

INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF FIRCREST AND THE CITY OF TACOMA
FOR FLEET MAINTENANCE SERVICES

THIS INTERLOCAL AGREEMENT is made and entered into by the CITY OF TACOMA ("TACOMA") and the CITY OF FIRCREST ("FIRCREST").

I. RECITALS

- A. Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes agreements between jurisdictions.
- B. FIRCREST desires to obtain cost effective services as set forth herein for the maintenance and repair of FIRCREST's vehicle fleet.
- C. TACOMA has the ability and capacity to provide certain maintenance and repair services, as outlined herein, and is willing to extend such service to FIRCREST on the terms and conditions outlined herein.
- D. The parties believe that the provision of services to FIRCREST by TACOMA as set forth herein will allow an efficient method of reducing maintenance costs for the parties.
- E. A cooperative effort between the parties is essential to ensure that the purposes of this agreement are fulfilled.

NOW, THEREFORE, it is agreed by and between the parties as follows:

II. DEFINITIONS

As used herein, the following terms shall have the following meanings:

- A. "Abuse" shall mean any damage to a vehicle caused by misuse or neglect by the equipment operator or other persons.
- B. "Disposal" or "Surplused" shall mean a process by which vehicles are sold, transferred, or otherwise taken out of service by a party.

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C. "In-Service" shall mean the set-up of new or refurbished equipment and/or components. The in-service of new vehicles shall include numbering; application of decals; licensing; and entry of information into the Fleet Information System.

D. "Modification" shall mean the alteration, addition, adjustment or deletion of a vehicle's original physical equipment or structure.

E. "Maintenance and Repair" shall mean those services performed for the proper refurbishment or upkeep of vehicles for the purpose of sustaining their proper function and value. Maintenance is divided into scheduled, unscheduled, and quick-fix.

1. "Scheduled Maintenance" shall mean the planned and prearranged service and repair of vehicles. Examples include the performance of a vehicle modification; repainting a vehicle; installing a vehicle air conditioner; and preventive maintenance.

2. "Unscheduled Maintenance" shall mean those services performed to remedy a vehicle breakdown or the sudden unexpected failure of a vehicle part which makes the vehicle or a part thereof inoperative, or the operation of the vehicle unsafe. Examples include the repair of a flat tire, and the repair of a discharged battery.

3. "Quick Fix Maintenance" shall mean the temporary repair of a vehicle component. A Quick-Fix is made in order to return a vehicle to immediate service and when FIRCREST does not want to take time to allow TACOMA the opportunity to diagnose and repair the true cause of the problem. Examples include installing a new battery when a vehicle will not start while a defective alternator is the source of the electrical problem.

F. "Warranty," when used in the context of vehicles, parts, or equipment of vehicles, shall refer to the promises and guarantees made by the manufacturer or seller of such vehicle, part, or equipment.

G. "Parts and/or supplies" means those items used during the repair and maintenance of vehicles, or incorporated into the vehicle.

H. "Red-lined" shall refer to a vehicle or equipment that can not be driven or operated until repairs are made.

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I. "Restricted Service" shall refer to those vehicles or equipment that has been diagnosed with a problem that requires immediate attention. Examples include a problem that increases in severity with time and mileage, or a problem that will become a safety issue. This condition does not allow that unit to be operated for its intended use, but does allow the vehicle or equipment to be driven directly to a repair facility up to a maximum of 25 miles.

J. "Recommended Repair" shall refer to a diagnosed problem that does not immediately affect the function of a vehicle. The Recommended Repair would most likely be cost effective to increase the useful life of the vehicle, and prevent major repairs in the future.

K. "Out-Of-Service" shall refer to a vehicle on which the lease has been terminated, and the vehicle is in the custody of TACOMA Fleet Services.

L. "Vehicle" shall have the same meaning as set forth in Section 46.04.320 RCW. In addition, the term "vehicle shall include motorized construction equipment."

M. "Emergency" shall mean any incident, either manmade or natural, where a qualified TACOMA representative is required at the scene because:

1. The safety and/or life of a person is in danger.
2. Property and/or the environment could be damaged, lost or destroyed.
3. The repair, monitoring, or use of a vehicle, generator, compressor, or fuel system is essential to the preservation of human life and/or property.

An emergency will be declared by FIRCREST representative or designee at an incident scene.

III. GENERAL PROVISIONS

A. PURPOSE. The purpose of this Agreement is to set forth the terms and conditions by which TACOMA shall perform maintenance and repair services for FIRCREST, and FIRCREST will compensate TACOMA for such services. Services rendered by TACOMA may include fleet fueling and operator training, as requested by FIRCREST.

B. TERM. The term of this Agreement shall be indefinite, and this Agreement shall continue from year to year until terminated by notice of termination, in writing,

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given by one party to the other. Notice of termination must be received sixty (60) days prior to the termination date.

C. ANNUAL REVIEW. The parties agree to semi-annually review the effectiveness of this Agreement, and to evaluate performance. One such review shall occur approximately six months before the submission of the biennial operating budgets of TACOMA and FIRCREST, to aid the budget preparation process.

D. AMENDMENTS. This Agreement may be amended at any time by the mutual written consent of the parties.

E. JOINT BOARD. There shall be no joint board created to administer this Agreement.

F. PROPERTY. No property will be acquired or held pursuant to this Agreement.

G. FILING. A copy of this Agreement shall be filed with the Secretary of State, the City Clerks of FIRCREST and TACOMA, and the Pierce County Auditor; provided, however, that failure to file shall not affect the validity of this Agreement.

IV. SERVICES PROVIDED BY TACOMA

A. All Services. For all services performed, TACOMA will:

1. Except as provided herein, arrange towing service for FIRCREST. Abnormal terrain and weather that require specialized equipment, resulting in costs that can not be predicted in advance. All towing services shall be performed by commercial towing firms, and not by TACOMA.
2. Perform pick-up and delivery of vehicles. With advanced scheduling TACOMA will perform delivery and pickup services, provided that the times of pick-up and delivery shall be mutually agreed upon; without advance notice, delivery or pick-up will be as TACOMA's staffing allows. Charges for pick-up and delivery shall be as set forth in Exhibit "B - Fleet Services Rate Structure."
3. Report those known and/or suspected cases of vehicle abuse to FIRCREST's designated representative.

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4. TACOMA will provide services 16 hours per day, 5 days per week. Hours of operation may vary as agreed to by both parties. The normal working hours of Fleet Operation Shops are listed in Exhibit "C - Operating Hours."

B. Preventative Maintenance

1. TACOMA will perform all scheduled Preventative Maintenance. Upon notification from TACOMA that a vehicle is due for maintenance, FIRCREST will contact TACOMA to schedule the work, and deliver the vehicle to TACOMA's repair facility.
2. TACOMA will provide FIRCREST with a monthly schedule of vehicles due for Preventative Maintenance.
3. Preventive maintenance shall consist of the following services: Maintain and repair of major and minor vehicle equipment component functions. TACOMA shall exercise its best efforts to maintain all equipment or components subject to this Agreement to a level of performance equal to or exceeding the manufacturer's specifications for the equipment when originally purchased.

C. Unscheduled Maintenance

1. FIRCREST may arrange for unscheduled maintenance by telephone, radio, or by delivering vehicles to TACOMA facilities for unscheduled repairs.
2. TACOMA staff may be dispatched for repairs in the field. The dispatched mechanic will determine if the unit can be repaired in the field or whether it will need to be transported into the shop. TACOMA will secure a tow truck if necessary. FIRCREST shall advise TACOMA at the time such field repairs are requested, if the estimated repair time will exceed fifteen minutes.
3. Turnaround time for unscheduled repairs will be as soon as possible. TACOMA will provide an estimated completion time as soon as the problem is analyzed and parts availability determined.

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D. Quick Fix Maintenance. At the request of FIRCREST, a non-safety related temporary repair of a vehicle may be performed. When quick fix maintenance is performed, FIRCREST will schedule the vehicle for permanent repair.

E. Emergency Services. TACOMA will provide 24 hour per day, 7 days a week service for any emergency. TACOMA's agent will arrive at the scene of an emergency situation within one (1) hour of receiving the first call for assistance, during regular business hours; or as soon as is possible at all other times.

F. Miscellaneous Services

1. Other Equipment. TACOMA Fleet Services staff is available to repair and maintain other non-fleet equipment. Regular fleet equipment will take priority over non-fleet equipment.

2. Training. TACOMA will consult with FIRCREST on special training needs for FIRCREST's vehicles. TACOMA shall assist FIRCREST in developing and assisting in operator training for FIRCREST staff. TACOMA will notify FIRCREST of specific training needs or concerns that come to the attention of TACOMA's Fleet Services staff.

3. Rentals. Upon request, TACOMA will coordinate functions associated with vehicle and equipment rentals from outside sources.

4. Liaison. Upon request, TACOMA will act as liaison between FIRCREST and other agencies and vendors, as authorized.

5. Optional Parts. TACOMA will install and remove optional parts and equipment on vehicles.

6. Additional Services. TACOMA will provide additional services as may be mutually agreed upon by the parties.

G. Reporting. TACOMA will provide FIRCREST with reports reflecting the actual services performed, and the cost of the provided services. The reports will indicate the monthly and year-to-date totals for all vehicles, and categories of services described in this contract.

H. Disposal. At the request of FIRCREST, TACOMA will dispose of vehicles or equipment. As vehicles reach target miles, as determined by FIRCREST,

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TACOMA will conduct a technical evaluation to determine an optimum replacement schedule. TACOMA will identify the most economical disposal method of surplus vehicles by consulting maintenance records and recommendations from TACOMA's and FIRCREST's Managers, Supervisors, Mechanics and the Specification Writer.

I. Fuel Cards. TACOMA will issue fuel cards upon the request of FIRCREST. Upon issuance, TACOMA will monitor, repair, and test fuel dispensing storage systems at TACOMA-owned fuel locations. TACOMA will monitor outside fuel vendor service. Monthly invoices will reflect actual fuel charges.

V. FIRCREST RESPONSIBILITIES

A. Reporting. FIRCREST shall report vehicle malfunctions and other needed repairs to TACOMA as soon as practical. All accidents will be reported to TACOMA's representative within 24 hours of the occurrence so that TACOMA can perform a safety inspection. TACOMA's repair file will be available to ascertain the physical and mechanical condition of the vehicle prior to the accident. Any damage to a vehicle caused by the vehicle or equipment operator or another person shall be recorded on the work order as an accident. The decision to submit an accident to the Accident Review Board will be made by FIRCREST.

B. Training. FIRCREST will provide equipment training to its staff, and will educate its employees on the proper way to operate, maintain and inspect assigned equipment.

C. Vehicle Misuse. FIRCREST will endeavor to minimize the improper operation of vehicles and equipment and Fleet Services will report any instances of abuse discovered to TACOMA promptly.

FIRCREST or

D. Designation of Vehicles. FIRCREST will designate the vehicles to be serviced by TACOMA. Exhibit "A - City of FIRCREST Vehicles" constitutes those vehicles designated as of the date this Agreement is executed. Exhibit "A" may be amended administratively, through the mutual consent of the representatives of the parties.

E. Equipment Modifications. FIRCREST will notify TACOMA of any equipment repairs or modifications completed by any entity other than TACOMA, on the vehicles covered by this contract.

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VI. SCHEDULING OF SERVICES

- A. Equipment Preventative Maintenance work shall be performed in accordance with Exhibit "D - Schedule." TACOMA will place information inside the vehicle to reflect the next anticipated service. FIRCREST shall promptly contact the TACOMA Fleet Services shop dispatcher to schedule a date and time for service.
- B. FIRCREST shall notify TACOMA's Fleet Services shop dispatcher at least four hours in advance of canceling an appointment. Failure to provide advance notice shall result in the imposition of a \$30.00 fee.
- C. The operational requirements of FIRCREST will be taken into consideration when scheduling repairs and maintenance.

VII. COMPENSATION AND PAYMENT

- A. Maintenance and Repairs. FIRCREST shall pay TACOMA, as sole compensation for the services performed under this contract, such sums of money as are arrived at by computing the actual number of hours expended by TACOMA in the performance of this contract and multiplying such total hours by the amounts set forth in Exhibit "B - Rate Structure." In addition, FIRCREST shall reimburse TACOMA for the cost of all parts and materials utilized in the maintenance and repair of FIRCREST's vehicles.
- B. TACOMA shall be paid monthly, on the basis of invoices submitted. TACOMA shall submit an original written invoice, with necessary and appropriate documentation for work completed during the previous month.
- C. Payment shall be made through FIRCREST's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- D. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- E. The parties acknowledge that each is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement.

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F. The parties shall provide at their sole expense all materials, office space, and other necessities to perform their respective duties under this Agreement, unless otherwise specified in writing.

VIII. ADMINISTRATION AND MANAGEMENT

A. The Senior Shop Supervisor for TACOMA, currently occupied by William Bowers, shall have primary responsibility for administering this Agreement and shall coordinate all communications for TACOMA.

B. The Fleet Manager for FIRCREST, currently occupied by Dave Clabaugh, shall have primary responsibility for administering this Agreement and shall coordinate all communications for FIRCREST.

C. Any and all notices affecting or relative to this Agreement shall be effective if in writing and delivered or mailed, postage prepaid, to the respective party being notified at the address listed with the signature of this Agreement.

D. Both parties shall comply with all applicable federal and state statutes, laws, rules and regulations.

E. Neither party shall assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, it is hereby acknowledged that TACOMA will enter into agreements with towing company(s), and FIRCREST hereby consents to TACOMA's selection of such company(s).

IX. INDEMNIFICATION

A. TACOMA agrees to indemnify and hold FIRCREST, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of TACOMA, its elected officials, officers, employees, agents, and volunteers or by TACOMA's breach of this Agreement.

B. FIRCREST agrees to indemnify and hold TACOMA, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims,

demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of FIRCREST, its elected officials, officers, employees, agents, and volunteers, or by FIRCREST's breach of this Agreement.

C. If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraphs of this contract is caused by or results from the concurrent negligence of FIRCREST and TACOMA or their respective agents or employees, the indemnity provisions provided for in the preceding paragraphs of this contract shall be valid and enforceable only to the extent of the indemnitor's/indemnitee's negligence.

The provisions of this paragraph shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

D. The parties specifically assume liability for actions brought by the respective party's own employees against the other party, and, solely for the purpose of this indemnification and defense, the parties specifically waive any immunity under the state industrial insurance law, Title 51 RCW. THE PARTIES RECOGNIZE THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.

E. This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

F. Standard of Care. All obligations and services of TACOMA undertaken pursuant to this Agreement shall be performed diligently and completely in accordance with professional standards of conduct and performance. To the extent allowed by budgeted funds, TACOMA staff will remain technologically current and updated, keeping abreast of any new innovations, applications, techniques, and equipment, related to fleet management. TACOMA Fleet Services mechanics will attend factory service schools or other training as needed, as training funds are available.

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X. DISPUTES

A. The parties shall seek in good faith to resolve any dispute arising out of or relating to this Agreement. In the event such dispute or conflict arises, the parties agree that, notwithstanding such dispute or conflict, the parties will make a good faith effort to cooperate in continuing to work toward the successful implementation of this Agreement.

B. If at anytime, a disagreement should arise under this Agreement that the party's designated representatives are unable to resolve, the disagreement shall then be referred to TACOMA Fleet Division Manager and the FIRCREST Assistant City Manager for resolution.

C. If the parties are unable to resolve any dispute through their representatives as set forth above, then the dispute or concern shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. The location of the arbitration shall be Tacoma, Washington, and its proceedings will be governed by the rules of the Commercial Arbitration Rules. The arbitrators shall be individuals skilled in the legal and business aspects of the subject matter of this Agreement. Demand for arbitration shall be filed in writing with the other party, and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter has arisen, but in no event shall such demand be made after the date when institution of legal or equitable proceedings based on such claim, demand, or other dispute would be barred by the applicable statute of limitations. No arbitration arising out of this Agreement shall include, by consolidation, joinder, or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement executed by the parties, and the person or entity to be joined. Consent to arbitration involving an additional person shall not constitute consent to arbitration of any claim, dispute, or other matter not described in the written consent. The foregoing agreement to arbitrate shall be specifically enforceable in accordance with applicable Washington law. The cost of the arbitration shall be in the discretion of the arbitrators, provided, however, that no party shall be obliged to pay more than its own costs and the cost of a third arbitrator. The award rendered by the arbitrator or arbitrators shall be final, and judgment upon award may be entered in Superior Court for the County of Pierce, in the State of Washington.

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D. Neither party shall be considered to be in default in the performance of this Agreement to the extent that performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party.

E. Causes of action between the parties to this Agreement shall be deemed to have accrued, and the applicable statute of limitations shall commence to run, on the date of issuance of the final payment under this Agreement.

XI. NON-DISCRIMINATION

Both parties agree to take all steps necessary to comply with all federal, state, and local laws and policies regarding non-discrimination and equal employment opportunities. Neither party shall discriminate in any employment action because of race, creed, color, national origin, marital status, sex, age, or the presence of any sensory, mental or physical handicap.

XII. INTERPRETATION AND VENUE

A. Applicable Law. Washington law shall govern the interpretation of this Agreement. Pierce County shall be the venue of any arbitration or lawsuit arising out of this Agreement.

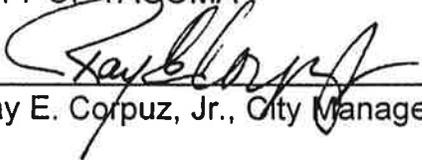
B. Severability. If one or more of the clauses of this Agreement is found to be unenforceable, illegal or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

C. Integration. This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties.

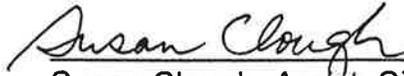
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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

CITY OF TAGOMA


Ray E. Corpuz, Jr., City Manager

CITY OF FIRCREST


Susan Clough, Assist. City Manager

Countersigned:


Peter Luttrupp, Finance Director

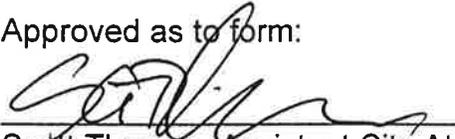

Leslie Rowen, General Services Director *cm*

Attest:


Rick Rosenblatt, City Clerk


Andy Michaels, Risk Manager

Approved as to form:


Scott Thomas, Assistant City Attorney

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