



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: September 4, 2008
SUBJECT: Agreement between City of Troy and Troy School District for NPDES Permit

The Michigan Department of Environmental Quality has declared that school districts, including the Troy School District, are also subject to the requirements of the National Pollutant Discharge Elimination System Wastewater Discharge Permit for Storm Water Discharges (NPDES Permit). The City of Troy has voluntarily worked with the Troy School District in past years, but with the issuance of a new permit, an agreement formalizing this “nesting” relationship under Troy’s permit is now required.

Pursuant to the terms of this Agreement, Troy retains the primary responsibility for compliance with the NPDES Permit. However, since the exact requirements of the new NPDES Permit are subject to our administrative challenge, and therefore unknown, the Nesting Agreement is vague, but does require the Troy School District to reimburse its share of any out of pocket costs incurred by Troy for compliance with the NPDES Permit. The Agreement is before you at this time, prior to the completion of the administrative proceeding, since the Troy School District needs to either apply for its own permit at this time or demonstrate that it will work cooperatively under the City’s NPDES permit. There may be other entities that desire to nest under the City’s NPDES permit as well, especially since there are now additional entities that are required to comply with the NPDES permit requirements.

The Troy School Board has approved this attached Agreement. It is our recommendation that the Agreement be approved by the Troy City Council.

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

EXHIBIT A

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2008, between the CITY OF TROY, Michigan, a Michigan municipal corporation, hereinafter referred to as the "City", and TROY SCHOOL DISTRICT, a Michigan general powers school district organized and operating under the provisions of the Revised School Code, MCLA 380.1, *et seq.*, as amended, whose address is Livernois Road, Troy, Michigan 48098-4799, hereinafter referred to as the "School."

Recitals

1. The City and School may be subject to the requirements of the Phase II Storm Water Regulations (the "Phase II Regulations"), 33 USC 1251, *et seq.*, published by the United States Environmental Protection Agency ("EPA") in the Federal Register on December 8, 1999.
2. The City is applying for a Michigan Department of Environmental Quality National Pollutant Discharge Elimination System Wastewater Discharge General Permit for Storm Water Discharges ("NPDES Permit" or "Permit") from Municipal Separate Storm Sewer Systems Subject to Watershed Plan Requirements (MIG619000).
3. At the request of the School, the City is also applying to cover the School which lies within the jurisdictional limits of the City.
4. The Phase II Regulations and the NPDES Permit may impose certain requirements on the City and School that must be satisfied.
5. The School and the City Council have approved the City to provide coverage for the School under the NPDES Permit to enable the City and the School to comply with the requirements of the Phase II Regulations, the NPDES Permit, and to engage in other storm water management activities related thereto.
6. The City and the School agree to cooperate and actively participate in the activities necessary to enable the City and the School to comply with the Phase II Regulations and the NPDES Permit.
7. The City and the School are authorized to enter into an Agreement for a term up to but not beyond the expiration date of the City's Certificate of Coverage under the NPDES Permit.
8. In order to provide permit coverage, it is necessary that the City and the School enter into this Agreement.

THEREFORE, in consideration of the premises and the covenants of each other and fully incorporating the above Recitals into the Agreement by reference, the parties hereto agree as follows:

I. GENERAL PERMIT COMPLIANCE

A. City

The City agrees to:

- (1) Prepare and submit the permit application and required attachments.
- (2) Be responsible for the general administration of the permit related compliance program including maintenance of records, permit compliance tracking and submittal of required plans, reports, and related correspondence.
- (3) Provide access to all correspondence and records related to the permit to the School.
- (4) Advise the School of any permit compliance issues or actions.
- (5) Hold meetings with the School to provide updates on compliance and storm water management related issues.
- (6) Be responsible for the primary implementation of minimum measures, Storm Water Management Plan, Watershed Management Plan, etc., with the City and School.
- (7) Attend and actively participate in watershed planning efforts.
- (8) Represent the School in watershed planning efforts.
- (9) Engage such consultants, assistants, attorneys, employees, and resources as may be necessary to provide the services necessary to maintain compliance with the permit.

B. School

The School agrees to:

- (1) Provide needed information to the City as may be requested including drawings, plans, reviews, reports, and notices of problems/spills/violations necessary to apply for and maintain compliance with the Permit.-
- (2) Name a storm water management contact person.

- (3) Approve and agree that the City shall provide such services hereunder as are necessary to assist in complying with the permit application requirements, the NPDES Permit, the Certificate of Coverage ("COC"), and in all other related storm water management activities.
- (4) Participate in subwatershed and watershed planning and implementation activities as requested.
- (5) Provide cooperation, information and assistance to the City as reasonably necessary to complete the School's specific requirements as related to complying with and implementing all aspects of the NPDES Permit and Phase II Stormwater Regulations, including but not limited to Illicit Discharge Elimination Plans, Public Education and Participation Plans, and Construction of Storm Water Controls.
- (6) Fully comply with all requirements of and activities resulting from the NPDES Permit.
- (7) Provide to the City full and complete access, upon reasonable notice, to the School's storm water facilities for inspections and maintenance required by the Permit.
- (8) Take all other action as may be reasonably requested by the City to meet compliance of the NPDES Permit.

II. COST SHARE

A. City

The City agrees to:

- (1) Provide NPDES Permit coverage to the School at no cost to the School except as provided in Section II.B. below; further, however, if the School fails to timely implement improvements required by the NPDES Permit, the City will provide the School with notice of the improvements that are required and permit the School to complete the improvements or upon written consent of the School the City will make those corrections in order to maintain compliance with the NPDES Permit and will charge the School for those improvements by submitting an invoice to the School, which shall represent the actual cost incurred by the City. If the School does not make the connections, then the City may terminate this Agreement in accordance with Section III.C., below.

- (2) Accept responsibility for costs of addressing permit non-compliance issues that are unrelated to the actions of the School.

B. School

The School agrees to:

- (1) Implement and promptly pay all actual out-of-pocket costs associated with changes required to their storm water facilities that are required to comply with the NPDES Permit and permit reasonable inspections by the City. Failure to make these corrections by the School shall trigger the City's rights as stated above in Section II.A.(1) to make the corrections and charge the School, which charge the School shall pay promptly to the City upon receipt of an invoice.
- (2) Provide reasonable assistance, including manpower and resources, to comply with the NPDES Permit and implement storm water management.
- (3) Reimburse the City for all other actual out-of-pocket costs that are incurred in addressing permit non-compliance issues that are solely the result of actions by the School.
- (4) Pay all actual out-of-pocket costs associated with testing and inspection of the School's storm water and related facilities, as requested by the School.

III. GENERAL AGREEMENT TERMS AND CONDITIONS

- A. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof; but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- B. The Agreement shall become effective after approval by the governing bodies of the City and the School and execution by the authorized officials of the parties. This Agreement shall terminate on the expiration date of the General Permit Certificate of Coverage unless extended by the parties in writing; may be executed in several counterparts; and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- C. If the City or the School is unable or unwilling to comply with the Agreement, then upon written notice from either party to the other, the parties shall engage in good faith informal negotiations for a period of thirty (30) days in an attempt to resolve their differences. In the event of a

dispute concerning the District's payment of costs, the District may terminate this Agreement after this thirty (30) day period. Otherwise, if the informal negotiations do not resolve the differences, then the Agreement can be terminated by any party with a ninety (90) day written notice.

If the Agreement is terminated, the City will notify the School in writing that they will have to apply for a permit, and the MDEQ of the termination of the Agreement. In the event that either the City or the School should terminate this Agreement for any reason, the City shall provide to the School, at no cost or expense, any and all studies, reports, tests, evaluations, or surveys as well as any other data compiled by the City pursuant to this Agreement.

- D. Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties.
- E. The parties, as required by law, shall not discriminate against a person to be served, an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges or employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, political affiliation or beliefs.
- F. The term of this Agreement shall commence on the date set forth above and shall remain in effect until the expiration date of the General Permit Certificate of Coverage, that is _____, 200__, unless extended by the parties in writing. Termination for cause shall be in accordance with the provisions of Section III.C.

The parties shall adhere to all applicable Federal, State, and local laws, ordinances, rules and regulations prohibiting discrimination, including, but not limited to, the following:

- (1) The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
 - (2) The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
 - (3) Section 504 of the Federal Rehabilitation Act of 1973, P.C. 93-112, 87 Stat 394, as amended, and promulgated thereunder.
 - (4) The Americans with Disabilities Act of 1990, P.C. 101-336, 104 Stat 328 (42 USCA S12101, *et seq.*), as amended, and regulations promulgated thereunder.
- G. Nothing in this Agreement shall in any way grant rights to any third party that is not a party to this Agreement.

H. Nothing contained in this Agreement shall constitute a waiver by the parties of any defenses, including without limitation the defense of governmental immunity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective duty authorized officers, all as of the day and year first above written.

Witness:

CITY OF TROY

By: _____
Louise Schilling

Its: Mayor

Tonni Bartholomew

TROY SCHOOL DISTRICT, a Michigan
general powers school district

Patricia R. Ouzykowski

By: *Michael M. Adamczyk*
Michael M. Adamczyk

Its: Assistant Superintendent,
Business Services

Approved:

City Engineer

Asst. City Manager/Economic Dev. Services

Approved as to form:

Department of Law

Pursuant to Resolution # _____

Adopted by City Council on _____

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