

## CITY COUNCIL ACTION REPORT

November 19, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services  
Mark F. Miller/Planning Director

SUBJECT: Transit Center Cost Sharing Agreement

### Background:

- Attached is a proposed Interlocal Agreement between Troy and Birmingham to share costs for a project manager for the proposed Transit Center. The City of Birmingham has selected Clark Hill as the project manager. At their December 15, 2008 meeting, the City of Birmingham will consider the Interlocal Agreement with the City of Troy. Birmingham will also consider the professional services contract with Clark Hill. Clark Hill has infinite experience in this line of work, both in Lansing and Washington DC.

### Financial Considerations:

- A month to month contract for project management services and shall not exceed \$7,500 per month. The City of Troy will be responsible for one half of this amount. This Agreement will expire December 31, 2010.
- Funds are available from the Transit Center reserve account.

### Legal Considerations:

- The Interlocal Agreement was drafted by the City Attorney's Office.

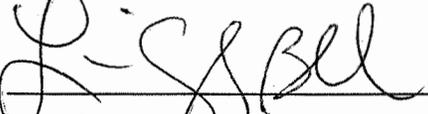
### Policy Considerations:

- Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues. (Outcome II)
- Troy is rebuilding for a healthy economy reflecting the values of a unique community in a changing and interconnected world. (Outcome III)

### Options:

- City Management recommends that City Council approve the attached Interlocal Agreement between the City of Birmingham and the City of Troy.

Reviewed as to Form and Legality



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Lori Grigg Blum, City Attorney

PLH/G/MEMOS TO MAYOR & CC\Transit Center

## INTERLOCAL AGREEMENT

This Interlocal Service Agreement dated, this \_\_\_\_ day of \_\_\_\_\_ 2008, is made by and between:

City of Birmingham  
151 Martin Street  
P.O. Box 3001  
Birmingham, Michigan 48012

-And-

City of Troy  
500 W. Big Beaver Road  
Troy, Michigan 48084

### RECITALS

The City of Troy, a Michigan Municipal Corporation (hereinafter "TROY"), and the City of Birmingham, a Michigan Municipal Corporation (hereinafter "BIRMINGHAM"), together referred to as the "Parties" or the "Party," are authorized separately by law to provide for services for their constituency; and

The Parties both have a strong interest in the development of an intermodal transit center near the joint border of the communities, which would provide a benefit to both of the communities, as well as to the surrounding metropolitan area; and

The Parties have undertaken joint planning efforts towards a cohesive development of a transit center, and plan to continue such efforts in the future to realize the construction of such an intermodal transit center on and around property that borders both communities; and

Pursuant to a consent judgment, there is an opportunity to use property bordering the communities for an intermodal transit center, as long as the construction of the transit center begins prior to the year 2010; and

The estimated cost of the proposed intermodal transit center is approximately six million dollars, based on a design presented by Wendel Duchscherer, which includes a number of site improvement and safety issues, including a pedestrian tunnel connecting Birmingham with Troy, which is a key element for the success of an intermodal transit center at the proposed location; and

A jointly hired project manager would provide a comprehensive and coordinated strategic approach to obtain the necessary funding and federal, state, and local support for the proposed intermodal transit center; and

A jointly hired project manager would provide a unique expertise, as well as a time commitment that exceeds the current capabilities of the professional staff of the Parties; and

The Michigan Constitution of 1963, Article 7, § 28, and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501, et. seq. (the "Act"), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common with which each might exercise separately; and

The Parties have reviewed a proposal submitted by R. Daniel Beattie, Director of Governmental Affairs at Clark Hill, PLC, and after reviewing the proposal, credentials of the firm, and after an interview, the Parties are satisfied that this full service firm should be awarded a professional services contract as the Project Manager for the proposed Troy/Birmingham intermodal transit center; and

The Parties have mutually agreed that this Agreement be entered into to allow BIRMINGHAM and TROY to jointly share in the cost of services for a Project Manager to advocate, on behalf of the Parties, for an intermodal transit center at the joint border, and pursuant to resolution of its governing bodies, the Parties each have the authority to execute this Interlocal Service Agreement ("Agreement"), and the Parties mutually agree to the following terms and conditions:

### **AGREEMENT**

1. BIRMINGHAM shall negotiate the terms of the professional services contract to hire Clark Hill as the Project Manager for the proposed Troy/Birmingham intermodal transit center, as long as the contract complies with the following:
  - a. The contract shall require the Project Manager to use its best efforts to secure funding and support so that the construction of the Troy/Birmingham intermodal transit center will commence prior to December 31, 2009.
  - b. The contract shall require advocacy for the completion of the Troy/Birmingham intermodal transit center, as proposed by Wendel Duchscherer.
  - c. The contract shall require advocacy equally on behalf of both parties.
  - d. The contract shall require effective advocacy at the federal and state level, as well as locally, which shall be directed at both public and also private sources.
  - e. The contract shall continue on a month to month basis, unless the City of Birmingham, the City of Troy or Clark Hill individually or jointly provide written notification of a termination of the contract. However, this month to month contract shall not extend beyond December 31, 2010 without prior written consent of the City of Birmingham and the City of Troy.
  - f. The contract shall require the Project Manager to submit monthly activity reports to the Parties.
  - g. The contract shall require the Project Manager to attend and/or participate in public meetings that the Parties jointly deem necessary.

- h. In no event shall the payment for Project Management services exceed \$7,500 per month.
  - i. The parties shall be owners of all of the drawings, specifications or other documents prepared by the Project Manager. Any modifications made to the drawings by the Parties shall be clearly marked as such on the modified document. The Parties may not use these documents for any purpose other than pursuant to the activities provided for in this Agreement.
  - j. The Project Manager shall list both Parties as additional insured, and shall hold the Parties harmless from any claims resulting from the performance of the Contract.
- 2. BIRMINGHAM agrees to initially pay the monthly invoices for the Project Manager, and invoice TROY for its one-half share of the monthly contract expenses of the Project Manager.
- 3. TROY agrees to reimburse BIRMINGHAM one half of the monthly costs of the Project Manager, payable on a monthly basis, for the duration of the contract. Payment for these costs must be paid within thirty (30) days of the invoice date.
- 4. The Agreement shall remain in effect until terminated by either Party. Either Party may terminate this Agreement, for any reason (including the convenience of any Party), and without penalty. In the event of a termination, the Party shall pay for any services rendered in accordance with the contract terms which were rendered prior to the date of the termination of the contract.
- 5. The Parties agree that at all times and for all purposes under the terms of this Agreement, each Party's relationship to the other Party is that of an independent contractor. No liability, right or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any party as a result of this Agreement.
- 6. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agency, or employees of any public agency or employees of any public agency when performing their respective functions within the territorial limits of their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extraterritorially under the provisions of any such interlocal agreement.
- 7. BIRMINGHAM agrees to defend, pay on behalf of, indemnify, and hold harmless TROY, its elected and appointed officials, employees and volunteers and others working on behalf of TROY against any and all claims, demands, suits, or loss, including, and for any damages which may be asserted, claimed or recovered against or from TROY, its elected and appointed officials, employees, volunteers or others working on behalf of TROY by reason of personal injury, including bodily injury or death and/or property damage,

including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. This duty to indemnify, defend and hold harmless shall include all costs of litigation or defense of claims including attorney fees, costs and expert fees.

8. TROY agrees to defend, pay on behalf of, indemnify, and hold harmless BIRMINGHAM, its elected and appointed officials, employees and volunteers and others working on behalf of BIRMINGHAM against any and all claims, demands, suits, or loss, including, and for any damages which may be asserted, claimed or recovered against or from BIRMINGHAM, its elected and appointed officials, employees, volunteers or others working on behalf of BIRMINGHAM by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. This duty to indemnify, defend and hold harmless shall include all costs of litigation or defense of claims including attorney fees, costs and expert fees.
9. The Parties agree that all indemnification and hold harmless promises, waivers of liability, representations, insurance coverage obligations, liabilities, payment obligations and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions, or claims, either occurring or having their basis in any events or transaction that occurred before termination of this Agreement, shall survive the termination.
10. The Parties agree that they shall promptly deliver to the other Party written notice and copies of any claims, complaints, charges, or any other accusations or allegations of negligence or other wrongdoing, whether civil or criminal in nature, that the other Party becomes aware of which involves, in any way the facility, equipment, personnel and/or services under this Agreement. Unless otherwise provided by law and/or the Michigan Court Rules, the parties agree to cooperate with one another in any investigation conducted by the other party of any acts or performances of any services under this Agreement.
11. Any written notice required or permitted under the Agreement shall be considered delivered to a party as of the date that such notice is deposited, with sufficient postage, with the U.S. Postal Service. Unless specifically otherwise set out in the Agreement, all writing sent to TROY shall be sent to: City of Troy, City Manager, 500 W. Big Beaver Rd., Troy, MI 48084. All writing sent to BIRMINGHAM shall be sent to: City of Birmingham, City Manager, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012.
12. This Agreement sets forth the entire Agreement between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not constructed strictly for or against any party. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.
13. If a Court of competent jurisdiction finds any provision of this Agreement

invalid or unenforceable, then that provision shall be deemed severed from the Agreement. The remainder of this Agreement shall remain in full force.

14. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret or decide any claim arising under this Agreement shall be brought in the 6<sup>th</sup> Judicial Circuit Court of the State of Michigan or the United States District Court for the Eastern District of Michigan, Southern Division as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
15. The Recitals shall be considered an integral part of this Agreement.
16. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement of the Parties.
17. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any Party's rights in this Agreement, or any other right of any kind in favor of any individual or legal entity.
18. Absent a written waiver, no fact, failure or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one of more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

This Agreement is executed by the authorized representatives of the CITY OF BIRMINGHAM on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

WITNESSES:

CITY OF BIRMINGHAM,

\_\_\_\_\_

By: \_\_\_\_\_  
Stuart Lee Sherman, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Nancy M. Weiss, City Clerk

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APPROVAL:

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Jana Ecker, Community Development  
as to Substance

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B. Sharon Ostin, Director of  
Finance as to Financial Obligation

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Thomas M. Markus, City Manager as  
to Substance

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Timothy J. Currier, City Attorney as to  
Form

This Agreement is executed by the authorized representatives of the CITY OF TROY on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF TROY,

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By: \_\_\_\_\_  
Louise E. Schilling, Mayor

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By: \_\_\_\_\_  
Tonni Bartholomew, City Clerk

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