



CITY COUNCIL AGENDA ITEM

Date: December 5, 2010

To: John Szerlag, City Manager

From: Mark F. Miller, Acting Assistant City Manager/Economic Development Services
Steven J. Vandette, City Engineer *SV*

Subject: Agenda Item – Clinton-Oakland & Evergreen Farmington Sewage Disposal Systems
City of Troy Inflow and Infiltration Reduction Project Contract

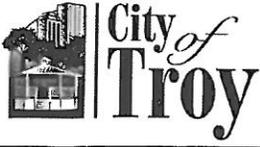
Background

The Oakland County Water Resources Commissioner (WRC) secured a \$3.8 million dollar grant through the United States Environmental Protection Agency for sanitary sewer projects in two Oakland County sewer districts. Of the \$3.8 million, \$2.8 million was apportioned to the Evergreen-Farmington Sewage Disposal System (EFSDS) and \$1 million to the Clinton-Oakland system. The City of Troy was awarded \$247,000 for sanitary sewer work within its part of the EFSDS district, located along the western side of the City from approximately Big Beaver and Adams to South Boulevard and Crooks Road.

The EFSDS district is under an Administrative Consent Order issued by the Michigan Department of Natural Resources and Environment (MDNRE). A requirement of the Consent Order is to remove sources of storm water from the sanitary sewer system in order to keep sewer flow within the system's capacity and keep sanitary sewer overflows from occurring. The city of Troy in 2005 submitted a Short Term Corrective Action plan to the MDNRE and has conducted several flow metering studies, sewer rehabilitation and manhole repair projects since then as part of that plan. A long term corrective action plan, predicated on the results of these projects, is due in 2014.

The primary purpose of this grant will be to continue our efforts to identify and reduce excess flows into the EFSDS. Identifying excess flows will be accomplished through field investigations such as manhole inspections, smoke testing and sanitary sewer televising. Reducing excess flows will be accomplished through manhole and sewer rehabilitation projects such as rebuilding manhole chimneys, replacing manhole frames with rubber gasket bolt-down frames, grouting manhole and sewer joints and lining sewers where necessary. The effectiveness of the rehabilitation work will be determined using pre- and post-rehab sanitary flow meter data collected by WRC permanent meters located in the sewers.

The City provided a work plan to the WRC that identified the scope of work and estimates of costs. While the grant amount is \$247,000 and does not require a local match, the total estimated project



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cost at \$505,000 will require a local expenditure of \$258,000. Funding for this project is provided in the 2010/11 Sewer Fund.

Recommendation

Staff recommends that City Council approve the attached *Clinton-Oakland & Evergreen Farmington Sewage Disposal Systems, City of Troy Inflow and Infiltration Reduction Project Contract* for the purpose of fixing the rights and obligations of each party for the inspection, maintenance and repair of Evergreen-Farmington Sewage Disposal System facilities described and specified as set forth in Exhibits A and B of the contract. Furthermore, staff recommends that the Mayor and City Clerk be authorized to execute the agreement.

Fund Availability

Funds for this work are included in the 2010/11 Sewer Fund. The budgeted amount includes funds for construction, inspection and contingencies.

Legal Considerations:

The format and content of the agreement has been reviewed by the City Attorney's Office and is consistent with past contracts with the Oakland County Water Resources Commissioner approved by City Council.

City Attorney's Review as to Form and Legality

CLINTON-OAKLAND & EVERGREEN FARMINGTON SEWAGE DISPOSAL SYSTEMS
CITY OF TROY INFLOW AND INFILTRATION REDUCTION PROJECT
CONTRACT

THIS CONTRACT, made and entered into as of the 1st day of November, 2010, by and between the COUNTY OF OAKLAND, a Michigan constitutional corporation in the State of Michigan (hereinafter sometimes referred to as the "County"), by and through its Water Resources Commissioner, County Agency, whose address is One Public Works Drive, Waterford, Michigan 48328 and the CITY OF TROY, a Michigan municipal corporation, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 (hereinafter sometimes referred to as the "City"). In this Contract, either the City or the County may also be referred to individually as a "Party" or jointly as the "Parties".

WITNESSETH:

WHEREAS, pursuant to Act No. 185 of the Public Acts of 1957, as amended ("Act 185") and Act No. 342, Public Acts of Michigan of 1939, as amended ("Act 342"), and Miscellaneous Resolution #93-075 adopted June 10, 1993, the Board of Commissioners of the County, authorized and directed that there be established a county system of sewage disposal improvements and services to serve the City and other municipalities in the County, said system to be known as the "Clinton-Oakland Sewage Disposal System" and the "Evergreen and Farmington Sewage Disposal System" and has designated the Oakland County Water Resources Commissioner as the County Agency for the sewage disposal systems with all powers and duties with respect thereto as are provided by Act 342 (said Water Resources Commissioner being hereinafter sometimes referred to as the "County Agency"); and

WHEREAS, under and subject to the terms of Act 342, the County is authorized, through the County Agency, to acquire (if necessary), construct (if necessary), repair, operate and/or

maintain the sewage disposal facilities hereinafter described as constituting part of the sewage disposal system as set forth in Exhibit "A" ("System"), and the County and the City are authorized to enter into a contract, as hereinafter provided, for the repair of the System by the County, and for the payment of the cost thereof by the City from available funds; and

WHEREAS, in accordance with Miscellaneous Resolution #10039 the County Board of Commissioners authorized the County Agency to proceed with System infiltration and inflow reduction project ("Project") within the City; and,

WHEREAS, there is an urgent need to construct and repair portions of the System within the City in order to promote the health and welfare of the residents thereof, which the Project would likewise benefit the County and its residents, and the parties hereto have concluded that the Project can be provided most economically and efficiently by the County through the exercise of the powers conferred by Act 342, and especially section 5 thereof; and

WHEREAS, a preliminary scope of services for the Project and an estimate of the cost thereof have been prepared, and approved by the County Agency and the governing body of the City and placed on file in the office of the County Agency, said estimate of cost being set forth in Exhibit B hereunto attached; and

WHEREAS, in order to undertake the Project by the County and for other related matters, it is necessary for the parties hereto to enter into this contract.

THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE COVENANTS OF EACH OTHER, THE PARTIES HERETO AGREE as follows:

1. The Parties hereto approve and agree to the inspection, maintenance and repair of the Project as part of the System, under and pursuant to Act 342 and approve the designation of "Clinton-Oakland Sewage Disposal System and Evergreen Farmington Sewage Disposal System - City of Troy Inflow and Infiltration Reduction Project" as the name of the Project. The City by way of compliance with Section 29, Article VII, Michigan Constitution of 1963, consents and agrees to the establishment and location of the Project within its corporate boundaries and to the use by the County of its streets, highways, alleys, lands, rights-of-way or other public places for the purpose and facilities of the Project and any improvements, enlargements or extensions thereof, and the City further agrees that, in order to evidence and effectuate the foregoing agreement and consent, it will execute and deliver to the County such grants of easements, rights-of-way, licenses, permits or consents as may be requested by the County.

2. The location and Project shall consist of the inspection, maintenance and repair of System facilities described and specified as set forth in Exhibits A and B, which are hereunto attached and made a part hereof. The Project shall be constructed and repaired substantially in accordance with said preliminary scope of services and in accordance with final plans and specifications to be prepared and submitted by the consulting engineers, but variations therefrom that do not materially change the location, capacity or overall design of the Project, and that do not require an increase in the total estimated cost of the Project, may be permitted on the authority of the County Agency. Other variations or changes may be made if approved by the County Agency and by resolution of the governing body of the City and if provisions required by paragraph 4 hereof are made for payment of any resulting increase in the total estimated cost. The estimated probable cost of the Project in the amount of **\$505,000** as set forth in Exhibit B is approved and adopted.

3. The County Agency shall proceed to take bids for the Project and, subject to available funding allocated and approved for this project as set forth in Paragraph 5 of this

agreement, enter into construction contracts with the lowest responsible bidder or bidders, procure from the contractors all necessary and proper bonds, cause the Project to be constructed within a reasonable time, and do all other things required by this contract. The County Agency will require all contractors engaged for the Project to provide general liability and other insurance, and in all such cases, the County and the City shall be named as additional insureds under the contractor's required insurance. The County Agency may, in its sole discretion, retain the services of a third-party engineering firm to perform contract administration of the Project, and payment for such services shall be the responsibility of the City as part of the cost of the Project as described in paragraph 5 hereof. All certificates for required payments to contractors shall be approved by the consulting engineers before presentation to the County Agency and the latter shall be entitled to rely on such approval in making payments.

4. Except as otherwise provided herein, in the event that it shall become necessary to increase the estimated cost of the Project for any reason, or if the actual cost of the Project shall exceed the estimated cost, whether as the result of variations or changes made in the approved plans or otherwise, then the County Agency shall not be obligated to pay such increased or excess cost unless the governing body of the City shall have adopted a resolution approving such increase or excess and agreeing that the same (or such part thereof as is not available from other sources) shall be defrayed by increased or additional payments agreed to be made by the City to the County in the manner hereinafter provided.

5. The City shall pay the entire cost of the Project not defrayed by grants and funds available from other sources. It is understood that the County Agency has received a financial assistance grant from the United States Environmental Protection Agency dedicated for a portion of the Project in the amount of **\$247,000**. The portion of the Project funded by the City is estimated at **\$258,000** as set forth in Exhibit "B". Said grant requires the County Agency to submit incurred Project costs and expenses to the USEPA for reimbursement which is subject to

USEPA approval and audit in accordance with the grant agreement and/or USEPA or other applicable federal regulations. The City acknowledges that while the costs of the Project may be defrayed by said grants, the County and County Agency cannot and do not warrant or guarantee the availability of said grant or that the USEPA will reimburse the County Agency for Project incurred costs and expenses. In the event that incurred Project costs and expenses are not reimbursed in accordance with the terms of said grant, the City is responsible for any shortfall caused by the unavailability of such grants or funds over and above the estimated portion of the Project funded by the City. The City hereby acknowledges that no County general funds shall be appropriated or pledged pursuant to this contract or for the Project. The County's role in the Project is strictly limited to that set forth in Act 342, and the City shall be solely responsible for all administration and Project costs (including attorney fees and all dispute resolution costs), all costs of operation and maintenance of the Project, all costs and expenses relating to lawsuits as described in paragraph 11 hereof and all items of costs described in paragraph 6 hereof in the same manner as herein provided with respect to other costs of the Project.

6. The County Agency is hereby authorized, but not required, to utilize County personnel for the administration of the Project. The City agrees that the Costs (as hereinafter defined) of, and Overhead (as hereinafter defined) for, contract administration, auditing and financial services shall be part of the cost of the Project for purposes of paragraph 5 hereof, whether such services are provided by County personnel or third parties. "Costs" shall be defined in this paragraph as the labor, including statutory and customary fringe benefits, overtime, material and supplies, power and utility services, vehicle/equipment rental and subcontractor services devoted specifically to the Project. "Overhead" shall be defined in this paragraph to include the following: all allocation of the labor cost, including statutory and customary fringe benefits, of personnel responsible for administering this contract or supervising the work performed in connection with this contract; an allocation of expenses of the County Agency; and an allocation of the indirect cost of the County charged to the County Agency for

support services, such as (but not limited to) legal, personnel, accounting, computer support, and insurance/risk management.

7. If the Project is abandoned for any reason, the City shall pay, or reimburse the County for the payment of, all engineering and legal expenses, Costs (as defined in paragraph 6 hereof) and Overhead (as defined in paragraph 6 hereof) incurred by the County Agency in connection with the Project and the City shall be entitled to all plans, specifications and other engineering data and materials.

8. After completion of the Project and the acceptance thereof by the City, the operation and maintenance of the Project as part of the System shall be in accordance with applicable agreements between the City and the County (if any).

9. It is understood and agreed by the parties hereto that the Project is to serve the City and not the individual property owners and users thereof, unless by special arrangement between the County Agency and the City. The responsibility of requiring connection to and use of the System and/or providing such additional facilities as may be needed shall be that of the City, which shall cause to be constructed and maintained, directly or through the County, any such necessary additional facilities. The County shall not be obligated to acquire or construct any facilities or provide any services other than those designated in paragraph 2 hereof.

10. The County shall have no obligation or responsibility for providing facilities or services except as herein expressly provided with respect to the Project or as otherwise provided by contract. The City shall have the authority and the responsibility to provide such other facilities and shall have the right to expand the facilities of the System by constructing or extending sewers or related facilities, connecting the same to the System, and otherwise improving the System. It is expressly agreed, nevertheless, that no such connection shall be

made to the System and no improvements, enlargements or extensions thereof shall be made without first securing a permit therefor from the County. Any such permit may be made conditional upon inspection and approval of new construction by the County. Nothing in this contract shall relieve the City of its obligations under the Clinton-Oakland Sewage Disposal System Contract or Evergreen and Farmington Sewage Disposal Systems Intermunicipal Contracts among the County and certain municipalities in the County, including the City, whichever is applicable.

11. The parties hereto agree that the costs and expenses of any lawsuits arising directly or indirectly out of this contract or the construction, provision or financing of the Project, to the extent that such costs and expenses are chargeable against the County or the County Agency, shall be deemed to constitute a part of the cost of the Project and shall be paid by the City in the same manner as herein provided with respect to other costs of the Project. In the event of such litigation, the County Agency shall consult with the City and shall retain legal counsel agreeable to the County and the City to represent the County; provided that if the County and the City cannot agree as to such representation within a reasonable time, the County Agency shall exercise its discretion as to the retention of such counsel. This paragraph shall not apply to a lawsuit instituted by the City to enforce its rights under this contract.

12. All powers, duties and functions vested by this contract in the County shall be exercised and performed by the County Agency, for and on behalf of the County, unless otherwise provided by law or in this contract.

13. In the event that any one or more of the provisions of this contract for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. This contract shall become effective after its execution by each party hereto. This contract shall terminate one (1) year from the date the City accepts the completed construction portion of the Project, unless terminated earlier by mutual agreement of the parties hereto in writing. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This contract may be executed in any number of counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed and delivered by their duly authorized officers, all as of the day and year first above written.

COUNTY OF OAKLAND

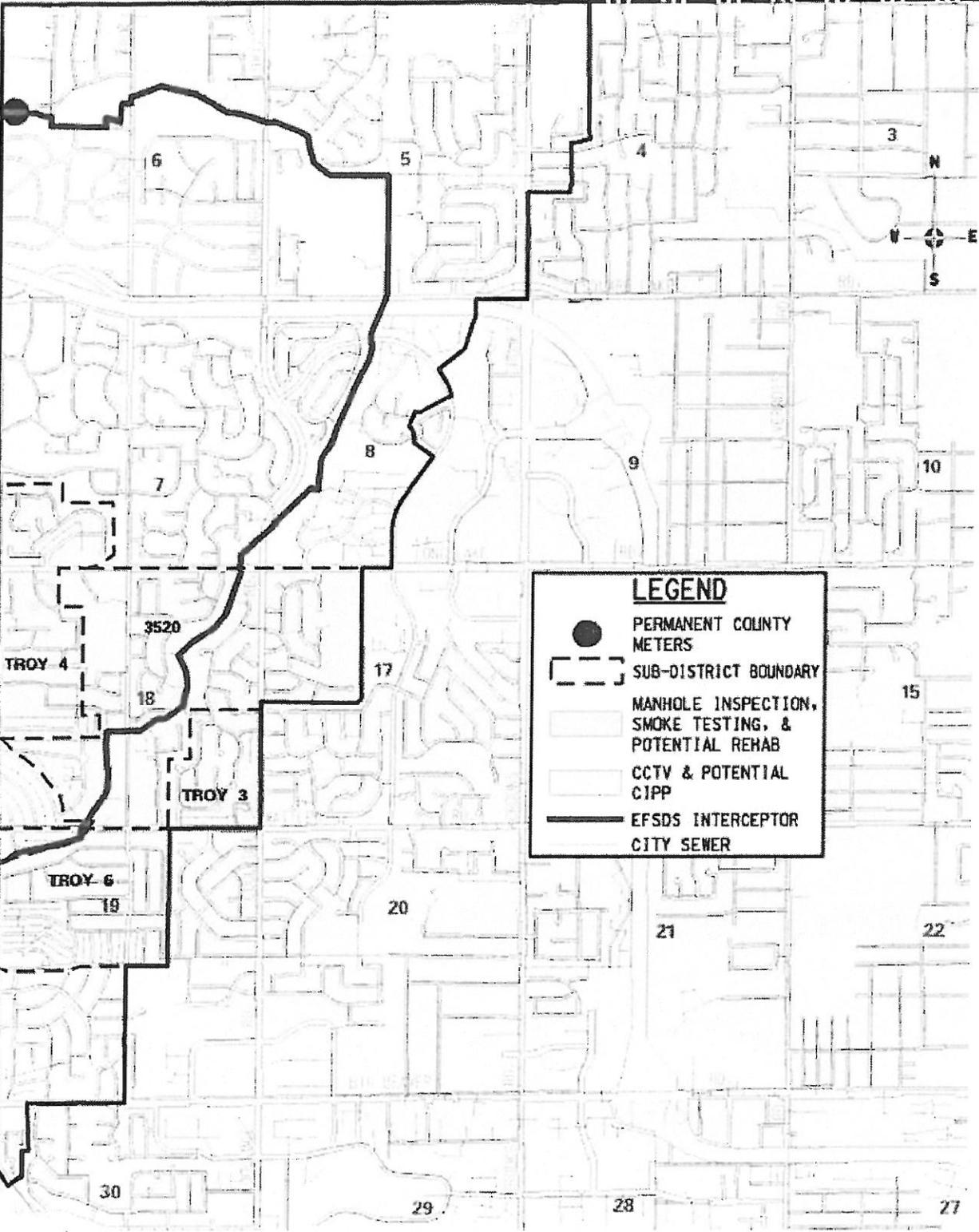
By: _____
County Water Resources Commissioner
(County Agency)

CITY OF TROY

By: _____
Mayor

And: _____
Clerk

OCDC
METER
3530



LEGEND

- PERMANENT COUNTY METERS
- SUB-DISTRICT BOUNDARY
- MANHOLE INSPECTION, SMOKE TESTING, & POTENTIAL REHAB
- CCTV & POTENTIAL CIPP
- EFSDS INTERCEPTOR CITY SEWER

OCDC
METER
3520

TROY 4

TROY 3

TROY 6

OCDC
METER
3510

EXHIBIT "A"

**CLINTON OAKLAND & EVERGREEN FARMINGTON
INFLOW & INFILTRATION REDUCTION PROJECT**

CITY OF TROY



Disclaimer: The information provided in this exhibit has been compiled from records maintained by the City of Troy. The information is provided as a service and is not intended to be used for any purpose other than that for which it was intended. The City of Troy is not responsible for any errors or omissions in this exhibit. The information is provided as a service and is not intended to be used for any purpose other than that for which it was intended.

**Clinton Oakland & Evergreen Farmington Sewage Disposal Systems
Inflow & Infiltration Projects
City of Troy**

1) Contracted Services: note 1			
Cured in Place Pipe	1,000 LF @	\$100	\$100,000
	Sub-Total		\$100,000
2) City of Troy Force Account: note 1			
Closed Circuit Television Sewer Inspection	33,000 LF @	\$1	\$33,000
Manhole Rehabilitation	150 EA @	\$1,500	\$225,000
	Sub-Total		\$258,000
3) Project Development: note 2			
Consulting Engineering:			
Pre Flow Metering			\$12,500
Manhole Inspection & Smoke Testing	391 EA @	\$250	\$97,750
Post Flow Metering			\$12,500
Technical Report			\$14,250
	Sub-Total		\$137,000
4) County Services:			
Administration			\$2,000
Engineering			\$8,000
	Sub-Total		\$10,000
 Estimated of Probable Cost			\$505,000
 (-) Grant Funding			\$247,000
 Funded by Troy			\$258,000

Note:

- 1.) Grant eligible with proper documentation submitted to the County and to be reimbursed to the City of Troy from grant proceeds
- 2.) Project costs to be completed and paid for by City of Troy.