



CITY of NOVI CITY COUNCIL

Agenda Item C
December 5, 2011

SUBJECT: Approval to amend the authorization of Offer to Purchase for a permanent easement and temporary grading permit on the Comau, Inc. property (parcel 50-22-23-376-008) from the previously approved amount of \$2,105 to a new offer of \$3,000 for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and the CSX Railroad.

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

CITY MANAGER APPROVAL: 

EXPENDITURE REQUIRED	\$ 3,000
AMOUNT BUDGETED	\$ 8,300
APPROPRIATION REQUIRED	\$ 3,000 (to be included in 2nd quarter budget amendment)
LINE ITEM NUMBER	204-204.00-974.417

BACKGROUND INFORMATION:

An offer to purchase a permanent easement and temporary grading permit on the Comau, Inc. property located at 42850 Ten Mile Road was approved at the October 17, 2011 City Council meeting in the amount of \$2,105 for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and CSX railroad. Since that time, Engineering staff and the City Attorney's office have been working with the property owner to negotiate the easements. The original offer was based on the land value of \$2.00 per square foot as established by the Assessor.

The negotiations have resulted in a preliminary valuation of \$3,000 for the permanent easement and the temporary grading permit. The additional \$895 value for the easement is recommended by staff and the City Attorney to avoid the costs associated with appraisals and litigation that would be necessary without a settlement (see November 22, 2011 letter from Beth Kudla for additional information). Comau's representatives have indicated that the proposed valuation of \$3,000 would be acceptable.

There are five permanent pathway easements and four temporary grading permits required to facilitate construction of the pathway. One of the permanent easements was donated by Joe Trudeau and accepted by City Council in July 2011. Negotiations have continued with one other property owner. Final deadlines for acceptance of the previously approved good faith offers are set for December, after which the City Attorney will file paperwork with the court to acquire the remaining easements through eminent domain.

The construction of the pedestrian safety path along Ten Mile Road between Catherine Industrial and CSX railroad is scheduled to begin in spring 2012 and will provide a complete pathway connection along the north side of Ten Mile Road between Novi Road and Haggerty Road.

RECOMMENDED ACTION: Approval to amend the authorization of Offer to Purchase for a permanent easement and temporary grading permit on the Comau, Inc. property (parcel 50-22-23-376-008) from the previously approved amount of \$2,105 to a new offer of \$3,000 for the purpose of constructing a pedestrian safety path on the north side of Ten Mile Road between Catherine Industrial Road and the CSX Railroad.

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

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

November 22, 2011

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-
3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Mr. Ben Croy, Civil Engineer
Engineering Division
City of Novi
26300 Delwal Drive
Novi, Michigan 48375

**RE: 10 Mile Road Safety Path
Comau, Inc. Property
Our File No. 55142 NOV**

Dear Mr. Croy:

As you know, Comau, Inc., made a counter-offer in the amount of \$4,165 to the City's good faith offer in the amount of \$2,105 for a safety path easement and temporary grading permit over its property. As we discussed, the basis for the counter-offer did not pertain to the actual \$2.00 square foot value of the property and is not compensable under the eminent domain statute. In discussing the value with representatives of Comau, Inc., they agreed to accept \$3,000 to resolve the matter. The additional \$895 provided in the settlement will allow the City to avoid litigation costs which could be significantly higher. On this basis, we recommend acceptance of the negotiated \$3,000 total value of the easements.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,



ELIZABETH M. KUDLA

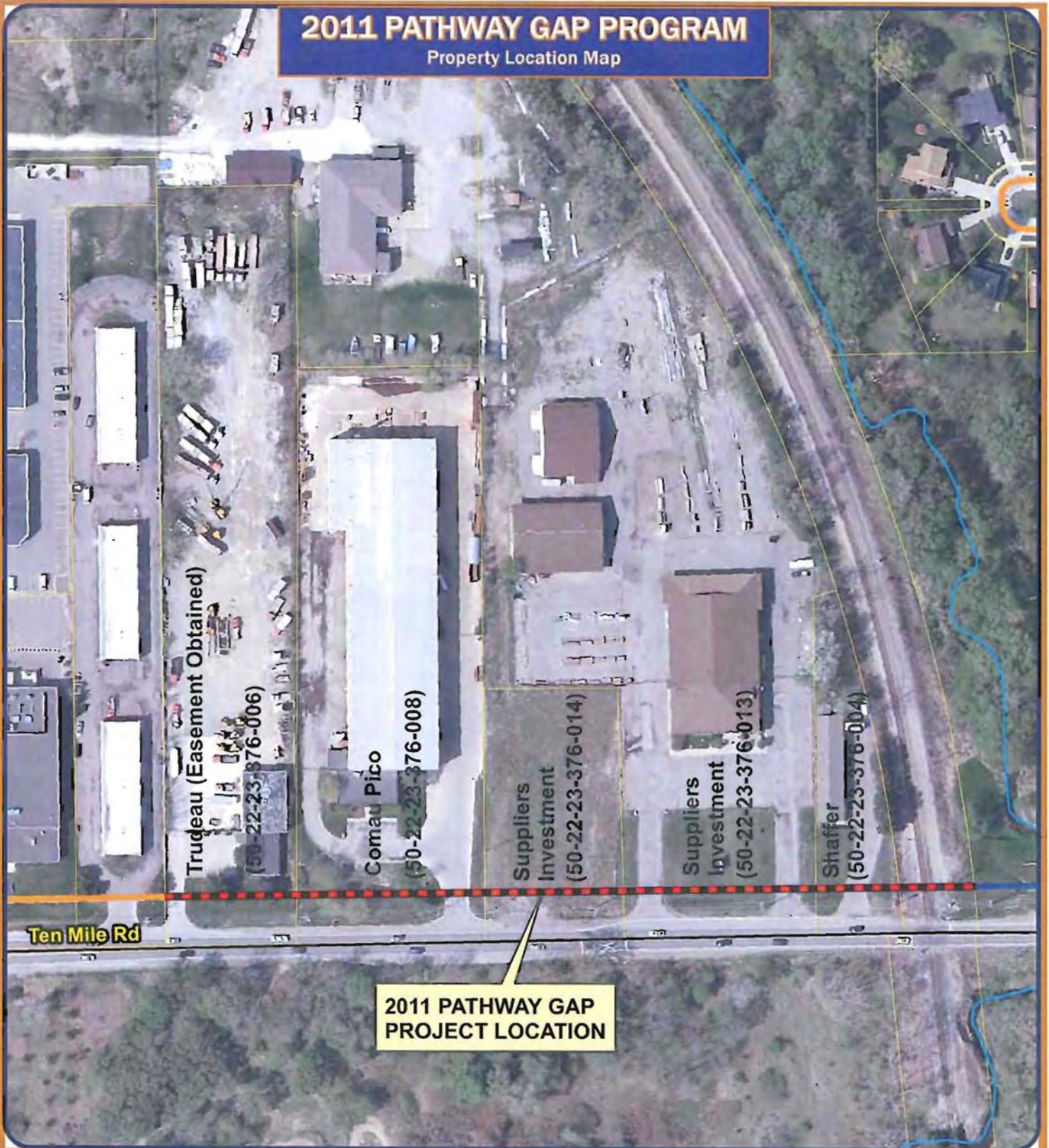
EMK

cc: Maryanne Cornelius, City Clerk
Clay Pearson, City Manager
Victor Cardenas, Assistant City Manager
Rob Hayes, Public Services Director
Thomas R. Schultz, Esquire

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2011 PATHWAY GAP PROGRAM

Property Location Map



Ten Mile Rd

2011 PATHWAY GAP
PROJECT LOCATION

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

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 232 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

Map Legend

— Existing Pathways



City of Novi

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



1 inch = 150 feet

AGREEMENT OF SALE
OFFER TO PURCHASE EASEMENTS OVER REAL PROPERTY

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

PARCEL DESCRIPTION (50-22-23-376-008):

T1N, R8E, SEC 23 PART OF SW 1/4 BEG AT PT DIST N 89 37'40" W 974.33 FT FROM S 1/4 COR, TH N 89 37'40" W 210.00 FT, TH N 01 00'00" E 660.00 FT, TH S 89 37'40" E 210.00 FT, TH S 01 00'00" W 660.00 FT TO BEG 3.18 A. SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

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

PATHWAY EASEMENT LEGAL DESCRIPTION:

COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PARENT PARCEL ON THE SOUTH LINE OF SECTION 23; THENCE N 01 00' 00" E, 33.00 FT ALONG THE WEST LINE OF THE PARENT PARCEL TO A POINT OF BEGINNING; THENCE N 01 00'00" E, 7.00 FT, THENCE S 89 37' 40" E, 77.92 FT; THENCE N 74 02' 14 E 49.78 FT; THENCE S 89 37' 40" E, 84.46 FT; THENCE S 01 00' 00" W, 7.00 FT ALONG THE EAST LINE OF THE PARENT PARCEL; THENCE N 89 37' 40" W, 78.05 FT; THENCE S 74 02' 14'W, 49.78'; THENCE N 89 37' 40" W, 84.34 FT TO THE POINT OF BEGINNING.

CONTAINS 1,560 SFT (0.036 ACRES), MORE OR LESS.

B) A Temporary Grading Permit in certain real estate described as follows:

NORTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PARENT PARCEL ON THE SOUTH LINE OF SECTION 23; THENCE N 01 00' 00" E, 40.00 FT ALONG THE WEST LINE OF THE PARCEL TO A POINT OF BEGINNING; THENCE N 01 00' 00" E, 4.00 FT; THENCE S 89 37' 40" E, 77.30 FT; THENCE N 74 02' 14 E 71.11 FT; THENCE S 89 37' 40" E, 64.68 FT; THENCE S 01 00' 00" W, 10.00 FT; THENCE N 89 37' 40" W, 84.46 FT; THENCE S 74 02' 14' W, 49.78'; THENCE N 89 37' 40" W, 77.92 FT TO THE POINT OF BEGINNING. CONTAINS 1,298 SFT (0.030 ACRES), MORE OR LESS.

SOUTHERLY GRADING EASEMENT LEGAL DESCRIPTION:

COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PARENT PARCEL ON THE SOUTH LINE OF SECTION 23; THENCE N 01 00' 00" E, 33.00 FT ALONG THE WEST LINE OF THE PARCEL; THENCE S 89 37' 40" E, 84.34 TO A POINT OF BEGINNING; THENCE N 74 02' 14 E 49.78 FT; THENCE S 89 37' 40" E, 78.05 FT; THENCE S 01 00' 00" W, 14.00 FT; THENCE N 89 37' 40" W, 125.66 FT TO THE POINT OF BEGINNING. CONTAINS 1,426 SFT (0.033 ACRES), MORE OR LESS

and to pay therefore the sum Three Thousand (\$3,000.00) Dollars, subject to the existing building and use restrictions, easements, and zoning ordinances, if any, upon the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSES:

PURCHASER:

CITY OF NOVI, a Michigan
municipal corporation

By: ROBERT J. GATT
Its: Mayor

By: MARYANNE CORNELIUS
Its: City Clerk

Dated: _____, 2011

To the Above Named Purchaser:

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

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

IN THE PRESENCE OF:

SELLER:

COMAU, INC., a Michigan
corporation

By: _____

PURCHASER'S RECEIPT OF ACCEPTED OFFER

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

CITY OF NOVI, a Michigan
municipal corporation, Purchaser

BY: _____

Its: _____

Dated: _____, 2011

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PATHWAY EASEMENT

KNOW ALL PERSONS THAT COMAU, INC., A MICHIGAN CORPORATION (“GRANTOR”), WHOSE ADDRESS IS 21000 TELEGRAPH RD, SOUTHFIELD, MI, for and in consideration of Two Thousand Four Hundred and Fifty-Five (\$2,455.00) Dollars, receipt and sufficiency of which is hereby acknowledged, hereby grant and convey to the City of Novi, a Michigan Municipal Corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375, being exempt pursuant to MCLA 207.505(a), and MCLA 207.526 (a) a permanent easement for a public walkway over across and through property located in Section 17, T.1N., R.8E., City of Novi, Oakland County, State of Michigan, more particularly described as follows:

Parcel No. 50-22-23-376-008

{See attached and incorporated Exhibit A}

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

{See attached and incorporated Exhibit A}

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

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

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

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

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

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

Dated this _____ day of _____, 20__.

GRANTOR

COMAU, INC., A MICHIGAN CORPORATION

BY: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing consent to easement was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a _____.

Notary Public
_____ County, __
My Commission Expires: _____

Parcel No.

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

When recorded return to:

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

RECORDING FEE _____
1716338_1.doc

REVENUE STAMPS _____

TEMPORARY GRADING PERMIT

In consideration of \$545.00, I, _____, the owner of the property as
(print name)

described as 42850 Ten Mile Road, Novi, Michigan (Parcel No. 50-22-23-376-008) grant the City of Novi and its contractor (or subcontractors) permission to access, move men and equipment on and through, the right to store materials and excavated earth, remove vegetation and alter the underlying land in, over, upon and through the property described above in the particular areas shown in Exhibit A, attached.

The work will include:

Grading and related construction activities required for the construction of a 5-foot wide non-motorized pathway, including but not limited to the removal or relocation of trees and landscaping in accordance with approved plans. All work is contained in the set of construction plans entitled "2011 Pathway Gap Program" by URS Corporation.

All portions of the Premises damaged or disturbed by Novi's exercise of temporary easement rights, shall be reasonably restored by Novi to the condition that existed prior to the damage or disturbance;

I understand this only grants permission to the Contractor to perform work directly relating to the listed project and upon completion of required grading operations the property will be fully restored.

Owner (signature)

Date

Contact Mailing Address

City, State, Zip

Phone Number

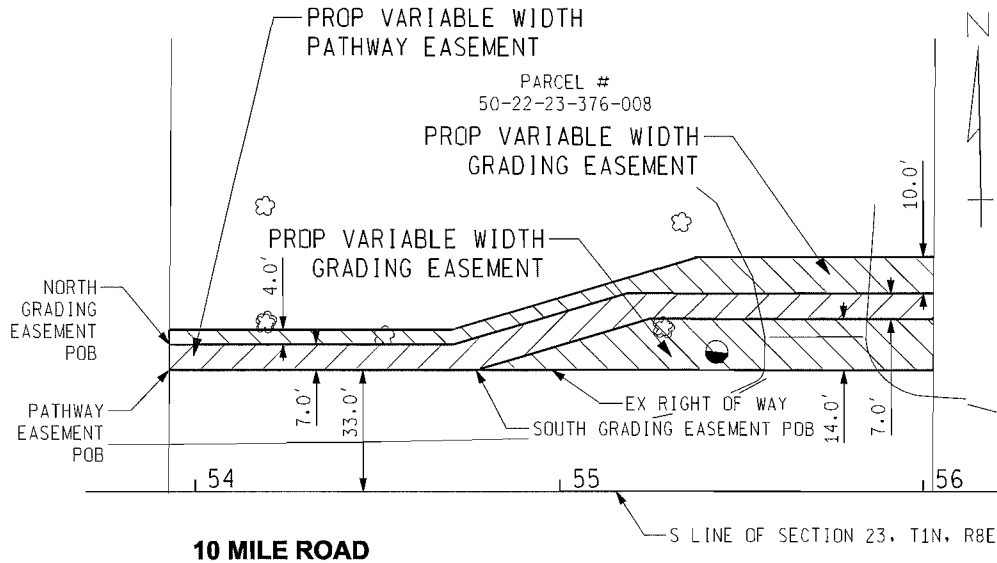
Fax Number

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by

Notary Public
_____ County, Michigan
My Commission Expires:

Drafted by:
Benjamin Croy, PE
City of Novi
45175 W Ten Mile Road
Novi, MI 48375



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PROPERTY OWNER:
 COMAU PICO, INC
 21000 TELEGRAPH RD
 SOUTHFIELD, MI 48034

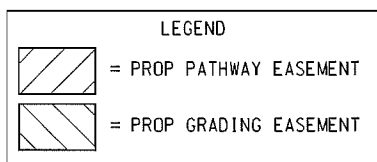
PROPERTY ADDRESS:
 42850 TEN MILE ROAD
 NOVI, MI 48375

TAX ID:
 50-22-23-376-008

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**PATHWAY &
 GRADING EASEMENT**

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

EXHIBIT A

1"=40' 0 20 40

PATHWAY & GRADING EASEMENT PARCEL 50-22-23-376-008



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