



CITY COUNCIL AGENDA ITEM

Date: February 14, 2014

To: Brian Kischnick, City Manager

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

Subject: Agreement to Provide Fleet Maintenance Services – Road Commission for Oakland County

Background

The Fleet Maintenance Division is a two shift operation with both day and afternoon shifts. The Fleet Maintenance Division maintains approximately 500 pieces of City owned equipment.

Several years ago, the Fleet Maintenance Division began in-sourcing repair work, on an as needed basis, for the following 13 outside communities/agencies: Bloomfield Township, City of Birmingham, City of Oak Park, City of Royal Oak, City of Clawson, City of Rochester, City of Madison Heights, City of Center Line, City of Huntington Woods, SOCRRA, SOCWA, MEDIGO, and the Troy School District.

The Road Commission for Oakland County approached the Fleet Division in the fall of 2013 requesting to enter into a service agreement similar to the agreements established with the 13 communities listed above.

The agreement was presented to the Road Commission for Oakland County and was approved by their Board on February 6, 2014.

The 2013 actual total operating revenue for the Fleet Division was \$2,690,000 with approximately \$356,874, or 13% coming from in-source revenue/reimbursements.

Recommendation

City management and the Fleet Division of Public Works recommend entering into the Interlocal Service Agreement with the Road Commission for Oakland County 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 Road Commission for Oakland County 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(s) as needed.



CITY COUNCIL AGENDA ITEM

City Attorney's Review as to Form and Legality

Legal counsel has reviewed the contract for form and legality.

Lori Grigg Bluhm, City Attorney

SPLS:\Richnak Review\AgendaItem\ 3.3.14 – Agreement to Provide Fleet Maintenance Services – Road Commission for Oakland County

INTERLOCAL SERVICE AGREEMENT FOR FLEET SERVICES

This Interlocal Service Agreement dated, this ____ day of _____, 2014, is made by and between:

The Road Commission for Oakland County
31001 Lahser Road
Beverly Hills, Michigan 48025

-And-

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

RECITALS

WHEREAS, the CITY OF TROY, a Michigan Municipal Corporation, 500 West Big Beaver Road, Troy, Michigan 48084 (hereinafter "TROY"), and The Board of County Road Commissioners of the County of Oakland, a Public Body Corporate, 31001 Lahser Road, Beverly Hills, Michigan 48025 (hereinafter "RCOC"), 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 Intergovernmental Contracts Act No. 35 of the Public Acts of 1951. Ex. Sess., being MCL 124.1, 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 public works vehicles on an as requested basis and under the terms set forth below;

WHEREAS, pursuant to resolution of their respective governing bodies, the Parties each have the authority to execute this Interlocal Service Agreement ("Agreement") to allow TROY to repair or maintain RCOC 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 RCOC 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 government vehicles owned by RCOC. Vehicles shall mean loaders, dozers, cars, mowers, forklifts, trailers, trucks, and other equipment, used for public purposes by RCOC.

2. TROY is agreeable to providing such services through TROY'S Fleet Division to RCOC, on the terms and conditions as set forth in this Agreement and upon the request of RCOC.

3. RCOC, at its own discretion and based on RCOC 'S decisions, may 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 RCOC vehicles as defined in Paragraph 1 above, as requested by RCOC. 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 RCOC 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. RCOC 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 RCOC under the terms and conditions of this Agreement.

4. RCOC understands, acknowledges and relies on the representation that TROY will use the highest standards which control the repair and maintenance of RCOC vehicles. Troy will not deviate from these standards even at the request of RCOC.

5. Subject to an annual adjustment of rates as provided in Paragraph 7, RCOC 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: \$80.00 per hour or fraction thereof.

Technician's premium time: \$95.00. Premium time will be billed at a minimum of 3 hours. If the job is not completed within 3 hours, an additional \$95.00 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 weekdays and Saturdays, Sundays and holidays. Holidays include New Year's Day, Good Friday, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve Day. If Christmas Day falls on Saturday or Sunday, TROY will notify RCOC of the Christmas holiday schedule.

6. RCOC 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. Manufacturers' warranties for all parts will be provided by TROY.

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 RCOC 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. RCOC 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. RCOC is not obligated under this Agreement to use the services of Troy exclusively and RCOC is expressly allowed to have its vehicles repaired and maintained elsewhere 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 PUBLIC VEHICLES. SPECIFICALLY, NO WARRANTY OF 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 RCOC has indicated a different termination date beyond the thirty (30) days on the notice supplied to the other party.

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

12. Upon receipt of notice of termination of the Agreement by RCOC, TROY shall have thirty (30) days to fully invoice RCOC for any outstanding balances that have not previously been invoiced. RCOC 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- RCOC municipal vehicles being serviced by TROY. If TROY is unable to obtain full refunds or only obtains partial refunds, RCOC will be invoiced for those non-refundable and/or partially refundable parts and supplies. The invoice shall be paid within (thirty) 30 days from the date of the invoice. TROY will hold those parts and supplies for (thirty) 30 days from the date of the invoice for pick up by RCOC. RCOC shall be responsible for payment for the non-refundable and/or partially refundable parts and supplies whether or not picked up by RCOC.

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. RCOC 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 and 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 RCOC 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 RCOC from any and all claims of damages against RCOC, or for damages to any RCOC public vehicles proximately caused by the gross negligence of TROY in provision of services, maintenance and/or repairs performed for RCOC 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.

17. TROY acknowledges that it is currently insured 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 RCOC vehicles. Upon request by RCOC, TROY shall provide a Certificate of Insurance as evidence of its coverage.

18. TROY represents and agrees that all work for RCOC 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. RCOC acknowledges that it is currently insured or, in the case of auto liability and workers compensation, state authorized self insured with proper coverage and limits. RCOC agrees to keep its current insurance, or insurance of a similar nature, at the same monetary amount or higher, in effect during all dates of service of maintenance to RCOC vehicles. Upon request by TROY, RCOC shall provide a Certificate of Insurance as evidence of its coverage.

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 involve, 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 Public Works Department - Fleet Division
4693 Rochester Road
Troy, Michigan 48085

All writing sent to RCOC shall be sent to:

Road Commission for Oakland County
Attn: Mary Gillis

Director of Central Operations
2420 Pontiac Lake Road
Waterford, Michigan 48328

With a copy to:

Road Commission for Oakland County
31001 Lahser Road
Beverly Hills, Michigan 48025
Attn: Mr. Patrick Carty,
General Counsel

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 is executed by the Parties on the date hereafter set forth.

WITNESSES:

P. Winczuch
Date: FEB - 6 2014

Date: _____

**BOARD OF COUNTY ROAD
COMMISSIONERS OF THE COUNTY
OF OAKLAND,
A Public Body Corporate**

By: Dennis G. Kolor
Its: Managing Director

Date: FEB - 6 2014

By: _____

Its: _____

Date: _____

WITNESSES:

Date: _____

Date: _____

**CITY OF TROY,
A Municipal Corporation**

By: _____

Its: Mayor

Date: _____

By: _____

Its: City Clerk

Date: _____

Board of Road Commissioners

*Ronald J. Fowkes
Commissioner*

*Gregory C. Jamian
Commissioner*

*Eric S. Wilson
Commissioner*

*Dennis G. Kolar, P.E.
Managing Director*

*Gary Piotrowicz, P.E., P.T.O.E.
Deputy Managing Director
County Highway Engineer*

February 6, 2014

Mr. Sam Lamerato, Superintendent
Department of Public Works, Fleet Maintenance
City of Troy
4693 Rochester Road
Troy, MI 48085

Re: **Inter-Local Fleet Services Agreement
City of Troy and RCOC**

Dear Mr. Lamerato:

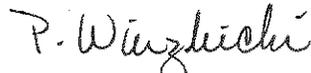
Enclosed are two RCOC-signed agreements for the above-referenced agreement for approval by the City of Troy Council and signatures of the appropriate city officials.

The agreement was approved at the Board meeting of Thursday, February 6, 2014 and subsequently signed by Dennis G. Kolar, P.E., Managing Director.

Please date the agreements and return one original signed copy to me

Please contact Mary N. Gillis, P.E., Director, Central Operations Department at (248) 858-4798 to answer any questions or for additional information.

Sincerely,



Patricia Z. Wierzbicki
Deputy-Secretary /Clerk of the Board

/sm

Enclosures

cc: Mary Gillis

Clerk of the Board

31001 Lahser Road
Beverly Hills, MI 48025

248-645-2000

FAX
248-645-1349