

CITY COUNCIL ACTION REPORT

December 10, 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:

- This item was postponed at the November 24, 2008 City Council meeting. City Council requested a business plan, which is included as an attachment.
- Attached is the November 24, 2008 City Council agenda item, which includes the 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.

Attachments

1. November 24, 2008 City Council Agenda item.
2. November 24, 2008 City Council Minutes excerpt.
3. Troy/Birmingham Multi-Modal Transit Center Business Plan



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.

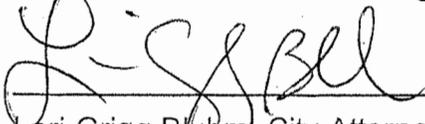
Policy Considerations:

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- 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



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.

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 6th 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

APPROVAL:

Jana Ecker, Community Development
as to Substance

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

Thomas M. Markus, City Manager as
to Substance

Timothy J. Carrier, 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,

By: _____
Louise E. Schilling, Mayor

By: _____
Tonni Bartholomew, City Clerk

POSTPONED ITEMS:

D-1 No Postponed Items

PUBLIC COMMENT: Limited to Items Not on the Agenda

REGULAR BUSINESS:

E-7 Transit Center Cost Sharing Agreement

Resolution
Moved by Kerwin
Seconded by Beltramini

RESOLVED, That Troy City Council hereby **APPROVES** the Interlocal Agreement between the City of Troy and the City of Birmingham, which equally divides the cost of a Project Manager for the proposed Troy/Birmingham Intermodal Transit Center; and

BE IT FURTHER RESOLVED, That Troy City Council hereby **AUTHORIZES** the Mayor and City Clerk to execute the Interlocal Service Agreement on behalf of the City of Troy, a copy of which shall be **ATTACHED** to the original Minutes of this meeting.

Proposed Resolution to Postpone Action on the Resolution for the *Transit Center Cost Sharing Agreement*

Resolution
Moved by Eisenbacher
Seconded by Howrylak

RESOLVED, That Troy City Council hereby **POSTPONES** action on the *Transit Center Cost Sharing Agreement* until the City of Troy City Council and the City of Birmingham City Commission have agreed upon a scope document no later than the Regular City Council Meeting scheduled for Monday, December 15, 2008.

Vote on Resolution to Amend Proposed Resolution to Postpone Action on the Resolution for the *Transit Center Cost Sharing Agreement*

Resolution #2008-11-338
Moved by Eisenbacher
Seconded by Beltramini

RESOLVED, That Troy City Council hereby **AMENDS** the resolution to *Postpone Action on the Transit Center Cost Sharing Agreement* by **STRIKING** "scope document" and **INSERTING** "business plan".

Yes: All-7

MOTION CARRIED

Vote on Resolution to Postpone Action on the Resolution for the Transit Center Cost Sharing Agreement as Amended

Resolution #2008-11-339
Moved by Eisenbacher
Seconded by Howrylak

RESOLVED, That Troy City Council hereby **POSTPONES** action on the *Transit Center Cost Sharing Agreement* until the City of Troy City Council and the City of Birmingham City Commission have agreed upon a business plan no later than the Regular City Council Meeting scheduled for Monday, December 15, 2008.

Yes: All-7

MOTION CARRIED

E-1 Appointments to Boards and Committees: a) Mayoral Appointments: Downtown Development Authority b) City Council Appointments: Advisory Committee for Persons with Disabilities and Parks & Recreation Board

(a) Mayoral Appointments

Resolution #2008-11-340
Moved by Schilling
Seconded by Kerwin

RESOLVED, That the Mayor of the City of Troy hereby **APPOINTS** the following persons to serve on the Boards and Committees as indicated:

Downtown Development Authority
Appointed by Mayor (13-Regular) 4-Year Term

Laurence G. Keisling Term Expires 09/30/2012

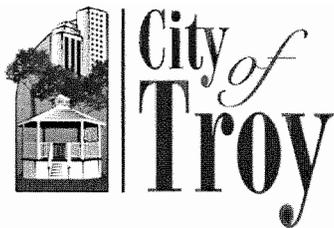
Yes: Eisenbacher, Fleming, Kerwin, Schilling, Beltramini, Broomfield
No: Howrylak

MOTION CARRIED

(b) City Council Appointments

Resolution #2008-11-341
Moved by Howrylak
Seconded by Broomfield

RESOLVED, That Troy City Council hereby **APPOINTS** the following persons to serve on the Boards and Committees as indicated:



Troy / Birmingham

Multi-Modal Transit Center

Business Plan

Contributors:

City of Troy

City of Birmingham

Draft

December 9, 2008

EXECUTIVE SUMMARY

Mission Statement

The Birmingham/Troy Multi-Modal Transit Center is intended to improve the attractiveness, reliability, safety and economic efficiency of rail passenger service in the Metro Detroit region. Design of the Transit Center will encourage increased rail travel, expanded multi-modal transit coordination and integration with other transit/para-transit modes. A pedestrian tunnel will connect the loading platform in Birmingham with the Transit Center in Troy. Construction of the Transit Center will provide the impetus for Transit Oriented Development (TOD) in both Birmingham and Troy.

Business Opportunities

Objective 1 – Provide a Transit Center to serve the existing and future Amtrak rail customers. <http://www.amtrak.com/servlet/ContentServer?pagename=Amtrak/HomePage>.

Objective 2 – Provide a transfer point and coordination of regional SMART bus services. <http://www.smartbus.org/smart/home>.

Objective 3 – Provide opportunities for public-private partnerships with traditional taxi service, black sedan service, and auto rental companies.

Objective 4 – Provide opportunities for public/private partnerships with non-traditional car sharing services (e.g. <http://www.zipcar.com/>).

Objective 5 – Provide opportunities for public/private partnerships for shared or rental bicycle services.

Objective 6 – Provide opportunities for mass transit connections for customers of the Oakland Troy “Executive” Airport. <http://www.oakgov.com/aviation/ota/>.

Objective 7 – Provide for a Transit Center that is integrated into the proposed Detroit Regional Mass Transit Initiative.

Objective 8 – Provide the impetus for Transit Oriented Development (TOD) in the Cities of Birmingham and Troy.

Objective 9 – Provide opportunities to integrate with the Detroit Region Aerotropolis (<http://www.detroitregionaerotropolis.com/>).

Objective 10 – Provide economic development opportunities for Birmingham, Troy and the Detroit region.

Financial Projections

On April 16, 2007, Troy City Council approved a contract with Wendel Duhscherer of Amherst, New York, for concept and preliminary engineering design services. On June 30, 2007, the contract was executed and representatives of the Cities of Troy and Birmingham worked with the consultant to develop a series of design plans for the proposed Transit Center. Consultant deliverables to date include the following: Traffic impact statement; Environmental site assessment report; Major considerations and design criteria; and, alternate conceptual plans and cost estimates. The most recent option addresses site improvement and safety issues, while providing a plan that minimizes future operating costs. This conceptual plan identifies three distinct components including a Transit Center building, train loading/unloading platform and pedestrian tunnel. Initial building envelope will encompass 3,000 to 3,500 square feet. Estimated cost of initial phase of the proposed building, platform and tunnel is \$6 million.

Both Cities (Troy \$1.3 million and Birmingham \$300,000) have allocated funding for the Transit Center. It is necessary to secure \$5 million in grants or appropriations to fully fund the design, bid and construction of the Transit Center. During the design and development phase of the project, the floor plan will be determined. This would be designed with consideration for potential public/private partnerships. There is the potential for lease arrangements with public and private transportation providers. This potential will be explored in greater detail as the building design and floor plan are developed. It is the goal of the City of Troy and City of Birmingham to create a Transit Center that does not require operational financial support. Therefore, during the design and development phase, the building's floor plan can be designed to provide for public/private partnerships opportunities. Financial projections will be developed as the scope of the Transit Center is defined.

INDUSTRY ENVIRONMENT

Overview of the Industry

According to *Critical Link 2007, Amtrak*, the Pontiac-Detroit-Chicago Corridor is ranked the ninth busiest Amtrak Corridor in the USA. In fiscal year 2006, this corridor had 439,000 riders over its 281 mile length. The existing Birmingham Amtrak Station is located on this corridor and serves 19,404 riders per year, according to the *Troy Impact Study, Troy Multimodal Transit Center*. This study also projects ridership to increase to 24,765 in 2012; 31,607 in 2017; and 40,340 in 2022. While metro regions throughout the USA are implementing mass transit systems including heavy rail and light rail, the Detroit Metro Regional Mass Transit System is still in its infancy. On December 8, 2008 the "Big 4" – Oakland County, Macomb County, Wayne County and the City of Detroit – voted to support John Hertel's Detroit Regional Mass Transit Initiative. It appears the support is based upon the "Big 4" adopting a resolution that would require the Michigan Legislature to create a regional mass transit authority. Additionally, the resolution requires a public vote on any local subsidy. The vote also allows for continued study of governance possibilities for a regional mass transit system. Finally, the Transit Center is identified in SEMCOG's RTP and MDOT's TIP.

Projected Position for the Future

On a local level, passenger rail is an engine for economic growth. There are numerous studies that indicate that rail stations inject economic growth for retail establishments. Further, it is also shown that both commercial and residential property values increase around rail stations. A study completed by the University of Michigan for the Urban Land Institute entitled the *Troy/Birmingham Transit Center Strategic & Implementation Plan* identifies the market potential for future development, transportation options and complementary land uses near the proposed Transit Center. The study indicates that there is 715,353 square feet (both walkable and drivable) of local retail demand over the next five years. The study goes on to state that, "While the for-sale housing market is struggling, there is sufficient demand for as many as 300 attached residential rental units within the Transit Center District in the next five years." There are over 4,400 properties within a one-mile radius of the proposed Transit Center.

The study indicates a proposed development area located along Maple Road immediately east of the rail line. By locating the proposed Transit Center into this area, there are possibilities of producing a dynamic mix of uses and enhancing the area's potential walkable character. The proposed Transit Center could also act as a catalyst for upgrading the Maple Road Corridor.

At the national level, passenger trains develop transportation options, mobility for underserved populations, congestion mitigation and jobs. Jobs provided include both the railroad industry and the ancillary industries that support rail.

Potential Customers

Amtrak and their riders.

SMART and their riders.

Future Detroit Regional Mass Transit Initiative riders.

Taxi and Black Sedan users and providers.

Car Rental users and providers.

Car Sharing users and providers.

Bicycle Rental or Sharing users and providers.

Air Commuters and providers.

Transit Oriented Development (TOD), residents, business owners and developers.

Direct Competitors

There is currently a modest Amtrak platform and structure located in the existing Transit Center area. The Transit Center would not have any direct competitors because it would be the only multi-modal Transit Oriented Development of its kind in Metro Detroit.

MARKETING

Business Opportunity

As the process of design and development of the Transit Center building progresses, business opportunities will be developed in more detail. It is clear that the Transit Center offers public/private partnerships and provides multi-modal transportation options. These could include lease arrangements or other options that need to be explored in greater detail as the project progresses.

Community Impact

The City of Troy Master Plan, adopted in October 2008, calls for the creation of the Transit Center District. The district envisions "The combination of air, rail, bus and non-motorized transportation in one compact area, supported by a high-density residential development and regional commercial uses. It will work to create a vibrant gateway to the southwest corner of Troy." It also calls for cooperation with the City of Birmingham to implement the Transit Center District.

Within the City of Birmingham, there is the MX Zoning District which requires the Rail District to be built out in a mixed-use compact urban form.

Community Strategy

The City of Birmingham Planning Board and the City of Troy Planning Commission have met jointly on three occasions. On December 2, 2008, the public bodies jointly adopted the following:

CITY OF BIRMINGHAM / CITY OF TROY JOINT PLANNING STATEMENT OF SUPPORT

The City of Birmingham Planning Board and the City of Troy Planning Commission hereby support the following.

- Designation of the boundaries for the Birmingham/Troy Multi-Modal Transit Center Study Area.
- Joint development of appropriate Transit Oriented Design standards to apply to all or a part of the Birmingham/Troy Multi-Modal Transit Center Study Area.
- Cooperation between the City of Birmingham and the City of Troy on planning issues within all or a part of the Birmingham/Troy Multi-Modal Transit Center Study Area.
- Establishment of a Joint Birmingham/Troy Planning Commission for all or a part of the Birmingham/Troy Multi-Modal Transit Center Study Area, including defining

composition, powers and duties, membership requirements, terms of office, operating procedures, and other related matters.

- Joint planning for the appropriate redevelopment of all or a part of the Birmingham/Troy Multi-Modal Transit Center Study Area.

OPERATIONS

Organizational Structure

The City of Birmingham and the City of Troy will continue to formulate this portion of the Business Plan.

Capital Requirements

Estimated cost of design, bid and construction	\$6,000,000
Contingencies (10%)	\$ 600,000
City of Troy financial commitment	\$1,300,000
City of Birmingham financial commitment	\$ 300,000
Federal/State grant or appropriation required	\$5,000,000

Core Operations

The City of Birmingham and the City of Troy will continue to formulate this portion of the business plan.

FINANCIAL PROJECTIONS

As the Transit Center project progresses, the business opportunities can be explored in greater detail with the multi-modal transportation providers. The Business Plan will be updated to provide the basic financial information required to analyze the growth potential for the Transit Center, capital requirements, revenue projections, etc. In addition, a traditional business plan would include a pro forma 3- to 5-year financial statement, as well as a break-even analysis. This section will need to be expanded upon.