CITY COUNCIL ACTION REPORT

October 31, 2007

TO: Phillip L. Nelson, City Manager

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

SUBJECT: William Beaumont Hospital Parking Agreement

Background:

- On November 13, 2006 the City of Troy and William Beaumont Hospital entered into an agreement to allow use of the Flynn Park roadway by hospital personnel. The agreement prohibited parking on City property.
- Construction on William Beaumont Hospital property has resulted in a shortage of parking and the request by Beaumont to use Flynn Park as a temporary parking site.
- Discussions between the two parties have resulted in the proposed addendum attached to this memo.

Financial Considerations:

- Approval of the addendum will result in additional revenues of $5,000/annually for park improvements.

Legal Considerations:

- The addendum contained herein addresses all legal considerations negotiated by both parties.

Policy Considerations:

- This item is consistent with goal III.

Options:

- City management recommends approval of the addendum for use of the Flynn Park parking lot by William Beaumont Hospital personnel.

October 31, 2007

To: Phillip L. Nelson, City Manager
Re: William Beaumont Hospital Parking Agreement

Approved as to Form and Legality: _____

Lori Grigg Bluhm, City Attorney

ADDENDUM TO *AGREEMENT BETWEEN CITY OF TROY AND WILLIAM BEAUMONT HOSPITAL FOR THE USE OF DRIVEWAY* TO ALLOW FOR THE TEMPORARY USE OF A PORTION OF FLYNN PARK FOR PARKING PURPOSES

This Agreement is entered into between the City of Troy, a Michigan municipal corporation, whose address is 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter "City", and William Beaumont Hospital, a Michigan non-profit corporation, whose address is 3601 West Thirteen Mile Road, Royal Oak, Michigan 48073, hereinafter "Beaumont".

RECITALS

A. City is the fee simple owner of a certain parcel of land located in the City of Troy, Oakland County, Michigan, more particularly described on Exhibit A attached hereto and incorporated herein (the "City Property"). The City Property is used as a City park, commonly known as Flynn Park.

B. Beaumont operates a hospital and related medical and parking facilities known as Troy William Beaumont Hospital ("Hospital") on the Beaumont Property, which is adjacent to the City Property.

C. On November 13, 2006, City and Beaumont executed an *Agreement Between the City of Troy and William Beaumont Hospital for the Use of Driveway* (hereinafter *Agreement for Use of Driveway)*. Pursuant to Paragraph 2 of this Agreement, "This Agreement does not allow the parking of User's vehicles on the Driveway and/or in the parking lot areas of the Property described in Exhibit A" (City Property).

D. At this time, Beaumont is in the construction phase of the development of additions to both the hospital and parking structures on its property. The construction process has temporarily limited the parking capacity available to Beaumont personnel on Beaumont owned property.

E. Beaumont has requested the temporary use of City Property for the parking of Beaumont personnel vehicles at Flynn Park. This request is limited in hours and duration and in scope, so that there will be minimal interference with scheduled park activities.

F. As consideration for the temporary use of City property, Beaumont is willing to pay a user fee.

NOW, THEREFORE, the City and Beaumont agree to the following terms and conditions as a temporary addendum to the *Agreement Between City of Troy and William Beaumont Hospital for the Use of Driveway* previously approved and executed:

1. Definitions. The following terms in this Addendum to Agreement are defined as follows:

   A. "User" shall mean all Beaumont personnel. The term "user" does not include construction vehicles or emergency vehicles or ambulances.

   B. "Vehicular" or "vehicles" shall include automobiles (including SUVs, vans, and pick-up trucks) and delivery vehicles driven by Users.

   C. "Construction vehicles" shall include automobiles, trucks, and any other motor vehicle or machinery or trailers used by Beaumont or its contractors or subcontractors for the delivery of materials, equipment, and/or personnel for construction purposes.

2. Temporary Suspension to Allow Parking of User Vehicles at Flynn Park. For consideration set out herein, City agrees to temporarily suspend the prohibition against parking, found in paragraph 2 of the *Agreement for the Use of* Driveway, under the following limited terms:

   A. From November 13, 2007 to March 31, 2008, there shall not be any limit on the number of User vehicles that are permitted to park on City Property, as long as the User Vehicles park in the areas that are described on Exhibit B. This is a non-exclusive grant, since the City Property shall remain open to the public during this time. All federal, state and/or local laws, including traffic laws, shall be enforced against Users and User vehicles on the City Property. During this time period, Beaumont shall be solely responsible for snow plowing and snow removal for the parking areas that are designated on Exhibit B. Beaumont , at its discretion, can hire out the snow plowing and snow removal obligation, but the level of service must be acceptable to City. City shall be held harmless from any and all claims, demands, suits or loss, including damages, costs and attorney fees alleged to be proximately caused by improper snow removal or failure to remove snow on the parking areas during this time period. This obligation is in addition to Beaumont's obligation to complete snow plowing and removal on the driveway areas under the *Agreement for the Use of Driveway*.

   B. From April 1, 2008 to October 31, 2008, User vehicles are only permitted to use the sixty (60) designated spaces that are found on Exhibit C. This grant is non-exclusive, and shall be limited to the weekdays only (Monday thru Friday) and only during the hours of 6:00 am to 3:30 pm

3. User Fee. As consideration for the ability to use City property for the parking of User vehicles, Beaumont shall pay a $5,000.00 Non-Refundable User Fee, which shall be paid within ten (10) days after the date of the last signature on this Addendum Agreement. The User Fee shall cover the period from November 13, 2007 to October 31, 2008.

4. Any requested extension of this Addendum Agreement must be mutually agreeable to the parties, and must be made in writing.

5. Signage. There shall be no signage on the City property that reserves parking spaces for User vehicles or otherwise identifies the area as designated for User vehicles. If this provision is violated, then City can remove the signs at cost to Beaumont, and will keep the signs for thirty (30) days at the Parks and Recreation Department. Any signs still remaining after thirty (30) days will be destroyed or recycled, in the City's discretion.

6. Indemnification and Hold Harmless. To the fullest extent permitted by law, Beaumont agrees to defend, pay on behalf of, indemnity and hold harmless City, its elected and appointed officials, employees and volunteers and others working on behalf of City against any and all claims, demands, suits, loss, including all costs and attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from City, its elected and appointed officials, employees, volunteers or others working on behalf of City, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Addendum Agreement.

7. Responsibility for Damage to Vehicles or Theft or Loss from Vehicles. The City shall not be responsible for damage to any vehicles, Users or otherwise, or for any theft from or loss from a vehicle, Users or otherwise, while that vehicle is parked on City Property.

8. Termination of Temporary Addendum Agreement. Beaumont may terminate this temporary Addendum Agreement at any time, but shall not be entitled to a refund of any portion of the Non-Refundable User Fee. If Beaumont no longer needs to use the City Property for User Vehicles during the designated time frame, then Beaumont shall send a courtesy notice to the Director of Parks and Recreation indicating that it Users will no longer be parking on City Property as of a certain date, which shall be included in the written notification. City may terminate this Addendum Agreement upon thirty (30) days written notice if, in its discretion, it is determined that it is in the best interest of City to do so, either because of different planning for the use of the City Property, or due to actions of the City or City Council which effect the ability of the City to allow Beaumont the use of the City Property for parking. City also reserves the right to terminate this temporary Agreement immediately, if the use of the parking lots or parking spaces causes any condition which effects the health, safety and welfare of the public. City will make every effort to give as much notice to Beaumont as is feasibly possible in this situation. Additionally, City may terminate this Addendum Agreement if, after giving written notice to Beaumont of specific violations of the law by Users or after misuse of the terms of the Addendum Agreement by Beaumont, Beaumont fails to cure such violation or misuse within ten (10) days of receipt of written notice.

9. Use of User Fee. It is the City's intent to use the User Fee paid by Beaumont under this Addendum Agreement for improving public parks throughout the City of Troy.

10. Notices. Notices permitted or required hereunder shall be in writing and shall be delivered or sent by certified mail or overnight delivery by a reputable national carrier to the addresses as set forth above. Either party may, by written notice, designate a different address to which notices must be sent.

11. Governing Laws. This Addendum Agreement shall be construed in accordance with the laws of the State of Michigan and any applicable federal laws and regulations.

12. Exhibits. All exhibits referred to herein and attached hereto shall to shall be deemed part of this Agreement.

13. Severability. If any term, provision or condition contained in this Addendum Agreement shall to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Addendum Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Driveway Use Agreement. This Addendum Agreement supplements the *Driveway Use* Agreement, and together comprises the entire Agreement of the parties with respect to temporary User parking on City Property. All terms and conditions of the Driveway Use Agreement between the parties shall remain in full force and effect during and after termination of the Addendum Agreement.

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

CITY OF TROY, a Michigan

By:_____
Louise E. Schilling, Mayor

By:_____
Tonni Bartholomew, City Clerk

STATE OF MICHIGAN)

)ss

COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me on _____,2007 by Louise E. Schilling, the Mayor of the City of Troy, a Michigan municipal corporation, on behalf of the corporation.

_____
Notary Public, _____County, Michigan
My commission expires:

STATE OF MICHIGAN)

)ss

COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me on _____,2007 by Tonni L. Bartholomew, the City Clerk of the City of Troy, a Michigan municipal corporation, on behalf of the corporation.

_____
Notary Public, _____County, Michigan
My commission expires:

WILLIAM BEAUMONT HOSPITAL, a
Michigan non-profit corporation

By:_____

Its:_____

STATE OF MICHIGAN)

)ss

COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on

_____,2007 by_____,
the_____of the William Beaumont Hospital, a Michigan non-profit corporation, on behalf of the corporation.

_____
Notary Public, _____County, Michigan
My commission expires:

EXHIBIT A

City of Troy Property Description

PART OF THE NORTHEAST FRACTIONAL ¼ AND PART OF THE NORTHWEST FRACTIONAL ¼ OF SECTION 1, TOWN 2 NORTH, RANGE 11 EAST, CITY OF TROY, OAKLAND COUNTY, MICHIGAN. BEGINNING AT THE NORTH ¼ CORNER OF SAID SECTION 1; THENCE N 89°40'14" E, ALONG THE NORTH LINE OF SAID SECTION 1, 1294.69 FEET; THENCE S 00°14'51" E 3491.98 FEET TO THE NORTH LINE OF "RANIERI SUB.", AS RECORDED IN LIBER 142, PAGE 25-26 OF OAKLAND COUNTY RECORDS; THENCE S 86°58'01" W, ALONG SAID NORTH LINE, 688.20 FEET TO THE NORTHWEST CORNER OF SAID "RANIERI SUB.", ALSO BEING ON THE EAST AND WEST ¼ LINE; THENCE S 87°25'25" W, ALONG SAID ¼ LINE, 622.42 FEET TO THE CENTER OF SAID SECTION 1; THENCE N 00°00'42" W, ALONG THE NORTH AND SOUTH ¼ LINE, 75.05 FEET; THENCE S 87°50'03" W, PARALLEL TO THE EAST AND WEST ¼ LINE, 1327.40 FEET TO A POINT ON THE EAST LINE OF "TROY LAKE ESTATES SUB.", AS RECORDED IN LIBER 232, P 25-29 OF OAKLAND COUNTY RECORDS; THENCE N 01°02'39" E, ALONG THE SAID EAST LINE, 1033.05 FEET TO THE NORTH LINE OF SAID "TROY LAKE ESTATES SUB.", THENCE S 89°41'40" E 30.00 FEET TO THE EAST LINE OF RAVENNA DRIVE; THENCE N 00°02'11" E, ALONG SAID EAST LINE, 1693.53 FEET; THENCE S 89°40'30" E 334.55 FEET; THENCE N 00°0'52" E, 800.76 FEET TO THE NORTH LINE OF SAID SECTION 1; THENCE S 89°56'00" E, ALONG SAID NORTH LINE, 941.10 FEET TO THE POINT OF BEGINNING. CONTAINING 202.60 +/- GROSS ACRES MORE OR LESS, THE NORTH 33.00 FEET OF WHICH IS CURRENTLY BEING USED FOR ROADWAY PURPOSES, AND BEING SUBJECT TO ALL ENCUMBRANCES OF RECORD.

EXHIBIT B

Parking allowed in any available space in the cross hatched area.

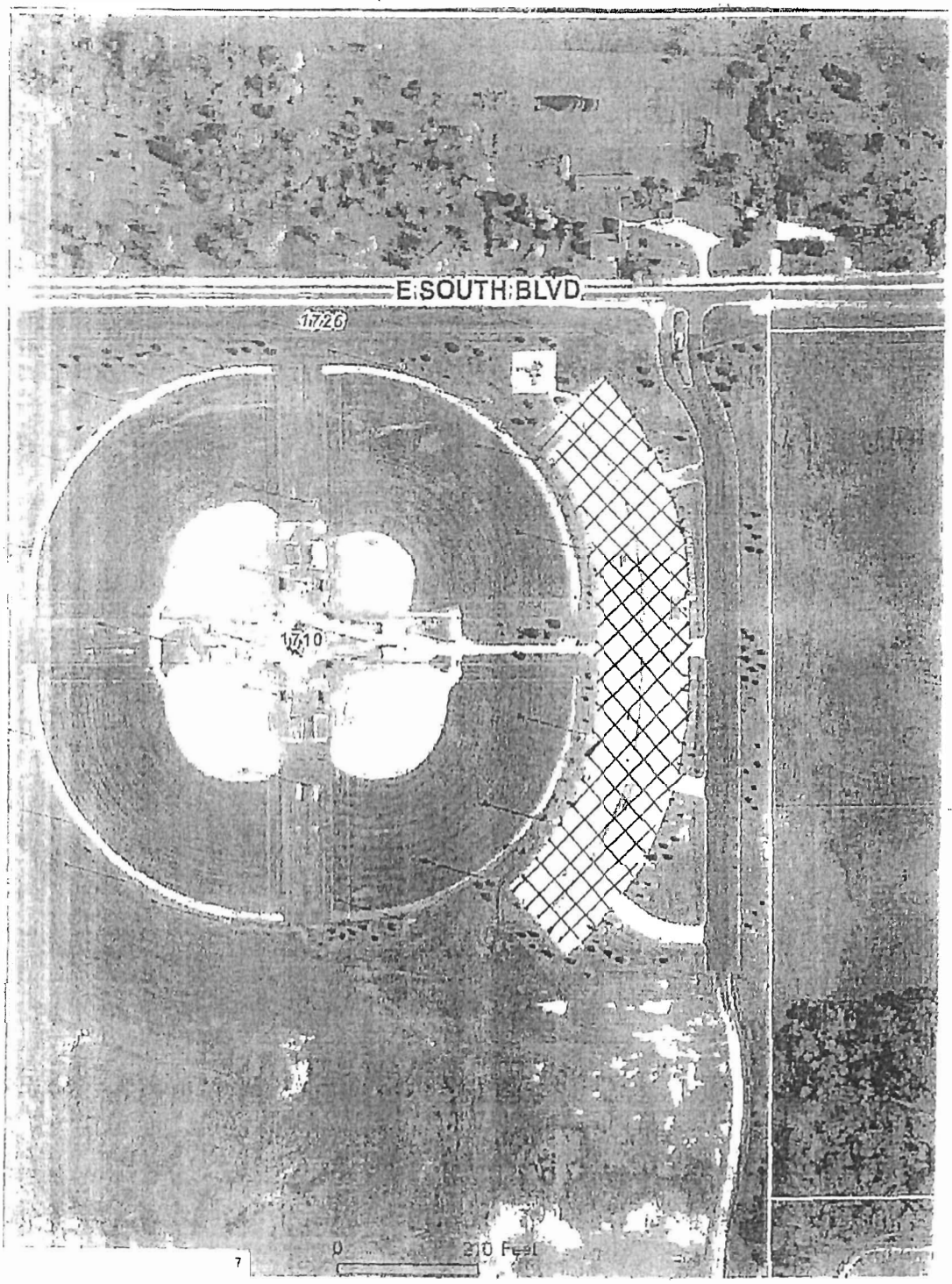
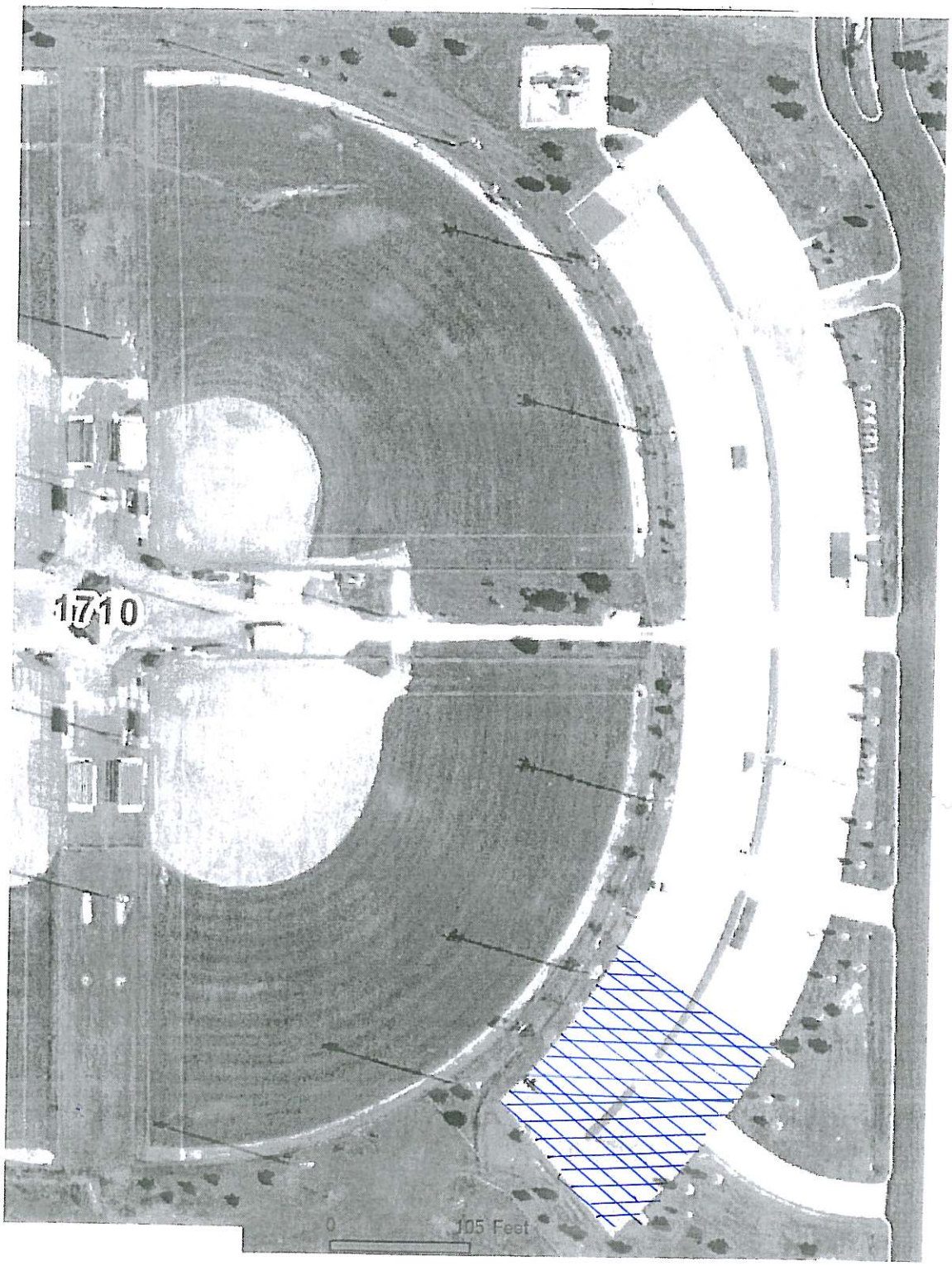


EXHIBIT C

May Park in any of the 60 cross hatched parking spaces