CITY COUNCIL ACTION REPORT

March 17, 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 PAP

SUBJECT: Request for Approval of Purchase Agreement and Acceptance of Permanent Public Utility Easement & Regrading and Temporary Construction Permit
Rochester Road Improvements, Torpey to Barclay - Project No. 99.203.5 &
Wattles Road Improvements, Bristol to Worthington – Project No. 01.106.5
Parcel 20 – Sidwell #88-20-14-351-056 – JLJ Investments, LLC

Background:

- In connection with the proposed improvements to Rochester Road, from Torpey to Barclay, the Real Estate & Development Department received a Purchase Agreement, Permanent Public Utility Easement, and Regrading and Temporary Construction Permit from JLJ Investments, LLC. This parcel is located at the northeast corner of Rochester Road and Wattles Road in the southeast ¼ of Section 14.

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 $21,677, plus closing costs for the acquisition of the property described in the purchase agreement; $48,857 for the Permanent Public Utility Easement and $4,261 for the Regrading and Temporary Construction Permit 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 numbers 401479.7989.992035 and 401479.7989.011065.

Legal Considerations:

- The format and content of the purchase agreement, easement and permit are consistent with documents previously accepted by City Council. As an additional condition of the purchase agreement, the City will reimburse the Seller $1,000 for costs associated with the review of the offer.
- As an additional condition of the purchase agreement, the City will reimburse the Seller up to $1,000 for actual costs associated with the review of the offer.

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 and Regrading and Temporary Construction Permit from JLJ Investments, LLC so that the City can proceed with the acquisition of this right-of-way.

PAP\G\MEMOS TO MAYOR & CC\JLJ Purchase Agreement, PUE & RGTCP

CITY OF TROY
AGREEMENT TO PURCHASE REALTY
FOR PUBLIC PURPOSES

The CITY OF TROY (the "Buyer"), agrees to purchase from JLJ Investments, 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 Twenty-One Thousand, Six Hundred, Seventy-Seven and no/100 Dollars ($21,677) 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:
Buyer agrees to pay all closing costs, recording fees and transfer taxes, if any. Buyer shall pay any and all prepayment penalties or other fees assessed to Seller, including, but not limited to, a reasonable review and document preparation fee, by Seller's lender, in conjunction with Seller's release of the Property and consent to this Agreement, Buyer shall reimburse Seller for legal fees and charges incurred in connection with this Agreement and the related permanent easement and regarding and temporary construction permit; Provided, however, Buyer's liability for such charges and fees shall be limited to the lesser of the actual costs or One Thousand and 00/100 ($1,000.00) Dollars. This Agreement is expressly contingent upon the Seller's lender consenting to this Agreement. In the event that Seller's lender does not consent to this Agreement, or if the Seller's lender makes its consent contingent upon demands that are not acceptable to Seller, this Agreement shall be null and

void and of no further force and effect and both parties shall be relieved of any further obligations under this Agreement. This Agreement is also expressly contingent upon the consent of any tenants ("Tenants") at the Property whose leases with Seller require the tenant's consent to any changes to or loss of any portion of the common areas of the Property. In the event that any Tenant does not consent to this Agreement, this Agreement shall be null and void and of no further force and effect and both parties shall be relieved of any further obligations under this Agreement.

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

IN WITNESS WHEREOF, the undersigned hereunto affixed their signatures this 13th day of March, 2009.

In presence of:

PAMELA VALENTIK

MICHAEL BASTIEN

CITY OF TROY (BUYER)

Patricia A. Petitto

PATRICIA A. PETITTO

SELLERS: JLJ INVESTMENTS, L.L.C.

BY: Edward Jonna

ITS: Manager

03-17-08
19990476
20-14-351-056
rev. 03-18-08
rev. 05-15-08

EXHIBIT 'A'

DESCRIPTION OF RIGHT OF WAY ACQUISITION

Part of Lot 11 "Supervisor's Plat No. 22", a subdivision of part of the Southwest ¼ of Section 14, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 13 of Plats, Page 45, Oakland County Records, described as: Commencing at the Southwest corner of said Lot 11, said point being N00°35'00"W 33.00 feet and East 33.00 feet from the Southwest corner of said Section 14, thence N00°35'00"W 27.00 feet and East 42.00 feet to the Point Of Beginning; thence N00°35'00"W 37.78 feet; thence S45°40'42"E 54.07 feet; thence West 38.30 feet to the Point Of Beginning.
Said acquisition contains 723 square feet, or 0.017 acres, more or less.

PERMANENT UTILITY EASEMENT

Sidwell #88-20-14-351-056
Parcel #20

JLJ Investments, LLC, a Michigan Limited Liability Company, Grantors, whose address is: is 30777 Northwestern Highway, Suite 301, Farmington Hills, MI 48334 for and in consideration of the sum of: Forty-Eight Thousand, Eight Hundred, Fifty-Seven and no/100 Dollars ($48,857) 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, including, but not limited to, any damage to the asphalt at the property. The Grantee agrees to reimburse the Grantors all costs related to the relocation of the current sign to an approved location outside of the easement area, based on the lowest of three bids from an approved sign company.

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 its signature(s) this 13th day of March, 2009.

JLJ INVESTMENTS, LLC, A MICHIGAN LIMITED LIABILITY COMPANY

(L.S.)
* Edward Jonna, Manager

(L.S.)
*

STATE OF MICHIGAN)
COUNTY OF Oakland)

The foregoing instrument was acknowledged before me this 13th day of March, 2009, by Edward Jonna, of JLJ Investments, LLC, a Michigan Limited Liability Company.

Carolyn Barber
*
Notary Public, Oakland County, Michigan

Acting in Oakland County, Michigan

My Commission Expires 9-30-2011

CAROLYN BARBER
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Sep 30, 2011
ACTING IN COUNTY OF Oakland

Prepared by: Patricia A. Petitto

Return to:

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

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

03-17-08
19990476
20-14-351-056
rev. 03-18-08
rev. 05-15-08

EXHIBIT 'A'

DESCRIPTION OF PUBLIC UTILITY EASEMENT

The East 8.00 feet of the West 50.00 feet of the South 12.00 feet of the North 28.00 feet of Lot 10 "Supervisor's Plat No. 22", a subdivision of part of the Southwest ¼ of Section 14, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 13 of Plats, Page 45, Oakland County Records, Also part of Lot 11 and 12 of said "Supervisor's Plat No. 22" described as: Commencing at the Southwest corner of said Lot 11, said point being N00°35'00"W 33.00 feet and East 33.00 feet from the Southwest corner of said Section 14; thence East 439.89 feet and N00°15'00"W 27.00 feet to the Point Of Beginning; thence West 359.75 feet; thence N45°40'42"E 14.31 feet; thence East 369.95 feet; thence S00°15'00"E 10.00 feet to the Point Of Beginning.
Said easement contains 3,648 square feet, or 0.084 acres, more or less.

REGRADING AND TEMPORARY CONSTRUCTION PERMIT

Sidwell # 88-20-14-351-056
Project # 99.203.5
Parcel #20

JLJ Investments, LLC, a Michigan Limited Liability Company, Grantor(s), whose address is 30777 Northwestern Highway, Suite #301, Farmington Hills, MI 48334 for and in consideration of the sum of Four Thousand, Two Hundred, Sixty-One and no/100 Dollars ($4,261.00) paid by the CITY OF TROY, a Michigan Municipal Corporation, hereinafter called the CITY, whose address is 500 West Big Beaver Road, Troy, Michigan, hereby grants to the CITY, during the construction of Rochester Road Improvements, Torpey to Barclay, the right to move men, equipment, and materials on and through, and to store equipment, materials, and excavated matter on the following described property, located in the City of Troy, to-wit:

SEE ATTACHED EXHIBIT "A"

IN FURTHER CONSIDERATION, the premises so disturbed by reason of the exercise of any of the foregoing powers, shall be reasonably restored to its original condition by the City, including, but not limited to, any damage to the asphalt at the property.

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

IN WITNESS WHEREOF, the undersigned hereunto affixed their signatures(s) this 13th day of March, 2009.

JLJ INVESTMENTS, LLC, A MICHIGAN LIMITED LIABILITY COMPANY

(L.S.)
Edward Jonna, Manager

(L.S.)

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this 13 day of March 2009, by JLJ Investments, LLC, a Michigan Limited Liability Company.

CAROLYN BARBER
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Sep 30, 2011
ACTING IN COUNTY OF Oakland

Carolyn Barber

Notary Public, Oakland, County, Michigan
Acting in Oakland County, Michigan

My Commission Expires 9-30-2011

Prepared by: Patricia A. Petitto
500 West Big Beaver
Troy, MI 48084

Return to: City Clerk, City of Troy
500 West Big Beaver Road
Troy, Michigan 48084

03-17-08
19990476
20-14-351-056
rev. 03-18-08
rev. 05-15-08

EXHIBIT 'A'

DESCRIPTION OF REGRADING AND TEMPORARY CONSTRUCTION PERMIT

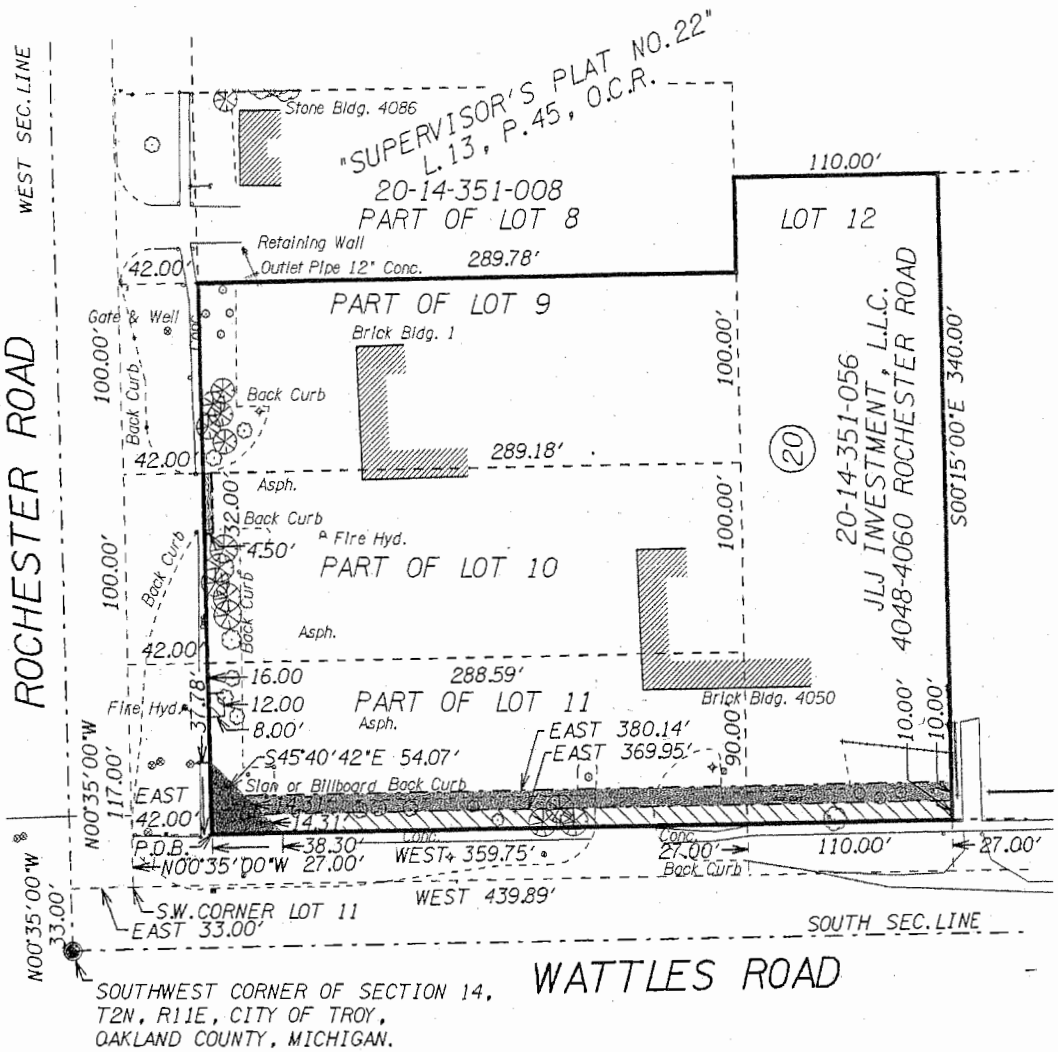
The East 4.50 feet of the West 46.50 feet of the North 32.00 feet of Lot 11 "Supervisor's Plat No. 22", a subdivision of part of the Southwest ¼ of Section 14, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 13 of Plats, Page 45, Oakland County Records, Also part of Lot 11 and 12 of said "Supervisor's Plat No. 22", described as: Commencing at the Southwest corner of said Lot 11, said point being N00°35'00"W 33.00 feet and East 33.00 feet from the Southwest corner of said Section 14; thence East 439.89 feet and N00°15'00"W 37.00 feet to the Point Of Beginning; thence West 369.95 feet; thence N45°40'42"E 14.31 feet; thence East 380.14 feet; thence S00°15'00"E 10.00 feet to the Point Of Beginning. Said easement contains 3,750 square feet, or 0.086 acres, more or less.

RIGHT OF WAY ACQUISITION

EXHIBIT 'B'
PARCEL 20

SCALE: 1" = 80'

NOTE: DESCRIPTION TAKEN FROM RECORD.



20-14-351-056
JLJ INVESTMENT, L.L.C.
TOTAL AREA = 121,183 S.F.
R.O.W. ACQUISITION = 723 S.F.
REMAINDER = 120,460 S.F.
UTILTY
EASEMENT = 3,648 S.F.
REGRADING AND TEMPORARY
CONSTRUCTION PERMIT = 3,750 S.F.

R.O.W. ACQUISITION =
UTILITY EASEMENT =
REGRADING AND TEMPORARY CONSTRUCTION PERMIT =

JOB NO. 19990476	HUBBELL, ROTH & CLARK, INC.	SHEET NO.
DATE 03-17-08	CONSULTING ENGINEERS 555 HULET DRIVE P.O. BOX 824 BLOOMFIELD HILLS, MICH. 48303-0824	2 OF 2

REV. 05-15-08
REV. 03-18-07

USER NAME = dhebert DESIGN FILE = F:\1999\199904\19990476\cadd\Field\990476_es20_R02.dgn QUEUE = \\cpsvr\CPBWTIFF CLR. TBL. = T:\standards\Wsk8\data\Vracolor2.tbl FEN TBL. = h:\xm\plotting\v8\black.plb TIME = 15-MAR-2008 07:42