



## CITY COUNCIL ACTION REPORT

December 5, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services  
Mark Stimac, Director of Building and Zoning

SUBJECT: Agreement to Provide Inspection 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 plumbing and mechanical inspection services to the City of Madison Heights on an as needed basis.
- This agreement is being presented to the Madison Heights City Council on this same date for their approval.

### **Financial Considerations**

- No additional staffing is required. There is currently capacity within the inspector's schedules to take on the additional work.
- The agreement generates outside revenue and maximizes the use of our staffing.
- The agreement allows for the periodic review of workload and fees and allows adjustments in the agreement as needed.

### **Legal Considerations**

- The City Attorney's office has reviewed the contract for form and legality.

### **Policy Considerations**

- Minimize the cost and increase the efficiency and effectiveness of city government. (Goal II)
- Emphasize regionalism and incorporate creativity. (Goal VI)

### **Options**

- City management recommends entering in to the Interlocal Service Agreement with the City of Madison Heights for inspection services.

**INTERLOCAL SERVICE AGREEMENT FOR PLUMBING  
AND MECHANICAL INSPECTION SERVICES**

This Interlocal Service Agreement dated, this \_\_\_\_ day of December 2008, 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 the City of Madison Heights, a Michigan Municipal Corporation, 300 W. Thirteen Mile Road, Madison Heights, Michigan 48071 (hereinafter "MADISON HEIGHTS"), or TROY and MADISON HEIGHTS hereinafter together referred to as the "Parties" are authorized separately by law to provide for mechanical and plumbing inspections under P.A. 230, of the Public Acts of 1972, as amended, being sections 125.1501 to 125.1531 of the Michigan Compiled Laws; and

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 which each might exercise separately; and

WHEREAS, MADISON HEIGHTS has traditionally entered into a contract with an independent contractor to perform mechanical and plumbing inspections either on a full time or a part-time basis; and

WHEREAS, due to the fact that mechanical and plumbing inspections require trained individuals who are registered with the Michigan Bureau of Construction Codes as inspectors and plan reviewers and are familiar with the State of Michigan Building Code requirements, it is difficult for public entities to locate trained and registered individuals who are able or willing to perform those specialized services timely and on a part-time basis; and

WHEREAS, TROY has full time employees who are trained and registered mechanical and plumbing inspectors capable of doing inspections for MADISON HEIGHTS through an interlocal agreement; and

WHEREAS, the Parties have mutually agreed that this Agreement be entered into to allow TROY to do mechanical and plumbing inspections for MADISON HEIGHTS on a routine basis under the terms set forth below; and

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 do mechanical and plumbing inspections for MADISON HEIGHTS at a fixed monthly cost, under the terms set forth below.

## **AGREEMENT**

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 state registered mechanical and plumbing inspectors with the qualifications, experience and abilities to provide services in connection with the business of inspecting buildings for compliance with the State of Michigan's building codes and laws, as well as those of the City of Madison Heights.
2. TROY, through its Building Department, is agreeable to providing such inspection services to MADISON HEIGHTS, on the terms and conditions as set forth in this Agreement.
3. MADISON HEIGHTS hereby agrees to engage TROY to provide mechanical and plumbing inspection services during regular business hours, i.e., 8:00 a.m. to 4:30 p.m. This inspection work is anticipated to be approximately four man hours per day, and includes site inspections, paperwork, office time at Madison Heights City Hall and travel time from Troy to Madison Heights and back to Troy. The inspectors' travel time shall be minimized as much as possible, and therefore may be from City Hall or from an inspection site, whichever is closer.
4. The requirement to work approximately four hours per day is intended to be flexible to accommodate the needs of the Parties, and may be adjusted as needed by an informal and mutual agreement between TROY's Director of Building and Zoning and MADISON HEIGHTS' Community Development Department Director, or their designees or successors. However, it is intended that the overall average will remain at approximately four hours per day.
5. All code issues or interpretations, disputes, or any other issues arising from inspections performed in MADISON HEIGHTS shall be resolved solely by the Madison Heights Building Official or his designee.
6. Should it become necessary for a contract inspector to testify in court on MADISON HEIGHTS behalf, TROY shall make the inspector available at the time and place established by the court.

7. Subject to an annual adjustment of rates as provided in Paragraph 12, MADISON HEIGHTS shall pay TROY a flat monthly fee of \$2,200 for TROY to provide the above referenced mechanical and plumbing inspection services.
8. After the first three (3) months of this Agreement, the Parties agree to review the terms of the Agreement, including the required number of man hours that are required for the inspection services. If the Parties agree to amend the required time commitment for inspections, then there should also be a corresponding amendment to the amount of compensation. The Parties are not precluded from making amendments after this initial three (3) month period, as long as the proposed amendments are approved by each governing body.
9. This Agreement can be terminated by either Party for any reason, with a minimum thirty days written notice to the other Party.
10. MADISON HEIGHTS shall supply to TROY all printed materials that are required for plan review, pre-inspection, inspection and post-inspection reports for MADISON HEIGHTS.
11. 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 state and industry standards.
12. Annually, TROY shall review its personnel costs for its inspectors and any costs directly related to the ability of TROY to provide services under this Agreement. If a change in these costs requires an adjustment to the monthly flat fee for the inspection services, then TROY shall notify MADISON HEIGHTS in writing of the amount of the necessary change, and the reason(s) why the change is required. This notification shall be sent prior to December 1 of each year. The monthly flat fee shall then be adjusted, effective as of February 1 of the next year, and each monthly invoice shall reflect the adjusted flat fee, subject to the approval of MADISON HEIGHTS.
13. This Agreement shall remain in effect until terminated by either Party. If, upon termination, any of TROY's inspectors have paperwork or forms belonging to MADISON HEIGHTS, then each such document shall be delivered to MADISON HEIGHTS within ten days of the termination of the Agreement.
14. 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: Mark Stimac, City of Troy Director of Building and Zoning, 500 W. Big Beaver Road, Troy, MI 48084.
15. 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.
16. 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 either invoiced prior to termination or performed by TROY before the termination of the Agreement.

17. 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.
18. All of the privileges and immunities from liability, and exemptions from laws ordinances and rules, and all pensions, relief, disability, workers' 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 any such interlocal agreement.
19. MADISON HEIGHTS agrees to defend, pay on behalf of, indemnify, and hold harmless TROY, its elected and appointed officials, employees and others working for TROY on behalf of MADISON HEIGHTS, against any and all claims, demands, suits, or loss, including, and for any damages which may be asserted, claimed or recovered against or from TROY, its elected and appointed officials, employees, or others working for TROY on behalf of MADISON HEIGHTS, 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 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.
20. TROY shall indemnify, defend and hold harmless MADISON HEIGHTS from any and all claims of damage against MADISON HEIGHTS proximately caused by the gross negligence of Troy in the provision of services 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.
21. 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 inspection services for MADISON HEIGHTS. Upon requested by MADISON HEIGHTS, TROY shall provide a Certificate of Insurance as evidence of its coverage.
22. 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 services preformed by TROY on behalf of MADISON HEIGHTS. MADISON HEIGHTS agrees to keep said insurance coverage in full force and effect for the term of this Agreement or any renewals thereof. MADISON HEIGHTS shall submit to the City of Troy Risk Management Department, prior to the expiration of any insurance coverage, the new Certificate(s) of Insurance acceptable to TROY. Any Certificate(s) of Insurance shall name the City of 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.”

TROY may request a copy of said insurance certificate at any time during this Agreement. Failure to produce a certificate of insurance within twenty (20) days of a request by TROY shall allow TROY to terminate the Agreement.

It shall be the responsibility of MADISON HEIGHTS to ensure that the City is provided with a new Certificate of Insurance acceptable to TROY before a Certificate of Insurance on file with the City’s Risk Management Department 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.

23. 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 and which involves the 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.
24. 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.
25. 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 Director of Zoning and Building, 500 W. Big Beaver Road, Troy, MI 48084. All writing sent to MADISON HEIGHTS shall be sent to: Community Development Department Director, City of Madison Heights, 300 W. Thirteen Mile Road, Madison Heights, MI 48071.

26. 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.
27. 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.
28. 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.
29. The Recitals shall be considered an integral part of this Agreement.
30. 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.
31. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all registrations, 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 registrations, permits, licenses, certificates or governmental authorizations to the requesting Party.
32. 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, 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 this \_\_\_\_day of December 2008.

WITNESSES:

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\_\_\_\_\_

CITY OF MADISON HEIGHTS,

By: \_\_\_\_\_  
Edward C. Swanson, Mayor

By: \_\_\_\_\_  
Marilyn J. Haley, City Clerk

WITNESSES:

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CITY OF TROY,

By: \_\_\_\_\_  
Louise E. Schilling, Mayor

By: \_\_\_\_\_  
Tonni Bartholomew, City Clerk