

AGREEMENT BETWEEN
THE CITY OF CHICAGO, BY AND THROUGH
IT'S DEPARTMENT OF FLEET AND FACILITY MANAGEMENT
AND THE BOARD OF EDUCATION OF THE CITY OF CHICAGO

This Agreement (the "Agreement"), made and entered into as of November 1, 2012 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 and Facility Management ("2FM"), and the Board of Education of the City of Chicago (the "Board" or "CPS"), a body politic and corporate.

RECITALS

WHEREAS, the Board wishes to purchase fuel and other ancillary liquids from the City;

WHEREAS, the Board desires to allow its authorized drivers of administrative and Drivers Education vehicles to have access to the City's fueling sites and the City desires to give the Board access to its fueling sites for the purpose set forth; and

WHEREAS, gas cards will be used to control fuel usage and for invoicing.

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

ARTICLE ONE: INCORPORATION OF RECITALS

The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE TWO: FUEL AND SERVICES

2.1 Prior to the execution of this Agreement, the Board will provide the City with copies of all documents evidencing title to Board vehicles. The Board shall provide City with reasonable access to its books and records relating to all Board vehicles which are owned and operated by the Board and which are utilizing the City's fueling system in accordance with the terms of this Agreement.

2.2 The Board shall have access to all of the City's fueling sites, which are listed on Exhibit A attached hereto, throughout the term of this Agreement.

2.3 The cost of unleaded and diesel fuels shall be the cost of such fuels to the City, including all applicable taxes, plus an additional charge of thirty-five cents (\$0.35) per gallon (the charge of .35 cents per gallon shall be referred to as the "Per Gallon Charge"). The Per Gallon Charge shall cover the costs of transmission fluid, oil, antifreeze and windshield wiper solvent provided to Board vehicles.

2.4 The City shall issue a gas card for each Board vehicle. Upon the initial issuance of a card or the issuance of a replacement card, the Board shall pay the City a non-refundable fee of Fifteen and 00/100 Dollars (\$15.00).

2.5 (a) Within 30 days after the end of each month, the City shall send a statement to the Board which details fuel consumption by vehicle for such month and will also state the amount of gas consumed by the Board to date (the "Monthly Statement"). Independent reports for unleaded and diesel fuel usage will be provided. CPS will pay all invoices submitted by 2FM within thirty (30) days from the invoice date. If CPS fails to pay an invoice, the City may cease service and terminate this Agreement by providing written notice to the Board. Unpaid invoices over sixty (60) days shall result in a 1.5% late fee on any outstanding balance.

(b) The Board has represented to the City that it has appropriated (or will appropriate) approximately Four Hundred Eighty-Five Thousand and 00/100 Dollars (\$485,000) (the "Appropriated Amount") annually for fuel charges for the Term (as defined in Section 3.1 below). The Monthly Statement will state each month the amount of fuel consumed by the Board to date (the "Accumulated Fuel Consumption"). When the Monthly Statement states that the Accumulated Fuel Consumption has reached approximately Three Hundred Ninety-Five and 00/100 Dollars (\$395,000), the Board shall provide written notice to the City of whether it intends to appropriate additional funds for fuel charges or terminate this Agreement. If the Board provides written notice that it intends to terminate this Agreement, such notice shall provide a termination date (the "Termination Date") which will coincide with the date that the Accumulated Fuel Consumption will be approximately \$485,000. The Board's access to the City's fueling sites shall terminate at 5:00 pm on the Termination Date. Within thirty (30) days after the Termination Date, the City will send the Board a final statement of the Board's fuel charges through the Termination Date, and the Board agrees to pay such charges within thirty (30) days after receipt of the statement, subject to the terms of subsection (d) below.

(c) If the City does not receive any written notice from the Board pursuant to subsection (b) above, the Board shall continue to have access to the City's fueling sites, and the Board agrees that it shall pay the City for all fuel charges incurred except as provided in subsection (d) below. The Board and the City agree that it is the Board's responsibility to monitor the Accumulated Fuel Consumption.

(d) Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event sufficient funds are not appropriated in a subsequent fiscal year by the Board for performance under this Agreement, the Board will notify the City and this Agreement shall terminate on the last day of the fiscal year for which funds were appropriated.

ARTICLE THREE: TERM

3.1 The term of this Agreement shall commence on November 1, 2012 and shall expire on October 31, 2015 (the "Term"), subject to the provisions for earlier termination set forth herein.

3.2 The City and the Board have two options to renew this Agreement for a period of one (1) year each, subject to approval of both parties and the execution of a renewal/extension agreement.

3.3 The Board may terminate this Agreement upon thirty (30) days prior written notice to the City.

ARTICLE FOUR: 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 and shall be provided in writing by the consenting party.

ARTICLE FIVE: NOTICE

Notice to Board shall be addressed to:

The Board of Education of the City of Chicago
Department of Operations – Student Transportation
125 South Clark St., 16th Floor
Chicago, IL 60603
Attention: Paul Osland

With a copy to: The Board of Education of the City of Chicago
Youth Development and Positive Behavior Support
125 South Clark St.
Chicago, IL 60603
Attention: Calvin Davis

With a copy to: The Board of Education of the City of Chicago
Law Department
125 South Clark St., 7th Floor
Chicago, IL 60603
Attention: General Counsel

Notice to the City shall be addressed to:

City of Chicago
Department of Fleet and Facility Management
30 North LaSalle Street, Room 300
Chicago, Illinois 60602
Attention: David J. Reynolds
Commissioner Fleet and Facility Management

With a copy to : City of Chicago
Office of the Corporation Counsel
City Hall, Room 600
121 N. 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) any form of electronic communications used by both parties; (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) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

ARTICLE SIX: ASSIGNMENT; BINDING EFFECT

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

6.2 This Agreement shall inure to the benefit of and shall be binding upon the City, the Board 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 any of their successors and permitted assigns.

ARTICLE SEVEN: MODIFICATION

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

ARTICLE EIGHT: COMPLIANCE WITH LAWS

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

ARTICLE NINE: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

City irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. City agrees that service of process on the City may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in the notice provision herein, by registered or certified mail addressed to the office actually maintained by the Board, or by personal delivery on any officer, director, or managing or general agent of the Board. If any action is brought by the City against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

If any provision(s) of this Agreement is (are) determined to be legally invalid, the parties hereto agree that particular provision shall be null and void, but that the remainder of this Agreement shall remain in full force and effect.

ARTICLE TEN: COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

ARTICLE ELEVEN: ENTIRE AGREEMENT

This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification of, or amendment to, this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

ARTICLE TWELVE: AUTHORITY

Execution of this Agreement by the City is authorized by City Municipal Code 2-51-050. Execution of this Agreement by the Board is authorized by Board Report #12-0925-PR13 approved by the Board on September 25, 2012. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

ARTICLE THIRTEEN: PARAGRAPH HEADINGS

The paragraph headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit, or extend the scope of intent of the paragraph to which they pertain.

ARTICLE FOURTEEN: DISCLAIMER OF RELATIONSHIP

Nothing contained in this Agreement, nor any act of the City or the Board, 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 the City and the Board.

ARTICLE FIFTEEN: 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 SIXTEEN: NON-LIABILITY OF OFFICIALS

No member, official, employee or agent of the City or the Board shall be personally charged with and/or held personally liable by the other party for any liability or expense in connection with this Agreement.

ARTICLE SEVENTEEN: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the Board: The Board of Education of the City of Chicago
Department of Operations – Student Transportation
125 South Clark St., 16th Floor
Chicago, IL 60603
Attention: Paul Osland
Phone: (773) 553-2860

For 2FM:
City of Chicago
Department of Fleet and Facility Management
30 N. LaSalle Street, Room 300
Chicago, IL 60602
Attention: Jennifer Muss, Deputy Commissioner
Phone: (312) 744-9723

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, email address, telephone number and fax number of the representative for such party for the purpose of this Agreement.

ARTICLE EIGHTEEN: INSURANCE

18.1 The Board of Education shall provide and maintain at the Board's own expense, during the Term the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to perform under this Agreement and Employers Liability coverage with limits of not less than \$100,000 for each accident or illness.

B. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: all premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the services.

C. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with performance under this Agreement, the Board shall provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

D. Self-Insurance

To the extent permitted by law, the Board may self-insure for the insurance requirements specified above, it being expressly understood and agreed that, if the Board does self-insure for the above insurance requirements, the Board shall bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program shall comply with at least the insurance requirements as stipulated above.

OTHER REQUIREMENTS

The Board will furnish the City, Department of Purchases, Contracts and Supplies, City Hall, Room 403, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term. The Board shall submit evidence of insurance on the City of Chicago Insurance Certificate Form or an equivalent form acceptable to the City's Department of Risk Management prior to the commencement of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all of the Agreement's requirements. The failure of the City to obtain certificates or other insurance evidence from Board shall not be deemed to be a waiver by the City. The Board shall advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve Board of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to halt performance under this Agreement until proper evidence of insurance is provided, or this Agreement may be terminated upon written notice to the Board.

The insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by the Board.

The Board agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

The Board expressly understands and agrees that any coverages and limits furnished by the Board shall in no way limit the Board's liabilities and responsibilities specified within this Agreement or by law.

The Board expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Board under this Agreement.

The required insurance shall not be limited by any limitations expressed in any indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The City maintains the right to modify, delete, alter or change these requirements and shall provide written notice to the Board of any such changes.

18.2 The City, at its own expense, shall procure and maintain insurance covering all operations under this Agreement, whether performed by the City or by subcontractors. The City shall submit to the Board satisfactory evidence of insurance coverage upon request. Minimum insurance requirements include the coverage set forth below and any additional coverage which may be specified by the Board:

A. Workers' Compensation and Employers' Liability Insurance.

Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees involved in performing under this Agreement with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The workers' compensation policy must contain a waiver of subrogation clause

B. Commercial General Liability Insurance.

Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, completed operations (for a minimum of two (2) years following completion), and defense.

C. Automobile Liability Insurance.

Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with performance under this Agreement, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

D. Self-Insurance

To the extent permitted by law, the City may self-insure for the insurance requirements specified above, it being expressly understood and agreed that, if the City does self-insure for the above insurance requirements, the City shall bear all risk

of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program shall comply with at least the insurance requirements as stipulated above.

E. Additional Insured.

The City shall have its General and Automobile Liability Insurance policies endorsed to provide that “the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board”.

- F. The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
125 S. Clark Street, 7th Floor
Chicago, Illinois 60603

- G. Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of the City's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The City's failure to carry or document required insurance shall constitute a breach of this Agreement. In the event the City fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to terminate this Agreement upon written notice to the City.
- H. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the City. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the City under this Agreement.
- I. All subcontractors are subject to the same insurance requirements of the City unless otherwise specified in this Agreement. The City shall require any subcontractors under this Agreement to maintain comparable insurance naming the City, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The City will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.
- J. The coverages and limits furnished by the City in no way limit the City's liabilities and responsibilities specified within this Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language

in this Agreement, if any, or any limitation that might be placed on the indemnity in this Agreement given as a matter of law.

K. The City agrees that insurers waive their rights of subrogation against the Board.

ARTICLE NINETEEN: BOARD REQUIRED PROVISIONS


19.1 Conflict of Interest. This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.

19.2 Ethics. No officer, agent or employee of the Board is or will be employed by the City or has or will have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy No. 11-0525-PO2 adopted April 25, 2011, as may be amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement.

19.3 Inspector General. Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.


IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, ILLINOIS, by and through the
Department of Fleet and Facility Management (2FM)

By: 
Commissioner
Department of Fleet and Facility Management (2FM)

BOARD OF EDUCATION OF THE CITY OF CHICAGO

By: 
David J. Vitale, President 

Attest:  12/19/12
Estela Beltran, Secretary

Board Report No.: 12-0925-PR13 -1

Approved as to legal form:

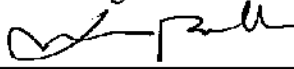

 
James L. Bebley, General Counsel

EXHIBIT A

LOCATION OF CITY FUELING SITES

See attached.

**Department of Fleet Management-Fuel Management Division
All City-Wide Fueling Facilities**

SITE NUM	Site Address	Ward	Fuel Types Available	Hrs of Operation
FS205	3245 N. Campbell	47th	Unleaded	7 Day / 24 Hr
FS001	1685 N. Throop St	32nd	Unleaded, Diesel, E85	7 Day / 24 Hr
FS002	6445 N. Ravenswood	40th	Unleaded, Diesel	7:00 am to 11:00 pm Holidays /Government Shut-down Days - Open Day shift Only (7:00 - 3:00 pm)
FS003	4233 W. Ferdinand	28th	Unleaded, Diesel, CNG, E85	7 Day / 24 Hr Closed All Holidays and Government Shut-down Days
FS004	3746 S. Iron	11th	Unleaded, Diesel, CNG, E85	7 Day / 24 Hr
FS005	4833 W. Sunnyside	45th	Unleaded, Diesel, CNG, E85	7 Day / 24 Hr
FS006	10101 S. Stony Island	7th	Unleaded, Diesel, CNG, E85	7 Day / 24 Hr
FS008	10420 S. Vincennes	19th	Unleaded, Diesel	7:00 am to 11:00 pm Closed All Holidays Government Shut-down Days
FS009	25 West 65 th Street (Corner of 65th/State)	20th	Unleaded, Diesel, CNG	7 Day / 24 Hr Closed All Holidays Government Shut-down Days
FS007	O'Hare AMC Building	41 st	Unleaded, Diesel, CNG, E85	7 Day / 24 Hr
FS202	Midway 5150 W. 63rd St	23rd	Unleaded, Diesel	Closed to Outside Depts

Last Updated 10/13/2009

NOTE: Fuel Sites closed on Holidays: Close at 11:00 pm the eve of the holiday and re-open at 11:00 pm the night of the holiday.