



CITY of NOVI CITY COUNCIL

Agenda Item D
March 25, 2013

SUBJECT: Approval of a revised Good Faith Offer in the amount of \$2,519 for a permanent pathway easement and a temporary grading permit on the Herbel/Toler property (parcel 22-27-200-011) located at 23777 Novi Road for the purpose of constructing a pedestrian safety path on the west side of Novi Road between Nine Mile and Ten Mile.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *B1C*

CITY MANAGER APPROVAL: *[Signature]*

EXPENDITURE REQUIRED	\$ 2,519
AMOUNT BUDGETED	\$190,554
LINE ITEM NUMBER	204-204.00-974.431

BACKGROUND INFORMATION:

The Novi Road Pathway is currently in design and includes the construction of three pathway segments to fill gaps along the west side of Novi Road between Nine Mile and Ten Mile (see attached location map). Four permanent easements and four temporary easements have been identified to facilitate future construction and maintenance of this pathway. Of the four properties requiring easements, this one appears on this agenda for City Council consideration, another has been donated, and the other two appeared on a previous agenda and are in various stages of the acquisition process. The original good faith offer for this easement was previously approved by City Council at the February, 25, 2013 meeting.

Engineering staff has had multiple meetings and discussions with Richard Herbel, an owner of the property at 23777 Novi Road, to acquire a pathway easement and temporary grading permit that are required to construct the proposed Novi Road pathway. Although Mr. Herbel has indicated he is not in favor of the project, he has recently agreed to grant the easements in return for an additional \$1,750 in compensation along with some minor modifications to the plans including some additional driveway gravel and a landscape plan to improve a portion of his frontage. The City's original good faith offer was in the amount of \$769 for the permanent and temporary easements. The revised offer of \$2,519 would allow the City to avoid litigation and the higher costs associated with the litigation process (see Beth Saarela's letter dated March 13, 2013).

The easements have been signed by Mr. Herbel, and await signatures from the Tolers, who are business partners with Mr. Herbel. It is anticipated that the the executed easements from the Tolers will be received in the near future. If the revised offer is approved by City Council, a check in the amount of \$2,519 would be released to the property owners upon receipt of the fully executed easements.

It is anticipated that the project would be ready for construction in summer 2013. The permit required for the crossing of Chapman Creek and the associated floodplain has already been issued by the Department of Environmental Quality.

RECOMMENDED ACTION: Approval of a revised Good Faith Offer in the amount of \$2,519 for a permanent pathway easement and a temporary grading permit on the Herbel/Toler property (parcel 22-27-200-011) located at 23777 Novi Road for the purpose of constructing a pedestrian safety path on the west side of Novi Road between Nine Mile and Ten Mile.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

Novi Road Sidewalk 23777 Ten Mile Rd (22-27-200-011)

Location Map



RICHARD HERBEL TRUST
23777 NOVI RD
NOVI, MI 48375

Proposed Sidewalk Segment

Nick Lidstrom Dr

Novi Rd

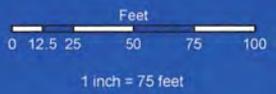
Map Author: Croy
Date: 2/14/13
Project: Novi Road Sidewalk
Version #: v2.1



City of Novi
Engineering Division
Department of Public Services
26300 Lee BeGole Drive
Novi, MI 48375
cityofnovi.org

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



26 February 2013

Benjamin L. Croy
Field Service Complex
26300 BeGole Drive
Novi, Michigan 48375

Dear Benjamin Croy,

In accordance with our telephone conversation of 3-25-13, in an attempt to resolve the Pathway Issue in front of our property located at 23777 Novi Road, the following items of consideration are submitted:

1. A Water Tap Fee Credit for 23777 Novi Road.
2. A Hook Up Fee Credit for the same property.
3. 3 "of 21 AA Gravel for the Driveway and Parking Area.
4. Developing a Landscape Plan to redo the plantings in front of the house due to construction of a new sidewalk and potential root damage.

Your assistance in these issues will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Richard Herbel". The signature is written in black ink and is positioned above the printed name.

Richard Herbel



March 5, 2013

CITY COUNCIL

Mayor
Bob Gatt

Mayor Pro Tem
Dave Staudt

Terry K. Margolis

Andrew Mutch

Justin Fischer

Wayne Wrobel

Laura Marie Casey

City Manager
Clay J. Pearson

**Director of Public Services/
City Engineer**
Rob Hayes, P.E.

Richard T. Herbel, Trustee
The Richard T. Herbel Revocable
Living Trust dated the 19th day
of August 1997
43600 Cottisford
Northville, MI 48167

Jerome M. Toler
Verda V. Toler

Re: Novi Road Sidewalk between Nine and Ten Mile
City Acquisition of Temporary Grading Permit and Permanent
Sidewalk Easement
Parcel 22-27-200-011

Dear Mr. Herbel:

Pursuant to our discussion, in response to the proposed counter offer you have made to the City's good faith offer, we have agreed to provide the following, subject to City Council approval:

1. \$2,519 in just compensation for the Permanent Sidewalk Easement and Temporary Grading Permit;
2. 3" of 21 AA gravel for the driveway and parking area;
3. A landscape plan to enhance aesthetics and replace any trees, if removal is required.

We have enclosed the permanent Sidewalk Easement and Temporary Grading Permit for execution. Please execute and return both originals to my attention and we will place the matter on the next City Council agenda for approval.

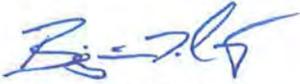
We appreciate your cooperation in moving this project forward and invite you to contact our office at 248-347-0454 with any questions.

Department of Public Services
Field Services Complex
26300 Lee BeGole Dr.
Novi, Michigan 48375
248.735.5640
248.735.5659 fax

cityofnovi.org

Sincerely,

ENGINEERING DIVISION



Benjamin Croy, PE
Civil Engineer

Enclosures

cc: Brian Coburn, Engineering Manager
Maryanne Cornelius, City Clerk
Jerome M. Toler and Verda V. Toler
Elizabeth K. Saarela, City Attorney's Office



JOHNSON ROSATI SCHULTZ JOPPICH PC

34405 W. Twelve Mile Road, Suite 200 ~ Farmington Hills, Michigan 48331-5627
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.johnsonrosati.com

March 13, 2013

Benjamin Croy, Civil Engineer
City of Novi
Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: **Novi Road Sidewalk – Nine Mile to Ten Mile
Permanent Pathway Easement and Temporary Grading Permit
*Parcel 50-22-27-200-011 – Herbel/Toler Property***

Dear Mr. Croy:

We have reviewed correspondence confirming discussions between City staff and Richard Herbel, an owner of the property located at 23777 Novi Road relating to the good faith offer made by the City for a permanent Pathway Easement and Temporary Grading Permit for the Novi Road Sidewalk Project. Mr. Herbel indicated that the good faith offer was not sufficient compensation for the easements and requested additional compensation in the form of additional plantings and additional driveway gravel to be incorporated into the project, as well as credit for a water connection to be made for the subject property.

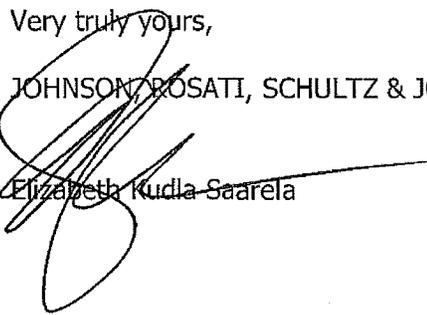
The total amount of the City's good faith offer was \$769, based on an estimated value of \$1.58 square foot value of the property, discounted to the value of an easement. The basis for the counter-offer by Mr. Herbel was not based on the \$1.58 square foot value of the property but in part on the perceived impact on the remaining property. Though it is not apparent that a water tap connection relates to the value of the easement or impact on the remaining property, as a result of your follow-up discussions with Mr. Herbel regarding the value of the easements, Mr. Herbel agreed to accept an additional \$1,750 in compensation, as well as modifications to the landscape plan and additional driveway gravel to mitigate the impact of the project. The additional \$1750 provided in the settlement will allow the City to avoid litigation cost in the matter that would be significantly higher. On this basis, we recommend acceptance of the negotiated settlement subject to receipt of the original executed permanent Pathway Easement executed by both the Herbels and the Tolers.

Benjamin Croy
March 13, 2013
Page 2

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.


Elizabeth Kudla-Saarela

EKS
Maryanne Cornelius, Clerk
Rob Hayes, Public Services Director
Brian Coburn, Engineering Manager
Thomas R. Schultz, Esq.

TEMPORARY GRADING PERMIT

I, Richard Herbel, the owner of the property as described as 23777 Novi
(print name)

Road, Novi, Michigan (Parcel No. 50-22-27-200-011) grant the City of Novi and its contractor (or subcontractors) permission to access, move men and equipment on and through, the right to store materials and excavated earth, remove vegetation and alter the underlying land in, over, upon and through the property described above in the particular areas shown in Exhibit A, attached.

The work will include:

Grading and related construction activities required for the construction of a non-motorized pathway in accordance with approved plans. All work is contained in the set of construction plans entitled "Novi Road Pathway, 9 Mile to 10 Mile and 2013 ADA Compliance Program" by Spalding DeDecker Associates.

All portions of the Premises damaged or disturbed by Novi's exercise of temporary easement rights, shall be reasonably restored by Novi to the condition that existed prior to the damage or disturbance;

I understand this only grants permission to the Contractor to perform work directly relating to the listed project and upon completion of required grading operations the property will be fully restored.

Richard Herbel
Richard Herbel

3-5-2013
Date

Jerome M. Toler

Date

Verda V. Toler

Date

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 5th day of MARCH, 2013, by
Richard Herbel

Susi DeMeo
Notary Public
Wayne County, Michigan
My Commission Expires: 1-10-2015

USA DE MEC
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jan 10, 2015
ACTING IN COUNTY OF OAKLAND

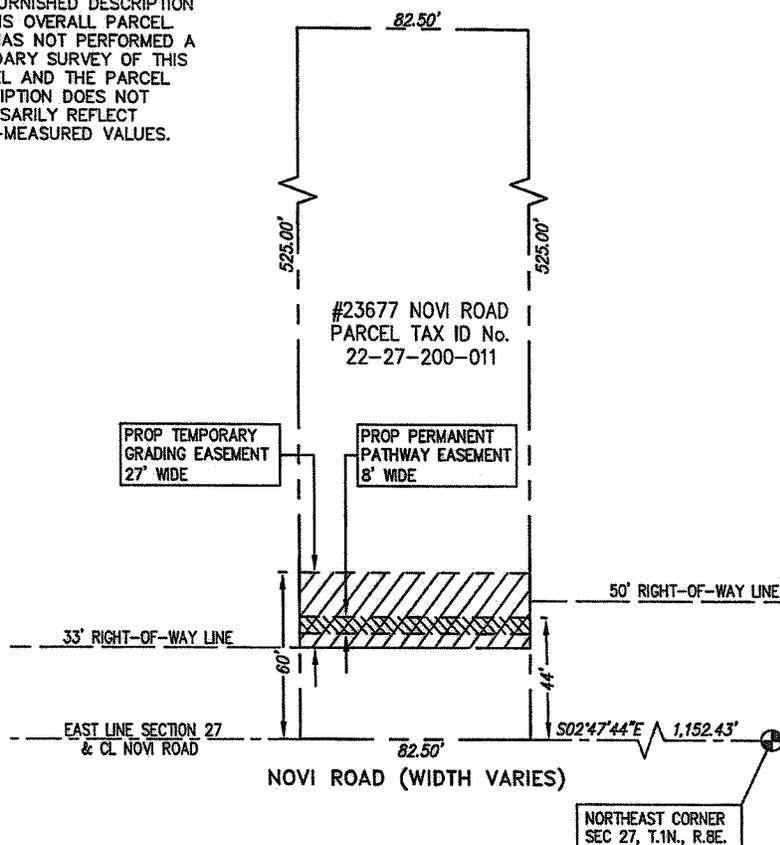
Drafted by:
Benjamin Croy, PE
City of Novi
45175 W Ten Mile Road
Novi, MI 48375

EASEMENT

EXHIBIT A



NOTE:
 THE PARCEL DESCRIPTION
 ABOVE WAS OBTAINED FROM
 SEAVER TITLE AGENCY, LLC.
 THE EASEMENT DESCRIPTION
 IS WRITTEN BASED UPON
 THE FURNISHED DESCRIPTION
 OF THIS OVERALL PARCEL.
 SDA HAS NOT PERFORMED A
 BOUNDARY SURVEY OF THIS
 PARCEL AND THE PARCEL
 DESCRIPTION DOES NOT
 NECESSARILY REFLECT
 FIELD-MEASURED VALUES.



FURNISHED LEGAL DESCRIPTION OF PARCEL

SEAVER TITLE AGENCY, LLC

COMMITMENT NO. 63-12271206-BLM

DATED: SEPTEMBER 7, 2012

SITUATED IN THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS:

ONE ACRE IN THE NORTHEAST CORNER OF THE SOUTH 5 ACRES OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 27, TOWN 1 NORTH, RANGE 8 EAST, SAID PARCEL MEASURING 82.50 FEET NORTH AND SOUTH AND 525 FEET EAST AND WEST. PARCEL IDENTIFICATION NO. 22-27-200-011

PERMANENT EASEMENT

THE EASEMENT SHALL BE A PERMANENT EASEMENT FOR CONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND REPLACEMENT OF PUBLIC PATHWAY DESCRIBED AS:

THE WESTERLY 8 FEET OF THE EASTERLY 44 FEET OF THE ABOVE DESCRIBED PARCEL, 660 SQ. FT.

TEMPORARY EASEMENT

ALSO, THE TEMPORARY GRADING EASEMENT FOR THE INSTALLATION OF THE PUBLIC PATHWAY DESCRIBED AS: THE WESTERLY 27 FEET OF THE EASTERLY 60 FEET OF THE ABOVE DESCRIBED PARCEL.

(2,228 SQ. FT.) (1,568 SQ. FT. EXCLUSIVE OF THE PERMANENT EASEMENT)

Spalding DeDecker
 Associates, Inc.



**SPALDING DeDECKER
 ASSOCIATES, INC.**

ENGINEERS SURVEYORS

905 SOUTH BLVD. EAST
 ROCHESTER HILLS, MI 48307

PH: (248) 844-5400 FAX: (248) 844-5404

www.spaldingdedecker.com

DRAWN: T. LINDOW

DATE: 12-05-12

CHECKED: M. SEDKI

DATE: 12-05-12

MANAGER: M. SEDKI

SCALE: 1" = 50'

JOB No. NV12-004

SHEET: 1 OF 1

SECTION 27 TOWN 1 NORTH RANGE 8 EAST

CITY OF NOVI

OAKLAND COUNTY, MI

PATHWAY EASEMENT

NOW ALL MEN BY THESE PRESENTS, that Jerome M. Toler and Verda V. Toler, husband and wife whose address is 3321 Culver Ave., Dearborn, MI 48124, as to an undivided ½ interest, and The Richard Herbel Revocable Living Trust dated the 19th day of August 1997, as to an undivided ½ interest, whose address is 43600 Cottisford Road, Northville, Michigan, 48167, for and in consideration of One Thousand Seven Hundred and Seven (\$1,707.00) Dollars, receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys to the City of Novi, a Michigan Municipal Corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375, a permanent easement for a public non-motorized pathway over across and through property located in Section 16, T.1N., R.8E., City of Novi, Oakland County, State of Michigan, more particularly described as follows:

Parcel No. 50-22-27-200-011

{See attached and incorporated Exhibit A}

The permanent easement for the public walkway is more particularly described as follows:

{See attached and incorporated Exhibit A}

Grantee may enter upon sufficient land adjacent to said easement for the purpose of exercising the rights and privileges granted herein.

Grantee may, construct, install, repair, replace, improve, modify and maintain a non-motorized pathway in the easement area as shown in the attached and incorporated Exhibit A.

Construction activities required for the construction of a non-motorized pathway, consisting of both 6-foot wide concrete pathway.

Grantor agrees not to build or to convey to others permission to build any permanent structures on, over, across, in, through, or under the above-described easement, except that, subject to Grantee's approval as part of an approved site plan, the Grantor may construct and/or install surface improvements to the property, including paved driveways, parking and/or walkways; landscaping; utilities and/or similar improvements, which improvements do not interfere with use, operation, maintenance, repair and replacement of the pathway in the easement areas shown on the attached and incorporated Exhibit A.

All portions of the Premises damaged or disturbed by Grantee's exercise of temporary easement rights, shall be reasonably restored by Grantee to the condition that existed prior to the damage or disturbance.

This instrument shall run with the land first described above and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

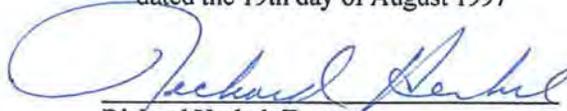
This easement shall allow public non-motorized traffic and shall permit maintenance, repair and replacement of the paving in the easement area.

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

Dated this 5 day of MARCH, 2013.

GRANTORS

The Richard Herbel Revocable Living Trust
dated the 19th day of August 1997


Richard Herbel, Trustee

AND

Jerome M. Toler

Verda V. Toler

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 5th day of MARCH,
2013, by Richard Herbel, Trustee of the

The Richard Herbel Revocable Living Trust dated the 19th day of August 1997

LISA DE MEO
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jan 10, 2016
ACTING IN COUNTY OF OAKLAND


Notary Public
WAYNE County, Michigan
My Commission Expires: 1-10-2013

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____,
20___, by Jerome M. Toler, and Verda V. Toler, husband and wife man.

Notary Public
_____ County, Michigan
My Commission Expires:

Drafted by:
Beth Saarela
Johnson, Rosati, Schultz & Joppich
34405 W. Twelve Mile
Farmington Hills, MI 48331

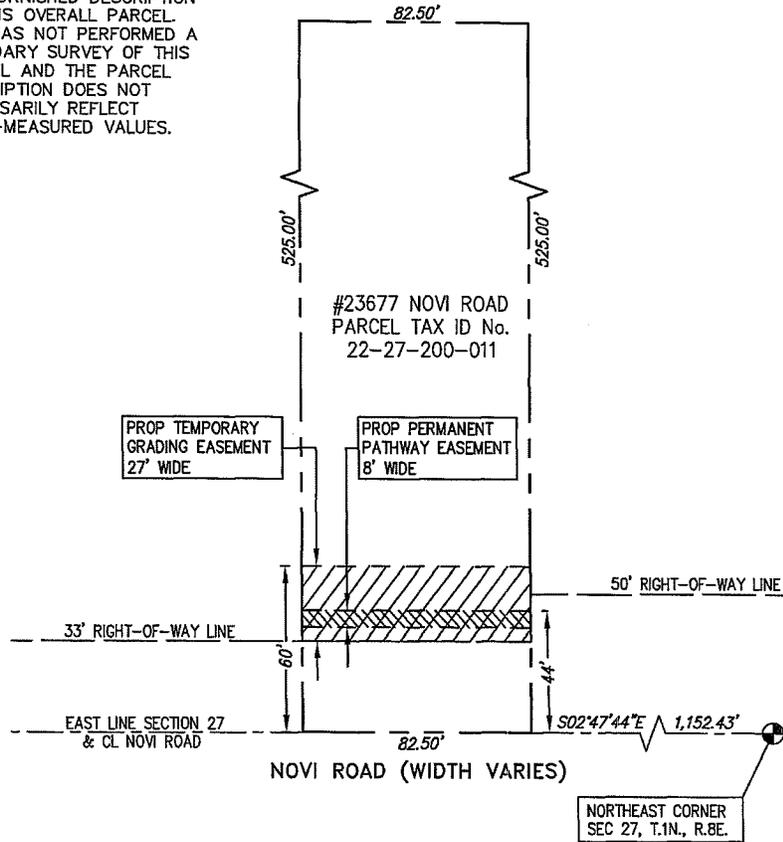
When recorded return to:
Maryanne Cornelius
City of Novi
City Clerk
45175 W. Ten Mile Road.
Novi, MI 48375

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EXHIBIT A



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COMMITMENT NO. 63-12271206-BLM

DATED: SEPTEMBER 7, 2012

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 (2,228 SQ. FT.) (1,568 SQ. FT. EXCLUSIVE OF THE PERMANENT EASEMENT)