



Office of the Chicago City  
Clerk



SO2011-7178

Office of the City Clerk

City Council Document Tracking Sheet

**Meeting Date:** 9/8/2011

**Sponsor(s):** Emanuel, Rahm (Mayor)

**Type:** Ordinance

**Title:** Amendment of Chapter 2-38-060 of Municipal Code regarding maintainance and repair of vechiles with other local governments

**Committee(s) Assignment:** Committee on Budget and Government Operations

## **SUBSTITUTE ORDINANCE**

**WHEREAS**, The City of Chicago (the “**City**”) is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, The City, through its Department of Fleet Management (“**Fleet**”), desires to enter into an intergovernmental agreement (the “**Agreement**”) with the City Colleges of Chicago (“**CCC**”) for equipment maintenance and repair ; and

**WHEREAS**, CCC desires to enter into the Agreement with Fleet; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

**SECTION 1.** Recitals. The above recitals are incorporated by reference as if fully set forth herein.

**SECTION 2.** Authority. Subject to the approval of the Corporation Counsel, the Commissioner of Fleet (the “**Commissioner**”) or a designee of the Commissioner are each hereby authorized to execute and deliver the Agreement in substantially the form attached hereto as Exhibit A, including specifically the mutual indemnification provisions contained therein, with such changes, deletions, and insertions thereto as the Commissioner or the Commissioner’s designee shall approve (execution of the Agreement by the Commissioner or the Commissioner’s designee constituting conclusive evidence of such approval), and to enter into and execute all such other agreements and instruments, and to perform any and all acts as shall be necessary or advisable in connection with implementation of the Agreement.

**SECTION 3.** Invalidity of Any Section. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, then the invalidity or unenforceability of such provision will not affect any of the remaining provisions of this ordinance.

**SECTION 4.** Superseder. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION 5.** Effective Date. This ordinance shall be in full force and effect immediately upon its passage and approval.

Equipment Maintenance and Repair Agreement

By And Between

The City of Chicago

By and Through

Its Department of Fleet Management

And

City Colleges of Chicago.

This Equipment Maintenance and Repair Agreement (the "**Agreement**"), made and entered into as of \_\_\_\_\_, 2011 by and between the City of Chicago (the "**City**"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Fleet Management ("**Fleet**") and the City Colleges of Chicago ("**CCC**"), a municipal corporation.

**RECITALS:**

Whereas, CCC desires Fleet to maintain and repair certain CCC Equipment (as hereinafter defined) on a regular basis (such maintenance and repair work as detailed in Article Two is defined herein as the "**Work**"); and

Whereas, each and every time Work is performed on any piece of Equipment, Fleet will prepare a detailed work order to document the parts and labor for the Work performed; labor hours for Work performed will be billed at the agreed upon shop rate of One Hundred Fifteen Dollars (\$115.00) per hour, and parts used in a Work assignment will be billed to CCC at the invoiced cost to Fleet; and

Whereas, on \_\_\_\_\_, \_\_\_\_\_ the City Council of the City (the "**City Council**") adopted an ordinance authorizing the execution of this Agreement and on \_\_\_\_\_, \_\_\_\_\_, the CCC Board authorized execution of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**AGREEMENT:**

Article One.

Incorporation of Recitals.

The recitals stated above are an integral part of this Agreement and are hereby incorporated into this Agreement by reference and made a part hereof.

Article Two.

The Work.

2.01 Assessment by Fleet.

Fleet will perform a mechanical condition assessment excluding initial body and collision assessment of all CCC equipment (the “**CCC Equipment**” or “**Equipment**”) when a unit of Equipment is first scheduled for maintenance and repair. Such assessment will use the form of assessment which is described in Exhibit A. CCC will also provide an electronic copy of the distribution represented in Exhibit A. CCC reserves the right to add and/or delete mutually agreed upon units to this Equipment distribution. Exhibit B lists the CCC Equipment subject to this Agreement

2.02 Work Transition Dates/Prior Contracts

Fleet will begin performing Work on the Equipment on a mutually agreed upon date.

2.03 Description of Work

- (a) Small Repairs, Routine Maintenance. Fleet will perform small repairs, routine maintenance, wash services, and preventative maintenance on Equipment as requested by CCC or, when the CCC otherwise approves a Fleet work order for the Work desired.
- (b) Large Repairs. If large repairs on a unit of Equipment are indicated (either by request of CCC or by recommendation of Fleet), then a specific document in the form of Exhibit C authorizing large repairs must be signed by the designated CCC representative. For purposes of this section, “**large repairs**” are repairs to a unit of Equipment costing individually or in the aggregate Three Thousand Five

Hundred Dollars (\$3,500) or more by Fleet's good faith estimate.

- (c) Description of Repairs. Fleet is prepared to provide full service Work to CCC. Work on Equipment may include, but not be limited to, maintenance and repairs to mechanical components, engines, body work, glass, electrical systems, hydraulic systems and tires, and other Work, and may include repair and/or replacement of parts. All Work will be performed by trained service technicians.
- (d) Subcontracted Work. Fleet has several subcontracts with vendors to perform various types of repair work on vehicles. If the Work that is required on CCC Equipment is Work that Fleet has subcontracted to a vendor, such vendor may perform the required Work on CCC Equipment. Fleet will pass-through the charges for the Work performed by subcontracted vendors to the CCC at the contracted service price per unit including parts plus a five percent (5%) administrative fee. Fleet will bill for such passed through charges as a part of its regular billing to CCC. CCC reserves the option to subcontract with vendors other than the City of Chicago to perform various types of repair work on vehicles, for which CCC will directly pay the vendor. Fleet will inform CCC of any unusual P.M. (preventative maintenance) notifications as they occur.
- (e) Cost of Work. All labor hours for Work performed will be billed utilizing the agree upon shop rate of One Hundred Fifteen Dollars (\$115.00) per hour (the "**Shop Rate**"). Fleet will review its Shop Rate on an annual basis and decide whether to adjust the Shop Rate to reflect increases in Fleet's labor costs or other associated costs with performing the Work. The effective date of any changes shall be January 1<sup>st</sup> of the following year. If there is a change in the Shop Rate, CCC reserves the right to terminate within one hundred eighty (180) days of the effective new date of such Shop Rate change with no increase to the originally agreed Shop Rate.
- (f) Scheduling and Priorities. Fleet reserves the right to control and adjust the scheduling of any Work and the priority of any specified Work. Consistent with its overall scheduling and priority requirements as a City Department, Fleet will use its best efforts to perform all Work in a timely manner. CCC must provide Fleet with a current Daily Equipment Requirement Listing.
- (g) Delivery and Pick-up. Unless otherwise agreed to by Fleet, CCC will be responsible for delivery of Equipment to Fleet's maintenance locations and will be responsible for pick-up of Equipment when Work is completed. CCC, however, reserves the right to invoke the provisions stated in paragraphs 2.09 and 2.10. CCC will be responsible for delivery, coordination and shuttle for these purposes as appropriate and as determined by CCC. Shuttle and delivery of CCC Equipment to and from the outside vendors from Fleet facilities will be the responsibility of Fleet.

2.04 Wash Service; Contract Commercial Locations. Upon development of policies and guidelines for this purpose, and at CCC's option, CCC may utilize Fleet's account at the various commercial wash service locations in the City under contract with Fleet and listed in Exhibit D for cars and smaller trucks. If the CCC uses this service, Fleet will pass-through the wash service charges, to CCC at the contracted wash service price per unit plus a five percent (5%) administrative fee. Fleet will bill for such passed through charges as a part of its regular billing to CCC. Fleet's billing for this service must include the vehicle's ID number [V.I.N.] and the name and badge number of the CCC employee who delivers a vehicle for wash service.

2.05 Emissions Testing/Other Governmental Requirements.

As owner of the Equipment, CCC is responsible for meeting emission test requirements and other governmental requirements applicable to its non-revenue Equipment. Fleet has no responsibility or duty under this Agreement for emission testing or other owner responsibilities. If Equipment fails to meet emission test requirements, then Fleet will repair any such Equipment to a Fleet work order approved by CCC and under the provisions of this Agreement.

2.06 Parts.

On June 7, 2000, the City Council approved an ordinance authorizing an agreement between Fleet and Genuine Parts Company doing business as NAPA Auto Parts ("NAPA") for parts supply and parts management. NAPA performs the parts inventory supply management and delivery functions. Fleet will charge CCC for parts used in the Work on a pass-through basis, dollar-for-dollar. Charges to CCC will include a five percent (5%) mark-up to cover administrative fees and consumable materials used in the performance of maintenance and/or repair services. Such consumable products typically include items such as aerosol lubricants/cleaners, rags, oil absorbents, et cetera.

2.07 Road Service.

Fleet will provide road service for CCC Equipment at the agreed upon Shop Rate plus one-half hour travel time for each road service call performed by one technician.

2.08 Towing.

At the option of CCC, Fleet will provide towing services for disabled Equipment. Towing services will be provided by Fleet Management's regular private contractor towing services under contract with Fleet. The contract cost for towing will be passed through to CCC, dollar-for-dollar. Charges to CCC will be based on vendor invoice plus a five percent (5%) mark-up to cover administrative fees. Fleet will bill for such passed through charges as a part of its regular billing to CCC. Fleet will provide CCC with current contract pricing for such tows. Fleet will update price lists as changes occur.

2.09 Defective Workmanship.

- (a) CCC Inspection. CCC agrees to promptly inspect completed Work within seven (7) days and to promptly bring Re-Work to Fleet's attention. Fleet agrees to make a good faith determination whether any Work is a new assignment or Work which qualifies as Re-Work. Re-Work will be performed by Fleet at no cost to CCC.
- (b) Cooperation. Both Fleet and CCC agree that they will work in good faith and harmony and with full cooperation to resolve any issues arising from or out of Re-Work.

2.10 Manufacturer Recall.

Upon receipt of notification of manufacturer's recall from CCC, Fleet will coordinate the manufacturer's recall work through its respective dealership network.

2.11 Representatives/Dispute Resolution.

- (a) Representatives. Fleet's representative to administer this Agreement is named in Exhibit E-1 (the "**Fleet Representative**"). CCC's representative to administer this Agreement is named in Exhibit E-2 (the "**CCC Representative**"). Both Fleet and CCC will also appoint an Alternate Representative to serve in the event the Primary Representative is unable to serve.
- (b) Dispute Resolution. If the Fleet Representative and the CCC Representative cannot agree on a resolution of issues arising from or out of this Agreement, including but not limited to:
  - (i) Work within the scope of this Agreement;
  - (ii) Work Scheduling;
  - (iii) Charges for Work;
  - (iv) Re-Work;
  - (v) Charges for Re-Work;
  - (vi) Work Priorities; and
  - (vii) Work under manufacturer's or dealer's warranty;

then, the Fleet Representative will promptly report any such disagreement to the Commissioner of Fleet (the "**Commissioner**") and the CCC Representative will promptly report to the CCC Vice Chancellor of Administrative and Procurement

Services. The Commissioner and the Vice Chancellor are responsible for promptly resolving any such disagreement in good faith and in a cooperative manner.

#### Article Three.

##### Funding.

3.01 Beginning one month after the mutually agreed start date, CCC will pay all invoices submitted by Fleet within thirty (30) days from the invoice date. If CCC fails to pay an invoice, then the City may cease the Work and terminate this Agreement by providing written notice to CCC. Unpaid invoices over sixty (60) days shall result in a one and five-tenths percent (1.5%) late fee on any outstanding balances.

3.02 Within thirty (30) days after execution of this Agreement, or such longer period of time as agreed to by the Commissioner, but in no event later than December 1, 2011, CCC will provide Fleet with copies of all active warranties for the Equipment and the duration of the warranties. If Fleet discovers that the Work to be done on a certain piece of Equipment is covered by a warranty, Fleet will notify CCC of such warranty, and Fleet and CCC will decide at that time how the Work will be performed. If the Work is performed on Equipment under a warranty by an entity other than Fleet, Fleet reserves the right to inspect such Work after it is performed. Fleet shall not be responsible for Work that is performed on Equipment which may violate or terminate a warranty on such piece of Equipment if Fleet does not know such warranty exists.

3.03 CCC will provide Fleet with reasonable access to records relating to the Equipment as requested by Fleet. Fleet will provide CCC with read-only access to its M4 computer system (Fleet maintenance database). CCC will provide terminals and date lines for this purpose.

#### Article Four.

##### Term.

4.01 The term of the Agreement shall commence on the date of its execution and shall expire on June 30, 2013 (the "**Extension Date**"). The parties shall have a right to extend the Agreement for five (5) years commencing on the Extension Date and expiring on June 20, 2018; provided, however, that the Agreement will not automatically renew and extend if either party terminates this Agreement in accordance with Section 4.02 below.

4.02 Either party may terminate this Agreement upon one hundred eighty (180) days prior written notice to the other.



Article Five.

Consent.

Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

Article Six.

Notice.

Notice to the CCC shall be addressed to:

Vice Chancellor of Administrative and  
Procurement Services  
City Colleges of Chicago  
226 West Jackson Boulevard  
Chicago, Illinois 60606

Notice to the City shall be addressed to:

Commissioner  
Department of Fleet Management  
1685 North Throop Street  
Chicago, Illinois 60622

and

Corporation Counsel  
City Hall, Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Finance and Economic  
Development Division

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, telecopy or facsimile (fax) machine; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above will be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) above will be deemed received on the day immediately following deposit with the overnight courier and if sent pursuant to clause (d) above will be deemed received two (2) days following deposit in the mail.

Article Seven.

Assignment; Binding Effect.

7.01 This Agreement or any portion thereof may not be assigned by either party without prior written consent of the other party.

7.02 This Agreement shall inure to the benefit of and shall be binding upon the City, CCC and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and permitted assigns.

Article Eight.

Modification.

This Agreement may not be altered, modified, or amended except by written instrument signed by all of the parties hereto.

Article Nine.

Compliance With Laws.

The parties hereto will comply with all federal, state, and municipal laws, ordinances, rules and regulations relating to this Agreement.

Article Ten.

Governing Law and Severability.

This Agreement is governed by the laws of the State of Illinois. If any provision of this Agreement is held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, then such circumstance will have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement will not affect the remaining portions of this Agreement or any part hereof.

Article Eleven.

Counterparts.

This Agreement may be executed in one or more counterparts, each of which is an original.

Article Twelve.

Entire Agreement.

This Agreement constitutes the entire agreement between the parties and cannot be modified or amended except by mutual written agreement of the parties.

Article Thirteen.

Authority.

Execution of this Agreement by Fleet is authorized by an ordinance passed by the City Council on \_\_\_\_\_. Execution of this Agreement by CCC is authorized by \_\_\_\_\_ of CCC adopted on \_\_\_\_\_. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

Article Fourteen.

Headings.

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

Article Fifteen.

Disclaimer of Relationship.

Nothing contained in this Agreement, nor any act of Fleet or CCC shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving Fleet and CCC.

Article Sixteen.

Construction of Words.

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter and the feminine form shall include masculine and neuter.

Article Seventeen.

No Personal Liability.

No member, official, employee or agent of Fleet or CCC shall be individually or personally liable in connection with this Agreement.

## Article Eighteen.

### Insurance.

18.01

Both CCC and Fleet understand and agree that both parties are self-insured.

18.02

To the extent permitted by law, CCC may self-insure for Fleet's insurance requirements:

- (a) Workers' Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employer's Liability coverage with limits on not less than One Hundred Thousand Dollars (\$100,000) for accident or illness.
- (b) Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage liability.
- (c) When any motor vehicles (owned and hired) are used in connection with Work to be performed, the CCC shall provide Automobile Liability Insurance with limits than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage.

## Article Nineteen.

### Mutual Indemnification.

Fleet hereby agrees to indemnify and hold harmless CCC and its directors, officers and employees (the "**CCC Indemnities**") from and against any and all liabilities, losses, damages, fines, or expenses, including reasonable attorneys' fees, suffered by, or accrued or brought against CCC Indemnities resulting from or arising out of any claim, lawsuit, demand, loss, settlement or judgment, of any nature whatsoever, brought by any person or party arising out of or with respect to the services provided hereunder, or any failure of performance, negligent performance or wrongful performance of Fleet or its directors, officers, employees, agents or subcontractors hereunder.

CCC hereby agrees to indemnify and hold harmless the City, Fleet and their respective officials, its directors, officers and employees (the "**Fleet Indemnities**") from and against any and all liabilities, losses, damages, fines, or expenses, including reasonable attorneys' fees,

suffered by, or accrued or brought against Fleet Indemnities resulting from or arising out of any claim, lawsuit, demand, loss, settlement or judgment, of any nature whatsoever, brought by any person or party arising out of or with respect to the services provided hereunder, or any failure of performance, negligent performance or wrongful performance of CCC or its directors, officers, employees, agents or subcontractors hereunder.

In Witness Whereof, each of the parties has caused this Agreement to be executed and delivered as of the date first written above.

City of Chicago, Illinois by and through  
the Department of Fleet Management

By: \_\_\_\_\_  
Commissioner  
Department of Fleet Management

City Colleges of Chicago

By: \_\_\_\_\_  
Chairman of the Board of Trustees

Equipment Maintenance And  
Repair Agreement  
dated as of \_\_\_\_\_, 2011

Schedule of Exhibits

<u>Exhibit Designation</u>	<u>Description</u>
A	Fleet form for Mechanical Condition Assessment
B	List of CCC Equipment
C	Fleet form for authorizing large repairs
D	Fleet Wash Service locations
E-1	Fleet Representative
E-2	CCC Representative

