

## CITY COUNCIL ACTION REPORT

September 10, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services  
 Steven J. Vandette, City Engineer *SV*  
 Larysa Figol, Sr. Right-of-Way Representative *RF*

SUBJECT: Request to Approve a Temporary Construction Easement Agreement with Troy School District - Niles Elementary School, Sidwell #88-20-09-226-012

### Background:

- As part of a water main improvement project located in section 9, the Engineering department has been working with the Troy School District to construct and install a new main in an existing easement on the Niles Elementary School property. To proceed with the project, the Troy School District has agreed to enter into a temporary construction easement agreement with the City of Troy.
- The Troy School District Board approved this Agreement at their September 2, 2008 meeting. The Agreement has been signed by Barbara Fowler, Superintendent of the Troy School District.

### Financial Considerations:

- The consideration amount on this document is \$1.00.

### Legal Considerations:

- The format and content of this document was reviewed by the City Attorney's Office.

### Policy Considerations:

- I. Troy has enhanced the health and safety of the community.
- II. Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues.
- III. Troy is rebuilding for a healthy economy reflecting the values of a unique community in a changing and interconnected world.

### Options:

- City Management recommends that City Council approve the attached *Temporary Construction Easement Agreement* and allow the City Mayor and City Clerk to execute the attached document on behalf of the City of Troy.

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, but effective as of December 22, 2008 (the "Effective Date"), between TROY SCHOOL DISTRICT, a Michigan municipal corporation, whose address is 4400 Livernois, Troy, Michigan 48098-4799 (hereinafter referred to as "Grantor"), and the CITY OF TROY, a Michigan municipal corporation, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 (hereinafter referred to as "Grantee").

RECITALS

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

B. The Grantee desires to acquire from the Grantor certain rights to the Premises in order to construct and install a Water Main; and

C. The operation, maintenance, repair and/or replacement of the Water Main shall be at Grantee's sole cost and expense, pursuant to the Water Main Easement by and between Grantor and Grantee dated March 16, 1981, and recorded on March 16, 1981 in Liber 8029, Page 283, Oakland County Records.

## IT IS THEREFORE AGREED:

1. Grant of Easement. In consideration of the sum of One and 00/100 (\$1.00) Dollar, and other valuable consideration, Grantor hereby grants to Grantee, as of the Effective Date, a nonexclusive, temporary construction easement as hereinafter described.

2. Character of Easement. The easement granted herein is appurtenant to the Premises.

3. Purpose of Easement. The easement herein shall be used only for the purpose of the construction and installation of the Water Main.

4. Location and Description of Easement. The location and legal description of the temporary easement granted herein is shown on the attached **Exhibit B** under the heading of "60' Water Main Temporary Construction Easement," which is attached hereto and incorporated herein by reference (the "Temporary Easement Area").

5. Construction and Installation. The construction and installation of the Water Main shall be at the sole cost and expense of the Grantee. All construction and installation shall occur between December 22, 2008 and January 2, 2009. All testing of the water main and connecting of water service to the new water main shall occur between April 6, 2009 and April 10, 2009, unless otherwise permitted by Grantor in writing. During all aspects of any work performed on the Premises, Grantee also covenants and agrees to do the following:

- a. Immediately backfill and temporarily restore, on a daily basis, all driveways, parking lots and sidewalk areas located upon the Premises and disturbed by virtue of the construction and installation of the Water Main until such time as final restoration of the affected areas occur pursuant to Paragraph 6 herein;
- b. Immediately backfill or fence during working hours all excavations on the Premises when not supervised to ensure safety;
- c. Secure all equipment and materials during non-working hours so as to prevent access by any licensees, invitees, guests or trespassers;
- d. Provide Grantor with continued access for ingress and egress over, under, through and across the Temporary Easement Area;
- e. Provide Grantor with continued access to the Premises; and
- f. Carry on its work to ensure only minimal interference or disruption of Grantor's school operations on the Premises.

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

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

Such restoration shall commence upon completion of the 2008 - '09 school year, unless sooner permitted by Grantor in writing.

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

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

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

10. Liability of Grantee. The Grantee shall be responsible to the Grantor for liabilities incurred by the Grantor, arising out of the actions of the Grantee during the construction and installation of the Water Main on the easement granted. These liabilities shall include costs, expenses, actual attorney fees and liabilities for personal injury or property damage, including damage to property of the Grantor. However, Grantee shall not be responsible for any claims resulting from the actions of Grantor or that of third parties who are not designees, agents, successors or employees of Grantee. The terms "Grantee" and "Grantor" shall include their designees, agents, successors and employees. Nothing in this clause shall be construed to limit either Grantee's or Grantor's defenses and rights, including the right to assert a claim of governmental immunity.

11. Extinguishment of Temporary Easement. This temporary construction easement shall automatically terminate and be of no further force and effect upon the earlier of: (i) completion of construction and installation of the Water Main and restoration of the Temporary Easement Area; or (ii) September 1, 2009. The operation, maintenance, repair and/or replacement of the Water Main shall be Grantee's responsibility at Grantee's sole cost and expense, pursuant to the Water Main Easement by and between Grantor and Grantee dated March 16, 1981, and recorded on March 16, 1981 in Liber 8029, Page 283, Oakland County Records.

12. No Liens. Grantee shall not permit any construction liens to be filed against its interest under this Temporary Construction Easement or any interest it holds in the Premises. If any such construction liens shall attach, Grantee shall bond it off or otherwise cause it to be discharged within thirty (30) days from the date of its filing.

13. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral



STATE OF MICHIGAN )  
 ) ss  
COUNTY OF OAKLAND )

On \_\_\_\_\_, 2008, before me personally appeared \_\_\_\_\_,  
on behalf of the CITY OF TROY, a Michigan municipal corporation, to me known to be the same person who executed the within instrument on behalf of the CITY OF TROY, and who acknowledges the same to be the free act and deed of the CITY OF TROY.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, MI  
Acting in \_\_\_\_\_ County, MI  
My commission expires:

Sidwell No. 88-20-09-226-012

Recording Fee: \$32.00

Drafted by:

Dana L. Abrahams, Esq.  
Clark Hill PLC  
255 S. Old Woodward Ave., Third Floor  
Birmingham, MI 48009

When recorded return to:

City Clerk  
City of Troy  
500 West Big Beaver Road  
Troy, MI 48084

EXHIBIT A

LEGAL DESCRIPTION

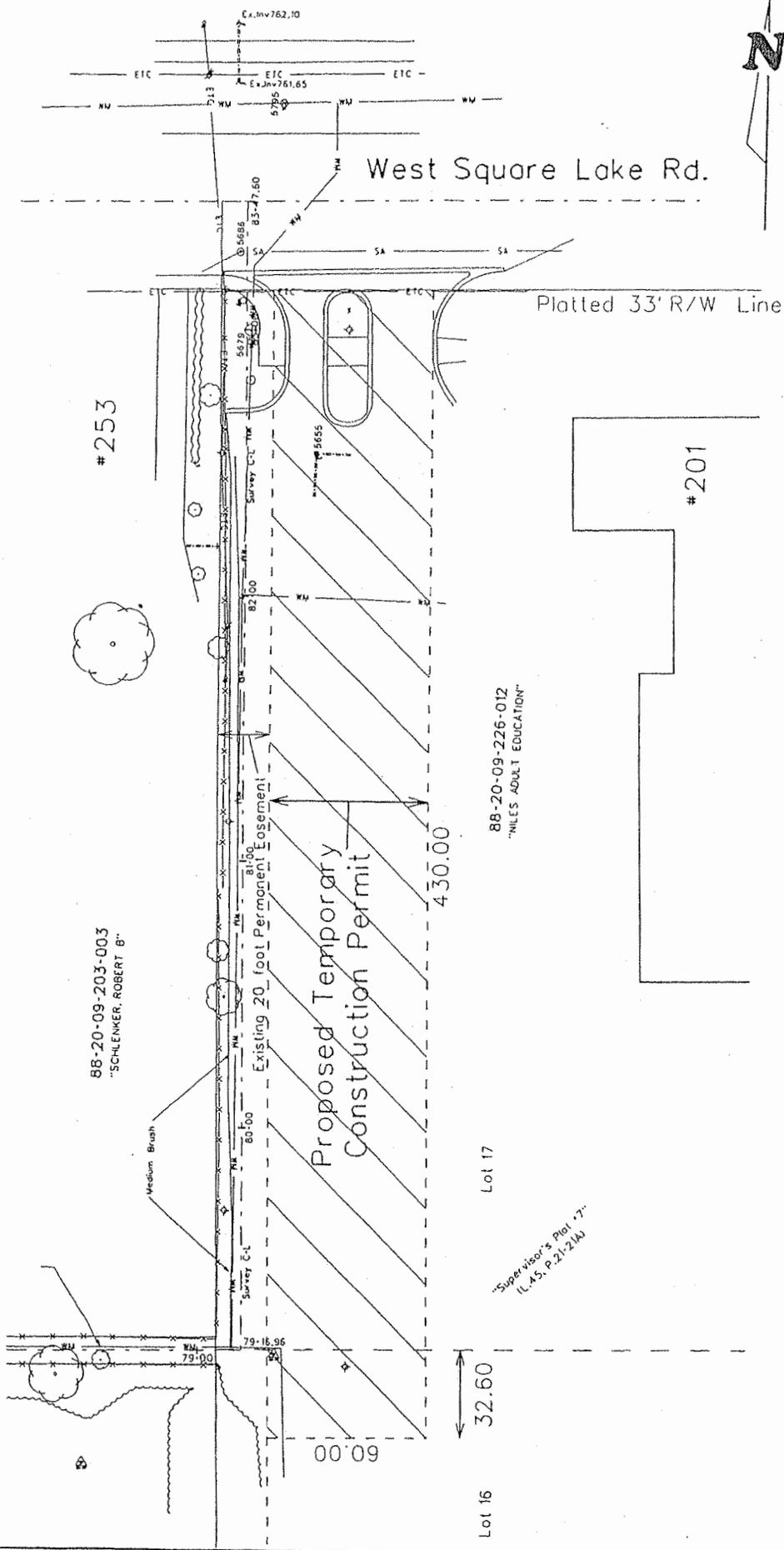
Lot 16 and Lot 17 of "Supervisor's Plat No. 7", as recorded in Liber 45, Pages 21-21A, of Oakland County, Michigan records being part of the Northeast  $\frac{1}{4}$  of Section 9, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan.

Tax Parcel I.D. #: 88-20-09-226-012

Commonly Known As: 201 W. Square Lake Rd.

**EXHIBIT B****60' WATER MAIN TEMPORARY CONSTRUCTION EASEMENT LEGAL  
DESCRIPTION AND SKETCH**

The East 60.00 feet of the West 80.00 feet of Lot 17 and the East 60.00 feet of the West 80.00 feet of the North 32.60 feet of Lot 16 of "Supervisor's Plat No. 7", as recorded in Liber 45, Pages 21-21A, of Oakland County, Michigan records being part of the Northeast ¼ of Section 9, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan. Containing 25,800 square feet or 0.592 acres, more or less.



88-20-09-203-003  
"SCHLEKER, ROBERT B"

#253

Proposed Temporary  
Construction Permit

Existing 20 foot Permanent Easement!

430.00

Lot 16 32.60

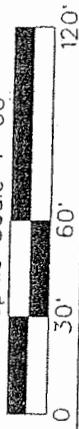
Lot 17

88-20-09-226-012  
"MILES ADULT EDUCATION"

"Supervisor's Plot #7"  
IL 45, P. 21-24a

#201

Graphic Scale: 1" = 60'



CITY OF TROY OAKLAND COUNTY, MICHIGAN		Proposed Temporary Construction Permit Sketch #88-20-09-226-012	
SCALE	DRAWN BY	CHECKED	FILE
HOR. 1" = 60'	NAME CJB III	NAME ACC	SIGWELL
VER.	DATE 4-2-08	DATE 4-2-08	VIEW *1
DOCUMENT PREPARED BY George J. Bollard III LAND SURVEYOR		SHEET No.	JOB No.
DATE		CONTRACT No.	
		CITY ENGINEER 10F1	

Proposed Temporary  
Construction Permit Area  
25,800 square feet

