

**INTERGOVERNMENTAL AGREEMENT
FOR FLEET SERVICES**

BETWEEN

CITY OF PORTLAND AND OREGON METRO

Pursuant to ORS Chapter 190 as to cooperation between municipalities, the **City of Portland** ("City") by and through its CityFleet Division of the Office of Management and Finance ("CityFleet"), and **Oregon Metro** ("Metro") by and through its Department of Parks & Environmental Services enter into this Intergovernmental Agreement (hereinafter "Agreement"). The City and Metro may individually be referenced as the "Party" or collectively as the "Parties".

RECITALS

- A. Metro desires to obtain on-call as-needed professional and technical services for its vehicles and equipment. Requested services may include, but are not limited to, vehicle maintenance and repair, parts procurement, automotive body repair, welding, machining, metal fabrication, specification engineering, custom outfitting, fleet analysis, and fueling.
- B. Public works vehicles have specific performance requirements which require specialized service and maintenance work. It is difficult for public entities to locate local service facilities that are able to perform those specialized services properly and timely.
- C. The City's CityFleet has the facility, tools, and equipment as well as employees with the qualifications, experience, and abilities to provide specialized fleet services in connection with the business of maintaining and repairing government vehicles and equipment such as those owned by Metro and other public agencies. CityFleet is willing and able to perform fleet services for Metro on as-needed and as-requested basis.
- D. Providing services to Metro pursuant to this Agreement is in the City's interest and promotes amicable relationships with other governmental entities. This Agreement will not impact CityFleet's ability to effectively and efficiently support the vehicle administrative needs of its internal bureaus and divisions.
- E. Metro has expressly assured the City that no Metro employees will lose their jobs with Metro in relation to the City performing work under this Agreement. In reliance, the City agrees to perform fleet services under this Agreement on the condition that such performance does not deprive Metro employees of their employment with Metro, or otherwise trigger obligations under ORS 236.605 to 236.640 (the "Transfer Statute").

NOW THEREFORE, in consideration of the mutual promises, conditions and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby incorporate the above Recitals and agree as follows:

I. Services and Responsibilities.

A. CityFleet will provide the following fleet services for Metro-owned vehicles and equipment on an as-needed as-requested basis:

1. Maintenance and Repair Services such as preventive maintenance (PM's) that would be required to be performed at regular intervals in accordance with vehicle manufacturer's guidelines for the class of vehicles and associated equipment, including mandated safety and emissions checks.
2. Parts Procurement including identifying parts and associated materials necessary to outfit, and/or service Metro's vehicles.
3. Automotive Work including automotive body repair, welding, machining, metal fabrication, specification engineering and custom outfitting.
4. Fleet Analysis wherein the City provides its expertise to assist Metro in analyzing and identifying vehicle class economic life cycle and specifications for acquisition of new Metro vehicles and vehicle/equipment outfitting.
5. Fueling Services wherein the City's in-house fueling services would be made available to Metro at City fueling ("in-house") stations and facilitating fueling at commercial off-site fueling to which the City may have fuel services arrangements.
6. Manufacturer's warranty or recall work may be performed if it is cost effective, as mutually determined by the Parties. If the City undertakes any manufacturer's warranty or recall work, the City will charge for labor and materials in accordance with this Agreement.
7. Other Fleet Services such as vehicle or equipment rental.

B. The City will:

1. Provide service on an "as scheduled" and a "first come, first served" basis. However, in the event of emergencies, CityFleet will make reasonable effort to prioritize the service work necessary to accommodate the circumstances for Metro under the terms and conditions of this Agreement. The City will provide current normal hours of operations and locations to Metro and notify Metro in advance of any changes to said hours of operation or locations.
2. Carry out repairs and maintenance in accordance with manufacturer's technical specifications, mandatory specifications or industry standards, while having regard to the age and condition of the vehicle and equipment.
3. Carry out warranty or recall work as mutually agreed, and provide Metro mutually agreed upon notification of the performance of said warranty or recall work.
4. Take reasonable care to ensure its workmanship meets industry standards.

5. Reserve sole discretion to decline to repair and/or maintain any vehicle or equipment. CityFleet will provide explanation as to the reasons for not accepting the vehicle or equipment for service. If the City does not accept the vehicle or equipment for service, Metro is free to undertake the work itself or to contract with others to perform the work.
6. In an emergency, such as inclement weather, make the services outlined in I.A. above available to Metro outside of normal working hours (specified in I.B.1 above) as required for Metro to maintain its necessary operations.

C. Metro will:

1. Deliver the vehicles and equipment that it requests for services to identified City service locations at scheduled times in order for services to be performed.
2. Provide necessary and requested information on ownership, service and usage data so that the City may provide recommendations for vehicle services or Fleet Analysis.
3. Timely (as specified in III.B.) pay costs of services, parts, supplies and other items provided by the City under this Agreement.
4. Process recall or warranty claims for Metro to submit for reimbursement of charges incurred by City and invoiced to Metro.
5. Use due care to maintain its vehicles and equipment before and after CityFleet's services.
6. Have current insurance, registration and licensing on all vehicle or equipment brought to the City for service.

D. Service Requests, Estimates and Authorizations.

1. Metro will identify an authorized representative (Fleet Coordinator) who will serve as Metro's day-to-day primary contact for coordinating services under this Agreement, including approval of all services performed and billings. The City will identify an authorized representative of CityFleet who will be the primary liaison regarding scheduling and coordinating performance.
2. The CityFleet representative and Metro Fleet Coordinator will be responsible to establish and maintain written, agreed-upon administrative procedures to process Metro's requests for services under this Agreement (Work Requests), CityFleet's schedule for performance and estimated cost for requested work to be performed to specifications (Work Proposals) and Metro's authorization for CityFleet to perform work (Work Authorizations).
3. Metro will not request, and the City will have no obligation to provide, non-emergency services on any observed federal, state or City holidays or weekends, when CityFleet personnel are not otherwise on duty.
4. The City will have no obligation to service non-Metro vehicles or equipment even if Metro may have fleet service responsibilities for the vehicles or equipment. Notwithstanding any third party authorization, the City reserves its discretion to perform work in accordance with I.B.5.

II. Term.

This Agreement is effective **January 1, 2016**. Either Party may terminate this Agreement upon thirty (30) days written notice. Any termination will not prejudice any rights or obligations accrued to the Parties prior to termination.

III. Payment and Billing.

- A. Services will be provided to Metro on a cost-reimbursement basis, inclusive of direct and indirect costs in furnishing personnel, materials and use of equipment to provide services under this Agreement. All rates and direct charges for services rendered are calculated and subject to change on a fiscal year basis. At least 30 days prior to the end of the fiscal year, the City will provide notice of proposed new rates applicable to the next fiscal year. Examples of direct charges would be for vehicle maintenance and repair, parts procurement, automotive body repair, welding, machining, metal fabrication, specification engineering, custom outfitting, and fueling. Applicable overtime pay, emergency callout pay or other compensation that the City is obligated to pay pursuant to collective bargaining agreements are in addition to the hourly labor rate. Overtime will be charged at a multiplier of 1.20 (of the Labor Hourly Rate from the table below). The City general fund overhead (GFOH) rates are used. The following tables outline CityFleet's FY15-16 rates and how they are calculated:

FY15-16 BILLING RATES (CHANGES COMMUNICATED EACH YEAR BY JULY 1ST):

	FY15-16		FY15-16
Labor Hourly	\$ 102.09	Motor Pool Hourly	\$ 6.87
Parts Markup	21.8%	Motor Pool Daily Max	\$ 35.00
Fuel Markup	\$ 0.12	Motor Pool Weekly	\$ 175.00
Vended	5.9%	Motor Pool Monthly	\$ 590.00
Shop Consumables	1.4%	Motor Pool Bikes Hourly	\$ 0
Rentals/Leases	5.53%	Motor Pool Electric Bikes Hourly	\$ 0
GFOH	4.5%	Motor Pool No Show Flat Rate	\$ 10.00

(Labor rate is the same for welding and fabrication, road-calls, auto body work, and specifications)

CALCULATING BURDENED RATES

		FY15-16
Labor:	Hourly Rate x Shop Consumables x GFOH	\$ 108.18
Parts:	Unit Price x Parts Markup x GFOH	\$ 12.73
Vended Parts & Labor:	Unit Price x Vended Markup x GFOH	\$ 11.07
Fuel:	(Unit Price + \$Fuel Markup) x Qty x GFOH	\$ 53.50
Motor Pool:	Rate x Usage Time x GFOH	\$ 14.36
Rentals/Leases:	Rental/Lease Total Invoice x Rental/Lease Rate x GFOH	\$ 110.28

(Examples based upon: \$10/unit part, \$5/gal fuel, 10 gal, 2 hr motor pool rental, \$100 lease invoice)

- B. Monthly billing reports will be sent to Metro's Fleet Coordinator or designee by the 10th of the month. Metro will pay all invoices within 30 days after the invoice date. Any amount remaining unpaid when due will be assessed interest at a rate of 1% per month computed 30 days from the invoice date and compounded monthly.
- C. The City may include additional charges for rebilling on a delinquent account pursuant to Portland City Code 5.48.040 and other reasonable collection costs.

IV. Insurance; Indemnification.

- A. The Parties acknowledge that they are self-insured entities for liability and property damage, and are responsible for providing workers compensation insurance to their own employees as required by law. Each Party's self insurance shall be maintained at levels to exceed the Oregon Tort Claims Act liability limits applicable to the Party and in sums that would be commercially reasonable to protect the Parties' potential liabilities and interests under this Agreement. Each Party must immediately notify the other, not more than thirty (30) days after, if either Party's self-insurance lapses or in any way becomes ineffective. Any claims for injury or damage to person or property arising out of or alleged to arise out of work performed under this Agreement shall be subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act. Both Parties are responsible, regardless of the location of an accident, direction and control at the time of an accident, or where work is being performed, for any injury to their subject workers. Neither Party is required to provide or show proof of any other insurance coverage.
- B. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Metro agrees to fully indemnify, hold harmless and defend the City and its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of activities of Metro, its officers, employees or agents under this Agreement. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, the City agrees to fully indemnify, hold harmless and defend Metro and its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of activities of the City, its officers, employees or agents under this Agreement.
- C. The City has entered into this Agreement in reliance on Metro's express representations that no Metro employees will lose their jobs with Metro as a result of the City performing work under this Agreement as contemplated under the Transfer Statute. Accordingly, Metro shall bear the sole responsibility for any civil, contractual or administrative claims or employee compensation arising from or related to the Transfer Statute in connection with the City's performance of work under this Agreement.

D. The City is not responsible for any liability and property damage arising out of any vehicle subject to this contract as a result of Metro's operation, repair, service or storage of the vehicle.

E. The City is responsible for liability and property damage caused by, or destruction to Metro vehicles and equipment:

1. In the care, custody and control of the City. However, Metro is responsible for inventorying, removing and safekeeping all personal property (such as papers, personal telecommunication devices, briefcases, bags, etc.) before vehicles are brought in for service. The City may but is not obligated to inventory, care, safekeeping or protect any personal property left within Metro vehicles against damage or loss.
2. Stored or undergoing repairs on City premises. However, the City shall not be liable for damage or loss caused by criminal actions of third parties (such as theft or vandalism.)
3. Due to negligent transportation, service and repair performed by the City, subject to other limitations of liability in this Agreement.
4. City shall notify Metro of any loss or damage to Metro vehicles while in the custody and control of City, regardless of the cause of such loss or damage, within 10 days of the City's knowledge of the occurrence.

F. The City is not responsible for vehicle or equipment failures or defects due to normal wear or abuse, or due to Metro's failure to maintain or repair vehicles or parts as needed for prudent property ownership or as recommended by CityFleet. The City is not liable for any defects in vehicles, parts or materials either original to the vehicle or as a result of non-City work on the vehicle. In the event of workmanship not completed to industry standard, CityFleet will redo the work at no additional cost.

V. Notice.

Any notice or communication under this Agreement will be in writing and effective: (a) upon delivery, if delivered personally to the identified Agreement representative below; (b) upon delivery to the manager or person in charge of the offices of the identified representatives during regular business hours; (c) two days after mailing, if deposited in the United States mail, postage prepaid; or (d) one day after deposit, if tendered to an overnight or commercial courier (such as Federal Express), and addressed to the person and address below, or to another designee or address as either party may specify in writing from time to time. Notice sent by facsimile transmission or electronic mail (email) is deemed sufficient when received during regular business hours, except for notice related to default or termination.

Oregon Metro
 Attn: Rory Greenfield,
 Facility and Fleet Operations Manager
 Parks & Environmental Services
 600 NE Grand Avenue
 Portland, Oregon 97232
 Telephone: 503-797-1815
 Facsimile: 503-797-1795
 Email: rory.greenfield@oregonmetro.gov

City of Portland
 Attn: John Hunt, CPFP, Fleet Manager
 OMF/Bureau of Internal Business Services,
 CityFleet Division
 2835 N Kerby Avenue
 Portland, Oregon 97227-1610
 Telephone: 503-823-2277
 Facsimile: 503-823-4374
 email: john.hunt@portlandoregon.gov

The Parties may change the identified Agreement representative or contact information by giving written notice of the changes as provided in this Section.

VI. Dispute Resolution.

If a dispute arises regarding this Agreement, the Parties agree to exercise good faith in expeditiously resolving any conflict. All conflicts should first be discussed and resolved if at all possible by the persons identified in the Notice section. Any conflicts not resolved by the contact person shall be elevated to the designee of the governing board of the Parties, specifically the Mayor for the City and the Chairperson for Metro, for discussion and resolution. The Parties may submit a dispute to mediated negotiation prior to any party commencing litigation, and will participate in good faith in a non-binding mediation process with the mediator selected by mutual agreement of the Parties and all mediator expenses shared equally. If the Parties are unable to mutually agree to a mediator, each Party will select a temporary mediator and those mediators shall jointly select the permanent mediator. In the event of dispute, each Party shall bear its own costs and attorney fees.

VII. General Provisions.

- A. Independent Contractor. In connection with this Agreement, each Party is an independent contractor and will have no authority to bind or commit the other. Nothing herein will be deemed or construed to create a joint venture, joint employment, partnership or agency relationship between the Parties for any purpose.
- B. Nonexclusive Agreement. This Agreement is nonexclusive. Metro is not City's only client and City will continue to provide services to other clients. City is not Metro's only provider for the services contracted herein and Metro may use other providers for the same or similar services.
- C. Protection of and Access to Data. City will use due care to store, secure and backup data created by City through the delivery of the services contemplated herein (hereinafter "Metro Data"). City will provide Metro reasonable access to Metro Data reports upon request by Metro.
- D. Compliance with Laws. The Parties will comply with all applicable federal, state and local laws, rules and regulations applicable to the work as set forth in this Agreement.

- E. Entire Agreement. This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- F. Amendments and Modifications. Any modifications to this Agreement must be made in writing and executed by all Parties. Notwithstanding this general requirement, the Parties may approve modifications to the scope of services to this Agreement without City Council or Board of Commissioners approval so long as the Transfer Statute is not implicated. The City's Chief Administrative Officer ("CAO") may approve and execute amendments and modifications to this Agreement as may be necessary upon City Attorney approval to form. The CAO may delegate some or all responsibilities for this Agreement to the Director of Bureau of Internal Business Services. Metro's Director or designee may approve and execute amendments and modifications to this Agreement as may be necessary upon Metro Attorney approval to form.
- G. No Assignment. Neither Party shall subcontract or assign any part of this Agreement without the written consent of the other Party.
- H. Counterparts & Electronic Transaction. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures and facsimiles.
- I. Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- J. No Third-Party Beneficiary Rights. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

This Intergovernmental Agreement is effective upon full execution by the Parties as shown below.

CITY OF PORTLAND

OREGON METRO

By: _____
 Fred Miller, Chief Administrative Officer
 Office of Management & Finance

By: _____
 Tom Hughes, Metro Council President

Date: _____

Date: _____

Approved as to Form: _____

Approved as to Form: _____



 City Attorney

 Oregon Metro Attorney