



CITY COUNCIL ACTION REPORT

July 14, 2009

TO: John Szerlag, City Manager

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

SUBJECT: Request to Grant a Permanent Drain Easement to McCulloch Drain Drainage District
 Sidwell#88-20-22-478-007 & 88-20-23-354-047

Background:

- As part of the ongoing improvement project at the corners of Big Beaver and Rochester Roads, the City of Troy has received a request from the McCulloch Drain Drainage District to grant an easement for the existing McCulloch Drain. Although in existence for many years, it appears that an easement has never been granted to the Water Resources Commissioner (formerly Oakland County Drain Commissioner) or the Drainage District.
- The easement is 60 feet in width running diagonally over the northeast corner parcels east of Rochester Road. Granting this easement will allow the Water Resources Commissioner the right to construct, operate, maintain, repair or replace the McCulloch Drain.

Financial Considerations:

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

Legal Considerations:

- The format and content of this easement document has been 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:

- Staff recommends that City Council grant the easement request to the McCulloch Drain Drainage District.

EASEMENT

Parcel No. 1-2009

KNOW ALL MEN BY THESE PRESENTS, that CITY OF TROY, a Michigan Municipal Corporation, GRANTOR, whose address is 500 West Big Beaver Rd., Troy, Michigan 48084 for and in consideration of the sum of ONE DOLLAR AND 00/CENTS (\$1.00) receipt of which is hereby acknowledged, paid to them by the McCULLOCH DRAIN DRAINAGE DISTRICT ("Drainage District"), a Michigan Statutory Corporation, acting through the Drainage Board for the McCULLOCH DRAIN ("Drain") pursuant to Act No. 40 of the Public Acts of 1956 ("Drain Code"), as amended, GRANTEE, whose address is the Office of the Oakland County Water Resources Commissioner ("OCWRC"), One Public Works Drive, Bldg. 95 West, Waterford, Michigan 48328-1907, does hereby grant to the said GRANTEE the right to construct, operate, maintain, repair or replace said DRAIN, in accordance with the terms and conditions set forth herein:

RECITALS:

A. The GRANTOR is the owner of certain real property described as follows (the "Premises"):

**SEE ATTACHED EXHIBIT "A" AND "B"
LEGAL DESCRIPTION**

*SIDWELL NO. 20-22-478-007
20-23-354-047*

and,

B. The GRANTEE desires to acquire from the GRANTOR certain rights to the Premises in order to construct, operate, maintain, repair or replace the DRAIN.

IT IS THEREFORE AGREED:

1. Grant of a Permanent Easement. Grantor hereby grants to Grantee a perpetual easement described as follows:

PERMANENT EASEMENT "A"

SEE EXHIBIT "A" FOR LEGAL DESCRIPTION

PERMANENT EASEMENT "B"

SEE EXHIBIT "B" FOR LEGAL DESCRIPTION

2. **Purpose of the Easement.** The permanent easement granted herein shall be used for the purpose of the operation, maintenance, repair or replacement of the DRAIN constructed in accordance with the plans and specifications approved by the Drain Board.

3. **General Conditions.**

a. Except as otherwise agreed in writing between the GRANTOR and GRANTEE, GRANTOR agrees not to build or convey to others permission to build any permanent structures on the above-described permanent easement. Permanent structures, include but are not limited to, fixtures, structures with footings, culverts, dams, bridges and structures of a similar nature.

b. Except as otherwise agreed in writing between the GRANTOR and GRANTEE, GRANTEE may remove all trees and shrubbery within the permanent easement and shall not be required to replace trees and shrubbery that are removed.

c. Except as otherwise agreed to in writing, if the Premises shall be disturbed by reason of the exercise of any of the foregoing powers, then the Premises shall be restored to substantially the condition that existed prior to entering upon said Premises by the Grantee, its contractors, agents or assigns.

d. GRANTOR retains, reserves, and shall continue to enjoy the use of the permanent easement for any and all purposes which do not interfere with, obstruct the use of or prevent the use by GRANTEE. Any unauthorized use or obstruction may be removed by GRANTEE in accordance with the procedures set forth in the Drain Code.

e. It is understood that 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.

f. This Easement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, representatives, successors and assigns. If the GRANTOR or any of GRANTOR'S heirs, representatives, successors or assigns shall dedicate all or any part of the Premises affected by this Easement, then prior to such dedication, GRANTOR or GRANTOR'S heirs, representatives, successors and assigns shall submit such dedication for review and approval from the GRANTEE, its heirs, successors or assigns.

g. A map of the above-described Easement is attached hereto and made a part thereof.

h. This instrument contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect. Any modification of this Easement must be in writing and must be signed by the party to be charged.

i. This Easement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Easement is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party.

j. It is further understood and agreed between the Parties that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between GRANTOR and GRANTEE in any way related to the subject matter hereof, except as expressly stated herein.

k. If any provision of this Easement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

l. It is understood and agreed between the Parties that a failure by either Party to fulfill a condition or term set forth in this Easement shall not result in extinguishment of the easement rights granted herein or constitute a waiver of such term or condition.

m. This easement shall be subject to a certain License and Use Agreement between GRANTOR and GRANTEE as recorded in Liber _____, Pages _____, Oakland County Records.

IN WITNESS WHEREOF, the GRANTOR have hereunto affixed their signatures this _____ day of _____, A.D., 2009.

WITNESSES: **CITY OF TROY, a Michigan
Municipal Corporation**

(L.S.)
LOUISE E. SCHILLING, MAYOR

(L.S.)
TONNI L. BARTHOLOMEW, CITY CLERK

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

On this _____ day of _____, A.D., 2009, before me, a Notary Public in and for said County, personally appeared **LOUISE E. SCHILLING** and **TONNI L. BARTHOLOMEW** to me personally known, who being by me severally duly sworn did say that they are respectively the **MAYOR** and **CITY CLERK** of the **CITY OF TROY, a Michigan Municipal Corporation**, a corporation created and existing under the laws of the **State of Michigan**, and that the said Easement Grant was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____ and _____ acknowledged the said instrument to be the free act and deed of the said Corporation.

Notary Public

County, _____
My Commission Expires: _____

This instrument drafted by:

Paul E. Dove, Right of Way Supervisor, Office of
Oakland County Water Resources Commissioner
Building 95 West
One Public Works Drive
Waterford, Michigan 48328-1907

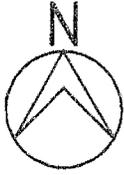
(C)-Corporation Ack.- Revised 10/18/01

PED/kmb

Kimberly Brown's files\D\DOVE\EAS\CITYTROY\MCCULLOCH\09P1\7/6/09

SKETCH OF EASEMENT

NOTE: NO FIELD WORK PERFORMED.
DESCRIPTION TAKEN FROM RECORD.



SCALE: 1" = 40'

UNIVERSITY AVENUE

N89°33'23"E 149.25'

ROCHESTER ROAD

N13°58'00"E 130.43'

McCULLOCH DRAIN
DRAINAGE EASEMENT

"SUPERVISOR'S PLAT NO. 13"
L. 49, P. 1, O.C.R.
PART OF LOT 1
20-22-478-007

SUB. LINE S84°32'00"E 179.82'
82.50' 97.32'

LOT 27

BROTHERTON
DRAIN ESMT.
L. 6488, P. 228

"SUPERVISOR'S PLAT NO. 9"
L. 46, P. 41, O.C.R.
PART OF LOT 28

N89°00'04"W 4.94'

102' R.O.W. LINE

P.O.B.

L. 8900, P. 312
(S. 69' LOT 28)

PART OF LOT 28

224.31'

BIG BEAVER

S.E. COR. SECTION 22,
T02N, R11E, CITY OF TROY,
OAKLAND COUNTY, MICHIGAN.

N00°41'00"E 102.00'

33.00'

S17°45'56"E 84.78'

S00°41'00"W 144.87'

EAST LINE OF SECTION 22
PART OF LOT 1

LOT 2

SUB. LINE

SUB. LINE S00°41'00"W 110.90'

PART OF LOT 24

PART OF LOT 25

"SUPERVISOR'S PLAT NO. 11"
L. 46, P. 46, O.C.R.

PART OF LOT 24

PART OF LOT 25

JOB NO. 20070645	HUBBELL, ROTH & CLARK, INC. CONSULTING ENGINEERS 555 HULET DRIVE BLOOMFIELD HILLS, MICH.	SHEET NO. 1
DATE 06-25-09		P.O. BOX 824 48303-0824 OF 2

06-25-09
20070645
20-22-478-007

DESCRIPTION OF PROPERTY (TAKEN FROM RECORD 20-22-478-007)

That part of Lot 1 lying in Section 22 of "Supervisor's Plat No. 13" a subdivision of part of Southeast ¼ of Section 22 and part of Southwest ¼ of Section 23, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 49 of Plats, Page 1, Oakland County Records and Lots 27 and 28, Except the South 69.00 feet taken for road of "Supervisor's Plat No. 9" a subdivision of parts of South ½ of Section 22 and part of Northwest ¼ of Section 26 and part of Northeast ¼ of Section 27, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 46 of plats, Page 41, Oakland County Records.

Subject to reservations, restrictions, and easements of record, if any.

Also known as Sidwell No. 20-22-478-007

DESCRIPTION OF DRAINAGE EASEMENT

Part of Lot 1 of "Supervisor's Plat No. 13" a subdivision of part of Southeast ¼ of Section 22 and part of Southwest ¼ of Section 23, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 49 of Plats, Page 1, Oakland County Records and Part of Lot 28 of "Supervisor's Plat No. 9" a subdivision of parts of South ½ of Section 22 and part of Northwest ¼ of Section 26 and part of Northeast ¼ of Section 27, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 46 of plats, Page 41, Oakland County Records, described as follows: Beginning at a point distant N00°41'00"E 102.00 feet along the East line of said Section 22 to the North right of way line of Big Beaver Road and the Point Of Beginning; thence along said right of way line N89°00'04"W 4.94 feet; thence N17°45'56"W 267.74 feet to a point on the South right of way line of University Avenue; thence along said right of way line N89°33'23"E 62.85 feet; thence S17°45'56"E 84.78 feet to a point on the East line of said Section 22; thence along said Section line S00°41'00"W 174.81 feet to the Point Of Beginning.
Said easement contains 11,008 square feet, or 0.253 acres, more or less.

06-25-09
20070645
20-23-354-047

DESCRIPTION OF PROPERTY (TAKEN FROM RECORD 20-23-354-047)

The East 26.00 feet of Lot 1, All of Lots 2 thru 7, inclusive "Supervisor's Plat No. 13" a subdivision of part of Southeast ¼ of Section 22 and part of Southwest ¼ of Section 23, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 49 of Plats, Page 1, Oakland County Records and Lots 17 thru 24, inclusive, Except the South 69.00 feet taken for road "Supervisor's Plat No. 11" a subdivision of part of the Southwest ¼ of Southwest ¼ of Section 23 and part of the Northwest ¼ of the Northwest ¼ of Section 26, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 46 of Plats, Page 46, Oakland County Records.

Subject to reservations, restrictions, and easements of record, if any.

Also known as Sidwell No. 20-23-354-047.

DESCRIPTION OF DRAINAGE EASEMENT

Part of Lot 1 "Supervisor's Plat No. 13" a subdivision of part of Southeast ¼ of Section 22 and part of Southwest ¼ of Section 23, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, as recorded in Liber 49 of Plats, Page 1, Oakland County Records and part of Lots 23 and 24 of "Supervisor's Plat No. 11" a subdivision of part of the Southwest ¼ of Southwest ¼ of Section 23 and part of the Northwest ¼ of the Northwest ¼ of Section 26, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan, described as follows: Beginning at a point distant N00°41'00"E 102.00 feet along the East line of said Section 22 to the North right of way line of Big Beaver Road; thence continuing N00°41'00"E 174.81 feet; thence S17°45'56"E 184.90 feet to a point on said right of way line; thence along said right of way line N89°00'04"W 58.51 feet to the Point Of Beginning.

Said easement contains 5,114 square feet, or 0.117 acres, more or less.