MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: July 16, 2009
SUBJECT: Discussion of City Manager Contract

At the July 9, 2009 City Council meeting, a Special Meeting was discussed and subsequently called by Mayor Schilling for July 20, 2009 at 6 pm, to discuss the terms of an acceptable Employment Agreement between the City of Troy and appointed City Manager A. John Szerlag. At that time, there were some members of City Council who requested a draft contract, which could be used and/or amended at the July 20, 2009 Regular Business Meeting (7:30 pm meeting). Enclosed please find a draft Employment Agreement from outside labor counsel Craig Lange. Mr. Lange will be present at the Special Meeting, and serves as the City's legal representative in this contract negotiation.

The purpose of having the meeting prior to the Regular City Council meeting on July 20, 2009 is to reach a mutually agreeable Employment Agreement, which could then be placed as a Regular Business Agenda item (as a late submittal) for Council review and/or approval. Since the Charter requires any vacancy in the City Manager position to be filled within 120 days (July 28, 2009), this will facilitate the approval of an acceptable Employment Agreement prior to that time.

A proposed resolution for Regular Business Item, Item E-4, is as follows:

RESOLVED, the Troy City Council hereby **APPROVES** the attached Employment Agreement between the City of Troy and City Manager A. John Szerlag, and authorizes the Mayor and the City Clerk to **EXECUTE** the document on behalf of the City of Troy. A copy of the Employment Agreement shall be **ATTACHED** to the original minutes of the meeting.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made on the _____ day of July 2009, by and between the City of Troy, Michigan, a municipal corporation, hereinafter referred to as the "City" and John Szerlag, hereinafter referred to as the "Executive."

As the City desires to retain the Executive as its City Manager and the Executive desires to serve the City as its City Manager; the City and the Executive agree as follows:

SECTION 1.
PERIOD OF EMPLOYMENT

This Agreement shall be effective as of July _____, 2009, and shall continue for an indefinite period, and may be terminated subject to the provisions of Section 14 of this Agreement.

SECTION 2.
EXECUTIVE'S DUTIES

During the period of employment with the City, the Executive shall perform the duties of the City Manager as set out in the applicable statutes of the State of Michigan, the Charter of the City of Troy, all ordinances and resolutions lawfully enacted, and other such duties as the Council of the City of Troy may lawfully assign to the Executive.

SECTION 3.
OTHER EMPLOYMENT

The Executive shall devote his primary attention, knowledge and skills in the interest of the City of Troy, and the City shall be entitled to full-time benefits arising from incident to the full-time work, services, and advise of the Executive. The Executive may from time to time teach, lecture, consult or make presentations that will not conflict or interfere with his work for the City. The Executive shall provide written notification to each member of the City Council at

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least thirty (30) days prior to entering into any agreement to provide consultation services to any municipal corporation or private entity. Said notification shall provide information sufficient to Council to ensure that the retention of the Executive for purposes of such consultation does not conflict or interfere with his work for the City.

The Executive agrees to execute all oaths and provide all bonds with surety as required by law.

SECTION 4.
HOURS OF WORK

The parties realize that the position of City Manager requires the Executive holding such position to work weekends, evenings, and other irregular hours at locations other than the City's administrative offices and during hours that said offices are not open. It is understood and agreed that the Executive shall work whatever hours that may be necessary in order for him to fulfill the requirements of the position of Executive, as described herein and otherwise, but in any event, no less than forty (40) hours per week.

SECTION 5.
EXECUTIVE'S SALARY

The Executive shall receive a salary at an annual rate of One Hundred Fifty Thousand Dollars ($150,000.00) for the period commencing _____, and that salary shall be payable in installments as per the pay plan generally applicable to other City exempt employees. From time to time, the City shall review the Executive's performance. The Executive's annual salary may be adjusted from time to time as determined by resolution of the City Council.

SECTION 6.
DEFERRED COMPENSATION

The City of Troy shall contribute $7,500 on or before January 15, 2010 to the ICMA Retirement Corporation Deferred Compensation Plan on behalf of the Executive. The City shall

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contribute $7,500 on each succeeding January 15th provided that this Section of the Agreement remains in full force and effect or this Agreement has not been terminated.

SECTION 7.
AUTOMOBILE ALLOWANCE

The Executive shall receive an automobile allowance of $425 per month during the time he is actively working during the term of this Agreement as City Manager for the City. This amount shall be increased from time to time to the extent such allowance is increased for other exempt employees within the City. This allowance shall be the total compensation to the Executive for the use of his personal automobile in the course of the City's business and shall be paid in lieu of mileage or any other method of reimbursement. The Executive shall provide proof of insurance to the City and name the City as an additional insured on his automobile insurance policy.

SECTION 8.
OTHER BUSINESS EXPENSE

The City shall reimburse the Executive for all other reasonable employment-related expenses, subject to the administrative policies concerning such expenses, as currently exist in the Exempt Employee's Handbook, Revised 2/00, as may be amended. Such expenses may include, but are not limited to, the following: air travel, tax and automobile rental, lodging, meals, memberships and subscriptions to the publications of the International City Manager's Association only, registration fees for training programs offered by such organizations, and travel and incidental costs relating to attending such programs or conferences and meetings of such organizations. It is specifically understood that such activities are to be undertaken by the Executive as may be required by the City, and shall be considered part of the Executive duties.

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The Executive shall be reimbursed for other such reasonable expenses as the City shall approve by resolution passed by the City Council.

SECTION 9.
VACATION LEAVE

The Executive shall receive four (4) weeks of paid vacation annually. For the 2009 partial calendar year only, the Executive shall receive three (3) weeks of paid vacation.

SECTION 10.
SICK LEAVE

The Executive shall accumulate sick leave pursuant to the plan for exempt employees as is provided in the Exempt Employee's Handbook, revised 2/00, which may be modified from time to time during the course of this agreement.

SECTION 11.
PARTICIPATION IN CITY DEFINED CONTRIBUTION PLAN

The Executive shall participate in the Defined Contribution (DC) pension plan which is administered by the ICMA Retirement Corporation. Contribution rates for the plan are:

Executive: 4.0%
City: 10%

The Executive may also contribute up to ten percent (10%) of his salary to the DC Plan on a voluntary after-tax basis. The City's contribution shall be deemed immediately (100%) vested on behalf of the Executive. The Executive shall not be a member of the City of Troy Retirement System as provided in Chapter 10 of the City's Ordinances and shall continue to draw his pension from the City of Troy Retirement System.

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SECTION 12.
GROUP MEDICAL INSURANCE

The Executive shall not participate in Hospitalization or Prescription Drug Insurance coverage as provided to the City's other exempt employees. The City shall provide the Executive with Dental and Optical Insurance as provided to the City's other exempt employees.

SECTION 13.
PUBLIC OFFICIAL LIABILITY INSURANCE AND REPRESENTATION BY LEGAL COUNSEL

The City shall provide the Executive with public official liability insurance in accordance with that provided other officers in the City. In addition, the City shall provide the Executive legal representation as otherwise provided for other City officials and as provided by ordinance, except for malicious, wanton criminal conduct arising from the Executive's action or conduct and/or unless the City Council determines that the Executive was clearly acting outside of the scope of his duties when engaged in the actions or conduct which form the basis for such charges or claims.

SECTION 14.
TERMINATION

The City or the Executive may terminate this Agreement at any time with or without cause.

1. In the event the Executive terminates this Agreement, he shall give no less than thirty (30) days prior written notice to the City Clerk and in said notice advise the City of the date of termination. If the Executive terminates this Agreement, all rights of the Executive to compensation and the further accrual of benefits pursuant to this Agreement shall cease as of the effective date of such termination.

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2. In the event the City terminates the Executive's employment under provisions of this Agreement for just cause, all rights of the Executive to compensation and the further accrual of benefits pursuant to this Agreement shall cease as of the effective date of such termination. Just cause shall include, but is not limited to, any of the following:

(a) Fraud, dishonesty, or other intentional misconduct either:

1. in the performance of Executive's duties and responsibilities pursuant to this Agreement, or

2. which has a material adverse impact on the City, its officials, administrators or the Executive.

(b) The use by Executive of alcohol, drugs, or any other intoxicant or controlled substance, in such a manner as to impair his ability to perform his duties and responsibilities pursuant to this Agreement in a competent and diligent manner or in a manner which harms the reputation of the City.

(c) The Executive's arrest and binding over for trial or a plea of guilty or nolo contendere to a crime providing for a term of imprisonment (other than traffic violations and crimes not requiring the knowing involvement of the Executive in the commission thereof).

(d) (i) A pattern of neglect or persistent failure to perform the duties herein contained with respect to duties previously communicated to the Executive in writing by the City Council but only after the Executive has been provided notice by the City Council of its dissatisfaction with the performance of said duties and Executive has been provided a reasonable opportunity to correct his performance;

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(ii) Otherwise willful misconduct in connection with the performance of his duties hereunder.

3. If the City terminates the Executive's employment under the provisions of Section 14, paragraph 2, all rights of the Executive to compensation and further accrual of benefits shall cease as of the effective date of such termination unless a final termination is thereafter made pursuant to the arbitration provisions hereof that the City did not have just cause to terminate the Executive, in which case the provisions of Section 14, Paragraph 4 below shall apply.

4. The City shall also have the right to terminate the Executive's employment without cause. In the event that the City terminates the Executive's employment before June 30, 2010 without just cause, as defined above, and the Executive is willing, able, and ready to perform the duties as City Manager, the City shall provide severance pay to the Executive equivalent to one year of his annual base salary, not including fringe benefits, as full satisfaction of the City's obligation under this Agreement. From July 1, 2010 through June 30, 2011, the City's obligation under this provision shall be fully satisfied by the payment to the Executive of seventy-five percent (75%) of his annual base salary, not including fringe benefits. After June 30, 2011, the City's obligation under this provision shall be fully satisfied by the payment to the Executive of fifty percent (50%) of his annual base salary, not including fringe benefits. The City shall not, however, be required to pay said sum to the Executive until such time that he executes a full and complete release of any and all potential claims against the City and its representatives in a form acceptable to the City Attorney.

SECTION 15.
ELIGIBILITY FOR BENEFITS AFFORDED OTHER CITY OFFICIALS

Except as otherwise provided in this Agreement, the Executive shall receive the same benefits as provided to the City's exempt employees including: compensatory time, sick leave,

Group Dental and Optical Insurance Benefits, life and other insurance, holidays and disability as is described in the City of Troy Exempt Employee's Handbook, revised 2/00, and which may be modified from time to time during the course of this Agreement.

SECTION 16.
ARBITRATION

It is mutually agreed between the Executive and the City that arbitration shall be the sole and exclusive remedy to redress any grievance which includes, but is not limited to any dispute, claim or controversy involving the interpretation of this Agreement, the terms, conditions or termination of this Agreement; and any and all disputes, claims or controversies arising as a result of the Employment of the Executive by the City, including claims under federal, state or local civil rights statutes such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act. It is the intention of the parties that the arbitration decision will be final and binding and that any and all grievances shall be disposed of as follows:

1. Any and all grievances must be submitted in writing by the aggrieved party within thirty (30) days from the date of termination of this Agreement;

2. Within thirty (30) days following the submission of the written grievance, the party to whom the grievance is submitted shall respond in writing. If no written response is submitted within thirty (30) days, the grievance shall be deemed denied;

3. If the grievance is denied, either party may, within thirty (30) days of such denial, refer the grievance to arbitration in Troy, Michigan. The arbitrator shall be chosen in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association then in effect, and the expense of the arbitration shall be shared equally by the City and the Executive.

4. Any grievance shall be deemed waived unless presented within the time limits specified above. The arbitrator shall not have jurisdiction or authority to change, add to or subtract from any of the provisions of this Agreement. The arbitrator's sole authority shall be to interpret or apply the provisions of this Agreement. The parties hereby acknowledge that since arbitration is the exclusive remedy with respect to any grievance hereunder, neither party has the right to resort to any federal, state or local court or administrative agency concerning breaches of this Agreement and that the decision of the arbitrator shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative agency with respect to any dispute which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to any grievance, survive the termination or expiration of this Agreement.

SECTION 17.
COMPLETE AGREEMENT

This written Agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions or other obligations in this Agreement. Any amendments to this Agreement shall be in writing and executed by both the City and the Executive.

SECTION 18.
GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.

SECTION 19.
SURVIVING PROVISIONS

All provisions, which by their terms or by reasonable implication may be performed after termination of this Agreement, shall survive termination of this Agreement including the

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Executive's rights to his City of Troy retirement pension and post-employment retiree medical benefits which are independent of this Agreement.

SECTION 20.
REPRESENTATIONS AND WARRANTIES

Executive represents and warrants to the City that he is free to enter into this Agreement and that he has no prior or other obligations or commitments of any kind to anyone that would in any way hinder or interfere with his acceptance of, or the full, uninhibited and faithful performance of, his employment under or the exercise of his best efforts as an employee of the City.

SECTION 21.
WAIVERS

The failure of either party hereto at any time or from time to time to require performance of any of the other party's obligations under this Agreement shall in no manner affect the right to enforce any provision of this Agreement at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent breach.

SECTION 22.
SURVIVAL

If any of the provisions, terms or clauses of this Agreement are declared illegal, unenforceable or ineffective in a legal forum or by the operation of law, those provisions, terms and clauses shall be deeded severable and all other provisions, terms and clauses shall remain valid and binding.

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SECTION 23.
WARRANTIES

The individuals signing this Agreement represent and warrant that they, and each of them, are duly authorized and empowered to act on behalf of and to sign for the parties for whim they have signed respectively.

CITY OF TROY, a Michigan municipal Corporation

By: _____
Louise E. Schilling, Mayor

Witnesses:

By: _____
Tonni Bartholomew, City Clerk

By: _____
A. John Szerlag

Executive:

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