



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: February 12, 2024

To: Mark F. Miller, City Manager

From: Robert J. Bruner, Deputy City Manager
Megan E. Schubert, Assistant City Manager
Kurt Bovensiep, Public Works Director
Ashely Tebedo, Administrative Services Manager

Subject: 5310 SMART and City of Troy Vehicle Lease Agreement



History

The Suburban Mobility Authority for Regional Transportation's (SMART) goal is to improve mobility for seniors and individuals with disabilities by removing barriers to transportation services and expanding the available transportation mobility options. SMART administers both financial and technical assistance through various federal and state funding sources.

The Federal Transit Authority (FTA) section 5310 – Enhanced Mobility of Seniors and Individuals with Disabilities Program is authorized by Act 49 United States Code. 5310 funding aims to improve the mobility of seniors and those with disabilities by removing barriers to transportation services. Troy R.Y.D.E utilizes funding from the 5310 program, as well as other funding initiatives such as Municipal and Community Credits, Specialized Services Operating Assistance Program, and general fund monies.

Through the 5310 program, municipalities were provided an opportunity to apply for various capital, operating, or mobility management resources. In 2021 Troy applied for one replacement transit van (Ford Transit 350) and one replacement bus. These vehicles were intended to replace and upgrade the van and bus Troy R.Y.D.E currently operates.

SMART experienced several delays in receiving request vehicles due to Covid-related manufacturing setbacks. Troy has been notified the replacement van has been scheduled for delivery between January and March. Upon executing the attached agreement, Troy will be able to receive the new van as soon as SMART receives it from the manufacturer. Troy will then turnover the van currently in our possession. Troy R.Y.D.E. is anticipating receiving the replacement bus in early 2025 and another lease agreement with be forthcoming.

There will be no disruptions in service during this time.

Recommendation

It is recommended that the City approve the 5310 Vehicle Lease Agreement with Suburban Mobility Authority for Regional Transportation (SMART) for the lease of a Ford Transit 350 van.

Legal Review

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

49 U.S.C. § 5310

VEHICLE LEASE AGREEMENT

AGREEMENT BETWEEN SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION AND CITY OF TROY

THIS AGREEMENT is made between the Suburban Mobility Authority for Regional Transportation (hereinafter “SMART”), an entity organized under the provisions of Act 204 of the Public Acts of 1967, as amended, whose address is 535 Griswold, Suite 600, Detroit, Michigan 48226, and **CITY OF TROY** (hereinafter “Grantee”), a **City**, whose address is **4693 Rochester Road, Troy, MI 48085**, for the use of grant funding for the leasing of vehicles from SMART provided by the Federal Transit Administration (hereinafter “FTA”), pursuant to 49 U.S.C. 5310 for formula grants for the enhanced mobility of seniors and individuals with disabilities (hereinafter “§5310”). SMART and Grantee are collectively referred to as the “Parties” herein.

WHEREAS, SMART, pursuant to the provisions of Act 204, has been vested with the authority to acquire, plan, construct, operate and maintain transportation systems and facilities within its jurisdiction; and

WHEREAS, Grantee is within SMART’s jurisdiction and desires to manage and operate certain public transportation services for purposes consistent with §5310 and consistent with SMART’s Program Management Plan;

WHEREAS, SMART is engaged in the trade or business of renting or leasing motor vehicles for a period greater than thirty (30) days, and Grantee is renting or leasing certain motor vehicles owned by SMART during the terms of this Agreement.

WHEREAS, the purpose of this Agreement is to state the responsibilities and obligations of Grantee and SMART, as well as the conditions for the Grantee’s use of the §5310 Project Vehicles distributed by SMART;

NOW THEREFORE, the Parties agree as follows:

1. PROJECT VEHICLES

SMART shall lease to Grantee for Grantee’s use SMART vehicle(s) as indicated in “**Exhibit A**” hereinafter referred to as “Project Vehicle(s),” in accordance with the terms and conditions of this Agreement. The forms making up **Exhibit A** shall be updated prior to delivery of the Project Vehicle(s) to include VIN number(s) and the acknowledgement that the Grantee has taken possession of the Project Vehicle(s). The Parties further agree that **Exhibit A** will be updated as necessary to reflect any changes to the Project Vehicle(s). All updates to **Exhibit A** shall become a part of this Agreement. SMART shall retain title to Project Vehicles. As a direct Recipient of §5310 funds, SMART is authorized to reassign and/or replace Project Vehicles as

SMART deems necessary to achieve the desired outcome of §5310 grant funding. No Project Vehicles shall be disposed of or reassigned without prior written approval by SMART. Project Vehicles are provided on an “As Is” basis.

2. THE PROJECT

Grantee shall undertake and complete the public transportation services of the Project as detailed in Grantee’s Project Submittal, which is incorporated into this Agreement, and in accordance with the terms and conditions of this Agreement. Grantee agrees to use Project Vehicles for the purposes as stated in Grantee’s Project Submittal and in the priority permitted in FTA Circular C 9070.1G, as may be amended or updated, which include transportation for other federal programs or transferring Project Vehicles to another §5310 sub-recipient if such transfer is approved by SMART. Grantee agrees to provide management of all facets of the Project, project assets and any staff (e.g. driver(s)), necessary for the efficient and safe operation of the transportation services provided. The Project is to be operated in compliance with the “Community Transit Manual” as amended, which is incorporated into this Agreement, FTA guidance, and all federal, state and local regulations and statutes.

3. TERM OF THE AGREEMENT

This Agreement shall be effective from the time of signing and shall remain in effect as long as Project Vehicles are leased by the Grantee. SMART shall have sole discretion to terminate this Agreement upon written notice to Grantee. Within thirty (30) days of receipt of written notice, Grantee shall return all §5310 Project Vehicles.

4. REVIEW AND APPROVAL OF SUB-CONTRACTORS

The Grantee shall submit any proposal to subcontract any portion of the Project to SMART for its review and approval prior to the execution of the subcontract by the Grantee. Approval by SMART will not be construed to relieve the Grantee of any responsibility for the fulfillment of this Agreement. If Grantee leases the Project Vehicles to another entity it must do so consistent with the requirements of FTA Circular C 9070.1G as may be amended or updated, including, but not limited to, Chapter 6, §6, and it shall only do so with the express, written permission of SMART in its sole discretion and under such conditions and terms agreed to by SMART.

5. INDEPENDENT CONTRACTOR

The Parties agree that Grantee is wholly independent in relation to the rights and responsibilities set forth in this Agreement. The Grantee retains the right to exercise full control and supervision over its employees, their compensation and discharge. Grantee further agrees to be solely responsible for all matters relating to payment of such employees, including compliance with social security, withholding, and all other regulations governing such matters. The Grantee agrees to be responsible for its own acts and dishonest or fraudulent misconduct of, or torts, intentional or unintentional, committed by its employees during the life of this Agreement.

6. MAINTENANCE OF RECORDS

Grantee shall keep accurate financial and operating records for the project for at least seven (7) years from the date of return or disposal of Project Vehicles. Such records shall include, but are not limited to: records of all expenses paid for its operations, records of the use of its services (ridership), all accident reports, maintenance records, dispatch records, personnel records, and all other supporting documents pertaining to the project operation. SMART may request, and Grantee shall permit, SMART or its designee to review all records relating to the project either by formal audit or periodic administrative review.

7. SUBRECEPIENT REPORTING AND MONITORING

Pursuant to 2 CFR Part 200 (hereinafter "Super Circular") §200.331, Grantee agrees to provide to SMART all available information required by **Exhibit B** of this Agreement at the time of the Agreement's execution to allow SMART to complete the information required by **Exhibit B**, and Grantee further agrees to provide to SMART all additional and supplemental information required by **Exhibit B** immediately as it becomes available following the execution of the Agreement. **Exhibit B** may be completed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same document.

8. NON-DISCRIMINATION

Grantee shall not discriminate against any passenger because of race, color, sex, age, disabled, religion, ancestry, marital status, national origin, place of birth or sexual orientation. Grantee shall comply with the State of Michigan publication "Prohibition of Discrimination in State Contracts," the Civil Rights Act of 1964 (78 Stat. 241), and the Michigan Civil Rights Acts of 1976 (45 P.A. 1976).

The Grantee agrees that it will not discriminate based upon race, color, creed, national origin, sex, age, disability, height, weight, familial status, marital status, or sexual orientation, in accordance with Title VI of the Civil Rights Act of 1964, section 303 of the Age Discrimination Act of 1975, section 202 of the Americans with Disabilities Act of 1990, 49 U.S.C. section 5332, the Michigan Elliot-Larsen Civil Rights Act, MCLA 37.2101 et seq., and SMART policy. The forgoing shall include, without limitation, employment upgrading, demotion, transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and/or the selection of training, including apprenticeship.

Grantee shall comply with FTA Circular C 9070.1G, as may be amended or updated, with respect to all provisions on Civil Rights and discrimination including, but not limited to, Chapter VIII, §9.

Grantee shall require similar covenants on the part of any consultant and/or sub-contractor employed in the performance of this Agreement.

9. DRIVER TRAINING

All drivers (including mechanics) of Project Vehicle(s) shall be properly licensed, including but not limited to a CDL or chauffeur license if necessary. All drivers of Project Vehicle(s) designed to transport sixteen or more passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL.

10. MAINTENANCE

Grantee is solely responsible for maintenance and shall maintain all Project Vehicles in good working condition for the Project Vehicles' full useful life, unless it is mutually determined that specific items are no longer feasible to maintain. Grantee agrees that it will not allow any Project Vehicle to be out of service for a period of time in excess of seven (7) days, unless this results from conditions beyond its control. Maintenance shall be carried out in accordance with specifications for the Project Vehicles as may be available either from the manufacturer or the maintenance procedures specified by SMART, including but not limited to the procedures outlined in the Community Transit Manual.

Upon Grantee's request, SMART, at its sole discretion, may provide all or any portion of the maintenance for a Project Vehicle. Maintenance services provided by SMART shall not relieve the Grantee of its duty to maintain all Project Vehicles in good working condition. The maintenance will be performed according to specifications for such Project Vehicles, as may be available either from the manufacturer or the maintenance procedures specified by SMART.

SMART shall charge the Grantee only for actual maintenance performed as follows:

If the Grantee receives SMART Community Credits, then SMART shall charge the Grantee the actual cost to SMART for parts used, without markup, and shall not charge for labor costs.

If the Grantee does not receive SMART Community Credits, then SMART shall charge the Grantee the actual cost to SMART for parts used without markup. In addition, SMART shall charge the Grantee the actual cost to SMART for labor costs, which are based on the hourly wage of the employee(s) performing the work, together with a percentage of that rate for the fringe benefits SMART pays.

11. INDEMNIFICATION

Notwithstanding any other provision in this Agreement, Grantee shall indemnify, defend and save harmless SMART, its officers, agents, employees, attorneys and members of its Board of Directors from any and all claims, losses and damages, including costs and attorney fees occurring or resulting from any act or omission of the Grantee or its officers, agents, employees, subcontractors, successors and/or assigns arising out of or pursuant to this Agreement or related in any way to operation, maintenance, or possession of the Project Vehicle(s) without regard to the negligence of the Grantee.

This Agreement is not intended to alter or increase SMART or Grantee's liability for tort claims, to other third-parties. Nor is this indemnity provision intended to be a third-party beneficiary contract, and therefore it confers no rights or third-party status on anyone other than the parties hereto.

12. INSURANCE

Grantee shall provide insurance with the coverage, limits and conditions described below. Any and all insurance must be written with an insurer admitted and licensed in the State of Michigan and approved by SMART's Manager of Risk Management. Proposed insurance carriers should have a Best's rating of "A VI" or above; however, SMART reserves the right to accept or reject any proposed carrier. SMART must be provided with certificates of insurance prior to the Grantee's use of the Project Vehicle(s) and the effective date of said coverage. In addition, SMART must be provided a complete copy of the insurance policy(ies) within the thirty (30) days following their effective date.

Coverage must be primary and non-contributory and must provide a waiver of subrogation in favor of SMART. If the Grantee is self-insured, a certificate from the appropriate State agency must be furnished by such agency to SMART. If during the term of the contract, the insurance certificate or any required coverage expires or is otherwise modified, the Grantee is responsible for immediately providing a renewed certificate of insurance to SMART. The purchase of insurance coverage or furnishing the aforesaid certificate to SMART shall not be a satisfaction of the Grantee's indemnification of SMART.

Physical Damage

Grantee shall purchase vehicle physical damage insurance, including comprehensive and collision coverage, for the Project Vehicle(s) for the greater of actual cash value or book value of the Project Vehicles. SMART shall be named as Loss Payee on the policy, and shall be provided with a minimum of thirty (30) days prior written notice of cancellation. Grantee shall be responsible for the payment of any deductible and SMART will not be obligated to pay for repairs to the vehicle.

Vehicle Liability Coverage

Grantee shall purchase vehicle liability insurance for SMART owned vehicles, including \$5,000,000 per occurrence Bodily Injury/Property Damage (CSL is acceptable), and Michigan No-Fault protection. SMART shall be named as Additional Insured on the liability policy and shall be provided a minimum of thirty (30) days prior written notice of cancellation.

Workers' Compensation

Grantee shall maintain statutory Workers' Compensation and \$500,000 Employer's Liability insurance for all employees, and shall require such insurance for all employees of any sub-contractors.

General Liability

Grantee shall maintain comprehensive general liability insurance with a limit not less than \$1,000,000, including contractual liability. Said policy shall name SMART as an Additional Insured.

Other State or Federally Funded Vehicles

Grantee shall maintain insurance on any vehicle not titled or registered to SMART, but for which \$5310 dollars are used to support the purchase of the non-SMART-owned vehicle, including vehicle liability with a limit not less than \$5,000,000 combined single limit. Said policy shall name SMART as an Additional Insured.

13. PRIORITY

Each of the following documents are incorporated by reference into the Agreement. In the event and to the extent of any inconsistency between two or more documents which form part of the Agreement, those documents will be interpreted in the following order of priority:

The Agreement
Applicable FTA Circulars
Program Management Plan
Program of Projects
Community Transit Manual (as amended)
Grantee Project Submittal

14. COUNTERPARTS

This Agreement may be executed and delivered (including by facsimile transmission) in two or more counterparts, each of which when executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. This Agreement constitutes the entire agreement between the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. This Agreement may be modified by SMART at its sole discretion and written notice to Grantee.

15. SEVERABILITY AND INTENT

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

16. WAIVER

Parties' failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

17. ASSIGNMENT

The Parties agree that the responsibilities and benefits under this Agreement shall not be assigned unless such assignment is approved by SMART in advance in writing. This agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.

18. VENUE

Parties agree to follow all applicable State and Federal laws. This Agreement shall be governed by the laws of the State of Michigan.

19. ELECTRONIC SIGNATURE

The Parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. The Parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. Without limitation, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

The Parties acknowledge that they have read and understand this Agreement and that the signatories below have affixed their signatures and affirmed that they are authorized to execute this Agreement, for the purpose of binding their respective Principals. This Agreement shall become effective upon the date the Agreement is signed by both Parties.

**SUBURBAN MOBILITY AUTHORITY
FOR REGIONAL TRANSPORTATION**

CITY OF TROY

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

CONTRACT #: _____

EXHIBIT A

Grantee: CITY OF TROY

SMART shall procure and provide, to Grantee and for Grantee’s use, the vehicle as indicated below:

Vehicle eligible for replacement under State and Federal Guidelines:36006

New SMART Vehicle Number: 44025

Make:Ford **Model:**Transit 350 **Fuel Type:** Gasoline

To be completed at Vehicle Hand-Off:

New Vehicle Identification Number (VIN):1FDVU4X84PKB62818

I have received keys and vehicle manual.
There were no vehicle issues on the walk-around.
I reviewed the fuel type with the SMART representative.

I, _____, hereby state that I have authority to accept the above referenced Project Vehicle on behalf of the Grantee and that by signing below I acknowledge receipt of the above referenced Project Vehicle:

Signature of Grantee Representative: _____

Print Name Grantee Representative: _____

Title of Grantee Representative: _____

Date: _____

Signature of SMART Representative: _____

Print Name SMART Representative: _____

Title of SMART Representative: _____

Date: _____

EXHIBIT B

- 1) **Subrecipient Name:** CITY OF TROY
- 2) **UEI Number:** QYPCKM4J5K81
- 3) **FAIN MI-2021-051**
- 4) **Fed Award Date** 9/2/2021
- 5a) **SubAward Start** 9/2/2021
- 5b) **SubAward End** 3/30/2027
- 6) **Fed Funds Obligated by this Action** \$37,828
- 7) **Total Fed Funds Obligated to Sub by FAIN** \$37,828
- 8) **Total Amount of Fed Award Committed** \$0
- 9) **Fed Award Project Desc.** 1- replacement van 36006
- 10) **SMART Vehicle Number** 44025
- 11) **Name of Fed Awarding Agency:** Federal Transit Administration
- 12) **Name of Pass-Through Entity:** SMART
- 13) **Contact Information for Pass-Through Awarding Official:** Ryan Byrne, SMART Director of Finance
- 14) **CFDA Number & Name:** 20.513-Enhanced Mobility of Seniors and Individuals with Disabilities
- 15) **R&D?** No
- 16) **Indirect Cost Rate for Federal Award:** N/A