

AGENDA REPORT

To: Mayor Pat Humphrey and the Clare City Commission
From: Ken Hibl, City Manager
Date: June 2, 2010
Regarding: MDOT Contract – Paving of US-127BR (3rd Street to Fifth Street)

For the Agenda of June 7, 2010

Background. MDOT plans to repave US-127BR (McEwan Street) between Third Street and Fifth Street in downtown Clare this summer. However, the MDOT paving project does not include the on-street parking areas in these two blocks; consequently, MDOT offered to include paving the parking spaces in the project if the City paid (\$5.3K) for this portion of the project. We included the funds to complete this paving in the 2009/2010 Downtown Development Authority (DDA) budget. MDOT has now forwarded us a proposed contract (copy att'd) to facilitate the inclusion of paving the parking spaces with their resurface project. The City Commission is asked to approve the MDOT contractual agreement.

Issues & Questions Specified. Should the City Commission approve the proposed MDOT contractual agreement?

Alternatives.

1. Approve the proposed MDOT contract.
2. Do not approve the proposed contract.
3. Defer the matter for further consideration and/or deliberation at a subsequent meeting.

Financial Impact. The total cost for paving the on-street parking areas is \$5,3000; this cost is included in the current DDA budget.

Recommendation. I recommend that the City Commission approve the proposed MDOT contract by adoption of Resolution 2010-057.

Attachments.

1. MDOT Contractual Agreement.
2. Resolution 2010-057.



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

May 14, 2010

Ms. Kay Haven, Clerk
City of Clare
202 W Fifth St.
Clare, MI 48617-1490

Dear Ms. Haven:

RE: MDOT Contract No.: 09-5771
Control Section: STUT 37021
Job Number: 106475

Enclosed is the original and one copy of the above described contract between your organization and the Michigan Department of Transportation (MDOT). Please take time to read and understand this contract. If this contract meets with your approval, please complete the following checklist:

 PLEASE DO NOT DATE THE CONTRACTS. MDOT will date the contracts when they are executed. A contract is not executed unless it has been signed by both parties.

 Secure the necessary signatures on all contracts.

 Include two (2) certified resolutions. The resolution should specifically name the officials who are authorized to sign the contracts.

 Return all copies of the contracts to my attention of the Department's Design Division, 2nd floor for MDOT execution.

In order to ensure that the work and payment for this project is not delayed, the agreement needs to be returned within 35 days from the date of this letter.

A copy of the executed contract will be forwarded to you. If you have any questions, please feel free to contact me at (517) 373-2285 or 241-0969.

Sincerely,

Vanessa Skym
Contract Processing
Design Support Area

Enclosure

SPECIAL TRUNKLINE
NON-ACT-51
ADDED WORK

DAB	
Control Section	STUT 37021 (18031)
Job Number	106475A
Federal No.	STP 1037(008)
Federal Item	HH 6504
Contract	09-5771

THIS CONTRACT is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF CLARE, a Michigan municipal corporation, hereinafter referred to as the "CITY"; for the purpose of fixing the rights and obligations of the parties in agreeing to construction improvements in conjunction with the DEPARTMENT'S construction on Highway M-53, within the corporate limits of the CITY.

WITNESSETH:

WHEREAS, the DEPARTMENT is planning resurfacing work on Highway US-127BR within the CITY; and

WHEREAS, the CITY has requested additional work in connection with the Highway US-127BR construction, which additional work is hereinafter referred to as the "PROJECT" and is located and described as follows:

Milling and resurfacing work for additional width of parking lanes along both sides of Highway US-127BR (McEwan Street) between 3rd Street and Highway M-115/US-10BR (5th Street); together with necessary related work, located within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT presently estimates the PROJECT COST as hereinafter defined in Section 1 to be: \$5,300; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties shall undertake and complete the construction of the PROJECT in accordance with this contract. The term "PROJECT COST", as herein used, is hereby defined as the cost of the construction of the PROJECT including the costs of physical construction necessary for the completion of the PROJECT as determined by the DEPARTMENT; and construction engineering, and any and all other expenses in connection with any of the above.

2. The cost of alteration, reconstruction and relocation, including plans thereof, of certain publicly owned facilities and utilities which may be required for the construction of the PROJECT, shall be included in the PROJECT COST; provided, however, that any part of such cost determined by the DEPARTMENT, prior to the commencement of the work, to constitute a betterment to such facility or utility, shall be borne wholly by the owner thereof.

3. The CITY will approve the design intent of the PROJECT and shall accept full responsibility for the constructed PROJECT functioning as a part of the CITY'S facilities. The CITY is solely responsible for any input which it provides as it relates to the design of the PROJECT functioning as part of the CITY'S facilities.

4. The DEPARTMENT will administer all phases of the PROJECT and will cause to be performed all the PROJECT work.

Any items of PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

5. The PROJECT COST shall be charged to the CITY 100 percent and paid in the manner and at the times hereinafter set forth. Such cost is estimated to be as follows:

PROJECT COST - \$5,300

The construction engineering costs chargeable to the DEPARTMENT and the CITY will be established in the same ratio as the actual direct construction costs.

6. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT. The DEPARTMENT may submit progress billings to the CITY on a biweekly basis for the CITY'S share of the cost of work performed to date, less all payments previously made by the CITY. No biweekly billings of a lesser amount than \$1,000 shall be made unless it is a final or end of fiscal year billing. All billings will be labeled either "Progress Bill Number _____", or "Final Billing". Upon completion of the PROJECT, payment of all items of PROJECT COST and receipt of all Federal Aid, the DEPARTMENT shall make a final billing and accounting to the CITY.

7. Pursuant to the authority granted by law, the CITY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified herein. If the CITY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the CITY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the CITY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the CITY with payment thereof, and to notify the CITY in writing of such fact.

8. Upon completion of construction, the facilities being constructed as the PROJECT shall be operated and maintained by the CITY at no cost to the DEPARTMENT.

9. If at any time in the future, the pavement for parking bays is required for trunkline purposes, the DEPARTMENT shall take over and use such extra width pavement without replacement of the facility or reimbursement to the CITY.

10. Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the CITY. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the CITY of its ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control or jurisdiction.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401; MSA 3.996(101), which is incidental to the completion of the PROJECT.

11. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix "A", attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d and 2000a - 2000h-6 and the Regulations of the Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B" attached hereto and made a part hereof, and will require similar covenants on the part of contractor or subcontractor employed in the performance of this contract.

12. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the CITY and for the DEPARTMENT; upon the adoption of a resolution approving said contract and authorizing the signatures thereto of the respective officials of the CITY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF CLARE

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



**APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract; the contractor agrees as follows:

- 1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.**
- 2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.**
- 3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.**
- 4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.**
- 5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.**
- 6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.**
- 7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.**
- 8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.**
- 9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.**

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

RESOLUTION 2010-057

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT) SPECIAL TRUNKLINE, NON-ACT 51 ADDED WORK CONTRACT.

WHEREAS, the Michigan Department of Transportation has informed the City of Clare of its intentions to pave that portion of US-BR127 (McEwan Street) between Third Street and Highway M-115/US-10BR (Fifth Street) within the corporate limits of the City; and

WHEREAS, said proposed project does not include paving the on-street parking portions of said street; and

WHEREAS, MDOT has offered the City a contractual agreement for added work wherein said on-street parking portions of said street can be added work if the City agrees to pay for said work; and

WHEREAS, the City of Clare has reviewed said MDOT offer and the terms of said contractual agreement and deems it to be in the City's best interests to approve said contract and pay for said added work.

NOW THEREFORE BE IT RESOLVED THAT, the Clare City Commission hereby approves MDOT Non-Act-51 Added Work Contract No. 09-5771 and agrees to abide by all terms and conditions stipulated therein, the Job Number for said Project being 106475A, Federal No. STP 1037(008).

BE IT FURTHER RESOLVED THAT the City authorizes Mr. Bob Bonham, its Street Administrator, to execute any and all documents related to said contractual agreement.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 7th day of June 2010.

Diane Schmidt, City Clerk