

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE STATE OF OREGON AND LOCAL CONTRACTING AGENCY
FOR DISPOSAL OF SURPLUS PERSONAL PROPERTY, VEHICLES, HEAVY
EQUIPMENT, TITLED TRAILERS & WATERCRAFT**

This Intergovernmental Agreement (the “Agreement”) is between the State of Oregon, Department of Administrative Services, (the “State”) and _____ (the “Local Contracting Agency”) (collectively, the “Parties”) for the purpose\ of setting forth the terms and conditions for services to be provided by the State for the disposal of surplus Personal Property, Vehicles, Heavy Equipment, Titled Trailers and Watercraft owned or under the control of the Local Contracting Agency.

RECITALS

Pursuant to ORS 190.110 and ORS 279A.250 to ORS 279A.285 (the “Authorizing Statutes”) and rules adopted in accordance with the Authorizing Statutes, the State is authorized to enter into intergovernmental agreements with state agencies, local governments and special government bodies for the acquisition, distribution, utilization, disposal or sale of surplus personal property in accordance with federal and state laws.

The parties to this Agreement wish to enter into this Intergovernmental Agreement for the disposal of Surplus Property. In entering into this Agreement, the Parties understand and acknowledge that the Local Contracting Agency has no obligation to utilize any of the Services (as defined hereafter) provided by the State pursuant to the Agreement. Notwithstanding this understanding and acknowledgment, the Parties agree that any transaction with respect to the Services provided hereunder shall be governed by this Agreement.

The Parties agree as follows:

1. **DEFINITIONS**

- (a) “Administrative Fee” means the fee, calculated in accordance with the Administrative Fee Schedule attached hereto as Attachment A, which is charged to the Local Contracting Agency by the State for the disposal of a Property Item.
- (b) “Marketing Fee” means the fee charged to a Local Contracting Agency for the cost incurred by the State in connection with the marketing of a Property Item.
- (c) “Property Item” means Surplus Property of the Local Contracting Agency which the Local Contracting Agency requests the State to dispose of pursuant to this Agreement.
- (d) “Reserve Price” means the minimum Transaction Price that the Local Contracting Agency will accept for the sale of the Property Item.

- (e) “Service Fee” means the fee charged to the Local Contracting Agency to cover the cost of repairs, maintenance or other services expended on a Property Item, by or at the direction of the State, when such repairs, maintenance or services may, in the judgment of the State, be expected to increase the potential Transaction Price of a Property Item.
- (f) “Services” means the acquisition, distribution, utilization, disposal or sale of Surplus Property of the Local Contracting Agency by the State.
- (g) “Surplus Property” means surplus property owned or under the control of the Local Contracting Agency that is designated by the Local Contracting Agency to be disposed of by the State.
- (h) “Surplus Property List” means the inventory list of Property Items for disposal maintained by the State.
- (i) “Transaction” means the disposal of a Property Item or group of Property Items by the State for and on behalf of the Local Contracting Agency.
- (j) “Transaction Price” means the disposal price received for a Property Item.

2. SERVICES TO BE PROVIDED.

The State agrees to provide the Services to the Local Contracting Agency on the terms and conditions set forth in the Agreement.

3. TERM OF THE AGREEMENT.

- (a) The Agreement shall be executed on the date it has been signed by all the Parties, and received all approvals required by applicable law.
- (b) The Term of the Agreement shall be for a period of five (5) years after the executed contract date, unless terminated earlier by the Parties in accordance with Section 6 below.

4. COMPENSATION TO THE STATE.

- (a) In consideration for the performance of the Services, the Local Contracting Agency shall pay an Administrative Fee to the State for each Transaction. In addition, the State may also require the payment of a Service Fee and Marketing Fee under the circumstances described hereafter. Local Contracting Agency agrees to pay these fees as assessed by the State.
- (b) The State may charge a Service Fee to the Local Contracting Agency where, in the judgment of the State, the potential Transaction Price of the Property Item may be increased by the repairs, maintenance or services on the Property Item.
- (c) The State may charge a Marketing Fee under the circumstances set forth in Section 5 and Section 7 (c).

- (d) The amount due each of the Parties from the Transaction Price for the disposal of the Property Item shall be calculated as set forth hereafter:
 - (1) First, the Administrative Fee shall be calculated and deducted from the Transaction Price and retained by the State.
 - (2) Second, if a Service Fee or Marketing Fee has also been incurred by the State in connection with the disposal of a Property Item, such fees will be deducted from the balance of the Transaction Price remaining after the deduction of the Administrative Fee. These fees shall also be retained by the State.
 - (3) The balance of the Transaction Price remaining after the deductions set forth in (1) and (2) above shall be remitted to the Local Contracting Agency within thirty (30) days of the receipt of the Transaction Price by the State.

5. REMOVAL OF PROPERTY ITEM FROM SURPLUS PROPERTY LIST

The Local Contracting Agency may, at any time, remove a Property Item from the Surplus Property List by notifying the State in writing. Upon receipt of the notice, the State shall take all actions required to stop marketing efforts in progress for the specified Property Item. As a condition of the removal of the Property Item from the Surplus Property List under this Section, the Local Contracting Agency agrees to pay to the State, within thirty (30) days of receipt of an invoice, the greater of \$100 or the sum of the any Service Fee and Marketing Fee incurred by the State in connection with the Property Item.

6. TERMINATION OF THE AGREEMENT

- (a) This Agreement may be terminated without liability or penalty, by either party, upon thirty (30) days written notice. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- (b) The State may terminate this Agreement immediately without liability or penalty in the event funding sufficient to support the program is suspended, withdrawn, denied or terminated. The State shall have absolute discretion to determine the availability of sufficient funding and may affect termination of this Agreement by delivery of written notice to the Local Contracting Agency.

7. RESPONSIBILITY OF THE LOCAL CONTRACTING AGENCY

- (a) Local Contracting Agency understands and acknowledges that it is under no obligation to utilize the Services of the State.
- (b) In the event that the Local Contracting Agency wishes to utilize the Services provided by the State, it will follow the guidelines established by the State (www.OregonSurplus.com – see Local Government). The information submitted to the State shall contain true and correct information known or, which through due inquiry, reasonably should have been known, by the Local Contracting Agency.

- (c) The Local Contracting Agency may specify a Reserve Price for each Property Item. If the Local Contracting Agency chooses to specify a Reserve Price for a Property Item, it will provide the State with information to support the reasonableness of the requested Reserve Price. The Reserve Price will not be lowered without the agreement of the Local Contracting Agency. If the Local Contracting Agency chooses to specify a Reserve Price, the State may charge a Marketing Fee for any additional expense attributable to the marketing of the Property Item.
- (d) The Local Contracting Agency shall provide such additional information about the Property Item as may be requested by the State in order to provide the Services in an effective and efficient manner.
- (e) The Local Contracting Agency agrees to allow all Administrative Fees, Service Fees and Marketing Fees to be deducted from the Transaction Price in accordance with Section 4 prior to the final disbursement of the balance of the Transaction Price to the Local Contracting Agency.
- (f) Local Contracting Agency shall maintain such insurance as it may deem appropriate on each Property Item to be disposed of by the State pursuant to this Agreement. **The State hereby notifies the Local Contracting Agency that the State does not maintain insurance for the damage to or destruction of any Property Item.**
- (g) Removal of official agencies decals/stickers from vehicles.

8. REPRESENTATION AND WARRANTIES OF THE LOCAL CONTRACTING AGENCY AND AGREEMENT TO INDEMNIFY FOR BREACH

Local Contracting Agency hereby represents and warrants as follows:

- (a) that it is authorized by applicable statutes, administrative rules, ordinances, charter provisions, by-laws and or other applicable governing authority to enter into this Agreement and the Transactions contemplated by this Agreement.
- (b) that this Agreement, when executed and delivered, is a valid and binding obligation of the Local Contracting Agency that is enforceable in accordance with its terms;
- (c) that it owns or is lawfully in possession of the Surplus Property which it authorizes the State to sell in connection with the Services.
- (d) that the information provided to the State with respect to each Property Item is true and correct to the best of its knowledge.
- (e) that it will indemnify the State for any losses the State might suffer as a consequence of the breach of any of the representations and warranties set forth in Section 8 (a) through 8 (d) above.

9. RESPONSIBILITY OF THE STATE.

- (a) The State shall endeavor to use commercially reasonable efforts in providing the Services to the Local Contracting Agency.
- (b) The State will notify the Local Contracting Agency in writing at least thirty (30) days prior to any scheduled changes in services and or fees.
- (c) The State shall be obligated to transmit the proceeds of each Transaction to the Local Contracting Agency in accordance with the terms of the Agreement.
- (d) The State will take necessary actions to assist the Local Contracting Agency to become a subscriber to and user of the State Surplus Property disposal network, which belongs to and is used by the State of Oregon and its constituent agencies and divisions.

10. LIMITATION OF LIABILITY

The State's maximum liability for any damages claimed by the Local Contracting Agency, whether in contract or tort, shall not exceed the Administrative Fee which was charged the Local Contracting Agency for disposal of the Property Item (if the Property Item was disposed of) or the Administrative Fee that would have been charged (in the event that the Property Item was not disposed of) by the State. The Local Contracting Agency agrees that in no event shall the State be liable for any damage or destruction of a Property Item or for any indirect, incidental, special, punitive, or consequential damages, or any loss of profits or revenue, including, but not limited to, delay, interruption of business activities, or lost receipts.

11. INDEMNIFICATION BY THE LOCAL CONTRACTING AGENCY

Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the Local Contracting Agency shall indemnify the State against any liability for personal injury or damage to life or property arising from the Local Contracting Agency's actions under this Agreement provided, however, the Local Contracting Agency shall not be required to indemnify the State for any such liability arising out of the wrongful acts of the State, its officers, employees or agents.

12. ASSIGNMENT

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign or transfer its interest in this Agreement without the prior written approval of the other.

13. WAIVER

The failure to either party to enforce any provisions of this Agreement shall not constitute a waiver by that party of that or any other provision of this Agreement, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent, similar breach.

14. SEVERABILITY

If any provision of this Agreement shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision. If any term or provision of this Agreement is declared by a court or tribunal or competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. VENUE, CHOICE OF LAW AND CONSENT

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement. The parties acknowledge that this is a binding and enforceable agreement and to the extent permitted by law, expressly waives any defense that either party does not have the right to seek judicial enforcement of this Agreement.

16. ATTORNEY FEES

In the event a lawsuit of any kind is instituted on behalf of either party to collect any payment due under this Agreement or to obtain performance of any kind under this Agreement, each party shall be responsible for its own attorney fees and all related costs and disbursements incurred therein.

17. INDEPENDENT CONTRACTOR STATUS

The State shall perform all of the Services as an independent contractor. Nothing contained in this Agreement is intended or should be construed as creating the relationship of partners, joint ventures, an association between the State and the Local Contracting Agency or a principal/agent relationship. Nor shall the employees, agents or representatives of either party be considered to be employees, agents or representatives of the other party for any purpose.

18. MERGER

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OR PROVISIONS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT.

19. LOCAL GOVERNMENT DEFAULT

- (a) Local Government will be in default under this Agreement upon the occurrence of any of the following events: Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- (b) Any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made;
- (c) Local Government (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- (d) A proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Local Government or of all or any substantial part of its assets, or (c) similar relief in respect to Local Government under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

20. AGENCY DEFAULT

Agency will be in default under this Agreement upon the occurrence of any of the following events:

- (a) Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement; or,
- (b) Any representation, warranty or statement made by Agency in this Agreement or in any documents or reports relied upon by Local Government is untrue in any material respect when made.

21. REMEDIES

- (a) In the event Local Government is in default under Section 19, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 19, (b) reducing or withholding payment for work or Work Product that Local Government has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Local Government to perform, at Local Government's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, including for interest within the limits set of ORS 293.462, or (e) exercise of its right of recovery of overpayments under Section 22 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- (b) In the event Agency is in default under Section 20 and whether or not Local Government elects to exercise its right to terminate this Agreement under Section 6 or in the event Agency terminates this Agreement under Sections 6 (a) or (b), Local Government's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed according to the requirements, acceptance criteria, representations and warranties of the this agreement and for authorized expenses incurred and interest within the limits of ORS 293.462, less any claims Agency has against Local Government, and (b) for Deliverable-based work, a claim for the sum designated for completing the Deliverable multiplied by the percentage of work completed on the Deliverable and accepted by Agency, for authorized expenses incurred, and interest within the limits of ORS 293.462, less previous amounts paid for the Deliverable and any claims that Agency has against Local Government. In no event will Agency be liable to Local Government for any expenses related to termination of this Agreement under Section 6. If previous amounts paid to Local Government exceed the amount due to Local Government under this Section 21 (b), Local Government shall promptly pay any excess to Agency.

22. RECOVERY OF OVERPAYMENTS

If payments to Local Government under this Agreement, or any other agreement between Agency and Local Government, exceed the amount to which Local Government is entitled, Agency may, after notifying Local Government in writing, withhold from payments due Local Government under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

23. NO THIRD-PARTY BENEFICIARIES

State and Local Contracting Agency are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

24. NOTICES

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party’s Authorized Representative at the physical address, or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender’s receipt of confirmation generated by the recipient’s email system that the notice has been received by the recipient’s email system.

Contact Information for the State:

Carla Jeannette, Program Analyst	Department of Administrative Services
Enterprise Asset Management – Surplus Property	Property Distribution Center
PH: (503) 378-2753	1655 Salem Industrial Drive NE
FAX: (503) 378-3398	Salem, OR 97303-4238
EMAIL: Carla.Jeannette@das.oregon.gov	

Contact Information for the Local Contracting Agency:

(Contact Name)	(Title)
(Name of Agency)	(Address 1)
(PH)	(Address 2)
(FAX)	(City, State, ZIP)
(Email)	

25. NONAPPROPRIATION

Agency’s obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 4 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

26. AMENDMENTS

This Agreement may be amended only by written signed by the Parties and approved as may be required by all applicable laws, rules, and ordinances, Provided however that the Administrative Fee Schedule (Attachment A) may be changed by the State at any time without the consent of the Local Contracting Agency upon written notice to the Local Contracting Agency in accordance with Section 24.

27. SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 15, 19, and 20 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

28. FORCE MAJEURE

Neither Party is responsible for any failure to perform nor any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Each Party may terminate this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

29. ASSIGNMENT AND SUCESSORS IN INTEREST

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

30. MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No wavier or consent under this Agreement will bind a party unless signed by an authorized person representing the consenting or waiving party, such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

31. SIGNATURES

Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each Person signing this Agreement represents and warrants having authority to execute this Agreement.

LOCAL CONTRACTING AGENCY
Name of Organization Here

Print

Sign

Title

Date

Name of Organization Here
(if more than one signature is needed)

Print

Sign

Title

Date

STATE OF OREGON, acting by and through its
– Department of Administrative Services
–Enterprise Asset Management – Surplus
Property

Print

Sign

Title

Date

STATE OF OREGON acting by and through
its – Department of Administrative Services
– Procurement Services

Print

Sign

Title

Date

ATTACHMENT A

ADMINISTRATIVE FEE SCHEDULE

Fees for services provided will, whenever possible and practicable, be deducted from the property-generating Agencies' reimbursement as 'other receivables. Reimbursements for items sold, and fees that exceed revenues, will be billed monthly on net 30 terms.

Please see current Administrative and Service Fees, and Resale Rates listed at Oregon Surplus's website at: <https://www.oregon.gov/DAS/surplus/Pages/Index.aspx>.

Administrative Fee – Personal Property*, Vehicles, Heavy Equipment, Titled Trailers & Watercraft:**

* Personal property accepted under this agreement will normally have a present value of at least \$1,000. Personal property accepted will be determined on a case-by-case basis at the sole discretion of the State.

** The following is a solid, but not all-inclusive, list of what falls into the category of Vehicles, Heavy Equipment, Titled Trailer and Watercraft:

Cars, pick-ups, trucks, graders, bulldozers, RVs, backhoes, front-end loaders, buses, cranes, skidders, motorcycles, skid-steers, snowmobiles, ATVs, excavators, rollers, planes, Sno-cats, forklifts, manlifts, tractors, riding mowers, trenching machine, golf carts, Gators/Mules, trailers, boats (not kayaks, canoes or other small, similar non-motorized boats), etc. **Note:** Individual parts or attachments are categorized as personal property (i.e. tires are not a car; a grader blade is not a grader.)

Service Fee – 3rd Party Towing:

\$ Actual cost (pass through)

Service Fee - repairs, maintenance or services (i.e. battery, tire(s), etc.)

\$ Actual cost (pass through)

Marketing Fee – Supplemental Advertising:

As requested and approved by the property generating agency at: \$ Actual + 20%