

INTERGOVERNMENTAL AGREEMENT
FOR FLEET SERVICES
BETWEEN
CITY OF PORTLAND
AND
SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON
(PORTLAND PUBLIC SCHOOLS)

Pursuant to ORS Chapter 190 as to cooperation between municipalities, the **City of Portland** ("City") by and through its CityFleet Division of the Office of Management and Finance ("CityFleet"), and **School District No. 1J, Multnomah County, Oregon** (Portland Public Schools or "PPS") by and through its Facilities and Asset Management Department, enter into this Intergovernmental Agreement ("Agreement"). The City and PPS may individually be referenced as the "Party" or collectively as the "Parties."

RECITALS

- A. PPS desires to obtain on-call as-needed professional and technical services for its vehicles and equipment on a pilot project basis for six months to determine the feasibility of contracting with the City for these services on a permanent basis. Requested services may include, but are not limited to, vehicle maintenance and repair, parts procurement, automotive body repair, welding, machining, metal fabrication, specification engineering, custom outfitting, fleet analysis, and fueling.
- B. Public works vehicles have specific performance requirements which require specialized service and maintenance work. It is difficult for public entities to locate local service facilities that are able to perform those specialized services properly and timely.
- C. The City's CityFleet has the facility, tools, and equipment as well as employees with the qualifications, experience, and abilities to provide specialized fleet services in connection with the business of maintaining and repairing government vehicles and equipment such as those owned by PPS and other public agencies. CityFleet is willing and able to perform fleet services for PPS on as-needed and as-requested basis.
- D. Providing services to PPS pursuant to this Agreement is in the City's interest and promotes amicable relationships with other governmental entities. This Agreement will not impact CityFleet's ability to effectively and efficiently support the vehicle administrative needs of its internal bureaus and divisions.
- E. PPS has expressly assured the City that no PPS employees will lose their jobs with PPS in relation to the City performing work under this Agreement. In reliance, the City agrees to perform fleet services under this Agreement on the condition that such performance does not deprive PPS employees of their employment with PPS, or otherwise trigger obligations under ORS 236.605 to 236.640 (the "Transfer Statute").

NOW THEREFORE, in consideration of the mutual promises, conditions and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby incorporate the above Recitals and agree as follows:

I. Services and Responsibilities.

A. CityFleet will provide the following fleet services for PPS-owned vehicles and equipment on an as-needed as-requested basis:

1. "Maintenance and Repair Services" such as preventive maintenance ("PM's") required to be performed at regular intervals in accordance with vehicle manufacturer's guidelines for the class of vehicles and associated equipment, including mandated safety and emissions checks.
2. "Parts Procurement" including identifying parts and associated materials necessary to outfit, and/or service PPS's vehicles.
3. "Automotive Work" including automotive body repair, welding, machining, metal fabrication, specification engineering and custom outfitting.
4. "Fleet Analysis" wherein the City provides its expertise to assist PPS in analyzing and identifying vehicle class economic life cycle, specifications for acquisition of new PPS vehicles and vehicle/equipment outfitting, and standards for determining adequacy of PPS fleet inventory for the purpose of meeting PPS fleet needs.
5. "Fueling Services" wherein the City's in-house fueling services would be made available to PPS at City fueling ("in-house") stations and facilitating fueling at commercial off-site fueling to which the City may have fuel services arrangements.
6. "Manufacturer's Warranty or Recall Work" may be performed if it is cost effective, as mutually determined by the Parties. If the City undertakes any manufacturer's warranty or recall work, the City will charge for labor and materials in accordance with this Agreement.
7. "Other Fleet Services" such as vehicle or equipment rental.

B. The City shall:

1. Provide service on an "as scheduled" and a "first come, first served" basis. However, in the event of emergencies, CityFleet will make reasonable effort to prioritize the service work necessary to accommodate the circumstances for PPS under the terms and conditions of this Agreement. The City will provide current normal hours of operations and locations to PPS and notify PPS in advance of any changes to said hours of operation or locations.
2. Carry out repairs and maintenance in accordance with manufacturer's technical specifications, mandatory specifications or industry standards, while having regard to the age and condition of the vehicle and equipment.
3. Carry out warranty or recall work as mutually agreed, and provide PPS mutually agreed upon notification of the performance of said warranty or recall work.
4. Take reasonable care to ensure its workmanship meets prevailing industry standards.

5. Reserve sole discretion to decline to repair and/or maintain any vehicle or equipment. CityFleet will provide explanation as to the reasons for not accepting the vehicle or equipment for service. If the City does not accept the vehicle or equipment for service, PPS is free to undertake the work itself or to contract with others to perform the work.
6. In an emergency, such as inclement weather, make the services outlined in I.A. above available to PPS outside of normal working hours (specified in I.B.1 above) as required for PPS to maintain its necessary operations.

C. PPS shall:

1. Deliver the vehicles and equipment that it requests for services to identified City service locations at scheduled times in order for services to be performed.
2. Provide necessary and requested information on ownership, service and usage data so that the City may provide recommendations for vehicle services or Fleet Analysis.
3. Timely (as specified in III.B.) pay costs of services, parts, supplies and other items provided by the City under this Agreement.
4. Process and submit manufacturer recall or warranty claims for PPS's reimbursement of charges incurred by City and invoiced to PPS.
5. Use due care to maintain its vehicles and equipment before and after CityFleet's services.
6. Have current insurance, registration and licensing on all vehicles or equipment brought to the City for service.

D. Service Requests, Estimates, and Authorizations.

1. PPS shall identify an authorized representative ("Fleet Coordinator") who will serve as PPS's day-to-day primary contact for coordinating services under this Agreement, including approval of all services performed and billings. The City will identify an authorized representative of CityFleet who will be the primary liaison regarding scheduling and coordinating performance.
2. The CityFleet representative and PPS Fleet Coordinator will be responsible to establish and maintain written, agreed-upon administrative procedures to process PPS's requests for services under this Agreement ("Work Requests"), CityFleet's schedule for performance and estimated cost for requested work to be performed to specifications ("Work Proposals") and PPS's authorization for CityFleet to perform work ("Work Authorizations").
3. PPS will not request, and the City will have no obligation to provide, non-emergency services on any observed federal, state or City holidays or weekends, when CityFleet personnel are not otherwise on duty.
4. Unless a third-party authorization is obtained by PPS, the City will have no obligation to service non-PPS vehicles or equipment even if PPS may have fleet service responsibilities for the vehicles or equipment. Notwithstanding any third-party authorization, the City reserves its discretion to perform work in accordance with Section I.B.5.

II. Term and Termination.

This Agreement is effective January 1, 2013, and will continue through June 30, 2013, unless sooner terminated. Either Party may terminate this Agreement upon 30 days written notice to the other Party. This Agreement may be extended by the Parties' written agreement. Any termination will not prejudice any rights or obligations accrued to the Parties prior to termination.

III. Payment and Billing.

- A. City shall provide services to PPS on a cost-reimbursement basis, inclusive of direct and indirect costs in furnishing personnel, materials and use of equipment to provide services under this Agreement. All rates and direct charges for services rendered are calculated and subject to change on a fiscal year basis. At least 90 days prior to the end of the fiscal year, the City will provide notice of proposed new rates applicable to the next fiscal year. Examples of direct charges would be for vehicle maintenance and repair, parts procurement, automotive body repair, welding, machining, metal fabrication, specification engineering, custom outfitting, and fueling. Applicable overtime pay, emergency callout pay or other compensation that the City is obligated to pay pursuant to collective bargaining agreements are in addition to the hourly labor rate. Overtime will be charged at a multiplier of 1.20 (of the Labor Hourly Rate from the table below). The City general fund overhead ("GFOH") rates are used. The following tables outline CityFleet's FY12-13 rates and how they are calculated:

FY12-13 BILLING RATES (CHANGES COMMUNICATED EACH YEAR BY JULY 1ST):

	FY12-13		FY12-13
Labor Hourly	\$ 95.24	Motor Pool Hourly	\$ 6.50
Parts Markup	21.8%	Motor Pool Daily Max	\$ 32.00
Fuel Markup	\$ 0.14	Motor Pool Weekly	\$ 150.00
Vended	5.5%	Motor Pool Monthly	\$ 560.00
Shop Consumables	1.8%	Motor Pool Bikes Hourly	\$ 0.25
Rentals/Leases	8.0%	Motor Pool Electric Bikes Hourly	\$ 3.00
GFOH	4.0%	Motor Pool No Show Flat Rate	\$ 10.00

(Labor rate is the same for welding and fabrication, road-calls, auto body work, and specifications)

CALCULATING BURDENED RATES

		FY12-13
Labor:	Hourly Rate x Shop Consumables x GFOH	\$ 100.83
Parts:	Unit Price x Parts Markup x GFOH	\$ 12.67
Vended Parts & Labor:	Unit Price x Vended Markup x GFOH	\$ 10.97
Fuel:	(Unit Price + \$Fuel Markup) x Qty x GFOH	\$ 53.46
Motor Pool:	Rate x Usage Time x GFOH	\$ 13.52
Rentals/Leases:	Rental/Lease Total Invoice x Rental/Lease Rate x GFOH	\$ 112.32

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

- B. Monthly billing reports will be sent to PPS's Fleet Coordinator or designee by the 10th of the month. PPS will pay all invoices within 30 days after the invoice date. Any amount remaining unpaid when due will be assessed interest at a rate of 1% per month computed 30 days from the invoice date and compounded monthly.
- C. The City may include additional charges for rebilling on a delinquent account pursuant to Portland City Code 5.48.040 and other reasonable collection costs.

IV. Insurance; Indemnification.

- A. The Parties acknowledge that they are self-insured entities for liability and property damage, and are responsible for providing workers compensation insurance to their own employees as required by law. Each Party's self-insurance shall be maintained at levels to exceed the Oregon Tort Claims Act (ORS 30.260 through 30.300) liability limits applicable to the Party and in sums that would be commercially reasonable to protect the Parties' potential liabilities and interests under this Agreement. Each Party must immediately notify the other, not more than 30 days after, if either Party's self-insurance lapses or in any way becomes ineffective. Any claims for injury or damage to person or property arising out of or alleged to arise out of work performed under this Agreement shall be subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act. Both Parties are responsible, regardless of the location of an accident, direction, and control at the time of an accident, or where work is being performed, for any injury to their subject workers. Neither Party is required to provide or show proof of any other insurance coverage.
- B. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, PPS agrees to fully indemnify, hold harmless, and defend the City and its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney fees, resulting from or arising out of activities of PPS, its officers, employees, or agents under this Agreement. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, the City agrees to fully indemnify, hold harmless, and defend PPS and its directors, officers, employees, and agents from and against all claims, suits, actions of whatsoever nature, damages or losses and all expenses and costs incidental to the investigation and defense thereof, including reasonable attorney fees, resulting from or arising out of activities of the City, its officers, employees or agents under this Agreement.
- C. The City has entered into this Agreement in reliance on PPS's express representations that no PPS employees will be laid off from current employment with PPS as a direct result of the City performing work under this Agreement as contemplated under the Transfer Statute. Accordingly, PPS shall bear the sole responsibility for any civil, contractual, or administrative claims or employee compensation arising from or related to the Transfer Statute in connection with the City's performance of work under this Agreement.

- D. The City is not responsible for any liability and property damage arising out of any vehicle subject to this Agreement as a result of PPS's operation, repair, service, or storage of the vehicle.
- E. The City is responsible for liability and property damage caused by, or destruction of PPS vehicles and equipment:
1. In the care, custody and control of the City. However, PPS is responsible for inventorying, removing, and safekeeping all personal property (such as papers, personal telecommunication devices, briefcases, bags, etc.) before vehicles are brought in for service. The City may but is not obligated for the safekeeping, inventory, care, or protection of any personal property left within PPS vehicles against damage or loss.
 2. Stored or undergoing repairs on City premises. However, the City shall not be liable for damage or loss caused by criminal actions of third parties (such as theft or vandalism.)
 3. Due to negligent transportation, service, and repair performed by the City, subject to other limitations of liability in this Agreement.
 4. City shall notify PPS of any loss or damage to PPS vehicles while in the custody and control of City, regardless of the cause of such loss or damage, within 10 days of the City's knowledge of the occurrence.
- F. The City is not responsible for vehicle or equipment failures or defects due to normal wear or abuse, or due to PPS's failure to maintain or repair vehicles or parts as needed for prudent property ownership or as recommended by CityFleet. The City is not liable for any defects in vehicles, parts or materials either original to the vehicle or as a result of non-City work on the vehicle. In the event of workmanship not completed to industry standard, CityFleet will redo the work at no additional cost.

V. Notice.

Any notice or communication under this Agreement will be in writing and effective: (a) upon delivery, if delivered personally to the identified Agreement representative below; (b) upon delivery to the manager or person in charge of the offices of the identified representatives during regular business hours; (c) two days after mailing, if deposited in the United States mail, postage prepaid; or (d) one day after deposit, if tendered to an overnight or commercial courier (such as Federal Express), and addressed to the person and address below, or to another designee or address as either party may specify in writing from time to time. Notice sent by facsimile transmission or electronic mail (email) is deemed sufficient when received during regular business hours, except for notice related to default or termination.

Portland Public Schools
Attn: Thomas L. Adams
Director of Facilities Operations
Facilities Operations
Facilities and Asset Management
501 N. Dixon Street
Portland, Oregon 97227
Telephone: 503-916-3197
Facsimile: 503-916-3177
email: tadams@pps.net

City of Portland
Attn: John S. Hunt, CPFP
Fleet Manager
OMF/Bureau of Internal Business Services,
CityFleet Division
2835 N. Kerby Avenue
Portland, Oregon 97227-1610
Telephone: 503-823-2277
Facsimile: 503-823-4374
email: john.hunt@portlandoregon.gov

The Parties may change the identified Agreement representative or contact information by giving written notice of the changes as provided in this section.

VI. Dispute Resolution.

If a dispute arises regarding this Agreement, the Parties agree to exercise good faith in expeditiously resolving any conflict. All conflicts should first be discussed and resolved if at all possible by the persons identified in Section V (Notice). Any conflicts not resolved by the contact persons shall be elevated to the designee of the governing board of the Parties, specifically the Mayor for the City and the Superintendent for PPS, for discussion and resolution. The Parties may submit a dispute to mediated negotiation prior to any party commencing litigation, and will participate in good faith in a non-binding mediation process with the mediator selected by mutual agreement of the Parties and all mediator expenses shared equally. If the Parties are unable to agree to a mediator, each Party will select a temporary mediator and those mediators shall jointly select the permanent mediator. In the event of dispute, each Party shall bear its own costs and attorney fees.

VII. General Provisions.

- A. Independent Contractor. In connection with this Agreement, each Party is an independent contractor and will have no authority to bind or commit the other. Nothing herein will be deemed or construed to create a joint venture, joint employment, partnership or agency relationship between the Parties for any purpose.
- B. Nonexclusive Agreement. This Agreement is nonexclusive. PPS is not the City's only client and City will continue to provide services to other clients. The City is not PPS's only provider for the services contracted herein and PPS may use other providers for the same or similar services.
- C. Protection of and Access to Data. City will use due care to store, secure, and backup data obtained from PPS or created by City through the delivery of the services contemplated herein ("PPS Data"). City will provide PPS reasonable access to view and report PPS Data, including the timely provision of all PPS Data to PPS in a reasonable and mutually agreed upon format and method upon the termination of the Agreement.

- D. Compliance with Laws. The Parties will comply with all applicable federal, state and local laws, rules and regulations applicable to the work as set forth in this Agreement.
- E. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement shall be governed by Oregon law, and any litigation arising out of the Agreement shall be conducted in courts located in Multnomah County, Oregon.
- F. Entire Agreement. This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- G. Amendments and Modifications. Any modifications to this Agreement must be made in writing and executed by both Parties. Notwithstanding this general requirement, the Parties may approve modifications to the scope of services to this Agreement without City Council or PPS Board of Education approval so long as the Transfer Statute is not implicated. The City's Chief Administrative Officer ("CAO") may approve and execute amendments and modifications to this Agreement as may be necessary upon City Attorney approval to form. The CAO may delegate some or all responsibilities for this Agreement to the Director of Bureau of Internal Business Services. The PPS Superintendent or designee may approve and execute amendments and modifications to this Agreement as may be necessary.
- H. No Assignment. Neither Party shall subcontract or assign any part of this Agreement without the written consent of the other Party.
- I. Counterparts & Electronic Transaction. This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument. The Parties agree that they may execute this Agreement, including any amendments or extension, by electronic means including the use of electronic signatures and facsimiles.
- J. Severability. If any clause, sentence, or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- K. No Third-Party Beneficiary Rights. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

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

CITY OF PORTLAND**SCHOOL DISTRICT NO. 1J,
MULTNOMAH COUNTY, OREGON**

By: _____
Jack Graham, Chief Administrative Officer
Office of Management & Finance

By: _____
Gregory MacCrone, Deputy Clerk

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

James H. Van Dyke, City Attorney

Jollee F. Patterson, General Counsel