

**INTERGOVERNMENTAL AGREEMENT
("Agreement")**

between

THE CITY OF SALEM,
an Oregon municipal corporation,
("Salem")

and

MARION COUNTY FIRE DISTRICT 1,
An Oregon rural fire protection district,
("District")

for

REPAIR OF VEHICLES AND EQUIPMENT

RECITALS

WHEREAS, the City of Salem is a municipal corporation of the State of Oregon; and

WHEREAS, the Marion County Fire District 1, is an Oregon Rural Fire Protection District; and

WHEREAS, the District wishes Salem perform maintenance of District vehicles and equipment on behalf of the District; and

WHEREAS, Salem has the facilities to perform maintenance of District vehicles and equipment, and

WHEREAS, Salem and District wish to enter and intergovernmental agreement pursuant to ORS 190.110, which shall set forth the obligations of the Parties.

NOW THEREFORE, in consideration of the mutual obligations and benefits set forth herein, the Parties hereby agree as follows:

1. **SALEM'S OBLIGATIONS:**

- 1.1 Salem shall perform maintenance and repair work on as many vehicles and pieces of equipment of Marion County Fire District 1, as Salem's Fleet Manager is willing to accommodate. The work performed and priority for such work shall be of the same level and quality as Salem applies to its own vehicles/equipment. Such priorities, level and quality of work is discretionary with Salem.
- 1.2 Salem shall attempt to schedule maintenance and repair of the District's vehicles/equipment at a time convenient to the District between the hours of 6:30 a.m. and 3:30 p.m., Monday through Friday, Salem holidays excepted.

- 1.3 Salem shall notify the District in writing if any required maintenance or repair work is beyond the expertise or capacity of Salem.

2. THE DISTRICT'S OBLIGATIONS:

- 2.1 The District shall pay Salem the following sums:
 - a. \$99.00 per hour during Fiscal Year 2018-19 for Salem's repair and maintenance work performed pursuant to this Agreement. In subsequent fiscal years the rate per hour charged by Salem may be revised effective July 1st.
 - b. Salem's cost for parts plus thirty-three percent (33%).
 - c. The actual costs Salem incurs to subcontract any work to be performed pursuant to this Agreement. All such subcontracts require prior, written approval from the District.
- 2.2 The District shall pay Salem all sums due within sixty (60) days of the date of mailing by Salem of Salem's itemized billing therefore.
- 2.3 The District shall provide timely information to Salem about performance problems with any vehicles/equipment on which Salem has performed repair or maintenance work within 180 days immediately prior to the performance problems.
- 2.4 The District shall deliver to Salem's Fleet Services Division Building #3 all vehicles/equipment for which Salem service is requested and shall retrieve all vehicles/equipment upon completion of service.
- 2.5 The District shall provide all return transportation for individuals delivering vehicles/equipment to Salem pursuant to subsection 2.4 of this Agreement.

3. GENERAL PROVISIONS:

- 3.1 Subject to the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), each party to this Agreement agrees to indemnify the other from each and every claim which the indemnitor would be legally liable to pay if: (a) a claim asserting the same loss or injury were made directly against the indemnitor, whether or not such a direct claim is actually made; and (b) the loss or injury sustained by the claimant resulted from the acts, errors or omissions of the indemnitor or those for whose actions the indemnitor is legally responsible. This mutual right to indemnity is in addition to and not in lieu of any other right of contribution or indemnity which may exist in favor of either party under Oregon law. "Indemnify," as used herein, means to indemnify, defend, or hold harmless.
- 3.2 Unless sooner terminated as provided in subsection 3.3, this Agreement shall be effective upon the date of the last signature below, until June 30, 2020.
- 3.3 This Agreement may be terminated by either party, with or without cause,

by providing the other with not less than thirty (30) days' prior written notice.

- 3.4 This Agreement represents the entire integrated understanding of the parties concerning the subject matter hereof. It supersedes all prior agreements, negotiations, and representations, whether written or oral. This Agreement may only be amended by a writing executed with the same formalities as this Agreement.
- 3.5 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by one or the following methods: by personal delivery; by sending via a reputable commercial overnight courier; by mailing using registered or certified United States mail, return receipt requested, postage prepaid; or by electronically confirmed facsimile transmission to the address or facsimile number set forth below:

If to Salem: Jim Schmidt, Fleet Manager (or his successor in office)
1455 22nd Street SE, Building 3
Salem, Oregon 97302
Fax: 503-588-6408

If to the District: Kyle McMann, Deputy Fire Chief, Marion County Fire District 1
(or his successor in office)
300 Cordon Road NE
Salem, Oregon 97317
Fax: 503-588-6537

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

- 3.6 This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Marion County. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate the choice of venue made in this subsection.
- 3.7 The District and Salem agree to obtain and maintain in full force at all times during the term of this Agreement, a policy of general liability insurance with liability limits of not less than \$2,000,000.00 (two million dollars). Salem, as a government body, may fulfill the insurance obligations listed above through a program of self-insurance, provided that the self-insurance program complies with all applicable laws and provides insurance coverage equivalent to both type and level of coverage to that listed above.
- 3.8 In the event any provision of this Agreement is found by a court of competent

jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of the District and Salem as set forth in this Agreement.

- 3.9 The parties agree that they will comply with all federal, state and local laws, regulations, executive orders that may be applicable to this Agreement. The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230, and 279B.235.
- 3.10 All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 3.11 The parties agree that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by either party.
- 3.12 Neither party to this Agreement shall hold the other responsible for any damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees, or agents.
- 3.13 One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF SALEM

MARION COUNTY FIRE DISTRICT 1

By: _____
Steve Powers, City Manager

By: _____
Kyle McMann, Deputy Fire Chief

Date: _____

Date: _____