

**CITY of NOVI CITY COUNCIL**

**Agenda Item M  
April 6, 2009**

**SUBJECT:** Approval of the Storm Drainage Facility Maintenance Easement Agreement for the Temperform site, located on Parcel I.D. No. 22-23-151-024 at 25425 Trans-X Drive Novi Road.

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

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

The Temperform Corporation has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Temperform site, located at 25425 Trans-X Drive. The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's March 3, 2009 letter, attached) and is recommended for approval.

**RECOMMENDED ACTION:** Approval of the Storm Drainage Facility Maintenance Easement Agreement for the Temperform site, located on Parcel I.D. No. 22-23-151-024 at 25425 Trans-X Drive Novi Road

	1	2	Y	N
<b>Mayor Landry</b>				
<b>Mayor Pro Tem Gatt</b>				
<b>Council Member Burke</b>				
<b>Council Member Crawford</b>				

	1	2	Y	N
<b>Council Member Margolis</b>				
<b>Council Member Mutch</b>				
<b>Council Member Staudt</b>				

March 3, 2009

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500  
Fax: 248-851-2158  
www.secretwardle.com

Rob Hayes, City Engineer  
CITY OF NOVI  
45175 West Ten Mile Road  
Novi, Michigan 48375-3024

Elizabeth M. Kudla  
Direct: 248-539-2846  
bkudla@secretwardle.com

**Re: Temperform Addition, SP06-54  
Storm Drainage Facility Maintenance Easement Agreement  
Our File No. 660149.NOVI**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for the Temperform Addition. All issues set forth in our February 4, 2009 correspondence have been addressed with the provision of additional exhibits containing an Ingress and Egress Easements. The additional exhibits have been reviewed and approved by the City's Consulting Engineer. The Agreement now appears to be 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 M. KUDLA

EMK

Enclosures

- C: Maryanne Cornelius, Clerk (w/Original Enclosures)
- Marina Neumaier, Assistant Finance Director (w/Enclosures)
- Charles Boulard, Building Official (w/Enclosures)
- Barb McBeth, Deputy Community Development Director (w/Enclosures)
- Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
- Taylor Reynolds and Byron Hanson, Spalding DeDecker (w/Enclosures)
- Sarah Marchioni, Building Department (w/Enclosures)
- AJ Bartoletto/George Thomas, Temperform (w/Enclosures)
- Thomas R. Schultz, Esquire (w/Enclosures)

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**STORM DRAINAGE FACILITY**  
**MAINTENANCE EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT is made this 12<sup>th</sup> day of June, 2009 by and between the Temperform Corporation, a Michigan Corporation, whose address is 25455 Trans-X Drive, Novi, 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 4 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 a Commercial Retail development on the Property.

B. The Commercial Retail 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, 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, 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 Detention/Sedimentation Basin Easement Area

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, plus an administrative fee in an amount equivalent to twenty-five (25%) percent of the total of all such costs and expenses incurred, 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 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.

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 Agreement as of the day and year first above set forth.

OWNER

Temperform Corporation, a Michigan Corporation

By: A.J. Bartoletto Its: President

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of January, 2009 by Matthew P. Mezin, on behalf of Temperform Corporation, a N S corporation.

Notary Public  
Wojcik County, Michigan  
My Commission Expires: 8-9-2012

CITY OF NOVI  
A Municipal Corporation

\_\_\_\_\_  
By:  
Its:

STATE OF MICHIGAN    )  
                                  ) SS  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by \_\_\_\_\_, on behalf of the City of Novi, a Municipal Corporation.

\_\_\_\_\_  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

Drafted by:

Elizabeth M. Kudla  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040

And when recorded return to:

Maryanne Cornelius, City Clerk  
City of Novi  
45175 W. Ten Mile Rd  
Novi, MI 48375

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CONSENT TO EASEMENT

As the holder of a mortgagee interest in and to the property referenced in the Storm Drainage Facility Maintenance Easement Agreement, dated January 12, 2009, attached hereto and incorporated as Exhibit A, whereby Temperform Corporation grants and conveys said easements to the City of Novi, the undersigned hereby evidences its consent to the grant, conveyance, existence and recordation of said easements, which easements are hereby acknowledged and agreed to be superior to the interest of the undersigned and shall bind the undersigned and the heirs, successors and assigns of the undersigned.

4th IN WITNESS WHEREOF the undersigned has caused its signature to be placed on the day of March, 2009.

NATIONAL CITY BANK,  
a NATIONAL ASSOCIATION

By: [Signature]  
Its: LOUIS SUVAK  
SENIOR VICE PRESIDENT

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF OAKLAND )

The foregoing Consent to Easement was acknowledged before me this 4th day of MARCH, 2009, by LOUIS SUVAK, the SENIOR VICE PRESIDENT of NATIONAL CITY BANK, a Michigan A NATIONAL ASSOCIATION.

[Signature]  
Notary Public  
MACOMB\* County, MI  
My commission expires: 5/20/11  
\* ACTING IN OAKLAND

LINDA S. MANNING  
Notary Public, State of Michigan  
County of Macomb  
My Commission Expires May 20, 2011  
Acting in the County of OAKLAND

## EXHIBIT A

DESCRIPTION OF A 4.884 ACRE PARCEL OF LAND BEING PART OF THE WEST 1/2 OF SECTION 23, T1N, R8E, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN.

A part of the West 1/2 of Section 23, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the West 1/4 Corner of said Section 23; thence South 89°56'11" East, 675.06 feet, along the East and West 1/4 line of said Section 23, to the POINT OF BEGINNING; thence North 36°32'58" West, 507.31 feet; thence North 54°08'00" East, 178.84 feet, to Point "A"; thence South 36°32'30" East, 85.24 feet; thence South 90°00'00" East, 91.36 feet; thence North 00°00'00" East, 113.10 feet, to the Southerly right-of-way of Trans X Drive (60 foot wide right-of-way), thence South 36°20'00" East, 605.89 feet, along the Southerly right-of-way of said Trans X Drive; thence South 54°06'00" West, 317.30 feet; thence North 36°32'58" West, 145.89 feet, to the POINT OF BEGINNING. AND ALSO, being described as commencing at said Point "A"; thence North 36°32'30" West, 34.26 feet, to the POINT OF BEGINNING; thence North 36°32'30" West, 141.12 feet; thence North 44°28'00" East, 62.30 feet; thence North 32°48'00" East, 22.00 feet; thence North 24°59'40" East, 20.00 feet; thence North 19°04'20" East, 50.80 feet, to the Southerly right-of-way of said Trans X Drive; thence South 36°20'00" East, 213.00 feet, along the Southerly right-of-way of said Trans X Drive; thence North 90°00'00" West, 98.26 feet; thence South 46°01'31" West, 62.44 feet, to the POINT OF BEGINNING. All of the above containing 4.884 acres. All of the above being subject to easements, restrictions, and right-of-ways of record.

SIDWELL NOS. 22-23-151-024 AND 22-23-151-032

**Exhibit B**

<u>Storm Water Facility</u>	<u>Maintenance Action</u>	<u>Corrective Action</u>	<u>Annual Estimated Cost for Maintenance &amp; Repairs</u>		
			<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>
Storm Sewer/Open Channels	After each storm that meets or exceeds a 10-year storm event, check for piping around culverts or erosion adjacent to culverts. Ensure culverts are not collapsed or clogged.	Implement energy dissipation measures as necessary to prevent erosion. Remove sediment and debris from channels and culverts. Replace collapsed culverts.	\$100	\$103	\$106
Buffer Strips	Periodically inspect to ensure vegetative cover prevents erosion.	Implement energy dissipation measures to prevent erosion.	\$150	\$155	\$160
Sediment Basin	Every three months, check depth of sediment. Check basin for piping, seepage, or mechanical damage. Check for soil caking around standpipes. Ensure outfall is not causing erosion.	Remove sediment that accumulates to no more than 50% of basin volume. Remove caking from around standpipe. Implement energy dissipation measures to prevent erosion. Repair basin or outfall erosion.	\$200	\$206	\$212
Total:			\$450	\$464	\$478



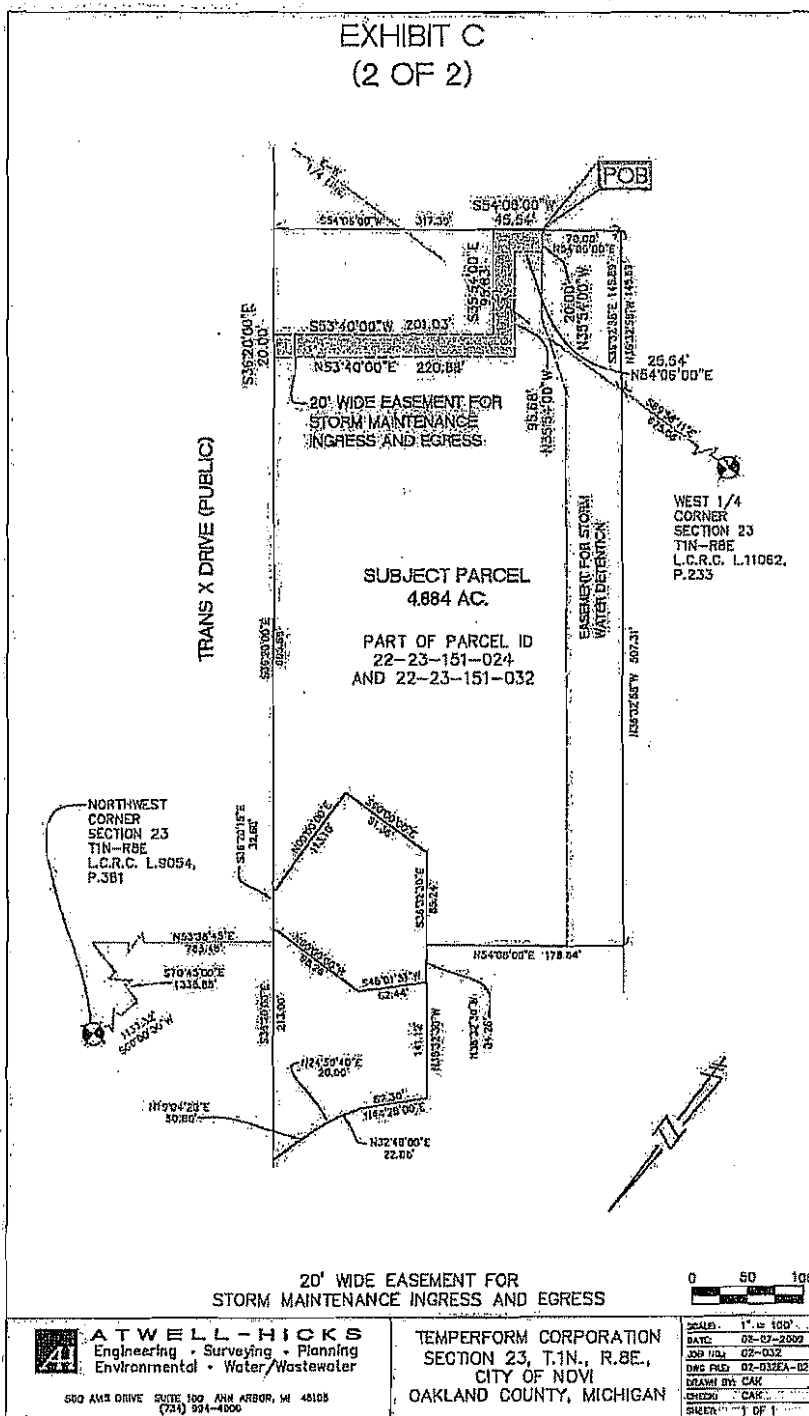
EXHIBIT C  
(1 OF 2)

LEGAL DESCRIPTION:

20 FT. WIDE EASEMENT FOR STORM MAINTENANCE INGRESS AND EGRESS

A part of the West 1/2 of Section 23, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the West 1/4 Corner of said Section 23; thence South 89°56'11" East, 675.06 feet, along the East and West 1/4 line of said Section 23; thence South 36°32'58" East, 145.89 feet; thence North 54°06'00" East, 70.00 feet, to the POINT OF BEGINNING; thence North 35°54'00" West, 20.00 feet; thence North 54°06'00" East, 25.54 feet; thence North 35°54'00" West, 95.68 feet, thence North 53°40'00" East, 220.88 feet to the Southerly right-of-way of Trans X Drive (60 foot wide right-of-way), thence South 36°20'00" East, 20.00 feet, along the Southerly right-of-way of said Trans X Drive; thence South 53°40'00" West, 201.03 feet; thence South 35°54'00" East 95.83 feet; thence South 54°06'00" West, 45.54 feet, to the POINT OF BEGINNING.  
Containing 0.157 acres.

EXHIBIT C  
(2 OF 2)



**ATWELL-HICKS**  
Engineering • Surveying • Planning  
Environmental • Water/Wastewater

500 AMZ DRIVE SUITE 100 ANN ARBOR, MI 48105  
(734) 994-4900

TEMPERFORM CORPORATION  
SECTION 23, T.1N., R.8E.,  
CITY OF NOVI  
OAKLAND COUNTY, MICHIGAN

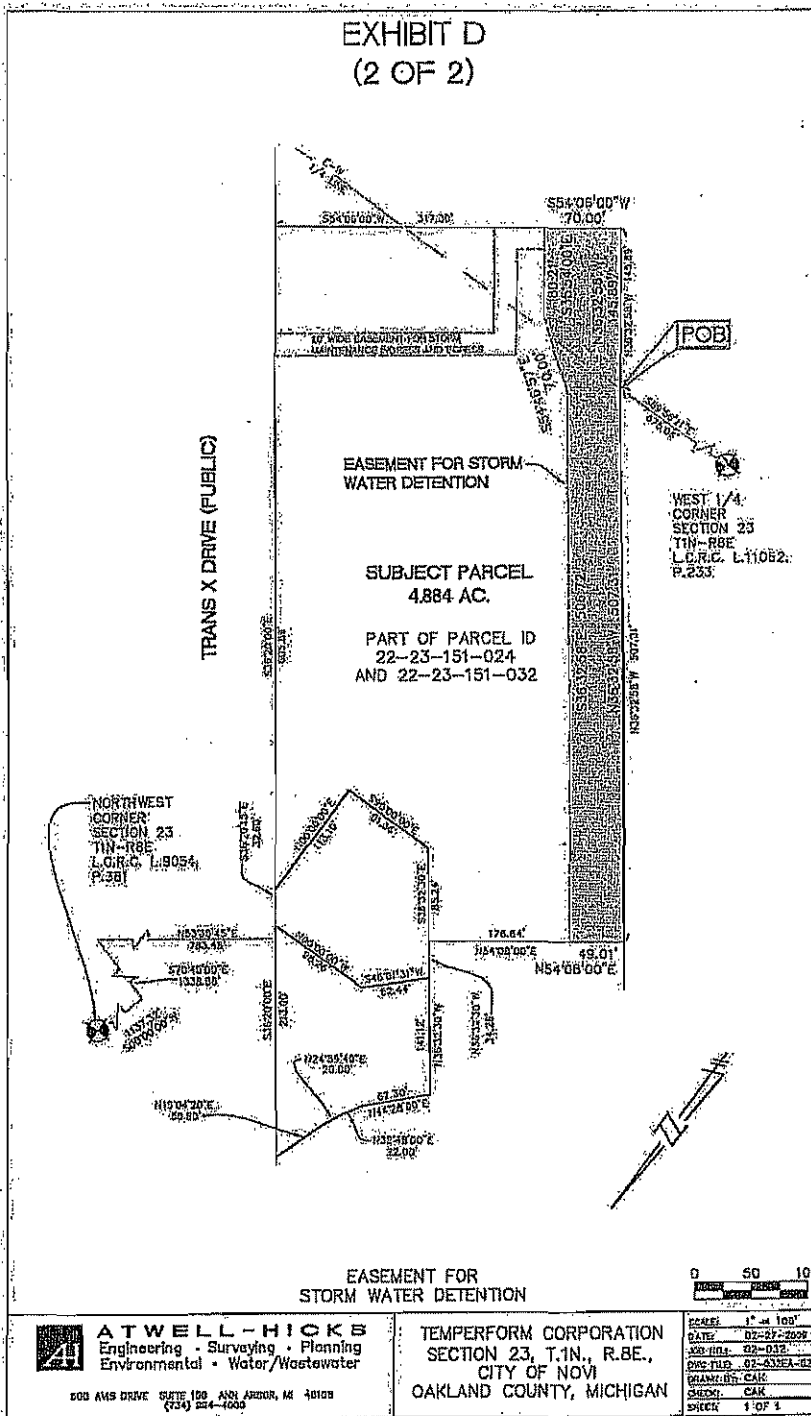
SCALE	1" = 100'
DATE	02-07-2002
JOB NO.	02-032
DWG. NO.	02-032EA-02
DRAWN BY	CAK
CHECKED BY	CAK
SCALE	1 OF 1

EXHIBIT D  
(1 OF 2)

LEGAL DESCRIPTION:  
EASEMENT FOR STORM WATER DETENTION

A part of the West 1/2 of Section 23, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the West 1/4 Corner of said Section 23; thence South 89°56'11" East, 675.06 feet, along the East and West 1/4 line of said Section 23, to the POINT OF BEGINNING; thence North 36°32'58" West, 507.31 feet; thence North 54°08'00" East, 49.01 feet; thence South 36°32'58" East, 506.72; thence South 54°46'57" East, 70.00 feet; thence South 35°54'00" East, 80.21 feet; thence South 54°06'00" West, 70.00 feet; thence North 36°32'58" West, 145.89 feet, to the POINT OF BEGINNING. Containing 0.791 acres.

EXHIBIT D  
(2 OF 2)



**ATWELL-HICKS**  
Engineering • Surveying • Planning  
Environmental • Water/Wastewater

608 AMS DRIVE SUITE 100 ANN ARBOR, MI 48106  
(734) 234-1000

**TEMPERFORM CORPORATION**  
SECTION 23, T.1N., R.8E.,  
CITY OF NOVI  
OAKLAND COUNTY, MICHIGAN