



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No. 64-2014

A resolution of the City Council of the City of Milwaukie, Oregon, to initiate an Intergovernmental Agreement for motorcycle maintenance and repair with the City of Portland Fleet Services.

WHEREAS, the City of Milwaukie owns and operates a small fleet of motorcycles for Police Department use; and

WHEREAS, the City of Milwaukie is unable to provide complete servicing of the motorcycle fleet; and

WHEREAS, the City of Portland Fleet Services provides motorcycle maintenance and repair at a high level and has the capacity to serve the City of Milwaukie;

Now, Therefore, be it Resolved that the City Manager is hereby authorized to enter into an Intergovernmental Agreement for motorcycle maintenance and repair with the City of Portland Fleet Services.

Introduced and adopted by the City Council on 7/1/14.

This resolution is effective on 7/1/14.

Jeremy Ferguson, Mayor

APPROVED AS TO FORM:
Jordan Ramis PC

ATTEST:

Pat DuVal, City Recorder

Jonathan V. Beavin
City Attorney

186698

INTERGOVERNMENTAL AGREEMENT
FOR FLEET SERVICES

BETWEEN

CITY OF PORTLAND AND CITY OF MILWAUKIE

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 City of Milwaukie ("Milwaukie") by and through its Department of Public Works enter into this Intergovernmental Agreement (hereinafter "Agreement"). The City and Milwaukie may individually be referenced as the "Party" or collectively as the "Parties".

RECITALS

- A. Milwaukie 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 Milwaukie and other public agencies. CityFleet is willing and able to perform fleet services for Milwaukie on as-needed and as-requested basis.
- D. Providing services to Milwaukie 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. Milwaukie has expressly assured the City that no Milwaukie employees will lose their jobs with Milwaukie 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 Milwaukie employees of their employment with Milwaukie, 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 Milwaukie-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 Milwaukie'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 Milwaukie in analyzing and identifying vehicle class economic life cycle and specifications for acquisition of new Milwaukie vehicles and vehicle/equipment outfitting.
5. Fueling Services wherein the City's in-house fueling services would be made available to Milwaukie 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 Milwaukie under the terms and conditions of this Agreement. The City will provide current normal hours of operations and locations to Milwaukie and notify Milwaukie 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 Milwaukie mutually agreed upon notification of the performance of said warranty or recall work.
4. Take reasonable care to ensure its workmanship meets industry standards.

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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, Milwaukie 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 Milwaukie outside of normal working hours (specified in I.B.1 above) as required for Milwaukie to maintain its necessary operations.
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C. Milwaukie 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 Milwaukie to submit for reimbursement of charges incurred by City and invoiced to Milwaukie.
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. Milwaukie will identify an authorized representative (Fleet Coordinator) who will serve as Milwaukie'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 Milwaukie Fleet Coordinator will be responsible to establish and maintain written, agreed-upon administrative procedures to process Milwaukie'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 Milwaukie's authorization for CityFleet to perform work (Work Authorizations).
3. Milwaukie 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-Milwaukie vehicles or equipment even if Milwaukie 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 July 1, 2014. 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 Milwaukie 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 FY14-15 rates and how they are calculated:

FY14-15 BILLING RATES (CHANGES COMMUNICATED EACH YEAR BY JULY 1ST):

	FY14-15		FY14-15
Labor Hourly	\$ 98.45	Motor Pool Hourly	\$ 6.65
Parts Markup	20.7%	Motor Pool Daily Max	\$ 32.00
Fuel Markup	\$ 0.12	Motor Pool Weekly	\$ 150.00
Vended	5.9%	Motor Pool Monthly	\$ 560.00
Shop Consumables	1.5%	Motor Pool Bikes Hourly	\$ 0
Rentals/Leases	8.41%	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

		FY14-15
Labor:	Hourly Rate x Shop Consumables x GFOH	\$ 104.42
Parts:	Unit Price x Parts Markup x GFOH	\$ 12.61
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	\$ 13.59
Rentals/Leases:	Rental/Lease Total Invoice x Rental/Lease Rate x GFOH	\$ 113.29

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

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- B. Monthly billing reports will be sent to Milwaukie's Fleet Coordinator or designee by the 10th of the month. Milwaukie 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.
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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, Milwaukie 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 Milwaukie, 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 Milwaukie 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 Milwaukie's express representations that no Milwaukie employees will lose their jobs with Milwaukie as a result of the City performing work under this Agreement as contemplated under the Transfer Statute. Accordingly, Milwaukie 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.

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- 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 Milwaukie's operation, repair, service or storage of the vehicle.
- E. The City is responsible for liability and property damage caused by, or destruction to Milwaukie vehicles and equipment:
1. In the care, custody and control of the City. However, Milwaukie 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 Milwaukie 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 Milwaukie of any loss or damage to Milwaukie 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 Milwaukie'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.

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City of Milwaukie
 Attn: Gary Parkin, Public Works Director
 6101 SE Johnson Creek Blvd
 Milwaukie, Oregon 97206-0641
 Telephone: 503-786-7614
 Facsimile: 503-786-7676
 Email: parking@milwaukieoregon.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 Milwaukie, 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. Milwaukie is not City's only client and City will continue to provide services to other clients. City is not Milwaukie's only provider for the services contracted herein and Milwaukie 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 "Milwaukie Data"). City will provide Milwaukie reasonable access to Milwaukie Data reports upon request by Milwaukie.
- 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. Milwaukie's Director or designee may approve and execute amendments and modifications to this Agreement as may be necessary upon Milwaukie 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.

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

CITY OF PORTLAND

CITY OF MILWAUKIE

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

By: *Bill Monahan*
Bill Monahan, City Manager

Date: 7/22/14

Date: 7/15/14

Approved as to Form: ~~AS TO FORM~~

Approved as to Form:

Tracy Reed
Tracy Reed, City Attorney

Justin V. Rennie
City of Milwaukie Attorney

ORDINANCE No. 186698

*Authorize an Intergovernmental Agreement with the City of Milwaukie for the maintenance and repair services of City of Milwaukie vehicles. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Public works vehicles have specific performance requirements which require specialized service and maintenance work.
2. The City of Portland's CityFleet provides specialized maintenance and repairs to its own fleet to meet the needs of the City of Portland. CityFleet has provided maintenance and repair to other local governmental entities. CityFleet is recognized as a leader in the fleet industry for its technical and mechanical capability.
3. City of Milwaukie wishes to engage the services of CityFleet pursuant to an intergovernmental agreement and to compensate Portland for its maintenance and repair services.
4. Providing maintenance and repair services to the City of Milwaukie is in Portland's interest and promotes amicable relationships with other governmental entities. Providing such services will not negatively impact CityFleet's ability to effectively and efficiently support the vehicle administrative needs of Portland's bureaus and divisions.

NOW, THEREFORE, the Council directs:

- a. An intergovernmental agreement to provide maintenance and repair to the City of Milwaukie is hereby approved in substantially the form attached hereto in the IGA as Exhibit A. The Commissioner in Charge of the Office of Management and Finance is hereby authorized to execute the intergovernmental agreement in substantially the form attached hereto and as approved to form by the City Attorney.

Section 2. The Council declares that an emergency exists because delay in proceeding with the intergovernmental agreement would result in additional expense and unnecessarily deprive the City of Milwaukie of fleet vehicle services; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council: JUL 02 2014

Commissioner: Mayor Hales
Prepared by: John Hunt
Date Prepared: June 17, 2014

LaVonne Griffin-Valade
Auditor of the City of Portland
By *Susan Parsons*
Deputy

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Agenda No. **186698**
ORDINANCE NO.
 Title

*Authorize an Intergovernmental Agreement with the City of Milwaukie for the maintenance and repair services of City of Milwaukie vehicles. (Ordinance)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</p>	CLERK USE: DATE FILED <u>JUN 27 2014</u>
<p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales <i>JCH</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p style="text-align: center;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>Paul</i></u> Deputy</p>
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: OMF/Bureau of Internal Business Services CAO: Fred Miller <i>File for Fred Miller</i> Bureau Head: Bryant M. Enge <i>BME</i></p>	<p>ACTION TAKEN:</p>
<p>Prepared by: John Hunt: pp Date Prepared: June 17, 2014</p>	
<p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>LF</i></p>	
<p>Council Meeting Date July 2, 2014</p>	

AGENDA

TIME CERTAIN
 Start time: _____

Total amount of time needed: _____
 (for presentation, testimony and discussion)

CONSENT

REGULAR
Total amount of time needed: _____
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	