



MEETING NOTICE

BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

PLEASE TAKE NOTICE that a meeting of the Birmingham Triangle District Corridor Improvement Authority will take place on **Wednesday, October 19, 2016 at 9:30 a.m.** in the City Commission Room (#205) at the Birmingham City Hall, 151 Martin St., Birmingham, MI 48009.

Meeting Agenda

1. Call to Order by Commissioner Sherman
2. Roll Call
3. Approval of minutes from June 30, 2016
4. New Business
 - a. Review of draft contract with Oakland County
5. Comments from the Public
6. Adjourn

Approved minutes of the meeting are available in the Planning Department or online at: www.bhamgov.org.

THIS NOTICE IS GIVEN in accordance with Act 261, 1968 Public Act 267.

DATE POSTED: October 13, 2016

Individuals requiring accommodations, such as interpreter services, for effective participation in this meeting should contact the City Clerk's Office at [\(248\) 530-1880](tel:2485301880) at least on day in advance of the public meeting.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:2485301880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



Birmingham Triangle District
Corridor Improvement Authority
Thursday, June 30, 2016
Birmingham City Hall
151 Martin
Commission Room #205
8:30 A.M.

MINUTES

1. Call to Order by Commissioner Sherman at 8:39 A.M.
2. Roll Call:

Present: J.C. Cataldo
Edward Fuller
Curtis Hays
Stuart Sherman
Robert Ziegelman (8:55 AM)

Absent: Kip Cantrick, Jr.
Victor Saroki

Others Present: Bond Counsel McGow, City Engineer O'Meara, City Attorney Currier,
City Manager Valentine, Planning Director Ecker, Deputy Clerk Arft

Commissioner Sherman noted there have been a few developments on negotiations with the county to make everyone aware of and provide guidance to send to the City Commission as to how to deal with certain issues.

3. Approval of minutes from January 22, 2015

MOTION: Motion by Fuller, seconded by Hays:
To approve the minutes of January 22, 2015

VOTE: Yeas, 5
Nays, None
Absent, 2 (Cantrick, Saroki)

Motion carried.

4. New Business

a. Review of history of TIF Plan

City Manager Valentine briefly outlined the history of the TIF plan since January 2015. The presumption at that time was that the Corridor Improvement Authority (CIA) had completed its role in developing the Development and TIF plans for the District and subsequently the Commission adopted the plans in May 2015. Shortly after that, the county notified the city that it was changing its policy for how TIFs were going to be reviewed, and provided the city with a draft of that policy. Discussions with the county continued to ensure their participation in the plan. Initially, the county opted out of the TIF until an agreement could be entered into between the county and the city. Discussions continued and documents were provided on multiple occasions. The county agreed to proceed with participating in the process to take this before their various boards. The city had several meetings with the boards, presented the plan, answered their questions and the county subsequently approved the plan, subject to an agreement with the city which was consistent with their new policy. The policy was adopted by the county in April after the discussions had already started. Negotiations began with county for the \$1.6 million they would contribute under the TIF plan. The city was presented with language, and the city responded and negotiated terms by which the city could come to an agreement and actually start collecting. The city subsequently missed the first year of capture because of the negotiation process, and it looks like it will miss the collection for 2015 as well.

City Manager Valentine explained that we are now at the position where the conflict of interest language is the sticking point. There is also some unclear direction from the county in terms of what they want to see in the plan. Initially, the city in its plan proposed to build two parking structures over the course of a 25 year period. The county subsequently indicated that because it is not definitive as the city does not own the property yet, the county had concerns about the city completing the plan as it was presented. The city then proposed putting the funds in into one structure for the \$1.6 million, it was submitted to the county and subsequently was denied and the city was told to stick with the original plan. So now the city will go back with two structures and work out the period for which the TIF collection is going to be for each structure. Initially, the city had 25 years up to 2040. The county wants one structure with a definitive time frame and if the structure is not built in that time frame, the city would reimburse all the funds collected under the TIF for that first period. Under the second period, if the structure is not built in the time frame, the city would do the same. In effect, this gives the city for \$800,000 for the first structure and \$800,000 for the second. It changed the city's concept of what was in the original TIF plan.

City Attorney Carrier explained the conflict of interest language. He said the language basically disqualifies anyone with an ownership interest in the Triangle District. The city felt the stakeholders should have a voice in the district. He said the city has stated our ethics ordinance should be relied upon, and the county has come around recently to agree to include the ethics language. The city felt it was important for the stakeholders to have a voice in the district, not that they would profit from the information, but they have the greatest insight into how this district should operate. He said the county wants to shorten the time frame but have not given the city a time frame as yet, and discussions are continuing.

Mr. Fuller asked if the way would be cleared if property owners were removed from the board. City Attorney Carrier responded that he believes that is now resolved. The city wanted the stakeholders involved. The county now agrees with the makeup and understands the logic.

Commissioner Sherman noted the amount of money being discussed is declining. He said one possible recommendation is to tell the commission the board is no longer interested in participating with the county.

City Attorney Currier said the long-run issue to consider is engaging the county in this project and possible future projects. His feeling is to pursue this regardless.

Mr. Cataldo asked for an idea of the dollar amount of the potential TIF funds.

City Planner Ecker referred to a table prepared by Finance Director Gerber, and said between 2014-2015 tax years, there was a 7.3% increase. From 2015-2016, there was a 9.6% increase. All Seasons represented an increase of \$6.8 million in tax value, which is what the city hoped to capture.

Commissioner Sherman said the county also wants to reset the base year.

Bond Counsel McGow said he understands the city will not capture for 2015 because the county had exempted, and the city would not capture for 2016 until there is an agreement, but the base year was based on the date the plan was approved by the city. He confirmed that the county thinks the base should be reset to when they approved the agreement.

City Attorney Currier said he does not believe the county is correct. Bond Counsel McGow agreed it is not correct under the statute. What the county is attempting to do in the sharing agreement is further limit the capture based on a higher base value.

City Attorney Currier noted many counties have gotten together to oppose TIF legislation at the state level. Oakland County has said they are still in favor of it.

City Manager Valentine said there was a different administration handling the TIF program in the county in 2008. Prior to 2008, the participation by the county was at 100% of the capture. The new policy limited the capture from the county's perspective to 50%, but it was possible to get up to 75% if the city met certain criteria, which the city met. Everyone participating would have to be equal in the capture, so that lowered the amount of the total capture that the city would receive based on the county's policy change.

Mr. Cataldo asked if the city can we go back and capture 2015 if the county is eliminated. City Manager Valentine said he thinks we could; however, HCMA and Oakland Community College opted out because the county opted out, and the county has said it would help assist to get the other entities to come back in. Those entities do not make up for the shortfall.

Bond Counsel McGow said the amount was \$17,000 for 2015, and if we miss this year then that is \$40,000 from the county alone, assuming 5 mills. He said the troubling thing is the change in the base year, as the city does not get that moving forward. He believes the city can still capture based on the 2014 base year. City Manager Valentine said the value is the additional capture from the county, HCMA and the college.

Mr. Valentine said the key to this succeeding is to have the county participate in this project. He wanted to bring the language to the authority and discuss the implications for the individual authority

members.

City Attorney Currier read the language to be included in the agreement and said it is almost verbatim from the ethics ordinance. The county now understands our reasons to include stakeholders as members of the authority. Negotiations continue over the number of structures, the term, and what base year it is going to be. The city wants to keep it 2014. The county wants to change that for themselves.

Commissioner Sherman thinks that section 1(e) in agreement is also a problem. City Attorney Currier said the city can operationally get past the land acquisition itself. City Attorney Currier said the consideration is if we abandon the county now, do we risk future participation.

Bond Counsel McGow said that one of the things counties object to is the use of the funds to pay for things they had to do anyway, for example, DDAs that use the funds to run police departments, pay for municipal buildings as opposed to economic development.

City Manager Valentine said the county likes to see a plan that is ready to go with the land purchased. In the city's case, we do not own the land yet or know exactly when we are going to construct, and the county has had some issues with that. Part of their resistance to this is the fact that we do not have the details down.

City Manager Valentine asked for consensus in terms of the language and any feedback on whether or not that would be acceptable to continue with what has been proposed, or if the members wanted to see any modifications to the agreement based on any concerns. Mr. Valentine stressed to the county that the language they proposed is not acceptable.

Mr. Fuller noted that the city has always had the ethics language situation to deal with. It does not stop the city from doing anything, but says you have to disclose it.

City Attorney Currier stated the practice that the city has followed for a long time is the federal land acquisition standards as far as buying property which means we obtain an appraisal to determine what the fair market value is and the city will not deviate from that a lot.

The consensus is that there is no problem with the sharing agreement.

Mr. Fuller left the meeting at 9:15 A.M.

Commissioner Sherman has a concern with section 5(c) regarding promotion and what the county requires of the city. He asked for clarity of that section as to exactly what is meant by promotion of county services and what could constitute a breach of that provision.

City Manager Valentine said going back in negotiations, we would continue to promote the 2014 year capture and provide some time frames for the structures. He said those are the points in contention.

Bond Counsel McGowan agreed the biggest financial impact is changing the base year since it carries forward every year. He said the way the CIA works is that it does not know what the dollars are going to be because it is based on the ultimate development. He asked if this agreement written with a hard cap of \$1.6 million. City Manager Valentine confirmed that it is, even though it is only projections. All

of this transpired after the CIA adopted their plan and the county came up with their new policy and set the conditions for their participation.

Commissioner Sherman asked what the statute says about the cap. Bond Counsel McGow said the statute talks about how the capture works, and then there is a section which says the taxing units can enter into an agreement with the city and the authority to provide for the sharing and capture of taxable value. Effectively that means the statute says you can contract for anything less than you would otherwise get, so if you want to limit it to years, dollar amount, percentages that can all be part of an agreement. Parameters, including the use of the money, can be placed in the contract. He believes that is permitted under the statute.

Mr. Cataldo said the city is looking at \$1.6 million from the county to be invested in the decks over a period of 25 years. The decks are in general \$37 million including land acquisition. City Manager Valentine clarified that the city would apply the county money toward the deck construction. Mr. Cataldo said it is looking at less the 3% of the total project that the county would contribute.

Mr. Cataldo asked about the time frame. City Manager Valentine said if the city comes to an agreement subsequent to this meeting, and assuming their position does not change, the city would start the capture in 2016, so the city is still looking at several years before it has anything to work with. It does not stop the city from pursuing something in the district to start moving ahead, it is just having the pool of funds to utilize for that project is going to be more limited.

Mr. Cataldo asked if it affects any current relationships. Commissioner Sherman said it affects the ability to bond. City Manager Valentine stated when looking at project cost, we will have to look at how to finance the project, so the TIF would be one of those components. If the TIF is not in a position where it can be counted on to contribute to the project, then arguably the city is not going to be able to count on that as part of the financing formula as we go forward. Indirectly, there is a disconnect because of that. The \$1.6 million dollars is not going to prevent the city from moving forward.

City Attorney Currier noted that bonding will be based on the city's financial strength, not the participation of the county. It will be a consideration, but he is not sure it will be a determining consideration.

There were no comments from the public.

The meeting adjourned at 9:25 A.M.

/ca

**TAX SHARING AGREEMENT BETWEEN THE
COUNTY OF OAKLAND, CITY OF BIRMINGHAM, AND THE BIRMINGHAM
CORRIDOR IMPROVEMENT AUTHORITY**

THIS TAX SHARING AGREEMENT ("Agreement") is entered into this ____day of _____, 2016 between the COUNTY OF OAKLAND ("County"), 1200 North Telegraph Road, Pontiac, Michigan, 48341, the CITY OF BIRMINGHAM ("Birmingham"), 151 Martin Street, P.O. Box 3001, Birmingham, MI 48009, and the BIRMINGHAM CORRIDOR IMPROVEMENT AUTHORITY ("C.I.A.") 151 Martin Street, P.O. Box 3001, Birmingham, MI 48009. In this Agreement, the County, Birmingham, and the C.I.A. may also be referred to as "Parties."

Public Act 280 of 2005, as amended, a/k/a the Corridor Improvement Authority Act ("Act 280"), authorizes a municipality to establish a Corridor Improvement Authority when the municipality determines that it is necessary for the best interests of the public to redevelop its commercial corridors and to promote economic growth. One of the purposes for creating a C.I.A. is to permit a municipality to finance corridor improvements in a designated area by capturing the property taxes levied on any incremental increase in property values within the development area; this is commonly referred to as tax increment financing.

Section 18(5) of Act 280 provides that a governing body of a taxing jurisdiction whose ad valorem taxes would otherwise be subject to capture may exempt its taxes from capture by adopting a resolution to that effect. Furthermore, Section 18(3) of Act 280 also provides that a C.I.A. may enter into agreements with

taxing jurisdictions and the municipality establishing the C.I.A. to share a portion of the captured assessed taxable value of the development area.

On _____, 200_, per Resolution _____, Birmingham passed a resolution of intent to establish a Corridor Improvement Authority for its "Triangle District"; on _____, 2008, Birmingham held a public hearing regarding its intent to establish the C.I.A. and the proposed boundaries of the development area; on November 10, 2008, per Resolution _____, Birmingham established the C.I.A.

The Triangle District, located in the center of Birmingham, between Adams Road and Woodward Avenue, south of Maple Road, has great potential for redevelopment. It is recognized by the Parties as an area that is ripe for and will significantly benefit from the type of redevelopment and economic revitalization investment by the public that is contemplated under Act 280. A key component to revitalizing the Triangle area is the need for more organized and efficient parking. A study of future parking demand was conducted based upon the Institute of Transportation Engineer's Parking Generation Manual. The study indicated a need for an additional 463 parking spaces in the north end of the Triangle District near Maple Road and an additional 1,080 spaces in the south end of the District. The C.I.A. will need to construct two new parking structures to provide the necessary parking to support the types of development needed to revitalize this area. Tax Increment Financing ("TIF") as authorized by Act 280, and explained in the Development Plan and Tax Increment Financing Plan dated May, 2015, attached as Exhibit A, will be utilized to finance the construction of a parking structure or two parking structures, which may be referred to as "the Project". The C.I.A. will take a phased approach to developing the parking structures. The immediate plan is to construct a

surface parking lot until the area redevelops and the need for a parking structure increases. Eventually, Birmingham plans to issue bonds for the land acquisition and construction costs for the parking structure(s). The large construction costs for building parking structure(s) may require waiting several years for TIF revenues to accrue before construction can be financed.

Over the past year, representatives from Birmingham explained their redevelopment plans to representatives of the County's Planning and Economic Development Services Division. Birmingham and the C.I.A. worked toward achieving compliance with established County guidelines and criteria adopted on March 18, 2015 in the preparation of their TIF and Development Plans, which Birmingham and the C.I.A. had successfully met.

After satisfying all public notice requirements under Act 280, including notice to County, the Birmingham City Council held a public hearing on March 16, 2015 regarding the TIF and Development Plans. Faced with a 60 day time frame in which to opt-out of participation in TIF Plans, the County Board of Commissioners voted to exempt County ad valorem property taxes from capture by the C.I.A. pursuant to Miscellaneous Resolution #15056, passed on March 18, 2015. On October 15, 2015, representatives of Birmingham appeared before the County's Tax Increment Financing District Review Policy Ad Hoc Committee ("Review Committee") to explain their plans for the Triangle District and request County participation in the TIF Plan. The Review Committee is charged with evaluating and recommending to the Finance Committee as to County's participation and possible tax sharing arrangement with C.I.A.s. The Review Committee found that Birmingham met County's C.I.A. participation criteria and it would be a good

investment of County's incremental tax revenue. The County Board of Commissioners ultimately determined that the C.I.A. had successfully demonstrated its plan met County's performance standards and, directed Corporation Counsel to attempt to negotiate an agreement with Birmingham and the C.I.A. (Miscellaneous Resolution #15274, passed on November 12, 2015)

Accordingly, under the terms of this Agreement made pursuant to Act 280, County agrees to participate with Birmingham and the C.I.A. by means of sharing with the C.I.A. a portion of the revenue derived from certain County ad valorem property taxes levied on properties described in Exhibit B

Comment [SJ1]: The County Equalization Department asked for an official parcel list for their review. That will be Exhibit B. Please provide.

The Parties agree as follows:

1. In accordance with the following conditions, County agrees to allow the tax increment revenue generated by its millage rate to be captured from the properties listed in Exhibit B, or any future divisions of such properties for the limited purpose of paying County's Pro-rata Share of the funding required for the Triangle District C.I.A. as set forth herein.

(a) "County's Pro-rata Share", pursuant to the adopted plan, is defined as County's proportionate share of the combined millage funds captured by the C.I.A. from all participating taxing jurisdictions, which include: County of Oakland (for general operating and Parks & Recreation), City of Birmingham, Birmingham Public Library, Oakland County Public Transit Authority and any future taxing jurisdictions that opts in after the date of this Agreement. With respect to the levy of any new additional millage by County, either to restore amounts reduced by the Headlee Amendment, or a new additional millage approved by County electors after the

date of this Agreement, such millages shall be exempt from this Agreement unless the County Board of Commissioners, in its sole discretion, adopts a Resolution submitting such additional millages to this Agreement for capture by the C.I.A.

(b) The Project is projected to cost approximately \$37,867,125 over 25 years.

(c) Birmingham, the C.I.A. and County acknowledge that the total anticipated expenditure is an approximation only. The Project shall be subject to applicable Birmingham public bid procedures and the final cost will be adjusted accordingly. However, notwithstanding the above acknowledgments, Birmingham and the C.I.A. agree that County's participation shall not exceed the Oakland County General Operating Millage and the Oakland County Parks and Recreation Millage beginning with the tax capture for 2015, as further explained herein.

(d) .

(e) In no event shall the capture from County's millage be used to bury utility lines, for land acquisition, municipal facilities used to house Birmingham's departments or operations, or for event and marketing materials not directly related to the implementation of projects approved within the TIF plan.

(f) The elected or appointed officials of the Applicant, or their immediate family members, shall not engage in a business transaction, relating to property in the District, which he or she may profit from because of his or her official position or authority or benefit from confidential information which he or she has obtained by reason of such position or authority. This provision does not prohibit members of the governing body of the Authority from having an ownership or business interest in the District. Any plans by the Authority to purchase property in the District from

elected or appointed officials of the municipality, or their immediate family members, shall be disclosed in writing to the County. *Immediate Family* means a City official or employee, his or her spouse, parents or children.

2. Birmingham and the C.I.A. hereby warrant and agree that the portion of the captured County ad valorem property taxes ("tax increment revenue") shall be applied to and limited to County's Pro-rata Share of the funding necessary for the construction of a parking structure.

3. If at the end of 2026, if the C.I.A. has not initiated the construction of a parking structure, the C.I.A. shall provide an update to the County on the status of the project and be subject to a review of this Agreement. At such time, the County may elect to amend or terminate this agreement based on the status of the project. If the County elects to terminate its participation for cause as stated herein, the City shall refund to County the total amount of County tax incremental revenue collected up to that point, there shall be no further capture of the County's tax increment revenue by the C.I.A. under the Development and Tax Increment Financing Plan adopted May 11, 2015 and this Agreement shall automatically terminate.

4. However, if the C.I.A. has initiated the construction of a parking structure by the end of 2026, the C.I.A. may continue to capture County's tax increment revenue as provided below.

5. If a parking structure has been initiated by 2026, once County's total share of the tax increment revenue for the Project is captured at a maximum of \$1,615,565 or for 25 years (through 2041), whichever occurs first, County's participation in the C.I.A. will

terminate and its portion of ad valorem property taxes that would otherwise be subject to capture will be exempt from further capture by the C.I.A. Birmingham and the C.I.A. understand and agree that under no circumstances shall the tax increment revenue generated by County's millage rate and retained by the C.I.A. be used to pay the full amount of the Project costs.

6. The C.I.A. and Birmingham agree to the following:

(a) The C.I.A. shall within three (3) months after the end of the Authority's fiscal year, send copies of the annual financial report to the County Treasurer, the Economic Development and Community Affairs Department and the Board of Commissioners. The report shall include:

- i. The amount of taxes captured by the Authority.
- ii. The amount spent on each project in the TIF Plan.
- iii. The amount of private sector investment received.
- iv. The number of buildings rehabilitated, the square footage per building rehabilitated, and the amount spent per building.
- v. The amount of new construction including the dollar amount spent and the square footage added.
- vi. The number of new businesses locating in the District.
- vii. The number of new jobs created.
- viii. The increase/decrease in the taxable value.
- ix. Any financial information that County is required to report in its financial statements or to the Michigan Department of Treasury.

(b) The C.I.A. will appear before the TIF Review Committee, at the Committee's request, within the first five (5) years of the Contract execution date, and each five (5) years thereafter, to present the District's current return on investment, which is defined as _____, and discuss the financial information required in this Agreement.

(c) The C.I.A. will promote the services available from the County Economic Development Community Affairs Department including the One Stop Shop Business Center and the Oakland County Economic Development Corporation and the Oakland County Business Finance Corporation.

(d) Birmingham will adopt/amend its community master plan to accurately incorporate the TIF Plan with its next scheduled community master plan review.

7. The C.I.A. and Birmingham shall submit to County's Review Committee any proposed modification or amendments to the C.I.A. Development Plan and Tax Increment Financing Plan that is required under Act 280 to be submitted to County for review and approval.

8. Birmingham agrees that in the event tax increment revenue is retained by the C.I.A. in excess of the County's Pro-rata Share of the funding for the Project, and if upon written notice from County, the C.I.A. and Birmingham fail to tender over to County the excess retained tax increment revenue, then without waiving any legal claims under this Agreement, County shall be entitled to reduce, set-off, and permanently retain any amount due to Birmingham from the County's Delinquent Tax Revolving Fund ("DTRF") by any such amount then still due and owing to County pursuant to this Agreement at the time the County distributes funds to Birmingham from the DTRF.

9. This Agreement sets forth the entire agreement between County, Birmingham, and the C.I.A. and fully supersedes any and all prior agreements or understandings between them in any way related to this subject matter. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter hereof, except as expressly stated herein. This Agreement shall not be changed or supplemented orally and may be amended only in writing and signed by the Parties.

10. County, Birmingham and the C.I.A. warrant that they each have the appropriate authority to enter into this Agreement and that each of them are bound by the respective signatures below.

FOR AND IN CONSIDERATION of the mutual assurances, promises, acknowledgments, warrants, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned hereby execute this Agreement on behalf of the Parties, and by doing so legally obligate and bind the Parties to the terms and conditions of this Agreement.

BIRMINGHAM CORRIDOR IMPROVEMENT AUTHORITY (C.I.A.)

By: _____

Its: _____

Date: _____

THE CITY OF BIRMINGHAM

By: _____
Name

Its: _____

Date: _____

OAKLAND COUNTY

By: _____
Michael J. Gingell,

Its: Chairperson Board of Commissioners

Date: _____

2105-0258-01

Birmingham CIA Agreement 081216.docx