



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM



Date: May 23, 2022

To: Mark F. Miller, City Manager

From: Robert J. Bruner, Assistant City Manager
Rob Maleszyk, Chief Financial Officer
Dee Ann Irby, Controller
William J. Huotari, City Engineer
Emily Frontera, Purchasing Manager
Larysa Figol, Sr. Right-of-Way Representative

Subject: Bid Waiver: Right-of-Way Services, Rochester Road, Barclay to Trinway, Project Number 2022CG0002

History

The City of Troy is seeking a three-year contract, with a two-year option to extend, with *Greenstar & Associates, LLC*, of Rochester, MI, for acquisition and relocation services for the right-of-way phase of the federally funded Rochester Road, Barclay to Trinway Project Number 2022CG0002.

Patricia Petitto is the sole owner of Greenstar & Associates, L.L.C. (Greenstar). Her company specializes in real estate services for local and state public agencies. Ms. Petitto is a former City of Troy employee who retired in 2006 with over 30 years of real estate and right-of-way experience. That same year, the City engaged Ms. Petitto's services for 5 (five) specific federally funded projects:

- John R - Long Lake to Square Lake (Resolution #2006-07-E-5)
- John R – Square Lake to South Boulevard (Resolution #2006-07-289-E-6)
- Wattles Road- east & west of Rochester Road (Resolution #2006-10-381-E-6)
- Rochester Road-Torpey to Barclay (Resolution #2006-10-381-E07)
- Rochester Road-Barclay to Trinway (Resolution #2007-01-005-E-7)

This latter project, Rochester Road-Barclay to Trinway was postponed for many years. For this reason, the service contract with Greenstar expired. At the time, Ms. Petitto did acquaint herself with the project and performed several tasks in preparation for negotiation with property owners, thus she has a certain degree of familiarity with this specific project.

In addition to her experience with the City of Troy, Ms. Petitto has completed several projects for surrounding local public agencies. Most recently she worked for the Michigan Department of Transportation (MDOT) acquiring right-of-way and performing relocation services, both residential and commercial, for the Gordie Howe International Bridge project. This project necessitated the acquisition of some 630 land parcels and over 310 residential and business relocations.



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History (continued)

Ms. Petitto brings with her a comprehensive knowledge of federal and state laws and regulations, land valuation and appraisal practices, and a geographic competence of Troy. She holds a SR/WA designation with the International Right-of-Way Association (IRWA), was a past International President of that body, holds a Michigan Real Estate Broker license, and is a State Licensed Real Estate Appraiser, and is on MDOT's list of Acquisition and Relocation Consultants.

Right-of-way acquisition is a specialized process and only a handful of independent professionals are currently providing this service in Michigan. Ms. Petitto has worked exclusively in the southeast Michigan (Oakland, Macomb & Wayne) market and is only one of three companies based in our tri-county area.

Acquisition of property rights for federally funded projects requires a specific skill set. The acquisition and relocation process is precise and deliberate. A thorough audit by MDOT following the right-of-way stage of the project examines how interest in property was acquired and the compensation paid. Failure to meet specific requirements can place federal funds in jeopardy. There is also a nuance to building relationships and trust with property owners, a skill in which Ms. Petitto is versed in and excels. She is recognized locally and nationally for her exceptional performance and professionalism.

MDOT has reviewed the content of the agreement and has no objection to engaging the services of a consultant for this project.

Purchasing

- *Greenstar & Associates, LLC of Rochester, MI* has provided many years of service negotiating acquisitions on behalf of the City and was previously approved by council and MDOT to provide right-of-way services for the Rochester Road – Barclay to Trinway Project.
- By contracting with Greenstar, the City would benefit in partnering with a highly trusted and exceptionally qualified professional, as well as maintain continuity through the completion of the right-of-way phase of this project.
- Greenstar has agreed to a rate of \$200 per hour for the 2022 calendar year with annual increases commencing in 2023 based upon the State of Michigan, Treasury multiplier, not to exceed 5%.
- Staff has surveyed the market and reviewed the hourly rate charged by companies offering right-of-way and related services and found the compensation amount to be comparable.
- It is in the best interest of the City to waive the bid process and award a contract to *Greenstar & Associates, LLC of Rochester, MI* for Right-of-Way Services for the Rochester Road - Barclay to Trinway Project.

Financial

The Rochester Road, Barclay to Trinway, Project Number 2022CG0002, is a federally funded major road improvement project. 80% of Greenstar's costs will be reimbursed to Troy from these federal funds. Expenditures will be charged to Account number 401.447.479.7989.022065. Currently the right-of-way phase of the project has a fund allocation of \$10,949,339.



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Recommendation

City Management, in the best interest of the City, recommends that the bid process be waived and City Council approve the Agreement for Right-of-Way Services with *Greenstar & Associates, LLC of Rochester, MI* for a period of three (3) years with a two-year option to extend the contract.

Legal Review

This item was submitted to the City Attorney for review pursuant to City Charter Section 3.17.

AGREEMENT FOR RIGHT OF WAY SERVICES

This agreement is made this _____ day of _____, 2022, by and between the City of Troy, 500 West Big Beaver Road, Troy, Michigan 48084, hereinafter called the "City" and Greenstar and Associates, LLC, 145 S. Livernois, #204, Rochester, Michigan 48307, 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 right-of-way related activities necessary for the construction of the Rochester Road, Barclay to Trinway Project #2022CG0002, a federally funded major road project. Services include negotiation and acquisition of needed property rights, relocation of businesses and homeowners in the project areas, assisting in condemnation cases and related services in accordance with State and Federal laws. This contract will be administered by the City Engineer and/or person designated by the City Engineer.

The Contractor must be able to work flexible hours upon short notice when schedules and volume demand. The right-of-way phase of the project includes 71 parcels, requiring the acquisition of approximately 48 grading permits, 57 utility easements, 37 partial and 3 full fee acquisitions. Any changes to the scope of work will be mutually agreed upon by both parties.

The City, in consideration of the performance of this agreement, agrees to pay Contractor an hourly basis at a rate of \$200.00 per hour. This rate shall remain firm for the 2022 calendar year. For services commencing in 2023 and thereafter, the Contractor will have the option of increasing the hourly rate based upon the State of Michigan, Treasury multiplier, not to exceed 5%.

This contract shall continue in effect from the date of execution for three (3) years with a one (1) two-year option to extend the contract if mutually agreeable to by the parties.

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 the 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, a Right-of-Way Certification shall be prepared for execution by the Contractor and the City representative, and this Certification shall be in a form that is acceptable to MDOT and/or FHWA, as required.

Any requested revisions to Contractor's submitted work that are due to Contractor's error or oversight, including but limited to acquisition documents and relocation documents, 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 in a time that is mutually agreeable to 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. The City shall provide reasonable access to services providing real estate information available to the City.

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 the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, all applicable federal, state and local laws and applicable regulations.

All provisions stated in 23 CFR 172.9(c) Contract Provisions are hereby incorporated by reference.

In addition, the Contractor shall be licensed and/or certified and professionally designated by the State of Michigan for the contracted work 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 the purposes of payroll deductions, withholding tax, social security, worker's compensation, unemployment compensation, disability benefits, vacations, fringe benefits or any other purpose. In the performance of duties, the Contractor shall supply and operate their 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

The City shall be the sole and exclusive owner of all data, materials and documentation originated and prepared for the City pursuant to this Agreement. 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. Certificates shall be in a format acceptable to the City.

1. Workers' Compensation Insurance: During the life of this contract, if employing or utilizing any employees, 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 Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Troy, Attn. Risk Manager, Purchasing Department, 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 on behalf of, indemnify and hold harmless the City of Troy, its elected and appointed officials, employees and volunteers and others working on 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 on 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 Agreement.

SECTION 10 – SUBCONTRACTORS

The contract work may not 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 agreement. 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 enter into 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 AGREEMENT

This agreement can be terminated, without penalty, upon 30 days written notice when mutually agreeable to the Parties. If terminated, the Contractor shall be paid for any work completed prior to the termination date.

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.

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: _____
Ethan D. Baker, Mayor

GREENSTAR & ASSOCIATES, LLC

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

By: _____
M. Aileen Dickson, City Clerk