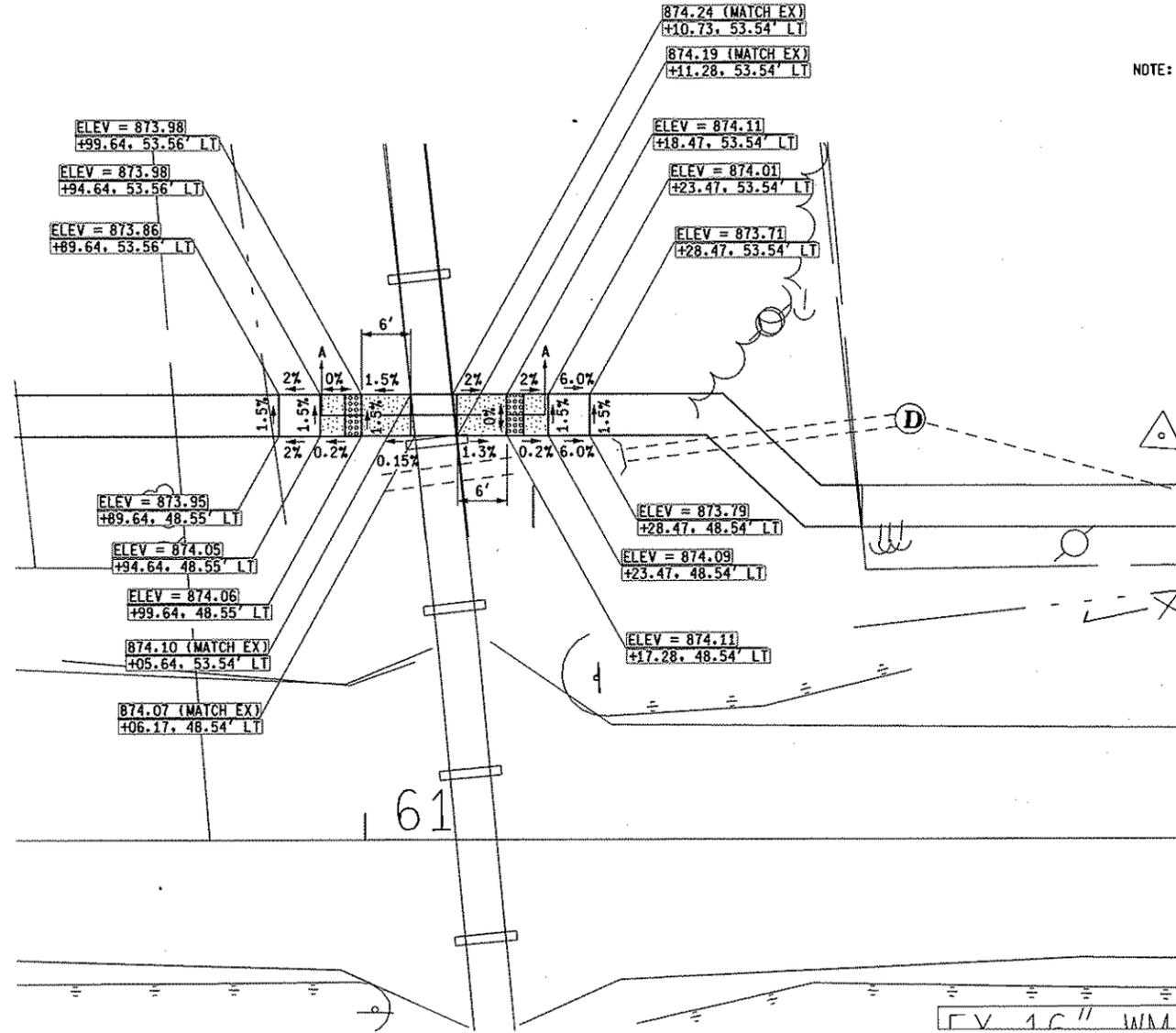
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| AUTH   | DATE           |
| <br>Surface Transportation<br>Grand Rapids, Michigan<br>Denver, CO               |                |
| <br><b>CITY OF NOVI</b>  |                |
| <b>10 MILE RD FROM CATHERINE INDUSTRIAL DR TO CSX RAILROAD</b><br><b>PROFILE</b> |                |
| JOB NO.  | 12942755       |
| DATE   | 10/06/11       |
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| WORKED ON BY:  | JSB            |
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NOTE: WORK BETWEEN STA 61+05.64 TO STA 61+11.28 WILL BE COMPLETED BY CSX RAILROAD



NOTE: PLACE GEOTEXTILE SEPARATOR BETWEEN EXISTING BALLAST AND PROPOSED 6AAA

SECTION A-A



10 MILE RD

10 MILE RD

CSX RAILROAD

| LEGEND |                           |
|--------|---------------------------|
|        | DETECTABLE WARNING SYSTEM |
|        | SIDEWALK RAMP, ADA        |
|        | SIDEWALK, CONC. 4 INCH    |

| DATE | REVISED |
|------|---------|
|      |         |
|      |         |
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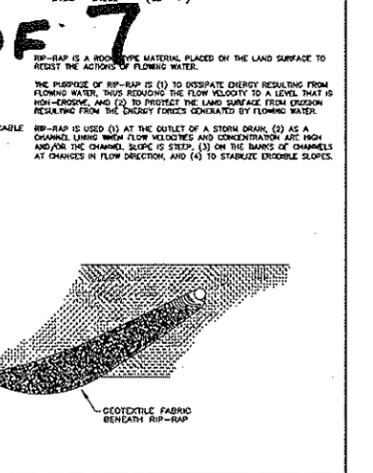
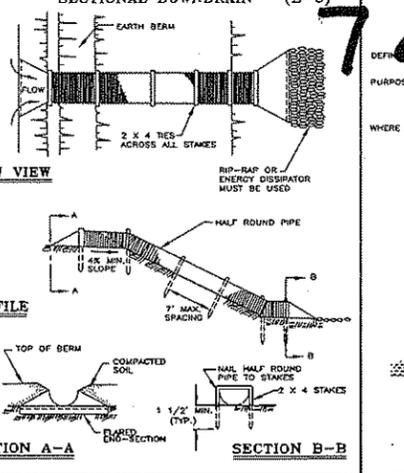
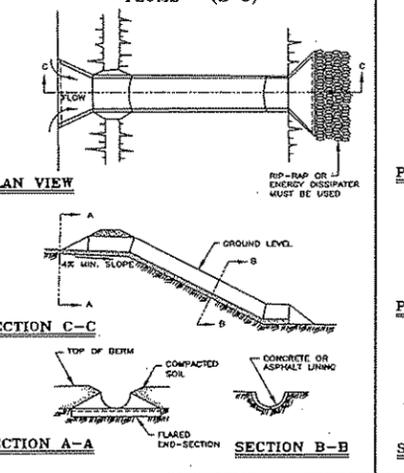
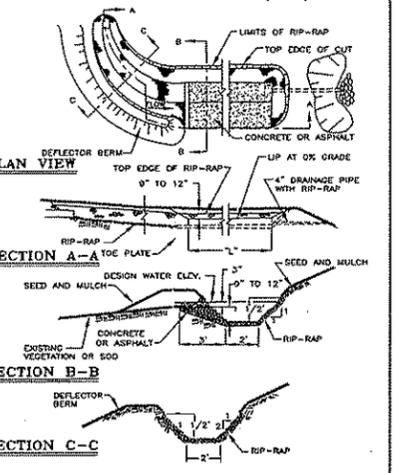
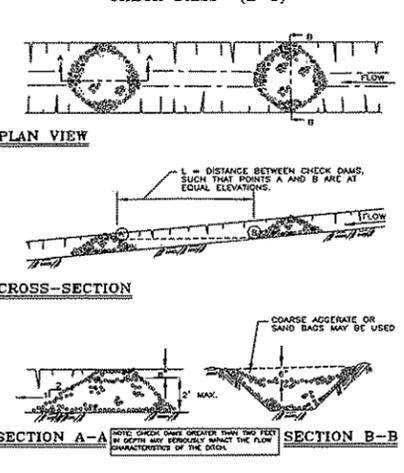
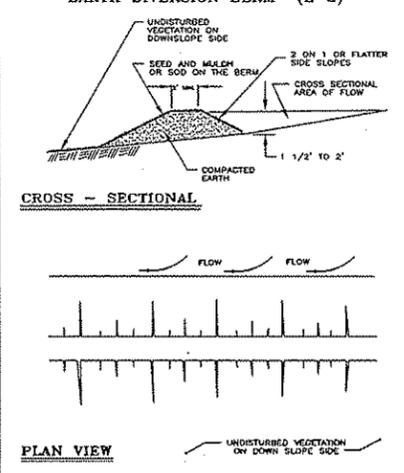
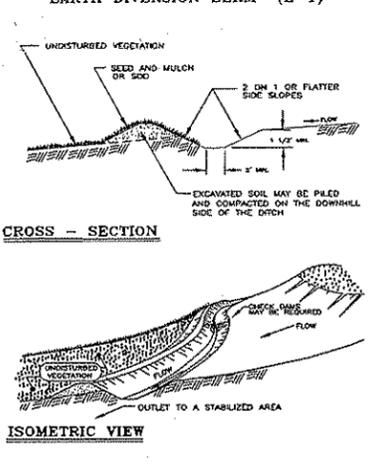
URS  
Surface Transportation  
Grand Rapids, Michigan  
Novi, Michigan



10 MILE RD FROM CATHERINE INDUSTRIAL DR TO CSX RAILROAD  
RAILROAD & SIDEWALK RAMP DETAILS

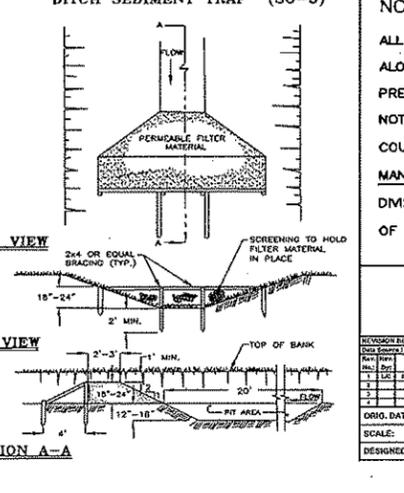
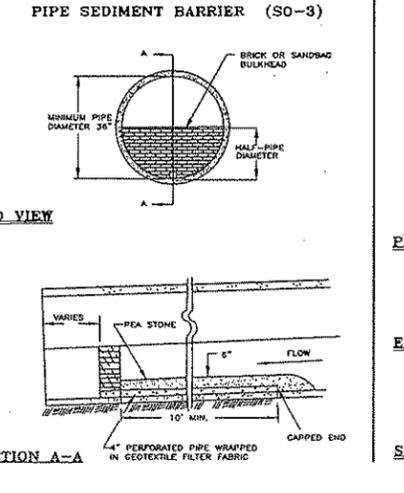
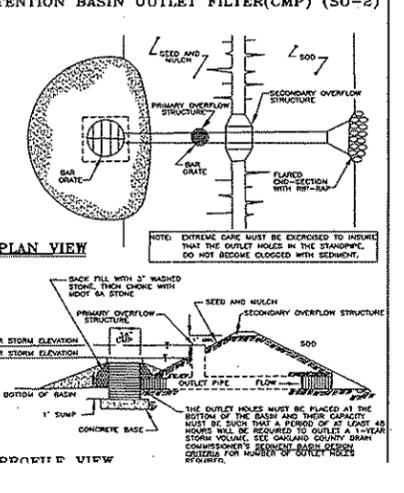
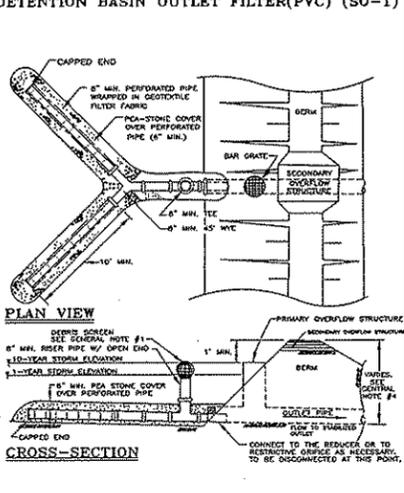
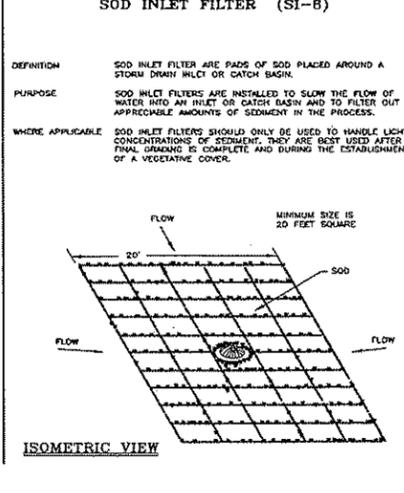
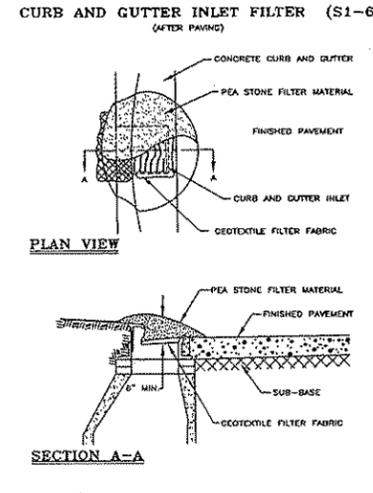
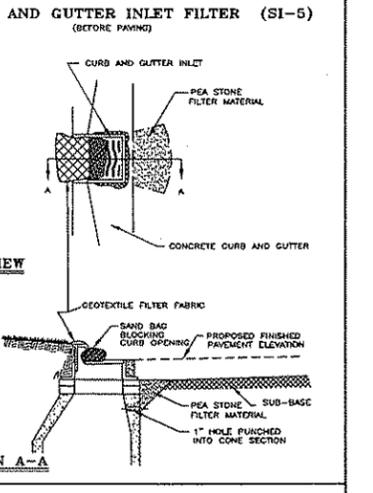
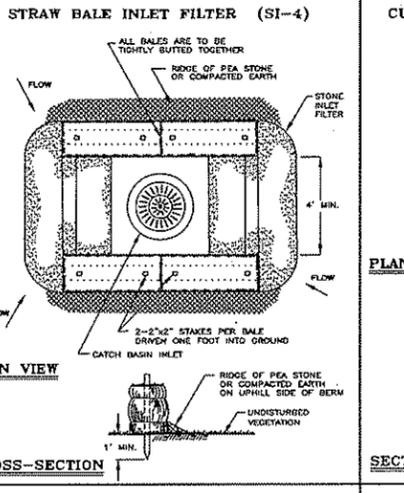
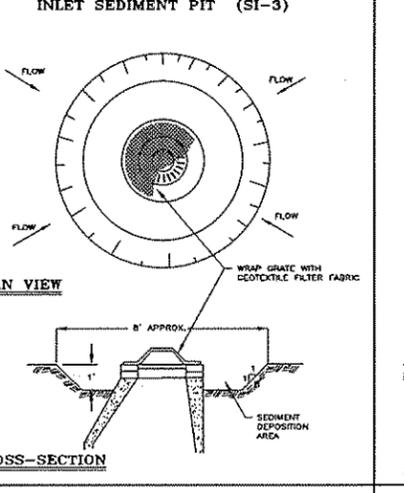
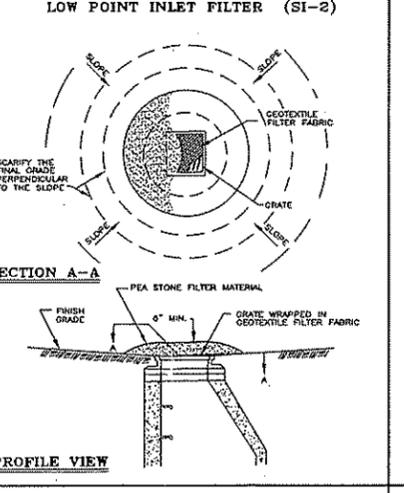
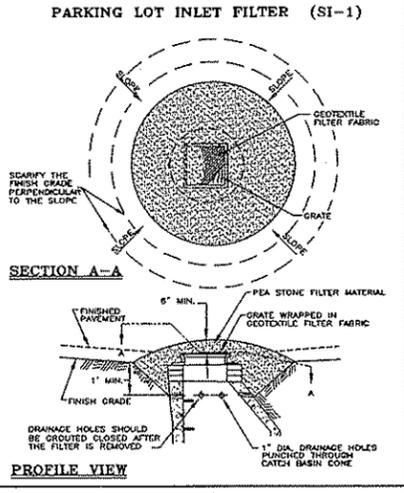
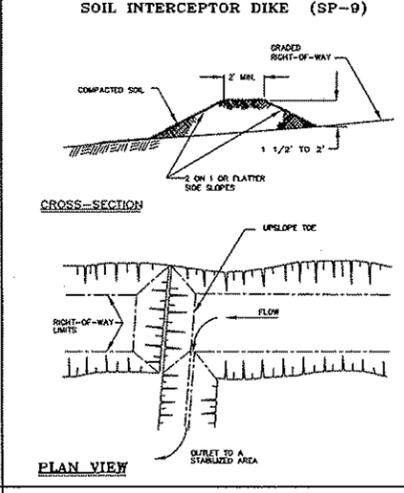
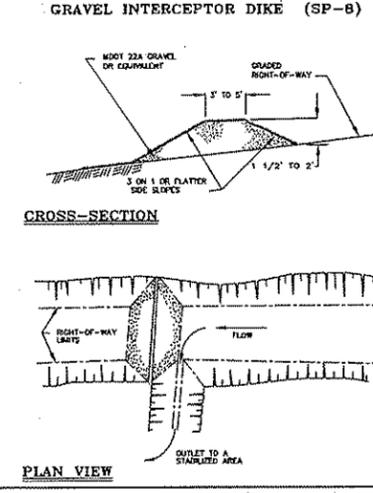
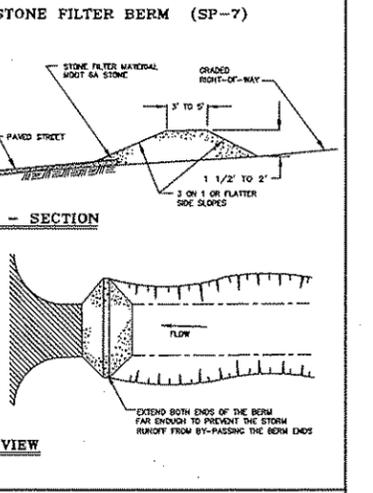
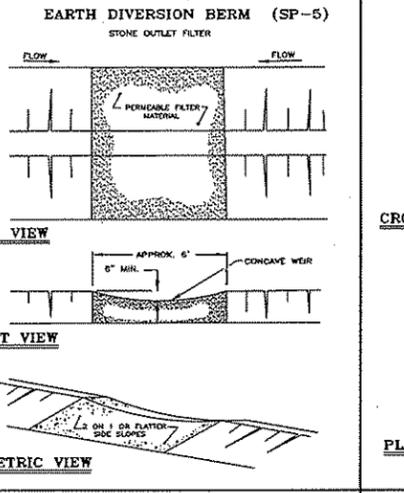
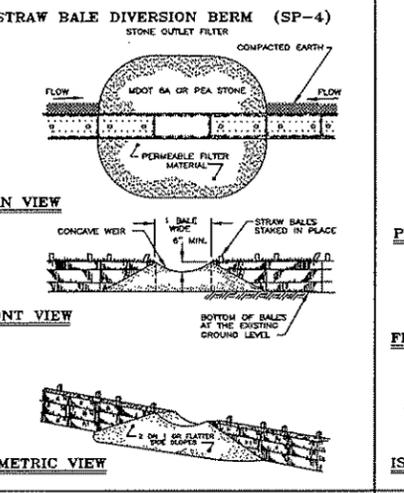
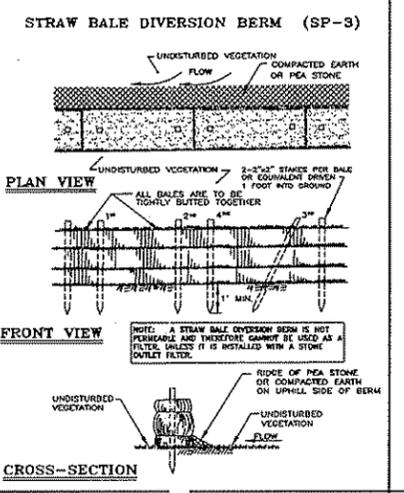
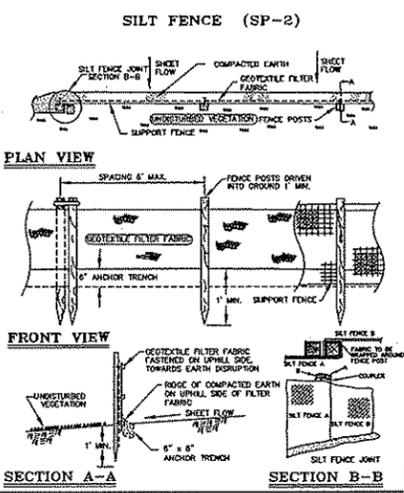
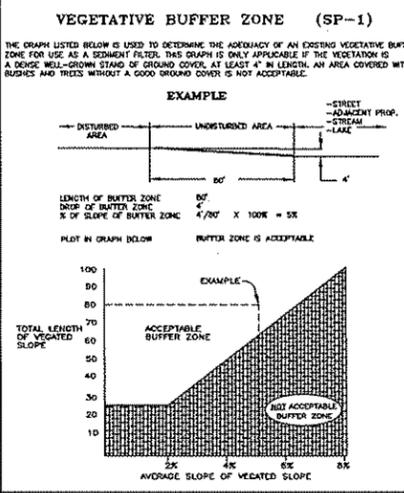
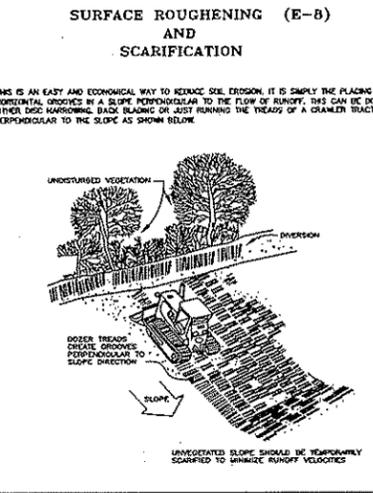
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| DATE      | 10/06/11 |
| SHEET NO. | 6        |

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CHECKED BY: SNK  
DATE: 10/06/11  
WORKED ON BY: JSB  
DATE: 10/06/11



7 OF 7

DEFINITION  
 PURPOSE  
 WHERE APPLICABLE



NOTE:  
 ALL OF THE DETAILS SHOWN ON THIS SHEET, ALONG WITH INFORMATION PERTAINING TO PLAN PREPARATION, DESIGN CRITERIA AND GENERAL NOTES, ETC., ARE INCLUDED IN THE OAKLAND COUNTY DRAIN COMMISSIONER'S EROSION CONTROL MANUAL. PLEASE CONTACT THE EROSION CONTROL DIVISION AT (313) 858-5389 TO OBTAIN A COPY OF THE MANUAL.

SOIL EROSION AND SEDIMENTATION CONTROL DETAILS

DESIGNED BY: OCDC

DATE: 01/01/01

SCALE: NONE

SHEET NO: 7 OF 7

## EXHIBIT C

### CSXT SPECIAL PROVISIONS

#### DEFINITIONS:

As used in these Special Provisions, all capitalized terms shall have the meanings ascribed to them by the Agreement, and the following terms shall have the meanings ascribed to them below:

“CSXT” shall mean CSX Transportation, Inc., its successors and assigns.

“CSXT Representative” shall mean the authorized representative of CSX Transportation, Inc.

“Agreement” shall mean the Agreement between CSXT and Agency dated as of \_\_\_\_\_, as amended from time to time.

“Agency” shall mean the **City of Novi, Michigan**.

“Agency Representative” shall mean the authorized representative of **City of Novi, Michigan**.

“Contractor” shall have the meaning ascribed to such term by the Agreement.

“Work” shall mean the Project as described in the Agreement.

#### I. AUTHORITY OF CSXT ENGINEER

The CSXT Representative shall have final authority in all matters affecting the safe maintenance of CSXT operations and CSXT property, and his or her approval shall be obtained by the Agency or its Contractor for methods of construction to avoid interference with CSXT operations and CSXT property and all other matters contemplated by the Agreement and these Special Provisions.

#### II. INTERFERENCE WITH CSXT OPERATIONS

- A. Agency or its Contractor shall arrange and conduct its work so that there will be no interference with CSXT operations, including train, signal, telephone and telegraphic services, or damage to CSXT’s property, or to poles, wires, and other facilities of tenants on CSXT’s Property or right-of-way. Agency or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or CSXT Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the CSXT Representative for approval, but such approval shall not relieve Agency or its Contractor from liability in connection with such Work.
- B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or CSXT’s property, Agency or its Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT may, at the expense of Agency or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.

#### III. NOTICE OF STARTING WORK. Agency or its Contractor shall not commence any work on

CSXT Property or rights-of-way until it has complied with the following conditions:

- A. Notify CSXT in writing of the date that it intends to commence Work on the Project. Such notice must be received by CSXT at least ten business days in advance of the date Agency or its Contractor proposes to begin Work on CSXT property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
- B. Obtain authorization from the CSXT Representative to begin Work on CSXT property, such authorization to include an outline of specific conditions with which it must comply.
- C. Obtain from CSXT the names, addresses and telephone numbers of CSXT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.

#### IV. WORK FOR THE BENEFIT OF THE CONTRACTOR

- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CSXT property that are considered necessary to the Work are anticipated or shown on the Plans. If any such changes are, or become, necessary in the opinion of CSXT or Agency, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either CSXT or Agency, but must be approved by both CSXT and Agency. Agency or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CSXT.
- B. Should Agency or Contractor desire any changes in addition to the above, then it shall make separate arrangements with CSXT for such changes to be accomplished at the Agency or Contractor's expense.

#### V. HAUL ACROSS RAILROAD

- A. If Agency or Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the Agency or Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein Agency or Contractor agrees to bear all costs and liabilities related to such access.
- B. Agency and Contractor shall not cross CSXT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

#### VI. COOPERATION AND DELAYS

- A. Agency or Contractor shall arrange a schedule with CSXT for accomplishing stage construction involving work by CSXT. In arranging its schedule, Agency or Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefor

- B. Agency or Contractor may not charge any costs or submit any claims against CSXT for hindrance or delay caused by railroad traffic; work done by CSXT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.
- C. Agency and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- D. Agency and Contractor understand and agree that CSXT does not assume any responsibility for work performed by others in connection the Project. Agency and Contractor further understand and agree that they shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by Agency or Contractor on account of operations by others.

## VII. STORAGE OF MATERIALS AND EQUIPMENT

Agency and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless Agency or Contractor has received CSXT Representative's prior written permission. Agency and Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require Agency or Contractor to move, such material and equipment at Agency's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

## VIII. CONSTRUCTION PROCEDURES

### A. General

- 1. Construction work on CSXT property shall be subject to CSXT's inspection and approval.
- 2. Construction work on CSXT property shall be in accord with CSXT's written outline of specific conditions and with these Special Provisions.
- 3. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which Agency and Contractor shall be required to obtain from CSXT, and in accord with any other instructions furnished by CSXT or CSXT's Representative.

### B. Blasting

- 1. Agency or Contractor shall obtain CSXT Representative's and Agency Representative's prior written approval for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, Agency or Contractor must comply with the following:
  - a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of Agency or Contractor.
  - b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.

- c. No blasting shall be done without the presence of an authorized representative of CSXT. At least 10 days' advance notice to CSXT Representative is required to arrange for the presence of an authorized CSXT representative and any flagging that CSXT may require.
  - d. Agency or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at Agency's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Agency's expense) any track misalignment or other damage to CSXT's property resulting from the blasting, as directed by CSXT Representative, without delay to trains. If Agency's or Contractor's actions result in delay of any trains, including Amtrak passenger trains, Agency shall bear the entire cost thereof.
  - e. Agency and Contractor shall not store explosives on CSXT property.
2. CSXT Representative will:
- a. Determine the approximate location of trains and advise Agency or Contractor of the approximate amount of time available for the blasting operation and clean-up.
  - b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.

#### IX. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

Agency or Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. Agency or Contractor shall provide erosion control measures during construction and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to Agency's or Contractor's operations shall be performed at Agency's expense.

#### X. FLAGGING / INSPECTION SERVICE

- A. CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever Agency or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.
- B. Agency shall reimburse CSXT directly for all costs of flagging that is required on account of construction within CSXT property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- C. Agency or Contractor shall give a minimum of 10 days' advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a

flagging job for bid, it may take up to 90-days to obtain this service, and CSXT shall not be liable for the cost of delays attributable to obtaining such service.

- D. CSXT shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of CSXT Representative, such inspection may be necessary. Agency shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve Agency or Contractor from liability for its Work.
- E. CSXT shall render invoices for, and Agency shall pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by Agency using the new rates. Agency and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

#### XI. UTILITY FACILITIES ON CSXT PROPERTY

Agency shall arrange, upon approval from CSXT, to have any utility facilities on or over CSXT Property changed as may be necessary to provide clearances for the proposed trackage.

#### XII. CLEAN-UP

Agency or Contractor, upon completion of the Project, shall remove from CSXT's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to Agency or Contractor. Agency or Contractor, upon completion of the Project, shall leave CSXT Property in neat condition, satisfactory to CSXT Representative.

#### XIII. FAILURE TO COMPLY

If Agency or Contractor violate or fail to comply with any of the requirements of these Special Provisions, (a) CSXT may require Agency and/or Contractor to vacate CSXT Property; and (b) CSXT may withhold monies due Agency and/or Contractor; (c) CSXT may require Agency to withhold monies due Contractor; and (d) CSXT may cure such failure and the Agency shall reimburse CSXT for the cost of curing such failure.

**EXHIBIT D**

INITIAL ESTIMATE  
ATTACHED

**CSX TRANSPORTATION, INC.  
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - MI0375

|  |                         |                            |
|--|-------------------------|----------------------------|
| <b>ESTIMATE SUBJECT TO REVISION AFTER:</b>   | <b>10/2/2012</b>        | <b>DOT NO.:</b> 232238W    |
| <b>CITY:</b> Novi  | <b>COUNTY:</b> Oakland  | <b>STATE:</b> MI           |
| <b>DESCRIPTION:</b> Install Timber surface for 5' wide sidewalk to be constructed on CSXT property over the track on the north side of the grade crossing. |                         |                            |
| <b>DIVISION:</b> Chicago   | <b>SUB-DIV:</b> Saginaw | <b>MILE POST:</b> CC-75.90 |
| <b>AGENCY PROJECT NUMBER:</b> Sidewalk Gap Project   |                         |                            |

**PRELIMINARY ENGINEERING:**

|  |        |        |           |             |
|--|--------|--------|-----------|-------------|
| 200 Labor (Non Contract)                             |        | Days @ | \$ 270.00 | \$ -        |
| 200 Additive   | 31.34% |        |           | \$ -        |
| 230 Expenses   |        |        |           | \$ -        |
| 212 Contracted & Administrative Engineering Services |        |        |           | \$ -        |
| <b>Subtotal</b>                                      |        |        |           | <b>\$ -</b> |

**CONSTRUCTION ENGINEERING/INSPECTION:**

|  |        |        |           |                  |
|--|--------|--------|-----------|------------------|
| 200 Labor (Non Contract)                             |        | Days @ | \$ 270.00 | \$ -             |
| 200 Additive   | 31.34% |        |           | \$ -             |
| 230 Expenses   |        |        |           | \$ -             |
| 212 Contracted & Administrative Engineering Services |        |        |           | \$ 10,027        |
| <b>Subtotal</b>                                      |        |        |           | <b>\$ 10,027</b> |

**FLAGGING SERVICE: (Contract Labor)**

|                               |        |                             |           |                 |
|-------------------------------|--------|-----------------------------|-----------|-----------------|
| 070 Labor (Conductor-Flagman) |        | Days @                      | \$ 350.00 | \$ -            |
| 050 Labor (Foreman/Inspector) |        | 10 Days @                   | \$ 336.00 | \$ 3,360        |
| 070 Additive                  | 73.76% | (Transportation Department) |           | \$ -            |
| 050 Additive                  | 97.95% | (Engineering Department)    |           | \$ 3,291        |
| 230 Per Diem                  |        | (Engineering Department)    | 10 Days @ | \$ 75.00        |
| 230 Expenses                  |        | (Engineering Department)    | Days @    | \$ 45.00        |
| <b>Subtotal</b>               |        |                             |           | <b>\$ 7,401</b> |

**SIGNAL & COMMUNICATIONS WORK:** (Details Attached)

\$ -

**TRACK WORK:** (Details Attached)

\$ 8,702

**ACCOUNTING & BILLING:**

|                 |        |          |           |               |
|-----------------|--------|----------|-----------|---------------|
| 040 Labor       |        | 2 Days @ | \$ 200.00 | \$ 400        |
| 040 Additive    | 63.03% |          |           | \$ 252        |
| <b>Subtotal</b> |        |          |           | <b>\$ 652</b> |

**PROJECT SUBTOTAL**

\$ 26,782

|                                  |  |        |  |          |
|----------------------------------|--|--------|--|----------|
| 900 <b><u>CONTINGENCIES:</u></b> |  | 10.00% |  | \$ 2,678 |
|----------------------------------|--|--------|--|----------|

**GRAND TOTAL \*\*\*\*\*** **\$ 29,460**

**DIVISION OF COST:**

|                    |                |  |  |                  |
|--------------------|----------------|--|--|------------------|
| Agency             | <u>100.00%</u> |  |  | \$ 29,460        |
| Railroad           |                |  |  | \$ -             |
| <b>TOTAL *****</b> |                |  |  | <b>\$ 29,460</b> |

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Assistant Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: D. Krafft

DATE: 4/5/2012

REVISED:

D-1

Approved by: AJD

DATE:

4/13/2012

CSXT Public Project Group

Form Revised 05-05-2011-LLS

**CSX TRANSPORTATION, INC.  
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - MI0375  
Pub EB - MI EB3 (MI)

|  |                          |                           |
|--|--------------------------|---------------------------|
| <b>ESTIMATE SUBJECT TO REVISION AFTER:</b>   | <b>10/2/2012</b>         | <b>DOT NO.:</b> 232238W   |
| <b>CITY:</b> Novi  | <b>COUNTY:</b> Oakland   | <b>STATE:</b> MI          |
| <b>DESCRIPTION:</b> Install Timber surface for 5' wide sidewalk to be constructed on CSXT property over the track on the north side of the grade crossing. |                          |                           |
| <b>DIVISION:</b> Chicago   | <b>SUB-DIV:</b> Saginaw  | <b>MILEPOST:</b> CC-75.90 |
| <b>DRAWING NO.:</b> URS Plan dated 10/06/11  | <b>DRAWING DATE:</b> ___ |                           |
| <b>AGENCY PROJECT NUMBER:</b> Sidewalk Gap Project   |                          |                           |

**PRELIMINARY ENGINEERING:** PROVIDED UNDER SEPARATE PE AGREEMENT AUTHORIZATION

|     |  |        |   |        |           |  |             |
|-----|--|--------|---|--------|-----------|--|-------------|
| 200 | Labor (Non Contract)                             |        | 0 | Days @ | \$ 270.00 |  | \$ -        |
| 200 | Additive   | 31.34% |   |        |           |  | \$ -        |
| 230 | Expenses   |        |   |        |           |  | \$ -        |
| 212 | Contracted & Administrative Engineering Services |        |   |        |           |  | \$ -        |
|     | <b>Subtotal</b>                                  |        |   |        |           |  | <b>\$ -</b> |

**CONSTRUCTION ENGINEERING/INSPECTION:**

|     |  |        |   |        |           |  |                  |
|-----|--|--------|---|--------|-----------|--|------------------|
| 200 | Labor (Non Contract)                             |        | 0 | Days @ | \$ 270.00 |  | \$ -             |
| 200 | Additive   | 31.34% |   |        |           |  | \$ -             |
| 230 | Expenses   |        |   |        |           |  | \$ -             |
| 212 | Contracted & Administrative Engineering Services |        |   |        |           |  | \$ 10,027        |
|     | <b>Subtotal</b>                                  |        |   |        |           |  | <b>\$ 10,027</b> |

**FLAGGING SERVICE: (Contract Labor) for Sidewalk and Drainage work**

|     |                           |                                    |    |        |           |  |                 |
|-----|---------------------------|------------------------------------|----|--------|-----------|--|-----------------|
| 70  | Labor (Conductor-Flagman) |                                    | 0  | Days @ | \$ 350.00 |  | \$ -            |
| 50  | Labor (Foreman/Inspector) |                                    | 10 | Days @ | \$ 336.00 |  | \$ 3,360        |
| 70  | Additive                  | 73.76% (Transportation Department) |    |        |           |  | \$ -            |
| 50  | Additive                  | 97.95% (Engineering Department)    |    |        |           |  | \$ 3,291        |
| 230 | Expenses                  | (Engineering Department)           | 10 | Days @ | \$ 75.00  |  | \$ 750          |
| 230 | Expenses                  | (Engineering Department)           | 0  | Days @ | \$ 45.00  |  | \$ -            |
|     | <b>Subtotal</b>           |                                    |    |        |           |  | <b>\$ 7,401</b> |

**COMMUNICATIONS WORK:**

|  |                              |  |  |  |  |  |             |
|--|------------------------------|--|--|--|--|--|-------------|
|  | Temporary (Details Attached) |  |  |  |  |  | \$ -        |
|  | Permanent (Details Attached) |  |  |  |  |  | \$ -        |
|  | <b>Subtotal</b>              |  |  |  |  |  | <b>\$ -</b> |

**TRACK: LABOR**

|     |                             |        |    |         |          |  |                 |
|-----|-----------------------------|--------|----|---------|----------|--|-----------------|
| 50  | Traffic Control             |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Remove Existing Crossing    |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install Cross Ties          |        | 16 | MAN-HRS | \$ 36.00 |  | \$ 576          |
| 50  | Renew Rail                  |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install OTM                 |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install Field Welds         |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install Geo-Textile Fabric  |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install Sub-Drains          |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install Ballast             |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Line and Surface            |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Install Crossing Materials  |        | 30 | MAN-HRS | \$ 36.00 |  | \$ 1,080        |
| 50  | Install Bituminous Pavement |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | _____                       |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | _____                       |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | _____                       |        | 0  | MAN-HRS | \$ 36.00 |  | \$ -            |
| 50  | Clean-Up                    |        | 8  | MAN-HRS | \$ 36.00 |  | \$ 288          |
| 50  | Additive                    | 97.95% |    |         |          |  | \$ 1,904        |
| 230 | Per Diem                    |        | 6  | MAN-DAY | \$ 90.00 |  | \$ 540          |
|     | <b>Subtotal</b>             |        |    |         |          |  | <b>\$ 4,388</b> |

**CSX TRANSPORTATION, INC.  
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - MI0375

Pub EB - MI EB3 (MI)

| <u>TRACK: MATERIAL</u> |  |   |     |             |    |       |
|------------------------|--|---|-----|-------------|----|-------|
| 220                    | Cross Ties, Main Line, as required                                   | 5 | EA  | \$ 39.00    | \$ | 195   |
| 220                    | Cross tie - pre-plated   | 0 | EA  | \$ 83.50    | \$ | -     |
| 220                    | Cross-tie - Borate   | 0 | EA  | \$ 56.00    | \$ | -     |
| 220                    | Crossties, 10' Length  | 0 | EA  | \$ 46.00    | \$ | -     |
| 220                    | Tie plates   | 0 | EA  | \$ 10.51    | \$ | -     |
| 220                    | Rail, 136RE, New   | 0 | LF  | \$ 21.00    | \$ | -     |
| 220                    | Misc. OTM  | 1 | LOT | \$ 500.00   | \$ | 500   |
| 210                    | Geo-Textile Fabric   | 0 | RL  | \$ 930.00   | \$ | -     |
| 210                    | Sub-Drains   | 0 | LF  | \$ 6.00     | \$ | -     |
| 220                    | Ballast - Car load   | 0 | NT  | \$ 12.00    | \$ | -     |
| 220                    | Ballast - Trucked in   | 0 | NT  | \$ 45.00    | \$ | -     |
| 220                    | Field Welds  | 0 | EA  | \$ 100.00   | \$ | -     |
|                        |  | 0 |     | \$ -        | \$ | -     |
|                        |  | 0 |     | \$ -        | \$ | -     |
| 210                    | Concrete Full Width  | 0 | TF  | \$ 250.00   | \$ | -     |
| 210                    | Concrete/Rubber Xing (CSX)   | 0 | TF  | \$ 200.00   | \$ | -     |
| 210                    | Rubber Crossing, Full Depth  | 0 | TF  | \$ 325.00   | \$ | -     |
| 210                    | Timber/Asphalt Crossing FOR 122# Rail (CSX Standard) with Rubber fla | 8 | TF  | \$ 100.00   | \$ | 800   |
| 210                    | Bituminous Material  | 0 | NT  |             | \$ | -     |
| 210                    | Sales Tax on Material  |   |     |             | \$ | -     |
| 210                    | Material Handling  |   |     |             | \$ | 75    |
|                        | <b>Subtotal</b>  |   |     |             | \$ | 1,570 |
| <br><b>CONTRACT:</b>   |  |   |     |             |    |       |
| 215                    | Asphalt Paving (In Place) BY AGENCY CONTRACTOR                       | 0 | NT  |             | \$ | -     |
| 215                    | Drainage work, BY AGENCY CONTRACTOR                                  | 0 | NT  |             | \$ | -     |
| 241                    | Disposal of Waste Materials  | 1 | LS  | \$ 800.00   | \$ | 800   |
| 215                    | Maintenance of Traffic   | 0 | DAY | \$ 350.00   | \$ | -     |
|                        | <b>Subtotal</b>  |   |     |             | \$ | 800   |
| 241                    | <b>EQUIPMENT RENTAL:</b>   |   |     |             |    |       |
|                        | <b>Subtotal</b>  |   |     |             | \$ | 1,944 |
| 50                     | <b>WORK TRAIN:</b>   | 0 | DAY | \$ 2,100.00 | \$ | -     |
|                        | <b>Subtotal</b>  |   |     |             | \$ | -     |
| <br><b>SALVAGE:</b>    |  |   |     |             |    |       |
| 228                    | Rail   | 0 | NT  | \$ 65.00    | \$ | -     |
| 228                    | OTM  | 0 | NT  | \$ 75.00    | \$ | -     |
|                        | <b>Subtotal</b>  |   |     |             | \$ | -     |

D-3

**CSX TRANSPORTATION, INC.  
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - MI0375

Pub EB - MI EB3 (MI)

|   |                                 |         |          |           |           |
|---|---------------------------------|---------|----------|-----------|-----------|
| <b><u>SIGNAL WORK:</u></b>              |                                 |         |          |           |           |
| 210                                     | Material - Field & Consumables  |         |          | \$        | -         |
| 210                                     | Material - Sales Tax            |         |          | \$        | -         |
| 220                                     | Material - Shop                 |         |          | \$        | -         |
| 60                                      | Construction Labor              |         |          | \$        | -         |
| 65                                      | Shop Labor                      |         |          | \$        | -         |
| 230                                     | Per Diem                        |         |          | \$        | -         |
| 200                                     | RR Engineering,Preliminary      |         |          | \$        | -         |
| 200                                     | RR Engineering,Construction     |         |          | \$        | -         |
| 60                                      | Additives to Construction Labor |         |          | \$        | -         |
| 65                                      | Additives to Shop Labor         |         |          | \$        | -         |
| 200                                     | Additives to Engineering        |         |          | \$        | -         |
| 241                                     | Equipment Expense               |         |          | \$        | -         |
| 241                                     | Waste Management                |         |          | \$        | -         |
| 212                                     | Contract Engineering            |         |          | \$        | -         |
| 211                                     | Freight                         |         |          | \$        | -         |
| 216                                     | AC Power Service                |         |          | \$        | -         |
| 228                                     | Salvage                         |         |          | \$        | -         |
| 900                                     | Other                           |         |          | \$        | -         |
|   | <b>Subtotal</b>                 |         |          | \$        | -         |
| <b><u>ACCOUNTING &amp; BILLING:</u></b> |                                 |         |          |           |           |
| 40                                      | Labor                           |         | 2 Days @ | \$ 200.00 | \$ 400    |
| 40                                      | Additive                        | 63.03%  |          |           | \$ 252    |
|   | <b>Subtotal</b>                 |         |          |           | \$ 652    |
| <b><u>PROJECT SUBTOTAL:</u></b>         |                                 |         |          |           |           |
| 900                                     | <b><u>CONTINGENCIES:</u></b>    | 10.00%  |          |           | \$ 26,782 |
|   |                                 |         |          |           | \$ 2,678  |
|   | <b>GRAND TOTAL</b>              | *****   |          |           | \$ 29,460 |
| <b><u>DIVISION OF COST:</u></b>         |                                 |         |          |           |           |
|   | Agency                          | 100.00% |          |           | \$ 29,460 |
|   | Railroad                        | 0.00%   |          |           | \$ -      |
|   | <b>TOTAL</b>                    | *****   |          |           | \$ 29,460 |

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Assistant Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: D. Krafft

Approved by:

CSXT Public Project Group

DATE: 4/5/2012

REVISED:

DATE:

Form Revised 05-05-2011-LLS

D-4

**CSX TRANSPORTATION, INC.  
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - MI0375

|  |                         |                      |          |
|--|-------------------------|----------------------|----------|
| <b>ESTIMATE VOID AFTER:</b>  | 10/2/2012               | <b>DOT NO.:</b>      | 232238W  |
| <b>CITY:</b> Novi  | <b>COUNTY:</b> Oakland  | <b>STATE:</b>        | MI       |
| <b>DESCRIPTION:</b> Install Timber surface for 5' wide sidewalk to be constructed on CSXT property over the track on the north side of the grade crossing. |                         |                      |          |
| <b>DIVISION:</b> Chicago   | <b>SUB-DIV:</b> Saginaw | <b>MILE POST:</b>    | CC-75.90 |
| <b>AGENCY PROJECT NUMBER:</b>  |                         | Sidewalk Gap Project |          |

**TRACKWORK DETAILS:**

**TRACK: LABOR**

|                                |            |          |           |              |
|--------------------------------|------------|----------|-----------|--------------|
| 50 Traffic Control             | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Remove Existing Crossing    | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install Cross Ties          | 16 MAN-HRS | \$ 36.00 | \$        | 576          |
| 50 Renew Rail                  | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install OTM                 | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install Field Welds         | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install Geo-Textile Fabric  | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install Sub-Drains          | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install Ballast             | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Line and Surface            | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Install Crossing Materials  | 30 MAN-HRS | \$ 36.00 | \$        | 1,080        |
| 50 Install Bituminous Pavement | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 _____                       | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 _____                       | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 _____                       | MAN-HRS    | \$ 36.00 | \$        | -            |
| 50 Clean-Up                    | 8 MAN-HRS  | \$ 36.00 | \$        | 288          |
| 50 Additive 97.95%             |            |          | \$        | 1,904        |
| 230 Per Diem                   | 6 MAN-DAY  | \$ 90.00 | \$        | 540          |
| <b>Subtotal</b>                |            |          | <b>\$</b> | <b>4,388</b> |

**TRACK: MATERIAL**

|   |       |           |           |              |
|---|-------|-----------|-----------|--------------|
| 220 Cross Ties, Main Line, as required                  | 5 EA  | \$ 39.00  | \$        | 195          |
| 220 Rail, 136RE, New                                    | LF    | \$ 21.00  | \$        | -            |
| 220 Misc. OTM   | 1 LOT | \$ 500.00 | \$        | 500          |
| 210 Geo-Textile Fabric                                  | RL    | \$ 930.00 | \$        | -            |
| 210 Sub-Drains  | LF    | \$ 6.00   | \$        | -            |
| 220 Ballast - Car load                                  | NT    | \$ 12.00  | \$        | -            |
| 220 Field Welds   | EA    | \$ 100.00 | \$        | -            |
| _____   | _____ | \$ -      | \$        | -            |
| _____   | _____ | \$ -      | \$        | -            |
| 210 Concrete Full Width                                 | TF    | \$ 250.00 | \$        | -            |
| 210 Concrete/Rubber Xing (CSX)                          | TF    | \$ 200.00 | \$        | -            |
| 210 Rubber Crossing, Full Depth                         | TF    | \$ 325.00 | \$        | -            |
| 210 Timber/Asphalt Crossing FOR 122# Rail (CSX Standard | 8 TF  | \$ 100.00 | \$        | 800          |
| 220 Crossties, 10' Length                               | EA    | \$ 46.00  | \$        | -            |
| 210 Bituminous Material                                 | NT    | \$ -      | \$        | -            |
| 210 Sales Tax on Material                               |       |           | \$        | -            |
| 210 Material Handling 5%                                |       |           | \$        | 75           |
| <b>Subtotal</b>   |       |           | <b>\$</b> | <b>1,570</b> |

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**CSX TRANSPORTATION, INC.  
FORCE ACCOUNT ESTIMATE**

**CONTRACT:**

|  |      |           |               |
|--|------|-----------|---------------|
| 215 Asphalt Paving (In Place) BY AGENCY CONTRACTOR | NT   | \$ -      | \$ -          |
| 241 Disposal of Waste Materials                    | 1 LS | \$ 800.00 | \$ 800        |
| 215 Maintenance of Traffic                         | DAY  | \$ 350.00 | \$ -          |
| <b>Subtotal</b>                                    |      |           | <b>\$ 800</b> |

**241 EQUIPMENT RENTAL:**

|                 |  |  |                 |
|-----------------|--|--|-----------------|
| <b>Subtotal</b> |  |  | <b>\$ 1,944</b> |
|-----------------|--|--|-----------------|

**50 WORK TRAIN:**

|                 |            |                    |             |
|-----------------|------------|--------------------|-------------|
|                 | <b>DAY</b> | <b>\$ 2,100.00</b> | <b>\$ -</b> |
| <b>Subtotal</b> |            |                    | <b>\$ -</b> |

**SALVAGE:**

|                 |    |          |             |
|-----------------|----|----------|-------------|
| 228 Rail        | NT | \$ 65.00 | \$ -        |
| 228 OTM         | NT | \$ 75.00 | \$ -        |
| <b>Subtotal</b> |    |          | <b>\$ -</b> |

**TOTAL TRACKWORK:**

|  |                 |
|--|-----------------|
|  | <b>\$ 8,702</b> |
|--|-----------------|

Office of Assistant Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by:

DATE: 4/5/2012

REVISED:

D-6

\$ -

ESTIMATE SUBJECT TO REVISION AFTER: **10/2/12** DOT NO.: 232238W  
 CITY: Novi COUNTY: Oakland STATE: MI  
 DESCRIPTION: Install Timber surface for 5' wide sidewalk to be constructed on CSXT property over the track on the north  
 DIVISION: Chicago SUB-DIV: Saginaw MILEPOST: CC-75.90  
 DRAWING NO.: URS Plan dated 10/2/12 DRAWING DATE: \_\_\_  
 AGENCY PROJECT NUMBER: Side

| Amount      |                          |          |
|-------------|--------------------------|----------|
| Task        | Task Desc                | Total    |
| 40          | Labor General Office     | \$652    |
| 50          | Labor Roadway            | \$10,499 |
| 60          | Labor Signal             |          |
| 65          | Labor Signal1            |          |
| 70          | Labor Transportation     |          |
| 200         | Labor NonContract        |          |
| 210         | Invoice Material         | \$875    |
|             | Material - Field & Consu |          |
| 211         | Invoice Freight          |          |
| 212         | Invoice Contract Eng     | \$10,027 |
| 215         | Invoice Misc             |          |
| 216         | Invoice Utilities        |          |
| 220         | Material New             | \$695    |
|             | Material - Shop          |          |
| 228         | Scrap Credit             |          |
| 230         | ExpenseRpts              | \$1,290  |
| 241         | Invoice Rental           | \$2,744  |
| 900         | Other                    |          |
| 900         | Contingencies            | \$2,678  |
|             | Material New             |          |
| Grand Total |                          | \$29,460 |

## **EXHIBIT E**

### **PAYMENT SCHEDULE**

#### **Advance Payment in Full**

Upon execution and delivery of notice to proceed with the Project, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within 30 days following delivery of such invoice to Agency.

## **EXHIBIT F**

### **INSURANCE REQUIREMENTS**

#### **I. Insurance Policies:**

Agency and Contractor, if and to the extent that either is performing work on or about CSXT's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSXT and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
  - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
  - b. CSX Transportation must be the named insured on the Railroad Protective Insurance Policy.
  - c. Name and Address of Contractor and Agency must be shown on the Declarations page.
  - d. Description of operations must appear on the Declarations page and must match the Project description, including project or contract identification numbers.
  - e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
  - f. Authorized endorsements may include:
    - (i). Broad Form Nuclear Exclusion - IL 00 21
    - (ii) 30-day Advance Notice of Non-renewal or cancellation
    - (iii) Required State Cancellation Endorsement
    - (iv) Quick Reference or Index - CL/IL 240
  - g. Authorized endorsements may not include:
    - (i) A Pollution Exclusion Endorsement except CG 28 31
    - (ii) A Punitive or Exemplary Damages Exclusion

- (iii) A “Common Policy Conditions” Endorsement
- (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
- (v) Policies that contain any type of deductible

5. All insurance companies must be A. M. Best rated A- and Class VII or better.

6. Such additional or different insurance as CSXT may require.

## II. Additional Terms

1. Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

Jonathan MacArthur  
Manager - Insurance  
CSX Transportation, Inc.  
500 Water Street – C907  
Jacksonville, FL 32202  
904.359.3394 (Phone)  
904.306.5325 (Fax)  
Jonathan\_MacArthur@csx.com

2. Neither Agency nor Contractor may begin work on the Project until it has received CSXT’s written approval of the required insurance.

**SCHEDULE I**

**CONTRACTOR'S ACCEPTANCE**

To and for the benefit of CSX Transportation, Inc. ("CSXT") and to induce CSXT to permit Contractor on or about CSXT's property for the purposes of performing work in accordance with the Agreement dated \_\_\_\_\_, 20\_\_, between **City of Novi, Michigan** and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibits C and F to the Agreement, and Sections 3, 9 and 11 of the Agreement.

Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CSXT Schedule PA**

(Advance Payment – Construction Agreement)

**PAYMENT SUBMISSION FORM**

**PROJECT INFORMATION**

**CSX OP No.:** MI0375  
**Description:** Novi, Oakland Co., Michigan; 10 Mile Road at CSXT Railroad – construct sidewalk across track on north side of the crossing; DOT # 232 238W; RR MP CC 75.90

\*\*\*\*\*  
Payment is hereby provided in accordance with the terms of Section 4.3 Payment Terms of the Agreement between Agency and CSXT.

\*\*\*\*\*  
A copy of this Payment Submission Form shall accompany all payments delivered by Agency to CSXT which shall be forwarded to the following address:

**CSX Transportation, Inc.  
P.O. Box 116651  
Atlanta, GA 30368-6651**

\*\*\*\*\*  
**(All information below to be completed by Agency providing Payment)**

|                     |                       |                  |
|---------------------|-----------------------|------------------|
| <u>Payment Date</u> | <u>Payment Amount</u> | <u>Check No.</u> |
| _____               | _____                 | _____            |

\*\*\*\*\*

Date: \_\_\_\_\_

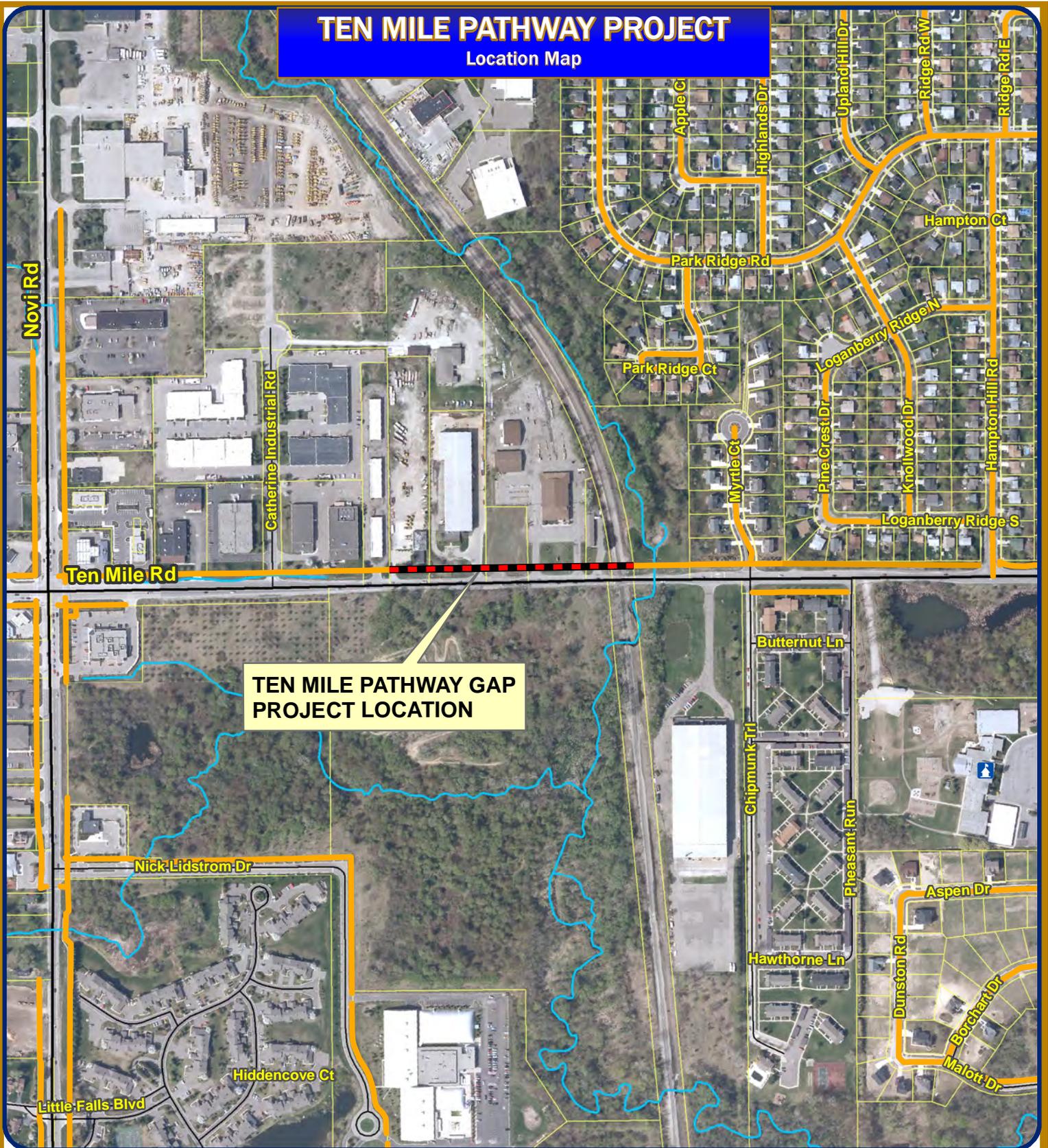
By: \_\_\_\_\_

**Please send copy of form and check to:**  
**CSX Transportation**  
**Mrs. Amanda DeCesare**  
**Project Manager – Public Projects**  
**1717 Dixie Highway, Rm 400**  
**Ft. Wright, KY 41011**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

# TEN MILE PATHWAY PROJECT

## Location Map



**TEN MILE PATHWAY GAP PROJECT LOCATION**

Map Author: Croy  
 Date: 4/30/12  
 Project: 10 Mile Path (2011 Pathway Program)  
 Version #: 2.0

### Map Legend

— Existing Pathways



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



1 inch = 500 feet

#### 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.