

AGENDA REPORT

TO: Mayor & City Commissioners

FROM: Ken Hibl, City Manager

DATE: May 12, 2010

RE: Intergovernmental Agreement for Plumbing & Mechanical Services – Isabella County

For the Agenda of May 17, 2010

Background. The City presently provides building and electrical inspection services to the residents and business community of Clare with “on-staff” inspectors (Mr. Dave Williams and Mr. Bruce Keidel); however, our community currently has to rely on plumbing and mechanical inspection services by State of Michigan inspectors. This situation oftentimes causes building delays and denies the City to influence the coordination and timing of these inspections.

We have solicited the services of Isabella County to determine if they would be willing to provide mechanical and plumbing inspection services for Clare. The County has indicated they would be willing to do so (see copy of att’d letter) and have offered an intergovernmental agreement (*copy att’d*) to facilitate the process to commence these services. **Note: we must obtain state permission (*copy of att’d application form*) before we can formally commence using the plumbing and mechanical inspection services of Isabella County.**

The Commission is asked to approve the intergovernmental agreement to allow us to proceed with the application process.

2nd Note: Dave Williams has recently received notice (*copy att’d*) of his certification and designation as a Michigan Building Official. This designation will further allow us to streamline the service provided to our customers as Dave will now be able to issue all types of the four primary trade permits (building, electrical, mechanical, and plumbing), thereby eliminating the need for our customers to make this permit application to Isabella County or the State of Michigan.

Issues & Questions Specified. Should the City Commission approve the proposed intergovernmental agreement?

Alternatives.

1. Approve the agreement.
2. Do not approve the agreement.
3. Set aside decision regarding this matter to a later date.

Financial Impact. There is no additional cost to implement this agreement, as our rate fee for these inspections will coincide with the charges we receive for these services; however, we do expect that we will be able to provide quicker, more efficient building department and inspection services to our community with implementation of this agreement.

Recommendation. I recommend that the City Commission approve the intergovernmental agreement by adoption of Resolution 2010-039 (*copy att'd*).

Attachments.

1. Isabella County Letter.
2. Intergovernmental Agreement.
3. Letter to Mr. Williams.
4. Resolution 2010-039.



COMMUNITY DEVELOPMENT
200 North Main, Mt. Pleasant, MI 48858

Phone: (989) 772-0911 ext. 283
Fax: (989) 775-6681

Ken Hibl
City Manager
City of Clare
202 West Fifth Street
Clare, MI 48617

Dear Ken;

This letter is intended to notify you of the Isabella County Community Development Department Inspection Divisions intent to provide Plumbing and Mechanical Inspections including Plan Review for the City of Clare. The Inspections division will provide required inspections and plan review activities as requested by the Building Official for the City of Clare under an agreed upon intergovernmental agreement.

If you have any additional questions or comments, please feel free to contact me in my office at 989-772-0911 X371.

Thank you and we look forward to providing the City of Clare with our services.

Sincerely,

Timothy A. Nieporte
Community Development Director
Isabella County
200 North Main Street
Mount Pleasant, MI 48858

Cc: Dave Williams, Building Official City of Clare

**INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CLARE TO PROVIDE
PLUMBING AND MECHANICAL CODE INSPECTION SERVICES**

THIS AGREEMENT, made and entered into this ____ day of _____, 2010, by and between the County of Isabella, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as "Isabella") and the City of Clare, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as "City of Clare").

WITNESSETH:

WHEREAS, City of Clare desires Plumbing and Mechanical Code Inspection and Enforcement services; and

WHEREAS, Isabella shall provide a Registered and Certified Code Official with an established and active business record in the Plumbing and Mechanical Inspections Trade in the State of Michigan; and

WHEREAS, Isabella and the City of Clare have agreed to the terms and conditions of this intergovernmental agreement to provide Plumbing and Mechanical Code inspection services.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY AGREED**, as follows:

1. **Services to be provided by Isabella.** Isabella agrees to provide the following services to the City of Clare:
 - A. Provide timely Plumbing and Mechanical inspections of any and all new construction.
 - B. As requested by City of Clare, meet with the Construction Board of Appeals on any issue regarding an appeal of action taken on your part.
 - D. Respond to calls and/or inquiries as soon as practicable or on scheduled work days.
 - E. Prepare all reports required by the City of Clare and/or the State of Michigan in compliance with any State and/or Local Ordinance or Law.
 - F. Provide plan reviews on all commercial, industrial and new home construction.

2. **Compensation.** Payment shall be in monthly installments, due and payable on the 10th of every month, for services rendered during the prior month. Compensation for the term of this agreement shall be agreed upon as expressed in the annual Isabella County Building Inspections Fund budget at a rate of \$45.00 per inspection. The per inspection rate includes time, mileage and operating expenses. In addition to the described services, any further service required by the City of Clare including attendance at meetings necessary to enhance the implementation of the City of Clare's Plumbing and Mechanical Code administration, as requested by Clare, which are mutually agreed upon will be billed to the City of Clare at the rate of \$35.00 per hour plus mileage. Payments shall be made to: "ISABELLA COUNTY"

3. **Qualifications of Isabella.** Isabella agrees that at all times during the term of this Agreement the Plumbing and Mechanical Code Inspector shall maintain his/her professional status and shall satisfy applicable licensing requirements of the State of Michigan, which qualify him/her to continue service to the City of Clare in the designated Registered Code Official capacity. Isabella further agrees to keep current in the disciplinary fields required to maintain his/her license, to remain in good standing with the State of Michigan in the capacity required to fulfill the terms of this Agreement. It is understood that the failure to comply with these requirements is a material breach of this Agreement and grounds for immediate termination of this Agreement.

4. **Title to Records, Documents, Papers, Etc.** The City of Clare shall have the sole and exclusive right, title and interest to any and all records, documents, papers, maps or manuscripts pertaining to or prepared pursuant to this Agreement.

5. **Avoidance of Conflicts of Interest.** Isabella agrees, during the term of this Agreement or any extended term in which this Agreement remains in effect, to avoid both actual and the appearance of conflicts of interest.

6. **City of Clare Responsibilities.** The City of Clare agrees to provide Isabella with the following:

- A. The reasonable cooperation of the City of Clare personnel.
- B. Access to existing records to perform duties as depicted in this document.
- C. A list of Inspections to be performed on scheduled inspection days.
- D. Code Books and necessary inspection forms to complete the Inspections requested including field reports.

7. **Nondiscrimination.** Isabella and the City of Clare, as required by law, shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, or marital status. Breach of this section shall be regarded as a material breach of this Agreement.

8. **Compliance with the Law, Applicable Law and Venue.** Isabella, while engaged in any activity pursuant to this Agreement, shall comply with all applicable Federal, State or local laws, ordinances, rules and regulations. Breach of this covenant shall be regarded as a material breach of this Agreement.

This Agreement shall be construed according to the laws of the State of Michigan. The venue for the bringing of any legal or equitable action under this Agreement shall be established in accordance with the statutes of the State of Michigan and/or Michigan Court Rules.

9. **Independent Contractor.** It is expressly understood and agreed that Isabella is an Independent Contractor. Isabella and the employees and agents of Isabella shall in no way be deemed to be and shall not hold themselves out as employees or agents of the City of Clare. Isabella and its employees and agents shall not be entitled to any fringe benefits which the City of Clare affords its employees, such as, but not limited to, health and accident insurance, life insurance, paid vacation leave, or paid sick leave. Isabella shall be responsible for the payment of salaries, wages and other compensation due its staff for services they perform under this Agreement and for withholding and payment of all applicable taxes, including, but not limited to, income and social security taxes to the proper Federal, State and local governments. Isabella, to the extent required by law, shall carry workers' compensation insurance coverage.

10. **Liability.**

A. All liability to third parties, loss or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by Isabella in the performance of this Agreement shall be the responsibility of Isabella, and not the responsibility of the City of Clare, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of Isabella, any subcontractor, anyone directly or indirectly employed by Isabella, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to Isabella or their employees by statutes or court decisions.

B. All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as the provision of policy and procedural direction, to be carried out by the City of Clare in the performance of this Agreement shall be the responsibility of the City of Clare and not the responsibility of Isabella if the liability, loss, or damage is caused by, or arises out of, the action or failure to act on the part of any City of Clare employee or agent, provided that nothing herein shall be construed as a waiver of any governmental immunity by the City of Clare or its employees as provided by statute or court decisions.

C. In the event that liability to third parties, loss, or damage arises as a result of activities conducted jointly by the City of Clare and Isabella in fulfillment of their responsibilities under this Agreement, such liability, loss, or damage shall be borne by the City of Clare and Isabella in relation to each party's responsibilities under these joint activities provided that nothing herein shall be construed as a waiver of any governmental immunity by the City of Clare, Isabella or their employees, respectively, as provided by statute or court decisions.

D. **Risk Management Systems.** Each of the parties to this Agreement agrees to cooperate with the other party in the constitution and operation of their respective risk management systems. Each party agrees that if an incident occurs and is reported as a part of its respective risk management system, and if the incident report involves either institution or its respective staff or agent, a copy of said incident report will be immediately delivered to the designated representative of the other party. It is agreed and understood that said incident reports will be held in the strictest of confidence and that each party agrees to cooperate fully with the other in the investigation and resolution of the incident or liability exposure revealed as a result of its respective risk management system.

E. **Non-Beneficiary Contract.** This Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the parties hereto.

11. **Insurance.** During the term of this Agreement, Isabella shall maintain the following insurances:

A. Workers' Compensation Insurance, including Employers' Liability Coverage, covering its employees, to the extent required by applicable statutes of the State of Michigan.

B. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$500,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

C. Cancellation Notice - Isabella shall promptly notify the City of Clare in the event any of the insurance described above is canceled or expires during the term of this Agreement.

12. **Waivers.** No failure or delay on the part of either of the parties to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

In no event shall the making by the City of Clare of any payment due to Isabella constitute or be construed as a waiver by the City of Clare of any breach of a provision of this Agreement, or any default which may then exist, on the part of Isabella, and the making of any such payment by the City of Clare while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the City of Clare in respect to such breach or default.

13. **Modification of Agreement.** Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties hereto.

14. **Agreement Term.** Isabella shall commence performance of the services required under this Agreement on _____, and the Agreement shall continue through September 30, 2011, unless terminated as provided in paragraph 3 or 13; or is otherwise amended by the written authorization of the parties.

15. **Termination of Agreement.** Either party shall have the right, upon ninety (90) calendar days prior written notice to the other party, to terminate this Agreement. In the event this Agreement is terminated, compensation shall cease at the end of the calendar month during which the termination is effective.

16. **Return of the City of Clare Records and Equipment upon Agreement Termination.** Upon termination or completion of this Agreement, Isabella shall turn over to the City of Clare all records, property, and equipment of the City of Clare within fifteen (15) days of such termination or completion.

17. **Section Titles.** The titles of the sections set forth in this Agreement are inserted for the convenience of reference only, and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

18. **Complete Agreement.** This Agreement contains all of the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

19. **Invalid Provisions.** If any provision of this Agreement is held to be invalid, it shall be considered to be deleted, and the remainder of this Agreement shall not be affected thereby. Where the deletion of the invalid provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the provision was declared invalid.

20. **Certification of Authority to Sign Agreement.** The persons signing on behalf of the parties certify by their signatures that they are duly authorized to sign this Agreement on behalf of said parties and that this Agreement has been authorized by said parties.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have fully executed this instrument on the day and year first above written.

WITNESSED BY:

COUNTY OF ISABELLA

Date

By: _____

Date

By: _____

WITNESSED BY:

CITY OF CLARE

Date

By: _____

Date

By: _____

Application to Administer and Enforce
Michigan Department of Energy, Labor & Economic Growth
Bureau of Construction Codes
Office of Local Government and Consumer Services
P.O. Box 30254, Lansing, MI 48909
517-241-9347
www.michigan.gov/bcc

Authority: 1972 PA 230 Completion: Mandatory Penalty: Governmental subdivisions will not be approved to administer and enforce code(s)	DELEG is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
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NAME OF GOVERNMENTAL SUBDIVISION		CONTACT PERSON (Elected Official)	
ADDRESS (Street Number and Name)			
CITY	COUNTY	STATE MI	ZIP CODE
TELEPHONE NUMBER (Include Area Code)	FAX NUMBER (Include Area Code)	E-MAIL ADDRESS	

A. Code Adoption

To assume responsibility for the administration and enforcement of the act and the state code in accordance with Section 8b(6) of 1972 PA 230. **Attach a copy of the ordinance assuming responsibility for administration and enforcement of the act and the code.** (Ordinance may be a proposed ordinance)

State Code(s) to be Enforced

Building Mechanical
 Electrical Plumbing

B. Enforcing Agency

1. This is to certify the enforcing agency is qualified by experience or training to perform the duties associated with construction code administration and enforcement, including the code and all related acts and rules.

Name of Inspector(s) <small>(Attach additional sheet, if necessary)</small>	Registration Number	Experience and/or Qualifications

Name of Plan Reviewer(s) <small>(Attach additional sheet, if necessary)</small>	Registration Number	Experience and/or Qualifications

Each inspector listed on the application must provide verification that he/she will perform inspections and/or plan review functions for the specific code discipline(s) identified.

Are the inspector(s) listed above associated with a private inspection agency? Yes No

If yes, complete the following:

Name and address of the private inspection agency _____

Governmental official responsible for the decision making as it relates to code administration and enforcement.

Name _____ Title _____ Registration No. _____

(Attorney General Opinion No. 4885, dated August 15, 1975, provides that an enforcing agency must be a public official or governmental agency. Inspection functions or other technical assistance may be performed under contract with a private organization, but all decisions and official actions based on such inspection or technical advice must be made by the enforcing agency. Any formal actions such as the issuance, suspension, revocation, or cancellation of permits is exclusively within the purview of the governmental entity. Decision making by a non-governmental entity in which government is not the final authority is in violation of the Michigan Constitution.)

B. Enforcing Agency (continued)

2. This is to certify the following services will be provided by the enforcing agency:

- | | | |
|--|---|---|
| <input type="checkbox"/> Plan Review | <input type="checkbox"/> Permit issuance | <input type="checkbox"/> Timely field inspections |
| <input type="checkbox"/> Issuance of final approval and certificate of occupancy | <input type="checkbox"/> Retention of records | <input type="checkbox"/> Identification/resolution of code violations |

3. This is to certify a copy of the ordinance(s) assuming the responsibility to administer and enforce the state code(s) and a copy of each code enforced will be available for public viewing at the offices of the local governmental subdivision.

4. This is to certify the application for permit and permit forms are in compliance with the requirements of Section 10 of 1972 PA 230. **Attach copies of the application(s) for permit and a copy of the permit form.**

5. This is to certify that procedures for the administration and enforcement of the code have been adopted by the enforcing agency. These procedures govern the operation of the code administration and enforcement program for the governmental subdivision. The procedures should include:

- (i) How permit applications are reviewed and approved.
- (ii) How plans are reviewed and violations identified during the process are resolved.
- (iii) How permits are issued.
- (iv) How inspections are scheduled and findings reported.
- (v) How code violations identified during inspections are resolved.
- (vi) Record keeping procedures.
- (vii) How certificates of occupancy and final approvals are issued.

Attach a copy of the procedures for the administration and enforcement of the code(s).

6. This is to certify fees have been adopted for the administration and enforcement of the code(s) in compliance with Section 22 of 1972 PA 230. **Attach a copy of the fee schedule.**

C. Construction Board of Appeals

This is to certify a Construction Board of Appeals has been established in accordance with Section 14 of 1972 PA 230. The names and qualifications of the members of the Construction Board of Appeals is listed below. *(Attach additional sheet, if necessary)*

Attach a copy of the Board of Appeals procedures.

Name	Qualifications <small>(Include professional license number and/or registration number)</small>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

D. Certification

I certify the information given in this application to administer and enforce is true and accurate to the best of my knowledge.

Name of Elected Official (Type or Print) _____ Title _____

Signature of Elected Official _____ Date _____

Copies of all documents attached to or submitted with this application should include a reference to the governmental subdivision.



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
LANSING

STANLEY "SKIP" PRUSS
DIRECTOR

May 5, 2010

Mr. David C. Williams, Sr.
PO Box 511
Farwell, MI 48622

Dear Mr. Williams:

This office is recommending that the building official classification be added to your registration. Your name has been placed on a list, which is going before the Construction Code Commission on July 7, 2010, for their approval.

Upon final approval from the Commission, a certificate will be sent to you. You, however, may begin performing the duties of a building official pending final approval. The educational requirements outlined in R 408.30055 of the Building Official, Plan Reviewers, and Inspector rules will commence upon final approval by the Construction Code Commission.

Please note, Rule 338.2310 (2) of the Michigan Building Officials and Inspectors Registration Act, PA54 of the Public Acts of 1986, states in part:

"An inspector shall not be permitted to inspect his or her own work in a governmental subdivision."

The above statement would also include, but not be limited to, any work performed by any entity of which you are a principle or an employee. In addition, if a change in your inspection jurisdiction occurs, please notify this office in writing.

If you have any questions, you may contact me at (517) 241-9347.

Sincerely,

Jennifer Parker

Jennifer Parker
Building Division

cc: Ken Hibl, Manager, City of Clare

Providing for Michigan's Safety in the Built Environment

BUREAU OF CONSTRUCTION CODES
P.O. BOX 30254 • LANSING, MICHIGAN 48909
Telephone (517) 241-9347 • Fax (517) 241-9308
www.michigan.gov/dleg

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RESOLUTION 2010-039

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH ISABELLA COUNTY FOR PLUMBING AND MECHANICAL INSPECTION SERVICES.

WHEREAS, the City currently provides electrical and building permit and inspection services to its residents and businesses but must presently rely on the State of Michigan for plumbing and mechanical permit and inspection services community members with responsive and efficient services; and

WHEREAS, the City desires to improve the responsiveness and efficiency of plumbing and mechanical permit and inspection services to its residents and business community; and

WHEREAS, the City has received a proposal from Isabella County to provide said services; and

WHEREAS, the City has determined that receiving said services from Isabella County will be in the best interests of the City.

NOW THEREFORE BE IT RESOLVED THAT, the Clare City Commission hereby approves an intergovernmental agreement for plumbing and mechanical inspection services with Isabella County, the terms, conditions, and parameters of said services as outlined within said agreement.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INSOFAR AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 17th day of May 2010.

Diane Schmidt, City Clerk