



CITY COUNCIL ACTION REPORT

September 18, 2014

TO: Honorable Mayor and Troy City Council Members

FROM: Brian Kischnick, City Manager
Lori Grigg Bluhm, City Attorney
Steven J. Vandette, City Engineer/Project Manager

SUBJECT: Approval of Memorandum of Understanding Between City of Troy And Grand Sakwa for Doyle Drive Maintenance and Operations

History

Doyle Drive is the private drive that provides access to the Transit Center property from either Coolidge or Maple Road. It is owned by Grand Sakwa, and is used by Grand Sakwa's condominium owners and shopping center patrons. Doyle Drive also provides the only access to the Transit Center, and a small piece of this private road is located on the Transit Center parcel, which was acquired by the City through condemnation. When Troy filed its condemnation action, it limited its acquisition to obtain a non-exclusive access easement over Doyle Drive, so that Doyle Drive could continue to be used for the public to access the condos, shopping center, and the Transit Center. Grand Sakwa has performed all maintenance and repair on Doyle Drive to date. However, since part of the private road is on City of Troy property, and part of the road is on Grand Sakwa property, it is prudent to try and reach an agreement as to who will be performing the maintenance and operations responsibilities over Doyle Drive. Additionally, if either party performs maintenance on the other's property, then insurance coverage should be extended to cover those operations. City Administration has negotiated an agreement to cover operations until SMART is ready to commence operations.

Terms

The term of this Memorandum of Understanding is for 20 years, which is the term of the City's lease with Amtrak. The lease requires Troy to maintain and pay for operations and utilities for the portion of Doyle Drive that it owns, and Grand Sakwa will do the same for the portion of Doyle Drive that it owns. Both parties will add the other as an additional insured, in case there are any injuries on the other's property. The Memorandum of Understanding also requires the City to place limited signage, identifying parking areas owned by Grand Sakwa as a private lot. Once the extent of SMART's bus usage on the Transit Center is verified, the parties agree to negotiate proportional shares of a sinking fund to pay for any future repair or replacement of Doyle Drive.

Recommendation

City Administration recommends that City Council approve the Memorandum of Understanding.

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is entered into as of the ___ day of October 2014, by and between the City of Troy (“Troy” or “City”), a Michigan municipal corporation, whose address is 500 W. Big Beaver, Troy, Michigan 48084, and Grand/Sakwa Properties, LLC (“Grand/Sakwa”), a Michigan limited liability company, whose address is 28470 Thirteen Mile Road, Suite 220, Farmington Hills, Michigan (48334). The reference to Grand/Sakwa herein also refers to and includes Grand/Sakwa New Holland, LLC and Grand/Sakwa Management, LLC.

RECITALS:

A. Grand/Sakwa developed a shopping center known as Midtown Square (the “Shopping Center”) and residential condominium development (the “Condominiums”) on land located south of Maple Road and west of Coolidge Road in the City of Troy in accordance with an Amended and Restated Consent Judgment entered on June 2, 2010 by the Oakland County Circuit Court in Case No. 99-02144-CH (the “Consent Judgment”). Grand/Sakwa remains the owner of the Shopping Center property as more particularly described in Exhibit A hereto. The reference to the Shopping Center herein includes the property described in Exhibit A.

B. Troy, through a condemnation action brought in the Oakland County Circuit Court (Case No. 14-141753-CC), obtained legal title to a 2.7 acre portion of the Shopping Center for use as an intermodal transportation facility, which is intended to include passenger rail service and bus services. The 2.7 acre parcel (the “Transit Center”) is more particularly described in Exhibit B.

C. Troy also condemned and obtained legal title to a non-exclusive ingress/egress easement over the privately-owned Doyle Drive, as depicted on Exhibit C. A small portion of Doyle Drive is located on the Transit Center and is now owned by Troy, but the remainder of Doyle Drive is owned by Grand/Sakwa and is the primary access drive serving the Shopping Center and the Condominiums. Grand/Sakwa and the other users of Doyle Drive, including the tenants of the Shopping Center and the residents of the Condominiums have retained a reserved, non-exclusive easement and right to continue utilizing that portion of Doyle Drive that is now located on the Transit Center parcel.

D. This MOU is entered into in order to carry out and effectuate the common maintenance, use and operation of Doyle Drive and related utilities and for the mutual benefit of Grand/Sakwa and Troy so that Doyle Drive will continue to be repaired, maintained, operated and replaced in an attractive, safe and good state of repair.

E. This MOU contemplates at this time only the use of the Transit Center for passenger rail service and uses ancillary to rail service. The Transit Center is planned to be used for bus services, but the scope and extent of the bus services has not been determined at the present time. The parties intend to negotiate in good faith a first amendment to this MOU regarding the sole and remaining issue of Troy’s pro rata share relating to the bus services of long term repair and replacement of Doyle Drive on the Shopping Center Property which may include the payment by Troy into a reserve fund.

NOW, THEREFORE, in consideration of the promises and agreements contained herein and in furtherance of the parties' understanding, it is hereby agreed as follows:

TERMS

1. Doyle Drive Maintenance Obligations. Grand/Sakwa shall at its expense continue to operate, maintain, repair and replace, or cause to be operated, maintained, repaired and replaced those portions of Doyle Drive located on the Shopping Center property in an attractive, safe condition and good state of repair. Troy at its expense shall be responsible for operating, maintaining, repairing and replacing those portions of Doyle Drive located on the Transit Center property in an attractive, safe condition and good state of repair, as depicted on Exhibit D. These respective road maintenance obligations include maintaining the road surfaces in a smooth and safe condition, the removal of snow, ice, paper, debris and filth in a timely manner and maintaining and replacing any appropriate lane markings, directional signage and fire lanes, as may be applicable. Neither party shall deposit or store snow and ice removed from one party's property on the property of the other. Parking is not permitted anywhere along Doyle Drive. Neither Grand/Sakwa nor Troy will block or impede or interfere with public access to either the Transit Center, Shopping Center or Condominiums over and through Doyle Drive.

2. Transit Center Maintenance. Troy is otherwise responsible for maintaining and repairing at its expense all of the Transit Center property, including the building, parking, sidewalks, bus shelters, lighting, landscaping, and utilities. Within thirty (30) days of the date of this MOU, or after Grand/Sakwa provides the electrical schematics for the lighting poles whichever is later, the City at its sole expense will disconnect the light poles located on the Transit Center property (as depicted on Exhibit D) from the Shopping Center electricity and run its own power to the lights. Grand/Sakwa agrees to provide reasonable rights of entry, if needed, to allow the completion of this disconnection and connection work.

3. Troy Insurance. Except for Railroad Protective Liability Insurance, Troy will procure and maintain at all times at its cost and expense the same insurance and adhere to the same terms and conditions that it is obligated to provide to Amtrak -in Troy's Multi-Modal Transit Facility Lease Agreement dated September 22, 2014 with Amtrak. Troy's insurance will specifically cover personal injury and property damage claims with respect to the use of Doyle Drive over the Shopping Center property by the City and its Transit Center customers, visitors, patrons, buses and by service and other Transit Center related vehicles. Troy will name Grand/Sakwa Properties, LLC, Grand/Sakwa New Holland, LLC, and Grand/Sakwa Management, LLC as additional insureds with respect to the insurance coverage regarding the operation and use of Doyle Drive. Troy agrees that the policy(ies) will not be cancelled or reduced in amount or below the coverage requirements, nor shall they be allowed to expire without at least a 30 day written notice to Grand/Sakwa Properties, LLC.

4. Grand/Sakwa Insurance. Grand/Sakwa will name Troy as an additional insured on its policies of insurance with respect to the Shopping Center common areas as set forth in the Section 5.4 of the Declaration of Easements and Restrictions covering the Shopping Center as recorded at Liber 21689, Page 590 *et seq.* Grand/Sakwa's insurance will specifically cover personal injury and property damage claims with respect to the use of Doyle Drive over the Transit Center property by Grand/Sakwa and its tenants, customers, visitors, patrons and by

service and other vehicles. Grand/Sakwa agrees that the policies will not be cancelled or reduced in amount or below the coverage requirements, nor shall they be allowed to expire without at least a 30 day written notice to Troy, through its City Manager and City Attorney.

5. Signage. Within thirty (30) days of the date of this MOU and written mutual approval of an appropriate signage installation plan, whichever is later, Troy shall, at its expense, place signs behind the Kohl's and Kroger stores adjacent to the parking areas near the Transit Center parking lot, stating that such parking is not authorized for the Transit Center and that such vehicles will be towed. Troy is not obligated to maintain the installed signage.

6. Stay of Operations With Respect to Bus Service. There is no understanding currently between Troy and SMART with respect to the use of the Transit Center property for bus services and the scope and extent of such bus services are not presently known. The parties agree to enter into a stipulated order providing a stay of the use and operation of the Doyle Drive for bus services for 45 days and that such bus services will not commence until 30 days after advance written notice by Troy to Grand/Sakwa of any understanding Troy reaches with SMART and the terms of that understanding with respect to bus services in connection with the Transit Center. While not obligated, once the scope and extent of such bus service is known, the parties agree to work in good faith to try to negotiate a first amendment to this MOU with respect to Troy's pro rata share of the cost of maintaining Doyle Drive on the Shopping Center property, which may include a reserve for repair and replacement of Doyle Drive. Both Troy and Grand/Sakwa reserve all of their arguments and defenses with respect to the propriety of a stay or related injunctive relief.

7. Default. In the event of a default with respect to a party failing to perform any of the obligations of this MOU, the non-defaulting party shall give written notice to the defaulting party of the specific nature of the default. The defaulting party shall have thirty (30) days after the receipt of said notice within which to cure the default. If the default is not cured within said thirty (30) day period, or such extended period as the parties may mutually agree under the circumstances, the non-defaulting party may pursue any remedies available in law or equity, including injunctive relief. If the alleged default involves a situation of imminent public harm or safety, and after providing written notice to the other side, the complaining party is authorized to seek a temporary restraining order or other appropriate relief from a court of competent jurisdiction. The prevailing party in any such dispute or enforcement action shall be entitled to recover its reasonable costs and reasonable attorneys' fees.

8. Term, Amendment, Modification or Termination. The term of this MOU shall be for twenty (20) years, commencing as of the date of the last signature in execution of this MOU. The term shall continue thereafter, unless terminated sooner by Troy. Troy may only terminate this MOU in the event of termination of rail passenger service and must provide thirty (30) days written notice to Grand/Sakwa. This MOU may be amended or modified at any time by an agreement in writing mutually agreed to, executed and acknowledged by Grand/Sakwa and Troy.

9. Successors. This MOU shall be binding upon and inure to the benefit of the parties designated herein, their heirs, executors, administrators, beneficiaries, successors and assigns.

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10. Governing Law. This MOU shall be construed and governed in accordance with the laws of the state of Michigan.

12. Severability. In the event any provision or portion of this MOU is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

13. Counterparts. This MOU may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but all such counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed effective as of the day and year first above written.

GRAND/SAKWA PROPERTIES, L.L.C.,
a Michigan limited liability company

Its: _____

CITY OF TROY,
a Michigan municipal corporation

Its: _____