

INTERGOVERNMENTAL
AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "CITY," and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO, a body corporate and politic, with an address of 900 Grant Street, Denver, Colorado 80203, hereinafter referred to as "CONTRACTOR" or "DPS."

W I T N E S S E T H:

WHEREAS, the City requires the services of a contractor to assist it in operating a school crossing guard program at various schools within the City operated by the Contractor; and

WHEREAS, the Contractor was selected by the City as being able to more efficiently operate such a program due to the proximity of public schools to the program sites; and

WHEREAS, the City believes the Contractor to be well able to undertake and perform such services for the City and County of Denver, and desires to contract with the Contractor for the performing of such services as an independent contractor; and

WHEREAS, the Contractor is ready, willing and able to undertake such services as an independent contractor; and

WHEREAS, the proposed Agreement would not provide for the joint exercise by the parties of the function, service or facility provided herein, nor would it establish a separate legal entity to do so, nor would it constitute either party as an agent of the other; and

WHEREAS, C.R.S. 29-1-203 and the Denver City Charter authorize the execution of an intergovernmental agreement between the parties.

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

1. WORK TO BE PERFORMED: The Contractor shall assume responsibility for and operate the school crossing guard program within the City for Denver Public Schools, in compliance with the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference. In the event of any contradiction or inconsistency between this Agreement and Exhibit A, the provisions of this Agreement shall govern.

2. COORDINATION AND LIAISON: The Contractor agrees that during the term of this Agreement it shall fully coordinate all services hereunder with the City, including the Denver Manager of Public Works, or as other-wise directed by the City. The Contractor understands that the City's Manager of Public Works is the City's representative under this Agreement through whom contractual services performed under this Agreement shall be coordinated. All records, data, specifications and documentation prepared by the Contractor under this Agreement, when delivered to and accepted by the Manager of Public Works shall become the property of the City. The Contractor also agrees to allow the City to review any of the procedures used by it in performing the services hereunder and to make available for inspection notes and other documents used in the preparation of any of the services required hereunder, in order to coordinate the performance of services by the Contractor in accordance with the terms of this Agreement.

3. TERM OF AGREEMENT: The term of the Agreement shall commence on September 1, 2012, and terminate on August 31, 2015.

4. PAYMENT: The Contractor agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all of the items of work contained in this Agreement sums necessary to reimburse Contractor for salaries and fringe benefits paid to crossing guard employees by Contractor and supplies provided to crossing guard employees, which are approved in advance by the City, up to **NINETY TWO THOUSAND EIGHT HUNDRED AND 0/100 DOLLARS (\$92,800.00)** per year during the term of this Agreement, not to exceed a total of **TWO HUNDRED SEVENTY EIGHT THOUSAND FOUR HUNDRED AND 0/100 DOLLARS (\$278,400.00)** during the term of this Agreement. Funds will be dispersed in appropriate semi-annual increments, upon approval of properly executed invoices. Such invoices shall be in form acceptable to the City, with appropriate documentation, including time sheets, payroll and other backup information which may be pertinent in light of the nature of services to be performed under this Agreement, and showing services performed

within the period for which the payment is requested and addressing the completion of all applicable project milestones. It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds duly and lawfully appropriated and encumbered by the Denver City Council for the purpose of this Agreement, and paid into the Treasurer of the City.

5. STATUS OF CONTRACTOR: It is understood and agreed by and between the parties that the status of the Contractor shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time and it is not intended, nor shall it be construed, that the Contractor or any employee or subcontractor is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever. The employees of the Contractor shall not be commissioned Special Police Officers or otherwise possess law enforcement powers granted by the City.

6. TERMINATION OF AGREEMENT: The City may terminate this Agreement, or any part thereof, at anytime on ten (10) days notice if the Contractor's services are not being satisfactorily performed in accordance with this Agreement or if the underlying project or activity, or any part thereof, is cancelled. The City may otherwise terminate the Agreement, or any part thereof, without cause, for its convenience, upon thirty (30) days notice to the Contractor. If the Contractor's services are terminated, in whole or in part, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action.

7. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of the Contractor, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

8. EXAMINATION OF RECORDS: The Contractor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until

the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Agreement.

9. SUBJECT TO LOCAL LAWS; VENUE: Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, executive orders or fiscal rules, enacted or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

10. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Agreement to any party, other than the Contractor named herein. The Contractor understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontractor shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Contractor herein named shall remain fully responsible to the City according to the terms of this Agreement.

11. LIABILITY: Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of this Agreement.

12. CONFLICT OF INTEREST: The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Contractor further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.8, 1.2.9 and 1.2.12.

13. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to current, past or future employees of the City or the Contractor. It is the express intention of the City and the Contractor that any person other than the City or the Contractor receiving **services or** benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. DISPUTES: All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearing pursuant to Denver Revised Municipal Code 56-106.

15. TAXES, CHARGES AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by the City's Revised Municipal Code.

16. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

17. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or 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 part, term, or provision held to be invalid.

18. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendments hereby shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors or assigns.

19. LEGAL AUTHORITY:

- a. The Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- b. The person or persons signing and executing this Agreement on behalf of the Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth.
- c. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, or any part thereof, if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Contractor for any performance of any of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Article.

20. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by the Contractor, time is of the essence.

21. COUNTERPARTS OF THIS AGREEMENT: This Intergovernmental Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this document.

22. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Contract Control Number: PWADM-201207375-00

Contractor Name: DENVER PUBLIC SCHOOLS

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of October 03, 2012.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson
Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By Michael B Hancock
Michael B Hancock, Mayor

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By Mitchel T. Behr
Mitchel T. Behr, Assistant City
Attorney

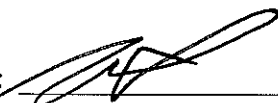
By Cary Kennedy
Cary Kennedy, Manager of
Revenue/Chief Financial Officer

By Dennis J. Gallagher
Dennis J. Gallagher, Auditor



Contract Control Number: PWADM-201207375-00

Contractor Name: DENVER PUBLIC SCHOOLS

By:  _____

Name: MICHAEL EATON
(please print)

Title: CHIEF OF SAFETY & SECURITY
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

School Crossing Guards Scope of Work

Background: The School Crossing Guard program is designed to supervise the safe crossing of elementary age school children when crossing streets on their way to and from schools. The School Crossing Guards are not enforcement officers and have no authority to enforce traffic laws.

- It is the duty of School Crossing Guards to:
- Ensure that turning motorists yield the- right of way to pedestrian school children
- Ensure that children obey the traffic signals
- Ensure that children do not start across the street when there is insufficient time remaining for them to cross on the green or walk light
- Instruct children in good safety habits, such as walking only with the green or walk light, using crosswalks, checking traffic before starting across the street, walking rather than running, and using the pedestrian push button where installed.

Program: The following provides information concerning the operation of the current School Crossing Guard program:

- There are currently 41 authorized locations for assignment of crossing guards providing service to 20 schools within Denver. Some schools may have one location and others could have up to five different locations authorized for guards. Each location is determined and prioritized by Transportation Engineering based on need, availability of traffic signals, traffic counts and other criteria.
- Additional locations may be authorized by Transportation Engineering after consultation with DPS. Final authorization for locations of School Crossing Guards rests solely with Transportation Engineering.