



CITY COUNCIL ACTION REPORT

November 22, 2013

TO: Brian Kischnick, City Manager

FROM: Mark Miller, Director of Economic and Community Development
Lori Bluhm, City Attorney
Steven J. Vandette, City Engineer

SUBJECT: Approval of Third Amendment to MDOT Capital Contract for
Troy Multi-Modal Transit Facility, MDOT Contract No. 2011-0231/A2

History:

MDOT Contract Amendments

City Council approved Capital Contract No. 2011-0231 (Resolution No. 2011-09-210) with MDOT for the final design and construction of the Troy Multi-Modal Transit Facility on September 12, 2011. MDOT provided federal funding in the amount of \$8,485,212 to the City for design and construction of the Transit Center.

On January 17, 2012, City Council approved a resolution that reduced the total cost of the Troy Multi-Modal Transit Center to \$6,272,500 (Resolution No. 2012-01-008). Following that, the First Amendment to the MDOT Capital Contract, was approved on November 12, 2012 (Resolution No. 2012-11-203), which reduced the grant funding amount from the original \$8,485,212 to the \$6,272,500 amount previously approved by City Council..

The Second Amendment to the MDOT Capital Contract, approved on March 4, 2013 (Resolution No. 2013-03-054), increased the grant amount from \$6,272,500 to \$6,620,736 so as to include the unanticipated cost of a crash wall , which was required after the start of construction by the host railroad, Grand Trunk Western Railroad, also known as Canadian National Railroad (CN).

Transit Center Property

Although the transit center property was deeded to the City in 2001 as part of the Consent Judgment negotiation that allowed the construction of Midtown Square, the Court of Appeals issued an opinion in May 2013 that reversed the May 2011 decision of the Oakland County Circuit Court. The Court of Appeals ruled that the Transit Center was allegedly not timely “funded” as of June 2, 2010, which was a condition for the City to keep the property. The City is seeking a reversal of this Court of Appeals decision, and has filed an application for leave to appeal with the Michigan Supreme Court, which is still pending.

Funding for Property Acquisition

In addition to the FRA construction grant, there was also a federal appropriation for the Transit Center that was administered by the FTA and granted to SMART. In September a request by SMART to repurpose \$1.625 million in appropriations was entered into FTA's Transportation Electronic Award Management (TEAM) system. This appropriation included \$1.3 million secured for the Transit Center by Congressman Gary Peters and a \$325,000 match from MDOT. These funds were requested to cover any necessary land acquisition costs.

The recent government shutdown has significantly delayed the processing of the FTA repurposing request. Only in the last week has the FTA Regional Office sent the request to Washington DC to begin its review by other governmental agencies. The FRA, who administered the construction grant, believes that this process may take months and this could significantly delay the opening of the Transit Center. The FRA has therefore offered to restore some of the original grant funding back to the Transit Center project in order for the city to proceed with actions necessary to secure continuous ownership of the property and open the station as quickly as possible.

Financial:

The total project continues to be 100% funded with federal ARRA funds administered by the FRA, through MDOT to Troy.

A summary of actions taken to date is provided below:

| | | |
|----------------------------------|--------------------|---|
| Original Contract | \$8,485,212 | Original Grant Amount – Administered by FRA |
| Amendment #1 | \$6,272,500 | Council Compromise Amount – Reduction by City Council |
| Amendment #2 Tooles/Clark | \$287,623 | Increase for Crash Wall Construction |
| Amendment #2 HRC | \$60,613 | Increase for Crash Wall Design, Testing and Staking |
| Amendment #3 | \$1,758,000 | Increase Reserve for Property Acquisition and Contingency |
| | | |
| Total Revised Contract Amount | \$8,378,736 | |

Recommendation:

Staff recommends that City Council approve a Third Contract Amendment to MDOT Capital Contract No. 2011-0231 for the purpose of increasing grant funds by \$1,758,000 for securing the City's ownership of the Transit Center property. The total revised contract amount is \$8,378,736.

MICHIGAN DEPARTMENT OF TRANSPORTATION

CITY OF TROY

AMENDMENT

This Amendatory Contract is made and entered into this date of _____ by and between the Michigan Department of Transportation (DEPARTMENT) and the City of Troy (CITY) for the purpose of amending Contract No. 2011-0231 (CONTRACT), effective October 1, 2011.

Recitals:

The CONTRACT provides federal grant funds for the final design and construction of the Troy Multi-Modal Transit Facility; and

Contract Amendment A1, entered into on November 19, 2012 reduced the grant amount from \$8,485,212 to \$6,272,500 to match the amount approved by Troy City Council on January 17, 2012.

Contract Amendment A2, entered into on May 8, 2013 increased the grant amount from \$6,272,500 to \$6,620,736 so as to include the cost of a crash wall required by the host railroad, Grand Trunk Western Railroad Company (CN).

The parties desire to further amend the CONTRACT to increase the grant to include the cost of property acquisition in Troy.

The parties agree that the CONTRACT be and that the same is amended as follows:

1. In order to increase the CONTRACT amount by One Million Seven Hundred Fifty-Eight Thousand Dollars and Zero Cents (\$1,758,000), for a revised total CONTRACT amount of Eight Million Three Hundred Seventy-Eight Thousand Seven Hundred Thirty-Six Dollars and Zero Cents (\$8,378,736), Sections 1, 3, 4, and 5(c) of the CONTRACT are amended to read as follows, and Attachment A of the CONTRACT, dated March 8, 2011, is replaced with Revised Attachment A, dated November 11, 2013.

“Section 1. PURPOSE

This Contract is to provide for the final design and construction of the Troy Multi-Modal Transit Facility, as set forth in Revised Attachment A, dated November 11, 2013 attached hereto and made a part hereof, such work hereinafter referred to as the “PROJECT.” The PROJECT will be performed in accordance with the Statement of Work, attached to and a part of the Grant Agreement (as defined

below) submitted to the FRA by the DEPARTMENT, said Statement of Work attached hereto and made a part hereof by reference as if the same were repeated in full herein.

The DEPARTMENT will participate in the PROJECT by making up to Eight Million Three Hundred Seventy-Eight Thousand Seven Hundred Thirty-Six Dollars and Zero Cents (\$8,378,736.00) in ARRA funding available to the CITY for use in financing the PROJECT, as set forth in Section 4.”

“Section 3. COST

The DEPARTMENT and the CITY agree that the maximum PROJECT amount of Eight Million Three Hundred Seventy-Eight Thousand Seven Hundred Thirty-Six Dollars and Zero Cents (\$8,378,736.00) set forth in Revised Attachment A represents estimated line item costs required to complete the PROJECT and may be subject to revision and adjustment. Therefore, the DEPARTMENT and the CITY agree that revisions or adjustments to estimated line item costs set forth in Attachment A are permitted, provided, however, that such revisions or adjustments will not result in an increase in the financial obligations of the DEPARTMENT, as set forth in Section 4 of this Contract, or in a change in the scope of the PROJECT, unless by prior award of a written amendment to the Contract. All costs in excess of the amount stated above will be the CITY’s responsibility.

No work may begin on the PROJECT until the work plan is approved by the DEPARTMENT and the DEPARTMENT provides the CITY with written notification to proceed. The DEPARTMENT will allow costs to be incurred by the CITY for the PROJECT prior to award of the Contract. If costs are incurred for the PROJECT that are not approved by the DEPARTMENT, those costs will not be eligible for reimbursement and will remain the responsibility of the CITY. If for any reason this Contract is not awarded, the DEPARTMENT will not be responsible for any expenses that have been incurred.

Funding for this Contract made available through legislative appropriation is based on projected revenue estimates. The DEPARTMENT may reduce the amount of this Contract if the revenue actually received is insufficient to support the appropriation under which this Contract is made.”

“Section 4. COST REIMBURSEMENT

The PROJECT cost will be met by contributions from the federal government. Federal ARRA funds will be applied to 100 percent of the eligible items of PROJECT cost not to exceed Eight Million Three Hundred Seventy-Eight Thousand Seven Hundred Thirty-Six Dollars and Zero Cents (\$8,378,736.00), as set forth in Revised Attachment A. All costs in excess of the amount stated above will be the CITY’s responsibility.

Reimbursement for costs incurred is subject to the cost criteria set forth in OMB Circular A-87, 49 CFR Part 18, and Federal Acquisition Regulations, 48 CFR Chapter I, Subpart 31.2, incorporated herein by reference as if the same were repeated in full herein. ARRA funds used for management and administrative costs will be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles.”

“[5]c. The DEPARTMENT will reimburse the CITY for all eligible PROJECT costs, as set forth in Revised Attachment A, within thirty (30) days of receiving said billings, up to a maximum amount of Eight Million Three Hundred Seventy-Eight Thousand Seven Hundred Thirty-Six Dollars and Zero Cents (\$8,378,736).”

- 2. All other provisions of the CONTRACT, except as herein amended, remain in full force and effect as originally set forth.
- 3. The CITY agrees that the compensation noted above represents payment in full for all services requested by the DEPARTMENT and waives any and all claims it has or may have against the DEPARTMENT that arise out of the need to amend the CONTRACT.
- 4. This Amendatory Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CITY and the DEPARTMENT and upon adoption of a resolution approving said Amendatory Contract and authorizing the signature(s) thereto of the respective representative(s) of the CITY, a certified copy of which resolution will be sent to the DEPARTMENT with this Amendatory Contract, as applicable.

CITY OF TROY

By: _____
Title: Dane M. Slater, Mayor

By: _____
Title: M. Aileen Bittner, City Clerk

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Title: Department Director

ATTACHMENT A
THE CITY OF TROY
AND
THE STATE OF MICHIGAN

November 11, 2013

Total estimated cost breakdown for the final design and construction of the Troy Multi-Modal Transit Facility:

| | |
|--|-------------|
| Professional services, architectural, engineering and Construction management | \$1,876,972 |
| Construction and Contingency | \$4,743,764 |
| Property Acquisition and Contingency | \$1,758,000 |
| Project Total to be contributed by the Michigan Department of Transportation | \$8,378,736 |