

**RESOLUTION NO. 1092**

**A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND THE STATE OF OREGON AND LOCAL CONTRACTING AGENCY FOR DISPOSAL OF SURPLUS PROPERTY.**

**WHEREAS**, the City from time to time uses the State of Oregon to dispose of surplus property owned and under control of the City; and

**WHEREAS**, the City was notified that the previous IGA with the State of Oregon expired at the end of March; and

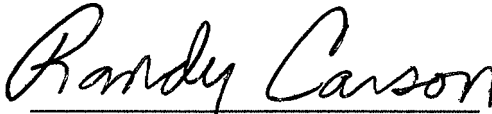
**WHEREAS**, the State of Oregon has proposed a form of IGA that is acceptable to the City; now therefore

**IT IS HEREBY RESOLVED** by the City of Canby Council as follows:

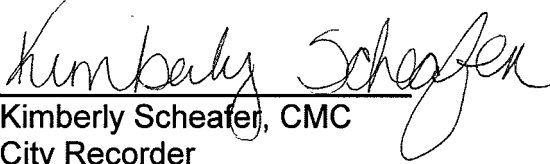
1. That the attached IGA, marked as Exhibit "A" and by this reference incorporated herein, by and between the City of Canby and State of Oregon is hereby adopted. The City Administrator is authorized to sign the IGA on behalf of the City.

This resolution shall take effect on April 20, 2011.

ADOPTED this 20<sup>th</sup> day of April 2011, by the Canby City Council.

  
\_\_\_\_\_  
Randy Carson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE STATE OF OREGON AND LOCAL CONTRACTING AGENCY  
FOR DISPOSAL OF SURPLUS PROPERTY**

This Intergovernmental Agreement ( the "Agreement") is made and entered into this 20<sup>th</sup> day of April, 2011, by and between the State of Oregon; Department of Administrative Services, ( the "State") and City of Canby (the " Local Contracting Agency ") (collectively, the "Parties") for the purpose of setting forth the terms and conditions for services to be provided by the State for the disposal of surplus personal property owned or under the control of the Local Contracting Agency.

**RECITALS**

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

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

The Parties agree as follows:

1. DEFINITIONS

- (a) "Administrative Fee" means the fee, calculated in accordance with the Administrative Fee Schedule attached hereto as Attachment A, which is charged to the Local Contracting Agency by the State for the disposal of a Property Item.
- (b) "Information Documents" means (1) a Property Disposition Request and (2) a Property Tag and (3) such other documents about the Property Item as may be requested by the State.
- (c) "Marketing Fee" means the fee charged to a Local Contracting Agency for the cost incurred by the State in connection with the marketing of a Property Item.
- (d) "Property Disposition Request" means the form prepared by the Local Contracting Agency which requests the State to provide the Services which are the subject of this Agreement.
- (e) "Property Item" means Surplus Property of the Local Contracting Agency which the Local Contracting Agency requests the State to dispose of pursuant to this Agreement.

- (f) "Property Tag" means the document prepared by the Local Contracting Agency for each Property Item which the State is authorized to dispose of on behalf of a Local Contracting Agency pursuant to the Agreement
- (g) "Reserve Price" means the minimum Transaction Price that the Local Contracting Agency will accept for the sale of the Property Item.
- (h) "Service Fee" means the fee charged to the Local Contracting Agency to cover the cost of repairs, maintenance or other services expended on a Property Item, by or at the direction of the State, when such repairs, maintenance or services may, in the judgment of the State, be expected to increase the potential Transaction Price of a Property Item.
- (i) "Services" means the acquisition, distribution, utilization, disposal or sale of Surplus Property of the Local Contracting Agency by the State.
- (j) "Surplus Property" means surplus personal property owned or under the control of the Local Contracting Agency that is designated by the Local Contracting Agency to be disposed of by the State.
- (k) "Surplus Property List" means the inventory list of Property Items for disposal maintained by the State.
- (l) "Transaction" means the disposal of a Property Item or group of Property Items by the State for and on behalf of the Local Contracting Agency.
- (m) "Transaction Price" means the disposal price received for a Property Item.

2. SERVICES TO BE PROVIDED.

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

3. TERM OF THE AGREEMENT.

- (a). The Term of the Agreement shall be for a period of five (5) years commencing on the date it has been signed by the Parties and received all approvals required by applicable law.
- (b). The Agreement may be terminated by the Parties as provided in Section 6 below.

4. COMPENSATION TO THE STATE.

- (a). In consideration for the performance of the Services, the Local Contracting Agency shall pay an Administrative Fee to the State for each Transaction. In addition, the State may also require the payment of a Service Fee and Marketing Fee under the circumstances described hereafter. Local Contracting Agency agrees to pay these fees as assessed by the State.

- (b). The State may charge a Service Fee to the Local Contracting Agency where, in the judgment of the State, the potential Transaction Price of the Property Item may be increased by the repairs, maintenance or services on the Property Item.
- (c). The State may charge a Marketing Fee under the circumstances set forth in Section 5 and Section 7 (c).
- (c). The amount due each of the Parties from the Transaction Price for the disposal of the Property Item shall be calculated as set forth hereafter:
  - (1) First, the Administrative Fee shall be calculated and deducted from the Transaction Price and retained by the State.
  - (2) Second, if a Service Fee or Marketing Fee has also been incurred by the State in connection with the disposal of a Property Item, such fees will be deducted from the balance of the Transaction Price remaining after the deduction of the Administrative Fee. These fees shall also be retained by the State.
  - (3) The balance of the Transaction Price remaining after the deductions set forth in (1) and (2) above shall be remitted to the Local Contracting Agency within thirty (30) days of the receipt of the Transaction Price by the State.

5. REMOVAL OF PROPERTY ITEM FROM SURPLUS PROPERTY LIST

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

6. TERMINATION OF THE AGREEMENT

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

7. RESPONSIBILITY OF THE LOCAL CONTRACTING AGENCY.

- (a) Local Contracting Agency understands and acknowledges that it is under no obligation to utilize the Services of the State.

- (b) In the event that the Local Contracting Agency wishes to utilize the Services provided by the State, it will prepare and deliver to the State, (1) a Property Disposition Request and (2) a Property Tag for each Property Item. These Information Documents submitted to the State shall contain true and correct information known or, which through due inquiry, reasonably should have been known, by the Local Contracting Agency.
- (c) The Local Contracting Agency may specify a Reserve Price for each Property Item. If the Local Contracting Agency chooses to specify a Reserve Price for a Property Item, it will provide the State with information to support the reasonableness of the requested Reserve Price. The Reserve Price will not be lowered without the agreement of the Local Contracting Agency. If the Local Contracting Agency chooses to specify a Reserve Price, the State may charge a Marketing Fee for any additional expense attributable to the marketing of the Property Item.
- (d) The Local Contracting Agency shall provide such additional information about the Property Item as may be requested by the State in order to provide the Services in an effective and efficient manner.
- (e) The Local Contracting Agency agrees to allow all Administrative Fees, Service Fees and Marketing Fees to be deducted from the Transaction Price in accordance with Section 4 prior to the final disbursement of the balance of the Transaction Price to the Local Contracting Agency.
- (f) Local Contracting Agency shall maintain such insurance as it may deem appropriate on each Property Item to be disposed of by the State pursuant to this Agreement. **The State hereby notifies the Local Contracting Agency that the State does not maintain insurance for the damage to or destruction of any Property Item.**

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

Local Contracting Agency hereby represents and warrants as follows:

- (a) that it is authorized by applicable statutes, administrative rules, ordinances, charter provisions, by-laws and or other applicable governing authority to enter into this Agreement and the Transactions contemplated by this Agreement.
- (b) that this Agreement, when executed and delivered, is a valid and binding obligation of the Local Contracting Agency that is enforceable in accordance with its terms;
- (c) that it owns or is lawfully in possession of the Surplus Property which it authorizes the State to sell in connection with the Services.
- (d) that the information provided to the State with respect to each Property Item, including the information provided on the Information Documents, is true and correct to the best of its knowledge.

- (e) that it will indemnify the State for any losses the State might suffer as a consequence of the breach of any of the representations and warranties set forth in Section 8 (a) through 8 (d) above.

9. RESPONSIBILITY OF THE STATE.

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

10. LIMITATION OF LIABILITY

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

11. INDEMNIFICATION BY THE LOCAL CONTRACTING AGENCY.

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

12. ASSIGNMENT.

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

13. WAIVER,

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

14. SEVERABILITY,

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

15. VENUE, CHOICE OF LAW AND CONSENT

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any other agency or department of the State of Oregon) and Local Contracting Agency that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, 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 Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

16. ATTORNEY FEES

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

17. INDEPENDENT CONTRACTOR STATUS

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

18. MERGER.

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

19. NO THIRD PARTY BENEFICIARIES.

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

20. NOTICES

Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, by email, personal delivery, facsimile, or mailing the same, postage prepaid, to the State or Local Contracting Agency at the address, number or email address set forth below in this Agreement, or to such other addresses or numbers as either party may indicate.

**Contact Information for the State:**

Bob "Duke" LaDuke, Program Analyst  
State Surplus Property Program  
PH (503) 378-2207 ext. 224  
FAX (503) 378-8558  
[Bob.w.laduke@state.or.us](mailto:Bob.w.laduke@state.or.us)

State of Oregon  
Property Distribution Center  
1655 Salem Industrial Drive NE  
Salem, OR. 97303-4238

**Contact Information for the Local Contracting Agency:**

<u>Ronda Rozzell, Office Spec.</u>	<u>Public Works</u>
(Name, Title)	(Location)
<u>City of Canby</u>	<u>PO Box 930</u>
(Representing)	(Address 1)
<u>503.266.4021 ext. 298</u>	
(PH)	(Address 2)
<u>503.266.7238</u>	<u>Canby, OR 97013</u>
(FAX)	(City, State, ZIP)
<u>rozzellr@ci.canby.or.us</u>	
(email)	



Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against the State, any notice transmitted by facsimile must be confirmed by telephone notice to the State's Contact Manager. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.


21. AMENDMENTS

This Agreement may be amended only by written instrument signed by the Parties and approved as may be required by all applicable laws, rules and ordinances, Provided however that the Administrative Fee Schedule (Attachment A) may be changed by the State at any time without the consent of the Local Contracting Agency upon written notice to the Local Contracting Agency in accordance with Section 20.

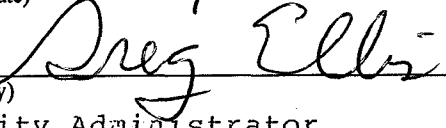
22. SIGNATURES

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

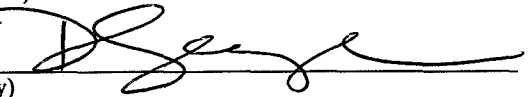
**FOR THE STATE OF OREGON**  
**Department of Adm. Services (DAS)**  
**State Services Division**  
**Surplus Property Section**

\_\_\_\_\_  
(By)   
\_\_\_\_\_  
(Title) Mgr  
\_\_\_\_\_  
(Date) 9/20/11

**FOR LOCAL CONTRACTING AGENCY**

\_\_\_\_\_  
(By)   
\_\_\_\_\_  
(Title) City Administrator  
\_\_\_\_\_  
(Date) 4-20-11

**Department of Adm. Services (DAS)**  
**Operations Division**  
**DAS Contract Services**

\_\_\_\_\_  
(By)   
\_\_\_\_\_  
(Title) DAS Contracts Mgr.  
\_\_\_\_\_  
(Date) 4-28-11

IGA  
Cf

**ATTACHMENT A**  
**ADMINISTRATIVE FEE SCHEDULE**

Oregon Surplus Property currently processes surplus, seized and/or recovered vehicles & personal property from Oregon State and Local Government Agencies, the U.S. Departments of Interior and Agriculture and various municipalities throughout the nation for public sale through a variety of effective sales channels. Fees for services provided will, whenever possible and practicable, be deducted from the property-generating Agencies' reimbursement as 'other receivables'. Reimbursements for sale items sold, and fees that exceed revenues, will be billed monthly on net 30 terms.

**Administrative Fee – Personal Property:**

100% of final auction value between \$ .01 - 10.00, plus  
20% of final auction value above \$10.00

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

The greater of \$260.00 or 7% of the final auction value

**Service Fee - Towing:**

\$ Actual (pass through) cost

**Service Fee - Freight & Cartage:**

The greater of \$35.00/hr. (Billed in 15 minute intervals, one hour minimum), and  
\$1.35 per mile + fuel surcharge<sup>1</sup>

<sup>1</sup>See Attachment B (attached hereto) for additional information regarding fuel surcharges

**Service Fee – Waste Disposal (non IT\hazardous equipment):**

\$30.00 per cubic yard

**Service Fee – Information Technology (IT) Equipment Disposal<sup>2</sup>:**

No work is required by DAS\Surplus Property of the IT asset-generating agency, municipality, bureau or special district; assets accepted AS-IS. HAZMAT<sup>3</sup> disposal costs will be reduced to absolute minimum allowed under current law and billed @ \$ Actual + 10%; there is no reimbursement for IT assets sold.

<sup>2</sup>See Attachment C (attached hereto) for a brief description of the (DAS\Surplus Property-mitigated) risks IT asset disposal poses to your agency.

<sup>3</sup>Non-working (or 'condition unknown') cathode ray tube (CRT) monitors are considered HAZMAT by the U.S. Environmental Protection Agency (EPA), as are many components of IT assets (i.e., circuit boards) in large quantities.

**Marketing Fee – Reserve Auctions:**

1.2% of the reserve sought

**Marketing Fee – Supplemental Advertising:**

As requested & approved by the property generating agency @ \$ Actual + 5%

**ATTACHMENT B**  
**FUEL SURCHARGE CALCULATION (pg. 1 of 2)**

A fuel surcharge is based upon the average retail price of diesel fuel in the region of origination, or where you pick up your load, on the date you pick up this load. This average retail price information, collected by the federal government's Energy Information Administration, is updated every Wednesday. The information is available by phone by calling (202) 586-6966 or you can go to their Web site: [http://tonto.eia.doe.gov/oog/info/wohdp/diesel\\_detail\\_report.asp](http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report.asp)

Here's an example for the week of 9/27/2004:

Weekly On-Highway Diesel Prices - Retail (\$ per gallon, including all taxes)

9/27/2004 This will be your fuel surcharge per mile this week\*

Region	Avg Price	Benchmark Price	Increase Per Gallon	Average MPG	Surcharge Per Mile
New England (CT, ME, MA, NH, RI VT)	2.102	1.10	1.002	5	0.2004
Central Atlantic (DE, MD, NJ, NY, PA & DC)	2.092	1.10	0.992	5	0.1984
Lower Atlantic (FL, GA, NC, SC, VA, WV)	1.981	1.10	0.881	5	0.1762
Midwest (IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, SD, OH, OK, TN, WI)	1.982	1.10	0.882	5	0.1764
Gulf Coast (AL, AR, LA, MS, NM, TX)	1.971	1.10	0.871	5	0.1742
Rocky Mtn. (CO, ID, MT, UT, WY)	1.999	1.10	0.899	5	0.1798
West Coast (AL, AZ, CA, HI, NV, OR, WA)	2.169	1.10	1.069	5	0.2138

\*The average price, minus the Benchmark price, divided by the miles per gallon, gives the surcharge rate multiplied times the miles driven gives the fuel surcharge amount.

**These fuel surcharges are:**

- based on the average price of fuel in each region for the week indicated.
- Assumes your truck gets an average 5 miles per gallon, and
- that a fuel surcharge per gallon is the difference between the average fuel price in your region and \$1.10 (standard industry benchmark price).

**ATTACHMENT B**  
**FUEL SURCHARGE CALCULATION (pg. 2 of 2)**

**To calculate the per mile surcharge:**

While basic freight rates (\$1.35/mi.) cover costs when fuel is \$1.10 and lower, temporary fuel surcharges are imposed to recoup those higher costs when the price of fuel goes above \$1.10 per gallon.

Oregon's Surplus Property Program has adopted the formula that AITA (The American Independent Truckers Assn. - <http://www.aitaonline.com>) recommends to calculate the surcharge for increased fuel costs.

**You need the following information:**

- Total round trip miles from point of origin to destination;
- The average miles per gallon for your truck (Ours currently averages 5 mpg);
- The average price of fuel for that day in the region where you pick up the load (check the EIA at the web address on page 1 of this attachment).

Oregon, like most motor carriers, utilizes the average benchmark fuel price of \$1.10 per gallon

**Methodology**

Our example will use a fuel surcharge of \$1.669 per gallon:

**Increased Fuel Costs:**

Compute your increased fuel costs per gallon used: Subtract the Benchmark price from the Average Price, or, in our example,  $\$1.669 - \$1.10 = \$0.569$  or 56.9 cents per gallon.

The increased cost of fuel per gallon (cpg) is 56.9

**Compute the fuel surcharge per mile:**

Divide the miles per gallon figure into the increased cost per gallon, which gives you the per mile surcharge. Our example is 5 mpg into 56.9 cpg which equals 11.38 cents per mile surcharge.

**Total Fuel Surcharge:**

Multiply this per mile surcharge times the total miles driven, and you get the total fuel surcharge amount to be assessed the shipper. Our example is 11.38 cpms times 130 miles equals \$14.79 for the load.

**Add the standard rate for the total due:**

Our example of 130 miles, when multiplied to Oregon Surplus Property's standard Freight & Cartage rate (\$1.35/mi.), comes to \$175.50; and totals \$190.29 when the fuel surcharge of \$14.79 is added.

## ATTACHMENT C

### ERASURE OR DESTRUCTION OF SENSITIVE ELECTRONIC DATA

Erasure or destruction of sensitive electronically recorded information from obsolete and excess IT assets can prevent data loss, expensive investigations, embarrassment, and other problematic events. Also, communications with other agencies, corporations, and contractors may also pose security risks. The Oregon Department of Administrative Services only recommends Department of Defense standards or total destruction.

Department of Defense Standard DOD 5220.22-M is the National Industrial Security Program Operating Manual (NISPOM) that the DOD, Department of Energy, Nuclear Regulatory Commission, and Central Intelligence Agency must use. The DOD 5220.22-M standard is the civilian term given to the terms and policies found in NISPOM. It prescribes methods and standards by which classified data needs to be secured. Regarding digital media, it requires that storage contain no residual data from the previously contained object before being assigned, allocated, or reallocated to another user. Specifically, the DOD 5220.22-M standard requires overwriting with a pattern, then its complement and, finally, with another pattern, such as overwriting first with 00110101, followed by 1100 1010, then 1001 0111. This standard requires a minimum of three overwrites.

#### **Regulations Aimed at Data Privacy and Protection:**

- The Health Insurance Portability & Accountability Act (HIPAA)
- The Gramm-Leach-Bliley Act
- The Electronic Communications Privacy Act
- The Computer Matching and Privacy Protection Act of 1988
- The Computer Security Act of 1987
- The Privacy Act of 1974

Heightened awareness of security issues has awakened both public agencies and corporations to the need for erasing all data from PC hard drives before disposal. With that comes the need for documenting the method of erasure or cleansing as it is sometimes called.

Disposing of computers without ensuring proper file deletion presents huge business risks as well as the danger of non-compliance with federal laws including the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act.

The most common erasure technique involves simply "deleting" the data, which actually does not erase anything. This "clearing" process simply instructs the computer to forget about the data. Security professionals and hackers can recover that data with tools that are not hard to obtain.

"Sanitization" is the process of overwriting hard drives so that the data is harder to recover. The extent to which the process is implemented can make it almost impossible to recover any data whatsoever. While various levels of secure data erasure exist, only the highest levels that meet requirements of the Department of Defense will be suitable for IT equipment sold to the public by the State of Oregon.