CITY COUNCIL ACTION REPORT

July 31, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Timothy L. Richnak, Public Works Director

SUBJECT: Agreement to Provide Fleet Maintenance Services – SOCWA

Background

- Attached is a copy of the proposed Interlocal Service Agreement between the City of Troy and SOCWA, where the City of Troy will provide fleet maintenance services on certain SOCWA vehicles and equipment.
- The Interlocal Service Agreement follows a discussion with the City's insurance pool to further define and outline the parameters of work that is to be performed.
- The agreement was presented to the SOCWA Board on July 11, 2007, and approved by 39 yea's, 0 nay's & 1 absent vote.

Financial Considerations

- No additional staffing is required. There is capacity in the facility to take on the additional work.
- The agreement generates outside revenue and maximizes the use of our facility and staffing.
- This operation also reduces our overall costs in the water budget by reducing SOCWA's operational costs.
- The cost charged to SOCWA is the fully burdened shop rate charged by the Enterprise Fund.
- The Enterprise Fund reviews the fully burdened shop rates on an annual basis, and will adjust the agreement as needed.

Legal Considerations

- Legal counsel 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 SOCWA for fleet maintenance services.

INTERLOCAL SERVICE AGREEMENT FOR FLEET SERVICES

This Interlocal Service Agreement dated, this ____ day of _____2007, is made by and between:

Southeastern Oakland County Water Authority
3910 W. Webster Road
Royal Oak, Michigan 48073

-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 Southeastern Oakland County Water Authority, a municipal authority authorized by state law, 3910 W. Webster Road, Royal Oak, Michigan 48073 (hereinafter "SOCWA") or TROY and SOCWA hereinafter 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 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 with which each might exercise separately;

WHEREAS, due to the fact that public work 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 SOCWA and TROY to repair or maintain SOCWA's public works vehicles on an as requested basis and under the terms set forth below.

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 repair or maintain SOCWA's 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 SOCWA 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 public works vehicles owned by SOCWA. Public works vehicles shall mean loaders, dozers, cars and trucks, whether marked or unmarked, used for public purposes of SOCWA.

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

3. SOCWA, at its own discretion and based on SOCWA's decisions, hereby agrees to 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 SOCWA's loaders, dozers, cars and trucks as requested by SOCWA. 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. After hours, weekends and holidays will be billed at premium rate with a minimum billing of three hours of service. SOCWA understands and acknowledges that TROY'S personnel will first service TROY vehicles. However, TROY will make every reasonable effort to timely complete work for SOCWA under the terms and conditions of this Agreement.

4. SOCWA understands, acknowledges and relies on the representation that TROY will use the highest standards which control the repair and maintenance of loaders, dozers, cars and trucks. TROY will not deviate from these standards even at the request of SOCWA.

5. Subject to an annual adjustment of rates as provided in Paragraph 7, SOCWA 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: **$77.00** per hour or fraction thereof.

   Technician's premium time: Minimum amount of **3 hours** plus **$92.00** per hour or fraction thereof.

6. SOCWA shall also pay the costs for all necessary parts and necessary supplies used in the repair and/or maintenance of the vehicles.

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 SOCWA 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. SOCWA 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: Sam Lamerato, City of Troy – Fleet Division, 4693 Rochester Road, Troy, Michigan 48085.**

9. TROY shall have absolute discretion to refuse to repair and/or maintain any loader, dozer, car or truck under this Agreement. SOCWA is not obligated under this Agreement to use the services of Troy exclusively and SOCWA is expressly allowed to seek other similar services on an as needed basis without violating this Agreement.

10. THIS AGREEMENT DOES NOT, AND IS NOT INTENDED TO INCLUDE ANY WARRANTIES, PROMISES OR GUARANTIES BY TROY OF ANY NATURE WHATSOEVER, CONCERNING THE TECHNICIANAL SERVICING AND/OR REPAIR OF ANY LOADER, DOZER, CAR OR TRUCK.

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 18. Termination shall become effective thirty (30) days from the date of the notice unless TROY or SOCWA has indicated a different termination date beyond the thirty (30) days on the notice supplied to the other party.

    If TROY has vehicles belonging to SOCWA on its site, SOCWA 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, SOCWA 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 SOCWA 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 SOCWA, TROY shall have thirty (30) days to fully invoice SOCWA for any outstanding balances that have not previously been invoiced. SOCWA 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 used parts and supplies to suppliers that it is unable to use on non- SOCWA vehicles being serviced by TROY. If TROY is unable to obtain full refunds or only obtains partial refunds, SOCWA will be invoiced for those non-refundable and/or partially refundable parts and supplies. The invoice shall be paid within 30 days from the date of the invoice. TROY will hold those parts and supplies for 30 days from the date of the invoice for pick up by SOCWA. SOCWA shall be responsible for payment for the non-refundable and/or partially refundable parts and supplies whether or not picked up by SOCWA.

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 any such interlocal agreement.

15. SOCWA 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, and for any damages which may be asserted, claimed or recovered against or from TROY, its elected and appointed officials, employees, 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 SOCWA 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 SOCWA from any and all claims of damage against SOCWA, or for damages to SOCWA'S loaders, dozers, cars and trucks proximately caused by the gross negligence of Troy in the provision of services, maintenance and/or repairs performed for SOCWA 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 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 service of maintain to SOCWA vehicles. Upon requested by SOCWA, TROY shall provide a Certificate of Insurance as evidence of it coverage.

18. TROY represents and agrees that all work for SOCWA under the terms of this Agreement shall be performed in accordance with all appropriate and applicable industry standards.

19. Within ten (10) days from the execution of this Agreement, SOCWA shall provide a Certificate of Insurance acceptable to the City 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 maintenance and repairs done by Troy and the use of the vehicles by SOCWA. SOCWA agrees to keep said insurance coverage in effect for the term of this Agreement or any renewals thereof (Sample Certificate attached as Exhibit A). SOCWA 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 the City. 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 named to the left."

SOCWA acknowledges that, once accepted by the Troy Risk Manager, the specified insurance for the Agreement shall remain in full force and effect during the life of the Agreement.

Additionally, 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 the City, shall allow the City to terminate the Agreement with forty-five (45) days written notice.

It shall be the responsibility of SOCWA to ensure that the City is provided with a new Certificate of Insurance acceptable to the City 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.

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 involves, 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: Sam Lamerato, City of Troy – Fleet Division, 4693 Rochester Road, Troy, Michigan 48085. All writing sent to SOCWA shall be sent to: Jeff McKeen.

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

WITNESSES:

CITY OF TROY, a Michigan Municipal Corporation,

_____

By:_____
Louise E. Schilling, Mayor

_____

_____

By:_____
Tonni Bartholonew, City Clerk

_____

_____

Southeastern Oakland County Water Authority, a Michigan municipal Authority,

_____

By:_____
Its:_____

DATE:_____