

# **AGENDA**

**Meeting of the**

## **CITY COUNCIL OF THE CITY OF TROY**

**JANUARY 8, 2007**

**CONVENING AT 7:30 P.M.**

**Submitted By  
The City Manager**

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***NOTICE: Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk at (248) 524-3316 or via e-mail at [clerk@ci.troy.mi.us](mailto:clerk@ci.troy.mi.us) at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.***

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TO: The Honorable Mayor and City Council  
Troy, Michigan

FROM: Phillip L. Nelson, City Manager

SUBJECT: Background Information and Reports

Ladies and Gentlemen:

This booklet provides a summary of the many reports, communications and recommendations that accompany your Agenda. Also included are suggested or requested resolutions and/or ordinances for your consideration and possible amendment and adoption.

Supporting materials transmitted with this Agenda have been prepared by department directors and staff members. I am indebted to them for their efforts to provide insight and professional advice for your consideration.

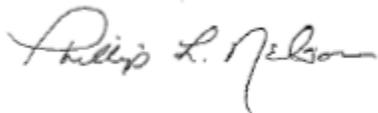
Identified below are goals for the City, which have been advanced by the governing body; and Agenda items submitted for your consideration are on course with these goals.

### **Goals**

1. Minimize cost and increase efficiency of City government.
2. Retain and attract investment while encouraging redevelopment.
3. Effectively and professionally communicate internally and externally.
4. Creatively maintain and improve public infrastructure.
5. Protect life and property.

As always, we are happy to provide such added information as your deliberations may require.

Respectfully submitted,



Phillip L. Nelson, City Manager

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## CITY COUNCIL

### AGENDA

January 8, 2007 – 7:30 PM  
Council Chambers  
City Hall - 500 West Big Beaver  
Troy, Michigan 48084  
(248) 524-3317

**CALL TO ORDER:** **1**

**INVOCATION & PLEDGE OF ALLEGIANCE: Pastor Bill Curtis – Community of Christ** **1**

**ROLL CALL:** **1**

**CERTIFICATES OF RECOGNITION:** **1**

A-1 Presentations: No Presentations **1**

**CARRYOVER ITEMS:** **1**

B-1 No Carryover Items **1**

**PUBLIC HEARINGS:** **1**

C-1 No Public Hearings **1**

**POSTPONED ITEMS:** **1**

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by Council Member Broomfield **1**

D-2 Proposed Appointment to Boards and Committees: City Council Appointments:  
Board of Zoning Appeals **2**

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Wednesday, February 28, 2007 (Liquor Violation Hearing) Regular City Council. 11  
Monday, March 5, 2007 Regular City Council ..... 11  
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**CALL TO ORDER:**

**INVOCATION & PLEDGE OF ALLEGIANCE: Pastor Bill Curtis – Community of Christ**

**ROLL CALL:**

Mayor Louise E. Schilling  
Robin Beltramini  
Cristina Broomfield  
Wade Fleming  
Martin F. Howrylak  
David A. Lambert  
Jeanne M. Stine

**CERTIFICATES OF RECOGNITION:**

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**A-1 Presentations: No Presentations**

**CARRYOVER ITEMS:**

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**B-1 No Carryover Items**

**PUBLIC HEARINGS:**

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**C-1 No Public Hearings**

**POSTPONED ITEMS:**

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**D-1 Resolution to the State of Michigan Regarding Group Day Care Homes – Referred by Council Member Broomfield**

Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

RESOLVED, That Troy City Council hereby **POSTPONES** *Resolution to the State of Michigan Regarding Group Day Care Homes – Referred by Council Member Broomfield* until the Regular City Council Meeting scheduled for Monday, July 9, 2007.

Yes:

No:

**D-2 Proposed Appointment to Boards and Committees: City Council Appointments:  
Board of Zoning Appeals**

Pending Resolution

Resolution #2007-01-

Moved by Stine

Seconded by Beltramini

RESOLVED, That the following person is hereby **APPOINTED BY THE CITY COUNCIL** to serve on the Boards and Committees as indicated:

**Board of Zoning Appeals**

Appointed by Council (7) – 3 Year Terms

Tom Krent

Unexpired Term Expires 04/30/09

Yes:

No:

**CONSENT AGENDA:**

*The Consent Agenda includes items of a routine nature and will be approved with one motion. That motion will approve the recommended action for each item on the Consent Agenda. Any Council Member may ask a question regarding an item as well as speak in opposition to the recommended action by removing an item from the Consent Agenda and have it considered as a separate item. Any item so removed from the Consent Agenda shall be considered after other items on the consent portion of the agenda have been heard. Public comment on Consent Agenda Items will be permitted under Agenda Item 9 “E”.*

**E-1a Approval of “E” Items NOT Removed for Discussion**

Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

RESOLVED, That all items as presented on the Consent Agenda are hereby **APPROVED** as presented with the exception of Item(s) \_\_\_\_\_, which **SHALL BE CONSIDERED** after Consent Agenda (E) items, as printed.

Yes:

No:

**E-1b Address of “E” Items Removed for Discussion by City Council and/or the Public**

**E-2 Approval of City Council Minutes**Suggested Resolution

Resolution #2007-01-

RESOLVED, That the Minutes of the 7:30 PM Regular City Council Meeting of December 18, 2006 be **APPROVED** as submitted.

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**E-3 Proposed City of Troy Proclamation(s): None Submitted****E-4 Standard Purchasing Resolutions****a) Standard Purchasing Resolution 4: Award – Macomb County Cooperative Purchasing Agreement – Fleet Vehicles**Suggested Resolution

Resolution #2007-01-

RESOLVED, That a contract to purchase seven (7) 2007 Ford Crown Victoria blue and white patrol cars and three (3) 2007 Ford Crown Victoria solid color command cars from Signature Ford of Owosso, MI, is hereby **APPROVED** through a Macomb County Cooperative Purchasing Agreement for an estimated total cost of \$206,560.00.

**b) Standard Purchasing Resolution 8: Best Value Award – Flynn Park Sports Lighting**Suggested Resolution

Resolution #2007-01-

RESOLVED, That a contract to furnish a new sport lighting system on four (4) ball diamonds at Flynn Park is hereby **AWARDED** to the best value proposal submitted by G&B Electrical Company of Bloomfield Hills, MI, as a result of a life cycle costing analysis at an estimated cost of \$385,000.00, as listed on the bid tabulation opened November 17, 2006, a copy of which shall be **ATTACHED** to the original Minutes of this meeting; and

BE IT FURTHER RESOLVED, That the award is **CONTINGENT** upon contractor submission of properly executed proposal and contract documents, including bonds, insurance certificates and all other specified requirements; and if additional work is required that could not be foreseen, such additional work is **AUTHORIZED** in an amount not to exceed 10% of the total project cost or \$38,500.00.

**c) Standard Purchasing Resolution 4: US Communities Contract – The Home Depot – Cabinets and Countertops for Fire Station #1 Kitchen Renovation**

Suggested Resolution  
Resolution #2007-01-

RESOLVED, That a contract to purchase cabinets and countertops for Fire Station One is hereby **APPROVED** through US Communities Cooperative Contract #05091 with The Home Depot for an estimated total cost of \$19,570.00.

**d) Standard Purchasing Resolution 4: AEPA Cooperative - Copiers**

Suggested Resolution  
Resolution #2007-01-

RESOLVED, That a contract to provide copiers from Konica Minolta Albin on an ongoing basis is hereby **APPROVED** through the Association of Educational Purchasing Agencies (AEPA) Cooperative Contract IFB #005 established by the AEPA bid process and Oakland Schools contract #06-0011 under the same pricing structure, terms, and conditions, which expires February 28, 2007, with any copier agreement executed by then extending for a period of two additional twelve (12) month periods.

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**E-5 Milano Development Company, Inc. v. City of Troy, et. al**

Suggested Resolution  
Resolution #2007-01-

RESOLVED, That the City Attorney is hereby **AUTHORIZED** and **DIRECTED** to represent the City of Troy in any and all claims and damages in the matter of Milano Development Company, Inc. v. City of Troy, et. al and to **PAY** all expenses and to **RETAIN** any necessary expert witnesses to adequately represent the City.

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**E-6 Approval of Contract No. 06-5632 with MDOT for Right-of-Way Acquisition for the Reconstruction and Widening of Rochester Road, Barclay to Trinway – Project No. 02.206.5**

Suggested Resolution  
Resolution #2007-01-

RESOLVED, That Contract No. 06-5632 between the City of Troy and the Michigan Department of Transportation for right-of-way acquisition for Rochester, Barclay to Trinway, Project No. 02.206.5, is hereby **APPROVED** and the Mayor and City Clerk are **AUTHORIZED TO EXECUTE** the documents, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

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**E-7 Approval of Subcontract No. 06-5632/S1 with Greenstar & Associates, LLC for Right-of-Way Services for the Reconstruction and Widening of Rochester Road, Barclay to Trinway – Project No. 02.206.5**

Suggested Resolution

Resolution #2007-01-

RESOLVED, That Subcontract No. 06-5632/S1, between the City of Troy and Greenstar & Associates, LLC for right-of-way services for the reconstruction of Rochester Road, between Barclay to Trinway is hereby **APPROVED** at an estimated cost to the City of Troy not to exceed \$75,000.00, and the Mayor and City Clerk are **AUTHORIZED TO EXECUTE** the subcontract, a copy of which shall be **ATTACHED** to the original Minutes of the meeting.

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**E-8 Contract Addendum No. 2 – Contract 06-3, Ferry Drain Restoration Project**Suggested Resolution

Resolution #2007-01-

RESOLVED, That Addendum No. 2 to Contract No. 06-3, Ferry Drain Restoration Project, is hereby **APPROVED** to D & J Lawn & Snow, Inc., 22750 Macomb Industrial Drive, Clinton Twp., MI, 48036 at the unit prices contained in the contract and the total amount authorized is \$99,692.45 and includes the previous authorized contract amount of \$76,882.25, the 10% contingency as per the previous contract award resolution, and the \$15,058.97 amount for which Addendum No. 2 exceeds the 10% contingency.

**PUBLIC COMMENT: Limited to Items Not on the Agenda**

*Public comment limited to items not on the Agenda in accordance with the Rules of Procedure of the City Council, Article 16 - Members of the Public and Visitors.*

**REGULAR BUSINESS:**

*Persons interested in addressing the City Council on items, which appear on the printed Agenda, will be allowed to do so at the time the item is discussed upon recognition by the Chair in accordance with the Rules of Procedure of the City Council, Article 16, during the Public Comment section under item 11“F” of the agenda. Other than asking questions for the purposes of gaining insight or clarification, Council shall not interrupt or debate with members of the public during their comments. Once discussion is brought back to the Council table, persons from the audience will be permitted to speak only by invitation by Council, through the Chair. Council requests that if you do have a question or concern, to bring it to the attention of the appropriate department(s) whenever possible. If you feel that the matter has not been resolved satisfactorily, you are encouraged to bring it to the attention of the City Manager, and if still not resolved satisfactorily, to the Mayor and Council.*

***NOTE: Any item selected by the public for comment from the Regular Business Agenda shall be moved forward before other items on the regular business portion of the agenda have been heard. Public comment on Regular Agenda Items will be permitted under Agenda Item 11 "F".***

**F-1 Appointments to Boards and Committees: a) Mayoral Appointments: Local Development Finance Authority (LDFA) b) City Council Appointments: Advisory Committee for Persons with Disabilities; Advisory Committee for Senior Citizens; Board of Zoning Appeals; Election Commission; and Municipal Building Authority**

The appointment of new members to all of the listed board and committee vacancies will require only one motion and vote by City Council. Council members submit recommendations for appointment. When the number of submitted names exceed the number of positions to be filled, a separate motion and roll call vote will be required (current process of appointing). Any board or commission with remaining vacancies will automatically be carried over to the next Regular City Council Meeting Agenda.

The following boards and committees have expiring terms and/or vacancies. Bold black lines indicate the number of appointments required:

**(a) Mayoral Appointments**

Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

RESOLVED, That the following persons are hereby **APPOINTED BY THE MAYOR** to serve on the Boards and Committees as indicated:

**Local Development Finance Authority (LDFA)**

Appointed by Mayor (5) – 4 Year Terms

Unexpired Term 06/30/07

Yes:

No:

**(b) City Council Appointments**

Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

RESOLVED, That the following persons are hereby **APPOINTED BY THE CITY COUNCIL** to serve on the Boards and Committees as indicated:

**Advisory Committee for Persons with Disabilities**

Appointed by Council (9-Regular; 3-Alternate) – 3 Year Terms

**(Alternate)** Term Expires 11/01/09

**Advisory Committee for Senior Citizens**

Appointed by Council (9) – 3 Year Terms

Unexpired Term 04/30/09

**Board of Zoning Appeals**

Appointed by Council (7) – 3 Year Terms

**Appointment Pending under Postponed Items – D-02**

Unexpired Term Expires 04/30/09

**(Planning Commission Rep)** Term Expires 01/31/08

**(Planning Commission Alternate Rep)** Term Expires 01/31/08

**Election Commission**

Appointed by Council (2-Regular; 1-Charter) – 1 Year Term

**(Democrat)** Term Expires 01/31/08

**(NOTE: Letters of recommendation from the Democrat & Republican Parties of Oakland County are pending)**

**Municipal Building Authority**

Appointed by Council (5) – 3 Year Terms

Term Expires 01/31/09

Yes:

No:

**F-2 Norma Robertson v. City of Troy**

Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

RESOLVED, That the City Attorney is hereby **AUTHORIZED** and **DIRECTED** to represent the City of Troy in any and all claims and damages in the matter of Norma Robertson v. City of Troy and to **PAY** necessary costs and expenses and to **RETAIN** any necessary expert witnesses to adequately represent the City.

Yes:

No:

**F-3 Hooters v. Troy – Proposed Consent Judgment****(a) Transfer of License**Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

RESOLVED, That the consent judgment between Hooters of Troy, Inc. and the City of Troy is hereby **APPROVED**, and the Mayor and City Clerk are **AUTHORIZED TO EXECUTE** the document, a copy of which shall be **ATTACHED** to the original Minutes of this meeting; and

BE IT FURTHER RESOLVED, That upon the execution of the consent judgment by the Court, the request from Hooters of Troy, Inc., (a Georgia Corporation) to transfer ownership of a 2005 Class C licensed business with outdoor service (1 area), and new Entertainment Permit located at 2950 Rochester Road Troy, MI 48083 Oakland County from Sign of the Beefcarver, Inc., be **APPROVED**.

**(b) Agreement**Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

WHEREAS, The City Council of the City of Troy deems it necessary to enter agreements with applicants for liquor licenses for the purpose of providing civil remedies to the City of Troy in the event licensees fail to adhere to Troy Codes and Ordinances;

THEREFORE, BE IT RESOLVED, That the City Council of the City of Troy hereby **APPROVES** an agreement with Hooters of Troy, Inc., (a Georgia Corporation) to transfer ownership of a 2005 Class C licensed business with outdoor service (1 area), and new Entertainment Permit located at 2950 Rochester, Troy, MI 48083, Oakland County from Sign of the Beefcarver, Inc., and the Mayor and City Clerk are hereby **AUTHORIZED TO EXECUTE** the document, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

Yes:

No:

**MEMORANDUMS AND FUTURE COUNCIL AGENDA ITEMS:**

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**G-1 Announcement of Public Hearings: None Submitted**

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**G-2 Green Memorandums: None Submitted**

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**COUNCIL REFERRALS: Items Advanced to the City Manager by Individual City Council Members for Placement on the Agenda**

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**H-1 No Council Referrals Advanced****COUNCIL COMMENTS:**

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**I-1 No Council Comments Advanced****REPORTS:**

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**J-1 Minutes – Boards and Committees:**

- a) Retiree Health Care Benefits Plan & Trust/Final – September 13, 2006
  - b) Building Code Board of Appeals Special/Final – October 18, 2006
  - c) Employees' Retirement System Board of Trustees/Final – November 8, 2006
  - d) Ethnic Issues Advisory Board/Draft – November 14, 2006
  - e) Ethnic Issues Advisory Board/Final – November 14, 2006
  - f) Downtown Development Authority/Final – November 15, 2006
  - g) Library Advisory Board/Final – November 16, 2006
  - h) Board of Zoning Appeals/Final – November 21, 2006
  - i) Troy Youth Council/Final – November 29, 2006
  - j) Building Code Board of Appeals/Final – December 6, 2006
  - k) Troy Youth Council/Draft – December 20, 2006
- 

**J-2 Department Reports:**

- a) Council Member Robin Beltramini's Travel Expense Report – NLC 83<sup>rd</sup> Congress of Cities and Exposition
  - b) City Attorney's Office – 2006 Fourth Quarter Litigation Report
- 

**J-3 Letters of Appreciation:**

- a) Letter of Thanks to Chief Craft from Tom Howe Regarding the Assistance Received Locating a Family Heirloom Rifle
  - b) Letter of Appreciation to Tonni Bartholomew from Secretary of State Terri Lynn Land Regarding the 2006 General Election
  - c) Letter of Thanks to Chief Craft from Clackamas County Sheriff's Office in Appreciation of the Participation in the 4<sup>th</sup> Annual National Family Violence Apprehension Detail
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**J-4 Proposed Proclamations/Resolutions from Other Organizations: None Submitted**

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**J-5 Calendar**

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**J-6 Communication from City Engineer Steve Vandette Regarding Request for Federal Aid Funding for FY 2010 and 2011**

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**J-7 Communication from Troy Residents Requesting a Change to the Ordinance Regarding Chaining of Dogs – Additional Documentation Available for Viewing at the City Clerk's Office and the Troy Public Library**

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**STUDY ITEMS:**

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**K-1** Council Responses to City Manager's Questionnaire

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**K-2** Correlation of Council Goals with Futures Report

**PUBLIC COMMENT:** Address of "K" Items

*Persons interested in addressing the City Council on items, which appear on the printed Agenda, will be allowed to do so at the time the item is discussed upon recognition by the Chair in accordance with the Rules of Procedure of the City Council, Article 16, during the Public Comment section under item 18 of the agenda. Other than asking questions for the purposes of gaining insight or clarification, Council shall not interrupt or debate with members of the public during their comments. Once discussion is brought back to the Council table, persons from the audience will be permitted to speak only by invitation by Council, through the Chair. City Council requests that if you do have a question or concern, to bring it to the attention of the appropriate department(s) whenever possible. If you feel that the matter has not been resolved satisfactorily, you are encouraged to bring it to the attention of the City Manager, and if still not resolved satisfactorily, to the Mayor and Council.*

**CLOSED SESSION:**

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**L-1** Closed Session:

Suggested Resolution

Resolution #2007-01-

Moved by

Seconded by

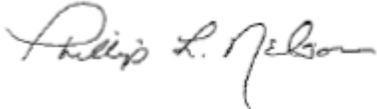
BE IT RESOLVED, That the City of Troy City Council **SHALL MEET** in Closed Session, as permitted by MCL 15.268 (e), Pending Litigation – Karagiannakis and Garrett Family Ltd. v. City of Troy, et. al.

Yes:

No:

**RECESSED****RECONVENED****ADJOURNMENT**

Respectfully submitted,



Phillip L. Nelson, City Manager

**SCHEDULED CITY COUNCIL MEETINGS:**

Monday, January 22, 2007 .....	Regular City Council
Monday, February 5, 2007 .....	Regular City Council
Wednesday, February 7, 2007 (Liquor Violation Hearing) .....	Regular City Council
Monday, February 19, 2007 .....	Regular City Council
Wednesday, February 28, 2007 (Liquor Violation Hearing).....	Regular City Council
Monday, March 5, 2007.....	Regular City Council
Monday, March 19, 2007.....	Regular City Council

A Regular Meeting of the Troy City Council was held Monday, December 18, 2006, at City Hall, 500 W. Big Beaver Road. Mayor Schilling called the Meeting to order at 7:31 P.M.

Reverend Richard Peacock – First United Methodist Church gave the Invocation and the Pledge of Allegiance to the Flag was given.

**ROLL CALL:**

- Mayor Louise E. Schilling
- Robin Beltramini
- Cristina Broomfield
- Wade Fleming
- Martin F. Howrylak (Absent)
- David A. Lambert
- Jeanne M. Stine

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**Vote on Resolution to Excuse Council Member Howrylak**

Resolution #2006-12-371  
Moved by Broomfield  
Seconded by Fleming

RESOLVED, That Council Member Howrylak’s absence at the Regular City Council meeting of December 18, 2006 is **EXCUSED** due to his absence from the county.

Yes: All-6  
No: None  
Absent: Howrylak

**CERTIFICATES OF RECOGNITION:**

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**A-1 Presentations: No Presentations**

**CARRYOVER ITEMS:**

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**B-1 No Carryover Items**

**PUBLIC HEARINGS:**

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**C-1 Rezoning (File Number: Z 723) – Proposed Taco Bell Restaurant, West Side of Dequindre, North of Long Lake, Section 12 – O-1 to B-2**

The Mayor opened the Public Hearing for public comment.  
The Mayor closed the Public Hearing after receiving comment from the petitioner and the public.

Resolution #2006-12-372  
Moved by Stine  
Seconded by Fleming

RESOLVED, That the O-1 to B-2 rezoning request, located on the west side of Dequindre, north of Long Lake, in Section 12, part of parcels 88-20-12-476-050 and 88-20-12-476-011, being 1.06 acres in size, is described in the following legal description and illustrated as Parcel "A" on the **ATTACHED** Certificate of Survey drawing:

T2N, R11E, SE ¼ of Section 12

Part of Lots 10, 11, 12 and the North 20 ft. of the East 200 ft. of Lot 16 of Jennings Subdivision (Liber 59, page 8, of Oakland County Plats) being more particularly described as follows:

Commencing at the Southeast corner of said Section 12; thence N 00°08'52" W, 60.00 ft. along the East line of said Section 12; thence N 89°32'26" W, 60.00 ft. to the Southeast corner of said Lot 16 of Jennings Subdivision; thence N 00°08'52" W (N 00°07' W record), 293.20 ft. along the East line of said Lot 16 and the West Right-of-Way line of Dequindre Rd. (60 ft. wide ½ Right-of-Way) to the Place of Beginning; thence N 88°11'10" W, 200.12 ft.; thence N 00°08'52" W, 20.01 ft.; thence N 88°11'10" W, 37.88 ft. along the South line of said Lot 12; thence N 00°08'52" W, 159.98 ft.; thence N 75°18'21" E, 70.21 ft.; thence S 88°10'33" E, 170.00 ft.; thence S 00°08'52" E (S 00°07' E record), 199.91 ft. along said East line of said Lots 10, 11, 12, and 16 and said West Right-of-Way of Dequindre Rd. (60 ft. wide ½ Right-of-Way) to the Place of Beginning. Containing ±1.06 ac. more or less, and subject to restrictions and easements of record; and

BE IT FURTHER RESOLVED, That the rezoning is recommended by City Management and the Planning Commission; and

BE IT FINALLY RESOLVED, That the City of Troy Zoning District Map is hereby **APPROVED**.

Yes: Broomfield, Fleming, Schilling, Stine  
 No: Beltramini, Lambert  
 Absent: Howrylak

## **MOTION CARRIED**

### **Vote on Resolution to Suspend Rules of Procedure of the City Council, Rule #6 – Order of Business, Article 15-1**

Resolution #2006-12-373  
 Moved by Stine  
 Seconded by Broomfield

RESOLVED, That Troy City Council hereby **SUSPENDS** Rules of Procedure for the City Council, Rule #6 Order of Business, Article 11-F, Regular Business and **AUTHORIZE** City Council to discuss and take action on item *F-6, Future Land Use Plan Amendment – Rochester Road Overlay District – Both Sides of Rochester Road, North of Long Lake and South of South Boulevard, Sections 2, 3, 11 and 12* prior to discussing and taking action on *Item C-2, Rezoning*

*Application (File Number Z 180-B) Proposed Binson's Home Health Care Center, Northwest Corner of Rochester and Marengo, Section 3 – R-1B to O-1 or R-1B to B-1.*

Yes: All-6  
 No: None  
 Absent: Howrylak

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**F-6 Future Land Use Plan Amendment – Rochester Road Overlay District – Both Sides of Rochester Road North of Long Lake Road and South of South Boulevard, Sections 2, 3, 11 and 12**

Resolution #2006-12-374  
 Moved by Stine  
 Seconded by Beltramini

WHEREAS, The responsibility of cities and villages to adopt and update a master plan is outlined in the Municipal Planning Act, PA 285 of 1931, as amended;

WHEREAS, The Municipal Planning Act requires that a copy of a plan amendment shall be sent to City Council following approval by the Planning Commission and Planning Commission approval is the final step in the amendment approval process unless City Council by resolution asserts the right to approve or reject the amendment;

WHEREAS, Section 02.10.02 of the City of Troy Zoning Ordinance grants the Planning Commission the authority to adopt amendments to the Future Land Use Plan; and

WHEREAS, On November 14, 2006, the Planning Commission adopted the Rochester Road Overlay District amendment;

THEREFORE, BE IT RESOLVED, City Council **HEREBY RECOGNIZES** that Planning Commission approval is the final step in the plan amendment process.

Yes: All-6  
 No: None  
 Absent: Howrylak

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**C-2 Rezoning Application (File Number Z 180-B) – Proposed Binson's Home Health Care Center, Northwest Corner of Rochester and Marengo, Section 3 – R-1B to O-1 or R-1B to B-1**

The Mayor opened the Public Hearing for public comment.

The Mayor closed the Public Hearing after receiving comment from the petitioner. There was no public comment.

Resolution #2006-12-375  
 Moved by Fleming  
 Seconded by Broomfield

RESOLVED, That the R-1B to B-1 rezoning request, located on the northwest corner of Rochester and Marengo, Section 3, being 39,000 square feet in size, is described in the following legal descriptions and illustrated on the **ATTACHED** drawing:

T2N, R11E, NE ¼ of Section 3

Lots 5,6,7,8, and 9 of Troy Little Farms Subdivision (Liber 42, pg. 8 of Oakland County Plats). Containing ±0.895 ac. more or less, and subject to easements of record; and

BE IT FINALLY RESOLVED, The City of Troy Zoning District Map is hereby **AMENDED**.

Yes: Lambert, Stine, Schilling, Broomfield, Fleming

No: Beltramini

Absent: Howrylak

### **MOTION CARRIED**

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#### **C-3 Commercial Vehicle Appeal – 5933 Diamond**

The Mayor opened the Public Hearing for public comment.

The Mayor closed the Public Hearing after receiving comment from the petitioner and the public.

Resolution #2006-12-376

Moved by Stine

Seconded by Beltramini

WHEREAS, The City Council of the City of Troy has not found that the petitioner has demonstrated the presence of condition(s), justifying the granting of a variance pursuant to Section 44.02.02 of Chapter 39 of the Code of the City of Troy;

THEREFORE, BE IT RESOLVED, That the request from Mr. Karim Abdal, 5933 Diamond, for waiver of Chapter 39, Section 40.66.00, of the Code of the City of Troy, to permit outdoor parking of a 2006 Chevrolet cutaway van and a 2001 Ford cargo van in a residential district is hereby **DENIED**.

Yes: All-6

No: None

Absent: Howrylak

### **MOTION CARRIED**

#### **Vote on Resolution to Suspend Rules of Procedure for the City Council, Rule #6 – Order of Business, Article 11-F.**

Resolution #2006-12-377

Moved by Lambert

Seconded by Beltramini

RESOLVED, That Troy City Council hereby **SUSPENDS** Rules of Procedure for the City Council, Rule #6 Order of Business, Article 11-F, Regular Business, and **AUTHORIZE** City Council to discuss and take action on agenda item, *F-9, Proposed Contract for T-Mobile Cell Tower at Fire Station #6.*

Yes: All-6  
No: None  
Absent: Howrylak

**MOTION CARRIED**

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**F-9 Contract for T-Mobile Cell Tower at Fire Station #6**

Resolution #2006-12-378  
Moved by Broomfield  
Seconded by Stine

RESOLVED, That the Lease Agreement between T-Mobile and the City of Troy is **HEREBY DENIED.**

Yes: All-6  
No: None  
Absent: Howrylak

**MOTION CARRIED**

The meeting **RECESSED** at 9:11 P.M.

The meeting **RECONVENED** at 9:20 P.M.

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**E-1a Approval of "E" Items NOT Removed for Discussion**

Resolution #2006-12-379  
Moved by Beltramini  
Seconded by Stine

RESOLVED, That all items as presented on the Consent Agenda are hereby **APPROVED** as presented with the exception of Item E-5, which **SHALL BE CONSIDERED** after Consent Agenda (E) items, as printed.

Yes: All-5  
No: None  
Absent: Fleming, Howrylak

**MOTION CARRIED**

**E-2 Approval of City Council Minutes**

Resolution #2006-12-379-E-2

RESOLVED, That the Minutes of the 7:30 PM Regular City Council Meeting of December 4, 2006 be **APPROVED** as submitted.

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**E-3 Proposed City of Troy Proclamation(s): None Submitted**

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**E-4 Standard Purchasing Resolutions****a) Standard Purchasing Resolution 1: Award to Low Bidder – Rough Mow Various Municipal Sites**

Resolution #2006-12-379-E-4a

RESOLVED, That a contract to provide three-year requirements of landscape maintenance services including mowing for municipal grounds and abandon properties with an option to renew for two additional years is hereby **AWARDED** to the low total bidder, Great Lakes Landscaping of Warren, MI, at unit prices as contained in the bid tabulation opened November 21, 2006, a copy of which shall be **ATTACHED** to the original Minutes of this meeting; and

BE IT FURTHER RESOLVED, That the award is **CONTINGENT** upon contractor submission of properly executed bid and contract documents, including insurance certificates and all other specified requirements.

---

**E-1b Address of “E” Items Removed for Discussion by City Council and/or the Public**

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**E-5 City of Troy Investment Policy and Establishment of Investment Accounts**

Resolution #2006-12-380

Moved by Beltramini

Seconded by Stine

RESOLVED, That the Investment Policy and establishment of Investment Accounts outlined in the memorandum from John M. Lamerato, Assistant City Manager/Finance and Administration, dated December 4, 2006 with annual review and approval is hereby **APPROVED**, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

Yes: Fleming, Stine, Schilling, Beltramini, Broomfield

No: Lambert

Absent: Howrylak

**MOTION CARRIED****PUBLIC COMMENT: Limited to Items Not on the Agenda**

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**REGULAR BUSINESS:****F-7 Troy Daze Festival****Vote on Resolution to Postpone**

Resolution #2006-12-381

Moved by Fleming

Seconded by Broomfield

RESOLVED, That Troy City Council hereby **POSTPONES** agenda item, *F-7 Troy Daze Festival*, until the Regular City Council Meeting scheduled for Monday, January 22, 2007 and that City Management provide a detailed audit of the 2006 festival expenses and retain an outside auditor to review the 2006 audit; copies of which shall be distributed to the Troy Community Foundation.

Yes: All-6

No: None

Absent: Howrylak

**MOTION CARRIED****F-1 Appointments to Boards and Committees: City Council Appointments: Board of Review and Election Commission****(b) City Council Appointments**

Resolution #2006-12-382

Moved by Broomfield

Seconded by Lambert

RESOLVED, That the following persons are hereby **APPOINTED BY THE CITY COUNCIL** to serve on the Boards and Committees as indicated:

**Board of Review**

Appointed by Council (3) – 3 Year Terms

James Hatch

Term Expires 01/31/10

**Election Commission**

Appointed by Council (2-Regular; 1-Charter) – 1 Year Term

David C. Anderson (Republican)

Term Expires 01/31/08

Yes: All-6

No: None

Absent: Howrylak

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**F-1 Proposed Appointment to Boards and Committees: City Council Appointments:  
Board of Zoning Appeals**

Resolution  
Moved by Stine  
Seconded by Beltramini

RESOLVED, That the following person is hereby **APPOINTED BY THE CITY COUNCIL** to serve on the Boards and Committees as indicated:

**Board of Zoning Appeals**

Appointed by Council (7) – 3 Year Terms

Tom Krent

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Unexpired Term Expires 04/30/09

**Vote on Resolution to Postpone**

Resolution #2006-12-383  
Moved by Broomfield  
Seconded by Fleming

RESOLVED, That Troy City Council hereby **POSTPONES** the *Proposed Resolution – City Council Appointments to the Board of Zoning Appeals* until the Regular City Council Meeting scheduled for Monday, January 8, 2007.

Yes: All-6  
No: None  
Absent: Howrylak

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**F-2 Potential Acquisition of 4265 Rochester Road**

Resolution #2006-12-384  
Moved by Beltramini  
Seconded by Stine

RESOLVED, That City Council directs staff to **PURSUE** acquisition of 4265 Rochester Road and that funds be used from the Park Development account 440770.7974.130.

Yes: All-6  
No: None  
Absent: Howrylak

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**F-3 Downtown Development Authority and Sanctuary Lake Golf Course Deficit Elimination Plans**

Resolution #2006-12-385  
Moved by Lambert  
Seconded by Stine

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RESOLVED, That the Troy City Council hereby **APPROVES** and **ADOPTS** the Downtown Development Authority Deficit Elimination Plan and the Sanctuary Lake Golf Course Deficit Elimination Plan presented to this meeting.

Yes: All-6  
No: None  
Absent: Howrylak

---

**F-4 Amendment #2 – Environmental Work Sanctuary Lake Golf Course – NTH Consultants**

Resolution #2006-12-386  
Moved by Beltramini  
Seconded by Lambert

WHEREAS, NTH Consultants, Ltd. has been providing environmental engineering services for the City of Troy (Resolution 2000-377); and

WHEREAS, NTH Consultants, Ltd. Environmental assessment report recommended ongoing ground water sampling and testing, and has provided methane detection monitoring (Resolution 2003-06-316); and

WHEREAS, NTH has provided a proposal to continue this work;

THEREFORE, BE IT RESOLVED, That a contract for methane gas and groundwater monitoring, replacement of damaged detectors, a methane detector maintenance plan and gas monitoring contingency plan be **APPROVED** with NTH Consultants, Ltd for an estimated cost of \$30,000.00, under the terms and conditions outlined in Proposal No. P-20061550-F dated November 9, 2006, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

Yes: All-6  
No: None  
Absent: Howrylak

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**F-5 Approval of Kitchen Lease – Emerald Food Services, LLC**

Resolution #2006-12-387  
Moved by Stine  
Seconded by Fleming

WHEREAS, Emerald Food Services, LLC is the provider of senior citizen nutritional services in contract with the Area Agency on Aging 1-B; and

WHEREAS, The City of Troy has agreed to allow use of the kitchen at the Community Center for the purpose of preparing these meals;

THEREFORE, BE IT RESOLVED, That the City Council of the City of Troy hereby **APPROVES** the kitchen lease and the Mayor and City Clerk are **AUTHORIZED TO EXECUTE** the agreement, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

Yes: All-6  
No: None  
Absent: Howrylak

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**F-8 TCF Bank Reimbursement Agreement – Brownfield Plan #4**

Resolution #2006-12-388

Moved by Lambert

Seconded by Stine

WHEREAS, On December 15, 2005, the Brownfield Redevelopment Authority recommended approval of Brownfield Plan #4 (Brownfield Plan to Conduct Eligible Response Activities, dated December 8, 2006), TCF Bank;

WHEREAS, On February 27, 2006, City Council approved Brownfield Plan #4 (Brownfield Plan to Conduct Eligible Response Activities, dated December 8, 2006), TCF Bank; and

WHEREAS, On December 12, 2006, the Brownfield Redevelopment Authority recommended approval of a Brownfield Tax Increment Financing Reimbursement Agreement, as executed by BRA Chair and TCF Bank;

THEREFORE, BE IT RESOLVED, That the Troy City Council **APPROVES** the Brownfield Tax Increment Financing Reimbursement Agreement for TCF Bank and the Mayor and City Clerk are **AUTHORIZED TO EXECUTE** the agreement, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

Yes: All-6  
No: None  
Absent: Howrylak

**MEMORANDUMS AND FUTURE COUNCIL AGENDA ITEMS:**

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**G-1 Announcement of Public Hearings: None Submitted**

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**G-2 Green Memorandums:**

- a) Zoning Ordinance Text Amendment (File Number: ZOTA 225) – Article 35.00.00  
Planned United Developments (PUD's)

Noted and Filed

**COUNCIL REFERRALS: Items Advanced to the City Manager by Individual City Council Members for Placement on the Agenda****H-1 Resolution Proclaiming and Celebrating that the Tree Adorning Troy City Hall Lawn be Known as “The Troy Christmas Tree” – Referred by Mayor Pro Tem Cristina Broomfield and Council Member Wade Fleming**

Resolution  
Moved by Fleming  
Seconded by Broomfield

WHEREAS, Christmas trees can be found in the homes of Troy families citywide;

WHEREAS, In early December of every year the Mayor, City Council, and people of Troy assemble in a festive gathering to light the Christmas Tree outside in front of City Hall;

WHEREAS, Also the national Christmas tree is found each year on the White House grounds in Washington D.C. to proclaim the Christmas season;

WHEREAS, Also the state legislature and governor have pronounced that the adorned tree placed in front of the state capital building be named “The State of Michigan Christmas Tree”;

WHEREAS, The holiday of Christmas, which is celebrated late in the year, has special importance to the lives of many citizens of Troy and Michigan; and

WHEREAS, In observance of this holiday, a prominent display is erected on the City Hall grounds;

THEREFORE, BE IT RESOLVED, That the tree prominently displayed outside the Troy City Hall late each year be officially **DESIGNATED** as “The Troy Christmas Tree” to properly symbolize the cherished event being observed; and

BE IT FURTHER RESOLVED, That a sign with the words, “The Troy Christmas Tree” **BE POSTED** near the base of the designated tree; and

BE IT FINALLY RESOLVED, That from this day forward, the tree and its graceful branches, which adorn the City Hall lawn each year, will **BE KNOWN** as “The Troy Christmas Tree”.

**Vote on Resolution to Amend**

Resolution #2006-12-389  
Moved by Beltramini  
Seconded by Lambert

RESOLVED, That Troy City Council hereby **AMENDS** the *Resolution Proclaiming and Celebrating that the Tree Adorning Troy City Hall Lawn be Known as “The Troy Christmas Tree”* by **STRIKING** “White House Grounds” and **INSERTING** “Ellipse” in the third “WHEREAS”

and by **INSERTING** *“Donated by Tom’s Landscaping – Troy, Michigan”* **AFTER** “The Troy Christmas Tree” in the second to last paragraph.

Yes: All-6

No: None

Absent: Howrylak

### **Vote on Resolution as Amended**

Resolution #2006-12-390

Moved by Fleming

Seconded by Broomfield

WHEREAS, Christmas trees can be found in the homes of Troy families citywide;

WHEREAS, In early December of every year the Mayor, City Council, and people of Troy assemble in a festive gathering to light the Christmas Tree outside in front of City Hall;

WHEREAS, Also the national Christmas tree is found each year on the Ellipse in Washington D.C. to proclaim the Christmas season;

WHEREAS, Also the state legislature and governor have pronounced that the adorned tree placed in front of the state capital building be named “The State of Michigan Christmas Tree”;

WHEREAS, The holiday of Christmas, which is celebrated late in the year, has special importance to the lives of many citizens of Troy and Michigan; and

WHEREAS, In observance of this holiday, a prominent display is erected on the City Hall grounds;

THEREFORE, BE IT RESOLVED, That the tree prominently displayed outside the Troy City Hall late each year be officially **DESIGNATED** as “The Troy Christmas Tree” to properly symbolize the cherished event being observed; and

BE IT FURTHER RESOLVED, That a sign with the words, “The Troy Christmas Tree” Donated by: Tom’s Landscaping – Troy, Michigan **BE POSTED** near the base of the designated tree; and

BE IT FINALLY RESOLVED, That from this day forward, the tree and its graceful branches, which adorn the City Hall lawn each year, will **BE KNOWN** as “The Troy Christmas Tree”.

Yes: All-6

No: None

Absent: Howrylak

### **COUNCIL COMMENTS:**

I-1 **No Council Comments**

**REPORTS:**

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**J-1 Minutes – Boards and Committees:**

- a) Historic District Study Committee/Final – September 6, 2006
- b) Traffic Committee/Final – September 20, 2006
- c) Troy Youth Council/Final – September 27, 2006
- d) Historic District Commission/Final – October 17, 2006
- e) Traffic Committee/Final – October 18, 2006
- f) Advisory Committee for Persons with Disabilities/Draft – November 1, 2006
- g) Advisory Committee for Persons with Disabilities/Final – November 1, 2006
- h) Building Code Board of Appeals/Final – November 1, 2006
- i) Advisory Committee for Senior Citizens/Final – November 2, 2006
- j) Historic District Study Committee/Final – November 7, 2006
- k) Planning Commission Special/Study/Final – November 7, 2006
- l) Employees' Retirement System Board of Trustees/Draft – November 8, 2006
- m) Planning Commission/Draft – November 14, 2006
- n) Planning Commission/Final – November 14, 2006
- o) Library Advisory Board/Draft – November 16, 2006
- p) Board of Zoning Appeals/Draft – November 21, 2006
- q) Planning Commission Special /Study/Draft – November 28, 2006
- r) Planning Commission Special/Study/Final – November 28, 2006
- s) Troy Youth Council/Draft – November 29, 2006
- t) Building Code Board of Appeals/Draft – December 6, 2006
- u) Advisory Committee for Senior Citizens/Draft – December 7, 2006

Noted and Filed

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**J-2 Department Reports:**

- a) Building Department – Permits Issued During the Month of November, 2006
- b) City of Troy Monthly Financial Report – November 30, 2006

Noted and Filed

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**J-3 Letters of Appreciation: None Submitted**

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**J-4 Proposed Proclamations/Resolutions from Other Organizations: None Submitted**

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**J-5 Calendar**

Noted and Filed

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**J-6 Letter from the Michigan Association of Public Employee Retirement Systems (MAPERS) to John M. Lamerato, Assistant City Manager/Finance & Administration, Advising of his Successful Completion of the Advanced Fiduciary Examination**

Noted and Filed

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**J-7 Communication from the City Attorney's Office Regarding City of Troy v. George Roberts**

Noted and Filed

**STUDY ITEMS:**

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**K-1 Correlation of Council Goals with Futures Report**

**PUBLIC COMMENT: Address of “K” Items**

**CLOSED SESSION:**

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**L-1 Closed Session:**

Resolution #2006-12-391  
Moved by Beltramini  
Seconded by Broomfield

BE IT RESOLVED, That the City of Troy City Council **SHALL MEET** in Closed Session, as permitted by MCL 15.268 (e), Pending Litigation – Hooters v. Troy.

Yes: All-6

**RECESSED**

The meeting **RECESSED** at 10:56 P.M.

The meeting **RECONVENED** at 11:03 P.M.

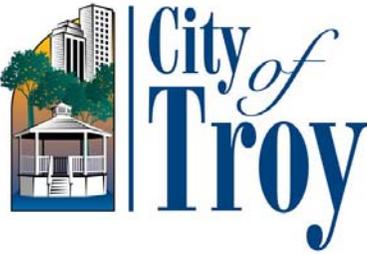
The meeting **ADJOURNED** at 11:30 P.M.

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Louise Schilling, Mayor

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Tonni L. Bartholomew, MMC  
City Clerk



## CITY COUNCIL ACTION REPORT

Date December 18, 2006

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services  
Jeanette Bennett, Purchasing Director  
Timothy L. Richnak, Public Works Director

SUBJECT: Standard Purchasing Resolution 4: Award – Macomb County Cooperative Purchasing Agreement – Fleet Vehicles

### Background:

- Signature Ford is the low total bidder in the Macomb County Cooperative Bid.
- Vehicles are sold at auction once they reach 90,000 miles.
- The vehicles being purchased are replacement vehicles for those sold at auction.

### Financial Considerations:

- Funds are available in the Public Works Fleet Division capital account # 565.7981.

	<u>BUDGET</u>	<u>UNIT COST</u>	<u>TOTAL</u>
(7) Ford Crown Victoria (blue & white)	\$168,000.00	\$20,776.00	\$145,432.00
(3) Ford Crown Victoria (solid color)	<u>\$ 72,000.00</u>	<u>\$20,376.00</u>	<u>\$ 61,128.00</u>
	<b>\$240,000.00</b>		<b>\$206,560.00</b>

### Legal Considerations:

- There are no legal considerations associated with this item.

### Policy Considerations:

- Four shifts of patrol & command cars are used on a daily basis to assure proper and proactive Police protection. (Goal IV & VI).
- The purchase of the patrol & command cars would assure the safety and welfare of citizens and businesses and also reduce the liability for the City. (Goal VI).

### Options:

- City management and the Public Works Fleet Division recommend awarding (7) seven 2007 Ford Crown Victoria (blue & white) Police patrol cars and (3) three 2007 Ford Crown Victoria (solid color) Police command cars to the low total bidder, Signature Ford of Owosso, MI for an estimated total cost of \$206,560.00.



## CITY COUNCIL ACTION REPORT

December 21, 2006

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance & Administration  
Jeanette Bennett, Purchasing Director  
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Standard Purchasing Resolution 8: Best Value Award – Flynn Park Sports Lighting

### Background

- On November 17, 2006, bids were received and opened for ITB-COT 06-48, to provide all material, labor, and equipment to install a new sport lighting system on four (4) ball diamonds at Flynn Park.
- 62 vendors were notified via the MITN system with two vendor walk-ins.
- Four (4) vendors responded, with one statement of no bid received. Vendors were required to submit a twenty-year life cycle cost for their lighting system showing the costs for operating and relamping their systems over the expected life of the system. This twenty-year life cycle cost is a major factor in determining the award.
- The lowest bid for the equipment was submitted by Custer Electric, Inc. and the second lowest was G&B Electrical Company at \$314,525.00 and \$385,000.00 respectively. Although the Qualite System proposed by Custer Electric has a lower initial cost to the City, it has a much higher life cycle cost. Therefore, the Musco SportsCluster Green™ system with its lower level of energy consumption and lower relamping costs presents a better value for the City of Troy.

#### **G and B Electrical Co. – Musco SportsCluster Green™**

Installation Cost	\$385,000.00
20-year Life Cycle Cost	<u>\$311,296.00</u>
<b>TOTAL COST OVER SYSTEM LIFE (Estimated)</b>	<b>\$696,296.00</b>

#### **Custer Electric, Inc. – Qualite Sport Lighting**

Installation Cost	\$314,525.00
20-year Life Cycle Cost	<u>\$481,061.00</u>
<b>TOTAL COST OVER SYSTEM LIFE (Estimated)</b>	<b>\$795,586.00</b>

- Sky Electric submitted an alternate bid, which proposed a \$10,000.00 deduction from their base bid, if the fixtures were purchased directly from the manufacturer, Musco.
- The alternate was analyzed but not in the City's best interest, due to acquiring additional risk and responsibility for the equipment.
- Replacement bulbs for the Musco system are readily available locally.

December 21, 2006

To: Phillip L. Nelson, City Manager  
Re: Best Value Award – Flynn Park Sports Lighting

### Financial Considerations

- Funds for this project are available in Parks capital Account #401770.7974.035

### Legal Considerations

- ITB-COT 06-48 was competitively bid and vendors were given the opportunity to respond with their level of interest in supplying and installing a new sports lighting system at Flynn Park.
- The award is contingent upon the recommended bidder's submission of proper contract and bid documents, including bonds, insurance certificates and all other specified requirements.

### Policy Considerations

- Replacing the existing 20-year old lighting system will address complaints of inadequate lighting on the fields as well as excess spill lighting reaching the surrounding residential areas. (Goal #6)
- Awarding the contract to the vendor whose lighting system saves energy and money over the life of the system is in the best interest of the City. (Goals #1 and #4)

### Options

- City management and the Parks and Recreation Department recommend awarding the contract for installing a new sports lighting system at Flynn Park to the low bidder, G and B Electrical Co., of Bloomfield Hills, MI, as the result of a life cycle costing analysis for an estimated total cost of \$385,000.00, at unit prices contained in the bid tabulation opened 11/17/06. Staff also requests authorization to approve additional work, not to exceed 10% of the total project cost due to unforeseen circumstances.

VENDOR NAME:

**	<b>G &amp; B Electrical</b>	Sky Electric Inc	Custer Electric Inc.
	<b>Company</b>		
CHECK #:	258028188	133701	11036
CHECK AMOUNT:	<b>\$5,000.00</b>	<b>\$5,000.00</b>	<b>\$5,000.00</b>

**PROPOSAL: TO FURNISH ALL LABOR, MATERIALS, AND EQUIPMENT TO REMOVE EXISTING LIGHTING AND INSTALL A NEW SPORT LIGHTING SYSTEM ON FOUR BALL DIAMONDS AT FLYNN PARK**

**LIGHTING SYSTEM FOR FOUR BALL DIAMONDS**

Quoting on Lighting Systems: Remote or Integral  
 Manufactured by:

Remote	Remote	Remote
Musco	Musco	Qualite Sports Lighting
<b>\$ 385,000.00</b>	<b>\$ 387,381.00</b>	<b>\$ 314,525.00</b>

**COMPLETE FOR THE SUM OF:**

**LIFE CYCLE COSTING MODEL:** Assumptions: (Average # of Hrs per year - 625) (Electric cost per Kilowatt Hr \$.089)

Number of light fixtures  
 Number of Lamps per fixture  
 Watts  
 Cost per lamp  
 Lamp Life in hours  
 Cost of Labor to remplace Lamp

<b>152</b>	152	232
<b>a) 5 b) 6 c/d) 4</b>	1	1
<b>1.56 Kw's</b>	1560	1500
<b>\$ 60.00</b>	\$ 60.00	\$ 70.00
<b>5000</b>	5000	3000
<b>\$ 65.00</b>	\$ 75.00	No Cost-Warranty
<b>\$ 311,296.00</b>	<b>\$ 315,096.00</b>	<b>\$ 481,061.00</b>

**ESTIMATED GRAND TOTAL:**

**	<b>\$ 696,296.00</b>	<b>\$ 702,477.00</b>	<b>\$ 795,586.00</b>
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(Includes Life Cycle Model)

SCHEDULE OF VALUES: MARKED AS

See Exceptions	AIA Doc. G703	Documation Summary letter
----------------	---------------	---------------------------

CONTACT INFORMATION: HOURS  
 PHONE

7am to 6pm	7am to 8pm	7am to 5pm
248-792-2279	810-664-0460	800-428-6568

COMPETION DATE: Shall Commence  
 Completion

10 Days	5 Days	20 Days
<b>March 1, 2007</b>		

SITE INSPECTION: Y/N  
 Date

Yes	Yes	Yes
11/16/2006	11/8/2006	1/12/2005

INSURANCE CAN MEET  
 CANNOT MEET

XX	XX - +\$250.00	XX
----	----------------	----

PROGRESS PAYMENTS:

Percentage/30 days 10% Retention - then 5%	Percent of work Completed with 30 days	14 Days
---	---	---------

TERMS:

Per Specs	30 Days	14 Days
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WARRANTY:

<b>AS SPECIFIED</b>		
---------------------	--	--

EXCEPTIONS:

1) Schedule of values requires parameters 2) Completion date unrealistic given weather	Clarification Attached to bid (Wiring methods Design, Asphalt repair, direct purchase of lights from Musco (deduct \$10M))	See Bid-if disconnects are needed at each pole Please add \$7,500.00 to bid amount
---	---	--

ACKNOWLEDGEMENT: Y/N

Yes	Yes	Yes
-----	-----	-----

**\*\* DENOTES BEST VALUE PROPOSAL**

ATTEST:

Jeff Biegler  
 Charlene McComb  
 Linda Bockstanz

Jeanette Bennett  
 Purchasing Director

VENDOR NAME:

McNulty Electric Inc.		
CHECK #:	4438543922	
CHECK AMOUNT:	\$5,000.00	

**PROPOSAL: TO FURNISH ALL LABOR, MATERIALS, AND EQUIPMENT TO REMOVE EXISTING LIGHTING AND INSTALL A NEW SPORT LIGHTING SYSTEM ON FOUR BALL DIAMONDS AT FLYNN PARK**

**LIGHTING SYSTEM FOR FOUR BALL DIAMONDS**

Quoting on Lighting Systems: Remote or Integral

Blank

Manufactured by:

GE/CHMS

**COMPLETE FOR THE SUM OF:**

\$ 465,700.00

Includes bonding costs

**LIFE CYCLE COSTING MODEL:** Assumptions: (Average # of Hrs per year - 625) (Electric cost per Kilowatt Hr \$.089)

Number of light fixtures

272/8

Number of Lamps per fixture

1

Watts

1500

Cost per lamp

\$ 75.00

Lamp Life in hours

12,000/2,000

Cost of Labor to replace Lamp

\$ 85.00

\$ 516,833.00

**ESTIMATED GRAND TOTAL:**

\$ 982,533.00

(Includes Life Cycle Model)

SCHEDULE OF VALUES: MARKED AS

Flynn Park Unit Costs

CONTACT INFORMATION: HOURS

24 Hours

PHONE

810-359-5451

COMPETION DATE: Shall Commence  
Completion

5 Days

**March 1, 2007**

SITE INSPECTION: Y/N  
Date

Yes

11/9/2006

INSURANCE CAN MEET  
CANNOT MEET

XX

PROGRESS PAYMENTS:

Per Month

TERMS:

Blank

WARRANTY:

**AS SPECIFIED**

EXCEPTIONS:

None

ACKNOWLEDGEMENT: Y/N

Yes

NO BIDS:

Harlan Electric Company



## CITY COUNCIL ACTION REPORT

January 2, 2007

TO: Phillip L. Nelson, City Manager

FROM: Jeanette Bennett, Purchasing Director  
William S. Nelson, Fire Chief

SUBJECT: Standard Purchasing Resolution 4: US Communities Contract –  
The Home Depot - Cabinets and Countertops for Fire Station #1  
Kitchen Renovation

### Background:

- City Council approved the kitchen renovation project at Fire Station #1 on November 27, 2006, Resolution 2006-11-351.
- A component of the renovation is the replacement of the kitchen cabinets and countertops. Products from The Home Depot are covered under a US Communities Cooperative Contract #05091.

### Financial Considerations:

- Funds for this project were budgeted in the Fire department Buildings capital account, 401344.7975.055
- The Cost for the cabinets and the countertops is less than the original estimate for the project (\$22,500.00).

### Legal Considerations:

- There are no legal considerations

### Policy Considerations:

This project addresses the following city goals:

- I Minimize cost and increase efficiency of City government
- IV Creatively maintain and improve public infrastructure
- VI Protect life and property

### Options:

- City management requests authorization to purchase the kitchen cabinets and countertops from Home Depot under the U.S. Communities contract at an estimated cost of \$19,570.00.



## CITY COUNCIL ACTION REPORT

December 28, 2006

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance & Administration  
Jeanette Bennett, Purchasing Director

SUBJECT: Standard Purchasing Resolution 4: AEPA Cooperative - Copiers

### **BACKGROUND**

- With the advent of the e-agenda in the Spring of 2001, IT and Purchasing researched and tested small copiers that would allow departments connectivity to the network with printing and scanning capabilities to enable departmental expeditious processing of e-agenda items and other scanning activities.
- Purchasing has analyzed copier contracts currently available and determined that the best price for tested equipment can be obtained through an AEPA (Association of Educational Purchasing Agencies) Cooperative contract.
- The premise of the bids for the copier contracts between the cooperative and state were different and, therefore, resulted in pricing differentials. A price comparison of like equipment between the State Contract and the AEPA Cooperative contract is attached.
- On a monthly basis, the City is projected to save at least \$125.00 per month per copier over like equipment available through the State. The State contract includes a minimum number of copies per month with the AEPA Cooperative contract allowing a user to pay only for copies made.
- Konica Minolta Albin has agreed to extend the cost per copy pricing from the expired MITN contract to the new AEPA contract for a cost savings of \$.0039 per copy.

### **FINANCIAL CONSIDERATIONS**

- Funds are available from the various departmental operating budgets under Office Supplies #7728.

### **LEGAL CONSIDERATIONS**

- There are no legal considerations associated with this item.

### **POLICY CONSIDERATIONS**

- Products were competitively bid thus ensuring best price practices. (Goal #1)

### **OPTIONS**

- The Purchasing Department requests approval and authorization to obtain copiers for various City departments on an on-going basis from Konica Minolta Albin, 46921 Enterprise Ct, Wixom, MI 48393 through the AEPA Cooperative contract under the prices, terms, and conditions of bid AEPA IFB #005.

**Copier Price Comparison  
State of Michigan vs. AEPA Cooperative**

	AEPA Price		State Of Michigan	
	Konica 200 20PPM	Konica 250 25PPM	Cannon C2270 22PPM	Cannon C2870 28PPM
<b>COPIES ONLY</b>				
Base Price (monthly lease 48 months)			\$ 176.23	\$ 191.44
Copies Included - 5,000			Included*	N/A
Copies Included - 8,000			N/A	Included**
Maintenance/Labor			\$ 66.92	\$ 91.92
<b>Final Cost (per month):</b>			\$ 243.15	\$ 283.36
<b>COPY, FAX</b>				
Base Price (monthly lease 48 months)			194.52	\$ 209.73
Base Price (Monthly lease 36 months)				
Copies Included - 5,000			Included*	N/A
Copies Included - 8,000			N/A	Included**
Maintenance			66.92	\$ 91.92
<b>Final Cost (per month):</b>			\$ 261.44	\$ 301.65
<b>COPY, PRINT, SCAN</b>				
Base Price (monthly lease 48 months)	\$ 121.67	\$ 126.14	210.32	\$ 225.53
Copies Included - 5,000	\$ 32.50	N/A	Included*	N/A
Copies Included - 8,000	N/A	\$ 52.00	N/A	Included**
Maintenance	Included	Included	66.92	\$ 91.92
<b>Final Cost (per month):</b>	\$ 154.17	\$ 178.14	\$ 277.24	\$ 317.45
<b>COPY, PRINT, SCAN, FAX</b>				
Base Price (monthly lease 48 months)	\$ 137.29	\$ 141.76	228.61	\$ 243.82
Copies Included - 5,000	\$ 32.50	N/A	Included*	N/A
Copies Included - 8,000	N/A	\$ 52.00	N/A	Included**
Maintenance	Included	Included	66.92	\$ 91.92
<b>Final Cost (per month):</b>	\$ 169.79	\$ 193.76	\$ 295.53	\$ 335.74

**IKON:**

\*Over 5,000 copies, copy cost is \$0.0121

\*\*Over 8,000 copies, copy cost is \$0.0100

**KONICA:**

Konica has agreed to extend the cost per page of \$.0065 from the MITN Contract

There are no minimum copies required, only pay for what is used

NOTE: The Konica 200 & 250 come out standard with copy/scan/print technology

**OaklandSchools**

MODIFICATION # 0002

**CONTRACT MODIFICATION**

**Between Oakland Schools and Konica Minolta Business Solutions**

This Modification is entered into this 16<sup>th</sup> day of June, 2006 by and between OAKLAND SCHOOLS, a Michigan Intermediate School District, whose address is 2111 Pontiac Lake Road, Waterford, Michigan 48328 and Konica Minolta Business Solutions U.S.A. Inc., whose business address is 100 Williams Drive, Ramsey, NJ 07446, to modify AEPA IFB 005C; Oakland Schools' contract 06-0011, between the parties, dated March 2, 2006, with respect to the following description:

Add the following language to paragraph "C" of the "Michigan, Oakland Intermediate School District, OISD - TERMS AND CONDITIONS:

"In addition, this contract is also available for use by cities, townships, villages, counties, and other government and/or municipal agencies within the State of Michigan, to the extent allowable by their respective rules, ordinances, regulations, laws, etc."

The original contract terms and conditions, unless otherwise specified in this amendment, shall remain in effect.

**Konica Minolta Business Solutions**

**Oakland Schools**

Denise Blackwell-Burns  
(Print Name and Title of Authorized Representative)  
Regional Sales Manager  
Denise Blackwell-Burns  
(Authorized Representative Signature)

Mike Rangos, Director - Regional Services  
(Print Name and Title of Authorized Representative)  
[Signature]  
(Authorized Representative Signature)

Date: July 14, 2006

Date: 7/24/06

Business Address:

Business Address:

Konica Minolta Business Solutions  
100 Via Riccardo  
Thousand Oaks, CA 91320

Oakland Schools  
2111 Pontiac Lake Road  
Waterford, Michigan 48328

### EXTENSION OF AGREEMENT

Contract EXTENSION AGREEMENT made by and between

**Konica Minolta Business Solutions**

and

**Oakland Schools**

**2111 Pontiac Lake Road**

**Waterford, Michigan 48312**

**Agency phone: 248-209-2209; Agency FAX: 248-209-2523**

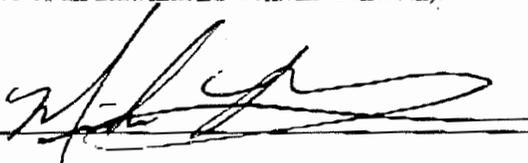
said Agreement being numbered: AEPA 05-C Digital Copiers and Related Equipment; Oakland Schools number 06-0011.

The existing Agreement initially commencing upon award terminates on February 28, 2006. The Term of Contract and Extension in the AEPA Bid provides the Agreement may be extended by mutual written agreement. AEPA has approved this extension and now Oakland Schools desires to extend the Agreement for an additional term of one (1) year until February 28, 2007. Upon the signature of an authorized officer of the Agency and of the above named company or corporation, the Agreement is hereby extended.

This extension shall be subject to the same Terms and Conditions as contained in the original AEPA Bid and in Contract Number AEPA 05A; and in the original Oakland Schools Contract Number 06-0011 (inclusive of all attachments contained therein).

**OAKLAND SCHOOLS**

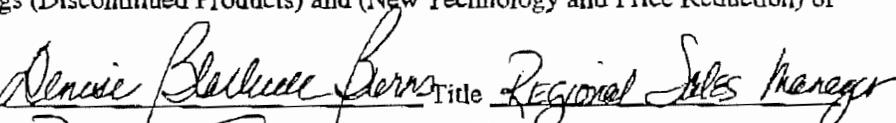
Authorized Signature \_\_\_\_\_



**KONICA MINOLTA BUSINESS SOLUTIONS**

Contractor agrees to provide complete information of any deleted and new products or prices as allowed under headings (Discontinued Products) and (New Technology and Price Reduction) of the IFB.

Authorized Signature \_\_\_\_\_



Title Regional Sales Manager

Typed Name \_\_\_\_\_

DENISE BLACKWELL-BURNS

NOTE: This agreement should be received by 5:00 p.m. at the offices of the Agency on or before February 28, 2006.

-----  
If you do not want to extend contract, please sign below and return this agreement.

~~Discontinue: We desire to discontinue the contract, effective February 28, 2006.~~

Signature: \_\_\_\_\_

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



## Terms and Conditions

### 1. Ordering Address and Procedures

Order will be accepted for the AEPA Agencies and Agency's Approved Members  
All order must be placed as follows:

**Konica Minolta Business Solutions U.S.A., Inc**  
Attn: Renique Keating  
*C/o Dealership Name*  
100 Williams Drive  
Ramsey, NJ 07446

Phone: 201-818-5729  
Email: rkeating@kmb.s.konicaminolta.us  
Fax: 888-651-1907

Electronic or facsimile orders are acceptable.

### 2. Ordering Procedures / Purchase Orders

Please include the following information with your purchase order:

Contract Number: "AEPA" must appear  
Product Model / Accessories  
Product Description  
Quantity of Item ordered  
Acquisition Plan with unit prices extended and PO totaled  
Any additional charges/items to be delivered with the copier to be listed  
Delivery Address, Contact Name and Number  
Purchase order / Sales Order for Purchases / Lease must be signed

### 3. Payment Address

For purchase contract, remit to address is per invoice.

For lease contracts, payments will be made to:

**Konica Minolta Business Solutions**  
1961 Hirst Drive  
Moberly, MO 65270

### 4. Payment Terms

All payments (lease / purchase) are net thirty (30) days. Cost Per Copy (CPC)  
payments will be made monthly in arrears.

All invoices shall contain the agency's purchase order number used to purchase or lease the equipment. Each agency will monitor invoices to verify that the cost is accurate for the equipment installed at its location. Invoices will be based on the lease or CPC charge stated on the purchase order.

5. **Delivery**

Delivery will be made within thirty days or sooner after receipt of order.

6. **Transportation / Delivery**

FOB Destination.

7. **Inquires**

All Inquires regarding shipping, billing, delivery and purchase order status must be directed to Konica Minolta Business Solutions U.S.A. Inc.'s Customer Support Department at:

**Konica Minolta Business Solutions U.S.A. Inc.**  
Customer Support Department  
100 Williams Drive  
Ramsey, NJ 07446  
Phone: 800-622-2565  
Email: MAPCustomerSupport@kmbs.konicaminolta.us  
Fax: 888-510-0014

8. **Lease Agreements**

Each copier ordered can be leased for 36, 48 or 60 months terms. The lease term begins on the date the copier is installed in the agency / members facility. Sixty (60) notice of return of equipment at the end of lease is required.

9. **Maintenance Service (Cost per Copy)**

Maintenance for full service and supply coverage based on a cost per copy charge can be obtained at the time of initially ordering the equipment or before equipment is installed. Any service agreements after the initial installation are subject to inspections fees and standard maintenance agreements.

Normal business hours are from 8:30 am through 5:00 pm, Monday through Friday, excluding holidays.

All equipment maintenance shall be ON-SITE, unless otherwise approved by the customer. This means the repair shall occur where the equipment is located.

Preventative maintenance includes lubrication, necessary adjustments and replacement of parts. The schedule will be based on the manufacturer's suggested preventative maintenance cycle.

Response time, defined as the time interval between the problem call by the customer and the on-site arrival of the Contract Vendor's technician, shall not exceed an average of four (4) working hours within a 50 mile radius of the service center.

The Cost Per Copy (CPC) charge includes normal operating supplies, including but not limited to toners (black & color), developers, fusing rollers, fuser oil, PM kits or any item required to make the machine run. Normal operating supplies DO NOT INCLUDE paper, transparencies or staples.

#### **10. Warranty**

Konica Minolta offers a warranty for one year to the AEPA that covers all parts and labor (any consumable items such as toner, developer, etc are not included) for the equipment acquired under the National Agreement. All supplies must be genuine Konica Minolta supplies acquired by the authorized servicing agency for this warranty. Any service call related to key operation error or abuse will be a chargeable call. This warranty does not cover service or damage due to non Konica Minolta items that may cause a malfunction of parts, accessories or supplies. Any alterations, modifications or changes to the equipment by someone other than a Konica Minolta authorized servicing agent may result in the termination of the warranty or service agreement. The warranty does not cover damage through accident, abuse, misuse, theft, neglect, electrical power fluctuations, and acts of third party, fire, water or any other natural force. During the warranty period, the use of the equipment must be installed and utilized within manufacture's recommended specifications.

**B. BID, ACCEPTANCE OF BID AND CONTRACT AWARD**  
**AEPA IFB 005C - Digital copiers and Related Equipment**

**BID, ACCEPTANCE OF BID**  
**And**  
**CONTRACT AWARD**

**TO BE COMPLETED BY BIDDER**

In compliance with the Invitation to Bid, the undersigned warrants that I/we have examined the Instructions to Bidders, and, being familiar with all of the conditions surrounding the proposed projects, hereby offer and agree to furnish all labor, materials, and supplies incurred in compliance with all terms, conditions, specifications and amendments in the INVITATION TO BID and any written exceptions to the bid. Signature also certifies understanding and compliance with the certification requirements of the Agency Terms and Conditions and the special Terms and Conditions. The undersigned understands that his/her competence and responsibility and that of hi proposed subcontractors, time of completion, as well as other factors of interest to the Agency as stated in the evaluation section will be a consideration in making the award.

Company Name Konica Minolta Business Solutions U.S.A. Inc Date March 28, 2005

Company Address 100 Williams Drive City Ramsey State NJ Zip 07446

Contact Person Denise Blackwell-Burns Title Regional Sales Manager

Authorized Signature (ink only) Denise Blackwell Burns Title Regional Sales Mgr

**ACCEPTANCE OF BID AND CONTRACT AWARD TO BE COMPLETED ONLY BY AGENCY**

Your bid for contracting services is hereby accepted. As contractor, you are now bound to sell the materials and services listed by the attached bid based upon the solicitation, including all terms, conditions, specifications, amendments as set forth in the Invitation for Bid. As contractor you are hereby cautioned not to commence any billable work or provide any material or service under this contract until contractor receives an executed purchase order from the Agency. The parties intend this contract to constitute the final and complete agreement between the Agency and contractor, and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall bind any of the parties hereto. No change or modification of this contract shall be valid unless it shall be in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract shall not be affected thereby. The term of the agreement shall commence on award and continue until February 28, 2006 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three additional 12-month periods ending on February 28, 2007; February 29, 2008 and February 28, 2009.

Awarding Agency: \_\_\_\_\_

Agency Executive \_\_\_\_\_

Awarded this \_\_\_\_\_ day of \_\_\_\_\_ Contract Number \_\_\_\_\_

C. QUESTIONNAIRE FOR BIDDERS

Company Name Konica Minolta Business Solutions

Please check Yes/No answers. "Days" requested are calendar days. If room provided is inadequate indicate, "see attached" and label the attachment with the question number.

- 1. Can your company serve all AEPA states with the best service offered?  X YES / \_\_\_ NO
- 2. Do you currently have representatives for all AEPA states?  X YES / \_\_\_ NO  
(If no, a plan and timeline for providing these services is to be attached.)
- 3. Is your pricing guaranteed for the term of the contract?  X YES / \_\_\_ NO
- 4. Is shipping/handling (S/H) included in the price?  X YES / \_\_\_ NO
- 5. If Prepaid and Add (PP & A), estimate S/H on purchases \_\_\_\_\_

6. Describe your return policy \_\_\_\_\_

7. Do you have a restocking fee?  \_\_\_ YES / X NO

8. What is your restocking fee, if any? (Not to exceed 15%) \_\_\_\_\_

9. Will you offer Participating Agencies a quick pay discount?  \_\_\_ YES / X NO

10. If YES, what is the discount? \_\_\_\_\_ Number of days? \_\_\_\_\_

11. How many line items are you offering under this bid category? \_\_\_\_\_

12. If some of the line items that you sell are not covered under this bid, do you have a way to block orders for these items?  N/A YES / \_\_\_ NO

Delivery of stocked items is promised within  30 days

13. What is your average time from receipt of order to shipping stocked items?  5-10 days

14. Delivery of non-stocked items is promised within  30 days

15. Do you offer an electronic ordering system?  X YES / \_\_\_ NO

Do you have minimum order requirements?  \_\_\_ YES / X NO

If yes, please describe. \_\_\_\_\_

16. As an important part of the evaluation of your offer, you must indicate the level of support you are offering in this bid. A bid will be determined to be non-responsive if this question is unanswered. Check either line a, b, or c. Prices offered in this bid are:

- \_\_\_ a. The same as we offer on single school district bids.
- \_\_\_ b. The same as we offer to cooperatives and state purchasing departments.
- X c. Better than we offer to cooperatives or state purchasing departments.

If either line b or c is checked, indicate the percent lower (on single items) than the best price ordinarily offered to educational institutions, cooperatives, or state purchasing departments.

- \_\_\_ Two percent (2%)  \_\_\_ Three percent (3%)  \_\_\_ Four percent (4%)
- \_\_\_ Five percent (5%)  \_\_\_ Six percent (6%)  X Other  \_\_\_ varies

Additional quantity or volume discounts are identified on the pricing page  \_\_\_ YES / X NO

Alene Blackwell Burns  
Signature (Same signature as on Bid Affidavit Signature and Acceptance Form)

**G. PRICING**

An Excel workbook document is available through the AEPA website. It consists of eight workbook sheets, one for each "Volume Band" of copiers as follows:

Volume Band I	500 to 10,000 CPM
Volume Band II	2,500 to 18,000 CPM
Volume Band III	5,000 to 30,000CPM
Volume Band IV	10,000 to 45,000 CPM
Volume Band V	15,000 to 75,00 CPM
Volume Band VI	30,000 to 150,000 CPM
Volume Band VII	50,000 to 300,000 CPM
Volume Band VIII	75,000 to 500,000 CPM

  
Signature (Same signature as on Bid Affidavit Signature and Acceptance Form)

(End of Part C)



**TO:** Mayor and Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
**DATE:** December 26, 2006  
**SUBJECT:** Milano Development Company, Inc. v. City of Troy, et. al.

---

The City has been named as a defendant in a re-plat lawsuit filed by Milano Development Company, Inc. According to the attached lawsuit, Milano Development Company, Inc. owns Lot 17 of Square Acres Subdivision, commonly known as 1703 Rockfield, Troy, MI. Plaintiff proposes to develop Lot 17 by constructing a 13-unit site condominium project. This project, Athens Park, has already received preliminary site plan approval from the Troy City Council. However, before the proposed development can occur, Plaintiff must first vacate an easement for a private roadway that is recorded in the original plat of 1940. According to the Complaint, the "43 foot easement for roadway purposes" must be removed, as its boundaries conflict and overlap with the proposed development.

Under the Land Division Act, the vacation of a easement requires the filing of a lawsuit against all property owners within 300 feet of the proposed vacation, as well as the utilities and governmental bodies that have jurisdiction over the property. Upon information and belief, all necessary parties have been served with a copy of the lawsuit.

Absent objections from City Council, our office will enter an appearance in the case to protect the City's interests. If you have any questions concerning the above, please let me know.

Legal Software, Inc.  
(800) 530-2255  
Approved, SCAO

Original - Court  
1st copy -Defendant

06-079401-CZ



CAPLINTD JUDGE MICHAEL WARREN  
COURT: MILANO DEVELO V AURAND, SCOTT

STATE OF MICHIGAN

JUDICIAL DISTRICT  
JUDICIAL CIRCUIT  
COUNTY PROBATE

SUMMONS AND COMPLAINT

6<sup>th</sup>

Court address

1200 N. Telegraph Road, Dept. 404, Pontiac, MI 48341-0404

Court telephone no.

(248) 858-1000

Plaintiff name(s), address(es) and telephone no(s).

MILANO DEVELOPMENT COMPANY, INC.  
c/o Kalas Kadian, P.L.C.  
43928 Mound Road, Suite 100  
Sterling Heights, MI 48314 (586) 726-0760

V

Defendant name(s), address(es), and telephone no(s).

City of Troy  
500 W. Big Beaver Rd.  
Troy, MI 48084-5285

Plaintiff attorney, bar no., address, and telephone no.

Mark H. Kadian (P46169)  
43928 Mound Road, Suite 100  
Sterling Heights, MI 48314  
(586) 726-0760

**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>DEC 11 2006</b>	This summons expires* <b>MAR 12 2007</b>	Court clerk <b>RUTH JOHNSON</b>
------------------------------	---	------------------------------------

\*This summons is invalid unless served on or before its expiration date.

**COMPLAINT** *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

**Family Division Cases**

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**General Civil Cases**

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**VENUE**

Plaintiff(s) residence (include city, township, or village) <b>Shelby Township, County of Macomb</b>	Defendant(s) residence (include city, township, or village) <b>City of Troy, County of Oakland</b>
Place where action arose or business conducted <b>City of Troy, County of Oakland</b>	

Date  
12/8/06

Signature of attorney  
**Mark H. Kadian (P46169)**

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.



## STATE OF MICHIGAN

## IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MILANO DEVELOPMENT COMPANY, INC.  
a Michigan corporation,

RECEIVED FOR FILING  
OAKLAND COUNTY CLERK

Case No. 06

CZ

Plaintiff.

HON.

'06 DEC -1 A10:45

-vs-

SCOTT AURAND and PATRICIA AURAND,  
husband and wife; JAMES P. MARTIN,  
CHI HO KWONG and SUK FONG LI,  
husband and wife; THERESA FOUNDERS and  
JAMES FOUNDERS, husband and wife;  
CHARLES SLATE and RUTH SLATE,  
husband and wife; ARTENIO A. DELCARMEN  
and EVANGELINE M. DELCARMEN, husband and wife;  
RUSSELL J. PACH, a single man; RODENY A. LEAKE  
and ELAINE M. LEAKE, husband and wife;  
JAMES BERAR and SOPHIE BERAR, husband and wife;  
HANAA S. NICKOLA, a married woman;  
BRIAN WIGNER, a single man; ANGELLA DIAMANTIS,  
a single woman; JACK HAY and SUSAN M. HAY,  
husband and wife; JEFFREY G. HARPER, a single man;  
KENNETH CRUM and AMANDA CRUM, husband and wife;  
MICHAEL L. AMES and LINDA S. AMES, husband and wife;  
SHARON A. VALENTE; LEONIDAS NICK TSANGANOS and  
LABRENE MARIE TSANGANOS, husband and wife;  
ERNIE C. RACKLEY and TINA M. RACKLEY, husband  
and wife; CLIFFORD CRIST; DAVID R. PURVIS and  
LINDA M. PURVIS, husband and wife; CITY OF TROY,  
a Michigan municipal corporation; JAY B. RISING,  
State Treasurer of the State of Michigan; JOHN MCCULLOCH,  
Drain Commissioner of the County of Oakland; BRENT BAIR,  
Chairperson of the County Road Commissioners for the  
County of Oakland,

Defendant.

\_\_\_\_\_/

KALAS KADIAN, P.L.C.  
By: MARK H. KADIAN (P46169)  
Attorney for Plaintiff  
43928 Mound Road, Suite 100  
Sterling Heights, MI 48314  
☎(586) 726-0760

\_\_\_\_\_/

COMPLAINT

There is no other pending civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint.

  
\_\_\_\_\_  
Mark H. Kadian (P46169)

### COMPLAINT

NOW COMES Plaintiff, Milano Development Company, Inc., a Michigan corporation, by and through its attorneys, Kalas Kadian, P.L.C., and for its Complaint against the above-captioned Defendants, states as follows:

#### PARTIES AND JURISDICTION

1. That Plaintiff, Milano Development Company, Inc. ("Plaintiff"), is a Michigan corporation, with its registered office located at 47858 Van Dyke Avenue, Suite 410, Shelby Township, MI 48317.
2. That Defendants Scott Aurand and Patricia Aurand are owners of record title to property commonly known as 1677 Hamman, Troy, MI.
3. That Defendant James P. Martin is the owner of record title to property commonly known as 1693 Hamman, Troy, MI.
4. That Defendants Chi Ho Kwong and Suk Fong Li are the owners of record title to property commonly known as 1709 Hamman, Troy, MI.
5. That Defendants Theresa Founders and James Founders are the owners of record title to property commonly known as 1725 Hamman, Troy, MI.
6. That Defendants Charles Slate and Ruth Slate are the owners of record title to property commonly known as 1773 Hamman, Troy, MI.
7. That Defendants Artenio A. DelCarmen and Evangeline M. DelCarmen are the owners of record title to property commonly known as 1805 Hamman, Troy, MI.

8. That Defendant Russell J. Pach is the owner of record title to property commonly known as 1821 Hamman, Troy, MI.

9. That Defendants Rodney A. Leake and Elaine M. Leake are the owners of record title to property commonly known as 1692 Hamman, Troy, MI.

10. That Defendants James Berar and Sophie Berar are the owners of record title to property commonly known as 1708 Hamman, Troy, MI.

11. That Defendant Hanaa S. Nickola is the owner of record title to property commonly known as 1724 Hamman, Troy, MI.

12. That Defendant Brian Wigner is the owner of record title to property commonly known as 1740 Hamman, Troy, MI.

13. That Defendant Angella Diamantis is the owner of record title to property commonly known as 1788 Hamman, Troy, MI.

14. That Defendants Jack Edward Hay and Susan M. Hay are the owners of record title to property commonly known as 1804 Hamman, Troy, MI.

15. That Defendant Jeffrey G. Harper is the owner of record title to property commonly known as 1820 Hamman, Troy, MI.

16. That Defendants Kenneth Crum and Amanda Crum are the owners of record title to property commonly known as 1643 Rockfield, Troy, MI.

17. That Defendants Michael L. Ames and Linda S. Ames are the owners of record title to property commonly known as 1661 Rockfield, Troy, MI.

18. That Defendant Sharon A. Valente is the owner of record title to property commonly known as 1656 Rockfield, Troy, MI.

19. That Defendants Leonidas Nick Tsanganos and Labrene Marie Tsanganos are the owners of record title to property commonly known as 1666 Rockfield, Troy, MI.

20. That Defendants Ernie C. Rackley and Tina M. Rackley are the owners of record title to property commonly known as 1704 Rockfield, Troy, MI.

21. That Defendant Clifford Crist is the owner of record title to property commonly known as 1677 Rockfield, Troy, MI.

22. That Defendants David R. Purvis and Linda M. Purvis are the owners of record title to property commonly known as 4461 Cynthia, Troy, MI.

23. That Defendant, the City of Troy ("Defendant Troy") is a Michigan municipal corporation, having offices located at 500 West Big Beaver Road, Troy, Michigan.

24. That Defendant Jay B. Rising is the State Treasurer of the State of Michigan, having offices at 430 West Allegan St., Lansing, MI 48922.

25. That Defendant John McCulloch is the Drain Commissioner of the County of Oakland, State of Michigan, having offices located at 1 Public Works Drive, Waterford, MI.

26. That Defendant Brent Bair is the Chairperson of the County Road Commissioners for the County of Oakland, State of Michigan, having offices at 31001 Lasher Road, Beverly Hills, MI 48025.

27. That this Court has jurisdiction over this matter pursuant to MCL 560.221 et seq.

**ACTION TO PARTIALLY VACATE PLAT  
IN ACCORDANCE WITH MCL 560.221, ET SEQ.**

28. That Plaintiff incorporates herein each and every preceding paragraph as though fully restated herein.

29. That Plaintiff is the owner of record of property commonly known as 1703 Rockfield, Troy, MI, which property is legally described as:

"Lot 17 of Supervisor's Plat of Square Acres Subdivision, as recorded in Liber 14 of Plats, Page 47, Oakland County Records, being a part of the south half of Section 4, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan" ("Plaintiff's Property").

30. That Plaintiff's Property is part of the Supervisors Plat for Square Acres Subdivision ("Plat for Square Acres Subdivision"), as recorded in Liber 14 of Plats, Page 49, Oakland County records.

31. That Defendants identified in paragraphs 2 through 22 above, are owners of record of property within 300' of Plaintiff's Property, and are joined as party Defendants in this action, in accordance with MCL 560.224a(1)(a).

32. That Defendants identified in paragraphs 23 through 26 above, are joined as party Defendants in accordance with MCL 560.224a(i)(b-f).

33. That the Plat for Square Acres Subdivision includes an easement for a private road ("Easement for Private Road"), as depicted on a portion of the recorded Plat for Square Acres Subdivision, attached as Exhibit "A".

34. That the northern portion of Plaintiff's Property is subject to the Easement for Private Road. The portion of Plaintiff's Property which is subject to the Easement for Private Road is legally described on attached Exhibit "B".

35. That Plaintiff seeks to vacate a part of the Plat for Square Acres Subdivision, so as to terminate the Easement for Private Road in the area legally described on attached Exhibit "B".

36. That Plaintiff seeks to vacate the part of the Plat for Square Acres Subdivision, as described in the preceding paragraph, to permit development of Plaintiff's Property in accordance with an approved site plan.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the following relief:

A. Enter an order partially vacating the Plat for Square Acres Subdivision, so as to terminate the Easement for Private Road in the area legally described on attached Exhibit "B"; and

B. Grant such other relief as this Court deems equitable and just.

Respectfully submitted,

KALAS KADIAN, P.L.C.

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

MARK H. KADIAN (P46169)  
Attorney for Plaintiff  
43928 Mound Road, Suite 100  
Sterling Heights, MI 48314  
☎(586) 726-0760

Dated: December 7, 2006

# EXHIBIT "A"



**EXHIBIT “B”**

DESCRIPTION  
43' PRIVATE ROAD EASEMENT

THE NORTH 43.00 FEET OF LOT 17 OF SUPERVISOR'S PLAT OF SQUARE ACRES SUBDIVISION, AS RECORDED IN LIBER 14 OF PLATS, PAGE 49, OAKLAND COUNTY RECORDS, BEING A PART OF THE SOUTH HALF OF SECTION 4, TOWN 2 NORTH, RANGE 11 EAST, CITY OF TROY, OAKLAND COUNTY, MICHIGAN, BEING DESCRIBED AS;

BEGINNING AT THE NORTHWEST CORNER OF LOT 17 OF SUPERVISOR'S PLAT OF SQUARE ACRES SUBDIVISION, AS RECORDED IN LIBER 14 OF PLATS, PAGE 49, OAKLAND COUNTY RECORDS; THENCE SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST 313.79 FEET ALONG THE NORTH LINE OF LOT 17 OF SUPERVISOR'S PLAT OF SQUARE ACRES SUB TO THE EAST LINE OF LOT 17 OF SUPERVISOR'S PLAT OF SQUARE ACRES SUB; THENCE SOUTH 00 DEGREES 33 MINUTES 32 SECONDS EAST 43.00 FEET ALONG THE EAST LINE OF SUPERVISOR'S PLAT OF SQUARE ACRES SUB; THENCE NORTH 89 DEGREES 49 MINUTES 00 SECONDS WEST 314.02 FEET TO THE WEST LINE OF SUPERVISOR'S PLAT OF SQUARE ACRES SUB; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST 43.00 FEET ALONG THE WEST LINE OF SUPERVISOR'S PLAT OF SQUARE ACRES SUB TO THE POINT OF BEGINNING.



# CITY COUNCIL ACTION REPORT

January 2, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services  
Steve Vandette, City Engineer *SV*

SUBJECT: Approval of Contract No. 06-5632 with MDOT for Right-of-Way Acquisition for the Reconstruction and Widening of Rochester Road, Barclay to Trinway – Project No. 02.206.5

## Background:

- The scope of the project is for the total removal of Rochester Road between Barclay and Trinway and the construction of a new six-lane concrete boulevard. Included in the project will be water main replacement, storm sewer, sidewalks, street lighting, traffic signals and related utilities.
- The construction phase of this project has not yet been funded.
- The agreement as submitted is based on estimated costs, as is standard with all MDOT agreements, since these agreements are prepared when funding for the project is obligated and long before actual costs are known. The City's reimbursements from MDOT, under the agreement, will be based on the actual cost incurred.
- The Environmental Assessment for this project has been completed and approved by the Federal Highway Administration. The formal public hearing was held on June 8, 2006.

## Financial Considerations:

- The Rochester Road, Barclay to Trinway reconstruction project requires an estimated \$4,000,000 in right-of-way with 80% of the cost to be paid for with Transportation Economic Development Category C funds.
- Funds for the City of Troy's share are included in the 2006-07 Major Road fund, account number 401479.7989.022065 and will also be included in the proposed 2007-08 budget and beyond as the right-of-way phase is a multi-year effort.
- In the event that actual construction of the roadway on the right-of-way being acquired is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the FHWA and MDOT project contract covering the project work is executed, the city will be required to repay to MDOT for forwarding the FHWA all monies distributed as the FHWA's contribution to the project cost.

## Legal Considerations:

- The format and content of the agreement is consistent with previously approved MDOT contracts for Right-of-Way phases.

Policy Considerations:

- Purchase of right-of-way allows the project to proceed to the next phase, including federal funds for the reconstruction and widening of Rochester Road to relieve congestion and provide for a safer road cross section (Goals II & IV)

Options:

- The Council can approve the suggested resolution
- The Council can amend the suggested resolution
- The Council can postpone action pending additional information

Approved for Submittal:

\_\_\_\_\_  
Phillip L. Nelson, City Manager

Approved as to Form:

\_\_\_\_\_  
Lori Grigg Bluhm, City Attorney



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
LANSING

KIRK T. STEUDLE  
DIRECTOR

December 22, 2006

Ms. Tonni Bartholomew  
Clerk  
City of Troy  
500 W. Big Beaver Road,  
Troy, MI 48084-5285

Dear Ms. Bartholomew:

RE: MDOT Contract No.: 06-5632  
Control Section: EDCF 63544  
Job Number: 56250

RECEIVED

JAN 02 2007

ENGINEERING

Enclosed is the original and one copy of the above described contract between your organization and the Michigan Department of Transportation (MDOT). Please take time to read and understand this contract. If this contract meets with your approval, please complete the following checklist:

**PLEASE DO NOT DATE THE CONTRACTS.** MDOT will date the contracts when they are executed. A contract is not executed unless it has been signed by both parties.

**Secure the necessary signatures on all contracts.**

**Include a certified resolution.** The resolution should specifically name the officials who are authorized to sign the contracts.

**Return all copies of the contracts to my attention of the Department's Design Division, 2<sup>nd</sup> floor for MDOT execution.**

**In order to ensure that the work and payment for this project is not delayed, the agreement needs to be returned within 35 days from the date of this letter.**

A copy of the executed contract will be forwarded to you. If you have any questions, please feel free to contact me at (517) 335-2264.

Sincerely,

*Jackie Burch*

Jackie Burch

Contract Processing Specialist  
Design Support Area

Enclosure

TED (C)  
FED  
RIGHT-OF-WAY  
MODIFIED PART II

CAB  
Control Section EDCF 63544  
Job Number 56250  
Project EBSL 0763(013)  
Federal Item No. RR 5451  
CFDA No. 20.205 (Highway Research  
Planning & Construction)  
Contract No. 06-5632

PART I

THIS CONTRACT, consisting of PART I and PART II (Modified Standard Agreement Provisions), is made and entered into this date of \_\_\_\_\_, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF TROY, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the acquisition by the REQUESTING PARTY of the right-of-way necessary for the following improvements in the City of Troy, Michigan, which right-of-way acquisition is hereinafter referred to as the "PROJECT":

Acquisition of right-of-way for the concrete reconstruction and widening from a five-lane roadway to a six-lane boulevard work along Rochester Road from Barclay Drive to Trinway Drive; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal and State law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the PROJECT has been approved for financing in part with funds appropriated to the Transportation Economic Development Fund, hereinafter referred to as "TED FUNDS", pursuant to PA 234 of the Public Acts of 1987, MCL 247.660; and

WHEREAS, it was determined that the PROJECT as described by this contract qualifies for funding pursuant to PA 231, Section 11(3)(c); Public Act of 1987 and categorized as:

C FUNDED PROJECT

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s):

#### EQUITY BONUS FUNDS

WHEREAS, the Federal Equity Bonus Funds will be used as TED FUNDS Category C; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as all the costs necessary for the performance of the PROJECT work, including engineering, appraisals, acquisition, legal, financing, the costs of technical guidance, monitoring, training, and any other costs as may be incurred by the DEPARTMENT as a result of this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT. The DEPARTMENT, at PROJECT COST, will provide technical guidance to the REQUESTING PARTY, will monitor the performance of the PROJECT work to assure conformance with Federal and state requirements, and will provide such training to the REQUESTING PARTY as is necessary for the performance of the PROJECT work.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY will perform or cause to be performed all the PROJECT work. The method of performing the work will be indicated on the work authorization.

5. The PROJECT COST shall be met in part by contributions by the Federal Government and/or TED FUNDS. Federal Equity Bonus Funds being used as TED FUNDS Category C shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 80 percent. The balance of the PROJECT COST, after deduction of Federal Funds and/or TED FUNDS, shall be paid by the REQUESTING PARTY. The PROJECT COST and cost participation are estimated to be as follows:

<u>ESTIMATED COST</u>	Federal Equity Bonus Funds <u>Being Used As TED FUNDS</u>	<u>REQUESTING PARTY'S SHARE</u>
\$3,999,500	\$3,199,600	\$799,900

Any items of PROJECT COST not reimbursed by Federal Funds and/or TED FUNDS will be the sole responsibility of the REQUESTING PARTY.

6. The DEPARTMENT will issue a separate authorization to the REQUESTING PARTY to proceed with the performance of the PROJECT.

7. The construction of the improvements for which the PROJECT work is being performed and the construction engineering and inspection work related thereto will be covered by a separate contract.

8. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the state and/or the Federal Highway Administration pursuant to Title 23 of the United States Code.

9. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project. In addition, the following provisions will apply:

All work will be performed in accordance with the Procedure Manual of the DEPARTMENT'S Real Estate Division. Variations from the procedures within the manual will be developed in cooperation with the DEPARTMENT.

Reimbursement for right-of-way acquisition will be governed by FAPG Chapter I, Subchapter H, Part 710, Subpart C, Reimbursement Provisions, and other applicable directives of the FHWA.

Procedures for relocation assistance, if necessary, will conform to the requirements set forth in FAPG Chapter I, Subchapter H, Part 740, and other applicable directives of the FHWA.

Disposal of any right-of-way acquired as the PROJECT will conform to the requirements set forth in FAPG Chapter I, Subchapter H, Part 713, Subpart C, Disposal of Right-of-Way, and other applicable directives of the FHWA.

10. In the event that actual construction of the roadway on the right-of-way being acquired as the PROJECT is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the FHWA and the DEPARTMENT project contract covering the PROJECT work is executed, the REQUESTING PARTY will be required to repay to the DEPARTMENT for forwarding to the FHWA all monies distributed as the FHWA'S contribution to the PROJECT COST.

11. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

12. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF TROY

MICHIGAN DEPARTMENT  
OF TRANSPORTATION

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

By \_\_\_\_\_  
Department Director MDOT

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

APPROVED  
12/18/06  
*[Signature]*  
ASSISTANT  
ATTORNEY  
GENERAL

REVIEWED  
12-7-06  
COURTNEY ADAM

RECEIVED

JAN 02 2007

ENGINEERING

DOT

BUREAU OF HIGHWAYS  
NON CONSTRUCTION  
03-15-93

PART II  
MODIFIED

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV SPECIAL PROGRAM AND PROJECT CONDITIONS

## SECTION I

### COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. All work shall be performed in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
- C. In conformance with FAPG (23 CFR 630C): Project Agreements, the parties to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
  - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
  - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
  - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

## SECTION II

### PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. On those projects funded with Federal monies, the DEPARTMENT shall, as may be required, secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- C. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

- D. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.
- E. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

- F. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- G. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- H. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 201, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- I. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- J. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- K. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that canceled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the canceled portions of the PROJECT will be promptly refunded.
- L. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

## SECTION III

### ACCOUNTING AND BILLING

#### A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the

language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 98-502.

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

- a. Agencies expending a total of \$500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. General Conditions:

1. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
2. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

## SECTION IV

### SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way acquisition.
- C. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- D. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

**APPENDIX A**  
**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX C

### TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

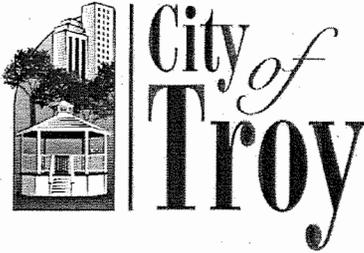
#### Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.



## CITY COUNCIL ACTION REPORT

January 2, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services  
Steve Vandette, City Engineer *SV*

SUBJECT: Subcontract No. 06-5632/S1 with Greenstar & Associates, L.L.C. for Right-of-Way Services for the Reconstruction and Widening of Rochester Road, Barclay to Trinway – Project No. 02.206.5

### Background:

- The Rochester Road, Barclay to Trinway reconstruction project requires an estimated \$4,000,000 in right-of-way with 80% of the cost to be paid for with Transportation Economic Development Category C funds.
- The City entered into a two-year contract for right-of-way services with Greenstar & Associates, L.L.C. (GA) in accordance with Resolution #2006-04-174.
- Pat Petitto is the owner of GA; is a former city employee in Real Estate & Development; and as of April 1, 2006 has been working for the City as a consultant.
- In order to use a consultant on a federally funded project, as well as to receive reimbursement for the consultant's time, justification for using the consultant is required along with an agreement between the City and the consultant.

### Financial Considerations:

- Compensation is based on an hourly rate of \$75 per hour, which is commensurate with the rate as previously approved by Resolution #2006-04-174.
- The maximum amount of this subcontract shall not exceed \$75,000.
- Funds for the City of Troy's share are included in the 2006-07 Major Road fund, account number 401479.7989.022065 and will also be included in the proposed 2007-08 budget and beyond as the right-of-way phase is a multi-year effort.

### Legal Considerations:

- The format and content of the agreement is consistent with the contract approved by Resolution #2006-04-174 and is materially the same as two (2) previous agreements for the John R Road right-of-way phases as approved by the Legal Department and City Council.
- MDOT has approved the format and content of the agreement based on their review of the previously submitted agreements.

Policy Considerations:

- Pat is a former city employee with 30+ years of experience in right-of-way acquisition on city and federally funded projects (Goals I & III)
- Purchase of right-of-way allows the project to proceed to the next phase, including federal funds for the reconstruction and widening of Rochester Road to relieve congestion and provide for a safer road cross section (Goals II & IV)

Options:

- The Council can approve the suggested resolution
- The Council can amend the suggested resolution
- The Council can postpone action pending additional information
- The Council can reject the suggested resolution and direct staff to solicit proposals for these services

Approved for Submittal:

\_\_\_\_\_  
Phillip L. Nelson, City Manager

Approved as to Form:

\_\_\_\_\_  
Lori Grigg Bluhm, City Attorney

Subcontract No. 06-5632/S1  
Control Section No. EDCF 63544  
Job No. 56250  
Fed. Project No. EBSL 0763(013)  
Fed. Item No. RR5451  
Troy Project No. 02.206.5

CITY OF TROY  
GREENSTAR & ASSOCIATES, L.L.C  
ROCHESTER ROAD, BARCLAY to TRINWAY  
RIGHT OF WAY SERVICES CONTRACT  
A TED FUNDS CATEGORY C PROJECT

THIS CONTRACT, made and entered into as of this date of \_\_\_\_\_, 2006, by and between Greenstar & Associates, L.L.C., 4840 N. Adams, Suite 183, Rochester, MI 48306, hereinafter referred to as the "CONSULTANT", and the City of Troy, hereinafter referred to as the "LOCAL AGENCY".

WITNESSETH:

WHEREAS, the LOCAL AGENCY is desirous of proceeding with acquisition of right of way for a road improvement PROJECT within its limits; and

WHEREAS, the LOCAL AGENCY desires to engage the professional services and assistance of the CONSULTANT to perform certain right of way acquisition services and other related work, said work to be hereinafter referred to as the "SERVICES", required in connection with the acquisition of right of way for improvements under the Transportation Economic Development Category C Program, said improvements to be hereinafter referred to as the "PROJECT."

Right of way acquisition services including title work provision of appraisals, negotiations, closings, maintaining and providing parcel files in acquisition of right of way for Rochester Road, Barclay to Trinway.

WHEREAS, the LOCAL AGENCY has programmed the PROJECT with the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT" for the construction with the use of Transportation Economic Development Category C funds administration by the United States DEPARTMENT of Transportation, Federal Highway Administration, hereinafter referred to as the "FHWA"; and

WHEREAS, the CONSULTANT is willing to render the SERVICES desired by the LOCAL AGENCY for the considerations hereinafter expressed; and

WHEREAS, the parties hereto have reached an understanding regarding the performance of the SERVICES on the PROJECT and desire to set forth this understanding in the form of a written Contract;

NOW THEREFORE, it is hereby agreed by and between the parties hereto that:

THE CONSULTANT SHALL:

1. Perform right of way services, including but not limited to providing title work, appraisals of parcels to be acquired, review of appraisals, negotiations with property owners and preparation of conveyance documents as may be required, attendance at closing, and other similar activities.
2. Govern all SERVICES by the applicable codes and practices of the LOCAL AGENCY and the DEPARTMENT and the FHWA.
3. Submit for approval by the LOCAL AGENCY the fully executed purchase agreement or request for approval of unconditioned offer and condemnation authorization.
4. Submit original documents including but not limited to appraisals, title commitments and documentation, review appraisals, negotiators' logs, and such other activities that are required to be performed and documented by Federal, State, and local statutes and regulations pertaining to the SERVICES.
5. During the preparation of the documents, make such changes and revisions in said plans and supporting material as are considered necessary and desirable by the LOCAL AGENCY and the DEPARTMENT.
6. During negotiations, make all corrections and alterations in the acquisition plans for the PROJECT as may be deemed necessary by the LOCAL AGENCY and the DEPARTMENT as a result of errors or omissions. The CONSULTANT and the LOCAL AGENCY specifically agree that in the event problems arise that may be the result of errors and/or omissions by the CONSULTANT or due to a failure of the CONSULTANT to otherwise perform in accordance with this Contract, that the CONSULTANT will be held responsible with no cost to the LOCAL AGENCY or in accordance with any agreement reached by the LOCAL AGENCY'S dispute resolution process, if applicable.
7. Be available at additional reasonable charges for additional consulting and assistance to the LOCAL AGENCY and counsel, should condemnation be required, said consulting and assistance to include reappraisal of the parcel or parcels to the date of taking.
8. During the performance of the SERVICES, be responsible for any loss or damage to documents belonging to the LOCAL AGENCY while they are in

its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.

9. Attend conferences and make trips to the offices of the LOCAL AGENCY and to the site of the work to confer with representatives of the LOCAL AGENCY or the DEPARTMENT or the FHWA as may be necessary in the carrying out of the work under this Contract.
10. Follow standard accounting practices and permit representatives of the LOCAL AGENCY and the DEPARTMENT and the FHWA to audit and inspect its PROJECT books and records at any reasonable time. Such records are to be kept available for three (3) years from the date of the final payment for work conducted under this Contract.
  - a. The CONSULTANT shall establish and maintain accurate RECORDS, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract, said RECORDS to be hereinafter referred to as the "RECORDS." Separate accounts shall be established and maintained for all costs incurred under this Contract.
  - b. The CONSULTANT shall maintain the RECORDS for at least three (3) years from the date of final payment of federal aid or state aid made by the DEPARTMENT to the LOCAL AGENCY under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CONSULTANT shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
  - c. The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
  - d. If any part of the work is subcontracted, the CONSULTANT shall assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
11. Have in its employ a sufficient number of qualified employees available to complete the SERVICES within two (2) years of execution of this Contract, unless an extension of time is granted as provided in Section 29.
12. Permit the LOCAL AGENCY, the DEPARTMENT, the FHWA, and other public agencies interested in the plans and designs for the PROJECT to have full access thereto during the process of the SERVICES being performed thereon.

13. Have their professional endorsement upon all plans, specifications, estimates, and engineering data furnished by the LOCAL AGENCY.
14. Provide evidence of Workers' Compensation Insurance, said insurance to be as required by law or if sole proprietor, provide workers compensation insurance release.
15. Commence SERVICE as set forth in this Contract only upon receipt of written notice from the LOCAL AGENCY PROJECT manager that the CONSULTANT'S SERVICES are desired.
16. Submit billings to the LOCAL AGENCY, as hereinafter set forth in Section 19.

THE LOCAL AGENCY SHALL:

17. Furnish for the use of the CONSULTANT, the DEPARTMENT'S standards for the SERVICES and such other information as may be needed in a particular instance.
18. For and in consideration of the SERVICES rendered by the CONSULTANT as set forth in this Contract, pay the CONSULTANT on an hourly basis at a rate of \$75 per hour. This rate shall remain firm for the 2006 calendar year. Thereafter the hourly rate will be increased at a rate not to exceed the difference in the Consumer Price index between the current year (as close to 12 months as possible) and the previous year as calculated on the CPI Inflation Calculator available on the Bureau of Labor Statistics website [www.BLS.gov/cpi/home.htm](http://www.BLS.gov/cpi/home.htm) with the exception that annual rate increases shall not exceed three (3) percent. The CPI Inflation Calculator uses the average Consumer Price Index for a given year.
  - a. The maximum amount of this Contract shall not exceed Seventy-Five Thousand Dollars (\$75,000.00) except by the execution of an amendment to the Contract by and between the parties hereto and with approval by the DEPARTMENT and the FHWA. Payment shall be made as set forth hereinafter.
19. Make payments to the CONSULTANT in accordance with the following procedures:
  - a. Progress payments may be made for reimbursement of amounts earned to date.
  - b. Partial payments will be made upon the submission by the CONSULTANT of a billing, accompanied by properly completed reporting forms and such other evidence of progress as may be

required by the LOCAL AGENCY. Partial payments shall be made only once a month.

- c. Final billing under this Contract shall be submitted in a timely manner but not later than three (3) months after completion of the SERVICES. Billing for work submitted later than three (3) months after completion of SERVICES will not be paid. Final payment will be made upon completion of audit by the LOCAL AGENCY and/or as appropriate, by representatives of the DEPARTMENT and the FHWA. In the event such audit indicates an overpayment, the CONSULTANT will repay the LOCAL AGENCY within sixty (60) days of the date of the invoice.
20. If SERVICES, or any part thereof, are terminated before completion, pay the CONSULTANT as follows:
- a. Pay the CONSULTANT actual cost, as defined herein, incurred for the work to be terminated up to the time of termination, plus an amount determined at the time of termination to compensate the CONSULTANT in full for work completed, as set forth in Section 19, subject to approval by the DEPARTMENT and the FHWA.
  - b. In no case shall the compensation paid to the CONSULTANT for SERVICES, or any part thereof, exceed the amount the CONSULTANT would receive had the SERVICES or the terminated portion thereof been completed.

IT IS FURTHER AGREED THAT:

21. Approval of this Contract by the DEPARTMENT in no way obligates the DEPARTMENT for any costs or other responsibilities, except as fiscal agent for the FHWA with respect to making federal funds available for the SERVICES performed by the CONSULTANT for the LOCAL AGENCY.
22. Upon completion or termination of this Contract, all documents prepared by the CONSULTANT, including tracings, drawings, estimates, specification, field notes, investigations, studies, etc., as instruments of SERVICE shall become the property of the LOCAL AGENCY.
23. No portion of the PROJECT work, hereto before defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the LOCAL AGENCY and approval by the DEPARTMENT and the FHWA. Consent to sublet, assign or otherwise dispose of any portion of the SERVICES shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Contract.

24. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the interpretation of plans and specifications shall be decided by the LOCAL AGENCY'S PROJECT Manager. All questions as to the satisfactory and acceptable fulfillment of the terms of this Contract shall be decided by the LOCAL AGENCY.
25. Any change in SERVICES to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the LOCAL AGENCY and approved by the DEPARTMENT and the FHWA prior to the performance thereof by the CONSULTANT and requires an amendment to this Contract.
26. In addition, the CONSULTANT shall comply with, and shall require any contractor or subcontractor to comply with, the following:
  - a. In connection with the performance of this Contract, the CONSULTANT (hereinafter in Appendix "A" referred to as the "Contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix "A" attached hereto and made a part hereof.
  - b. During the performance of this Contract, the CONSULTANT for itself, its assignees, and successors in interest (hereinafter in Appendix "B" referred to as the "Contractor"), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a – 1975d, and 2000a – 2000h-6, and the Regulations of the United States DEPARTMENT of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix "B" attached hereto and made a part hereof.
  - c. The parties hereto further agree that they accept the DEPARTMENT'S Minority Business Enterprises/Women's Business Enterprises (MBE/WBE) Program with respect to the PROJECT and will abide by the provisions set forth in Appendix "C" attached hereto and made a part hereof, being an excerpt from Title 42 CFR Part 23, more specifically 23.43(a)(1) and (2) thereof.
27. The CONSULTANT warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award, or making of this Contract. For breach or violation of this warranty, the LOCAL AGENCY shall have the right to annul this

Contract without liability, or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

28. The CONSULTANT specifically agrees that in the performance of SERVICES herein enumerated by it, or by an approved subcontractor, or anyone acting in its behalf, they will, to the best of their professional knowledge and ability, comply with any and all applicable state, federal and local statutes, ordinances and regulations.
29. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the process of any portions of the SERVICES specified in this Contract, except as hereinafter provided.

In case of a substantial delay on the part of the LOCAL AGENCY in providing to the CONSULTANT either the necessary information or approval to proceed with the work, resulting, through no fault of the CONSULTANT, in delays of such extent as to require the CONSULTANT to perform its work under changed conditions not contemplated by the parties, the LOCAL AGENCY will consider supplemental compensation limited to increased costs incurred as a direct result of such delays. Any claim for supplemental compensation must be in writing and accompanied by substantiating data. Authorization of such supplemental compensation shall be by an amendment to this Contract subject to prior approval by the DEPARTMENT and the FHWA.

When delays are caused by circumstances or conditions beyond the control of the CONSULTANT as determined by the LOCAL AGENCY, the CONSULTANT shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the CONSULTANT to proceed to complete the SERVICES, or any part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LOCAL AGENCY of any of its rights herein set forth.

30. In case the CONSULTANT deems extra compensation will be due it for work or materials not clearly covered in this Contract, or not ordered by the LOCAL AGENCY as a change, or due to changed conditions, the CONSULTANT shall notify the LOCAL AGENCY in writing of its intention to make claim for such extra compensation before beginning such work. Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT shall not in any way be construed to establish the validity of the claim. Such extra compensation shall be

provided only by amendment to this Contract with approval of the DEPARTMENT and the FHWA.

31. Indemnification and Insurance: The CONSULTANT shall not commence work until the certificate of insurance required under this paragraph has been delivered to the LOCAL AGENCY. All insurance carriers must be acceptable to the LOCAL AGENCY and licensed and admitted to do business in the State of Michigan. A new certificate of insurance shall be provided to the LOCAL AGENCY each year at the time of policy renewal.

1. Workers' Compensation Insurance. The CONSULTANT shall procure and maintain during the life of this Contract, Workers' Compensation Insurance, including employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan. If CONSULTANT is a sole proprietor, workers compensation release must be provided.

2. Commercial General Liability Insurance. The CONSULTANT shall procure and maintain during the life of the Contract, Commercial General Liability insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations Liability; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable. Coverage should include terrorist liability.

3. Motor Vehicle Liability. The CONSULTANT shall procure and maintain during the life of this Contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

4. Umbrella Liability Insurance. The CONSULTANT shall procure and maintain during the life of this Contract Umbrella Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence.

5. Professional Liability Insurance. The CONSULTANT shall procure and maintain during the life of this Contract, Professional liability insurance, issued on an "occurrence basis" or "claims made basis", with limits of liability of not less than \$1,000,000 per occurrence/aggregate, or per claim/aggregate if on a "claims made basis". If written on a "claims made basis", the policy must continue for a period of two (2) years following the termination or end date of the contract. Whether on an "occurrence basis"

or a "claims made basis", the policy shall include: a) per contract aggregate and b) deletion of all contractual liability exclusions and/or provisions.

6. Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds: "The City of Troy, the Michigan State Transportation Commission, and the Michigan Department of Transportation all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employers and volunteers thereof. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess."

7. Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Troy, 500 West Big Beaver Road, Troy, Michigan 48084."

8. If any of the above coverages expire during the term of the Contract, the CONSULTANT shall deliver renewal certificates and/or policies to the City of Troy at least ten (10) days prior to the expiration date. Failure to comply with the insurance requirements contained in this agreement shall constitute a material violation and breach of the agreement and may result in termination of the agreement.

To the fullest extent permitted by law, CONSULTANT agrees to defend, pay in behalf of, indemnify and hold harmless the City of Troy, its elected and appointed officials, employees and volunteers and others working in behalf of the City of Troy against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Troy, its elected and appointed officials, employees, volunteers or others working in behalf of the City of Troy by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Contract as well as to indemnify and save harmless the Michigan State Transportation Commission, and the DEPARTMENT, their officers, agents and employees from any and all claims and losses occurring or resulting to any person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the CONSULTANT in the performance of this contract.

- 32. This Contract shall be terminated upon advisement to the CONSULTANT by the LOCAL AGENCY that its SERVICES are completed and accepted.
- 33. The CONSULTANT'S signature on this Contract constitutes the CONSULTANT'S certification of "status" under penalty or perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

The certification, which is included as a part of this Contract as Attachment "A," is Appendix A of 49 CFR Part 229, and applies to the CONSULTANT (referred to in Appendix A of 49 CFR Part 29 as "the prospective primary participant").

- 34. The CONSULTANT hereby agrees that the costs reported to the LOCAL AGENCY for this Contract shall represent only those items which are properly chargeable in accordance with this Contract. The CONSULTANT also hereby certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
- 35. Upon execution of this Contract by the parties hereto, the same shall become binding on the parties hereto and their successors and assigns, until such time as all work contemplated hereunder is complete, or until such time as this Contract is terminated by mutual consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized agents and representatives the day and year first above written.

GREENSTAR & ASSOCIATES, L.L.C

By: Patricia A. Petitto  
Patricia A. Petitto

CITY OF TROY

By: \_\_\_\_\_  
Louise Schilling  
Its: Mayor

By: \_\_\_\_\_  
Tonni L. Bartholomew  
Its: City Clerk

## CERTIFICATION

I hereby certify that I am Patricia A. Petitto and a duly authorized representative of the firm of Greenstar & Associates, L.L.C., whose address is 4840 N. Adams, Suite 183, Rochester, MI 48306 and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Greenstar & Associates, L.L.C.) to solicit or secure this contract.

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Greenstar & Associates, L.L.C.) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

except as here expressly stated (if any):

I acknowledge that this certification is to be furnished to the Michigan Department of Transportation in connection with this contract involving participation of state and/or federal funds, and is subject to applicable state and federal laws, both criminal and civil.

1/2/07  
Date

Patricia A. Petitto  
Signature

APPENDIX A  
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX C

### TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

#### Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## ATTACHMENT A

(This is a reproduction of Appendix A of 49 CFR Part 29)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -  
PRIMARY COVERED TRANSACTIONS

## Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded" as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules impending Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default.

## Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicated for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

March 9, 1989

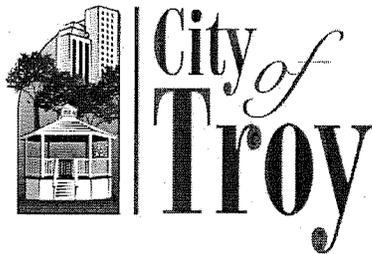
(This is a reproduction of Appendix B of 49 C.F.R. Part 29)  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," without notification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (517) 335-2513 or (517) 335-2514).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



## CITY COUNCIL ACTION REPORT

December 26, 2006

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services  
Steven J. Vandette, City Engineer *[Signature]*

SUBJECT: Contract Addendum No. 2 - Contract 06-3, Ferry Drain Restoration Project

### Background:

- During construction a buried storm sewer pipe was uncovered and needed to be restored. The end section of the pipe was rebuilt and additional excavation and bank stabilization measures were completed.
- Approximately 50 feet of additional excavation and bank stabilization was necessary at the south end of the project, west bank, in order to address severe undercutting of the bank, which was brought to our attention during construction by the property owner.
- The as-built bank excavation and stabilization quantity, as measured by our city survey crew using cross sectioning methods, exceeded the estimated plan quantities due to continuous bank erosion that occurred since the original project survey was done, more than 12 months prior to the start of construction.
- Since it is not practical or cost effective to stop construction for days or weeks until a change order can be approved for minor increases in contract quantities, the work continued on until final completion of the project.
- When the 10% contingency authorized with the contract award is sufficient to cover added costs, as is usually the case, final payment to the contractor is made and the project is closed out.
- If project costs exceed the authorized amount, as is the case with this project, council approval is needed prior to processing final payment for the additional work. The amount exceeding the 10% contingency on this project is \$15,058.97.

### Financial Considerations:

- Funds are available to complete this project in the 2006/07 Drains and Retention Fund, account number 555.7970.015015. The budgeted amount includes funds for construction, inspection and contingencies.

Legal Considerations:

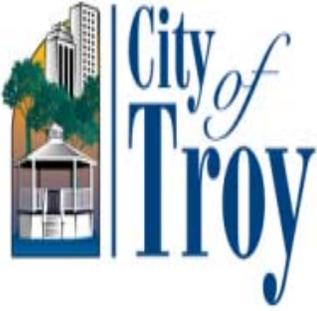
- There are no legal considerations associated with this item,

Policy Considerations:

- There are no policy considerations associated with this item.

Recommendation:

- It is recommended that City Council approve Contract Addendum No. 2 in the amount of \$15,058.97 to the Ferry Drain Restoration contract with D & J Lawn & Snow, Inc. of Clinton Twp.



**TO:** Mayor and Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Christopher J. Forsyth, Assistant City Attorney  
**DATE:** December 20, 2006  
**SUBJECT:** Norma Robertson v. City of Troy

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Enclosed please find a copy of a lawsuit that was recently filed against the City of Troy by Norma Robertson. According to the allegations in the complaint, on January 10, 2006, Ms. Robertson sustained a fall on the sidewalk in front of 392 Hickory. The complaint alleges that the City is liable for her injuries under the defective highway exception to governmental immunity. The complaint alleges that the sidewalk was “unsafe and reasonably unfit”, due to a “raised portion of the sidewalk.”

Ms. Robertson’s damages are described in the complaint as a broken right arm, “past, present and future pain, mental anguish, and severe embarrassment.” She is seeking damages in excess of \$25,000, the circuit court jurisdictional limit. Our office will defend the City of Troy absent contrary direction.

If you have any questions concerning the above, please let us know.



JUDGE RAE LEE CHABOT  
ROBERTSON, NOR V TROY CITY

STATE OF MICHIGAN

JUDICIAL DISTRICT  
6th JUDICIAL CIRCUIT  
COUNTY PROBATE

SUMMONS AND COMPLAINT

Court address

1200 N. Telegraph Rd., Pontiac, MI 48341

Court telephone no.

(248) 858-0582

Plaintiff name(s), address(es), and telephone no(s).

NORMA J. ROBERTSON  
207 Cherry  
Troy, MI 48083

Defendant name(s), address(es), and telephone no(s).

CITY OF TROY, a municipal corporation  
500 West Big Beaver Road  
Troy, MI 48084

v

Plaintiff attorney, bar no., address, and telephone no.

DAVID J. ELKIN (P36161)  
15815 West Twelve Mile Road  
Southfield, MI 48076-3043  
(248) 552-8500

**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). MCR 2.111(C)
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>DEC 13 2000</b>	This summons expires <b>MAR 14 2007</b>	Court clerk <b>RUTH JOHNSON</b>
------------------------------	--	------------------------------------

\*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

General Civil Cases

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Troy, MI	Defendant(s) residence (include city, township, or village) Troy, MI
Place where action arose or business conducted Troy, MI	

Date

11/27/00

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

06-079454-NO



OAKLAND COUNTY JUDGE RAE LEE CHABOT  
ROBERTSON, NOR V TROY CITY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

NORMA J. ROBERTSON, 2006 DEC 13 A 9:51

Plaintiff,

OAKLAND COUNTY CLERK

Case No. 06-

NO

-vs-

BY: \_\_\_\_\_  
DEPUTY COUNTY CLERK

HON.

CITY OF TROY, a municipal corporation,

Defendant.

BLUM, KONHEIM, ELKIN & CEGLAREK  
BY: DAVID J. ELKIN (P36161)  
Attorney for Plaintiff  
15815 West Twelve Mile Road  
Southfield, MI 48076-3043  
(248) 552-8500/Fax 1249

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

COMPLAINT

NOW COMES Plaintiff NORMA J. ROBERTSON, by and through her attorneys, BLUM, KONHEIM, ELKIN & CEGLAREK, by DAVID J. ELKIN, complaining against the Defendant herein says:

1. That the amount in controversy in this matter is in excess of **TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS.**
2. That Plaintiff NORMA J. ROBERTSON is a resident of the City of Troy, Oakland and State of Michigan.
3. That Defendant CITY OF TROY is a municipal corporation having offices located at 500 West Big Beaver Road in the City of Troy, Oakland County and State of Michigan 48084.

LAW OFFICES

BLUM, KONHEIM,  
ELKIN & CEGLAREK  
15 WEST TWELVE MILE ROAD  
SOUTHFIELD, MI 48076-3043

(248) 552-8500

4. That at the time of the occurrence complained of herein, Defendant CITY OF TROY was a governmental entity engaged in the exercise or discharge of a governmental function.

5. That at all times herein mentioned, the above named Defendant had the duty and obligation to repair and maintain public sidewalks within its jurisdiction, in a reasonably safe and convenient condition for public travel, and are liable for bodily injuries resulting from a dangerous and defective condition existing thereon.

6. That on or about January 10, 2006, Plaintiff NORMA J. ROBERTSON was walking along a public sidewalk in an easterly direction in front of 392 Hickory on the south side of the street when she suddenly and without warning tripped over a raised portion of sidewalk, thereupon causing her to fall with great force and violence to the ground and to sustain severe and disabling permanent personal injuries as hereinafter set forth.

7. That there were no barricades, warning lights or signs warning persons lawfully using said public sidewalk of the said dangerous and hazardous condition therein created by the existence of the aforesaid defective sidewalk.

8. That the Defendant had, in fact, been previously put on notice of this defect, but did nothing to repair and/or otherwise barricade that portion of sidewalk which was in a dangerous state of disrepair.

9. That the Defendant, by and through its agents, servants and/or employees, owed a duty to the general public, and Plaintiff in particular, to maintain, monitor and otherwise supervise the condition of the sidewalk within its jurisdiction, and to take timely action in the correction of the dangerous and hazardous condition once Defendant received constructive notice of the defect, to ensure the safety of persons lawfully traversing the same.

10. That the Defendant was then and there guilty of one or more of the following negligent acts and omissions in violation of its duty to Plaintiff, although Defendant knew or, in the exercise of reasonable care and diligence, should have known of the dangerous and hazardous condition therein existing:

- a) *In negligently allowing and permitting the aforesaid sidewalk to exist in a dangerous state of disrepair without the use of barricades, warning signs or lights, or any other warnings whatsoever, warning persons of the hazardous condition then and there existing;*
- b) *In failing to keep sidewalks in the City of Troy, Oakland County in a safe condition and in good repair for persons whom they knew or should have known would be using said public sidewalk;*
- c) *In failing to properly and adequately supervise and monitor the condition of public sidewalks within its jurisdiction;*
- d) *In failing to maintain the sidewalks in the City of Troy, Oakland County in a safe, proper and adequate manner to ensure that same were not defective and hazardous to persons lawfully traversing the same;*
- e) *In failing to post warning signs, warning lights, barricades or any other warning device immediately around the area of the said defective portion of sidewalk to warn persons lawfully upon said sidewalk of the dangerous and hazardous condition therein existing;*
- f) *In failing to take proper and timely action to correct the existence of the hazardous condition of said public sidewalk, so that same would not become dangerous to pedestrian travel; and*
- g) *In negligently failing to act in a timely, efficient and proper manner once the Defendant was notified of the defect.*

11. That the hazardous, dangerous and defective condition of the aforementioned public sidewalk constitutes a public nuisance which was created by the negligence of Defendant CITY OF TROY, by and through its agents, servants and/or employees, to permit the said sidewalk to remain without warning signs, lights or barricades when the same was in a dangerous state of

LAW OFFICES

BLUM, KONHEIM,  
LTKIN & CEGLAREK  
815 WEST TWELVE MILE ROAD  
LUTHERFIELD, MI 48076-3043

(248) 552-8500

disrepair, which condition was unsafe and reasonably unfit for public travel.

12. That the Defendant failed to take proper and timely action to correct the existence of the aforesaid defective sidewalk, when it knew of its existence, likewise constituting a failure to remove a known public nuisance per se once Defendant received constructive notice of the defect.

13. That the aforesaid public sidewalk has been held to be included within the highway exception to governmental immunity, MCL 691.1402, and for the reasons set forth above, the Defendant is not entitled to governmental immunity for its negligence in failing to properly and adequately maintain and monitor the condition of the aforesaid public sidewalk in the City of Troy, Oakland County and State of Michigan.

14. That in the happening of the aforesaid incident, Plaintiff NORMA J. ROBERTSON was not guilty of negligence or contributory negligence, but that as a direct and proximate result of the negligence and carelessness of the said Defendant, your Plaintiff NORMA J. ROBERTSON has suffered severe personal injuries, including but not limited to the following:

- a) *Severe and physical injuries past, present and future to her head, neck, back, and a fracture of the right humerus requiring open reduction internal fixation as well as lacerations and contusions to and about said areas which may result in permanent scarring, all of which injuries are progressive and may be permanent;*
- b) *Past, present and future pain and suffering;*
- c) *Past, present and future medical, hospital, therapeutic and pharmaceutical expenses;*
- d) *Severe emotional distress and mental anguish;*
- e) *Severe embarrassment, gross indignity, humiliation, degradation, and aggravation of pre-existing condition; and*

f) *Loss of enjoyment of life.*

15. That the Defendant is liable to Plaintiff NORMA J. ROBERTSON for the severe injuries and damages sustained by her as a result of the aforesaid hazardous and dangerous condition of a public sidewalk in the City of Troy, Oakland County and State of Michigan.

**WHEREFORE**, and for the foregoing reasons, Plaintiff NORMA J. ROBERTSON prays for a Judgment against Defendant CITY OF TROY, a municipal corporation, for whatever amount said Plaintiff is found to be entitled, plus interest, costs and attorney fees.

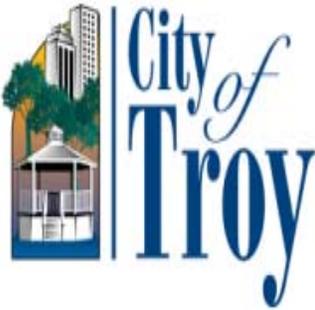
Respectfully submitted,

**BLUM, KONHEIM, ELKIN & CEGLAREK**

BY: 

DAVID J. ELKIN (P36161)  
Attorney for Plaintiff

DATED: November 27, 2006



**TO:** Mayor and Members of City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Christopher J. Forsyth, Assistant City Attorney  
**DATE:** December 28, 2006  
**SUBJECT:** Hooters v. Troy – Proposed Consent Judgment

---

At the request of Hooters, enclosed please find a consent judgment that would resolve both of the cases filed by Hooters of Troy against the City of Troy. The consent judgment is provided for your consideration and deliberation.

The federal civil rights lawsuit is currently pending before Judge Julian Cook. As the first responsive pleading, we filed an immediate motion requesting dismissal of the federal lawsuit. The parties have already filed the briefs for this motion, and the Court has set oral argument on the motion to dismiss for February 7, 2007. If the parties are desirous of settling this case prior to the oral argument on Troy's Motion to Dismiss, then time is of the essence.

All briefs have already been filed in the state court appellate matter as well. The Michigan Court of Appeals has not yet set a date for oral argument on Hooters' appeal of the dismissal of Hooters' state court lawsuit.

The terms of the consent judgment are as follows:

- Troy must approve the requested transfer of the Sign of the Beefcarver Class C Liquor license (Wagon Wheel) to Hooters of Troy.
- Upon approval of the requested transfer, Hooters will dismiss its appeal of the state court case, as well as dismiss its federal case against the City. Hooters would also forego any claims for damages, costs, or attorney fees from the City.
- Within 30 days of MLCC's approval of the requested transfer of the liquor license, Hooters would place the liquor license for the John R. Road location into escrow. Hooters also agrees to operate only one Hooters restaurant in the City of Troy.
- Hooters would permanently remove the pole sign that currently extends over the roof of the building, as well as the pole sign that is located in the parking lot to the east of the building, which is visible from Big Beaver Road.
- Hooters would be allowed to replace the pole sign near the east parking lot with up to two directional signs (entrance and exit signs), provided that each sign is no more than two square feet in size, and do not contain any logo or commercial message. The directional signs would also have to be erected near the northeastern most curb cut for the parking lot.

The attached consent judgment is attached for your consideration. It includes the site plan, since it depicts the location of signage and will be incorporated by reference.

If you have any questions concerning the proposed consent judgment please let us know.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HOOTERS OF TROY INC.,

Plaintiff,

v.

CASE NUMBER 06-CV- 14945  
HON. JULIAN A. COOK  
MAGIST. R. STEVEN WHALEN

CITY OF TROY,

Defendant.

\_\_\_\_\_/

EDWARD G. LENNON PLLC  
Edward G. Lennon (P42278)  
Attorney for Plaintiff  
HYMAN LIPPITT, P.C.  
Stephen McKenney (P65673)  
Co-Counsel for Plaintiff  
322 N. Old Woodward  
Birmingham, MI 48009  
248.723.1276

City of Troy – City Attorney’s Office  
Lori Grigg Bluhm (P46908)  
Christopher J. Forsyth (P63025)  
Attorney for Defendant  
500 W. Big Beaver Road  
Troy, MI 48084  
(248) 524-3320

\_\_\_\_\_ /

**JUDGMENT BY CONSENT**

At a session of said Court, held in the City of Detroit,  
Eastern District of Michigan on \_\_\_\_\_.

PRESENT: Hon. \_\_\_\_\_  
DISTRICT COURT JUDGE

HOOTERS OF TROY INC. and the CITY OF TROY consent to the entry  
of this Consent Judgment.

## RECITALS

1. Plaintiff, Hooters of Troy Inc. ("Hooters"), is a Georgia corporation and a wholly owned subsidiary of Hooters of America Inc., a Georgia corporation.

2. Plaintiff currently operates a Hooters restaurant located at 1686 John R Road in the City of Troy, Oakland County, Michigan. Plaintiff also currently holds a Class C liquor license for this restaurant.

3. On January 6, 2006, Plaintiff entered into an agreement with Sign of the Beefcarver, Inc. ("Beefcarver") to purchase Beefcarver's Class C and SDM Liquor Licenses and the requested Sunday Sales, Entertainment, and Outdoor Service permits, (collectively the "Liquor License") which Beefcarver was using at a restaurant named the Wagon Wheel Saloon and which it operated at 2946-2950 Rochester Road in Troy. The Wagon Wheel Saloon closed on or about May 31, 2006.

4. In addition to the agreement to purchase the Liquor License, Plaintiff also agreed to lease the property at 2946-2950 Rochester Road in which the Wagon Wheel Restaurant was located.

5. As required by the Michigan Liquor Control Code, MCL 436.1101 et. seq., Plaintiff submitted an application to the Michigan Liquor Control Commission, seeking a transfer of said Liquor License from Beefcarver to Hooters.

6. Pursuant to MCL 436.1501(2), such an application requires approval from the Troy City Council, the legislative body of the City of Troy. At

the June 19, 2006 regular City Council meeting, the Troy City Council denied Hooter's request to transfer the Liquor License from Beefcarver.

7. On June 27, 2006, Plaintiff filed a lawsuit in Oakland County Circuit Court. Plaintiff sought an order of superintending control approving the transfer of the Liquor License to Hooters. This case was dismissed by Oakland County Circuit Court Judge John McDonald. Plaintiff has appealed Judge McDonald's dismissal, and the case is pending oral argument in the Michigan Court of Appeals (Docket no. 272155).

8. On November 2, 2006, Plaintiff initiated this 42 U.S.C. § 1983 lawsuit against Defendant.

9. After extensive negotiation, the parties have reached a settlement of this §1983 lawsuit and the state court action. The parties agree that Troy City Council shall approve Plaintiff's application to transfer the Liquor License provided that Plaintiff complies with certain conditions that are further defined in this Consent Judgment. The parties also agree that this Consent Judgment shall be binding upon the parties, their successors and assigns.

10. The Court has reviewed the proposed Consent Judgment, and has verified that it currently possesses jurisdiction over this action, and has approved the form and substance of this Consent Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Consent Judgment shall constitute the final judgment of the Federal District Court, Eastern District of Michigan, and resolves all claims between the parties.

2. With the entry of this Consent Judgment by the Court, the Troy City Council approves Plaintiff's application to transfer the Liquor License from the Beefcarver to Hooters. After such time, the Troy City Clerk shall immediately forward a resolution of approval of the transfer to the Michigan Liquor Control Commission.
3. The City of Troy will reasonably cooperate and file such other additional or revised documents that reflect the above referenced approval, and as required by the Michigan Liquor Control Commission to complete or expedite the Liquor License transfer.
4. In consideration of the approval of the transfer of the Liquor License by the City of Troy, Plaintiff agrees to the following:
  - a. Plaintiff relinquishes any claim of damages against Defendant.
  - b. Plaintiff will dismiss with prejudice its claim of appeal filed with the Michigan Court of Appeals in the state court action, which is entitled *In Re Hooters of Troy Inc.*, Oakland County Circuit Court No. 06-75618 AS, Michigan Court of Appeals No. 272155.
  - c. Plaintiff will cease its operation of a Hooters Restaurant at 1868 John R Road, and place its Class C liquor license for that location into escrow with the Michigan Liquor Control Commission. This Consent Judgment does not address any future transfer or sale of the John R. escrowed license, and any sale or transfer of said liquor license shall comply with the Michigan Liquor Control Code. Plaintiff shall close this restaurant within 30 days after approval by

the Michigan Liquor Control Commission of the transfer of the Liquor License.

- d. After the John R restaurant is closed, Plaintiff shall be permitted to operate only one Hooters restaurant in Troy.
- e. Prior to operating the restaurant at the 2946-2950 Rochester Road address, Plaintiff shall remove the two pole signs (collectively, Pylon Signs F & G"), which were erected at this location. More specifically, the first pole sign Plaintiff shall remove is located a short distance from the restaurant, is in close proximity to the intersection of Rochester and Big Beaver Roads, and is the larger of the two pole signs. The second pole sign Plaintiff shall remove is located in close proximity to the northeast parking entrance to the restaurant, which also curb cuts on Big Beaver Road, and is the smaller of the two pole signs. These two pole signs are further described as F, SF Pylon, and G, DF Pylon, in the attached plan (Exh. A., incorporated by reference).
- f. Plaintiff shall be permitted to construct up to two directional signs from Big Beaver Road, which shall not exceed 2 square feet each, and which shall not contain any logos or other commercial message, and shall be limited to identifying the Entrance and Exit for the parking lot. These signs, if constructed, shall be located at the existing north easternmost curb cut of the parking lot.

- g. With the exception of the pole signs, which Plaintiff agrees to remove, and the directional signs, as referenced in Paragraph f, the amount and type of signage Plaintiff can maintain at 2946-2950 Rochester Road, is limited to that depicted in Exhibit A.
  - h. Plaintiff is further permanently barred from seeking permission or any variances from the City of Troy to construct or erect additional signage at 2946-2950 Rochester Road, including but not limited to any special event signs as set forth in Chapter 85 of the City of Troy Ordinances.
  - i. In the event Plaintiff fails to remove above described pole signs prior to operating its restaurant at 2946- 2950 Rochester Road, Defendant shall have the right to remove said pole signs, and charge all costs and expenses to Plaintiff. This does not preclude the parties from pursuing any other available relief under state or federal law for any violation of the terms of this Consent Judgment.
5. The parties agree to waive all costs and attorney fees incurred as result of the case.
  6. By entry of this Consent Judgment, the parties, their agents, successors, assignees waive and discharge any and all claims that they may have against the other party, including its officials and employees, relating to the subject of this lawsuit.
  7. In order to effectuate the intent of this Consent Judgment and to reconcile any differences of the parties that may arise in connection

with the performance of this Consent Judgment, this Court shall retain jurisdiction of this action.

\_\_\_\_\_  
DISTRICT COURT JUDGE

Approved for entry:

HOOTERS OF TROY INC.

By: \_\_\_\_\_  
Coby G. Brooks, President

CITY OF TROY, a Michigan Municipal Corporation

By: \_\_\_\_\_  
Louise Schilling, Mayor

By: \_\_\_\_\_  
Tonni Bartholomew, City Clerk

Approved as to form:

\_\_\_\_\_  
CITY OF TROY  
CITY ATTORNEY'S OFFICE  
By: LORI GRIGG BLUHM (P46908)  
CHRISTOPHER FORSYTH (P63025)  
Christopher J. Forsyth (P63025)  
500 W. Big Beaver Road  
Troy, MI 48084  
(248) 524-3320

\_\_\_\_\_  
EDWARD G. LENNON PLLC  
EDWARD G. LENNON (P42278)  
Attorney for Plaintiff  
HYMAN LIPPITT, P.C.  
Stephen McKenney (P65673)  
Co-Counsel for Plaintiff  
322 N. Old Woodward  
Birmingham, MI 48009

Prepared by:

CITY OF TROY  
CITY ATTORNEY'S OFFICE  
By: s/Christopher J. Forsyth  
Lori Grigg Bluhm (P46908)  
Christopher J. Forsyth (P63025)  
500 W. Big Beaver Road  
Troy, MI 48084  
(248) 524-3320  
c.forsyth@ci.troy.mi.us

A meeting of the Retiree Health Care Benefits Plan & Trust Board of Trustees was held on Wednesday, September 13, 2006, at Troy City Hall, 500 W. Big Beaver Rd., Troy, MI. The meeting was called to order at 1:36 p.m.

TRUSTEES PRESENT:           Mark Calice  
   Michael Geise  
   Thomas Houghton, Chair  
   Martin F. Howrylak  
   John M. Lamerato  
   William R. Need (Ex-Officio)  
   Phillip L. Nelson  
   Steven A. Pallotta

### MINUTES

#### ***Resolution # RH – 2006 – 09 - 004***

Moved by Lamerato  
 Seconded by Calice

*RESOLVED*, That the minutes of the June 13, 2006 meeting be approved.

Yeas:           All 7

### INVESTMENTS

#### ***Resolution # RH – 2006 – 09 - 005***

Moved by Pallotta  
 Seconded by Howrylak

*RESOLVED*, That the board deposit \$2,000,000 with Waddell & Reed to be invested in various mutual funds.

Yeas:           All 7

### OTHER BUSINESS – ESTABLISH 2007 MEETING DATES

#### ***Resolution # RH – 2006 – 09 - 006***

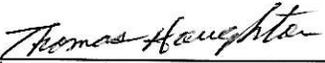
Moved by Lamerato  
 Seconded by Geise

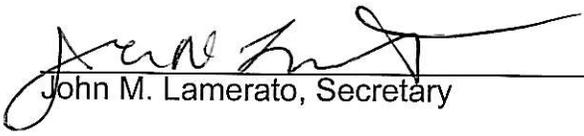
*RESOLVED*, That the board adopt the 2007 meeting dates and that a copy of the schedule be attached to the original minutes.

Yeas:           All 7

The next meeting is December 13, 2006 at 1:00 p.m. at City Hall, Conference Room C, 500 W Big Beaver, Troy, MI.

The meeting adjourned at 1:47 p.m.

  
\_\_\_\_\_  
Thomas Houghton, Chairman

  
\_\_\_\_\_  
John M. Lamerato, Secretary

## SPECIAL MEETING

BUILDING CODE BOARD OF APPEALS- FINAL

OCTOBER 18, 2006

Mr. Rick Sinclair, Acting Chairman, called the special meeting of the Building Code Board of Appeals to order at 8:35 A.M. on Wednesday, October 18, 2006 in Conference Room C of the Troy City Hall.

PRESENT: Rick Kessler  
Tim Richnak  
Rick Sinclair  
Frank Zuazo

ABSENT: Ted Dziurman

ALSO PRESENT: Mark Stimac, Director of Building & Zoning  
Pamela Pasternak, Recording Secretary

**ITEM #2 – VARIANCE REQUEST. GEORGE ST. PIERRE, EXHIBIT WORKS, 446 K W. FOURTEEN MILE**, for relief of Section 402.5.1 of the Michigan Building Code to construct a tenant space within the existing mall resulting in a mall width of 17' where 20' is required.

Mr. Stimac explained that the petitioner is proposing to construct a new freestanding tenant space within a portion of the existing Oakland Mall. This type of space would normally be referred to as a "kiosk" and be subject to the requirements of Section 402.10 of the Michigan Building Code. However, Paragraph 4 of Section 402.10 limits the size of kiosks to not more than 300 square feet in area. The Code does permit tenant spaces to be constructed within the mall, not subject to the 300 square foot limitation, as long as the regular "mall" provisions apply to the area around the tenant space. Section 402.5.1 requires that the width of the mall be a minimum of 20'. In this area the existing mall width is 50'. With the construction of this 16' wide tenant space in the middle of the mall, the width of the mall on either side will only be 17'.

Dino Rotondo representing Exhibit Works was present and stated that their business is basically an entertainment business. They are working with a large group of companies and basically work on the retail of wireless products. This project would be the first of its kind in the country. Their approach is to create a destination for kids and will provide a lounge like atmosphere so that they can spend time there. They will be able to download wallpaper, mobile phone ring tones and also be able to burn CD's. Mr. Rotondo also said that this exhibit will bring technology groups from around the world to look at it.

George St. Pierre was also present and stated that this tenant space will be open on all sides. People will be able to pass through it from any side.

Mr. Kessler stated that the basic difference between this space and a Kiosk is that this is an open space where a Kiosk is closed in. Mr. Kessler asked about the display items and hours of operation. Mr. Rotondo said that the displays are wall mounted and this tenant space will be open the same hours as the mall.

**ITEM #2 – con't.**

Michael Thoreson, Vice President of Exhibit Works was also present and stated that this structure would be very open and airy.

Mr. Richnak asked how the space was closed at night. Mr. St. Pierre said that there are sliding mall doors that are designed to open and shut, and at night, these doors will be locked.

Mr. Kessler asked if they had any plans to add to the display. Mr. Rotondo said that they do not perceive adding any displays. The showcases are very small and all will be hard wired.

Mr. Richnak asked about the space between the display cases. Mr. St. Pierre said that they are all ADA compliant and that the entrances have ramps, which are also ADA compliant.

Mr. Richnak also asked if this was the same exhibit that they would put in malls across the country. Mr. Thoreson stated that this was the design standard that they would like to use, as it would create recognition of the space.

Mr. Kessler asked where the petitioner would store the extra items. Mr. Rotondo said that the main warehouse is on Fourteen Mile and Stephenson, and they also have another space in Roseville. The columns also have storage areas in them and they can utilize storage space within the mall. Mr. Kessler confirmed that they are using fire retardant storage.

Mr. Stimac asked if the floor material outside the space was different from the existing mall floor and Mr. Thoreson said it was not.

Mr. Stimac asked if there was a stipulation in the lease that this structure would have to be removed, if this tenant were to vacate the space. Mr. Chas Miller, Property Manager for Oakland Mall was present and stated that in the event this tenant would leave, the structure would have to be taken down.

Mr. Jerry Hamling, of Exhibit Works was present, said that according to the lease this is a tenant fixture, belonging to the tenant, and would have to be removed. Mr. Stimac then asked if they would be able to sub lease this space. Mr. Hamling said that the contract is very specific that they cannot sub lease.

Mr. Stimac asked if there was a time limit in the lease regarding them removing this structure, if they were to vacate the space. Mr. Hamling said there was not. Their lease is for five (5) years and they are hoping to become long-term tenants of Troy.

**ITEM #2 – con't.**

Mr. Richnak asked what the elevation of the floor was. Mr. Thoresen said that it sits on top of Terrazzo and is elevated 3" and the entire space is ADA compliant. They have constructed the site so that the electricity comes up from the floor through the columns.

Mr. Chas Miller stated that Oakland Mall is very much in favor of this request. It is very difficult to operate a retail business and he believes that this exhibit will attract customers to the mall. In his opinion this is an exciting tenant and he believes it will be an asset to Oakland Mall. They have met the intent of the Code with the design of this space and there will be two (2) 17' aisle ways.

Mr. Richnak asked about the 20' requirement. Mr. Stimac explained that the process began in the early to mid 70's with the National Building Code. At that time the trend went from open-air retail shopping centers to enclosed malls. The width of the mall was discussed and basically they came up with 20' required between tenant spaces. Because this structure is considerably over the 300 square feet allowed for a Kiosk, it was determine that a 15% reduction in required mall width was the lesser variance request. Basically this is similar to creating a mall within a mall.

Mr. Richnak asked if they could approve this request while stipulating a time frame, such as 30 days, for removal of the structure if this tenant vacates the space. Mr. Stimac said that the Board could put in such a stipulation.

Mr. Thoresen stated that stated this space was designed to go up quickly and to be taken down quickly. They would not have a problem with the stipulation of a time frame.

Mr. Miller indicated that he feels a 30-day time frame would be very reasonable and the Mall would support a stipulation that addressed this issue.

Mr. Kessler asked again about the hours of operation and Mr. Hamling indicated that they are under obligation to keep their store open during the hours the mall is open.

Mr. Zuazo asked if they were allowed to sublease this space. Mr. Hamling stated that this was not in their contract.

Mr. Miller said that he was concerned about vandalism and Mr. Thoresen said that they could put the moveable items into storage at the end of the day and bring them out in the morning. Mr. Thoresen indicated that there is someone there between the hours of 7 AM and 10 PM.

Mr. Stimac asked what the time frame for construction of this space was. Mr. Thoresen said that it takes between five and seven days to put the structure up and less time to take it down.

**ITEM #2 – con't.**

Motion by Kessler  
Supported by Richnak

MOVED, to grant George St. Pierre, Exhibit Works, 446 K W. Fourteen Mile, relief of Section 402.5.1 of the Michigan Building Code to construct a tenant space within the existing mall resulting in a mall width of 17' where 20' is required.

- The provision of (2) 17' wide malls in close proximity provides an equivalent level of safety to a single mall 20' in width.
- Space to remain open during the operating hours of the mall.
- All removable items to be placed in storage at the time the store is closed.
- If this tenant vacates this space, the space is to be removed within thirty (30)-days.

Yeas: 4 – Richnak, Sinclair, Zuazo, Kessler  
Absent: 1 – Dziurman

MOTION TO GRANT VARIANCE CARRIED

The special meeting of the Building Code Board of Appeals ended at 9:14 A.M.

---

Ted Dziurman, Chairman

---

Pamela Pasternak, Recording Secretary

A meeting of the Employees' Retirement System Board of Trustees was held on Wednesday, November 8, 2006, at Troy City Hall, 500 W. Big Beaver Rd., Troy, MI. The meeting was called to order at 12:18 p.m.

TRUSTEES PRESENT:           Mark Calice  
   Michael Geise  
   Thomas Houghton, Chair  
   Martin F. Howrylak  
   John M. Lamerato  
   William R. Need (Ex-Officio)  
   Phillip L. Nelson  
   Steven A. Pallotta

### MINUTES

#### ***Resolution # ER – 2006 – 11 - 041***

Moved by Pallotta  
 Seconded by Calice

*RESOLVED*, That the minutes of the October 11, 2006 meeting be approved.

Yeas:           All 7

### OTHER BUSINESS – RECOVERY OF EDRO COST

#### ***Resolution # ER – 2006 – 11 - 042***

Moved by Lamerato  
 Seconded by Nelson

### Recovery of Costs of Processing Domestic Relations Orders

WHEREAS, The City of Troy Employee Retirement System is subject to the provisions of the Eligible Domestic Relations Order Act, 1991 PA 46, which provides that the Retirement System shall determine if domestic relations orders received by it are eligible domestic relations orders and, if so, must administer same; and

WHEREAS, The Retirement System has adopted policies and procedures to implement the requirements of the Eligible Domestic Relations Order Act which include the involvement of professional advisors due to the legal and actuarial issues inherently involved; and

WHEREAS, Such professional advisors charge fees for such services and, therefore, the Retirement System incurs costs it would not have incurred but for the enactment of the Eligible Domestic Relations Order Act and the divorce or separation of participants submitting domestic relations orders to the Retirement System; and

WHEREAS, The Eligible Domestic Relations Order Act contemplates payment of the costs associated therewith by the parties to such orders and provides that such orders may not require the Retirement System to provide an increased benefit determined on the basis of actuarial value, which includes the cost of administration; and

WHEREAS, The Retirement System has previously determined that the increased costs incurred by the Retirement System due to the administration of the Eligible Domestic Relations Order Act should be borne by the parties to the domestic relations orders submitted to the Retirement System, and the Retirement System desires to clarify and formalize its policy in this regard;

THEREFORE, BE IT RESOLVED, That the parties to any domestic relations order submitted to the City of Troy Employee Retirement System shall be required to reimburse the Retirement System for all additional actuarial fees and costs associated therewith on an equal basis; and

THEREFORE, BE IT FINALLY RESOLVED, That if such costs have not been reimbursed to the Retirement System by the parties prior to the commencement of benefits, such costs shall be deducted from the first and any necessary subsequent benefit payment to each party until that party's share of the costs has been fully recovered.

Yeas: All 7

OTHER BUSINESS – JUNE 30, 2006 QUARTERLY INVESTMENT PERFORMANCE

The Board received and filed the June 30, 2006 Quarterly Investment Report.

INVESTMENTS

**Resolution # ER – 2006 – 11 - 043**

Moved by Pallotta

Seconded by Houghton

*RESOLVED*, That the Board buy and sell the following securities:

**Buy:** 5,000 shares Kohl's  
\$725,000 John Hancock International Core Fund

**Sell:** Startek; Lucent Technologies; Compuware; Aim Constellation Mutual Fund and use Proceeds to buy Aim Global Value Fund and Aim European Growth Fund.

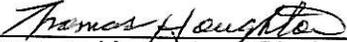
Yeas: All 7

PUBLIC COMMENT

There was no public comment.

The next meeting is December 13, 2006 at 1:30 p.m. at City Hall, Conference Room C, 500 W Big Beaver, Troy, MI.

The meeting adjourned at 1:28 p.m.

  
\_\_\_\_\_  
Thomas Houghton, Chairman

  
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John M. Lamerato, Secretary

**TROY ETHNIC ISSUES ADVISORY BOARD  
TUESDAY, NOVEMBER 14, 2006  
TROY CITY HALL - CONFERENCE ROOM C**

I. **Call to Order** 7:05 p.m.

II. **Roll Call:**

Present:

Padma Kuppa  
Mayada Fakhouri  
Reuben Ellis  
Michelle Haight  
Anju Brodbine

Cindy Stewart, City Liaison  
Lulu Guo, Student Rep.  
Helen Yang, Student Rep.  
Kelly Jones  
Tony Haddad

Absent:

Malini Sarma  
Gladson Remos

Guests: Cathy Francois  
Barbara Ford

Kevin Yan  
Deb Williamson, NCCJ

III. **Approval of Minutes**

Motion by: Reuben Ellis, seconded by: Padma Kuppa to approve the October 3, 2006 minutes. Approved unanimously with the following corrections: Page 2 – ethnic not ethic.

IV. **Correspondence/ Articles**

Interfaith Events to Celebrate Diversity: Free Press 10-27-06

Troy Area Emerging as Center of Religious Diversity: Free Press 10-26-06

Growing Indian-America Community Makes Its Mark: Oak Press 10-22-06

Affirmative Action: Does it Help or Hurt? - Free Press 10-17-06

Businesses Know Value of Diversity; State Should Too: Free Press 10-17-06

Leaders Take Up Challenge of Racial Unity: Free Press 10-9-06

## V. New Business

NCCJ - Deb Williamson

September 2005, Deb gave a presentation re: bringing in the Leadership LINC Academy program to Troy Schools. Grant from National City Foundation was awarded and 50 students from Athens and 50 from Troy High participated.

Bridging the Racial Divide took place on September 26, 2006. We had 60-65 community residents and Michelle, Padma, and Cindy from EIA Board also attended.

NCCJ now known as MI Roundtable for Diversity and Inclusion is a Non Profit human relations organization that seeks to reduce discrimination and racism by working proactively across racial, ethnic and other cultural boundaries.

Troy identified as one of 8 communities in Southeastern MI to take part in Bridging the Racial Divide Program founded by Emery King

September 26 was the first of four programs scheduled. Future production schedules are unknown at this time.

Troy is the only group who said we're not done, we want to continue on with this kind of training.

Survey results from Bridging the Racial Divide program were handed out. The intention was to have this program be the start of a dialogue between community residents to build a trust level. Last question of the survey was would you be interested in continuing on with this discussion/program. Majority responded yes.

M. Haight: Very encouraged from the group wanting to continue and take part in organized programs/discussions

R. Ellis: What do you think the reason was related to people wanting to continue this dialogue? Because we were in Troy? Was it a Black-White issue?

D. Williamson: Timing was right for Troy. But the 8 areas of the Metro Detroit area also felt this same way - wanting to continue the dialogue. Need to find some things that transcend race in order to move past racism and segregation. Increasingly more groups coming together on self-reflection.

At the high school, they began with the 2-day retreat in the Spring. This Sat, Nov. 18, LINC will hold a Student Diversity Summit at Berkley High School, with skill building workshops.

Helen and Lulu had a concern how students were chosen for the spring retreat in Troy. Some students said it was only a way to get out of school.

D. Williamson said they're meeting with school administrators to continue the program and tweak the process. They will recommend doing a school climate survey.

A. Brodbine: This seems like a breakdown for a very worthwhile and expensive program. How effective is the entire program if there was this initial breakdown?

D. Williamson: 2005 was our pilot year for Leadership Academy. Most impact was when districts did one school at a time, students developed an action plan and carried them out together. Need to figure out a better process of choosing students.

### Retreat

- Team Building
- Trust Building
- Become aware of the process of stereotyping
- Become aware of the collective effects of prejudice
- Identify elements of an inclusive community and work together to create a common vision of an inclusive community
- Begin an action plan to create a respectful, inclusive community

Troy Schools Action Plan: plan a diversity week; respect week; Individual goals - meet new people, plant a community garden, bring new people into their circles.

In Monroe, MI they had a program highlighted on Oprah, "Challenge Day." Brought in facilitators to their city for one day.

Troy administrators learned a lot from the initial program. LINC is a process that will continue and we hope this program continues in the schools. Our board needs to help lay a strong foundation.

Schools with the most success have a planning committee of 20 students who hold a stakeholders meeting, choose the students, help facilitate and continue with follow through.

Trading Places Community Dialogue is a 3 part, 3-hour session, originally for adults - a next step for bridging the racial divide.

Trading Places helps because people don't really talk about issues, they talk around them.

Groups of 12-18 meet for 9 hours of intensive dialogue. Could you bring youth in? Yes. As inter-generational work, but those young people have usually had background training.

Many people report, "While I never considered myself a racist or biased, I found parts of myself that I needed to work on."

People who fear or people who are ignorant are the culprits. But do they attend these programs? No.

The program, Trading Places, normally costs \$1000. Because of the work EIA did on Bridging the Racial Divide, NCCJ will wave the fee to train us and then we can move on to be facilitators and begin inviting the community to become involved. Schedule 3 sessions in 3 consecutive weeks.

M. Haight: What does the Board think of having Michigan Roundtable for Diversity and Inclusion come in and help facilitate a Trading Places for the EIA Board? Board is in agreement. Michelle would propose we begun in January or February.

Discuss at January meeting everyone's availability and room availability for February 6 and 13, Lower Level Conference Room.

## **VI. Old Business**

### **a. EthniCity - Troy Daze**

EIA Board needs to find a chairperson and co-chair for EthniCity.

Board members feel they need to be treated better by other former EthniCity volunteers and Troy Daze board members. Students were talked down to and EIA Board members were constantly apologizing for those people's attitudes.

If EIA Board is to run EthniCity, they should be allowed to run it without interference.

EthniCity is 4 components:

Booths, Posters, Flags, Children's Activities

EIA Board members will discuss this at future meetings.

### **b. International Institute Proposal - Nada Dalgamouni presented a proposal to offer classes for kids to teach understanding of other cultures at the Community Center. Biggest issue is to find sponsors or get grants. Information a bit overwhelming.**

Board agrees that she should talk to the School District and/or Parks and Recreation. This doesn't really tie in with the EIA mission statement. C. Stewart will forward on to Carol Anderson and Tim McCoy.

## **VII. Member Comment**

P. Kuppa: Very frustrating that our Troy Schools are so different. Michelle got involved at Barnard and their principal contacted Cindy for 500 Resource Listings to be sent home with all students. She also started a diversity newsletter, "Cultural Connection"

which is sent home monthly. Padma tried at Hill but no luck last year. But this year, teacher agreed to have an International Festival during Diversity Month in 2007 for 3<sup>rd</sup> grades.

Barnard's International Festival will be May 25, 2007.

Birmingham-Bloomfield Diversity Task Force contacted Padma for assistance with Hindu holidays. City calendar is very inclusive of all diverse holidays.

Notice of Troy Interfaith Group's program to celebrate Thanksgiving on Sunday, November 19, 7-8 pm at Big Beaver United Methodist Church, 3753 John R.

The program features a series of immigrant stories from our diverse community based on "American's Table: A Thanksgiving Leader".

The group is looking for a church to host the National Day of Prayer event, Thursday, May 3, 2007

Noel Night – Saturday, December 2, 2006 from 5-9:30 pm in Detroit.  
[www.midtowndetroit.org](http://www.midtowndetroit.org)

International Day of Peace- September 21

#### VIII. Motion to Adjourn

Moved by Padma Kuppa, seconded by Anju Brodbine to adjourn the meeting at 9:10 pm.

RESOLVED that the Ethnic Issues Advisory Board Meeting be adjourned at 9:10 pm. Approved unanimously.

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Michelle Haight, EIA Chair

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Cindy Stewart, EIA Recording Secretary

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Michelle Haight, EIA Chair

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Cindy Stewart, EIA Recording Secretary

## DOWNTOWN DEVELOPMENT AUTHORITY MINUTES FINAL November 15, 2006

A meeting of the Downtown Development Authority was held on Wednesday, November 15, 2006 in the Lower Level Conference Room of Troy City Hall, 500 W. Big Beaver Troy, Michigan. Alan Kiriluk called the meeting to order at 7:30 a.m.

**PRESENT:** Stuart Frankel  
David Hay  
Michele Hodges  
William Kennis  
Alan Kiriluk  
Carol Price  
Douglas Schroeder  
Harvey Weiss  
G. Thomas York

**ABSENT:** Michael Culpepper  
Daniel MacLeish  
Ernest Reschke  
Louise Schilling

**ALSO PRESENT:** John M. Lamerato  
Brian Murphy  
Lori Bluhm  
Mark Miller

**APPROVAL OF MINUTES**

Resolution: DD-06-35  
Moved by: Price  
Seconded by: Kennis

RESOLVED, That the minutes of the September 20, 2006 regular meeting be approved.

Yeas: All (9)  
Absent: Culpepper, MacLeish, Reschke, Schilling

## **OLD BUSINESS**

### A. Proposed Corridor Improvements - Rochester Road/Big Beaver

Randy Metz of Grissim Metz Andriese Associates reviewed revised conceptual designs of the Rochester Road/Big Beaver intersection. They will continue to work and make some minor revisions for some on-site parking as well as provide cost estimates.

### B. Informational Brochure

Resolution: DD-06-36

Moved by: Kennis

Seconded by: Weiss

RESOLVED, That the Board receive the Informational Brochure.

Yeas: All (7)

Nays: Frankel, Hodges

Absent: Culpepper, MacLeish, Reschke, Schilling

## **NEW BUSINESS**

### A. Big Beaver Corridor Study Plan Development

The Plan was pulled from the agenda and deferred to a future meeting.

### B. Impact Analysis

Resolution: DD-06-37

Moved by: Hodges

Seconded by: Price

RESOLVED, That the Board approve the contract to provide an Impact Analysis of the Big Beaver Corridor Study at an estimated cost of \$9,500.00 with Birchler Arroyo Associates and the Chesapeake Company.

Yeas: All (9)

Absent: Culpepper, MacLeish, Reschke, Schilling

### C. Funding Breakdown and Criteria

The Board reviewed and filed a report on possible funding sources for various Corridor projects.

D. Executive Director Appointment

Resolution: DD-06-38

Moved by: Hay

Seconded by: Kennis

RESOLVED, That Brian Murphy be appointed Executive Director of the Troy Downtown Development Authority.

Yeas: All (9)

Absent: Culpepper, MacLeish, Reschke, Schilling

E. Hooter's Update

City Attorney Lori Bluhm gave an update on the Hooter's lawsuit.

**PUBLIC COMMENT**

Two members of the audience addressed the Board.

**EXCUSE ABSENT MEMBERS**

Resolution: DD-06-39

Moved by: Frankel

Seconded by: Hodges

RESOLVED, That Culpepper, MacLeish, Reschke and Schilling be excused.

Yeas: All (9)

Absent: Culpepper, MacLeish, Reschke, Schilling

**MEMBER COMMENT**

None

**The meeting was adjourned at 8:48 a.m.**

**Next Meeting: December 20, 2006 @ 7:30 a.m. @ Lower Level Conference Room, City Hall.**

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Alan Kiriluk, Chair

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John M. Lamerato, Secretary/Treasurer

**LIBRARY ADVISORY BOARD – FINAL****NOVEMBER 16, 2006**

A Regular Meeting of the Troy Library Board was held on Thursday November 16, 2006 at the Office of the Library Director. Lynne Gregory, Chairman, called the meeting to order at 7:30 P.M.

**ROLL CALL**

**PRESENT:** Heather Eisenbacher  
Kul B. Gauri (arrived late)  
Lynne Gregory  
Nancy Weeler

Arthi Krishna, Student Representative  
Shruthi Subramanian, Student Representative

Brian Stoutenburg, Library Director

The Pledge of Allegiance to the Flag was given

**Resolution #LB-2006-11-01**

Moved by Wheeler  
Seconded by Eisenbacher

**RESOLVED, That Audre Zembrzuski be excused.**

**Yes: 3—Eisenbacher, Gregory, Wheeler**  
**No: 0**

**MOTION CARRIED****Resolution #LB-2006-11-02**

Moved by Eisenbacher  
Seconded by Wheeler

**RESOLVED, That Minutes of October 13, 2006 be approved.**

**Yes: 3—Eisenbacher, Gregory, Wheeler**  
**No: 0**

**MOTION CARRIED**

Reviewed Agenda entries

**Resolution #LB-2006-011-03**

Moved by Eisenbacher  
Seconded by Wheeler

**RESOLVED, That the Agenda be approved.**

**Yes: 3—Eisenbacher, Gregory, Wheeler**  
**No: 0**

**MOTION CARRIED**

**INTRODUCTIONS**

Shruthi Subramanian was introduced as our new Student Representative.

**POSTPONED ITEMS**

There were no Postponed Items.

**NEW BUSINESS.**

There was no New Business.

**REPORTS & COMMUNICATIONS**

**Director's Report.**

The cost quote for receipt printers that will work with the Sirsi system has been received. It is the intent of the library to have these in place in the next few months. The stability of the Internet connection in the Adult Services Technology Center appears to have been resolved. The Library ranked 2<sup>nd</sup> in Michigan among all public libraries, 13<sup>th</sup> in the nation for libraries serving populations our size and was in the top 1% of all 9,078 public libraries in the country. Three HVAC units were replaced over the Adult Services department. The pre-cast on the outside of the building has been power-washed and painted.

**Board Member's Comments.**

Wheeler read an article from the League of Women Voter's newsletter about the United Nation's display at our library.

Gregory informed the Board that he attended a meeting concerning the possible merger of the Suburban Library Cooperative and the Library Network. The general philosophies of the two organizations were discussed.

Gauri presented an article about the Waterford Library installing self-checkout/RFID technology and the associated costs.

**Student Representative's Comments.**

There were no comments.

**Suburban Library Cooperative.**

Gregory reported that since the SLC Board is meeting tonight, he will report on that meeting in December.

**Friends of the Troy Public Library.**

Tammy Duszynski, President of the Friends of the Troy Public Library reported that the Friends Board had been working on a method to allow interested artists to be able to post the prices of their exhibited items if they wanted to. Basically, the proposal would require the artist to be a “Business Member” of the Friends and donate 15% of any sales from the exhibit to the Friends. This would provide a tangible benefit to the Library since the funds raised by the Friends are used to support the Library. There was no formal proposal provided to the Library Advisory Board. Also discussed was the need for better communication between the two Boards. Eisenbacher stressed the importance of a Friend’s Board Member attending the Library Advisory Board meetings on a regular basis. Duszynski invited all Library Board members to attend the Friend’s Board meetings. Duszynski also mentioned that the Friend’s Building Committee will be presenting their concept of the library of the future to staff at the December 8<sup>th</sup> All Staff meeting. This is the same information presented to the Board by Maria Hunciag in the Spring and also to those Board members who attended the Book Store meeting this Fall.

**Gifts.**

No gifts were received.

**Informational Items.**

November TPL Calendar

**Contacts and Correspondence.**

25 written comments from the public were reviewed.

**Public Participation.**

Tom Duszynski asked if there was a way that within the Sirsi program a patron could change their email address used for notifications. He also asked if the library participated in the Michicard program and MelCat.

The Library Board meeting adjourned at 8:45 P.M.

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Lynne Gregory  
Chairman

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Brian Stoutenburg  
Recording Secretary

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, November 21, 2006 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney  
Marcia Gies  
Michael Hutson  
Matthew Kovacs  
Mark Maxwell  
Wayne Wright

ALSO PRESENT: Mark Stimac, Director of Building & Zoning  
Christopher Forsyth, Assistant City Attorney  
Pamela Pasternak, Recording Secretary

ABSENT: Christopher Fejes

Motion by Hutson  
Supported by Gies

MOVED, to excuse Mr. Fejes from this meeting due to illness.

Yeas: 6 – Gies, Hutson, Kovacs, Maxwell, Wright, Courtney

MOTION TO EXCUSE MR. FEJES FROM THIS MEETING CARRIED

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF OCTOBER 17, 2006**

Motion by Courtney  
Supported by Maxwell

MOVED, to approve the minutes of the meeting of October 17, 2006 as written.

Yeas: 5 – Hutson, Kovacs, Maxwell, Wright, Courtney

Abstain: 1 - Gies

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

Motion by Courtney  
Supported by Maxwell

MOVED, to hear Item #6 on the Agenda out of order.

- Same request has appeared before this Board for a number of years.

Yeas: 6 – Hutson, Kovacs, Maxwell, Wright, Courtney, Gies

## MOTION TO TAKE ITEM #6 OUT OF ORDER CARRIED

**ITEM #6 – VARIANCE REQUEST (Taken out of Order.) JOHN BRODERICK, OF HONEYBAKED HAM, 1081 E. LONG LAKE,** for relief of the Ordinance to place two temporary storage containers for the time period December 10<sup>th</sup> through December 31, 2006.

Mr. Stimac explained that the petitioner is requesting approval under the Zoning Ordinance to place two temporary storage containers outside at 1081 E. Long Lake from December 10, 2006, through December 31, 2006. Section 43.80.00 of the Zoning Ordinance gives the Board of Zoning Appeals the authority to permit temporary buildings for permitted uses for a time frame not to exceed two years. This Board has granted similar requests for this site in the past. The Building Department has no record of complaints as a result of previous approvals.

Mr. Broderick was present and asked if this Board could grant this request for this year and next year. Other than this time request, this request is identical to the other requests made by this petitioner.

Mr. Stimac explained that although this Board had the authority to grant this request for a period of two years, in his application, the petitioner had only requested the time frame that was published.

Mr. Hutson suggested that the petitioner ask for the additional time needed the next time they came before the Board.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are six (6) written approvals on file. There are no written objections on file.

Motion by Maxwell  
Supported by Wright

MOVED, to grant John Broderick, of Honey Baked Ham, 1081 E. Long Lake, relief of the Ordinance to place two (2) temporary storage containers outside for the time period December 10<sup>th</sup> through December 31, 2006.

- Variance is not contrary to public interest.
- There are no objections on file.
- Variance will not have an adverse effect to surrounding property.

Yeas: 6 – Kovacs, Maxwell, Wright, Courtney, Gies, Hutson

MOTION TO GRANT VARIANCE CARRIED

**ITEM #2 – VARIANCE REQUEST. JAE DUK CHO, OF ADA ARCHITECTS, 1304 E. MAPLE,** for relief of the Ordinance to alter an existing industrial building, that will result with a parking lot on the north side of the building to within 10' of the north property line and 21'-8" to the east property line where Section 30.20.09 requires a 50' front setback and Paragraph L of Section 31.30.00 requires that the front yard remain free of parking and maneuvering lanes.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to alter an existing industrial building.

The site plan submitted indicates the removal of the existing office portion of an industrial building and the expansion of the parking lot on the north side of the building to within 10' of the north property line along Maple Road and within 21'-8" of the east property line along Allen Drive. Section 30.20.09 of the Zoning Ordinance requires a 50' front setback in the M-1 (Light Industrial) Zoning District and Paragraph L of Section 31.30.00 requires that this front yard remain free of parking or maneuvering lanes. The parking lot along the east property line farther south on this lot is currently located 21'-8" from the front property line along Allen Drive based upon a variance granted in 1992.

This item last appeared before this Board at the meeting of October 17, 2006 and was postponed to allow the petitioner the opportunity to look at other options that are available; and to allow the petitioner to demonstrate to the Board the reason this much parking will be required. Since that meeting revised plans have been submitted with an alternate parking layout that would increase the greenbelt along the Maple Road property line to 43'.

Mr. Dan Saleet was present and stated that they had listened to what the Board had to say at the last meeting and believe they have come up with a solution that will appeal to the Board. They have reduced the number of parking spaces to ninety-three (93), which will be enough for their needs. They have also increased the amount of greenspace along Maple Road that will now result in a 43' setback.

Mr. Maxwell stated that he appreciated the compromise that the petitioner had made and thought this variance request was more reasonable.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Mr. Kovacs stated that this plan is much better and likes the fact that the petitioner is providing more greenspace.

Motion by Kovacs  
Supported by Courtney

**ITEM #2 – con't.**

MOVED, to grant Jae Duk Cho, of ADA Architects, 1304 E. Maple, relief of the Ordinance to alter an existing industrial building, that will result with a parking lot on the north side of the building to within 43' of the property line along Maple Road, where Section 30.20.09 requires a 50' front setback and Paragraph L of Section 31.30.00 requires that the front yard remain free of parking and maneuvering lanes.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property described in this application.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Variance does not permit the establishment of a prohibited use within a Zoning District.
- The revised site plan will result in less paving in the front yard than currently exists.

Yeas: 6 – Maxwell, Wright, Courtney, Gies, Hutson, Kovacs

MOTION TO GRANT VARIANCE CARRIED

**ITEM #3 – VARIANCE REQUEST. YEN CHEN, 4679 JOHN R.,** for relief of the Ordinance to construct an addition at the rear of his home that would result in a 26' rear yard setback, where Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition at the rear of his existing home. The site plan submitted indicates the proposed three-season enclosure will result in a 26' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

This item last appeared before this Board at the meeting of October 17, 2006 and was postponed at the request of the petitioner.

Mr. Joe Foxa, representing Mr. and Mrs. Chen was present. He distributed drawings of other possibilities for this sunroom. Mr. Foxa indicated that they could convert the existing garage to a sunroom and then construct a detached garage at the rear of the property. Mr. Foxa stated that although he understands the neighbors are very much against this sunroom, in his opinion it would be better to look at a sunroom rather than a detached garage. The homeowners are amenable to changing the existing garage to a three-season room.

Mr. Hutson asked if a garage could be constructed without a variance. Mr. Stimac stated that although he was not sure if there were any easements at the rear of this property, the alternate plan submitted would comply with the Ordinance regarding the square footage of accessory buildings, lot coverage and setbacks.

**ITEM #3 – con't.**

Mr. Foxa stated that he did not think the people behind this home would like to look at the back of a garage. He said that he had attempted to contact the owners that abut this property but was unable to talk to them.

Mr. Hutson said that he was against this variance request and the alternate plan does not require any type of variance.

Mr. Courtney said that in his opinion the neighbors were probably more interested in what would be happening with the large recreational vehicle parked on the property.

Mr. Foxa said that he offered that vehicle to the neighbors as a bargaining tool to them and said if they would be willing to rescind their objection, he could probably convince the Chens to move the vehicle to a storage lot, but the neighbors did not accept that. The Chens also like to have the recreational vehicle parked in their yard. Mr. Foxa also asked if the neighbors would rather look at a garage, with a ladder hanging on the back, possibly painted orange or a sunroom 30' or 40' away.

Mr. Kovacs said that there are two plans available, one that would require a variance and one that does not. He sympathizes with the needs of the Chens, but this property does not warrant a variance. This is a spec home built to within the 40' line, and the petitioner is allowed to add a detached garage.

Motion by Kovacs  
Supported by Courtney

MOVED, to deny the request of Yen Chen, 4679 John R., for relief of the Ordinance to construct an addition at the rear of his home that would result in a 26' rear yard setback, where Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

- Petitioner failed to demonstrate a hardship running with the land.

Yeas: 6 – Wright, Courtney, Gies, Hutson, Kovacs, Maxwell

**MOTION TO DENY VARIANCE CARRIED**

Mr. Hutson explained that the Ordinance requires a hardship with the land in order to grant a variance, and there is not a hardship running with this property.

**ITEM #4 – VARIANCE REQUEST. JEFFREY AND DONNA ARCE, 3511 BEACH,** for relief of the Ordinance to construct a covered front porch and laundry room addition to their existing, legal non-conforming home. These alterations would result in a 31' front setback to the new covered porch and a 37' front setback to the proposed laundry room addition. Section 30.10.02 requires a 40' front yard setback and Section 40.50.04

**ITEM #4 – con't.**

prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a covered front porch and laundry room addition to their existing home. This home is a non-conforming structure. The original plans for the home from 1961 show that it would meet the minimum front setback. However, recent surveys show that it has an existing 36' front yard setback to Beach Road where 40' is required per Section 30.10.02. Plans submitted indicate a new covered porch with a proposed 31' front setback and a proposed laundry room addition with a 37' front setback to the front property line along Beach Road. Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Jeffrey and Donna Arce were present. Mr. Arce stated that they have been residents of Troy for sixteen (16) years and they are in the process of re-doing the roof. They thought this would be a good time to make the necessary changes they wanted to do to their home. There are a lot of renovations going on around the neighborhood and they believe this is the time to do it.

Mr. Arce explained that they cannot enter the house from the attached garage, and when they add the laundry room, they will change the entrance to the home and have a true attached garage. Even though the addition is going out 7' it will not go up to the edge of the house. The addition is approximately 17' x 11', and it will close off the breezeway and give them a true attached garage.

There is an existing 4' x 12' open porch and they plan to rebuild it, add the roof and some columns. They have been working on this project for about a year and Mr. Arce believes this will fit in very nicely with the other homes in the area. Mr. Arce said that he had spoken to a number of his neighbors and they have all been very supportive of these proposed changes. These changes will not expand the structure more than it already is.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are four (4) written approvals on file. There are no written objections on file.

Motion by Maxwell  
Supported by Wright

**ITEM #4 – con't.**

MOVED, to grant Jeffrey and Donna Arce, 3511 Beach, relief of the Ordinance to construct a covered front porch and laundry room addition to their existing, legal non-conforming home. These alterations would result in a 31' front setback to the new covered porch and a 37' front setback to the proposed laundry room addition. Section 30.10.02 requires a 40' front yard setback and Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

- Variance will not decrease the existing setback of the home.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: 6 – Courtney, Gies, Hutson, Kovacs, Maxwell, Wright

MOTION TO GRANT VARIANCE CARRIED

**ITEM #5 – VARIANCE REQUEST. TOBY BUECHNER, 1600 W. MAPLE**, for relief of the Ordinance to eliminate the sidewalk along the northeast portion of the building and also to eliminate the sidewalk between the Maple road public sidewalk and the building perimeter sidewalk, both of which are required by Section 39.70.03.

Petitioner is also asking for relief of the dumpster enclosure screening required by Section 39.70.09.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to eliminate the sidewalk along the northeast portion of the building between the building and the vehicular use area and also to eliminate the sidewalk between the Maple Road public sidewalk and the building perimeter sidewalk, both of which are required by Section 39.70.03.

Petitioner is also asking for relief of the dumpster enclosure screening required by Section 39.70.09.

In August, 2006, the petitioner received a variance from this Board to reduce the amount of countable landscaping to 4,923 square feet where Section 39.70.04 of the Ordinance requires a minimum of 7,062 square feet of landscaping; and, in January 2006 Mr. Buechner received a variance to eliminate the sidewalk along the northwest and a portion of the west side of the building.

Mr. Buechner was present and stated that he is new to this business and he and his brother are trying to create a valuable business in the City of Troy. This is a uniquely shaped building. Mr. Buechner stated that the sidewalk in the back of the property does not come or go from anywhere and this is the reason he does not feel it is valuable. Regarding the sidewalk from the front of the building to Maple, Mr. Buechner said that

**ITEM #5 – con't.**

he did not believe anyone has ever walked to the building. He is trying to be practical and does not feel that this sidewalk is needed.

Mr. Buechner said that the dumpster is small, brand new and is actually screened by a tree and the building next door. There are a number of large dumpsters in this area that are not screened and he does not feel the dumpster on his property should require any additional screening. This building was vacant for three (3) years and he feels that they are moving in the right direction. Kids are having fun and there are seventeen (17) people employed.

Mr. Kovacs asked how people would safely walk to the entrance of the building if the sidewalk was removed behind the building. Mr. Buechner said that he does not believe in the nine (9) months that this building has been operational, anyone has ever parked at the back of the building.

Mr. Stimac explained that the reason there is no sidewalk along the west side of the building, is because this Board had previously granted a variance to eliminate that sidewalk. The plan originally seen by the Planning Commission and this Board had the parking and the driveway flipped. The driveway was at the northern edge of the property, but there is an existing pole with a guy wire, which makes it almost impossible to put a driveway in this area.

Mr. Courtney asked for clarification regarding the variance granted by this Board for the sidewalk on this property. Mr. Stimac explained that previously there was a request to eliminate the sidewalk along the northwest portion of the building and this variance was granted. Mr. Buechner said that this was due to the irregular shape of the building and constraints to provide adequate parking.

Mr. Courtney stated that he did not have a problem granting a variance for either sidewalk, but did have a problem eliminating the screening around the dumpster. Mr. Buechner passed a picture around to the Board members so that they could see what the dumpster looked like.

Mr. Hutson asked what type of screening would be put around this dumpster and Mr. Buechner said that he would probably put screening on three (3) sides of the dumpster, but does not feel this is very practical, and hopes that if he does have to add screening, no one will crash into it.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

**ITEM #5 – con't.**

Mr. Hutson said that this was a very difficult site. Mr. Buechner said that the beauty is on the inside of the building, and many employees of the City have brought their children over to use and enjoy this facility.

Motion by Courtney  
Supported by Wright

MOVED, to grant Toby Buechner, 1600 W. Maple, relief of the Ordinance to eliminate the sidewalk along the northeast portion of the building also to eliminate the sidewalk between the Maple road public sidewalk and the building perimeter sidewalk, both of which are required by Section 39.70.03.

- There is no practical purpose for the sidewalks.
- Variance is not contrary to public interest.

Yeas: 6 - Courtney, Gies, Hutson, Kovacs, Maxwell, Wright

MOTION TO GRANT VARIANCES FOR THE ELIMINATION OF TWO SIDEWALKS  
CARRIED

Motion by Kovacs  
Supported by Gies

MOVED, to grant Toby Buechner, 1600 W. Maple, relief of the Ordinance to eliminate the dumpster enclosure screening required by Section 39.70.09.

- Dumpster screening would be unnecessarily burdensome to the petitioner.
- Screening would make turning in the parking lot very difficult.

Yeas: 3 – Gies, Hutson, Kovacs  
Nays: 3 - Maxwell, Wright, Courtney

MOTION TO GRANT VARIANCE FAILS

The Zoning Board of Appeals meeting adjourned at 8:26 P.M.

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Michael Hutson, Chairman

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Pamela Pasternak, Recording Secretary

A meeting of the **Troy Youth Council (TYC)** was held on November 29, 2006 at 7:00 PM at the Troy Community Center, 3179 Livernois. Alex Gabriel and Kristin Randall called the meeting to order at 7:05 p.m.

**MEMBERS PRESENT:** Alexandra (Sasha) Bozimowski  
 Andrew Corey  
 Maxine D'Amico  
 Alex Gabriel (Co-chair)  
 Rishi Joshi  
 Jessica Kraft  
 Joseph Niemiec  
 Anupama Prasad  
 Kristin Randall (Co-chair)  
 Neil Shaw (Secretary)  
 Katie Thoenes  
 Nicole Vitale  
 Karen Wullaert

**MEMBERS ABSENT:** None  
**VISITORS:** Barbara Holmes, Deputy City Clerk  
**STAFF PRESENT:** John Hug, Fitness Coordinator

### 1. Roll Call

### 2. Approval of Minutes

Resolution # TY-2006-11-14  
 Moved by Bozimowski  
 Seconded by Niemiec

RESOLVED, That the minutes of September 27, 2006 be approved.

Yes: All – 13  
 No: 0  
 Absent: 0

### 3. Attendance Report:

Updated through October 2006. Reviewed by council members, no comments.

### 4. Futures Process:

A final meeting was held on Monday, November 27. Only TYC member notified of the meeting was Bozimowski. Remainder of members were not notified.

### 5. Visitor: Barbara Holmes, Deputy City Clerk.

Presented information on:

1. Functions of the Clerks Office which include processing applications for boards and committees, maintaining City ordinances and charter. The job is diverse and very involved with legislation/City Council.
2. City Clerks office is the record keeper of the City.

- 3. City Clerks position is appointed, not elected.
- 4. Everybody within the department is cross-trained.
- 5. Students will be needed in May to process voters and complete clerical work. Students will get paid \$7.50 per hour. Students must be 16 years of age. Students who are 18 and a registered voter may also work as a chair person.

**6. Troy Daze Festival:**

Maxine D’Amico prepared a letter for the Troy Daze Committee and sent it to Andrew Corey for revision. Corey showed Youth Council the edited letter. He suggested that the TYC send the letter in person. TYC members plan on making final edits to the letter and signing at the December 20 meeting.

**7. Motion to Excuse Absent Members Who Have Provided Advance Notification**

**No motion - full attendance**

Resolution # TY-2006-11-

Moved by

Seconded by

RESOLVED that

Yes: 0

No: 0

Absent: 0

**8. Youth Council Comments –**

-None.

**9. Public Comments –**

-None.

The meeting adjourned at 7:35 P.M.

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Alex Gabriel, Co-chair

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Scott Mercer, Recreation Supervisor

Reminder Next Meeting: December 20 at 7:00 P.M. @ *Troy Community Center*

The Chairman, Ted Dziurman, called the meeting of the Building Code Board of Appeals to order at 8:32 A.M., on Wednesday, December 6, 2006 in the Lower Level Conference Room of the Troy City Hall.

PRESENT: Ted Dziurman  
Rick Kessler  
Bill Nelson  
Tim Richnak  
Frank Zuazo

ALSO PRESENT: Mark Stimac, Director of Building & Zoning  
Marlene Struckman, Housing & Zoning Inspector Supervisor  
Pamela Pasternak, Recording Secretary

### **ITEM #1 – APPROVAL OF MINUTES – MEETING OF NOVEMBER 1, 2006**

Motion by Kessler  
Supported by Richnak

MOVED, to approve the minutes of the meeting of November 1, 2006 as written.

Yeas: All – 5

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

**ITEM #2 – VARIANCE REQUEST. MICHAEL BOGGIO ASSOCIATES, 3111, 3115, 3119 CROOKS ROAD**, for relief of Chapter 85 to enlarge an existing 50 square foot ground sign to a size of 140 square feet in area.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to enlarge the existing 50 square foot ground sign to 140 square feet in area. The sign as proposed to be modified would be 3' from the public right-of-way. Section 85.02.05 limits signs within 10' of the property line to not more than 50 square feet in area.

Michael Boggio was present and stated that this site and the one to the north are similar in nature. The building to the north has a sign for which this Board granted a variance, approximately one year ago. The proposed sign, on the south site, would be almost identical to the sign for the building to the north. Mr. Boggio said that they are not proposing to change anything on the sign; they would just like to put the brick frame around it. This sign would not be as large as the sign to the north, but would be a nicer looking structure than what is currently in place.

Mr. Dziurman asked for clarification regarding the size of signs and the setbacks to the right of way.

**ITEM #2 – con't.**

Mr. Stimac explained that the distance of the sign dictates the size of the sign from the right of way. The existing sign complies with the requirements of the Ordinance. The sign for the north building is located at a 16' setback from Crooks Road.

Mr. Boggio explained that they plan to use the existing masonry base and will not bring the sign any closer to the right of way. They would be going up rather than out.

Mr. Richnak stated that he had gone to the site and was very concerned about the site line along the sidewalk. Mr. Richnak feels that adding this brick frame will cause a problem for pedestrians to see on-coming traffic and believes the sign should be moved back. The proposed sign would create a very short site distance and this would affect the safety of both drivers and pedestrians.

Mr. Kessler stated that he agrees with Mr. Richnak and feels the proposed sign would create an obstruction. Mr. Kessler also stated that in order for the Board to grant a variance, a hardship is required with the land, and this parcel does not have a hardship.

Mr. Richnak asked if conditions could be placed on a motion regarding this proposed sign.

Mr. Stimac said that basically there were two options: One would be to postpone this request until the next meeting to allow the petitioner to explore other options; and the second to approve the request as long as certain conditions were imposed on it. If the request is approved with conditions and they choose not to implement them, the variance would expire.

Mr. Kessler asked how far back a sign of this size would have to go in order to comply with the ordinance and Mr. Stimac said at least 20' from the right of way.

Mr. Boggio said that they could not move it that far back, as the bottom two frames of the present sign would be blocked by the cars in the parking lot. Mr. Boggio felt that the sign could be moved back some, but if it was moved that far back they would have to put up a new sign.

Mr. Kessler said that as long as they were pouring cement they could move it back 6' as well as 2'.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

**ITEM #2 – con't.**

Mr. Dziurman asked the petitioner if they wished to postpone this request. Mr. Boggio said that they would rather have the Board approve the request with conditions attached.

Motion by Kessler  
Supported by Richnak

MOVED, to grant Michael Boggio Associates, 3111, 3115, 3119 Crooks Road, relief of Chapter 85 to enlarge an existing 50 square foot ground sign to a size of 140 square feet in area.

- Leading edge of the new sign cannot be any closer than 5' to the property line.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 5

MOTION TO GRANT VARIANCE WITH CONDITIONS CARRIED

The Building Code Board of Appeals meeting adjourned at 8:48 A.M.

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Ted Dziurman, Chairman

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Pamela Pasternak, Recording Secretary

A meeting of the **Troy Youth Council (TYC)** was held on December 20, 2006 at 7:00 PM at the Troy Community Center, 3179 Livernois. Nicole Vitale and Karen Wullaert called the meeting to order at 7:00 p.m.

**MEMBERS PRESENT:** Alexandra (Sasha) Bozimowski  
 Andrew Corey  
 Maxine D'Amico  
 Alex Gabriel  
 Rishi Joshi  
 Jessica Kraft  
 Joseph Niemiec  
 Anupama Prasad  
 Kristin Randall  
 Katie Thoenes (Secretary)  
 Nicole Vitale (Co-chair)  
 Karen Wullaert (Co-chair)

**MEMBERS ABSENT:** Neil Shaw

**VISITORS:** Cindy Stewart, Community Affairs Director

**STAFF PRESENT:** Cindy Stewart, Community Affairs Director

### 1. Roll Call

### 2. Approval of Minutes

Resolution # TY-2006-12-15  
 Moved by Thoenes  
 Seconded by Bozimowski

RESOLVED, That the minutes of November 29, 2006 be approved.

Yes: All – 12  
 No: 0  
 Absent: 1 - Shaw

### 3. Attendance Report:

Updated through November 2006. Reviewed by council members, no comments.

### 4. Futures Process:

No Update.

### 5. Visitor: Cindy Stewart, Community Affairs Director

Presented information on the functions of the Community Affairs Department:

1. Presented City Council goal to effectively communicate internally and externally.
2. Community Affairs communicates with residents and businesses through publications (calendar, Troy Today, brochures), cable tv (meetings, programs, events and weekly news), radio station and website.
3. Create and distribute new resident packets and business attraction and retention packets.

- 4. Liaison to City Committees – Cable Advisory Board, Ethnic Issues Advisory Board, Troy Daze Committee, Intergovernmental Cable Communications Authority.

**6. Troy Daze Festival:**

Council discussed the current status of the Troy Daze event and decided to hold off sending letter to Troy Daze Committee until after January meetings between the Troy Daze Committee and City Council to determine direction of event.

**7. Motion to Excuse Absent Members Who Have Provided Advance Notification**

**No motion - full attendance**

Resolution # TY-2006-12-16

Moved by               Bozimowski

Seconded by         Niemiec

RESOLVED that Neil Shaw is excused.

Yes:                 12

No:                 0

Absent:            1 - Shaw

**8. Youth Council Comments –**

-None.

**9. Public Comments –**

-None.

The meeting adjourned at 7:35 P.M.

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Karen Wullaert, Co-chair

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Scott Mercer, Recreation Supervisor

Reminder Next Meeting: January 24 at 7:00 P.M. @ *Troy Community Center*

**CITY OF TROY  
TRAVEL EXPENSE REPORT**

Name: Robin Beltramini Position: Council Member

Other Employees Included in Request: \_\_\_\_\_

Trip Destination: Beno NV Date From: Dec. 5, 2006 To: Dec. 10, 2006

Purpose of Trip: \_\_\_\_\_

Items	Dates:	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	TOTAL
<b>Miles</b> (Personal Car)		41							
Enter Current Mileage Rate: \$ 0.44 /mile		\$18.04							\$ 18.04
<b>City Car Expense</b> (Details on Bottom)									
<u>Air/Bus/Train</u>		307. <sup>59</sup>							307. <sup>59</sup> ✓
<b>Registration</b>				645. <sup>00</sup>					645. <sup>00</sup> ✓
<b>Room</b> (Attach all Receipts)				89. <sup>67</sup>	89. <sup>67</sup>	89. <sup>67</sup>	89. <sup>67</sup>	89. <sup>67</sup>	448. <sup>35</sup> ✓
<b>Meals</b> (Include tips and taxes. Note meals included with registration)									
Breakfast:		4. <sup>64</sup>			2. <sup>50</sup>	3. <sup>75</sup>	2. <sup>50</sup>		13. <sup>39</sup> ✓
Lunch:					7. <sup>00</sup>				7. <sup>00</sup> ✓
Dinner:				6. <sup>22</sup>					6. <sup>22</sup>
<b>Other taxi</b> Detail, Explain Below		8. <sup>00</sup>							8. <sup>00</sup>
<b>Additional Other</b> Detail, Explain Below									
<b>TOTAL EXPENSE</b>		\$338. <sup>27</sup>		740. <sup>89</sup>	99. <sup>17</sup>	93. <sup>42</sup>	92. <sup>17</sup>	89. <sup>67</sup>	\$1453. <sup>59</sup>

Details of City Car Expense

Total Mileage	
Gasoline/Oil Purchased (Attach Receipts)	
Maintenance Work (Attach Receipts)	
Parking/Storage	
Other ( )	
Total	

Cash Advanced	1400. <sup>94</sup> ✓
Balance Due Employee	\$ 52. <sup>65</sup>
(or) Balance Due City	

**Notes and Explanations:**

Robin E. Beltramini Requested By Date Dec 14, 2006

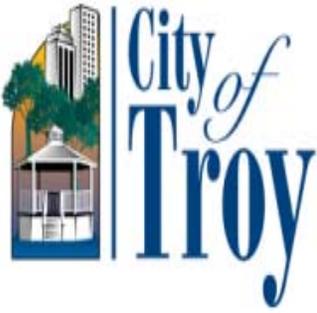
[Signature] Department Head Date 12/20/06

[Signature] Approved - Human Resources Director Date 12-20-06

[Signature] Approved - Financial Services Director Date \_\_\_\_\_

Charge to: Council's Education + Training

Dept. Account # 102-7960



**TO:** MAYOR AND MEMBERS OF CITY COUNCIL  
**FROM:** LORI GRIGG BLUHM, CITY ATTORNEY  
 ROBERT F. DAVISSON, ASSISTANT CITY ATTORNEY  
 CHRISTOPHER J. FORSYTH, ASSISTANT CITY ATTORNEY  
 SUSAN M. LANCASTER, ASSISTANT CITY ATTORNEY  
 ALLAN T. MOTZNY, ASSISTANT CITY ATTORNEY  
**DATE:** December 21, 2006  
**SUBJECT:** 2006 FOURTH QUARTER LITIGATION REPORT

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The following is the quarterly report of pending litigation and other matters of interest. **The accomplishments during the FOURTH quarter of 2006 are in bold.**

#### A. ANATOMY OF THE CASE

Once a lawsuit has been filed against the City or City employees, the City Attorney's office prepares a memo regarding the allegations in the complaint. At that time, our office requests authority from Council to represent the City and/or the employees. Our office then engages in the discovery process, which generally lasts for several months, and involves interrogatories, requests for documents, and depositions. After discovery, almost all cases are required to go through case evaluation (also called mediation). In this process, three attorneys evaluate the potential damages, and render an award. This award can be accepted by both parties, and will conclude the case. However, if either party rejects a case evaluation award, there are potential sanctions if the trial result is not as favorable as the mediation award. In many cases, a motion for summary disposition will be filed at the conclusion of discovery. In all motions for summary disposition, the Plaintiff's version of the facts are accepted as true, and if the Plaintiff still has failed to set forth a viable claim against the City, then dismissal will be granted. It generally takes at least a year before a case will be presented to a jury. It also takes approximately two years before a case will be finalized in the Michigan Court of Appeals and/or the Michigan Supreme Court.

#### B. ZONING CASES

These are cases where the property owner has sued for a use other than that for which the land is currently zoned and/or the City is suing a property owner to require compliance with the existing zoning provisions.

2. Troy v. Papadelis and Papadelis v. Troy - This is a case filed by the City against Telly's Nursery, seeking to enjoin the business from using the northern parcel for commercial purposes. After a lengthy appellate history, an order was entered in the Oakland County Circuit Court, requiring compliance on or before April 29, 2002. The Papadelis family failed to comply with the court's order, and therefore a Contempt Motion was filed. Oakland County Circuit Court Judge Colleen O'Brien determined that the defendants were in contempt of court, and required them to pay \$1,000 to the City of Troy. However, the court also determined that the defendants

were in compliance with the City of Troy zoning ordinances as of the date of the court decision. The Troy City Council authorized an appeal of this decision to the Michigan Court of Appeals. It was filed on September 27, 2002. The neighbors filed an application for leave to appeal, which was denied by the Michigan Court of Appeals on 2/10/03. After receiving criminal citations from the City for expansion of the business, Papadelis filed a federal lawsuit against the City of Troy, alleging civil rights violations and seeking an injunction against the prosecution and/or further expansion. The neighboring property owners filed a Motion to Intervene, which was granted by Federal US District Court Judge Arthur Tarnow. Troy filed a counterclaim in the Federal Court case but it was dismissed by Judge Tarnow, who refused to exercise jurisdiction over the counter-complaint, since it would require him to interpret the opinion of the Oakland County Circuit Court Judge. Troy has subsequently filed two separate motions to dismiss the Papadelis complaint. One of the motions asserted the same jurisdictional claim that was raised against the counter-complaint. The Court granted Troy's motion based on jurisdictional issues and dismissed the case without prejudice. The court did not rule on the other motion, but instead, directed the Papadelises to re-file their case in state court. The Papadelis family then re-filed its lawsuit in Oakland County Circuit Court. Troy filed an answer and a counterclaim. Troy also immediately filed a motion for summary disposition seeking dismissal of the complaint and a judgment in favor of Troy. The counterclaim seeks an order requiring the Papadelis family to remove two greenhouses and other structures that have been built upon the property without approvals that are required under the zoning ordinance. The Court scheduled an early intervention conference (settlement conference) for October 18, 2005. The Court has set the hearing date for the Motion for Summary Disposition for January 4, 2006. Subsequent to the filing of Troy's Motion for Summary Disposition, Plaintiffs' filed a Cross Motion for Summary Disposition, and the hearing was rescheduled for January 18, 2006. On February 17, 2006, the Court entered its written Opinion and Order, dismissing the Papadelis claim for money damages and their claim for injunctive relief. However, the Court also granted Summary Disposition in favor of the Plaintiffs on their claim for declaratory relief, and held that "retail" activity was not occurring on the northern parcel, and that the "agricultural" activities on the northern parcel were protected under the Right to Farm Act. Additionally the Court ruled the Plaintiffs' were exempt from City permitting requirements under the agricultural building permit exemption of the State Construction Code Act. The Court also dismissed the City's counterclaim. Troy has filed an appeal with the Michigan Court of Appeals. Plaintiffs' have filed a cross appeal challenging the dismissal of their claims for money damages and injunctive relief. All the required briefs have been filed with the Court of Appeals, which will either schedule an oral argument or will inform the parties that the case will be decided without oral argument. Since this case was assigned to the expedited track for summary disposition appeals, a final decision on appeal is expected before the end of September of this year.

On June 16, 2006, the Building Department discovered that the Papadelis family was erecting a new, large pole barn structure on the property at 3301 John R. Road. This structure was likely in violation of local and/or state law. The Building Department followed the procedure for issuing a Stop Work Order. In addition, our office filed an emergency motion with the Court of Appeals, seeking to enjoin construction of the building pending final outcome of the appeal. On June 21, 2006, the Court of Appeals granted the motion for immediate consideration, but denied the motion to enjoin construction of the building. The denial of the motion has no bearing on the final outcome of this appeal, and if Troy ultimately prevails on appeal, the new building will have to be removed. Despite the issuance of the Stop Work Order, the construction continued on the new building. The Papadelis Family then filed a Motion to hold the City Attorney and the Director of Building and Zoning in contempt of court. In this Motion, the Papadelis family argued that the Circuit Court ruling (Judge Colleen O'Brien) allows the construction of the new building without a permit and without having to comply with the zoning ordinance provisions regulating the size and location of buildings. Judge O'Brien denied this Motion on June 28, 2006, and ruled that her earlier ruling (the ruling on appeal) was limited to the buildings on the property at the time of the ruling, and did not extend to allow for new construction on the site. On September 19, 2006, the Court of Appeals affirmed the decisions of the Circuit Court. Thus, the Court affirmed the declaratory judgment in favor of the plaintiffs, but it also affirmed the dismissal of plaintiff's civil rights claims against the City, Mark Stimac, and Marlene Struckman. **Troy has filed an Application for Leave to Appeal with the Michigan Supreme Court. The Michigan Municipal League is also filing an amicus brief in support of the City's Application for Leave to Appeal. The Papadelis family filed a Cross Application for Leave to Appeal. If the Supreme Court denies both the Application for Leave to Appeal and the Cross Application for Leave to Appeal, the Court of Appeals decision becomes the final decision in this case. The Supreme Court may grant both the Application and Cross Application for Leave to Appeal, or it may grant one and deny the other, or it may grant either Application in part and limit the issues that it will review.**

2. Gerback (as a member of 300 Park Venture, L.L.C.) v Troy – This lawsuit was filed August 25, 2005, but it was not served on Troy until September 20, 2005. The case involves a parcel consisting of 0.892 acres located on the northwest corner of Rochester Road and Marengo that is presently zoned R-1B (One Family Residential). Plaintiff filed an application to rezone the property to B-1 for the purpose of developing a Binson's Home Health Care Center. The Planning Commission voted to recommend that City Council deny the rezoning. On August 1, 2005, City Council postponed the decision on the rezoning request until the first meeting in March 2006, to allow for the Planning Commission to consider amending the Future Land Use Plan in the Rochester Road Corridor between Square Lake Road and South Boulevard, before

Council would make a decision on the rezoning request. In count I of the complaint, the Plaintiff contends City Council has breached a clear legal duty by refusing to act on Plaintiff's Rezoning Request. He seeks a writ of mandamus requiring City Council to act on the rezoning request "within a reasonable time period, not to exceed twenty-one (21) days." Counts II and III allege City Council has effectively denied the rezoning request by the postponement. He argues that such denial constitutes a violation of Plaintiff's right to substantive due process (count II) and the right to equal protection under the law (count III). In both counts II and III, Plaintiff seeks an injunction that prevents Troy "from interfering with Plaintiff's proposed use of the Property." In addition to responding to the complaint, Troy also filed an immediate motion for summary disposition, arguing that the Plaintiff had failed to set forth a claim that entitled him to his requested relief. The hearing on this motion is scheduled for January 4, 2006. After a hearing, the Court granted Troy's Motion for Summary Disposition in part, and dismissed Count I of Plaintiff's complaint that sought a writ of mandamus. As to the other two counts of the complaint, the Court determined there were issues of fact that could only be decided at a trial. The parties are now conducting discovery in preparation for trial. Plaintiff filed a motion to amend the complaint to reinstate the mandamus claim and to add a new claim for damages based on inverse condemnation. After a hearing on the motion, the Court took the matter under advisement and indicated a written decision would be issued. On June 21, 2006, Judge Chabot issued her written opinion, denying the Plaintiff's motion to amend the complaint. Trial is scheduled for July 13, 2006. At the request of Plaintiff, the trial has been rescheduled for October 30, 2006. **On October 30, 2006, the parties appeared at Court for the scheduled trial date. However, the Court was unable to begin the trial on that day, and re-scheduled the trial for January 8, 2007. On December 18, 2006, City Council approved B-1 zoning for the property. As a result, the Plaintiff has now voluntarily dismissed his case against the City.**

3. Karagiannakis and Garrett Family Ltd.Partnership v. City of Troy, et. al. –The lawsuit was filed, seeking a Declaratory Judgment that a 43-foot easement is a "public" roadway easement under the control of the City of Troy. Garrett Family Ltd. Partnership has an option to purchase an outlot that is currently owned by Mr. and Mrs. Karagiannakis. The property would be a part of a proposed site condominium project. However, Troy's Zoning Ordinance requires that there be public street access for all new residential development. Therefore, this lawsuit was filed to convert the 43- foot wide driveway into a "public roadway." Our office filed an immediate Motion for Summary Disposition, arguing that there is no authority for the Court to grant the requested relief, since the Land Division Act requires a re-plat action to accomplish what the Plaintiffs propose. In a re-plat action, the Plaintiffs would file the case against all property owners within 300 feet, as well as the utilities and the units of government. **Plaintiffs filed their Brief in Response to our Motion for Summary Disposition, and also filed a First Amended Complaint, adding two new claims against the Defendants. In the first**

additional claim, Plaintiffs allege that the Court should order the City to allow the Plaintiffs to construct a private driveway from their property to the nearest public road. In the second additional count, Plaintiffs argue that the City has violated Plaintiffs' due process rights. This alleged due process violation stems from the City's failure to allow the use of an easement for roadway purposes for a public or private driveway for their development. The City filed a new Motion for Summary Disposition requesting dismissal of all claims, including the additional claims. Oral arguments on this new Motion are set for February 14, 2007.

4. **Milano Development Company, Inc. v. City of Troy, et. al.** – This lawsuit was filed on December 11, 2006. It seeks to amend part of a plat to vacate an easement reserved on the original plat of the Square Acres Subdivision Plat, located in Section 14. The Plaintiff is proposing to develop a 13-unit site condominium project on Lot 17. The City has already granted preliminary site plan approval of the proposed Athens Park Site Condominium Project. However, the development cannot be completed in accordance with the approved site plan unless the private roadway easement is vacated.

### C. EMINENT DOMAIN CASES

These are cases in which the City wishes to acquire property for a public improvement and the property owner wishes to contest either the necessity or the compensation offered. In cases where only the compensation is challenged, the City obtains possession of the property almost immediately, which allows for major projects to be completed.

#### 1. Parkland Acquisition (Section 36)

1. **Troy v. Premium Construction, L.L.C.** – The City has filed this lawsuit against Premium Construction, L.L.C. (John Pavone and Mukesh Mangala) to acquire property for a park in Section 36. After a prolonged discovery process, a bench trial began on February 22, 2005. The Court had to interrupt the bench trial proceedings with a number of other matters, including criminal jury trials, and had the parties on stand by and/or took limited testimony for several months. The last testimony in the lengthy bench trial was taken on June 10, 2005. After the testimony, the Judge required the parties to submit post-trial "Finding of Facts and Conclusion of Law" and a summary Memorandum, which were timely submitted by July 13, 2005. Replies to those briefs were due July 20, 2005. The parties are now anxiously waiting for the Judge's decision. It is unknown when the decision will be rendered. After several months, Oakland County Circuit Court Judge Mark Goldsmith requested portions of the transcript of the lengthy trial proceedings. Unfortunately, this request has been unexpectedly delayed, since the transcribing court reporter

broke his wrist, and is unable to complete the work himself and/or have others complete it for him. The parties continue to wait for the Court's decision. The Court issued his written opinion on February 3, 2006. The Defendants filed a Motion for Attorney Fees, and a hearing on that request was scheduled for April 5, 2006. The Court issued a written order on June 9, 2006 determining the amount of attorney fees. An appeal of the Court's decisions was filed with the Michigan Court of Appeals on June 30, 2006. The Michigan Court of Appeals subsequently ordered mandatory facilitation, which is continuing. **The trial transcript was completed and filed with the Court of Appeals. The parties will be submitting briefs in the near future.**

#### D. CIVIL RIGHTS CASES

These are cases that are generally filed in the federal courts, under 42 U.S.C. Section 1983. In these cases, the Plaintiffs argue that the City and/or police officers of the City of Troy somehow violated their civil rights.

1. **Hooters v. Troy- Hooters filed this lawsuit against the City in Federal District Court after its state court case was dismissed, and after the Michigan Court of Appeals denied Plaintiff's motion for peremptory reversal. Hooters alleges that in denying its request to transfer a Class C Liquor License, Troy City Council violated its constitutional freedom of speech, equal protection, and due process rights. City Council's action, according to the federal complaint, has caused Hooters to delay the opening of its new restaurant at Rochester and Big Beaver, and to lose significant profits. Consequently, Hooters has requested damages in excess of a million dollars. On November 22, 2006 we filed a motion for summary judgment asking District Court Judge Julian A. Cook to dismiss the case. A hearing date has been set for February 7, 2007.**

#### E. PERSONAL INJURY AND DAMAGE CASES

These are cases in which the Plaintiff claims that the City or City employees were negligent in some manner that caused injuries and/or property damage. The City enjoys governmental immunity from ordinary negligence, unless the case falls within one of four exceptions to governmental immunity: a) defective highway exception, which includes sidewalks and road way claims; b) public building exception, which imposes liability only when injuries are caused by a defect in a public building; c) motor vehicle exception, which imposes liability when an employee is negligent when operating their vehicle; d) proprietary exception, where liability is imposed when an activity is conducted primarily to create a profit, and the activity somehow causes injury or damage to another; e) trespass nuisance exception, which imposes liability for the flooding cases.

1. **Norma Robertson v. City of Troy- Plaintiff has filed this lawsuit, claiming that the City is liable for injuries she sustained after falling**

**on a sidewalk in front of 392 Hickory. The complaint alleges that the city is liable under the defective highway exception. According to the complaint, on January 10, 2006, Plaintiff was walking on the sidewalk when she tripped over a raised portion of concrete. This raised portion, she alleges, caused severe injuries, including a broken right arm. An answer to the complaint is due by January 15, 2007.**

#### F. MISCELLANEOUS CASES

1. In Re Hooters of Troy Inc. – Hooters has filed this lawsuit to challenge the June 19, 2006 City Council denial of their application to transfer a liquor license and entertainment permit. Hooters was seeking to re-locate their business from John R to Rochester Road, to the building that was previously occupied by the Wagon Wheel Saloon. Hooters has signed agreements with the former owners (Sign of the Beef Carver- Wagon Wheel), for the building and also the liquor license with entertainment permit. Pursuant to state law, local legislative approval is required for a transfer of Class C Liquor License and entertainment permit. In their complaint, Hooter’s alleges that the City Council denial of the transfer of the liquor license violates their equal protection rights and due process rights. They are asking the Court for an order of superintending control, which means they are asking a Circuit Court Judge to overrule City Council’s decision. Hooters is also asking for costs, attorney fees, and incidental damages as a result of the delay in moving its operation to Rochester Road. Shortly after filing their complaint, Hooter’s filed a motion requesting a superintending control order. On July 26, 2006 Oakland County Circuit Court Judge John McDonald, after hearing argument, denied Hooter’s motion and dismissed their case. Judge McDonald in making his ruling, stated that municipalities are afforded broad discretion in review applications for new or transferred liquor licenses, and that Troy City Council exercised this discretion properly in denying Hooter’s request for to transfer a Class C Liquor License and new entertainment permit. On August 4, 2006, Hooters filed a claim of appeal with the Michigan Court of Appeals. They also filed a motion for immediate consideration and motion for peremptory reversal arguing that Judge McDonald’s decision was so blatantly wrong that immediate reversal is warranted. On August 16, 2006, the Court of Appeals granted Hooter’s motion for immediate consideration but denied their motion for peremptory reversal. Hooter’s appeal is still pending, and all the required briefs have been filed with the Court of Appeals. **The Court of Appeals has not yet set the date for oral argument.**
2. Troy v. George Roberts – **This nuisance abatement action was filed after the City received multiple complaints from neighbors about the unsafe and unsanitary conditions existing at Defendant’s residence, located at 6791 Livernois Rd., in the City of Troy. According to reports from his neighbors, Defendant accumulated a large amount of trash, papers and debris inside his residence. There also was a concern that the residence**

did not have working plumbing. These reports were confirmed by subsequent inspections by Troy Building Inspectors, who observed multiple ordinance violations at Defendant's home. On November 17<sup>th</sup>, our office filed a lawsuit and a motion for a preliminary injunction with the Oakland County Circuit Court. Judge Mark A. Goldsmith entered an order on November 29, 2006, precluding Defendant from occupying the home until the first floor of the property was brought in compliance with the City's Property Maintenance Code. The order allows Defendant to clean his residence in phases, but requires completion of the entire project by January 10, 2007. The first floor was brought into compliance with the Property Maintenance Code as of the inspection date of December 19, 2006, and the Defendant was therefore allowed to return to his residence. A second inspection is scheduled for January 3, 2007.

#### G. CRIMINAL APPEALS

1. **People v Aileen Grace Potter** – Ms. Potter was charged with operating a motor vehicle while intoxicated. Her attorney filed a Motion to Dismiss the complaint, arguing that the Defendant was not “operating” a motor vehicle pursuant to the statute. Visiting Judge Levy granted the Defendant's Motion. The City has filed a Claim of Appeal with the Oakland County Circuit Court. The case is pending.

If you have any questions concerning these cases, please let us know.

28999 Redlands Mesa Road  
Hotchkiss, CO 81419-9435  
Phone: 970-872-7575

December 2, 2006

Chief Charles Craft  
City of Troy Police Department  
500 W. Big Beaver  
Troy, MI 48084

Dear Chief Craft:

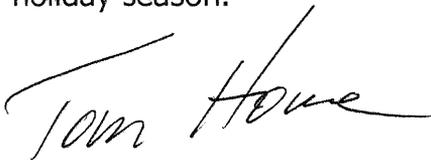
You called me on November 10, 2006 regarding a letter I had sent you requesting some assistance finding a family heirloom rifle which was there in Troy at a firm which appears to have closed it's doors. At that time you told me you didn't know if you could help, but to give you a few weeks and your team would check into the situation.

This past week my rifle arrived by mail.

I don't know if you and your team were totally or partially responsible but in either case I wanted to let you know that I appreciate your attention to my dilemma. It's very refreshing to find an organization that is willing to respond to a request from someone so far away and with such a trivial problem.

My most gracious thanks to you and your team. Receiving the rifle was a fantastic early Christmas present for us.

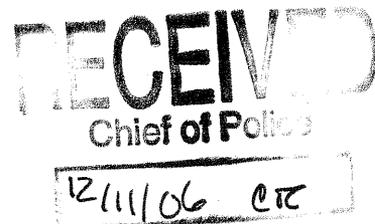
Please wish your entire staff and family our best wishes for a great Christmas and holiday season.



Tom Howe

CC: City Council – City of Troy, MI.

CC: City Mgr.





STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

December 8, 2006

Ms. Tonni L. Bartholomew, Clerk  
Troy City  
500 W. Big Beaver Road  
Troy, Michigan 48084-5285

Dear Ms. Bartholomew: *Tonni*

Now that the 2006 general election is "in the books," I want to offer my deepest appreciation for your dedication in ensuring its success.

I realize that every election places great demands on your time and resources, but this year took us to new and uncharted territories. The rollout of new voting equipment, additional federal requirements, a lengthy ballot, record turnout and heightened public scrutiny of elections nationwide all combined to make this year's preparation and administration even more challenging.

You and the election workers appointed in your jurisdiction did an amazing job of not only meeting those challenges, but often surpassing them as well. I am keenly aware of the countless hours that you devoted to preserving Michigan's record of election efficiency and integrity. You demonstrated beyond a doubt that your overriding concern was for the best interests of Michigan's voters. I know they share the respect and gratitude that I have for you.

I often tell people that their vote is their voice. But without you, democracy's voice could not be heard. Thank you for accepting the often difficult - but always noble - mantle of public service. Michigan's strength and bright future are due in large part to your extraordinary contributions.

I look forward to continuing our partnership in the years ahead. Remember that my door is always open. Again, please accept my sincerest thanks for a job well done, and my warmest wishes to you and your family during this holiday season.

Sincerely,

*TLL*  
Terri Lynn Land  
Michigan Secretary of State

*Thanks Greatly!*



# CLACKAMAS COUNTY SHERIFF'S OFFICE



**Office of  
CRAIG ROBERTS, SHERIFF  
CHARLES BOWEN, UNDERSHERIFF**

Chief Charles Craft  
Troy Police Department  
500 W. Big Beaver  
Troy, MI 48084

November 17, 2006

Dear Chief Charles Craft,

The Clackamas County Sheriff's Office Domestic Violence Enhanced Response Team would like to thank you and your agency for your participation in the 4<sup>th</sup> Annual National Family Violence Apprehension Detail. We would especially like to acknowledge your effort in locally coordinating your agency within this national effort. This year was a continued success as performed numerous warrant attempts and services on family violence offenders. Nationally, agencies reported the following statistics for the detail:

- 5009 Attempts of Warrant Services
- 916 Warrants Served
- 1492 Law Enforcement Personnel Participated
- 35 Probation and Parole Personnel Participated
- 21 District Attorney Victim/Witness Advocates Participated
- 6 Shelter Worker Participated
- 2 City /District Attorneys Participated
- 23 Other Members from Agencies and Local Communities Participated (U.S. Marshals, Correction Officers, Chaplains, Reserve Officers, etc.)

Most importantly, agencies across the United States sent the message offenders will be held accountable for their actions. We understand that this voluntary effort is hard work and can be a burden on resources, but because of your dedication, we continue to send the message that family violence is a serious crime law enforcement, parole and probation, victim services, and community agencies address on a regular basis. We look forward to your participation next year, as we anticipate increasing efforts.

Thank you,

Sheriff Craig Roberts  
Clackamas County Sheriff's Office

Jenn Roark, National Coordinator  
Domestic Violence Enhanced Response Team  
Clackamas County Sheriff's Office

CITY MANAGER

# January 2007

January 2007							February 2007						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28			

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
January 1, 07	2	3	4	5	6
City Hall Closed	7:00pm Ethnic Issues Advisory Board (Conference Room C)	8:30am Building Code Board of Appeals (Conference Room LL) 7:00pm Advisory Committee for Persons with Disabilities (Conference Room L)	1:00pm Advisory Committee for Senior Citizens (Community Center Room 301)		
8	9	10	11	12	13
7:00pm Liquor Advisory Committee Meeting (Conference Room Lower Level) 7:30pm City Council Meeting (Council Chambers)	7:30pm Planning Commission Regular Meeting (Council Chambers)	12:00pm Employee's Retirement System Board (Conference Room C)			
15	16	17	18	19	20
	3:00pm BRA Meeting (Council Boardroom) 7:30pm BZA (Chambers) 7:30pm Historic District Commission (Conference Room C)	7:30am DDA Meeting (Conference Room Lower Level) 7:00pm Cable Advisory Committee (Conference Room C)	7:00pm Parks & Recreation Advisory Board (Community Center - 3179 Livernois)		
22	23	24	25	26	27
7:30pm City Council Meeting (Council Chambers)	7:00pm Troy Daze Advisory Committee (Community Center - 3179 Livernois) 7:30pm Planning Commission Special/Study Meeting (Council Boardroom)				
29	30	31			

# February 2007

February 2007							March 2007						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
	4	5	6	7	8	9		4	5	6	7	8	9
11	12	13	14	15	16	17	11	12	13	14	15	16	17
18	19	20	21	22	23	24	18	19	20	21	22	23	24
25	26	27	28				25	26	27	28	29	30	31

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
			February 1	2	3
			1:00pm Advisory Committee for Senior Citizens (Community Center Room 301)		4
5	6	7	8	9	10
7:30pm City Council Meeting (Council Chambers)	7:00pm Ethnic Issues Advisory Board (Conference Room C) 7:30pm Planning Commission Special/Study Meeting (Council Boardroom)	8:30am Building Code Board of Appeals (Conference Room L) 7:00pm Advisory Committee for Persons with Disabilities (Confere) 7:30pm City Council Liquor Hearing (Council C			11
12	13	14	15	16	17
7:00pm Liquor Advisory Committee Meeting (Conference Room Lower Level)	7:30pm Planning Commission Regular Meeting (Council Chambers)	12:00pm Employee's Retirement System Board (Conference Room C)	7:00pm Parks & Recreation Advisory Board (Community Center - 3179 Livernois)		18
19	20	21	22	23	24
	7:30pm BZA (Chambers) 7:30pm Historic District Commission (Conference Room C)	7:30am DDA Meeting (Conference Room Lower Level)			25
26	27	28			
7:30pm City Council Meeting (Council Chambers)	7:00pm Troy Daze Advisory Committee (Community Center - 3179 Livernois) 7:30pm Planning Commission Special/Study Meeting (Council Boardroom)	7:30pm City Council Liquor Hearing (Council Chambers)			

# March 2007

March 2007							April 2007							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	4	5	6	7	1	2	3	1	2	3	4	5	6	7
11	12	13	14	15	16	17	8	9	10	11	12	13	14	
18	19	20	21	22	23	24	15	16	17	18	19	20	21	
25	26	27	28	29	30	31	22	23	24	25	26	27	28	
							29	30						

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
			March 1 1:00pm Advisory Committee for Senior Citizens (Community Center Room 301)	2	3
					4
5	6	7	8	9	10
7:30pm City Council Meeting (Council Chambers)	7:00pm Ethnic Issues Advisory Board (Conference Room C)  7:30pm Planning Commission Special/Study Meeting (Council Boardroom)	8:30am Building Code Board of Appeals (Conference Room LL)  7:00pm Advisory Committee for Persons with Disabilities (Conference Room L			11
12	13	14	15	16	17
7:00pm Liquor Advisory Committee Meeting (Conference Room Lower Level)	8:30pm Planning Commission Regular Meeting (Council Chambers)	1:00pm Employee's Retirement System Board (Conference Room C)  2:00pm Retiree Health Care Benefits Board (Conference Room C)	8:00pm Parks & Recreation Advisory Board (Community Center - 3179 Livernois)		18
19	20	21	22	23	24
7:30pm City Council Meeting (Council Chambers)	8:30pm BZA (Chambers) 8:30pm Historic District Commission (Conference Room C)	8:30am DDA Meeting (Conference Room Lower Level)			25
26	27	28	29	30	31
	8:00pm Troy Daze Advisory Committee (Community Center - 3179 Livernois)  8:30pm Planning Commission Special/Study Meeting (Council Boardroom)				



# CITY COUNCIL REPORT

December 14, 2006

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services  
Steve Vandette, City Engineer

SUBJECT: Request for Federal Aid Funding – FY 2010 and 2011

Background:

- The Oakland County Federal Aid Funding Committee will hold their annual meeting on February 7, 2007 for the purpose of approving road improvement projects for federal aid funding. Oakland County typically receives federal funds in the range of \$20-24 million to distribute to projects within Oakland County in the various funding categories.
- There are not sufficient federal funds available for all projects in Oakland County or even all phases of projects in Troy, so projects are prioritized and funding is programmed over several years.
- The following “Next Phase” projects will be submitted for funding consideration in the Surface Transportation Program – Urban (STPU) or Economic Development Fund – Category “C” (EDFC) categories for FY 2010 and 2011:

Project Name	Limits	Federal Amount	Local Match	Year	Phase
Rochester	Torpey to Barclay	\$ 1,200,000*	\$ 0	2010	CON
Wattles	600' E. & W. of Rochester	\$ 2,100,000	\$ 653,000	2010	CON
Livernois	Long Lake to Square Lake	\$ 2,400,000	\$ 600,000	2010	ROW
John R	Long Lake to Square Lake	\$ 5,500,000	\$ 2,977,000	2010/2011	CON
John R	Square Lake to South Blvd.	\$ 5,000,000	\$ 1,747,000	2010/2011	CON
Stephenson	14 Mile to I-75	\$ 2,600,000	\$ 722,000	2010/2011	CON
Rochester	Barclay to Trinway	\$ 9,000,000	\$ 2,671,000	2011	CON
Livernois	Long Lake to Square Lake	\$ 5,300,000	\$ 2,439,000	2011	CON
	<b>TOTAL</b>	<b>\$33,100,000</b>	<b>\$11,809,000</b>		

**PHASE**

**ROW** – Right-of-Way Acquisition

**CON** – Construction

\* \$8,400,000 was approved for this project in 2009 with a local match of \$3,386,000

- Once a project has been approved for preliminary engineering the entire project is then moved into the “Next Phase” category and subsequent phases (right-of-way and construction) are approved for funding based on the year originally ranked and availability of federal funds. The approval by the Funding Committee earmarks the federal funds for three (3) years into the future.

Financial Considerations:

- By obligating previous phases of a project, the city has agreed to construct these projects at some time in the future and fund the local share of the project.
- In the event that actual construction of the roadway is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the project contract covering the work is executed, the city would be required to repay all monies distributed for the previous project phases.

Legal Considerations:

- It is the responsibility of the local agency to complete all requirements for a specific phase in order to obligate the federal funds, including executing an agreement with the Michigan Department of Transportation (MDOT) which requires approval by City Council. Until obligation of the federal funds has been approved, no federal funds are available to the project phase and no local match is required.

Policy Considerations:

- Widening and reconstruction of major roads provides a safer road and relieves congestion (Goal #2 & #4)
- The use of federal funds reduces the overall cost to the city (Goal #1)

Approved for Submittal:

\_\_\_\_\_  
Phillip L. Nelson, City Manager

January 2, 2007

RECEIVED

JAN 02 2007

CITY OF TROY  
CITY MANAGER'S OFFICE

Mr. Phil Nelson, City Manager  
City of Troy  
500 West Big Beaver Road  
Troy, MI 48084

Dear Mr. Nelson:

A number of Troy residents would like the City to consider changing the ordinance regarding chaining of dogs. We would appreciate it if this could be put on the agenda for the January 8, 2007, City Council Meeting.

Enclosed is information for each member of the Council for their review prior to the meeting.

Please contact me at 248-879-7729 if you have any questions.

Sincerely,



Irene S. MacColeman  
2130 Stirling Drive  
Troy, MI 48085

Enclosure

**Note: A Hard Copy of Information is Included in your Agenda Packet**

# City Council Interview Questions

## 1) What do you want the City of Troy to excel at 5, 10 and 20 years from now?

- 5 years—balanced tax base; high quality of life; high property values; updated Master Land Use Plan.
  - 10 years—IT and invention capitol of Oakland County; Big Beaver beginning to show life as a world class boulevard; partnerships that keep service costs low to our taxpayers.
  - 20 years—THE SE Michigan destination for businesses, visitors, and families; effective mass transit; service offerings match citizen demographics.
- 
- Continued redevelopment taking place that would provide for all segments of our population.
  - Both the Big Beaver corridor study and the Maple Road study in process as these plans take time. Hopefully our gateways will be completed by the 10 year mark.
  - Ongoing efforts to maintain the City's tax base, getting back to the 50/50 split between residents and businesses.
  - Fill up all the empty office space.
  - A must that the master land use plan be completed and evidence of this plan acted on.
- 
- Big Beaver redevelopment with additional PUDs.
  - Maple and Stephenson redeveloped.
  - Balance budget/lower or maintain millage rate.
  - Master land use plan updated.
  - Best place in Michigan to live, work and play.
- 
- Troy needs to continue to be good at the things we do well. We need to efficiently and effectively deliver services to our residents. We need to have a strong economic base so that our community thrives not just 5, 10 or 20 years from now, but well beyond that.
  - We need to ensure ease of doing business in our City so that we can indeed be economically healthy.
  - Troy needs to continue to be a desirable community in which to live. Our tax rate must remain low and perhaps even be reduced further. We have an excellent spirit of volunteerism that manifests itself in many ways, not the least of which is the Fire Department. This needs to continue and be supported very much by the current and all future governing bodies.
- 
- Frugal use of taxpayer dollars.
  - Innovative local government.
  - Government partnerships with nonprofits and the private sector.
  - A safe community.
  - A family community.
  - A balanced and diverse economic base.

# City Council Interview Questions

- 5 years - To continue to be the safest city; redevelopment that will offer a balanced tax rate (no office vacancies); unemployment below 1%; a strict adherence to all ordinances which will equate to high quality of life; high level of services; high property values; wireless internet.
- 10 - 20 years - Major infrastructure improvements; a great lead into materialization of the Futures Report and Big Beaver (ring road to support a walkable downtown?). How about a coalition with other Oakland County communities to develop our own waste water treatment facility?
- Once the transit center is in place, we'll need ground transportation: buses, taxis, electric vehicles for transportation to and from hotels and businesses. Think of an ad that says, "Welcome to Troy! Troy offers transportation to whisk you from where and when you arrive to your choice of hotel or your business destination."
- Make us unique to southeast Michigan. Bring in electric vehicles. Check with Ovonics; they already have them.

# City Council

## Interview Questions

2) Each year the State announces the consumer price index (CPI). Should the CPI become one of the guiding benchmarks for an annual overall budget increase?

- The state CPI *could* become one of several factors used as benchmarks for the growth, or decrease, of the overall budget. I would want to see it used with other factors (e.g., Troy population change, employment figures, expansion or compression of the City's AV).
- Troy needs to continue to work at keeping our taxes low. I believe one reason people move and stay in Troy is because while we offer good services, our tax base continues to remain low. When people move out of a city because of high taxes...guess what...we lose all the taxes they are paying! We can always justify raising taxes...but the outcome is always the same...we lose. No...CPI should not be a guiding benchmark for overall budget increases.
- Strive for zero tax increase but never exceed the CPI.
- Yes.
- No. I would prefer another index that more accurately reflects costs that directly impact Troy City government.
- Not necessarily. We tighten our belts. Lose employees by attrition, have a better work ethic. Equate it more with the Michigan economy.

3) City Management believes that we should ideally maintain a fund balance of 17% but not drop below 10%. What is your opinion on this?

- I believe that we should not go below 12%, and should strive for the 17%.
- I agree with City Management regarding the goal of 17% and not dropping below 10%. I practice this with my own finances and it works!
- Agree, but prefer to not drop below 12%.
- This is reasonable.
- I would prefer a fund balance of at least 10% and no more than 15%.
- I agree with City Management. Dropping our fund balance can have serious repercussions (lose ability to borrow, lose AAA rating, and bond investment and sales).

# City Council Interview Questions

- 4) Is it more important to: a) Maintain the same level of service, even if it means a tax increase within our authorized limit; b) Reduce the level of service in order to maintain the overall rate of 9.43 mills; or c) Does your response differ for essential and non-essential services? If yes, define.

- For most service areas, I believe it is essential to maintain the level of service, even if it means a tax or fee increase. My answer is different for some non-essential services. For example, I believe that hours could be cut for the historical museum, nature center, and some community center functions, or fees raised, instead of raising taxes to maintain those levels of service. In all cases, I would expect staff to continue their aggressive pursuit of alternate funding and delivery mechanisms to reduce cost before requesting fee or tax increases.

- I believe that Council Members differ on what defines essential and non-essential services. There is where lies the big debate! Government is “allowed” by the people to collect monies that would provide for “essential” services. Essential services would be comprised of police, fire, streets, water and sewer. I also believe that the tax dollars should support our public libraries and museums and public parks. Everything after that is a “non-essential”. When we “the government” starting taking ... yes...taking...money from our residents to support a gym...we not only are spending taxpayers’ monies wrongfully...we are not competing with private enterprises. Government can operate in the red...we just raise taxes! Private enterprises need to make a profit or they close down. Even if some these “services” support themselves through fees...they are still costing the taxpayers. Government should not be in any other business other than providing police and fire protection, maintaining the roads and sewers, public parks, providing public learning centers and preserving our heritage within the boundaries of our public museums.

- b) Reduce non-essential services and control cost. Always maintain excellent police and fire services, as well as the roads.

- We should be able to deliver the same quality of service while maintaining our millage rate or reducing it. This can be accomplished through efficiencies in operations.
- The city government should have an organizational structure that is appropriate for us. This may necessitate changes to the way things are currently done.
- In addition, if we are in a financial tight spot, so to say, we should charge fees for non-essential services or spin off one of the golf courses prior to even considering raising taxes.

- We need to maintain the overall rate of 9.43 mills. However, we also need to focus on ways to partner with nonprofits and the private sector to help maintain a high level of service without resorting to tax increases.
- To guarantee that essential services protecting life, property, health and safety are maintained, my preference is to first shift funding from non-essential services and as a last resort, increase taxes.

# City Council Interview Questions

- a) The level of service is why people come to Troy, not the lower tax rate. For me, all services are important, but certainly police, fire, streets, water and sewer have to take priority.
- We cannot allow slumming of residential or commercial neighborhoods. We must retain the character and attractions of neighborhoods in order to meet the expectations of the majority of residents. If it takes an increase in taxes to do that, so be it. Our residents do not find a half mill increase onerous - I've asked them. They were in total disbelief when Council lowered the rate by .02. What did that mean to the average homeowner? A couple of dollars.
- We must not commercialize our neighborhoods, i.e., day care centers, small business. They must be kept on the perimeters. Nor do commercial vehicles belong in residential neighborhoods. Business districts vs. residential.

# City Council Interview Questions

5) In a general sense, please prioritize capital expenditures in terms of: a) Infrastructure; b) IT improvements; or c) Park development

1. Infrastructure—because of the “first impression” it gives and the ongoing frustration its disintegration can cause.
2. IT improvements—because of the efficiencies as well as education and “sense of community” such technology can foster.
3. Park development—because its quality of life improvement does not give the same “bang for the buck” as the other two.

1. Infrastructure
2. Park development
3. IT improvements

1. Infrastructure.
2. IT improvements - only where we can demonstrate a good ROI.
3. Park development - take advantage of business donations and civic organizations to help maintain.

1. Infrastructure
2. Park Development
3. IT improvements

1. Infrastructure.
2. Park development.
3. IT improvements.

1. Infrastructure is most visible to residents. If infrastructure is well maintained, it will support capital outlay.
2. Park development - This is an environmental, ecological and recreational expectation of our residents.
3. IT improvements - Wireless and improvements to our web site. Ease of use is necessary for any users (business, residents, students, global industry, etc.) It should be our welcome mat to the world, a site we would want to visit.

# City Council Interview Questions

6) What else would you like to discuss that pertains to the City of Troy as an organization, City Council, or the Council/Manager partnership?

- Council/Manager partnership—I would like to see even more emphasis on “policy” and less on mechanics from council. This could include some seminars/books/articles regarding different governance or decision-making methodology as well as case study materials.
- City Council—We need a better capability to discuss thorny issues without offending our colleagues or the public.
- City—As the community changes, there is a constant need to re-evaluate the “organizational chart.”

- I believe that the Council/Manager partnership is one of the better methods of running a city. Council members are lay people...we should not be expected to “know it all”. We need management to continue bringing us information so we can make better decisions. I would encourage our City staff to never think we have enough information. Never assume we know something important...please bring it to the table.
- City Council will always have its difficulties because of the wide range of basic beliefs. I would like to see less “pot-shots”. I believe we do get tired and frustrated at times, however, I believe we need to always show respect regardless if we agree with each other or not.
- The City of Troy as an organization is phenomenal! There are always ways to improve, and I believe we will do just that! That’s what makes our organization phenomenal!

- Streamline the processes for building and development and make more development friendly.

- On major policy matters, it is imperative that council and management are on the same page. If we need to delay action so that we can have a study session, that is always preferable to any process that is awkward and chaotic.
- I am very concerned about some of our purchasing items that have come before council, and I think it has to do with getting staff and council to speak the same language (because the purchasing department is very professional and capable).
- Sometimes policy issues manifest themselves in purchasing or bidding and it is really the first time that council has had the opportunity to express itself on the issue.
- On another note, it is imperative that the City Manager and Council have a serious discussion about the structure of our municipal government (i.e. departments, hierarchical flow chart, etc.).

- How to improve and “routinize” the planning and budgeting process for City Council.
- How to enhance citizen input on City issues and long-range planning.

# City Council Interview Questions

- I'm glad to see the word "partnership". We need to be partners in the complete sense of the word.
- More timely response to our requests by staff.
- Better direction from our paid professionals to help us take the City to a higher level ... we must not stagnate; we must not become apathetic.
- More timely response to residents (They are not to get the feeling they are being ignored)
- We cannot afford to lose our small town flavor. Troy depends on volunteerism providing excellent service with little costs (firefighters, Library, FTPL, Historical Society, Parks and Rec., Outdoor Education Center, Troy Daze, Boards and Committees, etc.

# City Council

## Interview Questions

7) Making the Big Beaver corridor more pedestrian-friendly is one of the key components of the corridor study. In light of this concept, should Troy invest in alternative modes of transit? Would you be willing to allocate funding?

- Absolutely. There is not a world-class city of any size without effective public transportation. Also, for a host of reasons, we need to provide the ability (as well as reasons) to walk along Big Beaver and to travel, easily, to other parts of the City.

- Yes, and we should seek sources for both private and public funding, possible private this transportation.

- We should not do this until or unless we withdraw from the Suburban Mobility Authority for Regional Transportation (SMART). Livonia provides a good litmus test for us. We pay to SMART well in excess of the services that we actually use in Troy. Instead of SMART, we should be able to keep 100% of the same taxes within Troy, continue to deliver quality transportation options, and also improve and/or create new transportation options. Regarding alternative modes of transit, I am concerned about wasting additional monies on unnecessary studies. Alternative transit may be the fad of the hour and we should not spend time or money investigating it unless we are truly committed.

- With the understanding that taxes will not be increased, I believe that it would be beneficial to improve public transit in Troy. We should work with Medi-Go Plus and SMART to determine ways we can improve those partnerships.

- First of all, would it be utilized? It is dubious at best. I believe the question is premature. We need to determine alternate routes before we consider alternate modes. In the late 90s we attempted a shuttle service provided by SMART during the Christmas shopping season at noon hour for businesses mostly along 16 Mile. Never saw a report of success/failure so I don't know why it was discontinued. It was largely initiated by the Chamber of Commerce. We might want to contact them.

# City Council Interview Questions

8) Please review ICMA survey results. How important is it that the City maintain its above-the-norm ratings?

- It is not important to maintain the above-the-norm ratings for ratings sake. It IS important to maintain that level of service and satisfaction to attract and retain families, jobs, and visitors.
- Survey is important.
- This is important, especially in the essential services areas.
- In general, it is important that we deliver high quality services in a cost-efficient manner. This requires us to continually review our organization structure to ensure its optimization. We need to have an innovative approach to governance and not rely on the “same old, same old”.
- I would prefer that we prioritize those above-the-norm ratings that make this a safe community where people want to live and work. We should also look at our below-the-norm ratings to determine which are appropriate to address.
- Extremely important.

# City Council Interview Questions

- 9) Listed below are the major areas of service the City of Troy provides to its residents. A scale is provided for you to indicate at what level of service you want each function to perform.

Staff will allocate budget funds based on the results of your answers. In other words, the level of importance to the Council as a group will be one of the guiding factors as to how available money is allocated.

	High	Medium	Low
Police	X		
Fire	X		
Streets, Water and Sewer	X		
Parks and Recreation	X		
Library	X		
Administration	X		

Parks and Recreation and Library are more non-essential services. However, they are part of our identity. It would be easy to say that those could operate at a “medium” level, but to attract and retain families and jobs, those services are essential to our “quality of life” rating. It is that quality of life that will be an even bigger draw than any tax rate we could establish.

	High	Medium	Low
Police	X		
Fire	X		
Streets, Water and Sewer	X		
Parks and Recreation		X	
Library		X	
Administration	X		

# City Council Interview Questions

	High	Medium	Low
Police	XXX		
Fire	XXX		
Streets, Water and Sewer	XXX		
Parks and Recreation		XXX	
Library			XXX
Administration	XXX		

	High	Medium	Low
Police	X		
Fire	X		
Streets, Water and Sewer		X	
Parks and Recreation		X	
Library		X	
Administration		X	

	High	Medium	Low
Police	X		
Fire	X		
Streets, Water and Sewer		X	
Parks and Recreation		X	
Library		X	
Administration		X	

# City Council Interview Questions

	High	Medium	Low
Police	X		
Fire	X		
Streets, Water and Sewer	X		
Parks and Recreation		X	
Library		X	
Administration	X		

# City Council Interview Questions

## 10) Additional Comments

- Suggest that private business and civic organizations be asked to help support the Parks and Recreation and Library budgets to help maintain and improve these areas. The Chamber of Commerce could be requested to participate.
- While I place Administration in the “medium” rank, I would add one qualifier - if Administration is used to enhance delivery of public services in ways that save tax dollars, I would move it up into a “high” rank (for example, the recent agreement with Clawson for police dispatching services).
- Actually, I want each function to perform at the highest level. If budgetary considerations prevent that, then the first 3 items must come first. I believe I have expressed by answers to #8 and #9 in the context of answers #1 - #7. Please review pages 6 and 9 of the Citizens Survey.



## CITY COUNCIL REPORT

December 11, 2006

TO: The Honorable Mayor and City Council

FROM: Phillip L. Nelson, City Manager

SUBJECT: Correlation of Council Goals with Futures Report

As the next step in the Troy Futures process, staff has tried to correlate the various committee thoughts with the Council's goals and objectives. Staff tried to be very broad in interpretation, but it appears that the Futures Committees placed a fairly heavy emphasis on what could be called quality of life issues, and, to a lesser extent, placed emphasis on economic development. There was also a significant amount of emphasis placed on regionalism, especially from a planning and economic development standpoint. A listing of "Preferred Futures" is included on the last two pages of this memo.

In 2005, the Council adopted the following goals and objectives:

- Minimize cost and increase efficiency of City government
- Retain and attract investment while encouraging redevelopment
- Effectively and professionally communicate internally and externally
- Creatively maintain and improve public infrastructure
- Annually improve the strategic plan
- Protect life and property

Council objectives include:

- Enhance the flow of information
- Address citizen input and concerns
- Maintain high level of service
- Promote culture of professionalism
- Determine appropriate staffing levels
- Expand electronic functions
- Prioritize capital projects
- Promote economic development and redevelopment
- Uphold fiscal integrity
- Recognize diversity and encourage participation

If the Council chooses to adopt the Futures Report as a part of the City's planning process, based on input from the various committees, staff would suggest that the goals and objectives be revised as follows:

- Minimize cost and increase ~~efficiency~~ *effectiveness* of City Government
- Retain and attract investment while encouraging redevelopment
- Effectively & professionally communicate internally & externally
- ~~Creatively maintain & improve public infrastructure~~
- *Expand the scope of public infrastructure to meet changing public needs*
- ~~Annually improve~~ *Emphasize regionalism and incorporate creativity into* the *annual* strategic planning process
- ~~Protect life and property~~ *Enhance the livability and safety of the community*

Council objectives revisions include:

- Enhance the *a two-way* flow of *public* information
- Address citizen input and concerns
- Maintain high level of service
- Promote culture of professionalism
- Determine appropriate staffing levels
- Expand electronic functions
- Prioritize capital projects
- Promote economic development and redevelopment
- Uphold fiscal integrity
- Recognize diversity and encourage participation
- *Enhance community livability through more integration of business, educational, recreational and other (re)development philosophies*
- *Revamp regulatory documents to be more flexible to take changing styles of the times into account*

The primary reasons for amending the goals as suggested are that if the Council chooses to adopt some or all of the suggestions offered in the report, budgets and other planning documents will have to be geared toward ensuring that the infrastructure, including technology, is ready to accommodate change. Additionally, planning documents will have to be revised to make the necessary changes in philosophies in order to bring the "preferred futures" to fruition.

To date, planning documents have been amended to allow for specific changes in development, but those documents have not always kept pace with changing styles of the times. As a whole, planning documents are designed to give a basic inventory of what the community has, but do not provide guidance in development directions to ensure that the City has the ability to supply all of the required infrastructure and resources to meet changing times. Large-scale redevelopment of various areas throughout Troy as suggested in the Futures Report could require the City to complete comprehensive studies to determine if City systems, including financial systems, have the capacity to accommodate proposed changes.

Based on Council action on the Troy Futures Report, staff will then develop a Strategic Policy Plan that uses the Council's goals and objectives, and the Troy Futures Report as its basis.

Points indicated by the Troy Futures Committee Members - "Preferred Futures":

- Recognize diversity through better communication
- Utilize aging population using their experience
- Create better forum for community discussion
- Partner with "civic" organizations as a means of shifting public participation
- Address declining revenues by alternative means to do more with less
- Modernize the Future Land Use Plan
- Create a "villaging" development concept to create a connected sense of community
- Become a model of environmentally friendly community
- Develop into more of a vibrant, dynamic & prosperous city showcasing a variety of business and residential uses
- Have elected leaders who govern in the best interest of the total community and is supported by a responsive and cooperative staff
- Troy has implemented "villaging" development concepts
- Develop multiple downtown areas that revolve around a specific culture or ethnic themes
- Focus on (physical) fitness
- Develop "My Village" concept
- Maintain small town feel through big city, small community themes
- Gotta Have Art
- Develop a "just hanging out" feel by forming gathering places
- Develop an outdoor sports complex
- Troy has a Citywide Lifetime Learning Committee
- Develop broad variety of life enriching educational methods to better face and deal with global lifestyles
- Troy community facilitates learning opportunities that encompass a variety of experiences, lifestyles and cultures using community knowledge and experience
- World class lifetime learning services and facilities are available to the entire Troy community

- Troy provides opportunity, encouragement and recognition for the highest levels of academic achievement including educational curriculum preparing students to handle the latest advances in technology in a healthy, accepting learning environment
- Troy is a safer place for travelers
- Troy is a walkable/bikeable community with an extensive network of non-automotive pathways
- Troy will be a city with multiple transit options for all age groups and workforce members
- Virtual pathways will exist to substitute communication for transportation
- Troy is a “green-clean” city
- Southeastern Michigan has developed into a world-class region
- Troy and the surrounding communities have coordinated their redevelopment efforts focusing on the strengths of each community to promote smart growth and retention of the creative class
- Southeastern Michigan has developed a multi-modal transportation system that is supportive of economic development and that provides alternative modes of transportation for citizens of all ages
- Troy is collaborating with southeastern Michigan to establish regional, high quality services in a cost efficient manner
- Troy has a regional spirit to create cultural, recreational, education, family and senior activities that improve the quality of life for all segments of the region’s population
- Create and promote an entrepreneurial area
- Create Troy promotional activity
- Upgrade public transportation
- Encourage Troy’s Asian population to become THE Southeast Michigan business link to Asia