

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN STATE OF OREGON AND PUBLIC AGENCY  
FOR MOTOR VEHICLE RENTALS, FUEL PURCHASES,  
AND MOTOR POOL SHOP SERVICES**

This Intergovernmental Agreement ("IGA") is entered into under ORS 190.110, 190.240, and 283.305 to 283.350, by the State of Oregon, acting by and through its Department of Administrative Services ("State") and **City of Salem** ("Public Agency") (collectively, the "Parties") for the purpose of establishing the terms and conditions of:

(i) Transactions in which the Public Agency rents motor vehicles ("Rented Vehicles") from the State ("Motor Vehicle Rentals");

(ii) Transactions in which the Public Agency purchases fuel from the State ("Purchased Fuel Transactions"); and

(iii) Transactions in which the Public Agency obtains repair services (including materials and labor), car wash services, inspections and certifications required under Oregon law, and towing services from the State for Public Agency-owned motor vehicles ("Shop Services").

Motor Vehicle Rentals, Purchased Fuel Transactions, and Shop Services are collectively referred to as "Services."

While the Parties acknowledge that the State has no obligation to provide, and the Public Agency has no obligation to purchase, any Services, the Parties also agree that the terms and conditions set forth in this IGA, including Exhibit A attached hereto and incorporated herein, shall constitute the terms of each contract for Services between the Parties entered into under this IGA ("Transaction").

Terms defined in the singular form shall have the same meaning when used in the plural form, and vice versa. When used in Exhibit A, the defined terms shall have the meaning given above.

**A. AUTHORITY.** The State may enter into agreements with public agencies for Services, subject to the requirements and restrictions of ORS 283.305 to 283.350. For purposes of this IGA and resulting Transactions, the Public Agency represents and warrants that it is either a unit of local government as defined in ORS 190.003, a public entity identified in ORS 283.310(1)(b), or an intergovernmental entity created under ORS 190.010 and acting under a valid intergovernmental agreement.

## **B. DURATION; COMPENSATION; TERMINATION OF IGA.**

1. This IGA shall become effective upon execution by the Parties and shall continue for an initial term of ten years unless earlier terminated by either Party upon written notice to the other Party. The Parties may agree to extend the IGA for additional two-year terms, or any portion thereof, by amendment.
2. **Effect of IGA Termination on Transactions.** All Transactions entered into under this IGA terminate on the date of IGA expiration or termination. However, no expiration or termination of this IGA or of any Transaction shall extinguish or prejudice the State's right to enforce this IGA or the terms of any Transaction with respect to any default or failure to perform by the Public Agency that has not been cured.

## **C. MOTOR VEHICLE RENTALS.**

1. Daily Rental Transactions. The Public Agency may enter one or more Motor Vehicle Rental Transactions on a daily rental basis as follows:

- a. Duration. Motor Vehicle Rental Transactions on a daily rental basis ("Daily Rental Transactions") commence on the date of dispatch of a vehicle to the Public Agency, as recorded in the State's electronic Fleet Management System as "Date and Time Out" and shall expire, unless earlier terminated, on the earlier of the date the Public Agency returns the Rented Vehicle, as recorded in the State's electronic Fleet Management System as "Date and Time Returned," or the date the State indicates to the Public Agency that the Daily Rental Transaction expires and that the Rented Vehicle must be returned. If the Public Agency does not return the Rented Vehicle by the close of business on the date the State has indicated to the Public Agency that the Daily Rental Transaction expires, the State may take any action authorized by Section 13 of this IGA, including but not limited to the collection of rental charges through the date of the return of the Rented Vehicle.

- b. Checkout Cards for Daily Rental Transactions. The Public Agency must submit a "Checkout Card" to the State prior to each Daily Rental Transaction. The Public Agency may obtain one or more Checkout Cards by completing the form Motor Pool Checkout Card Application ("Application") currently found at <http://www.oregon.gov/das/FleetPark/Pages/forms.aspx> and by submitting the completed Application by facsimile to 503-378-5813 or by mail to DAS Fleet Administration, 1100 Airport Road, S.E., Salem, OR 97301-6082. The State may, but is not required to, issue one or more Checkout Cards to the Public Agency after the State has received the Application. Even if the State has issued one or more Checkout Cards to the Public Agency, the Parties acknowledge and understand that the State may agree to a Daily Rental Transaction only if a State-owned motor vehicle is available for the date, time, and duration requested, as determined by the State in its sole discretion.

2. Long-Term Rental Transactions. The Public Agency may enter one or more Motor Vehicle Rental Transactions on a long-term rental basis as follows:

a. Duration. A long-term rental is defined as a Motor Vehicle Rental for a continuous number of days for any term greater than thirty days, or vehicles requested to be permanently assigned to a specific agency for a period of time greater than thirty days (“Permanent Assignment”). Motor Vehicle Rental Transactions on a long-term rental basis (“Long-Term Rental Transaction”) commence on the date recorded in the State’s electronic Fleet Management System as “Begin Date and Time,” and shall expire, unless earlier terminated, on the earlier of the date the Public Agency returns the Rented Vehicle to the State as recorded in the State’s electronic Fleet Management System as “End Date and Time,” or the date the State indicates to the Public Agency in writing that the Long-Term Rental Transaction expires and that the Rented Vehicle must be returned.

b. Permanent Assignment Requests. The Public Agency must obtain approval for a Permanent Assignment from the State for each Long-Term Rental Transaction. The Public Agency may obtain a Permanent Assignment Request Form (“Request”) at <http://www.oregon.gov/das/FleetPark/Pages/forms.aspx>. The State may agree to a Long-Term Rental through a Permanent Assignment Request only if a State-owned motor vehicle is available for the duration requested, as determined by the State in its sole discretion.

3. The duration of a Long-Term Rental Transaction and the duration of a Daily Rental Transaction are referred to as “Rental Term.”

4. Driver Authorization.

a. Safe Operation. The Public Agency shall be solely responsible for ensuring that all Rented Vehicles are operated only by safe, careful, legally qualified, and properly licensed drivers. The drivers shall be 18 years of age or older, and employed or otherwise under the direct control of, the Public Agency and shall be conclusively presumed to be employees or volunteers of the Public Agency and not of the State. The Public Agency represents to the State that its personnel, including the driver of any Rented Vehicle, are its officers, employees, or agents, as those terms are used in ORS 30.265. Those personnel shall in no event constitute or be considered officers, employees, or agents of the State for the purposes of the Oregon Tort Claims Act, ORS 30.260 to 30.300, or in any manner, or for any purpose. The Public Agency shall cause the Rented Vehicles to be used and operated with reasonable care and caution to prevent loss and damage due to negligent, reckless, or other wrongful use, abuse, fire, theft, collision, or injury to persons or property. Further, on written complaint from the State to the Public Agency specifying any reckless, careless, or abusive handling of a Rented Vehicle, the Public Agency shall remove the driver of any such vehicle. In addition, the Public Agency shall ensure that its drivers comply with all policies, conditions, and regulations now or subsequently made by the State with respect to the proper use, care, and operation of the Rented Vehicles.

b. Rented Vehicle Operator Qualifications. The Public Agency shall not authorize any person to operate a Rented Vehicle or to present a Permanent Assignment Request or a Checkout Card unless the person is at least 18 years of age and has both a valid driver’s license and a driving record that

meets the standards set by the Public Agency for operating Public Agency-owned motor vehicles. Upon receipt of written request from the State, standards of the Public Agency must be made available for review. The Public Agency shall not allow any person to operate a Rented Vehicle if the Public Agency observes or should reasonably be aware that the person is impaired or otherwise not in a physical, mental, or emotional condition to safely and lawfully operate a moving vehicle.

c. Required Driving Record Screening Measures. The Public Agency shall implement such internal procedures as may be necessary to monitor the driving record of any assigned driver, and shall be responsible for reporting to the State, on the State's request, any traffic infractions and moving vehicle violations incurred by assigned drivers. The State may at any time investigate the driving record of any person presenting a Permanent Assignment Request or a Checkout Card, although it shall not be obligated to do so and shall have the right to rely on the Public Agency's driving record screening measures.

5. Assignment of Alternative Fuel Vehicles. The State is mandated by Federal Regulations to purchase alternative fuel vehicles. The U.S. Department of Energy's definition of an alternative fuel includes the following:

- Mixtures containing 85% or more by volume of alcohol fuel, including methanol and denatured ethanol
- Natural gas (compressed or liquefied)
- Liquefied petroleum gas (propane)
- Hydrogen
- Coal-derived liquid fuels
- Fuels derived from biological materials
- Electricity (including electricity from solar energy)
- 100% Biodiesel (B100) \*

The Public Agency may request vehicles that use alternative fuels ("AFVs") or bio-diesel blends (B20) as Rented Vehicles, subject to availability, as determined by the State in its sole discretion.

\* Pure biodiesel (B100) is considered an alternative fuel. Lower-level biodiesel blends are not considered alternative fuels.

6. Rental Rates.

a. The rates applicable to Daily Rental Transactions and Long-Term Rental Transactions are posted at <http://www.oregon.gov/das/FleetPark/Pages/rates.aspx>, which is updated as the rates are amended. These rates, as they may be amended from time to time, are hereby expressly incorporated into this IGA.

b. Effect of Early Termination of Long-Term Rental Transaction. If the Public Agency terminates a Long-Term Rental Transaction before thirty (30) calendar days have expired, then the State, at its

discretion, may apply the rates applicable to Daily Rental Transactions to the actual duration of the Long-Term Rental Transaction.

c. Invoiced Charges. The State will indicate the rates applicable to current Daily Rental Transactions and Long-Term Rental Transactions, and the total amounts due to the State from the Public Agency, in the State's monthly invoice to the Public Agency for each Rented Vehicle. The State's determination of applicable rates shall be dispositive.

d. Long-Term Rental Rates. These rates are determined by model year of vehicle and average monthly miles driven. Rates are posted at <http://www.oregon.gov/das/FleetPark/Pages/rates.aspx>

7. Fuel Cards. The State shall assign a fuel credit card ("Fuel Card") for each Rented Vehicle. The Public Agency shall use the Fuel Card when obtaining fuel for the Rented Vehicle, in accordance with DAS Statewide Vehicle Policy and the DAS Fleet Policies found at <http://www.oregon.gov/das/FleetPark/Pages/policy.aspx> . The Public Agency may obtain fuel from retail fueling sites where the Fuel Card is accepted. The Public Agency also may obtain fuel from the State Motor Pool (at 1100 Airport Rd SE Salem, OR 97301) or at another State-operated fueling facility if the Public Agency has entered into a Written Cardlock Customer Agreement with the State. Except in circumstances in which fuel is not available from either of these two sources within a distance that can be reached before the Rented Vehicle's fuel is exhausted, the Public Agency may obtain fuel for the Rented Vehicle from any other source. Oregon State Fire Marshal regulations prohibit non-state employees from accessing the self-service fueling at state-owned facilities unless the Public Agency has signed a Cardlock Customer Agreement.

8. Authorized and Prohibited Use. The Public Agency shall use Rented Vehicles only in accordance with DAS Statewide Vehicle Policy and the DAS Fleet Policies found at <http://www.oregon.gov/das/FleetPark/Pages/policy.aspx> and shall use Rented Vehicles only for official public business, as required by ORS 283.310(1)(b). The Public Agency shall not allow drivers of Rented Vehicles to operate them for other than official public business. Unless statutorily authorized, the Public Agency shall not allow drivers or passengers to carry firearms or transport alcohol, contraband, other illegal substances, or **marijuana (as defined in ORS 475.005)**, except as permitted by OAR chapter 125, division 155 to the extent required to accomplish official public business. The Public Agency shall not allow Rented Vehicles to be used to transport animals, except as permitted by OAR chapter 125, division 155 to the extent required to accomplish official public business, and with the prior permission of DAS Fleet. The Public Agency shall prohibit the use or consumption of any tobacco, tobacco products, or marijuana including, but not limited to, cigarettes, cigars, pipes, chew, snuff, electronic cigarettes and smokeless products, inside state vehicles or equipment.

9. Storage and Protection. The Public Agency shall park Rented Vehicles off the public street in a reasonably secure setting. The Public Agency shall lock and properly secure Rented Vehicles at all times.

10. Reporting of Incidents; Fines and Penalties.

a. Notification and Cooperation. The Public Agency shall immediately notify the State by phone of any accidents, theft, traffic violations, and any other similar incidents involving the Rented Vehicle (“Incidents”), whether or not damage results. The current phone number for purposes of this notification is 1-800-378-0077 or any other number the State may provide to the Public Agency for this purpose. After the occurrence of any Incident, as soon as practicable, the Public Agency shall report to the State in writing, giving all information concerning the Incident, including but not limited to, the date, time, place, and circumstances of the Incident, the name of any investigating police officer, any incident report, the names and addresses of any person injured, the owners of any property damaged, the names and addresses of all witnesses, and all statements taken (the “Incident Information”). The Public Agency shall cooperate fully with the State and the police in the Incident investigation and shall cooperate with the State and its legal counsel in defense of any claim or suit that may be brought against the State or for which the Public Agency or the State may be liable, and shall not do anything to impair the defense or impair or invalidate any applicable insurance coverage. The Public Agency shall also promptly provide to the State on the State’s request copies of all citations issued to any driver of a Rented Vehicle, as well as any police report, and all documentation of all Incident Information.

b. Fines and Penalties. The Public Agency shall be responsible for and shall pay (or cause its personnel to pay) all fines, penalties, and forfeitures imposed for parking or traffic violations, or for the violation of any statute, law, ordinance, rule, or regulation of any duly-constituted public authority, which are incurred while the Rented Vehicle is in the possession of the Public Agency.

11. Repairs, Maintenance and Warranty Work. The Public Agency shall maintain each Rented Vehicle in the same condition and running order existing at the time the Public Agency enters the Transaction applicable to the Rented Vehicle. Unless the State approves otherwise, the Public Agency shall obtain all repairs, maintenance and warranty work on Rented Vehicles at the State Motor Pool facility. At the Public Agency’s request, the State may approve, at its sole discretion and prior to the work being performed, Rented Vehicle repairs, maintenance and warranty work to be performed by another facility. The State hereby approves repair work that must be performed in emergency situations when public safety is at risk and when the State motor pool facility is not reasonably accessible. The Public Agency shall pay for all Rented Vehicle repairs and maintenance work.

12. Return of Rented Vehicles. On the earlier of expiration or termination of the Daily Rental Transaction or Long-Term Rental Transaction, as applicable, the Public Agency shall immediately return the Rented Vehicle, together with the Fuel Card and all components, equipment and tools issued with the Rented Vehicle, to the State’s motor pool facility that dispatched or assigned the Rented Vehicle. The Public Agency shall return the Rented Vehicle in the same condition and running order existing at commencement of the Rental Term, ordinary wear and tear excepted. The Public Agency understands and agrees that on the return of a Rented Vehicle to the State motor pool facility, the State is entitled to inspect the Rented Vehicle to identify and record any damage beyond ordinary wear and tear. The Public Agency understands and agrees that, if the State discovers any damage to the Rented Vehicle beyond ordinary wear and tear, on receipt of written notice from the State describing the damage and the costs of repairing it, the Public Agency must reimburse the State for those costs.

13. Failure to Return Rented Vehicle. If the Public Agency fails to return the Rented Vehicle in accordance with Section C (12), above, the State may, at its option and in its sole discretion, do any of the following in any combination:

a. Repossession. The State may, at its option and in its sole discretion, repossess the Rented Vehicle by any lawful means and charge the Public Agency, and the Public Agency shall pay, for the Rented Vehicle at the current rental rate through the date of repossession, together with all costs and expenses of repossession (including, without limitation, attorney fees and court costs). The State may also repossess the Rented Vehicle without demand or notice to the Public Agency and recover the costs and expenses of such repossession (including, without limitation, attorney fees and court costs) if the State determines that the Rented Vehicle is illegally parked, is apparently abandoned, is improperly maintained, or is being operated in violation of law or the terms of this IGA or of the Transaction. The Public Agency acknowledges and agrees that it shall not have a reciprocal right to recover costs and expenses (including without limitation attorney fees and court costs) that it may incur in relation to the State's repossession of a Rented Vehicle.

b. Continued Accrual of Rental Charges. The State may, at its option and in its sole discretion, charge the Public Agency, and the Public Agency shall pay, for the Rented Vehicle at the then-current rental rate until the Public Agency returns the Rented Vehicle; or

c. Rental of Substitute Vehicle. The State may, at its option and in its sole discretion, rent a comparable vehicle for the State's use until the Public Agency returns the Rented Vehicle or until the State otherwise obtains possession of the Rented Vehicle, and may charge the Public Agency, and the Public Agency shall pay, all costs incurred as a result of such rental.

The Public Agency acknowledges and agrees that it shall have no lawful rights to further possession and use of a Rented Vehicle from and after the expiration or termination of the Daily Rental Transaction or Long-Term Rental Transaction, as applicable, and hereby acknowledges that the State shall have the maximum rights of repossession from and after the expiration or termination of the Transaction.

14. Responsibility for Total Loss or Damage. If the Rented Vehicle is determined by the State, in its sole discretion, to be a total loss due to any cause other than defects in the vehicle or fault of the State, the Public Agency shall pay the State the value of the Rented Vehicle. Payment shall be made within sixty (60) days of the date of the total loss designation. For purposes of this Section 14, "total loss" means when the damage to the vehicle meets or exceeds the market value of the vehicle at the time of the loss.

#### **D. SHOP SERVICES FOR PUBLIC AGENCY-OWNED VEHICLES.**

1. Shop Service Transactions. Transactions between the Parties for Shop Services ("Shop Services Transactions") are created when the Public Agency's representative delivers a Public Agency-owned motor vehicle to a State motor pool facility for specifically identified Shop Services, and the State's authorized representative enters a record of the Public Agency's request for specifically identified Shop Services into the State's Fleet Management System. The Shop Services Transaction terminates on the

date the Public Agency pays the State in full for the specifically identified Shop Services rendered for the Public Agency-owned motor vehicle.

2. Availability of Shop Services. The State may agree to perform Shop Services only pursuant to the Public Agency's pre-arranged appointment with the State motor pool facility and subject to the motor pool facility's availability. The Public Agency acknowledges and agrees that the State is obligated to devote first priority for motor pool facility services to State-owned motor vehicles, and therefore the State makes no representations or warranties as to the availability of Shop Services for Public Agency-owned vehicles.

3. Payment for Labor Costs and Parts and Supplies Costs ("Shop Services"). The Public Agency shall pay the State for the State's labor expended for Shop Services labor ("Shop Services Labor") plus the cost for parts and supplies the State uses in providing Shop Services ("Shop Services Materials"), as set forth in the State's invoices to the Public Agency for Shop Services.

a. Shop Services Labor. The amount payable for Shop Services Labor equals the then-prevailing hourly labor rate applicable to State personnel performing the Shop Services multiplied by the total number of hours (to the nearest higher tenth of an hour) of labor expended to complete the Shop Services. The applicable hourly rates for Shop Services Labor are those posted on the internet, currently at <http://www.oregon.gov/das/FleetPark/Pages/rates.aspx> , on the date the Shop Services were performed.

b. Shop Services Materials. The amount payable for Shop Services Materials is the cost to the State of the parts and supplies used plus the markup posted on the internet, currently at <http://www.oregon.gov/das/FleetPark/Pages/rates.aspx> , on the date the Shop Services were performed.

4. Public Agency Damages; Limitation on Remedies. THE PUBLIC AGENCY ACKNOWLEDGES AND AGREES THAT THE STATE'S MAXIMUM LIABILITY AND THE PUBLIC AGENCY'S SOLE REMEDY FOR ANY SHOP SERVICE THAT IS ALLEGEDLY IMPROPERLY, NEGLIGENTLY, OR OTHERWISE WRONGFULLY PERFORMED OR PROVIDED, SHALL NOT EXCEED THE AMOUNT CHARGED BY THE STATE TO THE PUBLIC AGENCY FOR SUCH SERVICE. NOTWITHSTANDING THE FOREGOING, THE STATE MAY ELECT TO PERFORM CORRECTIVE REPAIRS IN LIEU OF A REFUND.

**E. DISCLAIMERS.** Notwithstanding the foregoing, the Parties acknowledge that the State shall have no obligation to enter any Daily Rental Transaction, any Long-Term Rental Transaction, any Purchased Fuel Transaction, or any Shop Services Transaction with the Public Agency, and the Public Agency shall have no obligation to enter any Daily Rental Transaction, any Long-Term Rental Transaction, any Purchased Fuel Transaction, or Shop Services Transaction with the State.



**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the last date set forth below.

\_\_\_\_\_  
Public Agency

\_\_\_\_\_  
Authorizing Signature/ Title

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Street Address

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

State of Oregon, acting by and through its  
Department of Administrative Services,  
Enterprise Asset Management, Fleet Administration

by: \_\_\_\_\_  
Statewide Fleet Manager

Approved by:  
State of Oregon Department of  
Administrative Services,  
Contract Services Section

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved for legal sufficiency by William Nessly on 04/28/2015**

## EXHIBIT A

### GENERAL PROVISIONS FOR MOTOR VEHICLE RENTALS, FUEL PURCHASES, AND SHOP SERVICES (“GENERAL PROVISIONS”)

**1. Integration; Waiver.** There are no understandings, agreements or representations, oral or written, between the Parties to each Transaction not specified herein. No waiver of the terms of the IGA or a Transaction, or consent, shall bind either Party unless in writing and signed by both Parties, and any such written waiver or consent shall be effective only in the specific instance and for the specific purpose given in the written waiver or consent. Failure of the State to enforce any provision of the IGA or a Transaction shall not constitute a waiver by the State of that or any other provision thereof.

**2. Incorporation by Reference.** The data applicable to each Transaction as recorded in the State’s electronic Fleet Management System is incorporated by reference into each Transaction.

**3. Invoices for Services.** The State intends to invoice the Public Agency monthly for Services performed during the preceding month. The Public Agency shall pay in full invoices for Services no later than thirty (30) days after the date of the invoice. The Public Agency shall send payments to the address specified in the invoice. In the event that the Public Agency fails to make timely payments, then the amount not timely paid, together with all other amounts not timely paid, shall bear interest at the lower of eight percent (8%) per annum or the highest rate permitted by law, from the date payment was originally due until the amount owing, together with all interest thereon, is paid in full. Such interest shall not be deemed a penalty, but shall be on account of the estimated expenses that the State incurs in processing late payments. In addition, the interest so charged shall in no event limit or prohibit in any way the State’s entitlement to other remedies set forth in herein.

**4. Insurance.** The Public Agency shall obtain, at its expense, and keep in effect during the term of the IGA, the following insurance coverage:

A. Automobile insurance coverage and uninsured/underinsured motorist liability insurance coverage for the Public Agency’s owned, non-owned and hired vehicles (including Rented Vehicles), or the equivalent for a self-insured Public Agency, in a form acceptable to the State. Such insurance shall be primary, and not excess or contributory, with respect to any collision, accident, claim, loss, or damage involving the Rented Vehicles or involving the Public Agency’s own vehicles for which the Public Agency obtains Shop Services. For property damage or destruction of property, the Public Agency must obtain and keep in effect insurance coverage or self-insurance with coverage not less than the liability limits prescribed by ORS 30.273. For personal injury or death, the Public Agency must obtain and keep in effect insurance coverage or self-insurance with coverage not less than the liability limits prescribed by [ORS 30.271 (for a state agency)/ ORS 30.272 for a local public body]. The state reserves the right to increase, with ninety (90) days’ written notice to the Public Agency, the liability coverage limits requirements.

B. Workers’ Compensation Coverage. All employers, including the Public Agency, that employ subject workers to perform work in the State of Oregon shall comply with ORS 656.017, unless such employers are exempt under ORS 656.126. The Public Agency shall ensure that each of its subcontractors, if any, complies with these requirements.

C. There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew any insurance coverage without thirty (30) days written notice from the Public Agency or its insurer(s) to the Department of Administrative Services. No failure to comply with this notice provision, except for notice of the potential exhaustion of aggregate limits, shall affect the any coverage provided to the State of Oregon, its Department of Administrative Services, and their divisions, officers, and employees.

D. As evidence of the required insurance coverage, the Public Agency shall furnish to the State either documentation of self-insurance acceptable to the State or the Certificate(s) of Insurance, and with regard to liability coverage, policy endorsements evidencing the State of Oregon, the Department of Administrative Services, and their divisions, officers and employees, as additional insureds (or Loss Payees) upon the State's request. Insurance policies shall be obtained from insurance companies authorized to transact the business of insurance and issue coverage in Oregon. The Public Agency shall be responsible for all deductibles, self-insured retention and self-insurance.

**5. Notice.** All notices to either Party shall be in writing unless specified otherwise. Notices may be:

- A. Delivered personally;
- B. Transmitted by electronic mail;
- C. Transmitted by facsimile;
- D. Mailed by regular United States mail;
- E. Mailed by certified United States mail, postage prepaid and return receipt requested; or
- F. Delivered by a recognized national overnight delivery services.

Notices to either Party shall be directed to the applicable address or facsimile number set forth on the signature page of the IGA, or to such other address or facsimile number as either Party may specify by notice to the other Party. Any notice delivered in accordance with this Section 5 shall be deemed received (i) in the case of any notice transmitted by electronic mail, on the date and at the time stated in the e-mail; (ii) in the case of any notice transmitted by facsimile, on the date and at the time the transmitting machine confirms successful transmission; (iii) in the case of any notice delivered by a recognized national overnight delivery service, on the next business day after delivery to the service or on the day designated for delivery; or (iv) in the case of any notice mailed by regular or certified United States mail, three business days after date of postmark or other evidence of deposit into the postal system.

**6. No Assignment; No Encumbrance; Restricted Use.** The provisions for all Transactions shall be binding on and inure to the benefit of the Parties only. Further, the Public Agency shall not assign or transfer any interest in the IGA or any Transaction, and any such attempted assignment or transfer shall be void. The Public Agency shall not encumber any Rented Vehicle, or allow any person who is not an officer, employee or agent of the Public Agency to operate or take possession of a Rented Vehicle without prior written consent of the State, which consent may be denied in the sole discretion of the State.

7. **Amendments.** The IGA and any Transaction may be amended only by written instrument signed by the Parties and approved as may be required by all applicable laws, rules, and ordinances.

8. **Access to Records.** Upon reasonable request, each Party will make its records directly pertinent to the IGA and Transactions available to the requesting Party for review and copying during normal business hours. The Public Agency shall maintain and preserve all such records for six years after the termination or expiration of the IGA or until the conclusion of any controversy or litigation resulting from or relating to the IGA or any Transaction, whichever is longer.

9. **Severability.** If any term, provision, covenant, or restriction of the IGA or any Transaction is held by a court of competent jurisdiction or the legislature to be invalid, void, or otherwise unenforceable, the remainder of the terms, provisions, covenants, and restrictions of the IGA or Transaction shall remain in full force and effect, and shall be interpreted as if the unenforceable provision had not been included.

10. **Order of Precedence.** In the event of a conflict between any provision of the IGA or a Transaction and the DAS Statewide Vehicle Policy or the DAS Fleet Policies, the DAS Statewide Vehicle Policy and the DAS Fleet Policies shall take precedence. In the event of a conflict between these General Provisions and the remainder of the IGA, the remainder of the IGA shall take precedence.

11. **Venue and Choice of Law.** The IGA and each Transaction shall be governed by, and construed and enforced 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 State and the Public Agency that arises from or relates to the IGA or Transactions thereunder shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, that if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise, from any Claim or from the jurisdiction of any court. THE PUBLIC AGENCY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Provided, that with regard to public agencies that are Indian Tribes, the Parties hereby acknowledge and agree that the Public Agency is a federally recognized Indian Tribe and, as such, possesses sovereign immunity. If the Public Agency is an Indian Tribe, the Public Agency represents and warrants to the State that the Public Agency has completed all actions required by applicable tribal law to effectively waive the Public Agency's sovereign immunity for purposes of enforcing the IGA and each Transaction. Except as specifically set forth herein, nothing in the IGA or a Transaction is or shall be deemed to be a waiver of the Public Agency's sovereign immunity for any other purpose beyond the Public Agency's activities under the IGA and each Transaction.

12. **Independent Contractor Status.** Nothing contained in the IGA or any Transaction is intended to or should be construed as creating the relationship of partners, joint-venturers, an association between the State and the Public 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, nor shall drivers of or passengers in any Rented Vehicle be considered to be employees, agents, or representatives of the State for any purpose.

**13. No Third-Party Beneficiaries.** The State and the Public Agency are the only Parties to the IGA and all Transactions, and are the only parties entitled to enforce the terms of the IGA or of any Transaction. Nothing in the IGA or any Transaction 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. Rented Vehicle drivers and passengers shall not be considered under any circumstances to be third-party beneficiaries of the IGA or any Transaction.

**14. Compliance with Applicable Law.** Unless the Public Agency is an Indian Tribe, the State's performance under each Transaction is conditioned on the Public Agency's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein. The Public Agency shall, to the maximum extent economically feasible in the performance of each Transaction, use recycled paper (as defined in ORS 279A.010(cc)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

**15. Representations and Warranties.** The Public Agency represents and warrants that:

A. It is a Public Agency authorized under the applicable statutes, administrative rules, ordinances, charter provisions, by-laws, and other pertinent governing authority to enter into the IGA and each Transaction with the State to obtain the Services, and that the persons requesting Daily Rental Transactions, Long-Term Rental Transactions, Fuel Purchases, or Shop Services Transactions are authorized to do so. The State is entitled to rely on this representation and warranty for requests for any Transaction.

B. It has in force and effect, and will maintain in force and effect throughout the duration of the IGA, the insurance described in this Exhibit A.

**16. Damages; Remedies.** Neither Party shall be entitled to recover from the other indirect, incidental, or special damages under the IGA or in connection with any Transaction. Further, with the sole exceptions of the State's right to recover attorneys' fees, court costs, and expenses under this Exhibit A, Section 17 (hold harmless; indemnification; contribution) and its right to recover attorneys' fees, court costs, and expenses under Section C13(a) (repossession) of the IGA, neither Party is entitled to recover from the other attorneys' fees in connection with claims of any nature arising out of or relating to the IGA or arising out of or related to any Transaction. Neither Party recover from the other costs expended in investigation, expert witnesses, filing fees, appeal bonds, trial or appellate court costs, or any other expenses associated with the evaluation or pursuit of remedies afforded under the IGA or any Transaction for breach thereof.

**17. Hold Harmless; Indemnification; Contribution.**

**A. Hold Harmless; Indemnification.** The Public Agency shall be responsible for any damages, costs, expenses, claims, or liabilities (including but not limited to fines, penalties, towing and impoundment costs under Section 10 of the IGA and claims for repair work requested by the Public Agency under Section 11 of the IGA) which may arise from actions or inactions of the Public Agency, its officers, employees or agents under the IGA or any Transaction. The Public Agency shall indemnify, defend, and hold harmless the State of Oregon and its agencies, divisions, officers, agents, employees, and licensees from and against any damages, costs, expenses, claims or liabilities of any nature arising out of or relating to the actions or inactions of the Public Agency, its officers, agents, or employees under the IGA or any Transaction, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution. These obligations extend to any damages, costs, expenses, claims or liabilities that arise out of any actions or inactions by the Public Agency that constitute violations of the IGA or of the provisions of any Transaction, including, without limitation, any breach of a representation or warranty. The Public Agency's obligations under this Section 17.A shall not extend to any claim primarily caused by the negligent or willful misconduct of the State, its officers, employees or agents, Provided, However, that in cases in which a third party makes a claim or brings an action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 against a Party with respect to which the other Party" may have liability, Section 17.B. shall apply.

In any case in which the Public Agency is obligated to indemnify, defend, and hold harmless the State under this Section 17.A, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or to represent the interests of, the State of Oregon or its officers, employees or agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when, in the State's sole discretion, the State determines that: (a) proposed counsel is prohibited from the particular representation contemplated; (b) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (c) important governmental interests are at stake; or (d) the best interests of the State will be served thereby.

**B. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Public Agency (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Public Agency in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Public Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Public Agency on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

**18. Termination.** Either Party may terminate the IGA or any Transaction for any reason at any time upon written notice to the other Party. Provided, however, that the Public Agency shall remain liable to the State for the value of any Services performed prior to the State's receipt of notice of termination from the Public Agency, or prior to the return of the Rented vehicle, whichever is later.

**19. Survival.** The Public Agency remains liable on a Transaction until Public Agency has satisfied all of its obligations under the Transaction. These obligations, including those under Sections 8, 11 and 17, survive termination or expiration of the IGA or the Transaction.

**20. Interpretation.** The Parties agree that the terms of the IGA and those applicable to Transactions shall not be construed in favor of or against either Party based upon the source of its drafting or any other circumstances.

**21. Indemnification by Public Agency Contractors.** The Public Agency shall take all reasonable steps to cause any of its contractors that are not units of local government as defined in ORS 190.003 to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Public Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor (Claims") arising out of or in relation to the use of a Rented Vehicle. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.