



CITY of NOVI CITY COUNCIL

**Agenda Item J
November 10, 2014**

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from the Kroger Company of Michigan for the Kroger Office Expansion located at 40393 Grand River Avenue (parcel 22-24-327-010).

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

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Kroger Co. of Michigan requests approval of the Storm Drainage Facility Maintenance Easement Agreement for their office expansion, located at 40393 Grand River Avenue as shown on the attached map.

The Storm Drainage Facility Maintenance Easement Agreement (SDFMEA) is a requirement of the Storm Water Management Ordinance and details the responsibilities of the property owner to properly maintain their privately owned on-site storm water system. The agreement also contains a provision that permits the City to perform maintenance of the privately owned on-site storm water system should the property owner fail to do so at the expense of the property owner.

In this particular case, the property owner owns and agrees to maintain the on-site rain garden and has provided an ingress/egress easement to the facility. The owner is also responsible for maintaining the pipes and manholes leading to and from the on-site sewer system.

The enclosed agreement has been favorably reviewed by City staff and the City Attorney (Beth Saarela's September 18, 2014, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from the Kroger Company of Michigan for the Kroger Office Expansion located at 40393 Grand River Avenue (parcel 22-24-327-010).

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

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

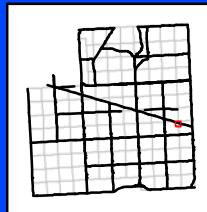


Map Author: A. Wayne
 Date: October 29, 2014
 Project:
 Version #:

Amended By:
 Date:
 Department:

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.



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



1 inch = 117 feet



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.johnsonrosati.com

September 18, 2014

Rob Hayes, Public Services Director
City of Novi, Department of Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

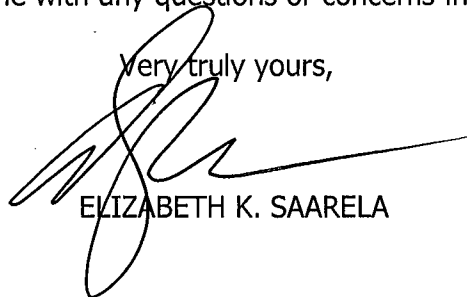
Re: Kroger Office Expansion **-JSP13-0065**
Storm Drainage Facility Maintenance Easement Agreement

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for storm water drainage and detention facilities serving the Kroger Office Expansion development. The Agreement is in the City's standard format and has been executed by the property owner, The Kroger Co. of Michigan. The City's Consulting Engineer has approved the Storm Drainage Facility Maintenance Easement Agreement exhibits. The Agreement is in order and may be placed on an upcoming City Council Agenda for approval. Once approved and executed by the City, the Agreement should be recorded with Oakland County Records by the City Clerk's Office.

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

Very truly yours,



ELIZABETH K. SAARELA

EKS
Enclosures

C: Maryanne Cornelius, Clerk (w/ Original Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
Barb McBeth, Deputy Community Development Director (w/Enclosures)
Sheila Weber, Treasurer's Office (w/Enclosures)
Kristin Pace, Treasurer's Office (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)

Rob Hayes, Public Services Director
September 18, 2014
Page 2

Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
David Beschke, Landscape Architect (w/Enclosures)
Adam Wayne, Construction Engineer (w/Enclosures)
Brittany Allen and Ted Meadows, Spalding DeDecker (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Matt Andrus, Jeffrey Scott Architects, PC (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

**STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT**

THIS STORM DRAINAGE FACILITY MAINTENANCE EASEMENT AGREEMENT (the "Agreement") is made this ____ day of May 2014, by and between The Kroger Co. of Michigan, a Michigan corporation, whose address is 40399 Grand River Ave., Novi, MI 48375 (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 (hereinafter the "City").

RECITATIONS:

A. Owner is the owner and developer of a certain parcel of land situated in Section 24 of the City of Novi, Oakland County, Michigan, described on the attached and incorporated **Exhibit A** (the "Property"). Owner has received final site plan approval for construction of an office expansion development on the Property (the "Office Expansion Development").

B. The Office Expansion Development shall contain certain storm drainage, detention and/or retention facilities, including but not limited to, a detention/sedimentation basin for the collection, conveyance, storage, treatment and/or discharge of storm water from the Property in accordance with all approved plans, and all applicable ordinances, laws and regulations.

NOW, THEREFORE, the Owner hereby covenants and agrees that the Owner shall, at its own expense, perpetually preserve, maintain, and repair all storm drainage, detention and retention facilities, including all wetlands which are part of the system located on the Property, to insure that the same continue to function as intended. The Owner shall establish a regular and systematic program of maintenance (the "Schedule of Maintenance") for such facilities and areas to insure that the physical condition and intended function of such areas and facilities shall be preserved and maintained. The Schedule of Maintenance and the annual estimated costs for maintenance and repairs for the first three (3) years are described in the attached **Exhibit B**.

In the event that the Owner shall at any time fail to carry out the responsibilities specified within this Agreement, and/or in the event of a failure to preserve and/or maintain the storm water drainage, detention and retention facilities in reasonable order and condition, the City may serve written notice upon the Owner setting forth the deficiencies in maintenance and/or preservation along with a demand that the deficiencies be cured within a stated reasonable time period (not less than thirty (30) day, except in the event of an emergency and the date, time and place for a hearing before the City for the purpose of allowing Owner an opportunity to be heard as to why the City should not proceed with the correction of the deficiency or obligation which has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If, following such hearing, the person conducting the hearing shall determine that the obligation has not been fulfilled or failure corrected within the time specified in the notice, as determined by the City in its reasonable discretion, the City shall thereupon have the power and authority, but not the obligation, to enter upon the Property, or cause its agents or contractors to enter the Property through the Ingress/Egress Easement Area as described and depicted in **Exhibit C** and perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary with respect to the detention/sedimentation basin within the Storm Water Management Easement described and depicted in **Exhibit D**, for the purposes described above. The cost and expense of making and financing such actions by the City, including notices by the City and reasonable legal fees incurred by the City, shall be paid by Owner within thirty (30) days of a billing to the Owner. All unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the Owner, and, in such event, the Owner shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit, in the event the City prevails.

The parties hereto make this Agreement on behalf of themselves, their heirs, successors, assigns and transferees, and hereby warrant that they have the authority and capacity to execute this Agreement and bind the Property as described in the terms and conditions of this agreement.

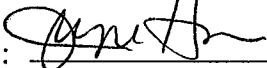
Invalidation of any of these covenants or conditions by Judgment or Court Order shall in no way affect the validity of any other provision which shall remain in full force and effect.

This Agreement shall run with the land and be binding upon all owners, their agents, heirs, successors, assigns and transferees.

IN WITNESS WHEREOF, Owner has executed this Storm Drainage Facility Maintenance Easement Agreement as of the day and year first above set forth.


OWNER:

THE KROGER CO. OF
MICHIGAN, a Michigan
corporation

By:  _____
Jayne Homco
Its: President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 4 day of May, 2014, by Jayne Homco, as the President of The Kroger Co. of Michigan, a Michigan corporation on behalf of the corporation.



Acting Notary Public
Oakland County, Michigan
My Commission Expires: Dec. 17, 2017

LINDA C. BAKER
Notary Public, State of Michigan
County of Wayne
My Commission Expires Dec. 17, 2017
Acting in the County of Oakland

EXHIBIT "A"

LEGAL DESCRIPTION

(Provided by Client, prepared by Ledy Survey Group)

The land referred to is located in the City of Novi, County of Oakland, State of Michigan, and is described as follows:

Part of the Southwest 1/4 of Section 24, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Beginning at a point on the North and South 1/4 line of Section 24, distant due North 1810.39 feet from the South 1/4 corner of Section 24, Town 1 North, Range 8 East, and proceeding thence North 71 degrees 12 minutes 52 seconds West 134.73 feet; thence due North 558.13 feet to a point on the centerline of Grand River Avenue; thence along centerline of Grand River Avenue South 71 degrees 12 minutes 52 seconds East 134.73 feet; thence along the North and South 1/4 line of Section 24 due South 558.13 feet to the point of beginning. Except that part, taken, used or deeded for Grand River Avenue.

Assurance Note: The above legal description describes the same property as in Schedule A of Title Commitment No. N-105080 of Lawyers Title Insurance Corporation bearing an effective date of October 16, 2009 at 8:00 A.M.

CLIENT:

**KROGER FACILITY
ENGINEERING OFFICE**

MEI

Mickalich Engineering, Inc.

Civil Engineering | Land Surveys | Planning

15243 Hawley Road
Holly, MI 48442

(248) 220-9289
albert@mickalich.com

DATE 04/10/14

SCALE N/A

SHEET # 1 OF 1

JDB #

13-073

EXHIBIT "B"

STORM WATER MANAGEMENT SYSTEM MAINTENANCE TASKS AND SCHEDULE

COMPONENTS	TASKS	SCHEDULE
DITCHES & SWALES	INSPECT FOR SEDIMENT ACCUMULATION	ANNUALLY
RIP-RAP	REMOVAL OF SEDIMENT ACCUMULATION (VACUUM TRUCK)	AS NEEDED (FOREBAY TO BE CLEANED WHENEVER VOLUME IS REDUCED TO 30% OR MORE DUE TO SEDIMENT ACCUMULATION)
OVERFLOW STRUCTURES	INSPECT FOR FLOATABLES, DEAD VEGETATION AND DEBRIS	ANNUALLY AND AFTER MAJOR EVENTS
OUTLET STRUCTURES	REMOVAL OF FLOATABLES, DEAD VEGETATION AND DEBRIS	AS NEEDED
STORM SEWER SYSTEM	MONITOR PLANTINGS/VEGETATION	2 - TIMES A YEAR
DETENTION BASIN/FOREBAY	ENSURE MEANS OF ACCESS FOR MAINTENANCE REMAIN CLEAR/OPEN	ANNUALLY
BASIN INLETS, OUTLETS & GRATINGS	REPAIR/STABILIZE AREA OF EROSION	AS NEEDED
	REPLACE DEAD PLANTINGS, BUSHES & TREES	AS NEEDED
	STRUCTURAL REPAIRS	AS NEEDED
	MAKE ADJUSTMENTS TO ENSURE PROPER FUNCTIONING	AS NEEDED
	SWEEP PARKING AREAS & DRIVES	2 - TIMES PER YEAR
	OIL & GASOLINE SPILLS	CLEANED OUT IMMEDIATELY
	REESTABLISH VEGETATION	AS NEEDED
	REPLACE OUTLET FILTER STONE	EVERY 3 - 5 YEARS, AS NEEDED

THE OWNER AND/OR ASSOCIATION SHALL MAINTAIN A LOG OF ALL INSPECTION AND MAINTENANCE ACTIVITIES AND MAKE THE LOG AVAILABLE TO CITY PERSONNEL AS NEEDED.

ANNUAL BUDGET \$2,000.00

CLIENT:

**KROGER FACILITY
ENGINEERING OFFICE**

MEI

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Civil Engineering | Land Surveying | Planning

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Holly, MI 48442

(248) 220-3299
albert@mickalich.com

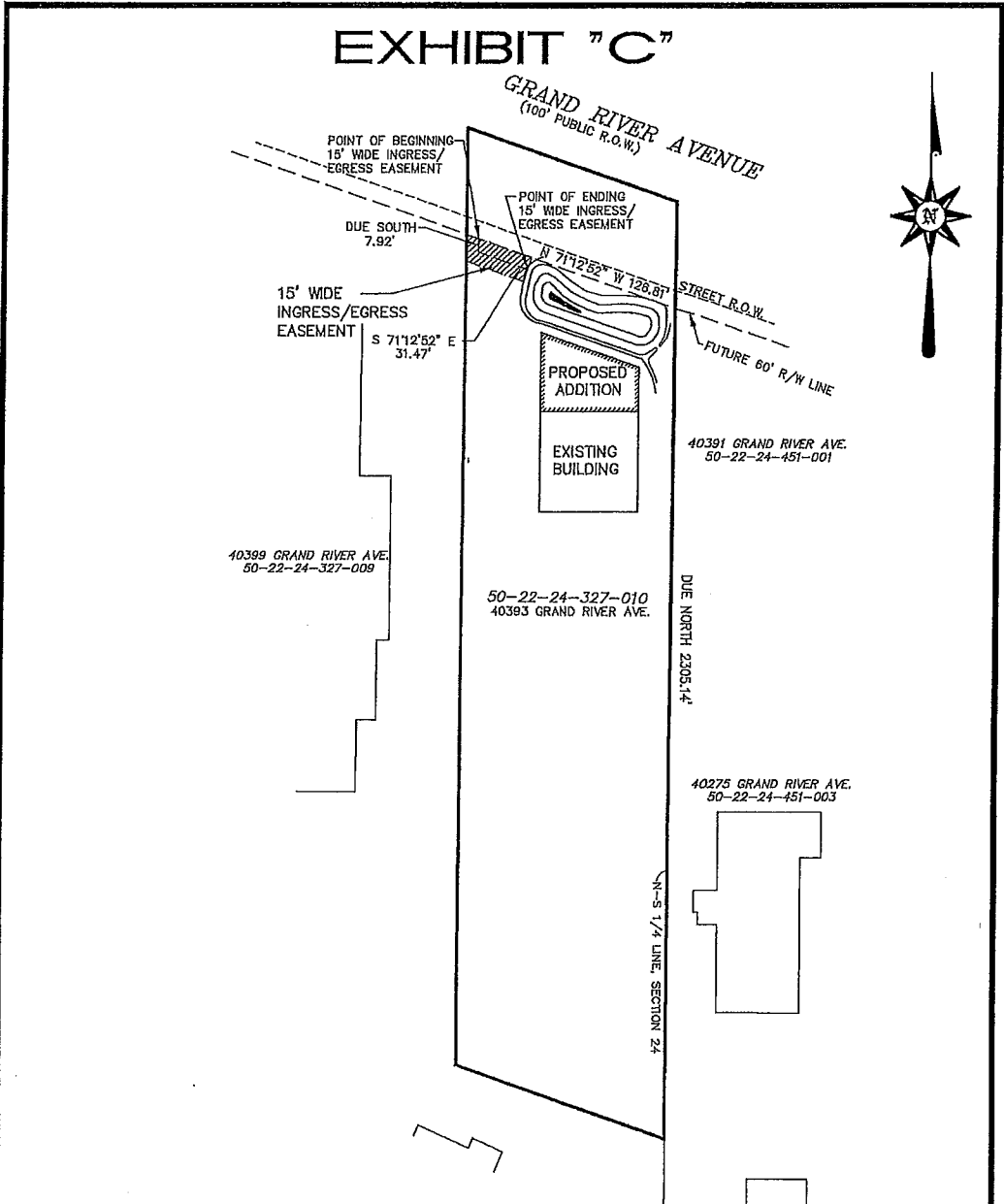
DATE 04/10/14

SCALE N/A

SHEET # 1 OF 1

JOB # 13-073

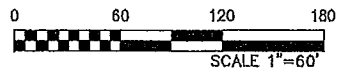
EXHIBIT "C"



15' WIDE INGRESS/EGRESS EASEMENT

A 15' wide Ingress/Egress Easement located in the City of Novi, County of Oakland, State of Michigan, and who's centerline is described as follows:

Part of the Southwest 1/4 of Section 24, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Beginning at a point on the South 60' Right of Way line of Grand River Avenue, said point being due North 2305.14 feet and North 71 degrees 12 minutes 52 seconds West 126.81 feet from the South 1/4 corner of Section 24, Town 1 North, Range 8 East; thence from said point of beginning Due South 7.92 feet; thence South 71 degrees 12 minutes 52 seconds East 31.47 feet to the Point of Ending.



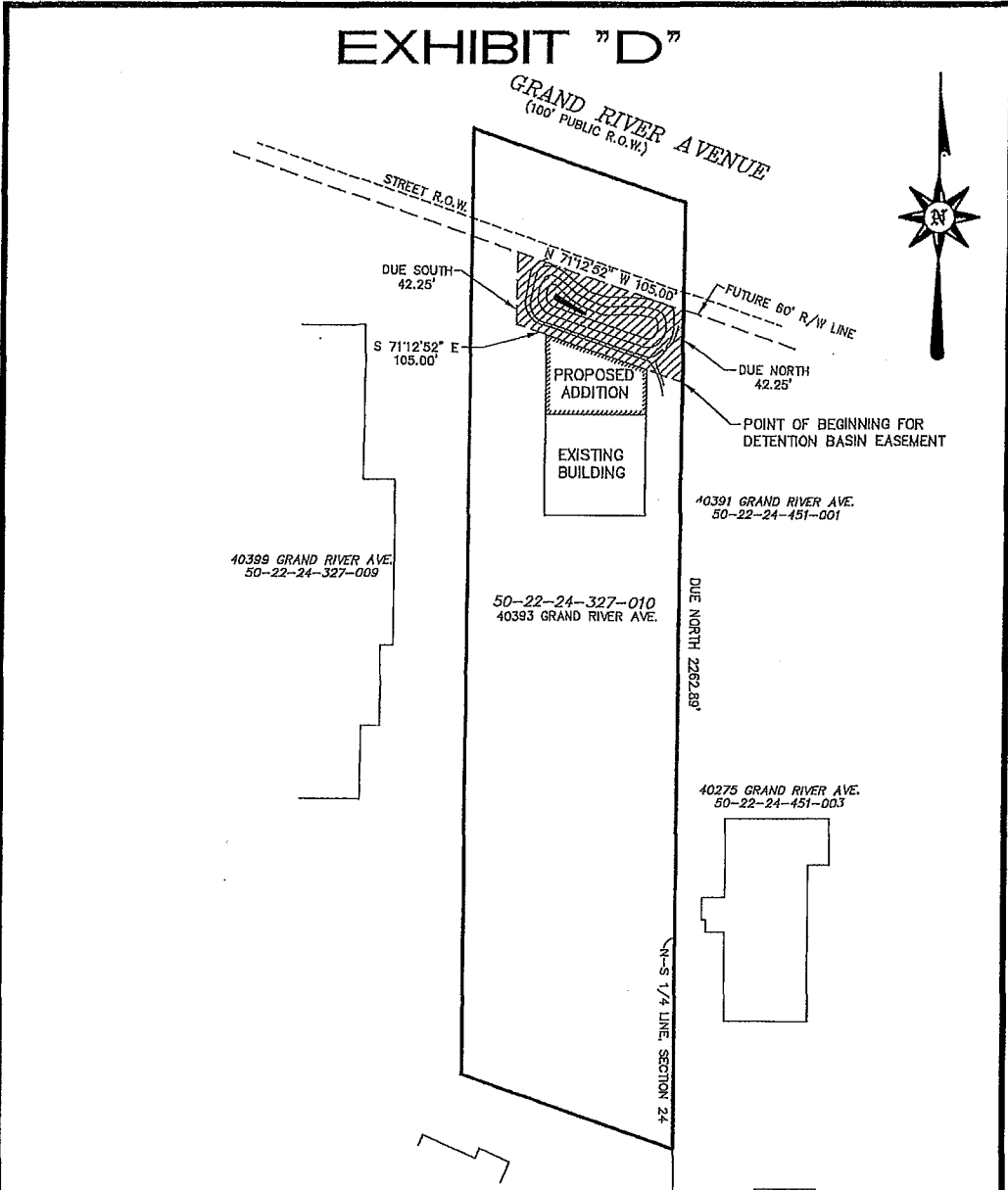
CLIENT:
**KROGER FACILITY
ENGINEERING OFFICE**



Mickalich Engineering, Inc.
Civil Engineering | Land Surveying | Planning
15243 Hawley Road (248) 223-9289
Novi, MI 48442 albert@mickalich.com

DATE 02/14/14
SCALE 1"=60'
SHEET # 1 OF 1
JOB # 13-073

EXHIBIT "D"

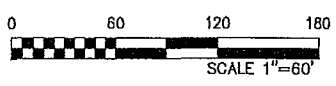


DETENTION BASIN EASEMENT

A Detention Basin Easement located in the City of Novi, County of Oakland, State of Michigan, and who's centerline is described as follows:

Part of the Southwest 1/4 of Section 24, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Beginning at a point on North-South 1/4 line of said Section 24, said point being due North 2262.89 feet from the South 1/4 corner of Section 24, Town 1 North, Range 8 East; thence continuing from said point of beginning, Due North 42.25 feet to a point on the South 60' Right of Way line of Grand River Avenue; thence along said line, North 71 degrees 12 minutes 52 seconds West 105.00 feet to a point; thence Due South 42.25 feet to a point; thence S 71 degrees 12 minutes 52 seconds E 105.00 feet to the point of beginning.

S 1/4 CORNER SECTION 24 T1N, R8E



CLIENT:
**KROGER FACILITY
ENGINEERING OFFICE**



Mickalich Engineering, Inc.
Civil Engineering | Land Surveying | Planning
15243 Hawkey Road (248) 220-9289
Holly, MI 48442 ebent@mickalich.com

DATE 02/14/14
SCALE 1"=60'
SHEET # 1 OF 1
JOB # 13-073



September 19, 2014

Matt Andrus
Jeffery A. Scott Architects P.C.
32316 Grand River Ave, Suite 200
Farmington, MI 48336

Re: Kroger Office Expansion - Acceptance Documents Review
Novi # JSP13-0065
SDA Job No. NV14-211
APPROVED

Dear Mr. Andrus:

We have reviewed the Acceptance Document Package received by our office on May 14, 2014 against the Final Site Plan (Stamping Set) approved on May 13, 2014 and inspection records for the storm sewer. We offer the following comments:

Final Acceptance Documents

1. **Off-Site Storm Drainage Facility / Maintenance Easement Agreement** – Exhibits A, C, & D Approved.
2. **As-Built Engineering Plans** are being prepared by Spalding DeDecker Associates, Inc.


Unless otherwise stated above, the documents as submitted were found to be acceptable by our office pending review by the City Attorney. Legal review will not occur until a current title policy is submitted to the City. For those documents which require revisions, please forward those revised documents to the City for further review and approval.

The City Attorney's Office will retain the original documents in their files until such time as they are approved and ready (notarized and executed properly) for the Mayor's signature. **It should be noted** that the Plan Review Center Report dated October 15, 2013 contains all documentation requirements necessary prior to construction and occupancy of the facility.

If you have any questions regarding this matter, please contact this office at your convenience.

Sincerely,

SPALDING DeDECKER ASSOCIATES, INC.


Taylor E. Reynolds, PE
Senior Project Engineer

cc:

Brian Coburn, Plan Review Center (via E-mail)
Maryanne Cornelius, City Clerk (via E-mail)
Valentina Nuculaj, City Planning (via E-mail)
Beth Saarela, Johnson Rosati, Schultz, Joppich PC
(via E-mail)
Sarah Marchioni, Building Department (via E-mail)
Barb McBeth, City Planning Director (via E-mail)

Ted Meadows, Spalding DeDecker Associates (via
E-mail)
Adam Wayne, City Construction Engineer (via E-
mail)
Sheila Weber, Treasurer's Office (via E-mail)
Albert Mickalich, MEI (via E-mail)

Engineering Consultants

Infrastructure • Land Development • Surveying