



CITY COUNCIL ACTION REPORT

December 2, 2009

TO: John Szerlag, City Manager
FROM: Gary Mayer, Chief of Police
SUBJECT: Interlocal Agreement with City of Sterling Heights for use of gun range

Background:

- Attached copy of the proposed Interlocal agreement between the City of Troy and City of Sterling Heights for the purpose of Sterling Heights Police Department using the City's gun range.
- This agreement will not hinder the use of the range by the Police department.

Financial Considerations:

- The City of Sterling Heights will pay the City of Troy \$8,000 for one year.
- No additional staff is required.
- This agreement will generate outside revenue.
- This agreement allows for review and adjustments in the agreement as needed.

Legal Considerations:

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

Recommendation:

- City management recommends entering in to the Inter-Local Agreement with the City of Sterling Heights for the use of the City of Troy's gun range.

Reviewed and approved as to form and legality:

Lori Grigg Bluhm, City Attorney

**INTERLOCAL SERVICE AGREEMENT FOR USE
OF GUN RANGE**

This Interlocal Service Agreement dated, this ____ day of December 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, ("TROY"), and the City of Sterling Heights, a Michigan Municipal Corporation, ("STERLING HEIGHTS"), together referred to as the "Parties", are authorized separately by law to provide for the training of police officers 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 the authority to establish gun ranges for training, certification, practice and maintaining proficiency of police officers for their respective cities; and

WHEREAS, TROY has an established gun range that could be used for the training, certification, practice and maintaining of proficiency of police officers from other cities; and

WHEREAS, the Parties have mutually agreed that this Agreement be entered into to allow police officers from STERLING HEIGHTS to use TROY's gun range for such purposes 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 sworn police officers from STERLING HEIGHTS to use TROY'S gun range at a cost to STERLING HEIGHTS, 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. STERLING HEIGHTS acknowledges that it has fully inspected the Troy Police Department gun range and accepts any and all currently existing conditions of the gun range. STERLING HEIGHTS acknowledges that TROY has disclosed that Troy voluntarily performed a lead remediation program for the gun range due to low level test readings for lead, even though those test levels did not violate the Michigan Occupational Safety & Health Administration (MIOSHA) Lead Standards. MIOSHA certified the gun range as within satisfactory lead level limits on December 20, 2007.
2. TROY agrees to allow sworn police officers who are employed with the Sterling Heights Police Department to use the Troy Police Department gun range. The TROY gun range may also be used by other STERLING HEIGHTS' employees or representatives if prior written approval is granted by the TROY Police Chief or his/her designee, as long as there is a STERLING HEIGHTS Safety Officer or Range Officer present at all times when the gun range is used by STERLING HEIGHTS.
3. At all times when STERLING HEIGHTS is using the TROY gun range, a Sterling Heights Safety Officer or a Sterling Heights Range Officer who has completed the training, as set forth in Paragraph 4, shall be present.
4. Each Sterling Heights Police Department Safety Officer or Range Officer shall attend one (1) mandatory training session at the Troy Police Department, which will be taught by the Troy Police Department Training Section. Training will include, but not be limited to: the proper way to use the gun range, proper cleaning of equipment and the protocol for the gun range. Within ten (10) days of the execution of this Agreement, STERLING HEIGHTS shall provide TROY with a list of Sterling Heights Safety Officers and Gun Range Officers that will need to be scheduled for training classes. Within ten (10) days after receipt of the list, TROY shall provide STERLING HEIGHTS with a list of training dates and times. Subsequent training for new Sterling Heights Safety Officers and Gun Range Officers will be mutually arranged upon a written request from STERLING HEIGHTS.

5. Once the initial training, as set forth in Paragraph 4 is completed, the Sterling Heights Police Chief or his designee will be supplied with three (3) door fobs to allow access into the Troy Police Department gun range. STERLING HEIGHTS is responsible for immediately reporting any loss of any of these three door fobs to the Troy Police Chief or his/her designee.
6. Subsequent to the training, TROY will create a range calendar, which will set range use dates for STERLING HEIGHTS for the calendar year. If either TROY or STERLING HEIGHTS needs to modify the scheduled STERLING HEIGHTS range use dates, then the requesting Party's Police Chief or their designee may request a change contacting the other party as soon as possible. TROY will attempt to accommodate requested changes, but is not required to do so if those changes interfere with Troy personnel availability or previous reservations for use of the gun range.
7. STERLING HEIGHTS shall be responsible for all of its own backers, guns, ammunition, and targets. All weapons and ammunition to be used in the gun range area must be pre-approved by TROY. TROY will provide space for an equipment cabinet in the gun range area for the use of STERLING HEIGHTS, which should be limited to weapons, ammunition, and other related equipment. STERLING HEIGHTS shall be solely responsible for providing the equipment cabinet, and also any desired lock for the cabinet. TROY has no responsibility for any such equipment cabinet or lock.

The STERLING HEIGHTS Chief of Police, or his designee, and TROY Chief of Police, or his designee, may agree in writing to the storage of additional equipment at the gun range or permission to use equipment owned by the other party. Those written agreements may be terminated by either party upon five (5) days written notice directed to the other party. In each instance when a written agreement for the use of equipment exists as set out in this section, the user of the other party's equipment shall be responsible for any damage to the equipment beyond the wear associated with normal use, regardless of any provisions in this Agreement to the contrary.

8. STERLING HEIGHTS is not obligated under this Agreement to use the Troy Police Department gun range exclusively and is expressly allowed to seek other similar venues on an as needed basis without violating this Agreement.
9. STERLING HEIGHTS shall pay to TROY eight thousand (\$ 8,000.00) dollars per year for use of the gun range under the terms and conditions as set out herein. That payment shall be made in one lump sum within twenty (20) days after the last signature executing this Agreement. There shall be no refund of this annual payment unless TROY exercises the right to terminate the Agreement without cause and with a 30 day written notice, as allowed in Paragraph 11, and in any such case, the refund shall be pro-rated, and shall be based on the number months remaining on the contract after the 30 day written notice is provided.

10. This Agreement shall be in effect for a one (1) year term. At least sixty (60) days prior to the end of the term of the Agreement, TROY will conduct an assessment based on information from the Troy Police Department Training Section as to any new issues which may need to be addressed regarding the use of the gun range and if renewal of the Agreement is in the best interest of TROY. If TROY is satisfied that it is in its best interest to continue the Agreement and STERLING HEIGHTS is also interested in continuing the Agreement, TROY and STERLING HEIGHTS may renew the Agreement for a specific duration of time, but any such Agreement must be mutually-approved by the City Council for each of the Parties.
11. Regardless of the term of the Agreement, either Party for any reason may terminate the Agreement with a minimum thirty (30) days written notice to the other Party.
12. All users of the Troy gun range shall comply with all federal, state and local ordinances while on TROY property. If there is a complaint of a violation of law, or of misuse of the gun range or other inappropriate conduct by a STERLING HEIGHTS employee or representative, and such complaint is validated after both Parties have the opportunity to participate in an investigation, then TROY may immediately terminate this Agreement.
13. 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.
14. STERLING HEIGHTS agrees that TROY shall have no liability for disability and workers' compensation benefits, including derivative benefits, dependent benefits or other benefits related to disability and workers' compensation benefits, for STERLING HEIGHTS own employees and, if applicable, others working on its behalf.
15. 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 use of the Troy Police Department gun range pursuant to 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. 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 use of the gun range 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.

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.

17. 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 use of the gun range by STERLING HEIGHTS 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.
18. 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.
19. 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 Chief of Police, 500 W. Big Beaver Road, Troy, MI 48084. All writing sent to

STERLING HEIGHTS shall be sent to: City of Sterling Heights Chief of Police, City of Sterling Heights, P.O. Box 8009, 40555 Utica Road, Sterling Heights, MI 48313.

20. 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.
21. 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.
22. 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.
23. The Recitals shall be considered an integral part of this Agreement.
24. 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.
25. 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.
26. 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, 2009.

WITNESSES:

CITY OF STERLING HEIGHTS,

By: _____
Richard J. Notte, Mayor

By: _____
Walter C. Blessed, City Clerk

WITNESSES:

CITY OF TROY,

By: _____
Louise E. Schilling, Mayor

By: _____
Tonni Bartholomew, City Clerk