



# CITY of NOVI CITY COUNCIL

**Agenda Item I**  
**November 23, 2015**

**SUBJECT:** Approval of an Encroachment on Easement Agreement with AT&T Michigan to facilitate the construction of the 14 Mile Road Water Main and Pathway (Haverhill to Maples) project within an existing AT&T Easement.

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *BTC RJA*

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

**BACKGROUND INFORMATION:**

The construction award for the 14 Mile Road Pathway and Water Main project (Haverhill to Maples) is elsewhere on this agenda for consideration. The alignment of the project crosses an existing, but unused, easement that is held by AT&T. While AT&T is willing to allow use of their easement for this project, they have requested that the City execute the attached encroachment agreement.

The encroachment agreement has been reviewed and approved by the City Attorney (see Beth Saarela's letter, attached). The agreement allows the City to construct the project within the easement, but protects AT&T's rights to use the easement in the future. The letter from the City Attorney provides additional information regarding the agreement.

Construction of the project will commence this fall with construction of the water main. Once the water main construction is complete this spring, the construction of the pathway will begin. Overall completion is anticipated in summer of 2016.

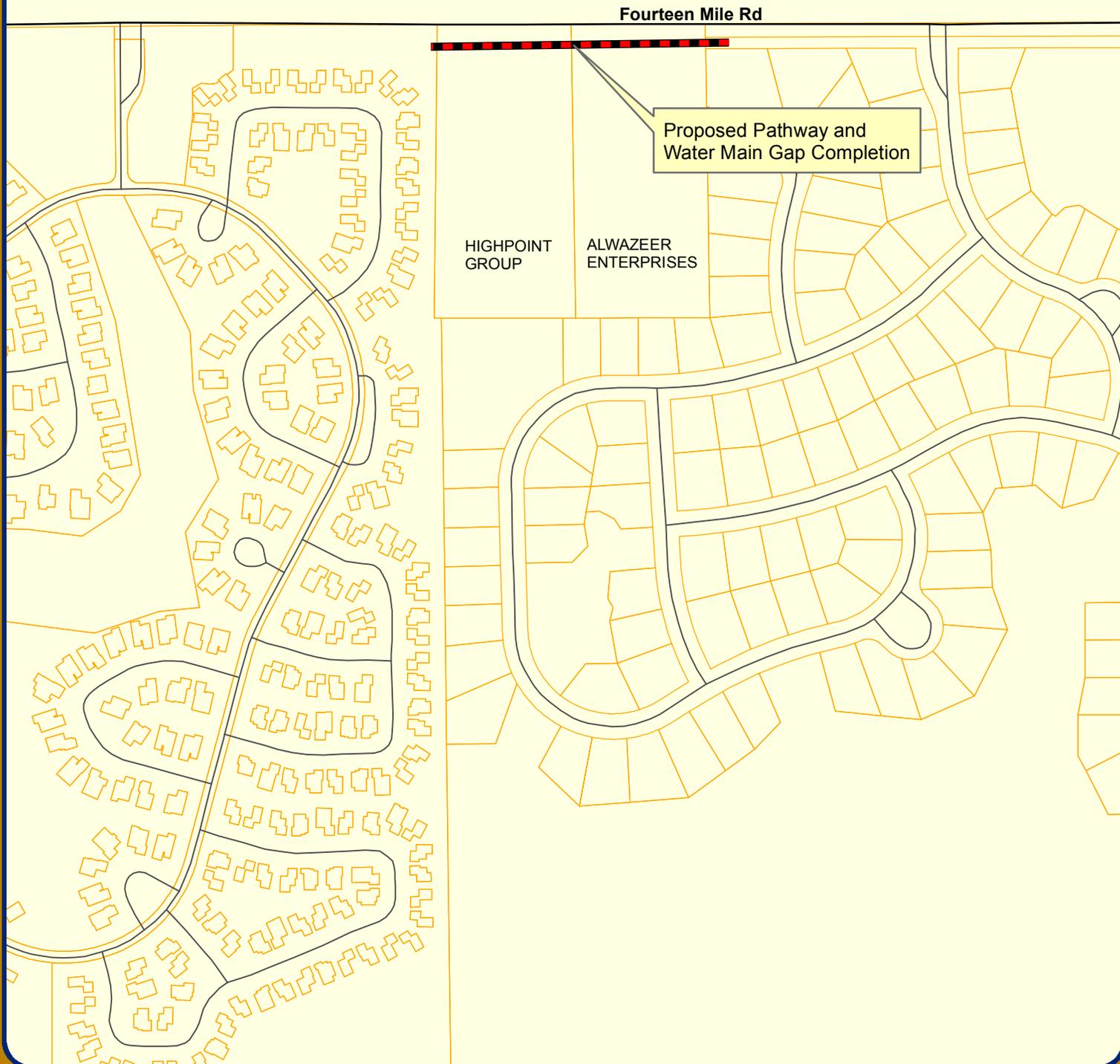
**RECOMMENDED ACTION:** Approval of an Encroachment on Easement Agreement with AT&T Michigan to facilitate the construction of the 14 Mile Road Water Main and Pathway (Haverhill to Maples) project within an existing AT&T Easement.

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

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

# 14 Mile Pathway and Water Main

## Location Map



Map Author: Croy  
Date: 9/8/15  
Project: 14 Mile Water Main  
Version #: v2.0

#### MAP INTERPRETATION NOTICE

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



1 inch = 333 feet



## City of Novi

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

## **ENCROACHMENT ON EASEMENT AGREEMENT**

This AGREEMENT, made effective as of \_\_\_\_\_ 2015, between MICHIGAN BELL TELEPHONE COMPANY, also known as AT&T MICHIGAN (“AT&T”), a Michigan corporation, whose address is 444 Michigan Ave, Detroit, MI 48226 and the CITY OF NOVI, a Michigan municipal corporation (“Permittee”), whose address is 45175 Ten Mile Road, Novi Michigan 48375.

### 1. BACKGROUND.

(a)

AT&T is grantee and owner of certain easement (the “Easement”) from underlying property owners authorizing the AT&T to construct, operate and maintain telephone facilities within the County of Oakland. The Easements are recorded with the Register of Deeds for Oakland County as follows:

Liber 13528 Page 484-486, signed on January 27<sup>th</sup>, 1993, granted by Stuart and Lisa Leve, 41295 Fourteen Mile Road, Walled Lake Michigan 48377, owners of land situated in the NW ¼ of Section 1, Township of Novi, T1N, R8E, Oakland County Michigan

(b)

Permittee has requested that AT&T grant it the right to encroach in the Northerly 27 feet of the Non-Exclusive portion of the Easement for the purposes of constructing a 12” watermain by open cut and a walking path.

(c)

AT&T is willing to grant to Permittee the right to encroach upon AT&T’s Easements to place Permittee’s Facilities to the extent it may lawfully do so and provided that AT&T is provided as-built and profile drawings of the project when completed and provided AT&T is protected from all losses associated with such encroachment and subject to the limitations set forth below.

2. GRANT; CONSIDERATION.

For an in consideration of Ten Dollars (\$10) and other consideration including the covenants and conditions herein, AT&T grants to Permittee a right to encroach upon the Easements in order to construct and to operate, maintain, repair, replace and remove said Permittee's Facilities.

3. NO WARRANTY AS TO RIGHTS; OTHER USES.

This right is subject to all existing recorded deeds, easements, restrictions and encumbrances affecting the property subject to the Easements.

4. CONDITIONS OF ENCROACHMENT

The right granted herein is subject to the following conditions and limitations: Permittee shall locate, support and protect AT&T's facilities within the Easements when constructing, operating, maintaining, repairing, replacing or removing Permittee's Facilities.

5. RESERVED RIGHTS; ACCESS.

AT&T reserves the right to construct, reconstruct, operate, maintain, replace, add to, and remove its facilities and other related above ground and underground fixtures equipment, manholes and appurtenances under the authority of the Easements.

6. DURATION; TERMINATION.

(a) Encroachment right Term, Renewal. The encroachment right granted herein shall be effective as of the date written above and shall be valid for the entire duration of the Easement.

(b) The Encroachment right granted under this agreement shall terminate under any of the following circumstances:

(1) Any attempted transfer, assignment or sublicensing of this encroachment right by Permittee; or,

(2) If Permittee is in default in the performance of any of its obligations under this agreement; or,

(3) If Permittee uses the Easements in a manner not consistent with the Easements.

(c) Termination of the encroachment right granted under this agreement shall not affect other rights or obligations of the parties which by their sense and content are intended to survive such terminations, and any such rights or obligations shall so survive and continue in effect.

#### 7. CONDITION OF ENCROACHMENT RIGHT COORIDOR.

Permittee acknowledges that it has inspected area subject to the Easements and accepts it in an "AS IS" condition. AT&T makes no representation as to the suitability of the area for Permittee's intended uses.

#### 8. DAMAGES.

Permittee shall be liable for any damages to AT&T's facilities that occur as the result of the Permittee's use of the Easements, except to the extent such damages result from the sole negligence of AT&T. Permittee shall promptly reimburse AT&T for the costs of any such damages or repairs to AT&T's facilities and shall defend and indemnify AT&T against any claims by third parties arising from such damages.

#### 9. COMPLAINCE WITH LAWS.

Permittee shall comply, at its own expense, with all federal, state and local laws, ordinances, regulations and codes (including procurement of required Easements and certificates in performance hereunder). Permittee agrees to indemnify AT&T from any loss, damage or expense that may be sustained by reason of Permittee's failure to so comply.

## 10. INDEMNITY.

Permittee shall indemnify, defend, hold harmless and make whole, AT&T, and its employees and agents, against all claims, liabilities, losses, suits, fines, proceedings, and expenses (except those arising out of the sole negligence or willful acts of AT&T, its employees and agents and not covered by Permittee's insurance), including reasonable attorney's fees, for injury to or death of any person or loss of or damage to property, including the property of the AT&T, arising out of: (i) Permittee use of the Easements; (ii) a breach of a term or condition of the Permts caused by AT&T's use of the Easements; (iii) the loss of the right of the AT&T to use the Easements caused by the Permittee's use of the Easements; or (iv) Permittee's use of the property subject to the Easements.

## 11. NOTICES.

(a)

Any notices or demand which under the terms of this agreement or under any statute must or may be given or made by any party hereunder shall be in writing and shall be either (1) hand-delivered, (2) sent by a reputable express delivery service, (3) sent by certified or registered mail, or (4) sent by facsimile machine, with a confirming copy sent by U.S. Mail.

Notices to AT&T shall be addressed to:

ATTN: Right-of-Way Office  
AT&T Manager – Right-of-Way  
30600 TELEGRAPH ROAD  
BINGHAM FARMS MI 48025

Notices to Permittee shall be addressed to:

City of Novi  
45175 Ten Mile Road  
Novi, MI 48375

(b) Notice or demand shall be deemed to have been given when sent or hand-delivered.

(c) If either party changes any information concerning the above address during the term of this agreement, it shall so advise the other party in writing; and any notice thereafter required to be given shall be sent to such new address.

## 12. ASSIGNMENT.

Permittee shall not assign, transfer or sublet this agreement or the encroachment right granted under it without AT&T's permission. Any such attempted assignment, transfer or sublet shall terminate this agreement and the encroachment right granted under it.

## 13. NO WAIVER.

No course of dealing or failure by AT&T to enforce strictly any covenant, right, or condition of this agreement shall be construed as a waiver of such covenant, right, or condition.

## 14. HEADINGS.

The headings of the various paragraphs are inserted for convenience of reference only and are not intended to be a part of or affect the meaning or interpretation of this agreement.

## 15. ENTIRE AGREEMENT

This agreement sets forth the entire understanding and agreement of the parties with respect to the matters addressed herein, and supersedes any prior representations, warranties, understandings, agreements, documents, and instruments pertaining to such matters.

(signatures on following pages)

**MICHIGAN BELL TELEPHONE COMPANY  
d/b/a AT&T MICHIGAN, (AT&T)**

BY: \_\_\_\_\_  
Susan Sampier, Manager, Right of Way,  
Michigan Bell Telephone, dba AT&T

STATE OF Michigan )  
 )ss.  
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2015 by Susan Sampier, Manager Right of Way, Michigan Bell  
Telephone Company, dba AT&T.

Notary Public \_\_\_\_\_

\_\_\_\_\_ County, Michigan

My Commission Expires \_\_\_\_\_

Acting in \_\_\_\_\_

**CITY OF NOVI (PERMITEE)**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

STATE OF MICHIGAN

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_.

Notary Public \_\_\_\_\_

\_\_\_\_\_ County, Michigan

My Commission Expires \_\_\_\_\_

Acting in \_\_\_\_\_

LIBR 135280484 EASEMENT 33 113809

For valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby warrant, grant, and convey to Michigan Bell Telephone Company, a Michigan Corporation, 444 Michigan Avenue, Detroit, Michigan, 48226, Grantee, its successors, assigns, lessees, licensees, and agents an exclusive easement and non-exclusive easement to construct, reconstruct, maintain, operate or remove above ground-and/or under ground communication facilities including necessary appurtenances and other related fixtures, equipment, marker posts, electric power which may from time to time be required, with the right of ingress and egress for the purposes of this grant, in, under, upon, over and across property located in the NW 1/4 of Section 1, Township of Novi, T 1N, R 8E, County of Oakland, State of Michigan and more fully described as follows:

Beg at Pt on N Sec Line Dist E 649 FT from NW Sec cor, TH E 315.10 FT, TH S 00-43-00 W 691.26 FT, TH W 315.10 FT, TH N 00-43-00 E 691.26 FT to Beg. 5 A.

#

Sidwell No. 22-01-100-002 - Novi sec 1

SAID EASEMENT to be located and described as follows:

See Exhibit "A" attached hereto and made a part hereof.

The purpose of the Exclusive Easement is to provide a location for a seven (7) foot by twenty-five (25) foot underground telecommunications equipment vault, with an exposed portion of said equipment vault measuring approximately six (6) foot by eight (8) foot and extending approximately three (3) feet above the ground to accommodate the entrance hatch and ventilation system; along with a non-exclusive easement for placement of underground telephone and electric facilities necessary for operations of the telecommunications equipment and no other use shall be made of such easement.

Grantee hereby agrees to restore in a good and workmanlike manner all property disturbed by its construction or maintenance activities. Said property shall be restored to a condition at least as good as it is as of the date of this agreement.

Grantee hereby expressly agrees to indemnify, defend, and hold harmless Grantor from and against any and all damages or liabilities (including reasonable attorney fees) resulting from or attributable to the existence of Grantee's facilities, improvements or work within the easement areas and the acts, omissions or work performed or omitted to be performed by Grantee, its agents, employees, contractors, subcontractors, representatives, or invitees.

The undersigned specifically agrees that, due to the exclusive nature of a portion of this grant, no other use shall be made by anyone including Grantor, under, across, upon and/or over the exclusive portion of the easement herein described without obtaining the prior written permission of Michigan Bell Telephone Company, its successors or assigns.

THIS GRANT IS hereby declared to be binding upon the heirs, successors, lessees, licensees, and assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned have hereunto set THEIR hand and seal this 27th day of JANUARY, 1993.

11:00  
21/01/93

WITNESS  
[Signature]  
L. P. FORAKER

GRANTORS:  
[Signature]  
Stuart J. Leve  
[Signature]  
Lisa I. Leve

[Signature]  
JAMES H. DONOVAN

384-70-4541  
SS # or Tax ID #

Address: 41295 Fourteen Mile Rd.  
Walled Lake, MI 48377

LIBER 13528 PG 485

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STATE OF MICHIGAN

COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this 27<sup>TH</sup> day of

JANUARY, 1993 by STUART T. LEVE and LISA I

LEVE as husband and wife

Notary Public James H. Donovan  
JAMES H. DONOVAN

DOCUMENT DRAFTED BY AND RETURN TO:

\* WAYNE County, Michigan

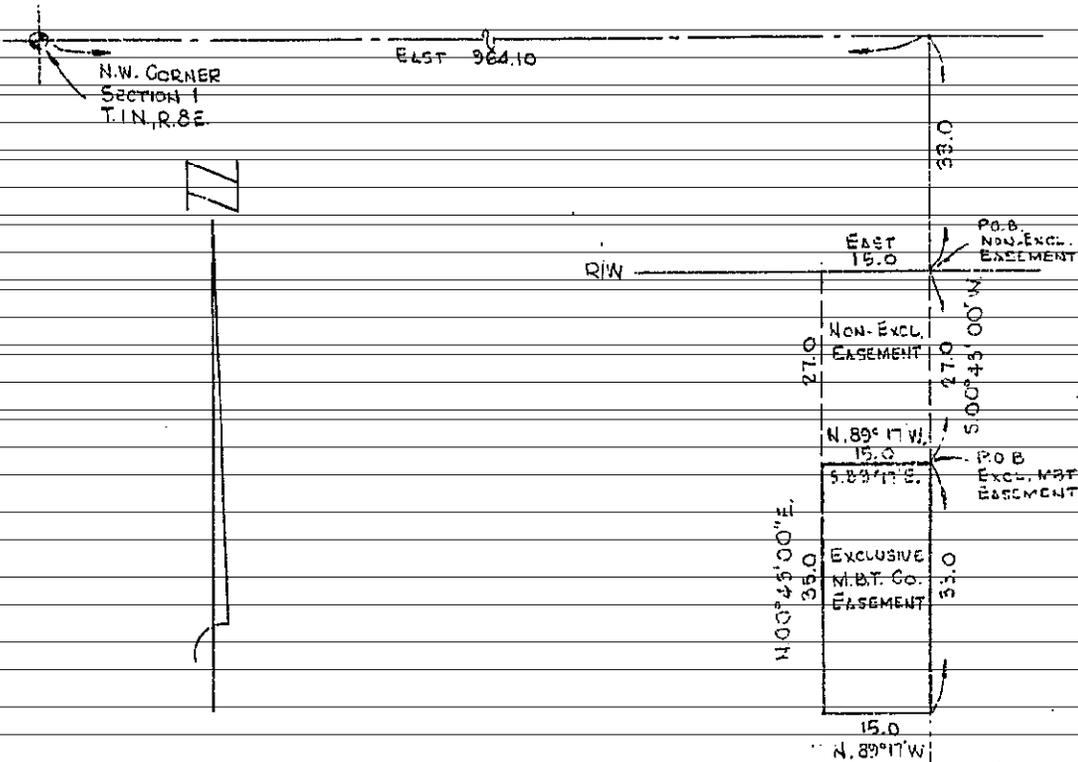
MICHIGAN BELL TELEPHONE COMPANY

My Commission Expires 1-4-95

JAMES DONOVAN  
54 N. Mill Street  
Box 30  
Pontiac, Michigan 48342

\* ACTING IN OAKLAND COUNTY

14 MILE ROAD



LEGAL DESCRIPTION

FOR A 15' X 35' EXCLUSIVE MICHIGAN BELL TELEPHONE COMPANY EASEMENT

Property located in the Northwest 1/4 of Section 1, City of Novi, T1N, R8E, Oakland County, Michigan, the easement being more particularly described as commencing at the Northwest corner of said Section 1: th East 964.10' along the Section Line; th S 0°43'00"W 33.00'; th continuing S 0°43'00"W 27.00' to the Point of Beginning; th continuing S 0°43'00"W 35.00'; th N 89°17'00"W 15.00'; th N 0°43'00"E 35.00'; th S 89°17'00"E 15.00' to the Point of Beginning.

Together with a 15' x 27' non-exclusive Michigan Bell Telephone Company easement on the said property, the easement being more particularly described as commencing at the Northwest corner of said Section 1; th East 964.10' along the Section Line; th S 0°43'00"W 33.00' to the Point of Beginning; th continuing S 0°43'00"W 27.00'; th N 89°17'00"W 15.00'; th N 0°43'00"E 27.00'; th East 15.00' to the Point of Beginning.

P.E.A. of Michigan, Inc.

Consulting Engineers & Land Surveyors

26001 Telegraph Road

Southfield, Michigan 48034 (313) 352-1050

CLIENT

MICHIGAN BELL TELEPHONE COMPANY

DN.

J.T.

CK.

SCALE 1" = 20'

JOB NO.

92-607