



Randy Leonard, Commissioner
David G. Shaff, Administrator

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INTERGOVERNMENTAL AGREEMENT

185823

AGREEMENT No.: 30002983

This Intergovernmental Agreement (IGA or Agreement) is entered into by and between the City of Portland, Oregon, acting by and through its Water Bureau, hereafter called "City" and School District No. 1J, Multnomah County, Oregon, hereafter called "PPS." This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

RECITALS

1. The City of Portland Business, Industry, and Government (BIG) program assists business, industry and government customers in the reduction of their water usage. This program is managed and operated by the Water Efficiency group of Resource Protection.
2. The BIG program has worked with PPS over the years to reduce wasteful water use and save valuable funds for education.
3. The BIG program has funds available to assist PPS in removing and replacing water-cooled equipment with air-cooled equipment, saving thousands of gallons of water each year and freeing up funds to further education in the public schools.
4. The City now desires to use BIG program funds to help PPS reduce water use.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. STATEMENT OF WORK

PPS shall provide the City the services set out below:

- A. Before performing any work, PPS shall submit an application, in a form substantially in accordance with the application attached to this agreement as Exhibit A, to the City Project Manager (PM) which details the equipment replacement including, but not limited to, location, potential water savings, and budget.
- B. The City's PM shall review each application and upon receiving written approval, PPS shall commence with the work as described in the application.
- C. PPS shall provide full accounting of equipment purchase, removal, installation, and recycling, if possible, including invoices.
- D. Program Operations
If a policy issue arises that is not covered by this IGA, and/or if disagreements in interpretation arise that cannot be settled by the City and PPS PM's, then the issue shall be referred for resolution in writing simultaneously to the Water Bureau Administrator and the Director of the

PPS Maintenance and Facility Services. The Water Bureau Administrator and PPS Director shall collaborate to settle the stated disagreement.

2. BILLING PROCEDURES AND COMPENSATION

- A.** The City has authorized a total not to exceed amount of \$20,000 for FY 2012-13 to fund the program and enter into a formal agreement for a period of one (1) year. Funding of \$20,000 is available in FY 2012-13 Budget. The City's fiscal year is defined as July 1 through June 30 of each year.
- B.** PPS shall provide an invoice that shall identify the tasks that have been completed per the terms of this agreement. All invoices must be received no later than June 1, 2013.
- C.** Invoices shall be submitted electronically to wbaps@portlandoregon.gov.
- D.** More than one (1) project can be funded through this agreement, but total funding shall not exceed \$20,000.

3. TERM AND TERMINATION

This Agreement becomes effective upon full execution by the authorized representatives of the parties and continues through June 30, 2013. The City on thirty (30) days written notice may terminate this Agreement. PPS on ninety (90) days written notice may terminate this Agreement.

4. NON-DISCRIMINATION

In carrying out activities under this Agreement, neither party shall discriminate against any employee or applicant for employment because of race, color, religion, sex, age handicap, familial status or national origin. Either party shall take affirmative actions to insure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

5. ACCESS TO RECORDS

Both parties and their duly authorized representatives shall have access to the books, documents, and records (electronic or otherwise) that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcript.

6. INDEMNIFICATION

Subject to the conditions and limitations of the Oregon Constitution (Article XI, Section 7) and Oregon Tort Claims Act (ORS 30.260 through 30.300), PPS shall indemnify, defend, and hold harmless the City from and against all liability, loss and costs arising out of or resulting from the acts of PPS, its officers, employees, and agents in the performance of this agreement.

Subject to the conditions and limitations of the Oregon Constitution and Oregon Tort Claims Act (ORS 30.260 through 30.300), the City shall indemnify, defend, and hold harmless PPS from and against all liability, loss and costs arising out of or resulting from the acts of City, its officers, employees, and agents in the performance of this agreement.

7. INSURANCE

PPS as an agency of the State of Oregon is self insured through the State Insurance Fund, administered by Risk Management Division, Department of Administrative Services. All PPS personnel, officers and employees, acting within the scope of their employment are covered by ORS 30.270. PPS is a subject employer under the Oregon Workers' Compensations law in compliance with ORS 656.017, and shall maintain workers' compensation insurance through the duration of this Agreement.

8. SUBCONTRACTING AND ASSIGNMENT

With the exception of the work identified in Section 1 (Statement of Work), PPS shall not subcontract, assign, or transfer its work under this Agreement without the City's written consent. PPS shall assure that all subcontractors used to perform the services under this Agreement meet the City's codes pertaining to permits, workers' compensation, licensing, and all other requirements.

9. OREGON LAWS AND FORUM

The parties agree that Oregon law governs any dispute arising under this Agreement or related to this Agreement, and that any litigation arising out of the Contract shall be conducted in courts located in Multnomah County, Oregon.

10. FUNDS AVAILABLE AND AUTHORIZED

The City certifies that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within current appropriations and limitations. In the event of any extension or non-appropriation, the City shall notify PPS its intent to terminate this Agreement.

11. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

12. SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

13. COMPLIANCE WITH APPLICABLE LAW

Both parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA. Without limiting the generality of the foregoing, parties expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; (v) Any applicable sections of ORS Chapter 279, and (vi) all other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.

14. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war that are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.

15. NO THIRD PARTY BENEFICIARY

The City and PPS are the only parties to this Agreement and such are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

16. MERGER CLAUSE

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms 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 effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written not specified herein regarding this Agreement.

17. AMENDMENTS

The parties may amend this Agreement at any time only by written amendment executed by authorized City and PPS representatives. Any such amendment shall be effective only in the specific instance and for the specific purpose given. The City authorizes its Water Bureau Administrator to approve amendments on behalf of the City to this Agreement that do not increase the total contract amount above 25% of the original Agreement amount.

18. AGREEMENT PROJECT MANAGERS

- A. The City Project Manager shall be Jeff Sandberg or such other person as shall be designated in writing by the Portland Water Bureau. All notices to City shall be directed to:

Jeff Sandberg, Project Manager
City of Portland
1120 SW 5th Ave., 6th floor
Portland, OR 97204
Phone: 503-823-4307
Email: jeff.sandberg@portlandoregon.gov

- B. The PPS Project Manager is Jeff Hamman or such other person designated in writing by the PPS. All notices to shall be directed to:

Jeff Hamman
P.O. Box 3107
Portland, OR 97208-3107
Phone: 503-916-2000 Ext 74414
Fax: 503-916-3253
Email: jhamman@pps.net

19. OWNERSHIP

- A. The City and PPS shall jointly own all data, documents, plans copyrights, specifications, working papers, and any other materials the produces in connection with this Agreement.
- B. PPS upon request by the City shall provide the City copies of the materials referred to above in Ownership (Section 19.A), including any electronic files containing the materials.

20. REIMBURSEMENT

Funding for this project shall only be disbursed upon City Council approval via City ordinance authorizing payment. If this Agreement is terminated before PPS project completion, then PPS shall return all unexpended funds to City within 60 days of said termination.

21. SEVERABILITY/SURVIVAL

If any of the provisions contained in this Agreement are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.

22. INDEPENDENT CONTRACTORS

Agreement is not intended and shall not be construed to create an employer-employee relationship between the parties or their respective directors, officers, employees, subcontractors, or agents. At all times under this Agreement, City and PPS are acting and performing as independent contractors.

23. CONFLICTS OF INTEREST

No City officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct, or indirect, in this Agreement or the proceeds thereof. During his or her tenure or for one year thereafter, no school board director or PPS employee shall have any direct financial interest in this Agreement or the proceeds thereof. No City officer or employees who participated in the award of this Agreement shall be employed by during this IGA.

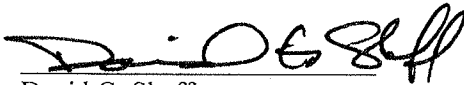
24. CONTRIBUTION

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 to this Agreement ("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 is jointly liable with the City (or would be if joined in the Third Party Claim), PPS 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 City in such proportion as is appropriate to reflect the relative fault of on the one hand and of the PPS 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 on the one hand and of the City 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. PPS 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.

CITY OF PORTLAND

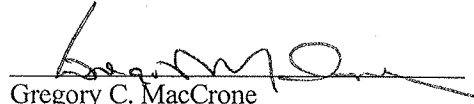


David G. Shaff
Portland Water Bureau Administrator

12.04.2012

Date

PORTLAND PUBLIC SCHOOLS:




Gregory C. MacCrone
Deputy Clerk

NOV 29 2012


Date

APPROVED AS TO FORM:
APPROVED AS TO FORM


James H. Van Dyke
City Attorney

Date

REVIEWED:



Jollee Patterson
General Counsel

11-27-12
Date