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: Service Agreement for Use of Vehicle – City of Clawson

Background

- Attached is a copy of the proposed Interlocal Service Agreement between the City of Troy and City of Clawson, where the City of Troy will provide a city owned vehicle, fuel and maintenance services to the City of Clawson.
- 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 Clawson City Council on July 17, 2007, and approved by 3 yea's, 1 nay & 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.
- The $500.00 monthly fee charged to Clawson for the lease of the vehicle will offset the vehicle purchase price, fuel and maintenance. The monthly fee includes 120 hours of use with additional hours billed at a rate of $4.15 per hour.

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 the City of Clawson for Use of Vehicle.

SPL\Service Agreement Clawson\08.06.07- Agreement for Use of Vehicle – Clawson

INTERLOCAL SERVICE AGREEMENT FOR USE OF VEHICLE

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

City of Clawson
425 North Main Street
Clawson, Michigan 48017

-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 Clawson, a Michigan Municipal Corporation, 425 North Main Street, (hereinafter "CLAWSON") or TROY and CLAWSON hereinafter together referred to as the "Parties" or the "Party" are authorized separately by law to provide for the purchase, rental, lease and/or use of vehicles for public purposes 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, CLAWSON is in need of a midsize, 4-door sedan for use in its Senior Citizen program, specifically that vehicle will be used for the transportation of senior citizens to local appointments and the senior center.

WHEREAS, TROY has a motor pool which has available a vehicle (hereinafter "vehicle" or "Troy vehicle") that could be used for the Clawson Senior Citizen program;

WHEREAS, the Parties have mutually agreed that this Agreement be entered into to allow CLAWSON to use a Troy vehicle for its Senior Citizen program as set out above 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 Agreement to allow CLAWSON to use of a Troy vehicle for the specific purposes set out above for its Senior Citizen program under the terms set forth below.

Based upon the foregoing statements, the Parties agree to the following terms, conditions, representations and acknowledgements and mutually agree as follows:

1. TROY is agreeable to providing the use of a midsize 4-door sedan through TROY'S Fleet Division to CLAWSON, on the terms and conditions as set forth in this Agreement. That vehicle is described as **2007 4 Door Chevrolet - Malibu/Color White**. The VIN number of the vehicle is **1G1ZS57F47F277730**.

3. CLAWSON, at its own discretion and based on CLAWSON'S decision, hereby agrees to the use a midsize 4-door sedan from Troy's Fleet Division for the sole purpose of providing service to the Senior Citizen program as set out in this agreement.

4. CLAWSON shall pay $500.00 per month compensation for the use of the vehicle. "Usage" or "Use" of the vehicle shall mean "possession" of the vehicle by CLAWSON. The $500 shall include usage for a maximum of 120 hours per month; however, there shall be no refund to CLAWSON of the $500.00 rental amount if CLAWSON uses the vehicle less than 120 hours per month, or if the vehicle is in CLAWSON'S possession but not used over holidays, weekends or weekdays. The first $500.00 rental payment shall be prorated based upon the hourly use of the vehicle during the first month only. If Clawson uses the vehicle beyond the 120 hours per month, TROY will invoice CLAWSON on a monthly basis for those additional hours at the rate of $4.15 per hour. The $500 per month rental rate shall be paid no later than the fifteenth (15th) day of each month. Invoices for use of the vehicle beyond the 120 hours shall be paid within thirty (30) days of the invoice date. **All rental payments shall be made payable to the City of Troy and sent to Sam Lamerato, Troy Fleet Division, 4693 Rochester Road, Michigan 48085.** The Interlocal Agreement rental rates shall be reviewed once a year when MDOT rate books become available. TROY may adjust the rental rate under the Interlocal Agreement based on the MDOT rate books and notify CLAWSON of any rental rate increases at least thirty (30) days before the effective date of said increase.

5. CLAWSON agrees that the vehicle will be used a maximum of 120 hours per month from 8:00 a.m. to 2:00 p.m., Monday through Friday. CLAWSON agrees that use of the vehicle shall not exceed 1,000 miles per month.

6. CLAWSON agrees that the vehicle shall be parked at the Clawson Community Center, 509 Fisher Ct., Clawson, Michigan 48017.

7. CLAWSON agrees that it shall only allow employees of CLAWSON to drive the Troy vehicle. All such drivers shall have current valid State of Michigan driver's licenses and meet Troy's Criteria Used in Assessing Driving Record attached hereto as Exhibit A.

8. TROY agrees to provide gasoline for the vehicle and perform routine maintenance on the vehicle. CLAWSON shall cooperate with TROY in

producing the vehicle for routine maintenance within 48 hours after notice from TROY that the vehicle is due for routine maintenance. The vehicle shall be refueled at: 500 W. Big Beaver Road, Troy, Michigan 48084. Routine maintenance shall be performed at the Department of Public Works-Fleet Division, 4693 Rochester Road, Troy, Michigan 48085.

9. CLAWSON shall be responsible for operators abuse, negligence and/or any damages to the vehicle beyond normal wear and tear. TROY and CLAWSON shall inspect the vehicle upon delivery and TROY shall prepare a written description of any existing damages to the vehicle, if any. CLAWSON shall sign the written description of the vehicle prepared by TROY. Thereafter, CLAWSON shall be responsible for damages not existing on the date of delivery. CLAWSON shall only have the vehicle serviced at TROY. If CLAWSON is to be held responsible for damages to the vehicle, TROY will invoice CLAWSON for the cost to repair the damages. That invoice shall be paid within thirty (30) days to the City of Troy.

10. THIS AGREEMENT DOES NOT, AND IS NOT INTENDED TO INCLUDE ANY WARRANTIES, PROMISES OR GUARANTIES BY TROY OF ANY NATURE WHATSOEVER, CONCERNING THE FITNESS OF THE VEHICLE FOR A PARTICULAR PURPOSE.

11. Upon of termination of the Agreement by TROY, CLAWSON shall return the vehicle to the Department of Public Works – Fleet Division. TROY may terminate the agreement for non-payment of the use fee, for misconduct by any of the vehicle's drivers, or for any other good cause.

12. 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.

13. 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 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.

14. CLAWSON 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, 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 the use of the Troy vehicle by CLAWSON 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.

15. 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 use of its motor pool vehicle by CLAWSON. Upon Requested by CLAWSON, TROY shall provide a Certificate of Insurance as evidence of coverage.

16. Within ten (10) days from the execution of this Agreement, CLAWSON 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 the use of the Troy vehicle by CLAWSON. CLAWSON agrees to keep said insurance coverage in effect for the term of this Agreement or any renewals thereof (Sample Certificate attached as Exhibit A). CLAWSON shall submit to the 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."

CLAWSON 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 CLAWSON 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.

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 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.

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: Sam Lamerato, City of Troy – Fleet Division, 4693 Rochester Road, Troy, Michigan 48085. All writings sent to CLAWSON shall be sent to: **Mickey Alderman, City of Clawson, 509 Fisher Ct., Clawson, Michigan 48017.**

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 construed 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. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement of the Parties.

25. 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.

26. 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.

27. 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 Bartholomew, City Clerk

_____

CITY OF CLAWSON, a Michigan Municipal corporation,

_____

By:_____
_____, Mayor

_____

By:_____
_____, City Clerk

DATE:_____