City of Birmingham
A Walkable Community

MEMORANDUM

Engineering Dept.

DATE: **July 1, 2015**

TO: **Joseph Valentine, City Manager**

FROM: **Paul T. O'Meara, City Engineer**

SUBJECT: **Birmingham Train Station Demolition**

In 2004, when the property in the immediate area of the train station parking lot was being redeveloped, the City updated and reconstructed a simple train station consisting of a concrete ramp for passengers to walk from Villa Ave. up to the loading platform, and a new simple shelter. The improvements were intentionally kept simple with the idea that something better would be built in the near future with the City of Troy.

Now that the Troy Transit Center is fully operating, the Birmingham Train Station needs to be removed. The MI Dept. of Transportation (MDOT) has offered to cover the cost of this work. Working with their staff, we have estimated that the cost of putting together bidding documents with an engineering firm, and paying a contractor to complete the work will cost about $40,000. The attached agreement has been prepared by MDOT to document the terms that the City will have to follow to accept these funds. The agreement has been reviewed by the City Attorney's office, and has been endorsed.

Of particular note in the agreement is Section 2.a.(xvi), which clarifies that participation in this agreement in no way is intended to somehow involve Birmingham in the operation or maintenance of other related facilities, such as the one recently constructed for the City of Troy.

Hubbell, Roth, & Clark was hired by Birmingham to prepare the design documents for this facility that must now be removed. Further, they were the lead civil engineer on the design team for the Troy Transit Center. They are familiar with working with CN RR staff, and obtaining needed approvals from their office. With that in mind, it is our intent to hire them to create the bidding documents needed to proceed. Once the agreement has been finalized with MDOT, our office will bring a separate proposal from HRC so that they can get started on their portion of this work.

SUGGESTED RESOLUTION:

To approve the agreement with the MI Department of Transportation to reimburse the City of Birmingham for all related costs to demolish the existing Birmingham Train Station up to a cost not to exceed $40,000.

CONTRACT NO. 2015-0212
PROJECT NO. 127447

michigan.gov/recovery

MICHIGAN DEPARTMENT OF TRANSPORTATION

CITY OF BIRMINGHAM

RAIL PASSENGER STATION

CAPITAL CONTRACT

This Contract is made and entered into this date of _____ by and between the Michigan Department of Transportation (MDOT) and the City of Birmingham (CITY).

Recitals:

The Federal Railroad Administration (FRA) has awarded High Speed Rail funds for the final design/demolition and restoration of the relocated Birmingham passenger rail platform at the Intermodal Transit Facility located in the city of Birmingham; and

The federal funding will be provided under the American Recovery and Reinvestment Act of 2009 (ARRA) pursuant to the FRA's High-Speed Intercity Passenger Rail program (HSIPR); and

The purpose of the project is to benefit intercity passenger rail service, and the CITY is committed to helping to achieve, to the extent to which it is capable, the anticipated project benefits.

The parties agree as follows:

Section 1. PURPOSE

This Contract is to provide for the final design/demolition and restoration of the relocated Birmingham passenger rail platform at the Intermodal Transit Facility, as set forth in Attachment A, dated March 26, 2015 (PROJECT). The PROJECT will be performed in accordance with the Statement of Work submitted to the FRA by MDOT, attached to and made part of the Grant Agreement (as defined in Section 2 below).

MDOT will participate in the PROJECT by making up to Forty Thousand Dollars ($40,000.00) in ARRA funding available to the CITY for use in financing the PROJECT, as set forth in Section 4.

Section 2. PROJECT

a. The CITY will perform or cause to be performed all of the PROJECT work. It is understood that the CITY will contract for all or portions of the PROJECT work, including the final design/demolition and restoration services. The performance of the PROJECT work will be subject to all requirements contained in MDOT's grant/cooperative agreement with the FRA concerning the PROJECT, Grant Agreement Number FR-HSR-0084-11-01-00 (Grant Agreement), a copy of which will be provided under separate cover when available, and to the following:

(i) The PROJECT will comply with the requirements of the Americans with Disabilities Act.

(ii) All CITY subcontracts will be submitted for approval to MDOT and, if necessary, to the FRA, prior to award. Any such approvals will not be construed as a warranty of the subcontractors' qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.

(iii) It is understood that the CITY will, under contract with a licensed engineer and/or architect, perform all engineering activities required for completion of the PROJECT.

(iv) The CITY will neither advertise nor award the construction contract(s) for the PROJECT prior to receipt of written authorization from MDOT to proceed.

(v) The CITY, prior to receiving authorization from MDOT to advertise the construction contract(s), will certify to MDOT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable state and federal standards and regulations.

(vi) It is understood that the construction contract(s) for the PROJECT will be publicly advertised and awarded on the basis of the lowest responsive and responsible bid, in accordance with current FRA and MDOT procedures, including 49 CFR Part 18. The successful bidder(s) will be qualified to perform the work in accordance with all bidding requirements, as determined and approved by MDOT and the FRA.

(vii) The CITY, prior to receipt of authorization from MDOT to award the construction contract(s), will certify to MDOT that the selection of the contractor(s) was made in accordance with the terms of this Contract and applicable federal, state, and local statutes, regulations, and ordinances.

(viii) During the construction phase of the PROJECT, the CITY, through its PROJECT engineer/architect, will be in charge of the PROJECT and will ensure that the plans and specifications are followed.

(ix) The CITY will secure any and all necessary permits with concerned federal, state, and local agencies, etc., as may be necessary under federal, state, and local laws for the performance of work required for the PROJECT and will forward such permits to MDOT for such reviews and approvals as may be required.

(x) The CITY will require any contractor that is awarded a contract for the construction of the PROJECT to provide and maintain, at a minimum, the following insurance:

Personal injury, bodily injury, and property damage insurance for the duration of the PROJECT in the amount of One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) general aggregate.

Owner's protective liability insurance naming as insured the State of Michigan, the Michigan State Transportation Commission, MDOT, the CITY, and their officials, agents, and employees for the duration of the PROJECT. Copies of certificates of insurance will be provided to the insured. The insurer will be required to give 30 days written notice of any cancellation or change in coverage to the insured. It is understood that MDOT does not assume ownership of the PROJECT building(s) or of the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

The CITY will provide MDOT with written notice by certified mail of any cancellation or change in insurance coverage within fourteen (14) days of receiving notice of any such cancellation or change.

The CITY agrees that ARRA funds will not be used for first-dollar liability costs for insurance.

(xi) The CITY will, within ten (10) days of any ceremony to be held in connection with the PROJECT, notify MDOT.

(xii) The CITY will, when issuing any news release or promotional material regarding the PROJECT, give MDOT and the FRA credit for participation in the PROJECT and provide that the PROJECT is funded by the FRA with funds provided through ARRA.

(xiii) The CITY will consider posting a sign at all fixed PROJECT locations at the most publicly accessible location announcing that the PROJECT is

funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the sign(s) will be consistent with guidance issued by the Office of Management and Budget (OMB) and/or the U.S. Department of Transportation and must be approved by the FRA.

(xiv) Within sixty (60) days of completion of all PROJECT work, the CITY will prepare a PROJECT report, in accordance with current MDOT requirements, and submit it to

Al Johnson, Supervisor
Office of Rail/MDOT
425 West Ottawa Street, P. O. Box 30050
Lansing, MI 48909

(xv) Upon completion of the PROJECT work and acceptance thereof by the CITY, the CITY will so notify MDOT and will request a final acceptance inspection of the PROJECT work. MDOT will make a final acceptance inspection of the PROJECT work, as necessary to meet federal aid requirements.

(xvi) It is understood that the CITY is responsible for the facilities constructed under the PROJECT and that said facilities may require special or unusual operation and/or maintenance. The CITY certifies, by award of this Contract, that upon completion of construction and at no cost to the PROJECT or MDOT, it will properly maintain, or provide for the maintenance and operation of, the PROJECT facilities in a state of good repair, making ample provisions each year for the performance of such maintenance work as may be required, for a period of a minimum of twenty (20) years from the date the PROJECT property is placed in service.

It is further understood that this PROJECT, as set forth in Attachment A, is for the final design/demolition and restoration of the relocated Birmingham passenger rail platform site located in the city of Birmingham. The CITY is not responsible for the construction, operation, and/or maintenance of any other facilities, including, but not limited to, certain facilities designed and constructed pursuant to a separate contract dated October 1, 2011, between MDOT and the City of Troy.

Failure of the CITY to fulfill its responsibilities as outlined herein may disqualify the CITY from future federal aid participation in transportation projects or in other projects for which it has maintenance responsibility. Federal aid may be withheld until such time as deficiencies in regulations have been corrected and the improvements constructed as the PROJECT is brought to a satisfactory condition of maintenance.

(xvii) The CITY will comply with Section 114 of the Clean Air Act, 42 USC 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all regulations issued thereunder. The CITY will include this provision in all subcontracts relating to this PROJECT and will also include in such subcontracts the criteria and requirements of the "Environmental Protection" section of the Grant Agreement and an affirmative covenant requiring the contractor(s) and/or subcontractor(s) to immediately inform MDOT upon the receipt of a communication from the U.S. Environmental Protection Agency (EPA) regarding the EPA's List of Violating Facilities.

(xviii) The CITY will promptly refer to the U.S. Department of Transportation Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

(xix) The CITY agrees to comply with the cargo preference requirements of 46 USC 1241(b), the regulations issued thereunder, 46 CFR Part 381, and the Grant Agreement. The CITY will include this provision in all PROJECT subcontracts.

(xx) The CITY agrees to comply with the "Patent Rights" and "Rights in Data and Copyrights" sections of the Grant Agreement.

(xxi) The PROJECT property, equipment, and supplies financed by the Grant Agreement will be used for the PROJECT purposes for the duration of their useful life, as determined by FRA. Such property, equipment, and supplies are subject to the property management standards, including disposition, of 49 CFR Part 18.

(xxii) The CITY agrees not to execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect FRA interest in any PROJECT property or equipment.

(xxiii) The CITY agrees to include in all subcontracts involving ARRA funds a clause providing that the performance of the PROJECT work will be subject to all requirements contained in the Grant Agreement.

(xxiv) MDOT, its successors, and its assignees will have the right to use the PROJECT property for the purpose of providing intercity passenger rail service during the term of this Contract.

(xxv) The CITY will not modify or otherwise alter the PROJECT property in a manner that would decrease reliability for the existing intercity passenger rail service during the term of this Contract without MDOT's prior written approval.

b. The CITY will comply with all applicable federal, state, and local statutes, ordinances, regulations, and requirements and will obtain all permits and approvals required for the performance of the PROJECT work.

Section 3. COST

MDOT and the CITY agree that the maximum PROJECT amount of Forty Thousand Dollars ($40,000.00) set forth in Attachment A represents estimated line item costs required to complete the PROJECT and may be subject to revision and adjustment. Therefore, MDOT and the CITY agree that revisions or adjustments to estimated line item costs set forth in Attachment A are permitted, provided, however, that such revisions or adjustments will not result in an increase in the financial obligations of MDOT, as set forth in Section 4 of this Contract, or in a change in the scope of the PROJECT, unless by prior award of a written amendment to this Contract. All costs in excess of the amount stated above will be the CITY's responsibility.

No work may begin on the PROJECT until the work plan is approved by MDOT and MDOT provides the CITY with written notification to proceed. MDOT will allow costs to be incurred by the CITY for the PROJECT prior to award of this Contract. If costs are incurred for the PROJECT that are not approved by MDOT, those costs will not be eligible for reimbursement and will remain the responsibility of the CITY. If for any reason this Contract is not awarded, MDOT will not be responsible for any expenses that have been incurred.

Funding for this Contract made available through legislative appropriation is based on projected revenue estimates. MDOT may reduce the amount of this Contract if the revenue actually received is insufficient to support the appropriation under which this Contract is made.

Section 4. COST REIMBURSEMENT

The PROJECT cost will be met by contributions from the federal government. Federal ARRA funds will be applied to 100 percent of the eligible items of PROJECT cost not to exceed Forty Thousand Dollars ($40,000.00), as set forth in Attachment A. All costs in excess of the amount stated above will be the CITY's responsibility.

Reimbursement for costs incurred is subject to the cost criteria set forth in OMB Circular A-87, 49 CFR Part 18, and Federal Acquisition Regulations, 48 CFR Chapter I, Subpart 31.2, incorporated herein by reference. ARRA funds used for management and administrative costs will be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles.

Section 5. METHOD OF REIMBURSEMENT

a. The reimbursements identified in Section 4 will be made by MDOT against invoices presented to it by the CITY detailing actual costs by the CITY and/or its subconsultants as well as evidence of payment and/or other supporting documentation by the CITY. Reimbursement for costs incurred is subject to review and approval by MDOT.

b. The CITY will submit along with each invoice, as identified in Section 5(a), a PROJECT billing summary showing actual PROJECT costs to date. The CITY agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CITY also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

c. MDOT will reimburse the CITY for all eligible PROJECT costs, as set forth in Attachment A, within thirty (30) days of receiving said billings, up to a maximum amount of Forty Thousand Dollars ($40,000.00).

Section 6. AUDIT AND RECORD RETENTION

The CITY agrees to the following:

a. The CITY will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract (RECORDS). Separate accounts will be established and maintained for all costs incurred under this Contract.

b. The CITY will also maintain accurate records of all information relating to the following (as part of the RECORDS): support for any proposal, change order, or request for equitable adjustment submitted by the CITY; Contract compliance and performance, including any work or deliverables in progress; compliance with applicable provisions of the Grant Agreement; and support for all direct and indirect costs or prices charged to MDOT.

c. The CITY will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507) and the OMB Circular A-133, as revised or amended, and the provisions of 1951 PA 51; MCL 247.660h, as applicable with regard to audits, that are in effect at the time of Contract award.

d. The CITY will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the

CITY will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired, or until the end of the three (3) year period, whichever is later.

e. MDOT, the FRA, the U.S. Department of Transportation, and the Comptroller General of the United States, and their authorized representatives will have access to and the right to inspect, copy, and/or audit the RECORDS, at any reasonable time after giving reasonable notice. In connection with such audit and inspection activities, MDOT, the FRA, the U.S. Department of Transportation, and the Comptroller General of the United States, and their authorized representatives will be afforded access to the PROJECT facilities and to contract work and/or deliverables in progress, the opportunity to interview the CITY's employees concerning any matter relating to the Contract, and adequate and appropriate workspace.

f. The entire PROJECT will be subcontracted. The CITY will assure, and is responsible for, compliance with subsections (a), (b), (c), (d), and (e) above for all subcontracted work, and will require all subcontractors to include these subsections in all lower tier subcontract(s) and/or purchase order(s).

g. The CITY must comply with applicable state laws and regulations relative to audit requirements.

h. The CITY is subject to state monitoring activities, which may include limited scope reviews and other on-site monitoring.

i. MDOT, the FRA, the U.S. Department of Transportation, and the U.S. Comptroller General, and their authorized representatives have the right to make site visits at all reasonable times, and the CITY must provide access to all reasonable facilities at such visits.

Section 7. AUDIT AND REPAYMENT

In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the CITY a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CITY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CITY will (a) respond in writing to MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or

questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CITY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract. The CITY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the CITY, the CITY will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the CITY fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the CITY agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the CITY under this Contract or any other agreement or payable to the CITY under the terms of PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CITY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the CITY in a timely filed RESPONSE.

Section 8. INDEMNIFICATION

Each party to this Contract will remain responsible for any claims arising out of its performance of this Contract, as provided by this Contract or by law.

This Contract is not intended to increase or decrease either party's liability for or immunity from tort claims.

This Contract is not intended to give nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this Contract.

Section 9. NONDISCRIMINATION

a. The CITY and MDOT will comply with the fair employment and equal opportunity practices of Executive Order (E.O.) 11246, as amended by E.O. 11375, and as supplemented by 41 CFR Part 60. The CITY will include this provision in all subcontracts relating to this Contract.

b. In connection with the performance of the PROJECT under this Contract, the CITY (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated June 2011. This provision will be included in all subcontracts relating to this Contract.

c. During the performance of this Contract, the CITY, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor"), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241 as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011. This provision will be included in all subcontracts relating to this Contract.

d. The CITY will carry out the applicable requirements of MDOT's DBE program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 1, 2005, attached hereto and made a part hereof.

Section 10. SUBLETTING

No portion of the PROJECT will be sublet without the prior written consent of MDOT. Consent to sublet any portion of the PROJECT will not be construed to relieve the CITY of any responsibility or obligation under or for the fulfillment of this Contract. All contracts, including amendments with subcontractors, in excess of Twenty- Five Thousand Dollars ($25,000.00), will be submitted to MDOT for approval prior to award and will contain all applicable provisions of this Contract. Any such approvals will not be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.

Section 11. ENTIRE CONTRACT

This Contract constitutes the entire agreement between the parties with respect to the PROJECT. There are no other agreements, either expressed or implied. All prior contracts, agreements, and understandings between the parties with respect to the PROJECT are subsumed within this Contract. Except as otherwise provided in this Contract, no change in, modification to, or amendment to this Contract will be of any force or effect unless in writing, dated, and awarded by the duly authorized representatives of the parties.

Section 12. CHANGES

All changes in the scope or character of the PROJECT or in the cost, compensation, or term of this Contract will be by award of a prior written amendment to this Contract by the parties. The parties will not enter into or agree to any substantive changes in the Contract without the FRA's prior written consent.

Section 13. TERMINATION

MDOT may terminate this Contract for convenience or cause, as set forth below, before the PROJECT is completed. Written notice of termination will be sent to the CITY. The CITY will be reimbursed in accordance with the following:

a. **Termination for Convenience:**

If MDOT terminates this Contract for convenience, MDOT will give the CITY written notice of such termination thirty (30) days prior to the date of such termination, and the CITY will be reimbursed for eligible PROJECT costs incurred up to the effective date set forth in the notice of termination. In no case will the compensation paid to the CITY for partial completion of the PROJECT exceed the amount the CITY would have received had the PROJECT been completed.

b. **Termination for Cause:**

In the event the CITY fails to complete any part of the PROJECT in a manner satisfactory to MDOT, MDOT may terminate this Contract. If MDOT terminates this Contract for cause before the PROJECT is completed, MDOT will not reimburse the CITY for any PROJECT costs. Written notice of termination will be sent to the CITY.

In the event that termination by MDOT is necessitated by any wrongful breach, failure, default, or omission by the CITY, MDOT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the CITY under this Contract, as well as any other existing or future contracts between the CITY and MDOT, for any and all damages and costs incurred or sustained by MDOT as a result of its termination of this Contract due to the wrongful breach, failure, default, or omission by the CITY. In the event of termination of this Contract, MDOT may procure the PROJECT work from other sources and hold the CITY responsible for any damages or excess costs occasioned thereby.

Section 14. UNFAIR LABOR PRACTICES

a. In accordance with 1980 PA 278, MCL 423.321 *et seq.*, the CITY, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void this Contract if the name of the

CITY or the name of a subcontractor, manufacturer, or supplier utilized by the CITY in the performance of this Contract subsequently appears in the register during the performance period of this Contract.

b. The CITY will comply with the requirements of 40 USC 3141.

c. The CITY and MDOT will comply with the state, local government, and contractor whistleblower protections of ARRA.

Section 15. SEVERABILITY

If any part of this Contract is determined to be invalid, illegal, or unenforceable, such determination will not affect the validity, legality, or enforceability of any other part of this Contract, and the remaining parts of this Contract will be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

Section 16. ASSIGNMENT OF ANTITRUST RIGHTS

With regard to claims based on goods or services that were used to meet the CITY's obligation to MDOT under this Contract, the CITY hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The CITY will require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the CITY's obligation to MDOT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

The CITY will notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the CITY's obligation to MDOT under this Contract may have occurred or is threatened to occur. The CITY will also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the CITY's obligation to MDOT under this Contract.

Section 17. ARRA REQUIREMENTS

This Contract is subject to all applicable requirements and conditions of ARRA, including, but not limited to, the requirements set forth in Attachment B, pages 1 through 6, attached hereto and made a part hereof.

The CITY agrees that it and its subcontractors will provide all documentation requested by MDOT for its use in preparing reports required by the Grant Agreement, including all

ARRA reporting requirements, and any supplemental reports as may be required. Should the CITY and/or any of its subcontractors fail to provide such documentation, MDOT may withhold reimbursement of federal funds for the PROJECT work until compliance is achieved.

The CITY agrees that ARRA funds will not be used for any casino or other gaming establishment, aquarium, zoo, golf course, or swimming pool.

The CITY agrees that, to the maximum extent possible, contracts funded under ARRA will be awarded as fixed-price contracts through the use of competitive procedures, and that the CITY will provide a summary of any contract awarded with ARRA funds that is not fixed-price and not awarded using competitive procedures to MDOT.

The CITY agrees to comply with the Buy American requirements of 49 USC 24405(a).

Section 18. TERM

This Contract will be in effect from the date of award through December 31, 2015. No PROJECT work may begin until the CITY receives a written notification to proceed from MDOT.

The timely delivery of ARRA projects is critical. The expectation is that all PROJECT funds will be obligated within a year.

Prior to expiration, the time for completion of performance under this Contract may be extended by MDOT upon written request and justification from the CITY. The parties will not enter into or agree to any such extension of the Contract without the FRA's prior written consent. Upon approval and authorization, a written time extension amendment will be issued by MDOT. The terms and conditions of the extension will be set forth in the amendment. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.

Section 19. ASSIGNMENT

The CITY will retain and not voluntarily sell, dispose, or abandon the PROJECT property without the prior written approval of MDOT.

Section 20. APPLICATION OF FEDERAL LAW

The CITY and MDOT agree that federal requirements, including federal laws, regulations, policies, and related administrative practices, may change and the changed requirements will apply to the PROJECT, as required. The CITY will include this provision in all subcontracts financed with ARRA funds relating to this Contract.

Section 21. AWARD

This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CITY and MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the CITY, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

CITY OF BIRMINGHAM

By: _____

Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

FORM APPROVED
4-16-15
ASSISTANT ATTORNEY GENERAL

By: _____

Title: Department Director

ATTACHMENT A

THE CITY OF BIRMINGHAM
AND
THE STATE OF MICHIGAN

March 26, 2015

Total estimated cost breakdown for the final design, demolition and restoration of the relocated Birmingham platform/site in Birmingham, Michigan:

Professional services, architectural and engineering, and construction management		$5,000
Demolition, Site Restoration		35,000
Project Total to be contributed by the Michigan Department of Transportation	**$**	**40,000**

Funding source:
ARRA
FY10/77619 $40,000
WB 0030

ATTACHMENT B

The following conditions apply to work funded under the American Recovery and Reinvestment Act 2009 (ARRA).

A. This work is funded under the American Recovery and Reinvestment Act 2009 (ARRA).

B. As such it will be monitored and audited by the federal government or their representatives. The Contractor is required to keep complete records including but not limited to invoices, payroll information, and timesheets. The Contractor is required to make such records available for federal government or their representatives for inspection and/or audit.

C. Buy American Requirement: The Buy American requirement will be met by compliance with 49 USC 24405 (a).

D. Wage Requirements: All laborers and mechanics employed by contractors and subcontractors of projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40 of the United States Code (see ARRA section 1606). The Secretary of Labor's determination regarding prevailing wages applicable to Michigan is available at http://www.gpo.gov/davisbacon/mi.html.

E. Whistleblower Protection: Section 1553 of Title XV of Division A of the ARRA prohibits all non-federal recipients of ARRA funds, including the State of Michigan, and all contractors and grantees, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes there is evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule or regulation related to an agency contract (including competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The recipient must post notice of the rights and remedies available to employees under section 1553 of Title XV of Division A of ARRA.

This requirement must be included in all subcontracts or sub grants involving the use of funds made available under ARRA.

Contractors are to display the poster included below under section 'M'.

F. Reporting Requirements: Reporting has to be done under ARRA and the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282). Prime responsibility for such reporting is with the Owner. However this Contractor will be required to provide monthly reports accompanying each

Payment Request. This information will be in addition to the typical payment request format and back-up.

The Owner will provide in electronic format a form to be completed each month. The form will include but not be limited to the following information:

1. Name of Contractor
2. Amount of Contract
3. Type of Contract*
4. Agency*
5. NAICS Code *
6. Program Source*
7. Purpose
8. Location of Contract
9. City
10. State
11. Congressional District*
12. County
13. Country
14. Unique Identifier*
15. Subcontracts
16. Amount of each Subcontract
17. Completion Status
18. Number of Jobs Created or Retained

Items marked * will be completed by the Owner. The Contactor shall complete all other items.

G. Inspection of Records: The Contractor shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1998 or his representative (1) to examine any records that directly pertain to and involve transactions relating to this contract, and (2) to interview any officer or employee of the contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.

H. Non-Discrimination: The Contractor shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments Act of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients for Federal financial assistance.

I. Job Opportunity Posting Requirements: contractors shall post notice of job opportunities created in connection with activities funded in whole or in part with ARRA funds in the Michigan Talent bank www.michworks.org/mtb.

J.

Notification

ARRA MONTHLY EMPLOYMENT REPORTS

Note: This notification is only applicable for those projects/contracts funded with ARRA funds. If you have questions please contact MDOT Contract Services Division at (517) 335-0071.

The American Recovery and Reinvestment Act of 2009 (ARRA), requires states receiving stimulus funds for railroad projects to provide monthly reports to the Federal Railroad Administration (FRA) regarding the number of employees of the prime contractors, all-tier subcontractors and consultants on ARRA funded projects.

The cost for complying with this Notification must be borne by the prime contractor, and all tiers of subcontractors and consultants, as part of their overhead and is deemed to be included in the payments made under this contract.

Within 10 days after the end of each month in which work is performed on this contract, all prime contractors and consultants must provide the Engineer a monthly report on MERS at https://sso.state.mi.us/ providing employment information on each ARRA project, which will include, for work performed in that preceding month:

- The total number of employees who performed work on this contract
- The total number of hours worked by employees who performed work on this contract
- The total wages of employees who performed work on this contract

Prime Consultants are responsible for reporting on all sub consultants' employment information in MERS, as the subconsultants will not have access to do so.

In addition, the prime contractor must provide a total payment amount made to any subcontractor who is certified DBE in that preceding month.

This Notification shall be included as a part of each subcontract executed by the prime contractor, and all-tiers of subcontractors and consultants.

If necessary to conform to guidance provided by FRA concerning the ARRA reporting requirements, the prime contractor, and all-tiers of subcontractors and consultants will revise their reporting as directed by the Engineer.

Failure to comply with the reporting requirements under ARRA would jeopardize the Department's continued receipt of ARRA funding.

Accordingly, if a contractor or any-tier of subcontractor of consultant fails to comply with this Notification, the Department may withhold contract payments until compliance is achieved. If the Department is compelled to incur costs because of such a breach, the amount of those costs may be deducted from payments otherwise to be made under this contract. Additional sanctions may include reduction or elimination of prequalification ratings and removal of bidding privileges.

Revised: 8-4-2010

K.

03NB41
03-26-09

NOTICE TO BIDDERS

ARRA REQUIREMENTS

As a part of the American Recovery and Reinvestment of 2009 (ARRA), Davis-Bacon prevailing wage requirements apply to all ARRA funded construction projects regardless of location (including projects on local roads or rural minor collectors, and Transportation Enhancement projects outside the highway right-of-way).

L.

03NB42
03-26-09

NOTICE TO BIDDERS
REQUIRED CONTRACT PROVISIONS TO IMPLEMENT AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) SECTIONS 902 AND 1515

In accordance with requirements under section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), the following language is made a part of this contract and is to be made a part of all tier subcontracts or consultant contracts:

The U.S. Comptroller General and his representatives have the authority:

(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

The Comptroller General and his representatives have the authority and rights provided under Section 902 of the ARRA with respect to this contract. As provided in section 902, nothing in section 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

In accordance with the requirements of section 1515(a) of the ARRA any representatives of the Inspector General have the authority:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee or agency regarding such transactions.

Nothing set forth in section 1515 of the ARRA shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

M. Whistleblower Poster to be Displayed

Know Your Rights
Under the Recovery Act!

Did you know?

The American Recovery and Reinvestment Act of 2009 [1] provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse or Recovery Act funds.

Who is protected?

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

How are Whistleblowers Protected?

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

What types of disclosures are protected?

The disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

Take Action!

Log on to Recovery.gov for more information about your rights and details on how to report at www.recovery.gov.

[1] Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5

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 Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any 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 will 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 ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any 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; treatment; 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 shall, 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 its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall 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 itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State 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, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan 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 Michigan 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 Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

<u>Revised June 2011</u>

APPENDIX B
TITLE VI ASSURANCE

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

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment 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 contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the 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 facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it 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 Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

    a. Withholding payments to the contractor until the contractor complies; and/or

    b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material 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 Department or the USDOT 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 from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

(Revised October 1, 2005)

APPENDIX C
Assurances that Recipients and Contractors Must Make
(Excerpts from US DOT Regulation 49 CFR § 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.