



CITY COUNCIL AGENDA ITEM

July 19, 2011

To: John Szerlag, City Manager

From: Timothy L. Richnak, Public Works Director
Samuel P. Lamerato, Superintendent of Fleet Maintenance

Subject: Agreement to Provide Fleet Maintenance Services – City of Madison Heights

Background

Attached is a copy of the proposed Interlocal Service Agreement between the City of Troy and the City of Madison Heights where the City of Troy will provide fleet maintenance services to the City of Madison Heights vehicles and equipment on an as needed basis. The Agreement was presented to the Madison Heights City Council and approved unanimously.

Recommendation

City management and the Fleet Division of Public Works recommend entering into the Interlocal Service Agreement with the City of Madison Heights for fleet maintenance services.

Fund Availability

The Agreement generates outside revenue and maximizes the use of our facility and staffing. At this time no additional staffing is required. There is capacity in the facility to take on the additional work. The hourly repair cost charged to Madison Heights is the fully burdened shop rate charged by the Internal Service Fund. The Superintendent of Fleet Maintenance reviews the fully burdened shop rates on an annual basis, and will adjust the Agreement as needed.

City Attorney's Review as to Form and Legality

Legal counsel has reviewed the contract as to form and legality.

Lori Grigg Bluhm, City Attorney



City of Madison Heights

City Hall Municipal Offices
300 W. Thirteen Mile Road
Madison Heights, MI 48071

Department of Public Services
801 Ajax Drive
Madison Heights, MI 48071

Fire Department
31313 Brush Street
Madison Heights, MI 48071

Police Department
280 W. Thirteen Mile Road
Madison Heights, MI 48071

www.madison-heights.org

April 21, 2011

APR 26 2011 PM02:16

Susan M. Lancaster
Assistant City Attorney
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

SUBJECT: Inter-local Service Agreement for Fleet Services

Dear Ms. Lancaster:

Enclosed please find, four (4) signed originals of the Inter-local Service Agreement for Fleet Services between the City of Madison Heights and the City of Troy. Also enclosed, as required by the Agreement, is the City of Madison Heights's Certificate of Insurance as prepared by our Risk Manager naming Troy as additional insured with the required 30-day cancellation clause, which contains the standard Michigan Municipal Risk Management Authority wording. Once the Agreement has been executed, please return two (2) copies directed to my attention.

Please feel free to contact me if I can be of further assistance or if additional information is needed to execute the Agreement.

Sincerely,

Marilyn J. Haley
City Clerk

encs (4)

copy w/out encs:

- Keith L. Potter, Risk Manager
- Larry H. Sherman, City Attorney
- Benjamin I. Myers, Deputy City Manager
- Melissa R. Marsh, Director of Administrative Services

F:\USERS\CLERK\DPS\11 Fleet SrvcsAgr.doc

Area Code (248)

City Assessor.....	583-0820	Fire Department.....	588-3605	Nature Center.....	585-0100
City Clerk.....	583-0826	43rd District Court.....	583-1800	Police Department.....	585-2100
City Manager.....	583-0829	Housing Commission.....	583-0843	Purchasing.....	837-2602
Community Development.....	583-0831	Human Resources.....	583-0828	Recreation.....	589-2294
Department of Public Services.....	589-2294	Library.....	588-7763	Senior Citizen Activity Center.....	545-3464
Finance.....	583-0846	Mayor & City Council.....	583-0829	Water & Treasurer.....	583-0845

INTERLOCAL SERVICE AGREEMENT FOR FLEET SERVICES

This Interlocal Service Agreement dated, this ____ day of _____ 2011, is made by and between:

City of Madison Heights
300 W. Thirteen Mile Road
Madison Heights, Michigan 48071

-And-

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

RECITALS

WHEREAS , the City of Troy, a Michigan Municipal Corporation, 500 W. Big Beaver Road, Troy, Michigan 48084 (hereinafter "TROY"), and City of Madison Heights, a Michigan Municipal Corporation, 300 W. Thirteen Mile Road, Madison Heights, Michigan 48071 (hereinafter "MADISON HEIGHTS") together referred to as the "Parties" or the "Party" are authorized separately by law to provide for the repair and maintenance of public works vehicles for their respective public entities;

WHEREAS, 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;

WHEREAS, due to the fact that public works vehicles have specific performance requirements which require specialized service and maintenance work, it is difficult for public entities to locate service facilities that are able to perform those specialized services, properly and timely;

WHEREAS, TROY has a facility at its Department of Public Works building located at 4693 Rochester Road, Troy, Michigan 48085 that contains the Troy Fleet Division. The Troy Fleet Division maintains a vehicle repair facility and personnel capable of repairing and maintaining public works vehicles for TROY and, by this and other interlocal agreements, other public entities;

WHEREAS, the Parties have mutually agreed that this Agreement be entered into to allow TROY to repair or maintain MADISON HEIGHTS public works vehicles on an as requested basis and under the terms set forth below.

WHEREAS, pursuant to resolution of its governing bodies, the Parties each have the authority to execute this Interlocal Service Agreement ("Agreement") to allow TROY to repair or maintain MADISON HEIGHTS public work vehicles at costs on an as requested basis and under the terms set forth below.

Based upon the foregoing statements, the Parties agree to the following terms, conditions, representations, consideration and acknowledgements and mutually agree as follows:

1. TROY represents and MADISON HEIGHTS acknowledges that TROY has the necessary facility, tools and equipment and its employees have the qualifications, experience and abilities to provide services in connection with the business of maintaining and repairing municipal vehicles owned by MADISON HEIGHTS. Municipal vehicles shall mean loaders, dozers, cars, mowers, forklifts, motorcycles, trailers, trucks, and other equipment whether marked or unmarked, used for public purposes by MADISON HEIGHTS.
2. TROY is agreeable to providing such services through TROY'S Fleet Division to MADISON HEIGHTS, on the terms and conditions as set forth in this Agreement and upon the request of MADISON HEIGHTS.
3. MADISON HEIGHTS, at its own discretion and based on MADISON HEIGHTS' decisions, hereby agrees to engage TROY'S Fleet Division to provide repair and maintenance services during regular business hours consisting of the following work: service and/or maintenance on MADISON HEIGHTS municipal vehicles as defined in Paragraph 2 above, as requested by MADISON HEIGHTS. TROY will also provide a technician on call if needed 24 hours a day, 7 days per week. The technician on-call can be reached at cell # 248 885-1847. TROY agrees to immediately provide notice to MADISON HEIGHTS if the on-call contact phone number changes. After hours, weekends and holidays will be billed at premium rate with a minimum billing of three hours of service. MADISON HEIGHTS understands and acknowledges that TROY'S personnel will first service TROY vehicles. Other vehicles will be serviced on a "first come, first served basis". However, TROY recognizes that there are emergency situations and will make every reasonable effort to prioritize the repair work to accommodate those emergencies for MADISON HEIGHTS under the terms and conditions of this Agreement.
4. MADISON HEIGHTS understands, acknowledges and relies on the representation that TROY will use the highest standards which control the repair and maintenance of municipal vehicles. TROY will not deviate from these standards even at the request of MADISON HEIGHTS.
5. Subject to an annual adjustment of rates as provided in Paragraph 7, MADISON HEIGHTS shall pay compensation for the maintenance and repair services of TROY'S Fleet Division employees provided by TROY'S Fleet Division at the following rates:

Technician's time: \$77.00 per hour or fraction thereof.

Technician's premium time: \$92.00. Premium time will be billed at a minimum of 3 hours. If the job is not completed within 3 hours, an additional \$92.00 per hour or fraction thereof (per 10th of an hour) will be charged.

Technician's premium time shall mean: 12:00 a.m. to 7:30 a.m. on week-days and Saturdays, Sundays and holidays. Holidays include New Years Day, Good Friday, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, Christmas Day and New Years Eve Day. If Christmas Day falls on Saturday or Sunday, TROY will notify MADISON HEIGHTS of the Christmas holiday schedule.

6. MADISON HEIGHTS shall also pay the costs for all necessary parts and necessary supplies used in the repair and/or maintenance of municipal vehicles. Costs for parts and supplies will include a 20% markup.
7. Before June 1st of each year, TROY shall review its personnel costs, including technician's time and technician's premium time, and any costs directly related to the ability of TROY to provide services under this Agreement. If those costs have increased, TROY shall notify MADISON HEIGHTS in writing of the amount of and the reason for the increased costs for services under the Agreement. Those increased costs will be effective on July 1st of each year. This increase in costs shall be effective even if the Agreement was executed within less than a year period of the cost increase.
8. MADISON HEIGHTS will be invoiced on a monthly basis. Payment for all costs must be paid within thirty (30) days of the invoice date. Payments shall be mailed to: Superintendent of the Fleet Maintenance, City of Troy, 4693 Rochester Road, Troy, MI 48085. Checks shall be payable to: City of Troy.
9. TROY shall have absolute discretion to refuse to repair and/or maintain any municipal vehicles under this Agreement. MADISON HEIGHTS is not obligated under this Agreement to use the services of Troy exclusively and MADISON HEIGHTS is expressly allowed to seek other similar services on an as needed basis without violating this Agreement.
10. THIS AGREEMENT DOES NOT, AND IS NOT INTENDED TO INCLUDE OR CONNOTE ANY WARRANTIES, PROMISES OR GUARANTIES BY TROY OF ANY NATURE WHATSOEVER, CONCERNING THE TECHNICAL SERVICING AND/OR REPAIR OF ANY MUNICIPAL VEHICLES. SPECIFICALLY, NO WARRANTY OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR TO BE IMPLIED BY TROY WITH RESPECT TO SERVICES OR PARTS PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL TROY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER UNDER CONTRACT, TORT OR OTHERWISE.

11. 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 but shall comply with Paragraph 12. Either Party may deliver a written notice of termination of the Agreement to the names and address set out in the notice provision of Paragraph 22. Termination shall become effective thirty (30) days from the date of the notice unless TROY or MADISON HEIGHTS has indicated a different termination date beyond the thirty (30) days on the notice supplied to the other party.

If TROY has municipal vehicles belonging to MADISON HEIGHTS on its site, MADISON HEIGHTS shall state in its termination notice that it authorizes TROY to complete work on those municipal vehicles or that TROY is to discontinue work on those municipal vehicles. If TROY is to discontinue work on the municipal vehicles, MADISON HEIGHTS shall pick up the municipal vehicles within five (5) days of the notice of termination. If TROY completes work on the municipal vehicles based on instructions from MADISON HEIGHTS after termination of the Agreement, all terms and conditions of this Agreement shall apply as to those municipal vehicles.

12. Upon receipt of notice of termination of the Agreement by MADISON HEIGHTS, TROY shall have thirty (30) days to fully invoice MADISON HEIGHTS for any outstanding balances that have not previously been invoiced. MADISON HEIGHTS shall continue to be responsible for payment for the cost of services, parts and supplies either invoiced prior to termination or performed or purchased by TROY before the notice of termination. TROY will attempt to return any unused parts and supplies to suppliers that it is unable to use on non- MADISON HEIGHTS municipal vehicles being serviced by TROY. If TROY is unable to obtain full refunds or only obtains partial refunds, MADISON HEIGHTS will be invoiced for those non-refundable and/or partially refundable parts and supplies. The invoice shall be paid within 30 days from the date of the invoice. TROY will hold those parts and supplies for 30 days from the date of the invoice for pick up by MADISON HEIGHTS. MADISON HEIGHTS shall be responsible for payment for the non-refundable and/or partially refundable parts and supplies whether or not picked up by MADISON HEIGHTS.

13. 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.

14. 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 this agreement. Furthermore, the Parties believe that their performance of services and duties pursuant to this Agreement will be in the exercise or discharge of a governmental function.

15. MADISON HEIGHTS 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 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 services, maintenance and/or repair performed for MADISON HEIGHTS in accordance 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.
16. TROY shall indemnify, defend and hold harmless MADISON HEIGHTS from any and all claims of damages against MADISON HEIGHTS, or for damages to any MADISON HEIGHTS municipal vehicles proximately caused by the gross negligence of TROY in provision of services, maintenance and/or repairs performed for MADISON HEIGHTS in accordance with this Agreement. To the extent this provision is triggered, 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. Gross negligence shall be defined for purposes of this Agreement as "willful and/or wanton conduct".
17. TROY acknowledges that it is currently issued with proper coverage and limits. TROY agrees to keep its current insurance, or insurance of a similar nature, in effect during all dates of service of maintenance to MADISON HEIGHTS vehicles. Upon requested by MADISON HEIGHTS, TROY shall provide a Certificate of Insurance as evidence of its coverage.
18. TROY represents and agrees that all work for MADISON HEIGHTS under the terms of this Agreement shall be performed in accordance with all appropriate and applicable industry standards and that TROY'S service personnel shall obtain and maintain all required certifications applicable to the type of repair work being performed (e.g., ASE Master Certification, State Certification and Blue Seal of Excellence).
19. Within ten (10) days from the execution of this Agreement, MADISON HEIGHTS shall provide a Certificate of Insurance acceptable to TROY demonstrating that general liability coverage is available for any and all claims for personal injury or property damage which are or might be caused by maintenance and repairs done by TROY and the use of the municipal vehicles

by MADISON HEIGHTS. MADISON HEIGHTS agrees to keep said insurance coverage in effect for the term of this Agreement or any renewals thereof (Sample Certificate attached as Exhibit A). MADISON HEIGHTS shall submit to the TROY Risk Manager prior to the expiration of any insurance coverage the new Certificate(s) of Insurance acceptable to TROY. Any Certificate(s) of Insurance shall name TROY as an additional insured and contain the following cancellation notice:

“Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the certificate holder named to the left.”

MADISON HEIGHTS acknowledges that, once accepted by the TROY Risk Manager, the specified insurance for the Agreement shall remain in full force and effect during the life of the Agreement.

Additionally, TROY may request a copy of said insurance certificate at any time during this Agreement. Failure to produce a certificate of insurance within twenty-one (21) days of a request by TROY, shall allow TROY to terminate the Agreement with forty-two (42) days written notice.

It shall be the responsibility of MADISON HEIGHTS to ensure that TROY is provided with a new Certificate of Insurance acceptable to the City before a Certificate of Insurance on file with TROY'S Risk Manager expires. A lapse in the insurance coverage required under the Agreement shall be considered a material breach of this Agreement and the Agreement shall become null and void automatically at any time such a lapse in coverage exists.

20. 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.
21. 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.
22. 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 – Fleet Division, 4693 Rochester Road, Troy, Michigan 48085. All writing sent to MADISON HEIGHTS shall be sent to: 300 West Thirteen Mile Road, Madison Heights, Michigan 48071 ATTN: Deputy City Manager.

- 23.** 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.
- 24.** 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.
- 25.** 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.
- 26.** The Recitals shall be considered an integral part of this Agreement.
- 27.** The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement of the Parties.
- 28.** 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.
- 29.** Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and/or agents necessary to perform all of its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requested party.
- 30.** 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.

IN WITNESS WHEREOF, this Agreement if executed by the Parties on the date hereafter set forth.

WITNESSES:

CITY OF TROY, a Michigan
Municipal Corporation,

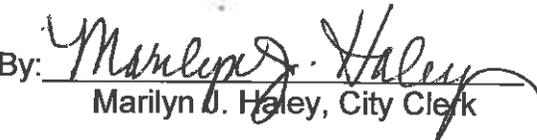
By: _____
Louise E. Schilling, Mayor

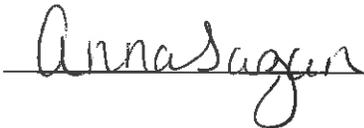
By: _____
M. Aileen Bittner, Acting City Clerk

CITY OF MADISON HEIGHTS, a Michigan
Municipal Corporation,

By:  _____
Edward C. Swanson, Mayor

 _____

By:  _____
Marilyn J. Haley, City Clerk

 _____



MICHIGAN MUNICIPAL
RISK MANAGEMENT
AUTHORITY

CERTIFICATE OF COVERAGE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder except to the extent shown below. This certificate does not amend, extend, or alter the coverage contained in the Authority's Joint Powers Agreement and coverage attachments thereto.

This is to certify that a Self-Insured Program has been undertaken by the member listed below through the Authority pursuant to Act 138 P.A. 1982.

The coverage provided by the Authority is as follows:

- 1. Liability coverage for general liability, automobile (including Michigan No-Fault), law enforcement, and public officials liability; in the sum of \$15,000,000 each occurrence inclusive of loss adjustment and defense costs.
- 2. Property Coverage including loss to real & personal property, to amounts stipulated in coverage documents and overview for this member.
- 3. Motor Vehicle Physical Damage Coverage for the vehicles stipulated in the Coverage Document.

___ Information only

___ The physical damage interest of the following is included in the coverage related to the purchase or lease of vehicles or other property identified below and loss, if any, shall be adjusted with the member and payable to the member and the following, as their interest may appear:

X Other (as described here): **THE COVERAGE IN ITEM 1. ABOVE IS AMENDED TO INCLUDE WITHIN THE DEFINITION OF MEMBER#123, CITY OF TROY, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES AND VOLUNTEERS, SOLELY AS RESPECTS LIABILITY WHICH MAY ARISE OUT OF THE SERVICES DESCRIBED IN THE VEHICLE MAINTENANCE AND REPAIR AGREEMENT.**

Authority membership and coverage are continuous in nature, and bear no expiration or termination date, however, should the member identified below withdraw from the Authority, or its Authority Membership be otherwise terminated, the Authority shall endeavor to notify the certificate holder in writing thirty (30) days in advance thereof, but failure to furnish such notice shall impose no obligation or liability of any kind upon the Authority, or its representatives.

Certificate Holder:
CITY OF TROY
500 W. BIG BEAVER ROAD
TROY, MI 48084
ATTN: STEVE COOPERRIDER, RISK MANAGEMENT

Member: **Member No.: 123**
CITY OF MADISON HEIGHTS
300 WEST 13 MILE
MADISON HEIGHTS, MI 48071-1899

Distribution:
Ms. Melissa Marsh, City of Madison Heights
Lorraine Zurenko, Underwriting, MMRMA

Effective Date of Membership: July 1, 1986
Date Issued: April 19, 2011

Authorized Representative

