

May 22, 2006

TO: John M. Lamerato, Acting City Manager

FROM: Douglas J. Smith, Real Estate & Development Director 

SUBJECT: AGENDA ITEM – Request for Acceptance of Sanitary Sewer Easement Agreement and Water Main Easement Agreement, Troy School District – Sidwell #88-20-23-326-001, Project No. 05.926.3 Baker Middle School Addition

In connection with the recent addition to Baker Middle School in the southwest ¼ of Section 23, the Real Estate and Development Department has acquired a Sanitary Sewer Easement Agreement and a Water Main Easement Agreement from Troy School District. The consideration amount on each document is \$1.00.

In order for the Troy School District to proceed with this project, staff recommends that City Council accept the attached easement agreements from Troy School District and authorize the Mayor and City Clerk to sign the agreements on behalf of the City of Troy.

SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT made and entered into this 7th day of February, 2006, between TROY SCHOOL DISTRICT, a Michigan municipal corporation, whose address is 4400 Livernois, Troy, Michigan 48098-4799 (hereinafter referred to as "Grantor"), and the CITY OF TROY, a Michigan municipal corporation, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 (hereinafter referred to as "Grantee").

RECITALS

A. The Grantor is the owner of certain real property described in **Exhibit A** under the heading of "Legal Description of Overall Parcel", which is attached hereto and incorporated by reference (the "Premises"); and

B. The Grantee desires to acquire from the Grantor certain rights to the Premises in order to operate, maintain, repair and/or replace a City owned Sanitary Sewer.

IT IS THEREFORE AGREED:

1. Grant of Easement. In consideration of the sum of One and 00/100 (\$1.00) Dollar, and other valuable consideration, Grantor hereby grants to Grantee a perpetual nonexclusive Sanitary Sewer easement as hereinafter described.
2. Character of Easement. The easement granted herein is appurtenant to the Premises.
3. Purpose of Easement. The easement herein shall be used only for the purpose of the operation, maintenance, repair and/or replacement of the City owned Sanitary Sewer.
4. Location and Description of Easement. The location and legal description of the easement granted herein is described and shown in **Exhibits A and B** and described under the heading of "Legal Description of Sanitary Sewer Easement," which are attached hereto and incorporated herein by reference (the "Easement Area").
5. Operation and Maintenance. The operation, maintenance, repair, and/or replacement of the City owned Sanitary Sewer shall be at the sole cost and expense of the Grantee. During all aspects of any work performed on the Premises, Grantee also covenants and agrees to do the following:
 - a. Immediately backfill and temporarily restore, on a daily basis, all driveways, parking lots and sidewalk areas located upon the Premises and disturbed by virtue of the maintenance or repairs to the City owned Sanitary Sewer until such time as final restoration of the affected areas occur pursuant to Paragraph 6 herein;
 - b. Immediately backfill or fence during working hours all excavations on the Premises when not supervised to ensure safety;
 - c. Fence all equipment and materials during non-working hours so as to prevent access by any licensees, invitees, guests or trespassers;

- d. Provide Grantor with continued access for ingress and egress over, under, through and across the Easement Area;
- e. Provide Grantor with continued access to the Premises; and
- f. Carry on its work to ensure only minimal interference or disruption of Grantor's school operations on the Premises.

6. Restoration. If upon any maintenance, repair, replacement, removal or any such work performed upon the City owned Sanitary Sewer, the Premises have been affected in any manner by said maintenance, repair and/or replacement, Grantee shall, at its sole cost and expense, restore the Premises to a condition as good as its condition prior to such work. Such restoration shall include but not be limited to the following:

- a. The restoration of sodded and grassed areas;
- b. Any driveways, parking lots, sidewalks, bike paths, culverts, curbs and headwalls so disturbed shall be restored with like materials and to matching thickness as prior to Grantee's commencement of any such work;
- c. Any and all shrubbery, removed, destroyed or disturbed in any manner shall be replaced upon completion of such work with like shrubs; and
- d. The restoration of disturbed or destroyed chainlink fencing, if any, located upon the Premises.

Such restoration shall occur not later than sixty (60) days after completion of maintenance, repair, replacement, removal or any such work performed upon the Premises. If, however, weather conditions and/or local frost laws prevent the timely restoration of the Premises, such restoration shall occur not later than the first growing season after completion of the work performed.

7. Grantor's Rights. Grantor also retains, reserves, and shall continue to enjoy the use of the surface of the Easement Area for any and all purposes which do not interfere with or prevent the use by Grantee. If the Grantor or any of Grantor's successors or assigns shall dedicate all or any part of the property affected by this easement, the Grantee and its successors and assigns shall execute all instruments that may be necessary or appropriate to effectuate such dedications, without, however, extinguishing the easement right granted herein.

8. Nonexclusive Easement. The easement, rights, and privileges granted herein are nonexclusive, and Grantor reserves and retains the right to convey similar easements and rights to such other persons as Grantor may deem proper provided such similar easements do not affect Grantee's easement.

9. Insurance. Grantee shall require each contractor performing work on the Premises to keep in force at its sole cost and expense during and until completion of any maintenance, repair, replacement, removal or any such work performed upon the Premises, in a form acceptable to Grantor, an Owner's and Contractor's Protective Policy naming Grantor as the principal insured and shall also require each contractor to name Grantor as an additional insured on all Contractor Policies of insurance with both policies having minimum limits of \$1,000,000.00 on account of bodily injuries to or death of one person, and minimum limits of \$2,000,000.00 on account of bodily injuries or death of more than one person, or such other amounts as Grantor may, from time to time, reasonably request, as a result of any one accident or occurrence; and property damage insurance with minimum limits of \$1,000,000.00, or such other amounts as Grantor may, from time to time, reasonably request. Prior to commencement of any work, Grantee shall provide Grantor with a certificate of insurance or other written evidence of Grantor's coverage as an additional insured, including an endorsement which states that such insurance may not be cancelled except upon ten (10) days prior written notice to Grantor.

10. Liability of Grantee. The Grantee shall be responsible to the Grantor for liabilities incurred by the Grantor, arising out of the actions of the Grantee during the operation, maintenance, repairs or replacement of the City owned Sanitary Sewer on the easement granted. These liabilities shall include costs, expenses, actual attorney fees and liabilities for personal injury or property damage, including damage to property of the Grantor. However, Grantee shall not be responsible for any claims resulting from the actions of Grantor or that of third parties who are not designees,

agents, successors or employees of Grantee. The terms "Grantee" and "Grantor" shall include their designees, agents, successors and employees. Nothing in this clause shall be construed to limit either Grantee's or Grantor's defenses and rights, including the right to assert a claim of governmental immunity.

11. Covenants to Run with Land. The covenants contained in this Agreement shall run with the land and shall be binding upon the parties and their respective heirs, representatives and successors.

12. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect. Any modification of this Agreement must be in writing and must be signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

WITNESSES:

Janice M. Shotwell
Rebecca J. Herity

GRANTOR:
TROY SCHOOL DISTRICT

By: Barbara A. Fowler
Barbara A. Fowler, Ph.D.
Its: Superintendent

WITNESSES:

GRANTEE:
CITY OF TROY

By: Louise E. Schilling
Its: Mayor
By: Tonni L. Bartholomew
Its: City Clerk

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

On this 13TH day of February, 2006, before me personally appeared BARBARA A. FOWLER, Superintendent of TROY SCHOOL DISTRICT, a Michigan Municipal Corporation, to me known to be the same person who executed the within instrument on behalf of TROY SCHOOL DISTRICT and who acknowledges the same to be the free act and deed of TROY SCHOOL DISTRICT.

Janice M. Shotwell
Oakland, Notary Public
County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: May 31, 2007

JANICE M. SHOTWELL
Notary Public, Oakland County, MI
My Commission Expires 05/31/2007

EXHIBIT A

LEGAL DESCRIPTION OF OVERALL PARCEL

A PARCEL OF LAND THAT IS THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 23, TOWN 2 NORTH, RANGE 11 EAST, CITY OF TROY, OAKLAND COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE CENTER OF SECTION 23, WHICH IS THE POINT OF BEGINNING OF PARCEL; THENCE S02°15'41"E, 1293.80 FEET; THENCE S86°16'29"W 1303.38 FEET; THENCE N02°21'19"W, 1293.80 FEET; THENCE N86°16'37"E, 1305.50 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION OF SANITARY SEWER EASEMENT

A 20' WIDE STRIP OF LAND, LOCATED IN THE CITY OF TROY, OAKLAND COUNTY, MICHIGAN, THE CENTER LINE OF WHICH IS INTENDED TO FOLLOW THE SANITARY SEWER AS CONSTRUCTED, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 23, WHICH IS THE POINT OF BEGINNING OF OVERALL PARCEL; THENCE S86°16'37"W, 1305.50 FEET; THENCE S02°21'19"E, 546.15 FEET TO THE POINT OF BEGINNING OF SANITARY SEWER EASEMENT; THENCE N74°06'31"E, 162.13 FEET; THENCE N85°59'50"E, 536.25 FEET TO THE POINT OF ENDING OF SANITARY SEWER EASEMENT.



SPALDING DeDECKER ASSOCIATES, INC.

ENGINEERS SURVEYORS

905 SOUTH BLVD. EAST
ROCHESTER HILLS, MI 48307

PH: (248) 844-5400 FAX: (248) 844-5404

www.spaldingdedecker.com

DRAWN: M.KASIM

DATE: 10-03-05

CHECKED: E.HAJ-HAMAD

DATE: 10-03-05

MANAGER:

SCALE: NONE

JOB No. DV04-066

SHEET: 2 OF 2

SECTION 23 TOWN 2 NORTH RANGE 11 EAST

CITY OF TROY

OAKLAND COUNTY, MI

EXHIBIT B

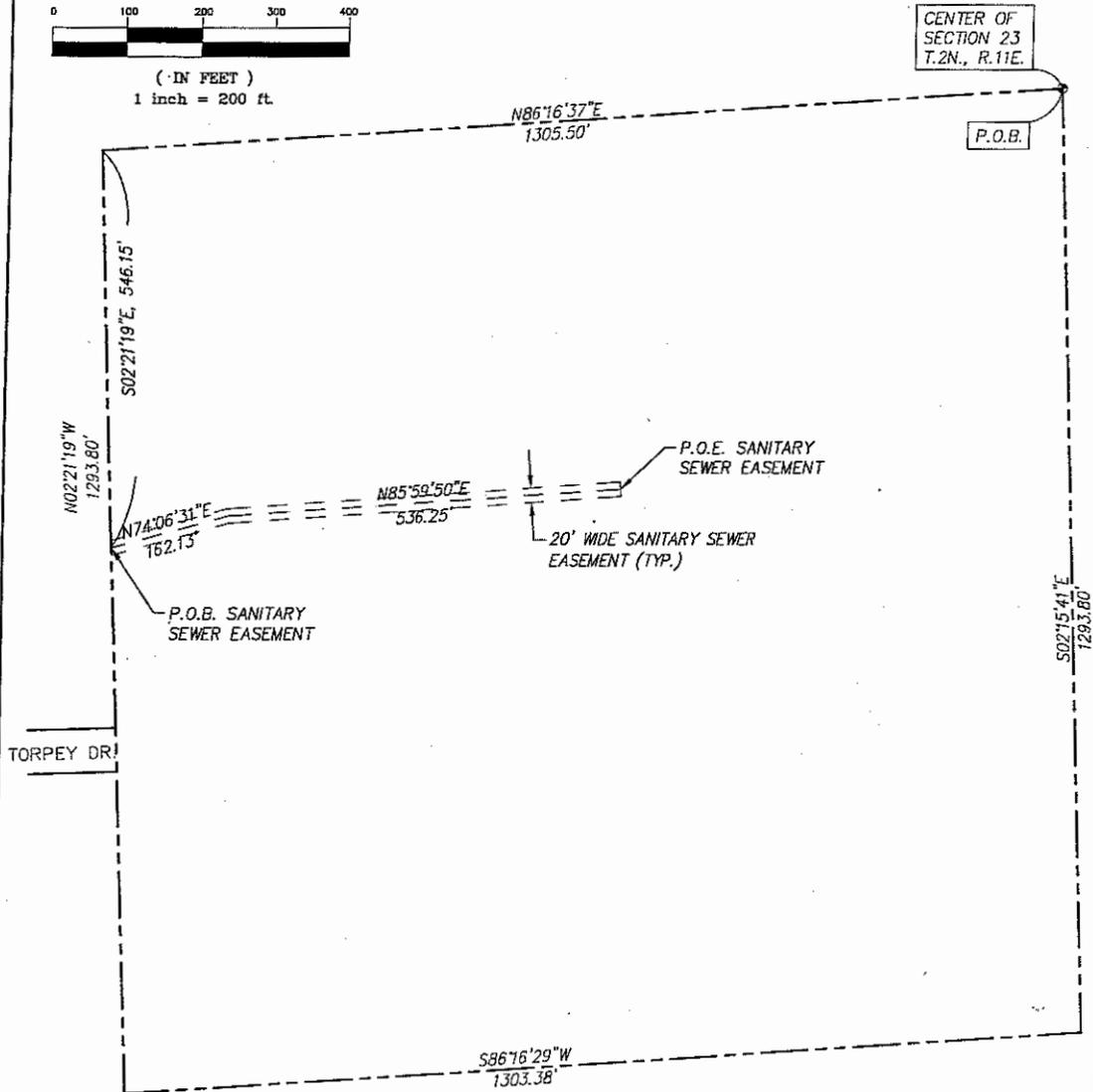


GRAPHIC SCALE



(-IN FEET)
1 inch = 200 ft.

CENTER OF SECTION 23
T.2N., R.11E.



Engineering & Surveying Excellence
Since 1954

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DRAWN: M. KASIM	DATE: 10-03-05
CHECKED: E.HAJ-MAMAD	DATE: 10-03-05
MANAGER:	SCALE: 1" = 200'
JOB No. DV04-066	SHEET: 1 OF 2
SECTION 23 TOWN 2 NORTH RANGE 11 EAST	
CITY OF TROY OAKLAND COUNTY, MI	

WATER MAIN EASEMENT AGREEMENT

THIS WATER MAIN EASEMENT AGREEMENT made and entered into this 7th day of February, 2006, between TROY SCHOOL DISTRICT, a Michigan municipal corporation, whose address is 4400 Livernois, Troy, Michigan 48098-4799 (hereinafter referred to as "Grantor"), and the CITY OF TROY, a Michigan municipal corporation, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 (hereinafter referred to as "Grantee").

RECITALS

A. The Grantor is the owner of certain real property described in **Exhibit A** under the heading of "Legal Description of Overall Parcel", which is attached hereto and incorporated by reference (the "Premises"); and

B. The Grantee desires to acquire from the Grantor certain rights to the Premises in order to operate, maintain, repair and/or replace a City owned Water Main.

IT IS THEREFORE AGREED:

1. Grant of Easement. In consideration of the sum of One and 00/100 (\$1.00) Dollar, and other valuable consideration, Grantor hereby grants to Grantee a perpetual nonexclusive Water Main easement as hereinafter described.
2. Character of Easement. The easement granted herein is appurtenant to the Premises.
3. Purpose of Easement. The easement herein shall be used only for the purpose of the operation, maintenance, repair and/or replacement of the City owned Water Main.
4. Location and Description of Easement. The location and legal description of the easement granted herein is described and shown in **Exhibits A and B** and described under the heading of "Legal Description of Water Main Easement," which are attached hereto and incorporated herein by reference (the "Easement Area").
5. Operation and Maintenance. The operation, maintenance, repair, and/or replacement of the City owned Water Main shall be at the sole cost and expense of the Grantee. During all aspects of any work performed on the Premises, Grantee also covenants and agrees to do the following:
 - a. Immediately backfill and temporarily restore, on a daily basis, all driveways, parking lots and sidewalk areas located upon the Premises and disturbed by virtue of the maintenance or repairs to the City owned Water Main until such time as final restoration of the affected areas occur pursuant to Paragraph 6 herein;
 - b. Immediately backfill or fence during working hours all excavations on the Premises when not supervised to ensure safety;
 - c. Fence all equipment and materials during non-working hours so as to prevent access by any licensees, invitees, guests or trespassers;

d. Provide Grantor with continued access for ingress and egress over, under, through and across the Easement Area;

e. Provide Grantor with continued access to the Premises; and

f. Carry on its work to ensure only minimal interference or disruption of Grantor's school operations on the Premises.

6. Restoration. If upon any maintenance, repair, replacement, removal or any such work performed upon the City owned Water Main, the Premises have been affected in any manner by said maintenance, repair and/or replacement, Grantee shall, at its sole cost and expense, restore the Premises to a condition as good as its condition prior to such work. Such restoration shall include but not be limited to the following:

a. The restoration of sodded and grassed areas;

b. Any driveways, parking lots, sidewalks, bike paths, culverts, curbs and headwalls so disturbed shall be restored with like materials and to matching thickness as prior to Grantee's commencement of any such work;

c. Any and all shrubbery, removed, destroyed or disturbed in any manner shall be replaced upon completion of such work with like shrubs; and

d. The restoration of disturbed or destroyed chainlink fencing, if any, located upon the Premises.

Such restoration shall occur not later than sixty (60) days after completion of maintenance, repair, replacement, removal or any such work performed upon the Premises. If, however, weather conditions and/or local frost laws prevent the timely restoration of the Premises, such restoration shall occur not later than the first growing season after completion of the work performed.

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8. Nonexclusive Easement. The easement, rights, and privileges granted herein are nonexclusive, and Grantor reserves and retains the right to convey similar easements and rights to such other persons as Grantor may deem proper provided such similar easements do not affect Grantee's easement.

9. Insurance. Grantee shall require each contractor performing work on the Premises to keep in force at its sole cost and expense during and until completion of any maintenance, repair, replacement, removal or any such work performed upon the Premises, in a form acceptable to Grantor, an Owner's and Contractor's Protective Policy naming Grantor as the principal insured and shall also require each contractor to name Grantor as an additional insured on all Contractor Policies of insurance with both policies having minimum limits of \$1,000,000.00 on account of bodily injuries to or death of one person, and minimum limits of \$2,000,000.00 on account of bodily injuries or death of more than one person, or such other amounts as Grantor may, from time to time, reasonably request, as a result of any one accident or occurrence; and property damage insurance with minimum limits of \$1,000,000.00, or such other amounts as Grantor may, from time to time, reasonably request. Prior to commencement of any work, Grantee shall provide Grantor with a certificate of insurance or other written evidence of Grantor's coverage as an additional insured, including an endorsement which states that such insurance may not be cancelled except upon ten (10) days prior written notice to Grantor.

10. Liability of Grantee. The Grantee shall be responsible to the Grantor for liabilities incurred by the Grantor, arising out of the actions of the Grantee during the operation, maintenance, repairs or replacement of the City owned Water Main on the easement granted. These liabilities shall include costs, expenses, actual attorney fees and liabilities for personal injury or property damage, including damage to property of the Grantor. However, Grantee shall not be responsible for any claims resulting from the actions of Grantor or that of third parties who are not designees,

agents, successors or employees of Grantee. The terms "Grantee" and "Grantor" shall include their designees, agents, successors and employees. Nothing in this clause shall be construed to limit either Grantee's or Grantor's defenses and rights, including the right to assert a claim of governmental immunity.

11. Covenants to Run with Land. The covenants contained in this Agreement shall run with the land and shall be binding upon the parties and their respective heirs, representatives and successors.

12. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect. Any modification of this Agreement must be in writing and must be signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

WITNESSES:

Janice M. Shotwell

GRANTOR:
TROY SCHOOL DISTRICT

By: Barbara A. Fowler
Barbara A. Fowler, Ph.D.

Its: Superintendent

WITNESSES:

GRANTEE:
CITY OF TROY

By: Louise E. Schilling

Its: Mayor

By: Tonni L. Bartholomew

Its: City Clerk

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

On this 8th day of February, 2006, before me personally appeared BARBARA A. FOWLER, Superintendent of TROY SCHOOL DISTRICT, a Michigan Municipal Corporation, to me known to be the same person who executed the within instrument on behalf of TROY SCHOOL DISTRICT and who acknowledges the same to be the free act and deed of TROY SCHOOL DISTRICT.

Rebecca J. Garity
_____, Notary Public
Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 9-19-06

REBECCA J. GARITY
Notary Public, Oakland County, MI
My Commission Expires 09/19/2006

EXHIBIT A

LEGAL DESCRIPTION OF OVERALL PARCEL

A PARCEL OF LAND THAT IS THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 23, TOWN 2 NORTH, RANGE 11 EAST, CITY OF TROY, OAKLAND COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER OF SECTION 23, WHICH IS THE POINT OF BEGINNING OF PARCEL; THENCE S02°15'41"E, 1293.80 FEET; THENCE S86°16'29"W 1303.38 FEET; THENCE N02°21'19"W, 1293.80 FEET; THENCE N86°16'37"E, 1305.50 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION OF WATERMAIN EASEMENT

A 20' WIDE STRIP OF LAND, LOCATED IN THE CITY OF TROY, OAKLAND COUNTY, MICHIGAN, THE CENTER LINE OF WHICH IS INTENDED TO FOLLOW THE WATERMAIN AS CONSTRUCTED, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 23, WHICH IS THE POINT OF BEGINNING OF OVERALL PARCEL; THENCE S86°16'37"W, 1305.50 FEET; THENCE S02°21'19"E, 871.71 FEET; THENCE N87°38'41"E, 27.07 FEET TO THE POINT OF BEGINNING OF WATERMAIN EASEMENT; THENCE N37°37'14"E, 315.05 FEET; THENCE N03°30'25"W, 67.72 FEET; THENCE N41°29'27"E, 9.96 FEET TO REF. PT. "A"; THENCE N41°29' 27"E, 39.54 FEET; THENCE N86°29' 19"E, 261.05 FEET; THENCE N75°14'19"E, 43.81 FEET TO REF. PT. "B"; THENCE N75°14'19"E, 30.78 FEET; THENCE N85°59'50"E, 181.01 FEET; THENCE S48°51'51"E, 88.57 FEET; THENCE S04°00'10"E, 155.81 FEET; THENCE S48°51'51"E, 26.80 FEET; THENCE S04°00'10"E, 390.34 FEET; THENCE S41°08'09"W, 122.84 FEET; THENCE S86°16'29"W, 20.28 FEET TO REF. PT. "C"; THENCE S86°16'29"W, 436.33 FEET TO THE POINT OF ENDING OF WATERMAIN EASEMENT.

ALSO, COMMENCING AT REFERENCE POINT "A"; THENCE N48°30'33"W, 22.07 FEET TO THE POINT OF ENDING.

ALSO, COMMENCING AT REFERENCE POINT "B"; THENCE S14°45'41"E, 13.83 FEET; THENCE S03°43'35"E, 111.12 FEET TO THE POINT OF ENDING.

ALSO, COMMENCING AT REFERENCE POINT "C"; THENCE N03°43'31"W, 28.98 FEET TO THE POINT OF ENDING.



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CHECKED: E.HAJ-HAMAD	DATE: 10-03-05
MANAGER:	SCALE: NONE
JOB No. DV04-066	SHEET: 2 OF 2
SECTION 23 TOWN 2 NORTH RANGE 11 EAST	
CITY OF TROY	OAKLAND COUNTY, MI

EXHIBIT B

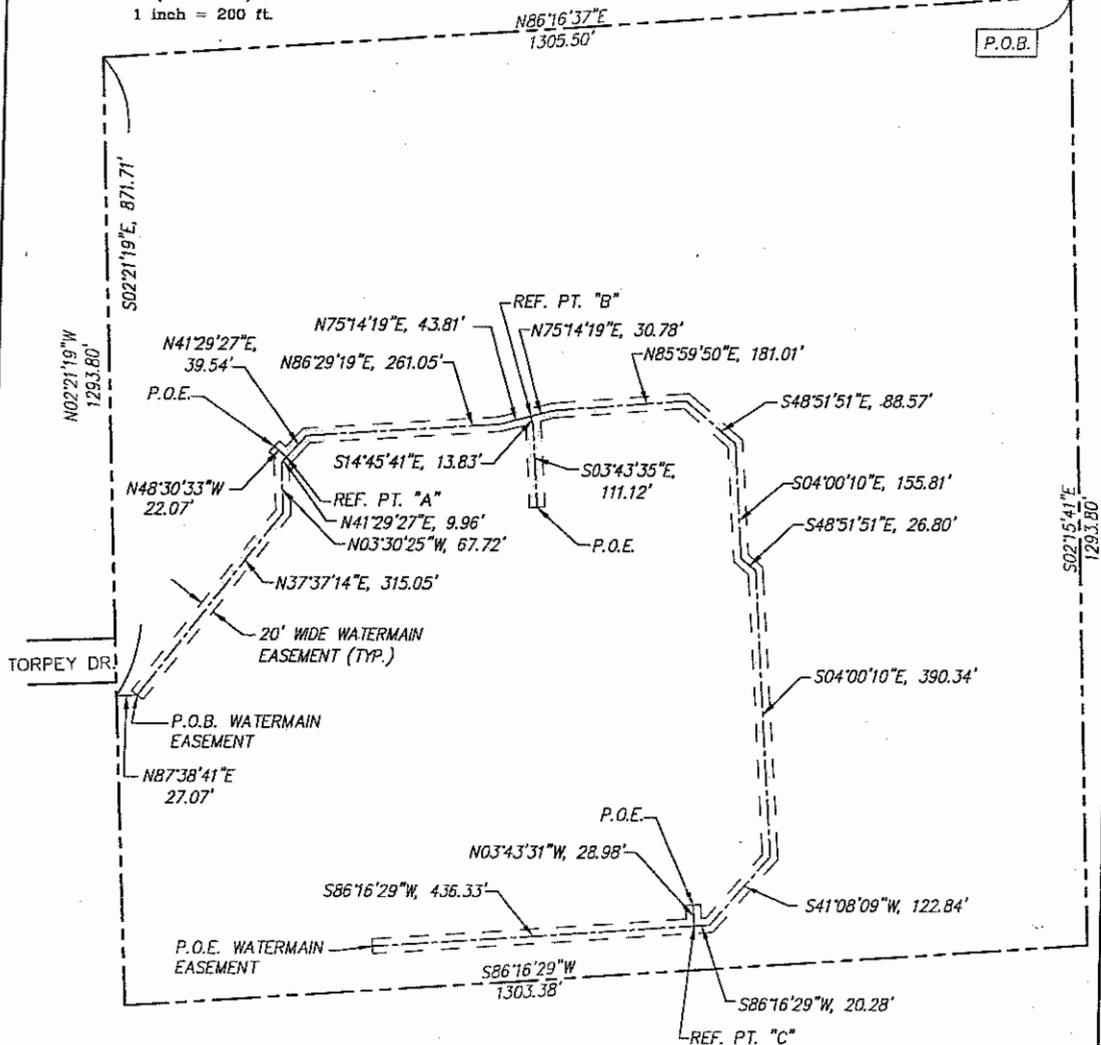


GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

CENTER OF SECTION 23
T.2N., R.11E.



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DRAWN: M.KASIM

CHECKED: E.HAJ-HAMAD

MANAGER:

JOB No. DVD4-066

SECTION 23 TOWN 2 NORTH RANGE 11 EAST

CITY OF TROY

DATE: 10-03-05

DATE: 10-03-05

SCALE: 1" = 200'

SHEET: 1 OF 2

OAKLAND COUNTY, MI