



CITY COUNCIL ACTION REPORT

DATE: August 25, 2009

TO: John Szerlag, City Manager

FROM: Mark Miller, Acting Assistant City Manager Services
Mark Stimac, Director of Building and Zoning

SUBJECT: Interlocal Agreement to Provide Inspection Services – City of Sterling Heights

Background

- Attached is a copy of the proposed Interlocal Service Agreement between the City of Troy and the City of Sterling Heights, where the cities will share inspection services.
- This agreement is being presented to the Sterling Heights City Council on September 1, 2009, for their approval.

Financial Considerations

- No additional staffing is required. The agreement allows for the most effective use of inspection staff of both cities and allows for the coverage of heavy workloads, vacation time, and required training.
- The agreement could generate 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 Sterling Heights for inspection services.

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

**INTERLOCAL SERVICE AGREEMENT FOR BUILDING
INSPECTION SERVICES**

This Interlocal Service Agreement dated, this ____ day of August 2009, is made by and between:

City of Sterling Heights
P.O. Box 8009
40555 Utica Road
Sterling Heights, Michigan 48313

-And-

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

RECITALS

WHEREAS, the City of Troy, a Michigan Municipal Corporation, (hereinafter "TROY"), and the City of Sterling Heights, a Michigan Municipal Corporation, (hereinafter "STERLING HEIGHTS"), or TROY and STERLING HEIGHTS hereinafter together referred to as the "Parties" are authorized separately by law to provide for building, electrical, 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, both TROY and STERLING HEIGHTS have traditionally employed individuals to do building, electrical, mechanical and plumbing inspections for their respective cities only; and

WHEREAS, due to the fact that building, electrical, 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 on both a full-time and on a part-time basis; and

WHEREAS, both TROY and STERLING HEIGHTS have full time employees who are trained and registered building, electrical, mechanical and plumbing inspectors capable of doing inspections for either city through an interlocal agreement; and

WHEREAS, the Parties have mutually agreed that this Agreement be entered into to allow TROY or STERLING HEIGHTS to do building, electrical, mechanical and plumbing inspections for either city 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 and STERLING HEIGHTS to do building, electrical, mechanical and plumbing inspections for either city at a 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 STERLING HEIGHTS acknowledges that TROY has state registered building, electrical, 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.
2. STERLING HEIGHTS represents and TROY acknowledges that STERLING HEIGHTS has state registered building, electrical, building, electrical, 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.
3. Both TROY and STERLING HEIGHTS, through their respective Building Departments, agree to provide such inspection services to each other on the terms and conditions as set forth in this Agreement.
4. TROY and STERLING HEIGHTS hereby agree to engage each other to provide building, electrical, mechanical and plumbing inspection services during regular business hours. This inspection work is anticipated to include site inspections, paperwork, office time at the other Party's City Hall and travel time between cities. 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.
5. Each city understands and acknowledges that the other Party will first service its own inspection needs. However, TROY and STERLING HEIGHTS will make every reasonable effort to timely complete work for the other Party under the terms and conditions of this Agreement.
6. All code issues or interpretations, disputes, or any other issues arising from inspections performed in TROY shall be resolved solely by the TROY Building Official or his designee. All code issues or interpretations, disputes, or any other

issues arising from inspections performed in STERLING HEIGHTS shall be resolved solely by the STERLING HEIGHTS Building Official or his designee.

7. Should it become necessary for an inspector who performed services under this Agreement for the other Party to testify in court, the Party for which the inspector is employed, shall make the inspector available at the time and place established by the court.
8. Subject to an annual adjustment of rates as provided in Paragraph 12, STERLING HEIGHTS and TROY shall pay sixty (\$60.00) dollars per hour to the other Party for the above referenced building, electrical, mechanical and plumbing inspection services.
9. This Agreement can be terminated by either Party for any reason, with a minimum thirty (30) days written notice to the other Party.
10. The Parties shall supply to each other all printed and digital materials that are required for plan review, pre-inspection, inspection and post-inspection reports for each city.
11. The Parties represent to each other and agree that all inspections performed under the terms of this Agreement shall be performed in accordance with all appropriate and applicable state laws and regulations and industry standards.
12. Annually, the Parties shall each review its personnel costs for its inspectors and any costs directly related to the ability of each city to provide services under this Agreement. If a change in these costs requires an adjustment to the fee for the inspection services, then TROY and STERLING HEIGHTS shall notify each other 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 May 1 of each year. The fee shall then be adjusted, effective as of July 1 of the next year, and each monthly invoice shall reflect the adjusted fee, subject to the approval of the Parties governing bodies.
13. This Agreement shall remain in effect until terminated by either Party. If, upon termination, any of TROY'S or STERLING HEIGHTS' inspectors have paperwork or forms belonging to the other Party, then each such document shall be delivered to the other Party within ten (10) days of the termination of the Agreement.
14. Each Party agrees to invoice the other Party on a monthly basis. Payment for all costs must be paid within thirty (30) days of the invoice date. Payments shall be mailed to: City of Troy Treasurer, 500 W. Big Beaver Road, Troy, MI 48084 or Michael Bartholomew, City of Sterling Heights Development Director/Assistant City Manager, P.O. Box 8009, 40555 Utica Road, Sterling Heights, Michigan 48313, as appropriate.

15. The Parties are not obligated under this Agreement to use each others services exclusively and are 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 either Party, both Parties shall have thirty (30) days to fully invoice the other Party for any outstanding balances that have not previously been invoiced. Each Party shall continue to be responsible for payment for the cost of services either invoiced prior to termination or performed by either Party before the termination of the Agreement.
17. The Parties agree that at all times and for all purposes under the terms of this Agreement, there is no employer-employee relationship between the Parties. No liability, right or benefit associated with any employer-employee relationship shall be implied by the terms of this Agreement or service performed under this Agreement.
18. Each Party agrees to be liable for disability and workers' compensation benefits, including derivative benefits, dependent benefits or other benefits related to disability and workers' compensation benefits, for its own employees and, if applicable, others working on it's behalf, even if the activities giving rise to those benefits occurred in the territorial limits of the other Party. Each Party's employees shall use only vehicles owned or leased by the Party to travel to and from inspections in the other Party's jurisdiction. Personal vehicles of employees shall not be used at any time under the terms of this Agreement. Each Party shall be liable for any damage to vehicles owned or leased, by the Party and for injuries to a Party's employees or agents arising out of the use of such a vehicle regardless of in whose jurisdiction the damage or injury occurred.
19. All of the privileges and immunities from liability, and exemptions from laws ordinances and rules, which apply to the activity of officers, agents, or employees of either Party 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 interlocal agreement.
20. Each Party agrees to be liable for, defend, pay on behalf of, indemnify, and hold harmless the other Party, its elected and appointed officials, employees and others working for that Party from any third party claims, demands, suits, or loss of any nature, including, but not limited to, bodily injury or death and/or property damage, which arises out of or is in any way connected with the inspection services performed by an employee pursuant to this Agreement in the other Party's jurisdiction. 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. Each Party acknowledges that it is currently insured with proper coverage and limits. Each Party agrees to keep its current insurance, or insurance of a similar nature, in effect during all dates of inspection services for either TROY or STERLING HEIGHTS under this Agreement. Upon requested by either Party,

the other Party shall provide a Certificate of Insurance as evidence of its coverage.

22. Within ten (10) days from the execution of this Agreement, each Party shall provide a Certificate of Insurance, acceptable to the other Party, 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 performed by TROY or STERLING HEIGHTS on behalf of the other Party. Each Party agrees to keep said insurance coverage in full force and effect for the term of this Agreement or any renewals thereof. Each Party shall submit to the other Party, prior to the expiration of any insurance coverage, the new Certificate(s) of Insurance acceptable to the other Party. Any Certificate(s) of Insurance shall name the other Party 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.”

Either Party 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 a Party shall allow the requesting Party to terminate the Agreement.

It shall be the responsibility of each Party to ensure that the other Party is provided with a new Certificate of Insurance acceptable to the other Party before a Certificate of Insurance on file with the other Party 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 Building and Zoning, 500 W. Big Beaver Road, Troy, MI 48084. All writing sent to STERLING HEIGHTS shall be sent to: Michael Bartholomew, City of Sterling Heights Development Director/Assistant City Manager, City of Sterling Heights, P.O. Box 8009, 40555 Utica Road, Sterling Heights, MI 48313.

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 _____ 2009.

WITNESSES:

CITY OF STERLING HEIGHTS,

By: _____
Richard J. Notte, Mayor

By: _____
Walter L. Blessed, City Clerk

WITNESSES:

CITY OF TROY,

By: _____
Louise E. Schilling, Mayor

By: _____
Tonni Bartholomew, City Clerk