

**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND PUYALLUP SCHOOL DISTRICT
REGARDING SCHOOL ZONE FLASHER BEACON ASSEMBLY
MAINTENANCE AND REPAIR SERVICES**

THIS AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a municipal corporation and political subdivision of the State of Washington (herein referred to as "COUNTY") and the undersigned, **PUYALLUP SCHOOL DISTRICT**, a municipal corporation of the State of Washington (herein referred to as "DISTRICT").

WHEREAS, the DISTRICT has a need for specific school zone flasher beacon assembly maintenance and repair services and has requested said services as described below to be performed by the Pierce County Public Works and Utilities Department, Office of the County Engineer – Traffic Division.

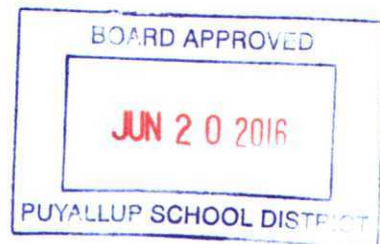
WHEREAS, the COUNTY agrees to perform the work described below at the convenience of the Pierce County Public Works and Utilities Department and that the DISTRICT will reimburse the COUNTY for all costs incurred.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and the DISTRICT as follows,

SECTION 1. PURPOSE. The purpose of this agreement is to establish the rights, duties and responsibilities of the parties with regards to the school zone flasher beacon assembly maintenance and repair services requested by the DISTRICT and any costs associated with this work.

SECTION 2. COUNTY'S RESPONSIBILITY. The COUNTY will perform the following maintenance and repair services for the DISTRICT under the direction and control of the DISTRICT.

- A. The COUNTY will provide personnel, equipment, and materials deemed by the COUNTY as necessary for repair and maintenance of the DISTRICT'S school zone flasher beacon assemblies.
- B. The COUNTY may also provide services on an on-call basis, if needed. Charges for these services shall include a call out fee and an hourly fee.
- C. If in the opinion of COUNTY staff the maintenance services requested are not appropriate, the COUNTY may refuse to perform such work for any reason.



SECTION 3. DISTRICT'S RESPONSIBILITY.

- A. The DISTRICT shall specify the location of the work to be provided by the COUNTY. The DISTRICT shall provide the COUNTY with a list of work for each year of this agreement.
- B. Any work requested from the COUNTY shall be through written "Work Authorizations" which shall identify the specific activities to be performed.
- C. All work requested by the DISTRICT must be performed in compliance with the COUNTY's NPDES permit.

SECTION 4. COMPENSATION AND BILLING PROCEDURE. The DISTRICT has agreed to pay up to the amount of **\$4,000.00** per calendar year to complete the described maintenance and repair services and any other on call work. The DISTRICT certifies that sufficient budgeted funds are available to cover the costs of the requested maintenance and repair services, and agrees to make payment to the COUNTY.

In consideration for the provision of maintenance services described herein, the DISTRICT agrees to pay the COUNTY for the actual work completed based on monthly billings and in accordance with the provisions of Section 2 and 3 above. Monthly billings will be calculated as indicated below.

- A. The labor rate billed to the DISTRICT shall be increased by thirty percent (30%) to account for administration overhead. The rate of overhead includes Maintenance Administration costs and Department Administration costs. No supervision or maintenance office costs will be charged directly.
- B. Equipment use will be charged to the DISTRICT based upon the hours used times the Pierce County Equipment Services Division (ESD) rental rate. A five percent (5%) administration charge will be assessed for processing.
- C. Materials and supplies will be billed at cost plus a ten percent (10%) administration processing fee. -Equipment Rental & Revolving Fund (ERR) inventory stocked items will be billed at the Pierce County ERR materials rate.
- D. The costs of services as outlined will be billed no later than the thirtieth (30th) day of the month by the COUNTY based on services provided in the previous month. Payments by the DISTRICT will be due within thirty days of receipt of the billing. Monthly payments that are not paid within the allotted time period shall be considered delinquent. Delinquent

charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one half of one percent (.5%) per month.

- E. The billing rates for labor and equipment related to providing the functions and services each year after 2016 shall be adjusted annually, effective January 1st of each year to reflect current costs. Increases in the costs that are the results of changes in regulatory requirements will be included in any increases to billing rates after 2016.

SECTION 5. DURATION. Unless sooner terminated as provided elsewhere in the Agreement, this agreement shall have an initial term commencing on the date that the last signature is affixed hereto until midnight **August 31, 2017**. After which, the contract shall be automatically renewed annually on September 1 of each year for an additional one year term, unless either party gives notice of non-renewal not less than 60 days prior to the expiration of the current term.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS. The COUNTY shall defend, indemnify, and save harmless the DISTRICT, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the COUNTY, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the COUNTY does not assume liability or responsibility for or in any way release the DISTRICT from any liability or responsibility which arises in whole or in part from the existence or effect of DISTRICT ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such DISTRICT ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the DISTRICT shall defend the same at its sole expense and if judgment is entered or damages are awarded against the DISTRICT, the COUNTY, or both, the DISTRICT shall satisfy the same, including all chargeable costs and attorney's service charges.

The DISTRICT shall defend, indemnify and save harmless the COUNTY, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the DISTRICT, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the DISTRICT does not assume liability or responsibility for or in any way release the COUNTY from any liability or responsibility which arises in whole or in part from the existence or effect of COUNTY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such COUNTY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the COUNTY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the COUNTY, the DISTRICT, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's service charges.

SECTION 7. NO THIRD-PARTY BENEFICIARY. The COUNTY does not intend by this agreement to assume any contractual obligations to anyone other than the DISTRICT, and the DISTRICT does not intend by this agreement to assume any contractual obligations to anyone other than the COUNTY. The COUNTY and the DISTRICT do not intend that there be any third-party beneficiary to this agreement.

SECTION 8. INSURANCE COVERAGE. The DISTRICT shall maintain at all times during the course of this agreement a general liability insurance policy or other comparable coverage with a policy limit of no less than \$5,000,000.00 dollars.

SECTION 9. NON-DISCRIMINATION. The COUNTY and the DISTRICT certify that they are Equal Opportunity Employers.

SECTION 10. ASSIGNMENT. Neither the COUNTY nor the DISTRICT shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 11. NOTICE. Any formal notice or communication to be given by the COUNTY to the DISTRICT under this agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

Puyallup School District
302 Second Street Southeast
Puyallup, WA 98372
Attention: Facilities Planning Director

Any formal notice or communication to be given by the DISTRICT to the COUNTY under this agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

Pierce County Public Works
4301 South Pine Street, Suite 446
Tacoma, WA 98409
Attention: County Traffic Engineer

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the DISTRICT or the COUNTY giving notice thereof to the other as herein provided.

SECTION 12. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 13. ENTIRE AGREEMENT. This agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this agreement and no prior

agreements shall be effective for any purpose.

SECTION 14. TERMINATION FOR DEFAULT. If the DISTRICT defaults by failing to perform any of the obligations of this agreement or fails to timely pay for County services, the COUNTY may, by depositing written notice to the DISTRICT in the U.S. mail, postage prepaid, terminate the agreement.

SECTION 15. TERMINATION FOR PUBLIC CONVENIENCE. The COUNTY may terminate the contract in whole or in part whenever the COUNTY determines, in its sole discretion that such termination is in the interests of the COUNTY. Whenever the contract is terminated in accordance with this paragraph, the COUNTY shall be entitled to payment for actual work performed at unit contract prices for completed items of work. Termination of this contract by the COUNTY at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the COUNTY.

SECTION 16. AMENDMENT. Provisions within this agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION 17. SEVERABILITY. If any of the provisions contained in this agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 18. CHOICE OF LAW, JURISDICTION AND VENUE. This agreement shall be governed by, construed, and enforced in accordance with the laws and regulations of the United States, the State of Washington, and the ordinances of Pierce County.

SECTION 19. ATTORNEY FEES AND COSTS. In the event of any controversy, claim, or dispute arising out of or in any way relating to this agreement or its breach, the prevailing party shall be entitled to recover its cost and reasonable attorney fees.

IN WITNESS WHEREOF, the parties have executed this Agreement this 20th day of June, 2016.

PUYALLUP SCHOOL DISTRICT:

By: [Signature] 6/20/16
Superintendent Date

Print Name: Timothy S. Yeomans



PIERCE COUNTY:

Approved as to legal form only:

By: [Signature] 7/13/16
Deputy Prosecuting Attorney Date

Recommended:

By: [Signature] 7/18/16
Budget & Finance Date

Approved:

By: [Signature] 7/21/16
Department Director Date
(less than \$250,00)

By: n/a
Pierce County Executive Date
(\$250,000 or more)