CITY COUNCIL ACTION REPORT

March 30, 2009

TO: John Szerlag, Acting City Manager

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

SUBJECT: Contract 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.
- The one year option was approved by Resolution #2008-04-134 and remains in force until April 21, 2009.
- 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 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
        - Right-of-way acquisition is on-going and is budgeted in 2008/09 and proposed in 2009/10 in the Major Road fund. It is anticipated that the right-of-way phase will be complete in 2009/10.

    - John R, Square Lake to South Boulevard, MDOT subcontract No. 05-5110/S1, as approved by Resolution # 2006-07-289-E-6
        - Right-of-way acquisition is on-going and is budgeted in 2008/09 and proposed in 2009/10 in the Major Road fund. It is anticipated that the right-of-way phase will be complete in 2009/10.

    - 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
        - Right-of-way acquisition is on-going and is budgeted in 2008/09 and proposed in 2009/10 in the Major Road fund. It is anticipated that the right-of-way phase will be complete in 2009/10.

- Rochester Road, Torpey to Barclay, MDOT subcontract No. 06-5418/S1, as approved by Resolution # 2006-10-381-E-7
  - Right-of-way acquisition is on-going and is budgeted in 2008/09 and proposed in 2009/10 in the Major Road fund. It is anticipated that the right-of-way phase will be complete in 2009/10.

- Rochester Road, Barclay to Trinway, MDOT subcontract No. 06-5632/S1, as approved by Resolution # 2007-01-005-E-7
  - Right-of-way funds have been obligated through MDOT and acquisition will be budgeted in the 2010/11 Major Road fund.

- The above referenced projects require an estimated $18,250,000 in right-of-way with approximately 80% of the cost paid for with federal funds.
- The right-of-way acquisition is ongoing and is part of multi-year, multi-phase projects.
- 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:

- GA has agreed to the same terms and conditions as the original agreement, as amended, with no increase to the hourly rate of $78.64 per hour for the first year.
- Subsequent years would be subject to adjustment by using the consumer price index computation for the published Urban-Detroit/Ann Arbor Area between April of the current contract year and the base year of April 2009, upon mutual consent of both parties.
- Funds for the City of Troy's share are included in the 2008-09 Major Road fund and will also be included in the proposed 2009-10 and 2010-11 Major Road fund as appropriate.

Legal Considerations:

- The format and content of the agreement is substantially similar to the contract previously approved by City Council in 2006, as amended in 2008.

Policy Considerations:

- Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues. (Goal II)

Options:

- Staff recommends award of a two (2) year contract for Right-of-Way Acquisition Services with an option to renew for one (1) additional year to Greenstar & Associates, L.L.C. at an hourly rate of $78.64 per hour.

Approved as to Form and Legality: _____ _____

Lori Grigg Bluhm, City Attorney Date

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

This agreement is made this _____ day of _____, 2009, 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 federally funded major road projects, as detailed in Addendum "A," disposal of excess real and personal property, relocation of business and homeowners in project areas, assisting the City Attorney's Office 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 City Engineer and the Contractor will be solely responsible to the City Engineer 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 assignments will conform to the attached Addendum "A", unless changes are mutually agreed upon by both parties.

The City, in consideration of the performance of this agreement, agrees to pay Contractor on an hourly basis at a rate of $78.64 per hour. This rate shall remain firm for the 2009 calendar year. Thereafter the hourly rate may be increased by using the Consumer Price Index computation for the published Urban-Detroit/Ann Arbor area between April of the current contract year and the base year of April 2009, upon mutual consent of both parties.

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, the Contractor 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 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, and this Certification shall be acceptable to MDOT and/or FHWA, as required.

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 for revision. If a revision to the Contractor's submitted work 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 timely furnish legally releasable documentation within the possession of the City that is relevant to the nature of the Contractor's 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

The Contractor 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 such licenses and/or certification shall be maintained 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 her own vehicle, cell phone, office equipment and office. However, she 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

The City shall be the sole and exclusive owner of all data, materials and documentation originated and prepared for the City pursuant to this contract. The 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: During the life of this contract, the Contractor shall procure and maintain Workers' Compensation Insurance, including employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

2. Commercial General Liability Insurance. During the life of this contract, the Contractor shall procure and maintain 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. During the life of this contract, the Contractor shall procure and maintain 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. During the life of this contract, the Contractor shall procure and maintain Umbrella Liability Insurance with limits of liability of not less than $1,000,000 per occurrence.

5. Additional Insured. The above referenced Commercial General Liability and Motor Vehicle Liability Insurance shall include the following endorsement, naming as an Additional Insured: "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. The above mentioned Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance 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, Attn. Risk Manager, 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 of the insurance. 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, the 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 work by any other contractor, the Contractor shall inspect and promptly report to the City any defects in the other contractor's work that renders it unsuitable for the Contractor's proper execution. The Contractor's 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

This Agreement can be terminated, without penalty, upon 30 days written notice when mutually agreeable to the Parties.

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.

With their signatures below, the City and the Contractor warrant that they are authorized and empowered to enter into this Agreement, which shall be binding on themselves, and their respective principals, agents, assignees and successors.

CITY OF TROY

By: _____
Louise E. Schilling, Mayor

_____
Tonni L. Bartholomew, City Clerk

GREENSTAR & ASSOCIATES, LLC

By: _____
Patricia A. Petitto, SR/WA

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ADDENDUM "A"

Federally Funded Major Road 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, 1000 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

Steven J Vandette

From: Steven J Vandette
Sent: Wednesday, April 01, 2009 9:58 AM
To: Mary F Redden
Subject: Contract Extension with Greenstar

We choose to extend this contract for the following reasons:

- The rate is the same as the start of the contract in April, 2006.
- Extension allows numerous right of way acquisitions, works in progress for the Rochester Road widening project, Torpey to Barclay, to be acquired on time and within a tight timeframe to be ready for overhead utility relocations beginning this spring, and road construction that begins late this year and continuing well into 2010.
- MDOT approved a third party agreement with Greenstar in 2006 in part because Pat was a former Real Estate employee with the city of Troy and had done acquisition work on numerous MDOT projects in the past. This permitted continuity on acquisitions that were in progress at the time. Based on her credentials, MDOT's formal consultant selection process was waived, which saved time and money for the city. MDOT regarded Greenstar as the "Best Source" for this service based on; continuity, saving time and dollars, availability, and meeting all requirements.
- We obviously have a well established and efficient working relationship between Pat and the Legal Department and with MDOT.
- The contract was previously approved by Council and MDOT.
- We have 4 other contracts that need ROW acquisition, as noted in the council item, and Pat has varied amounts of work already completed on all of them.

Please let me know if you need anything else.

Steven J. Vandette, P.E.
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