

INTERLOCAL SERVICE AGREEMENT
BETWEEN CITY OF BATTLE CREEK
AND _____ FOR FLEET SERVICES

This Interlocal Service Agreement dated, this ____ day of August, 2016, is made
between:

City of Battle Creek
10 N Division Street
Battle Creek, Michigan 49014

-And-

_____, MI _____

RECITALS

The City of Battle Creek, a Michigan municipal corporation, (hereafter "BATTLE CREEK"), and the _____, a Michigan municipal corporation, (hereafter "_____"), together referred to as the "Parties" or the "Party" are authorized separately by law to provide fleet services (hereafter referred to as "Fleet Services") for their respective public entities; and

The Michigan Constitution of 1963, Article 7, §28, and the Urban Cooperation Act of 1967, being MCL 124.501, et. seq. (the "Act"), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common with which each might exercise separately; and

Due to the fact that some areas of municipal services need to meet specific standards or details which require specialized skills and knowledge, and it is difficult for public entities to locate service providers that are able to perform those specialized services, economically, properly and timely; and

BATTLE CREEK has specific areas of expertise in its Fleet Services Division and has the facilities and personnel capable to perform Fleet Services for _____; and

BATTLE CREEK represents and acknowledges that it has the necessary facilities, tools, equipment and personnel to assist, repair and provide Fleet Services for _____; and

BATTLE CREEK is licensed by the State of Michigan as a Motor Vehicle Repair Facility at the Fleet Services Department garage located at 154 S. Kendall Street; and

The Parties mutually desire to enter into this Agreement to allow BATTLE CREEK to provide Fleet Services to _____ on an as-requested basis as BATTLE CREEK'S schedule and City work load allows; and

Pursuant to resolutions adopted by their respective City Commission and City Council the Parties each have been authorized to execute this Agreement for BATTLE CREEK to provide Fleet Services for _____ on an as-requested basis according to the terms and conditions set forth below.

THEREFORE, the Parties agree, as follows:

1. _____ engages BATTLE CREEKS' Fleet Services Division to provide Fleet Services consisting of the following work: fleet maintenance, repair and fabrication and other fleet related services as requested. BATTLE CREEK will arrange to have a contact person on call, if needed, 24 hours a day, 7 days per week. BATTLE CREEK will not perform any body work under this agreement. _____ understands and acknowledges BATTLE CREEK'S first priority is to service its own municipality and BATTLE CREEK has the absolute right to decline to perform work under this agreement. However, BATTLE CREEK will make every reasonable effort to timely complete work for _____.
2. BATTLE CREEK will perform Fleet Services in accordance with accepted industry standards and practices. BATTLE CREEK will not perform any services under this agreement that would require 3rd party certifications.
3. BATTLE CREEK shall not be obligated to provide a written estimate of fleet services repairs for _____ under this agreement. _____ shall call BATTLE CREEK to make an appointment and complete a work order specifying what work it requests BATTLE CREEK to perform, which work order shall include a waiver consistent with MCL 257.1332(3). _____ shall provide BATTLE CREEK a point of contact person and expressly authorizes that contact person(s) to engage BATTLE CREEK to perform the services requested in the work order.
4. Subject to an annual adjustment of rates as provided in Paragraph 5, _____ shall pay BATTLE CREEK for the services provided as follows:

A. During Regular Business Hours (M-F, 7:00am- 3:30pm):

Employee's time: Current direct operational expenses per hour/plus benefits, which is currently calculated to be \$80.00 per hour, charged at ¼ hour increments for the duration of the agreement.

B. During Weekends, Holidays and after Regular Business Hours:

For services performed after or before regular business hours, or on weekends or holidays, Fleet Services will be billed at premium rate (time and a half for after hours or weekends or double time for holidays) with a minimum billing of three (3) hours of service.

5. _____ shall also pay the costs for all parts, materials and supplies used. An administrative fee of 20% will be assessed on parts, oils and lubricants provided by BATTLE CREEK.
6. Before June 1st of each year, starting in 2017, BATTLE CREEK shall review its personnel costs and any costs affecting their ability to provide Fleet Services under this Agreement. If those costs have increased, then the Parties shall come to an agreement on the amount of and reason for the increased costs for services under the Agreement. Those increased costs will become effective for services provided after July 1st of each year. In the event a Party's collective bargaining agreement with its respective unit changes in the wages or benefits category, then the parties agree to meet and decide on a modified change.
7. BATTLE CREEK shall invoice _____ on a monthly basis for Fleet Services, parts, materials and service charge provided during the preceding month. _____ shall pay BATTLE CREEK'S invoices within thirty (30) days of the invoice date.
8. BATTLE CREEK reserves the right to, in its discretion, withhold or refuse to provide services to _____. _____ is not obligated to use the services of BATTLE CREEK exclusively, and _____ is expressly allowed to obtain Fleet Services through other means or vendors.
9. This Agreement does not, and is not intended to include or connote any warranties, promises or guarantees by BATTLE CREEK of any nature whatsoever, concerning the provision of Fleet Services. SPECIFICALLY, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY IS MADE OR TO BE IMPLIED WITH RESPECT TO SERVICES, MATERIALS OR PARTS PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL BATTLE CREEK BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER UNDER CONTRACT, TORT OR OTHERWISE. BATTLE CREEK shall not be responsible for any third party or Act of God damage that may occur to _____ fleet while on BATTLE CREEK's premises.
10. The Agreement shall continue in effect until terminated by either Party. Either Party may terminate its participation in this Agreement, for any reason (including the convenience of the Party), without penalty. A Party may deliver a written

notice of termination of the Agreement to the other Party in accordance with the notice provision of Paragraph 15. Termination shall become effective thirty (30) days from the date of the notice unless the terminating Party specifies a later termination date in the notice supplied to the other Party.

11. Upon receipt of notice of termination of the Agreement, BATTLE CREEK shall, within thirty (30) days, deliver a final invoice to _____ for any current charges and outstanding balances that have not previously been invoiced or paid. _____ shall continue to be responsible for payment for the cost of services, parts and supplies either invoiced prior to termination or performed or purchased by BATTLE CREEK before the notice of termination. BATTLE CREEK will attempt to return any new or used parts and supplies to suppliers that it is unable to use. If BATTLE CREEK is unable to obtain full refunds or only obtains partial refunds, _____ will be invoiced for those non-refundable and/or partially refundable parts and supplies. _____ shall pay BATTLE CREEK invoice within thirty (30) days from the date of the invoice.
12. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. No liability, right or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.
13. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agency, or employees of any public agency when performing their respective functions within the territorial limits of their respective agencies shall apply to the same degree and extent to the performance of such functions, services and duties under this Agreement. Furthermore, the Parties believe that performance of services and duties pursuant to this Agreement will be in the exercise or discharge of a governmental function.
14. The Parties agree that they shall promptly deliver to the other Party written notice and copies of any claims, complaints, charges, or any other accusations or allegations of negligence or other wrongdoing, whether civil or criminal in nature, that the other Party becomes aware of which involves, in any way the facility, equipment, personnel and/or services under this Agreement. Unless otherwise provided by law and/or the Michigan Court Rules, the parties agree to cooperate with each other in any investigation conducted by another party of any acts or performances of any services under this Agreement.
15. Any written notice required or permitted under the Agreement shall be considered delivered to a party as of the date that such notice is deposited, with sufficient postage, with the U.S. Postal Service. Unless specifically otherwise set out in the Agreement, all notices sent to BATTLE CREEK shall be sent to:

City Manager's Office, 10 N Division Street, Battle Creek, MI 49014

All notices sent to _____ shall be sent to:

_____, _____, MI _____.

16. This Agreement sets forth the entire agreement between the Parties and supersedes any prior understandings or agreements. Amendment or modification of this Agreement shall be in writing signed, dated and approved by both Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not constructed strictly for or against any Party, as both Parties participated in the drafting of this Agreement. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.
17. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from the Agreement. The remainder of this Agreement shall remain in full force.
18. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret or decide any claim arising under this Agreement shall be brought in the Calhoun County Circuit Court, the 10th District Court, or the United States District Court for the Western District of Michigan, Southern Division as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
19. The recitals shall be considered an integral part of the Agreement.
20. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication), right of subrogation as to any Party's rights in this Agreement, or any other right of any kind in favor of any third party beneficiary, individual or legal entity.
21. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and/or agents necessary to perform all of its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting Party.
22. Absent a written waiver, no fact, failure or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a

continuing waiver of any term, condition, or provision of this Agreement. No waiver by a Party shall subsequently affect its right to require strict performance of this Agreement.

IN WITNESS WHEREOF, this Agreement if executed by the Parties on the date hereafter set forth.

CITY OF BATTLE CREEK

By: _____
Rebecca L. Fleury,
Its: City Manager

By: _____
Its: _____

STATE OF MICHIGAN
COUNTY OF CALHOUN

The foregoing instrument was acknowledged before me this _____ day of August, 2016, by Rebecca L. Fleury.

Notary Public
_____, Michigan
My commission expires:

STATE OF MICHIGAN
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____.

Notary Public
_____, Michigan
My commission expires: