

## CITY COUNCIL ACTION REPORT

January 16, 2009

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Asst. City Manager/Economic Development Services  
Steven J. Vandette, City Engineer *SV*

SUBJECT: Oakland County Lane Drain Drainage District – Transfer of Surplus Drain Construction Funds and Petition for Lane Drain Project

### Background:

- The Oakland County Water Resources Commissioner's Office, formerly the Oakland County Drain Commission, is responsible for fifty-four (54) drains within the City of Troy.
- These Oakland County drains were constructed with funds obtained by assessments to the City of Troy and are maintained and improved by the use of surplus construction funds that remain in various drainage districts after construction work is completed.
- The Brotherton and Nelson Drainage districts have surplus construction funds in the amount of \$1,700,000 and \$336,000, respectively.
- The State Drain Code permits the transfer of surplus construction funds from Oakland County drain projects within Troy so long as the funds are used to alleviate drainage problems within the City of Troy.

### Council Action:

- The City is requesting that these surplus funds be transferred to the Lane Drainage District and a portion of the funds to be used for improvements to the Lane Drain. It is estimated there will be a surplus of \$800,000 when the project is complete.
- The City is petitioning the Oakland County Water Resources Commissioner's Office to construct the improvements.
- Preliminary engineering for the Lane Drain project is included in the 2008/09 City budget, account number 401.447.516.7989.073035 and has been completed. Construction funds are not budgeted.
- The proposed Lane Drain project is designed to address excessive sediment in the in-line storm water detention basin near the Aquatic Center, which has rendered the basin ineffective during a 10-year storm.
- The Lane Drain project includes:
  - Removing sediment from the detention basin

- Repairing the existing flood control structure at the basin outlet (concrete weir)
- Replacing large diameter culverts under Civic Center Drive
- Creating a sediment forebay to reduce sedimentation of the basin in the future
- Stabilizing five (5) stream bank failures upstream from the basin
- Creating landscape buffers along the stream banks and around the basin

Financial Considerations:

- All engineering and construction funding for the project would be provided by the Oakland County Lane Drain District Fund.

Legal Considerations:

- There are no legal considerations.

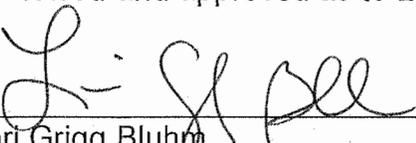
Policy Considerations:

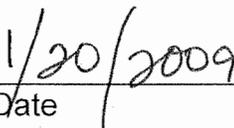
- Consistent with Goal #3 of the City of Troy Goals & Objectives policy (Maintain Relevance of Public Infrastructure to Meet Changing Public Needs).

Options:

- The Council can approve or disapprove the suggested resolutions.
- The Council can amend the suggested resolutions.

Reviewed and approved as to Legality:

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

  
\_\_\_\_\_  
Date

CONTRACT FOR THE TRANSFER OF SURPLUS CONSTRUCTION FUNDS

THIS CONTRACT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and among the BROTHERTON DRAINAGE DISTRICT, a Michigan statutory public corporation established pursuant to Chapter 20 of Act 40 of the Public Acts of 1956, as amended, MCL 280.461 et seq., (hereinafter referred to as the "Brotherton Drainage District"), the NELSON DRAINAGE DISTRICT, a Michigan statutory public corporation established pursuant to Chapter 20 of Act 40 of the Public Acts of 1956, as amended, MCL 280.461 et seq., (hereinafter referred to as the "Nelson Drainage District" and sometimes referred to collectively with the Brotherton Drainage District as the "Drainage Districts"), and the CITY OF TROY, a city corporation located in the County of Oakland (hereinafter referred to as the "City").

W I T N E S S E T H:

WHEREAS, pursuant to Chapter 20 of Act 40 of the Public Acts of 1956, as amended (hereinafter referred to as the "Drain Code"), MCL 280.461 et seq., and as a matter of public health, the BROTHERTON DRAINAGE DISTRICT was established and the City has been assessed for all or part of the cost of the Brotherton Drain; and,

WHEREAS, pursuant to Chapter 20 of the Drain Code, and as a matter of public health, the NELSON DRAINAGE DISTRICT was established and the City has been assessed for all or part of the cost of the Nelson Drain; and,

WHEREAS, the construction of the Brotherton Drain is complete and the Brotherton Drainage District has surplus construction funds remaining in its construction fund (hereinafter referred to as the "Brotherton Surplus Construction Funds"); and,

WHEREAS, the construction of the Nelson Drain is complete and the Nelson Drainage District has surplus construction funds remaining in its construction fund (hereinafter referred to as the "Nelson Surplus Construction Funds"); and,

WHEREAS, pursuant to Section 497 of the Drain Code, MCL 280.497, a drainage board may contract to transfer surplus construction funds to any public corporation if that public corporation has been assessed for all or part of the cost of the drain so long as, among other things, the surplus construction funds shall be utilized by the public corporation to alleviate drainage problems in its jurisdiction; and,

WHEREAS, under the provisions of Act 227 of the Public Acts of 1885, as amended, and as a matter of public health, the LANE DRAIN SPECIAL ASSESSMENT DISTRICT was established and there exists a public health necessity for the City to reconstruct a portion of the Lane Drain in order to alleviate drainage problems in the City; and,

WHEREAS, it is proposed that the Brotherton and Nelson Surplus Construction Funds (as defined above) be transferred by the Drainage Districts to the Lane Drainage District pursuant to Section 497 of the Drain Code, MCL 280.497; and,

WHEREAS, in order to provide for the transfer of the Surplus Construction Funds by the Drainage Districts to the City, and for other related matters, it is necessary for the parties hereto to enter into this contract.

THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE COVENANTS OF EACH OTHER, THE PARTIES HERETO AGREE as follows:

1. The Brotherton Drainage District and the Nelson Drainage District hereby represent and warrant that all outstanding drain orders or bonds, if any, are paid on their respective drainage district projects. Further, the Brotherton Drainage District and the Nelson Drainage District hereby identify that surplus construction funds in the amounts of approximately \$1,700,000 and \$336,000, respectively, are available for use by the City of Troy for the improvements needed on the Lane Drainage District, and the appropriate amount can be transferred to the Lane Drainage District once all projected improvement costs have been identified.

2. The Brotherton Drainage District hereby represents and warrants that (a) the Brotherton Transfer represents a portion of the Brotherton Surplus Construction Funds not needed for more than the cost of inspection, repair and maintenance of the Brotherton Drain as provided in Section 196 of the Drain Code, MCL 280.196 and (b) the Brotherton Transfer represents all or a portion of the City's pro rata share of the Brotherton Surplus Construction Funds in direct proportion to the amounts assessed and collected by the Brotherton Drainage District from the City.

3. The Nelson Drainage District hereby represents and warrants that (a) the Nelson Transfer represents a portion of the Nelson Surplus Construction Funds not needed for more than the cost of inspection, repair and maintenance of the Nelson Drain as provided in Section 196 of the Drain Code, MCL 280.196 and (b) the Nelson Transfer represents all or a portion of the City's pro rata share of the Nelson Surplus Construction Funds in direct proportion to the amounts assessed and collected by the Nelson Drainage District from the City.

4. The City covenants and agrees that upon receipt of the Surplus Construction Funds the City shall utilize the Surplus Construction Funds to alleviate drainage problems in the City of Troy.

5. All powers, duties and functions vested by this contract in the Brotherton Drainage District and the Nelson Drainage District shall be exercised and performed by the Brotherton Drainage Board and the Nelson Drainage Board, respectively, for and on behalf of its respective Drainage District, unless otherwise provided by law or in this contract.

6. In the event that any one or more of the provisions of this contract for any reason shall 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 contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. This contract shall become effective after its execution by each party hereto. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This contract may be executed in any number of counterparts.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed and delivered by the undersigned, being duly authorized by the respective governing body of such parties, all as of the day and year first above written.

BROTHERTON DRAINAGE DISTRICT  
A Michigan Statutory Public Corporation

By: \_\_\_\_\_  
John P. McCulloch  
Oakland County Water Resources  
Commissioner, Chairperson of  
Brotherton Drain Drainage Board

NELSON DRAINAGE DISTRICT  
A Michigan Statutory Public Corporation

By: \_\_\_\_\_  
John P. McCulloch  
Oakland County Water Resources  
Commissioner, Chairperson of  
Nelson Drain Drainage Board

CITY OF TROY

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

And: \_\_\_\_\_  
Tonni L. Bartholomew, City Clerk

PETITION

TO WATER RESOURCES  
COMMISSIONER OF THE  
COUNTY OF OAKLAND

Pursuant to Chapter 8 of Act 40 of the Public Acts of 1956, as amended, MCL 280.191, et seq., the City of Troy petitions the Water Resources Commissioner of the County of Oakland for the cleaning, widening, deepening, straightening and extending of the drain known and designated as the Lane Drain located and established in the City of Troy in the County of Oakland, State of Michigan.

Based upon the need to address flooding, flow conveyance, erosion and sedimentation and water quality issues, the proposed maintenance of and improvements to the Lane Drain are necessary for the public health of the City. These improvements include the removal of sediment, repair of the existing control structure (concrete weir), replacement of two sets of twin culverts, creation of a sediment forebay, stabilization of five streambank failures, creation of a landscape buffer and the accommodation for future trails and park amenities.

The cost of the proposed maintenance of and improvements to the Lane Drain are to be paid from funds that are currently or will be transferred to the Lane Drainage District. The City of Troy consents to the use of the Lane Drainage District funds to pay its percentage of the total amount assessed for the cost of the proposed maintenance of and improvements to the Lane Drain, as well as agrees to advance fund the percentage of the total amount assessed for the cost of the proposed maintenance of and improvements to the Lane Drain for any other properly assessed entity.

This petition is filed pursuant to Chapter 8 of Act 40 of the Public Acts of 1956, as amended.

A certified copy of the resolution of the governing body of the public corporation executing this petition authorizing its execution is attached hereto.

CITY OF TROY

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

And: \_\_\_\_\_  
Tonni L. Bartholomew, City Clerk