CITY COUNCIL ACTION REPORT

January 8, 2009

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Steven J. Vandette, City Engineer
Patricia A. Petitto, Real Estate Consultant, Greenstar & Associates, LLC

SUBJECT: Request for Approval of Purchase Agreement and
Acceptance of Permanent Public Utility Easement
Rochester Road Improvements, Torpey to Barclay
Project No. 99.203.5 – Parcel 6 – Sidwell #88-20-23-156-004
Mattress & Futon Plaza L.L.C.

Background:

- In connection with the proposed improvements to Rochester Road, from Torpey to Barclay, the Real Estate & Development Department received a Purchase Agreement and Permanent Public Utility Easement from Mattress & Futon Plaza, L.L.C. This parcel is located on the east side of Rochester Road, between Charrington and Bishop in the northwest ¼ of Section 23.

Financial Considerations:

- An appraisal was prepared by Raymond V. Bologna, CRE, MAI, State Certified Appraiser and reviewed by Kimberly Harper, Deputy Assessor and State Licensed Appraiser. Staff believes that $99,800, plus closing costs for the acquisition of the property described in the purchase agreement and $2,500 for the Permanent Public Utility Easement are justifiable amounts for this acquisition.
- Eighty percent of these costs will be reimbursed from Federal funds. Funds for the City of Troy's share are included in the 2008-09 Major Road fund, account number 401479.7989.992035.

Legal Considerations:

- The format and content of the purchase agreement and easement are consistent with documents previously accepted by City Council.

Policy Considerations:

- The purpose of this project is to relieve congestion, improve safety and improve the flow of traffic. (Outcome Statements I, II and III)

Options:

- City Management recommends that City Council approve the attached purchase agreement and accept the attached Permanent Public Utility Easement from Mattress & Futon Plaza, L.L.C. so that the City can proceed with the acquisition of this right-of-way.

PAP\G\MEMOS TO MAYOR & CC\Mattress & Futon Plaza Purchase Agreement & PUE

Sidwell # 88-20-23-156-004

CITY OF TROY
AGREEMENT TO PURCHASE REALTY
FOR PUBLIC PURPOSES

The CITY OF TROY (the "Buyer"), agrees to purchase from Mattress & Futon Plaza L.L.C., a Michigan Limited Liability Company, aka Mattress & Futon Plaza LLC, a Michigan Limited Liability Company (the "Sellers"), the following described premises (the "Property"):

SEE ATTACHED EXHIBIT "A"

for a public project within the City of Troy and to pay the sum of Ninety-Nine Thousand, Eight Hundred and no/100 Dollars ($99,800) under the following terms and conditions:

1. Seller shall assist Buyer in obtaining all releases necessary to remove all encumbrances from the property so as to vest a marketable title in Buyer.

2. Seller shall pay all taxes, prorated to the date of closing, including all special assessments, now due or which may become a lien on the property prior to the conveyance.

3. Seller shall deliver the Warranty Deed upon payment of the purchase money by check drawn upon the account of the City of Troy.

4. Buyer shall, at its own expense, provide title insurance information, and the Seller shall disclose any encumbrances against the property.

5. This Agreement is binding upon the parties and closing shall occur within ninety (90) days of the date that all liens have been released and encumbrances have been extinguished to the satisfaction of the Buyer, unless extended by agreement of the parties in writing. It is further understood and agreed that this period of time is for the preparation and authorization of purchase money.

6. Buyer shall notify the Seller immediately of any deficiencies encumbering marketable title, and Seller shall then proceed to remove the deficiencies. If the Seller fails to remove the deficiencies in marketable title to Buyer's approval, the Buyer shall have the option of proceeding under the terms of this Agreement to take title in a deficient condition or to render the Agreement null and void, and any deposit tendered to the Seller shall be returned immediately to the Buyer upon demand.

7. The City of Troy's sum paid for the property being acquired represents the property being free of all environmental contamination. Although the City of Troy will not withhold or place in escrow any portion of this sum, the City reserves its rights to bring Federal and/or State and/or local cost recovery actions against the present owners and any other potentially responsible parties, arising out of a release of hazardous substances at the property.

8. Seller acknowledges that this offer to purchase is subject to final approval by Troy City Council.

9. Seller grants to Buyer temporary possession and use of the property commencing on this date and continuing to the date of closing in order that the Buyer may proceed with the public project.

10. Additional conditions, if any:

_____
_____
_____
_____
_____

SELLER HEREBY ACKNOWLEDGES THAT NO PROMISES WERE MADE EXCEPT AS CONTAINED IN THIS AGREEMENT.

SIGN

IN WITNESS WHEREOF, the undersigned hereunto affixed their signatures this 8TH day of JANUARY, 2008.

In presence of:

Laurel Nottage
LAUREL NOTTAGE

William J. Huotari
WILLIAM J. HUOTARI

CITY OF TROY (BUYER)

Patricia A. Petitto
PATRICIA A. PETITTO

SELLER:

MATTRESS & FUTON PLAZA L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY, AKA MATTRESS & FUTON PLAZA LLC, A MICHIGAN LIMITED LIABILITY COMPANY

Larry Rivetto
LARRY RIVETTO, MEMBER

01-28-08
19990476
20-23-156-004
rev. 02-29-08

EXHIBIT 'A'

DESCRIPTION OF RIGHT OF WAY ACQUISITION

Part of the Southwest ¼ of the Northwest ¼ of Section 23, T2N, R11E, City of Troy, Oakland County, Michigan, described as: Beginning at a point which is S00°12'22"E 2,472.54 feet from the Northwest corner of said Section 23; thence N89°15'16"E 43.00 feet to the Point Of Beginning; thence N89°15'16"E 32.00 feet; thence S00°12'22"E 219.00 feet; thence S89°15'16"W32.00 feet; thence N00°12'22"W 219.00 feet to the Point Of Beginning.
Said acquisition contains 7,008 square feet, or 0.16 acres, more or less.

PERMANENT UTILITY EASEMENT

Sidwell #88-20-23-156-004
Parcel #6

Mattress & Futon Plaza L.L.C., a Michigan Limited Liability Company, aka Mattress & Futon Plaza LLC, a Michigan Limited Liability Company, Grantors, whose address is: 3516-3536 Rochester, Troy, MI 48083 for and in consideration of the sum of: Two Thousand, Five Hundred and no/100 Dollars ($2,500) paid by the CITY OF TROY, a Michigan Municipal Corporation, Grantee, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 grants to the Grantee a utility easement, said easement for land situated in the City of Troy, Oakland County, Michigan described as:

SEE ATTACHED EXHIBIT "A"

and to enter upon sufficient land adjacent to said improvement(s) for the purpose of the construction, operation, maintenance, repair and/or replacement thereof.

The premises so disturbed by the exercise of any of the foregoing powers shall be reasonably restored to its original condition by the Grantee.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns and the covenants contained herein shall run with the land.

IN WITNESS WHEREOF, the undersigned hereunto affixed HIS signature(s) this 8TH day of JANUARY, 2008.

MATTRESS & FUTON PLAZA L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY, AKA MATTRESS & FUTON PLAZA LLC, A MICHIGAN LIMITED LIABILITY COMPANY

Larry Rivetto (L.S.)
* LARRY RIVETTO, MEMBER

_____ (L.S.)
*

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 8TH day of JANUARY, 2008, by LARRY RIVETTO, MANAGER, of Mattress & Futon Plaza L.L.C., a Michigan Limited Liability Company, aka Mattress & Futon Plaza LLC, a Michigan Limited Liability Company.

Patricia A. Petitto
* PATRICIA A. PETITTO
Notary Public, OAKLAND County, Michigan

Acting in OAKLAND County, Michigan

My Commission Expires 12-31-11

Prepared by: Patricia A. Petitto
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Return to: City Clerk
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

PLEASE SIGN IN BLUE INK AND PRINT OR TYPE NAMES IN BLACK INK UNDER SIGNATURES

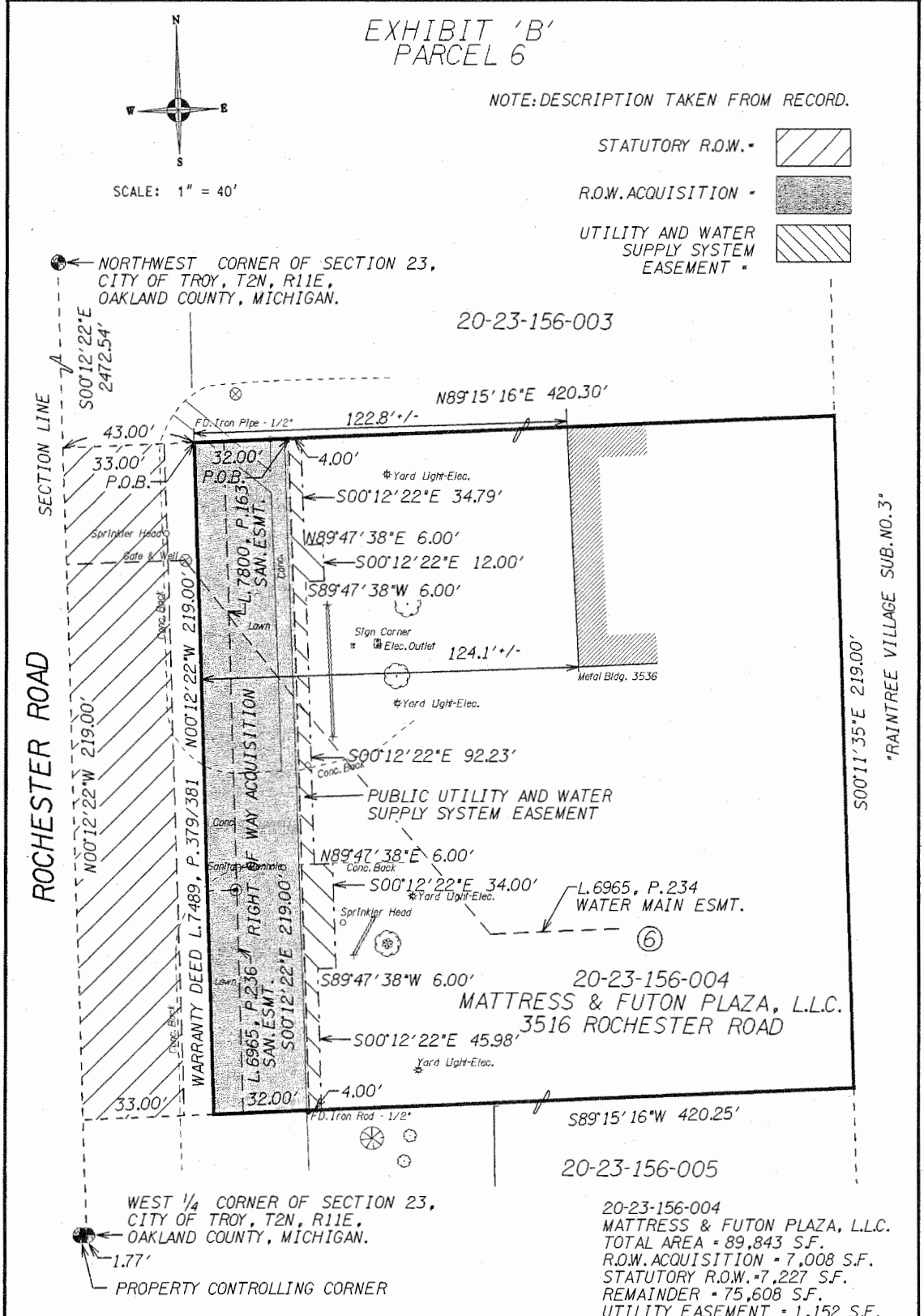
01-28-08
19990476
20-23-156-004
rev. 02-29-08

EXHIBIT 'A'

DESCRIPTION OF PUBLIC UTILITY EASEMENT

Part of the Southwest ¼ of the Northwest ¼ of Section 23, T2N, R11E, City of Troy, Oakland County, Michigan, described as: Beginning at a point which is S00°12'22"E 2,472.54 feet from the Northwest corner of said Section 23; thence N89°15'16"E 75.00 feet to the Point of Beginning; thence N89°15'16"E 4.00 feet; thence S00°12'22"E 34.79 feet; thence N89°47'38"E 6.00 feet; thence S00°12'22"E 12.00 feet; thence S89°47'38"W 6.00 feet; thence S00°12'22"E 92.23 feet; thence N89°47'38"E 6.00 feet; thence S00°12'22"E 34.00 feet; thence S89°47'38"W 6.00 feet; thence S00°12'22"E 45.98 feet; thence S89°15'16"W 4.00 feet; thence N00°12'22"W 219.00 feet to the Point Of Beginning.
Said easement contains 1,152 square feet, or 0.026 acres, more or less.

RIGHT OF WAY ACQUISITION



JOB NO. 19990476	HUBBELL, ROTH & CLARK, INC.	SHEET NO.
DATE 01-28-09	CONSULTING ENGINEERS 555 HULET DRIVE P.O. BOX 824 BLOOMFIELD HILLS, MICH. 48303-0824	2 OF 2

REV. 02-29-08

USER NAME = dhebert DESIGN FILE = F:\1999\19990476\ventdrv\ent\19990476_es06_R01.dgn QUEUE = \\spsrv\CPBWTIFF CLR. TBL = I:\standards\MSV8\data\rrcolor2.tbl\PEN TBL = I:\MM\Plotting\V8\pbblack.pb TIME = 29-FEB-2008 13:38