



CITY COUNCIL ACTION REPORT

April 15, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services
Steven J. Vandette, City Engineer *SV*

SUBJECT: Contract Renewal with Greenstar & Associates, L.L.C. for Right-of-Way Acquisition Services

Background:

- The City entered into a two-year contract in 2006 for right-of-way acquisition services, Resolution #2006-04-174, with Greenstar & Associates, L.L.C. (GA) with a one year option to renew.
- Pat Petitto is the owner of GA and a former Senior Right-of-Way Representative in the Real Estate & Development department. She has been working for the City as a contract employee/consultant since April 1, 2006.
- Work to be assigned to GA is on federally funded major road improvement projects, specifically the right-of-way phase, and GA's cost is 80% reimbursed to Troy from federal funds.
- In order to use a consultant on a federally funded project, as well as to receive 80% reimbursement for the consultant's time, an agreement between the City and the consultant is required.
- GA has been approved by City Council and the Michigan Department of Transportation (MDOT) to complete the right-of-way phase on the following projects:
 - John R, Long Lake to Square Lake, MDOT subcontract No. 05-5109/S1, as approved by Resolution # 2006-07-289-E-5
 - John R, Square Lake to South Boulevard, MDOT subcontract No. 05-5110/S1, as approved by Resolution # 2006-07-289-E-6
 - Wattles Road, 1,000 feet east and west of Rochester Road, MDOT subcontract No. 06-5417/S1, as approved by Resolution # 2006-10-381-E-6
 - Rochester Road, Torpey to Barclay, MDOT subcontract No. 06-5418/S1, as approved by Resolution # 2006-10-381-E-7
 - Rochester Road, Barclay to Trinway, MDOT subcontract No. 06-5632/S1, as approved by Resolution # 2007-01-005-E-7
- The above referenced projects require an estimated \$13,900,000 in right-of-way with 80% of the cost paid for with federal funds.
- The right-of-way acquisition is ongoing, is part of a multi-year effort, and is expected to continue for at least one more year depending on negotiations with property owners.
- The contract with GA is project specific and limited duration. It is cost effective and does not require the addition of permanent, full-time staff.

Financial Considerations:

- Compensation is based on an hourly rate of \$78.64 per hour, which is commensurate with the rate previously approved by Resolution #2006-04-174.
- Funds for the City of Troy's share are included in the 2007-08 Major Road fund and will also be included in the proposed 2008-09 budget as the right-of-way phase is a multi-year effort.

Legal Considerations:

- The format and content of the agreement is consistent with the contract previously approved by City Council in 2006.

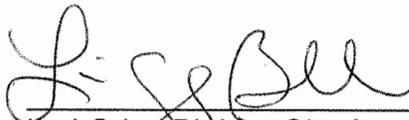
Policy Considerations:

- Pat is a former city employee with 30+ years of experience in right-of-way acquisition on city and federally funded projects (Goals II & IV)
- Purchase of right-of-way allows the project to proceed to the construction phase. (Goals I & V)
- By using federal funds to acquire right-of-way, up to 80% of the total cost is reimbursable with federal funds (Goal II)

Options:

- City management recommends exercising the option to renew the contract at the same terms and conditions, with an expiration date of April 22, 2009.

Approved as to Form and Legality:



Lori Grigg Bluhm, City Attorney

FIRST AMENDMENT TO AGREEMENT FOR RIGHT OF WAY ACQUISITION
PROJECT MANAGEMENT AND RELATED SERVICES BETWEEN CITY OF TROY
AND GREENSTAR & ASSOCIATES

On April 3, 2006, the City of Troy (TROY) and Greenstar & Associates (GREENSTAR) entered into an Agreement for Right-of-Way Acquisition Project Management and Related Services, which was approved by the Troy City Council in Resolution # 2006-04-174 (AGREEMENT). Under Section 1 of the AGREEMENT, the contract term was for two years, with a one year option to renew. The parties to this contract are now desirous of exercising the one year option to renew. A First Amendment to the AGREEMENT is necessary, since several of the projects have already been completed, and since there have been some administrative changes. The parties agree to the terms of this First Amendment, as well as the one year extension of the AGREEMENT.

Except as stated below, all terms and conditions of the Agreement for Right of Way Acquisition Project Management and Related Services (AGREEMENT) remain in full force for the one year extension period under the contract, which expires on April 21, 2009.

1. Under *Section 1- Services/ Compensation* of the AGREEMENT, the contract was to be administered by the Director of Real Estate and Development. Due to administrative changes, the City Engineer shall be substituted in as the City's administrator of the AGREEMENT.
2. *Addendum A, Upcoming Right of Way Projects*, shall be replaced with the following:
 - John R, Long Lake to Square Lake, MDOT subcontract No. 05-5109/S1, as approved by Resolution # 2006-07-289-E-5
 - John R, Square Lake to South Boulevard, MDOT subcontract No. 05-5110/S1, as approved by Resolution # 2006-07-289-E-6
 - Wattles Road, 1,000 feet east and west of Rochester Road, MDOT subcontract No. 06-5417/S1, as approved by Resolution # 2006-10-381-E-6
 - Rochester Road, Torpey to Barclay, MDOT subcontract No. 06-5418/S1, as approved by Resolution # 2006-10-381-E-7
 - Rochester Road, Barclay to Trinway, MDOT subcontract No. 06-5632/S1, as approved by Resolution # 2007-01-005-E-7.

The parties enter into this First Amendment for Right of Way Acquisition Project Management and Related Services on this _____ day of April, 2008.

GREENSTAR & ASSOCIATES, LLC

By _____

Its _____

CITY OF TROY

By _____
Louise Schilling

Its _____
Mayor

By _____
Tonni L. Bartholomew

Its _____
City Clerk

F-3 Contract for Greenstar & Associates, LLC for Right-of Way Services

Resolution #2006-04-174

Moved by Beltramini

Seconded by Stine

WHEREAS, It has been determined that it would be in the best interest of the City of Troy to enter into a contract for right-of-way services in lieu of hiring a Senior Right of Way Representative;

WHEREAS, Greenstar & Associates, LLC has submitted a proposal to provide right-of-way services for authorized project hours up to 1310 hours per year for the next two years, with a one year option to renew, and at an estimated total cost of \$98,250, as outlined in a memorandum from the Real Estate & Development Department dated March 20, 2006; and

WHEREAS, In the event additional hours or projects are added to those described in Addendum A of the above referenced memorandum, the proposed contract provides the flexibility to add up to 190 hours per year for a total cost not to exceed \$112,500.

NOW, THEREFORE, BE IT RESOLVED, That the agreement between the City of Troy and Greenstar & Associates, LLC to provide right-of-way services is hereby **APPROVED**, and the Mayor and the City Clerk are hereby **AUTHORIZED TO EXECUTE** the Agreement documents; and

BE IT FURTHER RESOLVED, That the contract is **CONTINGENT** upon contractor submission of properly executed documents including insurance certificates and any other specified requirements.

Yes: All-6

No: None

Absent: Howrylak

AGREEMENT FOR RIGHT-OF-WAY ACQUISITION PROJECT MANAGEMENT AND RELATED SERVICES

This agreement is made this 3rd day of April, 2006, by and between the City of Troy, 500 West Big Beaver Road, Troy, Michigan 48084, hereinafter called the "City" and Greenstar & Associates, LLC, 4840 N. Adams Road, Suite 183, Rochester, Michigan 48306, hereinafter called the "Contractor."

NOW, THEREFORE, the Contractor and the City for the consideration hereinafter named, agree as follows:

Section 1 – Services/Compensation

The Contractor agrees to provide complete management, supervision and coordination of all right-of-way related activities which include appraisal, negotiation and acquisition of needed property rights to construct City capital improvement projects, disposal of excess real and personal property, relocation of business and homeowners in project areas, advising the Legal Department in condemnation cases and related services, in accordance with State and Federal laws. Additional services, not included in this agreement, shall be mutually agreed to by the City and Contractor. This contract will be administered by the Director of Real Estate and Development and the contractor will be solely responsible to the Director for all performance and contract related issues.

The Contractor must be able to work flexible hours upon short notice when schedules and volume demand. All project hours and assignments will conform to the attached Addendum "A", unless changes are mutually agreed upon by both parties. Project hours will not exceed 1500 hours per year.

The City, in consideration of the performance of this agreement, agrees to pay Contractor on an hourly basis at a rate of \$75 per hour. This rate shall remain firm for the 2006 calendar year. Thereafter the hourly rate will be increased at a rate not to exceed the difference in the Consumer Price Index between the current year (as close to 12 months as possible) and the previous year as calculated on the CPI Inflation Calculator available on the Bureau of Labor Statistics website www.BLS.gov/cpi/home.htm with the exception that annual rate increases shall not exceed three (3%) percent. The CPI Inflation Calculator uses the average Consumer Price Index for a given year.

This contract shall continue in effect from the date of execution for two (2) years with a one (1) year option to renew.

Section 2 – Consultant Services

The Contractor will not be reimbursed for vehicle mileage, license fees, training, business cell phone, home office use or supplies. While an office will be provided for the contractor on site, the City does not assure exclusive access of this office for the

contractor's use. The Contractor agrees that in performance of its duties as outlined above will be bound by the code of ethics applicable to its industry. The Contractor will complete all work required and referenced in the contract expeditiously and on time, as defined in Addendum "A", or as mutually agreed by the City and Contractor. Upon completion of the contracted services for each project, a Right-of-Way Certification shall be prepared for execution by the Contractor and the City representative.

Revisions due to error or oversight to work submitted to the City by the Contractor, including but not limited to market studies, acquisition documents, and appraisal reviews shall be submitted to the City within ten (10) days from receipt of City's request. If a revision becomes necessary because of revised plans or additional requirements of the City, revisions shall be completed by mutual agreement between the City and the Contractor.

Section 3 – City Cooperation

The City shall cooperate with the Contractor to furnish documentation timely, as appropriate and as legally possible in the possession of the City relevant to the nature of the work assignments.

Section 4 – Compensation

For and in consideration of the faithful and professional performance and delivery of the above services as set forth, the City shall pay the Contractor for services pursuant to this Contract within a period of thirty (30) days after receipt from the Contractor of an itemized monthly invoice describing services performed.

Section 5 – Compliance with All Laws and Regulations

In the provision of the services described herein, the Consultant agrees to comply with all applicable Federal, State and local laws and applicable regulations. In addition, the Contractor shall be licensed and/or certified and professionally designated by the State of Michigan and licenses and/or certification shall be maintained as active during the term of this agreement.

Section 6 – Independent Contractor

The Contractor shall perform duties as an independent contractor and in an independent manner without supervision and control by the City. The Contractor shall not be deemed to be an employee of the City for purposes of payroll deductions, withholding tax, social security, workers' compensation, unemployment compensation, disability benefits, vacations, fringe benefits or any other purpose. In the performance of duties, the Contractor shall supply and operate Contractor's own vehicle, cell phone office equipment and office. However, Contractor may use an on-site office provided by the City when it is in the City's best interest to do so.

Section 7 – Ownership of Documents

Ownership of all data, materials and documentation originated and prepared for the City pursuant to this contract shall belong exclusively to the City.

Contractor may use the materials prepared for the City as promotion and marketing pieces in pursuit of work for others, provided prior written approval is obtained from the City.

Section 8 – Insurance

The Contractor shall not commence work until the certificate of insurance required under this paragraph has been delivered to the City. All insurance carriers must be acceptable to the City and licensed and admitted to do business in the State of Michigan.

A new certificate of insurance shall be provided to the City each year at the time of policy renewal. New certificates shall be delivered to the City in the same format as outlined in the sample certificate included in the City's Request for Proposal.

1. Workers' Compensation Insurance: The Contractor shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
2. Commercial General Liability Insurance. The Contractor shall procure and maintain during the life of the blanket purchase order, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations Liability; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable. Coverage should include terrorist liability.
3. Motor Vehicle Liability. The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
4. Umbrella Liability Insurance. The Contractor shall procure and maintain during the life of this contract Umbrella Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence.
5. Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds "The City of Troy, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employers and volunteers thereof. This coverage shall be

primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.”

6. Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following "It is understood and agreed that Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Troy, 500 West Big Beaver Road, Troy, Michigan 48084."
7. If any of the above coverages expire during the term of the contract, the Contractor shall deliver renewal certificates and/or policies to the City of Troy at least ten (10) days prior to the expiration date. Failure to comply with the insurance requirements contained in this agreement shall constitute a material violation and breach of the agreement and may result in termination of the agreement.

Section 9 – Indemnification

To the fullest extent permitted by law, Contractor agrees to defend, pay in behalf of, indemnify and hold harmless the City of Troy, its elected and appointed officials, employees and volunteers and others working in behalf of the City of Troy against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Troy, its elected and appointed officials, employees, volunteers or others working in behalf of the City of Troy by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract.

Section 10 – Subcontractors

No contract may be sublet without the written consent of the City of Troy. Any subcontractor, so approved, shall be bound by the terms and conditions of this contract. The contractor shall be fully liable for all acts and omissions of its subcontractor(s) and shall indemnify the City of Troy for such acts or omissions.

Section 11 – Assignment of Agreement and Other Contractors

The Contractor shall not assign this Agreement or any part thereof without the written consent of the City. The city reserves the right to let other agreements in connection with this work, even if of like character, for work under an agreement. The Contractor shall coordinate work as required by the City. If any part of the Contractor's work depends on the proper execution of any other contractor, the Contractor shall inspect and promptly report to the City any defects in such work that renders it unsuitable for such proper execution. Failure to inspect and report shall constitute an acceptance of the other contractor's work.

Section 12 – Non-Discrimination

The Contractor agrees not to discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin or handicap. A breach of this Section shall constitute a material breach and may be cause for this Agreement to be canceled or terminated by the City.

Section 13 – Termination of Contract

The City reserves the right to terminate this agreement without penalty or handling fees upon 30 days written notice due to poor performance or for any reason deemed to be in its best interest.

Section 14 – Entire Agreement

This agreement constitutes the entire agreement between the City and the Contractor and shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors, assigns and third parties claiming under this Agreement or by virtue of Agreement between the City and the Contractor.

This agreement shall be construed in accordance with and governed in all respects by the laws of the State of Michigan.

IN WITNESS WHEREOF, the undersigned, warranting that each is fully authorized and empowered to do so, hereby execute these presents intending to bind themselves, and their respective principals, agents, assignees and successors thereby, as of the date first written above.

CITY OF TROY

GREENSTAR & ASSOCIATES, LLC

By: *Louise E. Schilling*
Louise E. Schilling, Mayor

By: *Patricia A. Petitto*
Patricia A. Petitto, SR/WA

Tonni L. Bartholomew
Tonni L. Bartholomew, City Clerk

ADDENDUM "A"
UPCOMING RIGHT OF WAY PROJECTS

PROJECT	ESTIMATED NUMBER OF PARCELS	APPRAISAL & ACQUISITION	CONSTRUCTION	GREENSTAR ESTIMATED HOURS*
Expansion of Historic Green	2	2006	2005-2010	13 (40)
Coolidge/Wattles CMAQ	1 (Wattles only)	2006	2006	6 (20)
Livernois Watermain (West Side) – Stalwart to Cutting & Road Widening, Long Lake to Square Lake	22-Partial Fee 7-Easements 14-Temporary Grading from 35 parcels (7 of which are for watermain)	2006	Watermain 2007 – Road Widening 2013+	234 (700)
Livernois Sanitary Sewer (East Side) – Stalwart to Cutting & Road Widening, Long Lake to Square Lake	7-Partial Fee 5-Easements 9-Temporary Grading from 16 parcels (4 of which are for sanitary sewer)	2006+	Sanitary Sewer 2007 – Road Widening 2013+	106 (320)
John R Widening – Long Lake to Square Lake	8-Partial Fee 2-Drainage Easements 22-Grading Permits from 26 parcels	2006 & 2007	2006-John R/Square Lake CMAQ Project 2010 +/- John R	173 (520)
John R Widening – Square Lake to South Boulevard	2-5-Full Acquisitions 27-30-Partial Fee 14-Easements 54-Grading Permits from 28 parcels	2006 & 2007	2010 +/-	186 (560)
Miscellaneous Storm Drain Projects Based on Need	15 estimated	2006	2006?	50 (150)
Miscellaneous Sidewalk Projects for Sidewalk Gap Program	?	2006	2006+	
Miscellaneous Acquisitions Related to New Development	100 documents per year	2006	Acquired 27 deeds, 130 easements & 4 agreements in 2004	334 (1,000)
Rochester Widening – Torpey to Barclay	1-Full 55-Partial Fee 61-Easements & 9-Temporary Grading from 66 parcels	2006-2008	Need to Complete EA (2009)	440 (1,320)
Rochester Watermain (East Side) – Long Lake to Sylvanwood	12-Partial Fee 5-Easements from 14 parcels**	2006-2008	Need to Complete EA 2010+	
Rochester Watermain (West Side) - Wattles to Sylvanwood	23-Partial Fee 15-Easements from 38 parcels**	2006-2008	Need to Complete EA 2009	
Wattles – East & West of Rochester	13-Partial Fee 13-Easements & 12-Temporary Grading from 21 parcels	2006 & 2007	2009 - Need to Complete EA	140 (420)

PROJECT	ESTIMATED NUMBER OF PARCELS	APPRAISAL & ACQUISITION	CONSTRUCTION	GREENSTAR ESTIMATED HOURS*
Miscellaneous Storm Drain Projects Based on Need	15 estimated	2007	2007?	50 (150)
Miscellaneous Sidewalk Projects for Sidewalk Gap Program and Based on Requests from School District	?	2007	2007+	
Miscellaneous Acquisitions Related to New Development	Estimated 100 documents per year	2007	Acquired 27 deeds, 130 easements & 4 agreements in 2004	334 (1,000)
Rochester Widening – Barclay to Trinway	41-Partial Fee 56-Easements 42-Temporary Grading from 83 parcels	2007-2008	Need to Complete EA 1010+	554 (1,660)
Dequindre – Long Lake to Auburn	? (may be acquired by RCOC)	2008-2009	2010+	
I-75/Crooks/ Interchange	?	?	?	
TOTAL				2,620 (7,860)

*Total Estimated Real Estate & Development Hours are Listed in Parenthesis)

**These parcels are also included in road widening projects.

Prepared by: Patricia A. Pettito 1/25/06

SAMPLE

ADDENDUM "B"

RIGHT-OF-WAY CERTIFICATION

Sign Either Section A or B, below, as appropriate

Project: John R, Square Lake to South Boulevard

Eligible Applicant/Requesting Authority: City of Troy Date: _____

Route Name: John R

Termini (be specific): Square Lake to South Boulevard Crossing: Square Lake to South Blvd.

SECTION A:

- The project did not require the acquisition of additional right-of-way, temporary grading permits or permanent easements.
- The City of Troy has adequate power and authority to properly control the right-of-way necessary for the construction, operation, and maintenance of this project.

(Signed by authorized person employed by the City)

(Date)

(Typed Name and Title) _____

SECTION B:

- The project required additional right-of-way. The requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; the provisions of 23USC; the provisions of 23 CFR; the provisions of 49 CFR; and the provisions of P.A. 1980, No 87, as amended, have been met with respect to this project.
- The City of Troy has adequate power and authority to properly control the right-of-way necessary for the construction, operation, and maintenance of this project.
- The checklist on page 2 of this attachment has been completed.
- Number of parcels needed for this project, by type:

Fee (Total Take):	_____
Fee (Partial Take):	_____
Easement:	_____
Grading Permit:	_____
Limited Access Rights:	_____

(Signed by authorized person employed by the City)

(Date)

(Typed Name and Title) _____

CHECKLIST

This checklist must be completed if Section b on page 1 of this document applies.

Each parcel requires a parcel file. All parcel files must contain, but are not limited to, the following:

√ Indicates requirement has been met for each parcel

- Title Evidence: (Title Commitment, tax roll search, etc.).
- Memos of Negotiations (Buyers' contacts).
- Copies of Appraisals and Appraisal Reviews, or copies of executed Waiver of Appraisals and the market study done for the overall project.
- Copies of executed DEEDS, EASEMENTS, or PERMITS which agree with the valuation of the Appraisal Reviews and copies of Approval Letters when compensation exceeds the original approved offer.
- Copies of documents indicating the original offer made to property owners (value statement).

IN ADDITION.....All parcel files requiring any relocation must also contain, but are not limited to the following:

- Relocation eligibility notice for all personal items within the right-of-way and actual moving costs.
- Properly completed housing determination listing at least three D.S.S. comparables.
- Copy of notice to quit to all relocates indicating they were given at least 90 days notice.
- Copies of claims/payments to relocatees.

Initials _____

(Initialed by authorized person employed by the county, city or village)

Date _____