

CITY COUNCIL ACTION REPORT

July 27, 2009

TO: John Szerlag, City Manager

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

SUBJECT: McCulloch Drain License and Use Agreement

Recommendation:

Staff recommends that City Council approve the attached License and Use Agreement with the McCulloch Drain Drainage District for the construction, operation and maintenance of a city park, partially within a sixty (60) foot wide permanent easement for the McCulloch Drain, at the northeast corner of Rochester and Big Beaver roads. Furthermore, staff recommends that the Mayor and City Clerk be authorized to execute the agreement.

Background:

The Oakland County Water Resources Commissioner's Office requires a standard license and use agreement whenever improvements are constructed within a drain easement. A City Council resolution approving the attached agreement and a copy of the signed agreement is needed for their files.

The Big Beaver and Rochester Intersection and Park Enhancement project includes a park with landscaping, sidewalks and other aesthetic enhancements at the northeast corner of the intersection. The project also includes pedestrian safety improvements; modernizing the pedestrian crossing signals and upgrading the sidewalks and cross walks to comply with the American's with Disabilities Act (ADA). Additional trees will also be planted along sidewalks near the intersection and within a landscaped island to be constructed in the middle of the Big Beaver/Rochester intersection. These improvements are being constructed in accordance with the key concepts of the Big Beaver Corridor study, previously adopted by City Council, and City Planning Commission and are being funded by the Downtown Development Authority (DDA).

Financial Considerations:

There are no financial considerations associated the agreement.

Legal Considerations:

The format and content of the agreement is consistent with agreements approved by City Council for other improvements located within county drain easements.

Policy Considerations:

Goal I – Troy has enhanced the health and safety of the community.

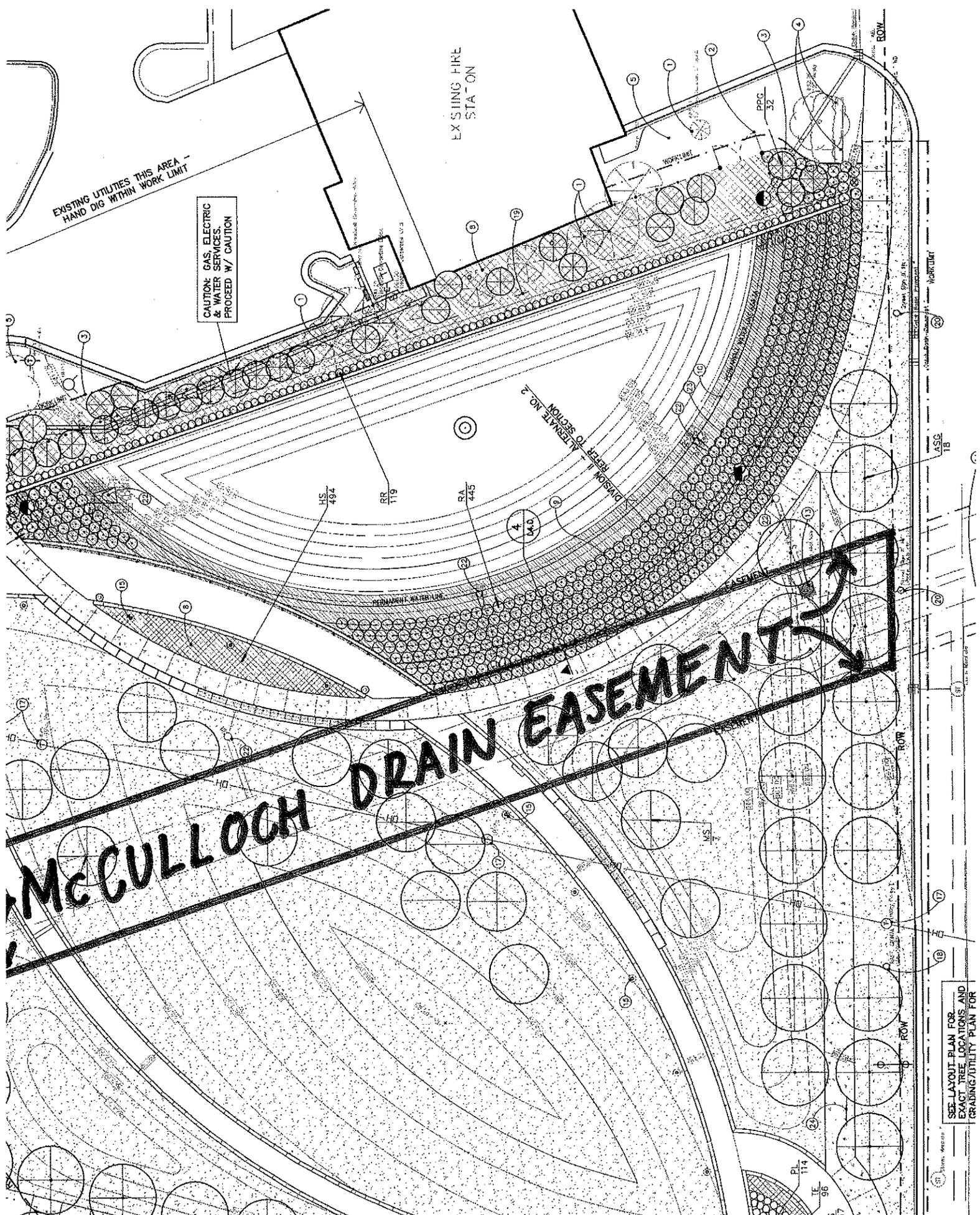
Goal II – Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues.

- 1 EXISTING
- 2 RELOCAT
- 3 NEW BEE
- 4 EXISTING
- 5 EXISTING
- 6 EXISTING
- 7 FOUNTAIN
- 8 MALLOCH / PLANTING
- 9 COBBLES
- 10 PERMANENT
- 11 EXISTING
- 12 EXISTING
- 13 STORM S
- 14 EXISTING
- 15 NEW LOG
- 16 EXISTING
- 17 EXISTING
- 18 APPROX
- 19 APPROX
- 20 EXISTING
- 21 RELOCAT
- 22 NEW STC
- 23 HIGH WA
- 24 CONTRAS

GENERAL
 1. ADD SOIL LOCAL CC
 PROT.

LEGEN

[Pattern 1]	[Pattern 2]	[Pattern 3]
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SEE LAYOUT PLAN FOR EXACT TREE LOCATIONS AND GRADING/UTILITY PLAN FOR

LICENSE AND USE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between the **McCULLOCH DRAIN DRAINAGE DISTRICT, a Michigan Statutory Corporation**, acting through the Drainage Board for the **McCULLOCH DRAIN**, under Chapter 20 of Act 40 of the Public Acts of 1956, as amended, whose address is One Public Works Drive, Bldg. 95 West, Waterford, Michigan 48328-1907 (hereinafter referred to as the “**DISTRICT**”) and the **CITY OF TROY, a Michigan Municipal Corporation**, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 (hereinafter referred to as the “**CITY**”).

WITNESSETH:

WHEREAS, the **CITY** is the fee owner of certain property located in the **CITY OF TROY**, said property being more particularly described as:

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, T.2N., R.11E., 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, T.2N., R.11E., 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

AND,

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, T.2N., R.11E., 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, T.2N., R.11E., 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. 230-23-354-047.

AND,

WHEREAS, there is located a 60 foot wide permanent easement for the **McCULLOCH DRAIN** over the aforescribed parcel of property for drainage purposes, said easement having been granted to the **DISTRICT** as recorded in Liber _____, Pages _____ of Oakland County Records; and

WHEREAS, the **CITY** acknowledges and accepts the paramount rights of the **DISTRICT** to permanently maintaining control and use of said easement; and

WHEREAS, the **CITY** proposes to construct, operate and maintain a portion of a City "Park" within said easement. Said "Park" to include a stone seatwall with seats, fencing, landscaping and irrigation system, sidewalk, curb and walk pavers, lighting and a decorative pond, hereinafter collectively referred to as the "Improvements", and

WHEREAS the **DISTRICT** does not object to the proposed "Park" and "Improvements" as approved at its Drainage Board meeting on _____, 2009.

NOW, THEREFORE, in consideration of the premises, covenants and undertakings hereinafter contained, and for **ONE DOLLAR (\$1.00)**, receipt of which is hereby acknowledged by the **DISTRICT**, the **DISTRICT** and the **CITY** mutually agree as follows:

- 1) The **CITY** shall be allowed to construct the "Park" and "Improvements" in accordance with the plans submitted and approved by the **DISTRICT**. No other permanent structures of any kind shall be allowed. The "Park" and "Improvements" shall be constructed in such a manner and location as to prevent any damage to the existing drain or its related drainage systems which lie within the easement.

- 2) The **CITY** shall be responsible for any and all costs associated with the construction, operation or maintenance of the "Park" and "Improvements".
- 3) The **CITY** agrees, that if it is ever necessary for the **DISTRICT** to remove and/or cause damage to the "Park" and "Improvements" because of operation, maintenance, repair and/or replacement of the **McCULLOCH DRAIN** or its related systems, the **DISTRICT** shall not be held liable for restoring or replacing said "Park" and "Improvements". All restoration will be paid for and accomplished by the **CITY**, and such restoration shall be approved by the **DISTRICT**.
- 4) The **CITY** further agrees to remove any portion of the "Park" and/or "Improvements" that the **DISTRICT** deems necessary to facilitate maintenance, repair and/or replacement activities to the **McCULLOCH DRAIN** within **30 days** of receiving written notice from the **DISTRICT** of any impending maintenance, repair and/or replacement activity.
- 5) In the event that the **CITY** fails to so remove said "Park" and/or "Improvements" as deemed necessary by the **DISTRICT** within **30 days** of the date of receiving such notice or any later date as set by the **DISTRICT** for such removal, the **DISTRICT** may proceed to clear all or any area by any means expeditious to the project and assess and bill the **CITY** for all costs additional to the project and attendant to such clearing of the right-of-way area. The **CITY** agrees that it shall be liable for and will pay all such costs upon receipt of any billing for such costs.
- 6) The **CITY** shall be allowed to replace and re-establish the "Park" and/or "Improvements" upon completion of any maintenance, repair and/or replacement project consistent with the specifications of the plans as approved by the **DISTRICT**.
- 7) To the extent provided by law, the **CITY OF TROY** shall indemnify and hold the **DISTRICT** harmless from any and all liability, loss or damage the **DISTRICT** may suffer as a result of all claims, demands, costs or judgments against it or claimed by any third party, their heirs, successors or assigns out of the **CITY OF TROY'S** use of the easement for "Park" and "Improvement" only.
- 8) To the extent provided by law, the **CITY** agrees to defend and hold the **DISTRICT** harmless against any and all claims of any nature or type, lawsuits, actions, arbitrations, or any form of claim or demand brought against the **DISTRICT** arising out of the City of Troy's use of the easement for "Park" and "Improvements" only.

9) The CITY shall name as an additional insured on it's present and future insurance contracts, the DISTRICT for any and all coverage or contract that the CITY shall have in effect that provides coverage for the CITY'S use of the DISTRICT'S easement. Notwithstanding the foregoing, the CITY may fulfill the insurance requirements herein by requiring any and all CITY authorized users of the site to purchase and maintain general liability insurance which names the DISTRICT as an additional insured. The CITY or other authorized users shall submit insurance certificates to the Water Resources Commissioner for his review and approval.

10) The DISTRICT will grant and issue such permits as are deemed necessary prior to starting construction of the "Park" and "Improvements" within the DISTRICT'S easement. The CITY shall secure approval from any other municipality, agency, utility company or private property owner as may be required prior to commencing construction.

It is hereby expressly reserved unto the DISTRICT that this Agreement may be terminated by the DISTRICT in writing to the CITY for cause or without cause at any time during its duration. Furthermore, in the event the CITY chooses to abandon its use of the easement, this Agreement may be terminated by the CITY in writing to the DISTRICT for cause or without cause.

In the event this Agreement is terminated by the DISTRICT, the CITY hereby releases the DISTRICT from any loss, damage or liability of any kind of nature caused by or due to the termination of this Agreement by the DISTRICT. Furthermore, if this Agreement is terminated by the CITY, the DISTRICT hereby releases the CITY from any loss, damage or liability of any kind of nature caused by or due to the termination of this Agreement by the CITY.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors or assigns.

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

In the Presence of:

**McCULLOCH DRAIN
DRAINAGE DISTRICT**

JOHN P. McCULLOCH, CHAIRMAN

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
)SS:
COUNTY OF OAKLAND)

On this _____ day of _____, A.D. 2009, before me, a Notary Public in and for said County appeared **JOHN P. McCULLOCH**, to me personally known, who being by me duly sworn did say that he is the **CHAIRMAN** of the **DRAINAGE BOARD** for the **McCULLOCH DRAIN** acting for the **McCULLOCH DRAIN DRAINAGE DISTRICT** and that said instrument was signed in behalf of said Drainage District by authority of its Drainage Board and the said **JOHN P. McCULLOCH** acknowledged said instrument to be the free act and deed of said Drainage Board.

Notary Public

_____ County, _____

My Commission Expires: _____

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

LOUISE E. SCHILLING, MAYOR

TONNI L. BARTHOLOMEW, CITY CLERK

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
)SS:
COUNTY OF OAKLAND)

On this _____ day of _____, A.D. 2009, before me personally appeared **LOUISE E. SCHILLING, MAYOR and TONNI L. BARTHOLOMEW, CITY CLERK**, of the **CITY OF TROY**, who are to me known to be the persons described in and who executed the above License and Use Agreement and acknowledged the same to be their own free act and deed.

Notary Public

_____ County, _____

My Commission Expires: _____

This instrument drafted by:

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

PED/kmb

Kimberly Brown's files\D:\DOVE\LICENSEUSEAGREE.EAS\MCCULLOCHDRAIN09.JL7\7/7/09