

**INTERLOCAL AGREEMENT FOR PROVISION OF SERVICES
BETWEEN
CITY OF MERCER ISLAND AND MERCER ISLAND SCHOOL DISTRICT**

THIS INTERLOCAL AGREEMENT ("Agreement") FOR PROVISION OF SERVICES BETWEEN THE CITY OF MERCER ISLAND ("City") AND MERCER ISLAND SCHOOL DISTRICT ("School District") is entered on this 20th day of June, 2016. Collectively, the City and the School District are referred to as the "Parties."

1. RECITALS

WHEREAS, RCW 46.63.180 authorizes school districts to install and operate automated school bus safety cameras on school buses to be used for the detection of violations of RCW 46.61.370(1) (failing to stop when the school bus has activated its stop sign) if the use of the cameras is approved by a vote of the school district board of directors; and

WHEREAS, the School District's board of directors approved the use of automated school bus safety cameras on School District buses, pursuant to RCW 46.63.180 on April 21, 2016 and

WHEREAS, the School District wishes to enter into an agreement with the City for provision of Law Enforcement and Municipal Court services related to the enforcement and processing of infractions issued through the use of automated school bus safety cameras; and

WHEREAS, the City is willing and able to provide the School District with the Law Enforcement and Municipal Court services set forth in this Agreement, provided that the City's costs of such services are reimbursed by the School District; and

WHEREAS, the Parties negotiated this Agreement to set out the terms of the services to be provided by the City and the costs to be paid by the School District;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

2. LAW ENFORCEMENT SERVICES

2.1 Law Enforcement Services. The City shall provide Law Enforcement Services to the School District for school bus safety camera infraction cases. Law Enforcement Services as used in this Agreement shall mean and include: inspection of photographs, microphotographs or electronic images produced by an automated school bus safety camera provided to the City by American Traffic Solutions and when appropriate, issuance of a notice of infraction including a certificate or facsimile of the notice, stating the facts supporting the notice of infraction.

2.2 Law Enforcement Decisions. Decisions made by Law Enforcement whether or not to issue a notice of infraction are not subject to School District consent or approval.

3. MUNICIPAL COURT SERVICES

3.1 **Municipal Court Services.** The Mercer Island Municipal Court shall provide Municipal Court Services for all School District school bus safety camera infraction cases filed on behalf of the School District in the Mercer Island Municipal Court. Municipal Court Services as used in this Agreement shall mean and include all local court services imposed by state statute, court rule, or other regulations as now existing or hereafter amended, including but not limited to processing, adjudication, and penalty enforcement of all School District school bus safety camera infraction cases filed in Municipal Court.

3.2 **GR 29.** The Parties recognize that GR 29 requires that the ultimate decision-making authority regarding the management and administration of the Court rests with the Presiding Judge and/or the Division Presiding Judge, and the Parties recognize that the duties imposed by GR 29 are non-delegable except as provided otherwise in GR 29. The services provided by the City and Municipal Court pursuant to this Agreement are subject to GR 29 and the non-delegable duties and responsibilities of the Presiding Judge and/or the Division Presiding Judge contained therein.

3.3 **Judicial Assignments.** Any assignments of judicial officers to hear the School District's cases will be made at the discretion of the Municipal Court Presiding Judge and are not subject to School District consent or approval, except as provided by law or court rule.

4. COMPENSATION FOR ADMINISTRATION AND OPERATING COSTS

4.1 **Administration and Operating Costs.** The Parties agree that the City will be paid for the administration and operating costs of the school bus safety cameras. Pursuant to state law, administration and operating costs include infraction enforcement and processing costs incurred by the City's Law Enforcement, and Municipal Court, including interpreter costs. For purposes of this Agreement, all costs are calculated on a per case basis as detailed in Exhibit A.

4.2 **Annual Increase.** The per case cost as set forth in Exhibit A shall increase annually by CPI- W plus 1.5% and shall be submitted to the School District by September 1st of each year. The cost detailed in Exhibit A, as adjusted, will go into effect on January 1st of the following year.

4.3 **Quarterly Invoices.** At the end of each quarter during the calendar year, the City will send the School District an invoice for all administration and operating costs that were incurred in that quarter. The City shall deduct and retain an amount equal to those costs from any revenue it collects from automated school bus safety cameras in that quarter. The invoice will show the amount, if any, owed to the City that was not fully satisfied by revenue or the amount of revenue, if any, in excess of that owed to the City. In the event the revenue did not fully satisfy the costs, the School District shall pay the City the unsatisfied amount within 60 days of receipt of the written invoice from the City. In the event the revenue exceeds costs in any quarter, the City shall remit the excess amount to the School District within 60 days of the date of the City's written invoice.

4.4 Close Out Services and Costs. Upon termination or expiration of this Agreement, the Municipal Court shall continue to process School District infraction cases filed in the Municipal Court prior to the termination date. The City and the Municipal Court shall continue to retain revenue sufficient to cover its costs; invoice the School District for unsatisfied costs; and/or remit revenue in excess of its costs on a quarterly basis as provided in section 4.3 above, until all school bus camera infraction cases have been closed. The School District shall pay invoices for the Municipal Court's and Law Enforcement's unsatisfied costs within 60 days of receipt of a written invoice. The Parties agree that the provisions of this paragraph shall survive termination or expiration of this Agreement.

5. TERM/TERMINATION

5.1 Term. This Agreement shall be effective as of June 28th, 2016 and shall remain in effect for an initial term of one year. The Agreement shall automatically renew for successive one-year terms under the same terms and conditions indefinitely, unless terminated as provided in Section 5.2 below.

5.2 Termination and Notice of Termination.

5.2.1 Termination for Convenience. This Agreement is terminable by either party at the end of the initial term or any additional one-year term without cause and in the party's sole discretion upon sixty (60) days' advance written notice to the other Party.

5.2.2 Termination for Cause. The City may terminate this Agreement upon five (5) calendar days' advance written notice in the event: (1) the School District materially breaches any duty or obligation required pursuant to this Agreement; or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible.

6. RE-OPENER

6.1 Mutual Agreement to Re-Open. The City and the School District may agree to enter into re-negotiation of the terms of this Agreement at any time and for any purpose by mutual agreement in writing. The Agreement shall remain in full force and effect during such negotiations.

6.2 Staffing Study Re-Opener. The City may re-open negotiations regarding the costs set forth in Exhibit A if in the City's determination the results of a Municipal Court or Law Enforcement Staffing Study indicate that such costs should be adjusted. Any agreed upon adjustment shall go into effect on January 1st of the following year or earlier if agreed to by the City and the School District.

7. SCHOOL DISTRICT AGREEMENT WITH VENDOR

The School District shall be solely responsible for entering into a contract with the manufacturer or vendor of the automated school bus safety cameras, American Traffic

Solutions, and complying with all applicable laws related to this contract.

8. SCHOOL ZONE SAFETY PROJECT REPORTS

The School District shall provide an annual report to the City reporting on the school zone safety projects funded with the revenue collected from infractions detected through the use of automated school bus safety cameras.

9. INDEMNIFICATION

9.1 School District Policies, Rules and Regulations. In executing this Agreement, the City does not assume liability or responsibility for or in any way release the School District from any liability or responsibility which arises in whole or in part from the existence or effect of School District policies, procedures, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any School District policy, procedure, rule or regulation is at issue, the School District shall defend the same at its sole expense and if judgment is entered or damages are awarded against the School District, the City, or both, the School District shall satisfy the same, including all chargeable costs and attorney fees.

9.2 City Held Harmless. The School District shall defend, indemnify, and hold harmless the City and its officers, employees, and agents, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, by any reason arising out of the acts or omissions of the School District, its officers, employees, and agents, or any of them relating to or arising out of performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss or damages is brought against the City, its officers, employees, agents, or any of them, the School District shall defend the same at its sole cost and expense; provided that the City, in its sole discretion, reserves the right to participate in said suit; and if final judgment be rendered against the City, and its officers, employees, agents or any of them, or jointly against the City and the School District and their respective officers, agents, or any of them, the School District shall satisfy the same. This indemnification shall survive the expiration or termination of this Agreement.

9.3 School District Held Harmless. The City shall defend, indemnify and hold harmless the School District and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the School District, the City shall defend the same at its sole cost and expense, provided that the School District retains the right to participate in said suit if any principal of governmental or public law is involved. If final judgment be rendered against the School District and its officers, agents, and employees, or any of them, or jointly against the School District and City and their respective officers, agents,

and employees, or any of them, the City shall satisfy the same. This indemnification shall survive the expiration or termination of this Agreement.

9.4 Actions Contesting Agreement. Each Party shall appear and defend any action or legal proceeding brought to determine or contest: (1) the validity of this Agreement; or (2) the legal authority of the School District and/or the City to undertake the activities contemplated by this Agreement. If both Parties to this Agreement are not named as parties to the action, the Party named shall give the other Party prompt notice of the action and provide the other an opportunity to intervene. Each Party shall bear any costs and expenses taxed by the court against it. Any costs and expenses assessed by a court against both Parties jointly shall be shared equally.

10. INDEPENDENT CONTRACTOR

Each party to this Agreement is an independent contractor with respect to the subject matter herein. Nothing in this Agreement shall make any employee of the School District a City employee for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded School District employees by virtue of their employment. At all times pertinent hereto, employees of the City are acting as City employees and employees of the School District are acting as School District employees.

11. GENERAL PROVISIONS

11.1 Entire Agreement and Negotiated Understanding. This Agreement represents the entire, final and complete agreement of the Parties with respect to the Automated School Bus Cameras and supersedes and replaces all oral or written agreements entered into prior to the date hereof. No provision of this Agreement may be amended or modified except in a writing signed by both Parties.

11.2 Negotiated Agreement. The Parties acknowledge that this Agreement is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship.

11.3 Compliance with Laws and Regulations. Each Party shall, with respect to its duties, responsibilities and operations hereunder, comply with all applicable laws, rules and regulations governing the same.

11.4 Governing Law and Venue. This instrument shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action that arises from or out of this instrument shall be the King County Superior Court.

11.5 Attorneys' Fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of

this Agreement in the hands of an attorney or files a lawsuit, each Party shall pay all its own attorney fees, costs and expenses.

11.6 Dispute Resolution. In the event of a dispute arising from this Agreement, the Parties agree to meet and confer in good faith in an effort to resolve such dispute prior to commencing any legal action.

11.7 Waiver of Binding Arbitration. The Parties waive and release any right to invoke binding arbitration under RCW 3.62.070, RCW 39.34.180 or other applicable law as related to this Agreement, any extension or amendment of this Agreement, or any discussions or negotiations relating thereto.

11.8 Non Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition or of any breach hereof, whether pertaining to the same or a different provision of this Agreement.

11.9 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part of any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

11.10 Section Headings. The section headings used in this Agreement are for the convenience of the Parties. In the event of a conflict between a section heading and the text of a particular section, the written text shall prevail.

11.11 Notice. Unless otherwise provided herein, any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the addressee, or sent by certified or registered mail, return receipt requested, addressed as follows, or to such other address as may be designated by the addressee by written notice to the other party:

City: City Manager
City of Mercer Island
9611 SE 36th Street
Mercer Island, Washington 98040

School District: Gary Plano, Superintendent
Mercer Island School District
4160 86th Ave SE
Mercer Island, Washington 98040

11.12 Force Majeure. The term "force majeure" shall include, without limitation by the following enumeration, acts of Nature, acts of civil or military authorities, fire, terrorism, accidents, shutdowns for purpose of emergency repairs, lockouts, strikes, and any other labor, civil or public disturbance, inability to procure required construction supplies and materials, delays in environmental review, permitting,

or other environmental requirement or work, delays as a result of legal or administrative challenges brought by parties other than signatories to this agreement. If the City is rendered unable, wholly or in part, by a force majeure, to perform or comply with any obligation or condition of this Agreement then, upon giving notice and reasonably full particulars to the School District, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restore normal operations.

11.13 No Third Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

11.14 Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same Agreement.

11.15 Amendment or Waiver. This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the School District and the City; provided that changes herein which are technical in nature and consistent with the intent of the Agreement may be approved on behalf of the School District by its Superintendent and on behalf of the City by the City Manager. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any Party.


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

City of Mercer Island

Mercer Island School District



Steven Lancaster, Interim City Manager



Gary Plano, Superintendent

Date: 6-28-2016

Date: 6/28/16

Approved as to Form:

Approved as to Form:



Kari Sand, City Attorney



Erin Battersby, School District Attorney

EXHIBIT A

**CITY INFRACTION ENFORCEMENT AND PROCESSING COSTS
PER CASE BASIS**

Bus Paddle Citation Fine	\$394
Law Enforcement Cost	\$5
Municipal Cost	\$21
American Traffic Solutions Vendor Fee	\$69
Funds to Mercer Island School District for school zone safety projects	\$299