

11/10/2005

POSSESSION AND USE AGREEMENT

1. **Grant** -- The parties hereby agree that the Road Commission for Oakland County ("RCOC") and/or the City of Rochester Hills and its agents are granted an irrevocable right to possession and use of the property described in the attached EXHIBIT A. The right to possession is permanent and shall be deemed granted as of the date of October 24, 2005. The RCOC or City of Rochester Hills will pay \$22,700.00 plus interest from October 24, 2005 at the statutory interest rate. This Agreement also includes payment for a Temporary Grading Permit of \$1,700.00.
2. **Effective Date** -- This Agreement shall become effective when properly executed and acknowledged by the owner(s) and accepted by the City and/or RCOC.
3. **Payment** -- The amount stated in paragraph 1 represents 100% of the City's estimated just compensation owed to the owner(s). It is agreed this amount shall be deducted from any final settlement amount or verdict. It is also agreed in the event the final settlement amount, jury or verdict, is less than this amount, the undersigned owner(s) shall immediately refund the difference to the City and/or RCOC.
4. **Negotiate** -- The City and/or RCOC will continue to negotiate in good faith with the owner(s) to acquire their interest in the property by direct purchase. If a settlement is not reached within 60 days from the effective date of this Agreement, the City and/or RCOC will exercise the power of eminent domain to acquire title to the property. The owner(s) stipulate and agree to the necessity of the particular highway construction and improvement project for which the property described in EXHIBIT A is needed and to the necessity for the taking of said property. The owner(s) waive issue and hearing on necessity, jurisdiction and authority for the taking. The owner(s) further acknowledge that the City has made the jurisdictionally required good faith offer and effort to purchase said property and consent to the City's and/or RCOC's execution and recording of a declaration of taking for the property described in EXHIBIT A, hearing thereon being expressly waived.
5. **Title** -- It is agreed by the undersigned owner(s) in the event of condemnation that the date of valuation is the date of October 24, 2005. This Agreement does not convey title. Title will pass upon proper conveyance by the owner(s) or filing of the condemnation provisions.

6. **Tenants** -- In the event the property described in EXHIBIT A is occupied by a tenant, the City's and/or RCOC's possession, granted in this instrument, is subject to the rights of the tenant.
7. **Interest** -- In the event of condemnation, the owner(s) are entitled to interest at the rate provided by MCL 213.51, et seq. on the final judgment or jury verdict, less any sums previously paid, from October 24, 2005 until the date of payment of all unpaid sums.
8. **Taxes** -- All real property taxes and special assessments shall be prorated as of October 24, 2005 in accordance with State law. The owner(s) shall be responsible for payment of all delinquent taxes and/or delinquent special assessments and for the portion of current taxes and current special assessments attributable to the period prior to October 24, 2005. Real estate taxes and special assessments that are owed by the owner(s) pursuant to this paragraph will be deducted from the amount in paragraph 1 before delivery to the owner(s).
9. **Personal** -- Personal property taxes are the personal responsibility of the owner(s). Personal property taxes will be deducted from the amount in paragraph 1, if requested by the local government, before delivery to the owner(s). They are not subject to proration.
10. **Reimbursement** -- The City hereby agrees to reimburse the owner(s) reasonable attorney fees, appraisal fees, engineering fees and other expenses incurred in reviewing, analyzing or contesting the compensation to be offered. In that regard, the City will reimburse the owner's(s') reasonable attorney fees computed on an hourly basis which have occurred through the date of execution of this Agreement, up to a maximum of \$5,000.00. Subsequent to the date of execution of this Agreement, the City will reimburse the owner's(s') reasonable attorney fees as computed on a contingency rate at one-third of any increase over the City's initial good faith written offer.

OWNER(S):

CITY OF ROCHESTER HILLS

James Lawrence Barton
James Lawrence Barton

By: _____

Beverly J. Barton
Beverly J. Barton

Its: _____

Dated: 15 November, 2005

Dated: _____, 2005

LEGAL DESCRIPTION

advanced Geomatics

ADAMS ROAD
December 29, 2003

CTIC COMMITMENT NUMBER 63-501489
Project Reference No. 12

Part of Tax Parcel 15-30-302-016
Part of the S 1/2 of the SW 1/4 of Section 30, T 3 N, R 11 E
Part of the S 1/2 of the SE 1/4 of Section 25, T 3 N, R 10 E

DESCRIPTION OF RIGHT OF WAY ACQUISITION

Situated in the City of Rochester Hills, Oakland County, Michigan; COMMENCING at a 5/8" iron rod in monument box at the southwest corner of Section 30, Township 3 North, Range 11 East as recorded in Liber 22386, Page 323, Oakland County records; thence along the true west line of said section, North 02°44'00" West 1241.21 feet to the POINT OF BEGINNING of this description; thence South 83°20'24" West (recorded as South 85°47'50" West) 2.41 feet to the east line of "Supervisor's Plat No. 16" as recorded in Liber 28 of Plats, Page 46, Oakland County records, said point previously recorded as being 1658.86 feet from the west quarter corner of said Section 30; thence along east line of said "Supervisor's Plat No. 16" (previously referred to as the east line of Section 25, Township, 3 North, Range 10 East), North 02°50'39" West (recorded as North) 105.00 feet; thence North 83°20'24" East (recorded as North 86°03'00" East and as North 85°47'50" East) 2.61 feet to said true west line of Section 30; thence continuing North 83°20'24" East (recorded as 86°03'00" East and as North 85°47'50" East) 57.52 feet; thence South 02°50'39" East 105.00 feet; thence South 83°20'24" West (recorded as South 85°47'50" West) 57.73 feet to the Point of Beginning; being a part of the south half of the southwest quarter of Section 30, Township 3 North, Range 11 East and a part of the south half of the southeast quarter of Section 25, Township 3 North, Range 10 East. The above described parcel contains 0.145 acres (6,300 square feet) in its entirety, and 0.065 acres (2,835 square feet) excluding the westerly 33 feet thereof previously taken as an existing right-of-way easement for Adams Road. The portion of the above described property previously taken as an existing right-of-way easement for Adams Road contains 0.080 acres (3,465 square feet).

DESCRIPTION OF REMAINDER

Situated in the City of Rochester Hills, Oakland County, Michigan; COMMENCING at a 5/8" iron rod in monument box at the southwest corner of Section 30, Township 3 North, Range 11 East as recorded in Liber 22386, Page 323, Oakland County records; thence along the true west line of said section, North 02°44'00" West 1241.21 feet; thence North 83°20'24" East 37.73 feet to the POINT OF BEGINNING of this description; thence North 02°50'39" West 105.00 feet; thence North 83°20'24" East (recorded as North 85°47'50" East and as North 86°03'00" East) 270.90 feet; thence South 02°50'39" East (recorded as South 00°02'15" West) 105.00 feet; thence South 83°20'24" West (recorded as South 85°47'50" West) 270.90 feet to the Point of Beginning; being a part of the south half of the southwest quarter of Section 30, Township 3 North, Range 11 East, and containing 0.652 acres (28,382 square feet).

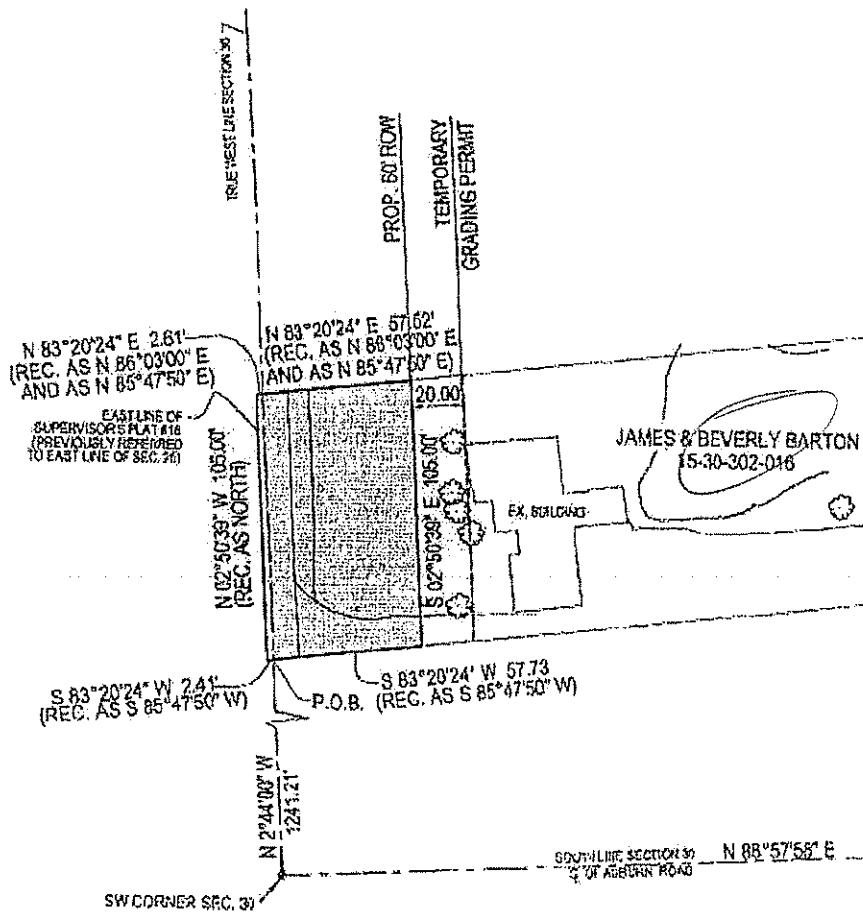
SURVEY

EXHIBIT 'A'

PART OF THE S 1/2 OF THE SW 1/4 SECTION 30, T.3 N., R.11 E.
 CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN
 PART OF THE S 1/2 OF THE SE 1/4 SECTION 25, T.3 N., R.10 E.
 CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN



SCALE 1" = 50'



LEGEND:

- NOW ACQUISITION

FINKBEINER PETTIS & STROUT
 CONSULTING ENGINEERS
 61441 ELEVEN HILL ROAD
 NOVI, MI 48220

(734) 825-7700 (248) 305-7304 FAX

<small>APPROVED BY:</small>	<small>DATE:</small>
<small>LIST A FOUR-BUSINESS DAYS</small>	<small>12/20/04</small>
<small>DRAWN BY:</small>	<small>PROJECT:</small>
<small>15</small>	