

**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND THE CITY OF PACIFIC
REGARDING TRAFFIC MAINTENANCE SERVICES
CONTRACT NO. 14-92288**

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, **CITY OF PACIFIC**, a municipal corporation of the State of Washington (herein referred to as "CITY").

WHEREAS, the CITY has a need for specific traffic maintenance services and has requested said services as described below to be performed by the Pierce County Public Works and Utilities Department, 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 CITY 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 CITY 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 traffic maintenance services requested by the CITY and any costs associated with this work.

SECTION 2. COUNTY'S RESPONSIBILITY. The COUNTY will perform the following traffic maintenance services for the CITY under the direction and control of the CITY during 2014 thru 2019

- A. Traffic maintenance and operation services, including but not limited to, street lighting, traffic signs, roadway markings, raised pavement markings, and minor engineering projects, as requested by the City.
- B. The COUNTY may also provide traffic signal maintenance on an on-call basis, if needed. Charges for these services shall include a call out fee and an hourly fee for signal maintenance.
- 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. CITY'S RESPONSIBILITY.

- A. The CITY shall specify the location of the work to be provided by the COUNTY. The CITY 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. The CITY shall be responsible for locating utilities in the area in which the COUNTY shall perform work. The CITY shall be solely responsible for all costs and damage to the utility lines.
- D. All work requested by the CITY must be performed in compliance with the COUNTY's NPDES permit.
- E. The CITY shall purchase from the COUNTY insurance and post a bond for the work which the COUNTY will perform according to this agreement.

SECTION 4. COMPENSATION AND BILLING PROCEDURE. The CITY has agreed to pay up to the amount of **\$10,000.00** per calendar year to complete the described traffic maintenance services and has agreed to an ending date of **December 31st, 2019**. The CITY certifies that sufficient budgeted funds are available to cover the costs of the requested traffic maintenance services, and agrees to make payment to the COUNTY.

In consideration for the provision of maintenance services described herein, the CITY 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 CITY 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 CITY 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 CITY 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 2014 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 2014

SECTION 5. DURATION. This agreement shall remain in full force and effect upon the date that the last signature is affixed hereto until midnight December 31, 2019, unless otherwise renewed in writing by both parties.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS. The COUNTY shall defend, indemnify, and save harmless the CITY, 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 CITY from any liability or responsibility which arises in whole or in part from the existence or effect of CITY 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 CITY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the CITY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney's service charges.

The CITY 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 CITY, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the CITY 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 CITY, 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 CITY, and the CITY does not intend by this agreement to assume any contractual obligations to anyone other than the COUNTY. The COUNTY and the CITY do not intend that there be any third-party beneficiary to this agreement.

SECTION 8. INSURANCE COVERAGE. The CITY shall maintain at all times during the course of this agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than \$500,000.00 and a policy limit of no less than \$5,000,000.00 dollars.

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

SECTION 10. ASSIGNMENT. Neither the COUNTY nor the CITY 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 CITY under this agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

City of Pacific
Ken Barnett
100 – 3rd Avenue Southeast
Pacific, WA 98407

Any formal notice or communication to be given by the CITY 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 & Utilities
2702 South 42nd Street, Suite 201
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 CITY 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 CITY 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 CITY 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 ____ day of _____, 2014.

CITY OF PACIFIC:

PIERCE COUNTY:


Approved as to legal form only:

By:  7/29/14
Mayor Date

By:  8/12/14
Deputy Prosecuting Attorney Date

Approved as to form only:

Recommended:

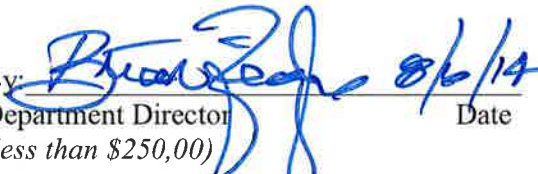
By: 
City Attorney Date

By:  8/12/14
Budget & Finance Date

Attest:

Approved:

By:  7/29/14
City Clerk Date

By:  8/6/14
Department Director Date
(less than \$250,00)

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

**CITY OF PACIFIC
WASHINGTON**

RESOLUTION NO 2019-603

**A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING THE
MAYOR TO EXECUTE AN AMENDMENT TO THE INTERLOCAL AGREEMENT
WITH PIERCE COUNTY REGARDING TRAFFIC MAINTENANCE SERVICES.**

WHEREAS, the City periodically has a need for specific traffic maintenance services and Pierce County Public Works and Utilities Department, Traffic Division has the ability and willingness to perform these services; and

WHEREAS, the City of Pacific authorized an Interlocal Agreement with Pierce County through Resolution 2014-181 for traffic maintenance services in August 21, 2014; and

WHEREAS, Pierce County has requested modifications to update the agreement to align with County billing procedures; and

WHEREAS, the City is still in need of these services periodically.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC,
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section 1. The Pacific City Council hereby authorizes the Mayor to execute the attached amendment to the interlocal agreement (ILA) Amendment between the City of Pacific and the Pierce County, Exhibit A, to modify the billing procedures in the ILA approved by Resolution 2014-181.

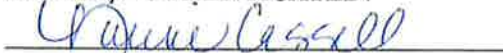
**APPROVED BY THE CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE 24th DAY OF JUNE, 2019.**

CITY OF PACIFIC



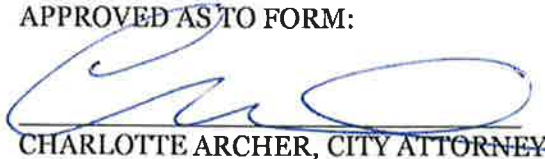
LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:



LAURIE CASSELL, CITY CLERK

APPROVED AS TO FORM:



CHARLOTTE ARCHER, CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

FIRST AMENDMENT
TO MEMORANDUM OF AGREEMENT CC-92288
BETWEEN PIERCE COUNTY AND THE CITY OF PACIFIC

THIS FIRST AMENDMENT is entered into by and between PIERCE COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY," and the undersigned, CITY OF PACIFIC, a municipal corporation of the State of Washington, hereinafter referred to as "CITY".

WHEREAS, the parties have previously entered into an Agreement dated August 21, 2014, regarding traffic maintenance services; and

WHEREAS, the parties desire to execute a First Amendment to replace Section 4 Compensation and Billing Procedure and Section 5 Duration,

NOW THEREFORE, in consideration of the mutual benefits and advantages to be derived by each of the parties,

IS IT HEREBY AGREED as follows:

1. The MEMORANDUM OF AGREEMENT number CC-92288 shall be amended to replace Section 4 and Section 5, as shown in Attachment 1.
2. ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL AGREEMENT AND ALL SUPPLEMENTS, MODIFICATIONS, AND AMENDMENTS THERETO SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be duly executed, such parties acting by their representatives being thereunto duly authorized.

DATED this 24th day of June, 2019.

CITY OF PACIFIC:

PIERCE COUNTY:

Approved as to form only:

By: [Signature] Date: 6/28/19
Mayor

By: [Signature] Date: 7-16-19
Deputy Prosecuting Attorney

Approved as to form only:

Approved:

By: [Signature] Date: 6/24/19
City Attorney

By: [Signature] Date: 7/12/19
Department Director

Attest:

By: [Signature] Date: 6/24/19
City Clerk

By: [Signature] Date: 8/1/19
Finance

Attachment 1

Section 4 and Section 5 of the original agreement are replaced in their entirety with the sections below.

SECTION 4. COMPENSATION AND BILLING PROCEDURE. In consideration for the provision described herein, the CITY agrees to pay the COUNTY up to \$10,000.00 per calendar year to complete assigned maintenance services. The CITY certifies that sufficient budgeted funds are available to cover the costs of the requested services and agrees to make payment to the COUNTY.

In consideration for the provision of maintenance services described herein, the CITY 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. Labor cost rates will be calculated based on the County's labor cost rates in effect during the period of service performance. Labor cost rates will be calculated based on the hours worked (in .1 increments) for in a specific job class and billed the CITY. The labor cost rates will include all Maintenance and Department Administration costs, as well as material and supply markup costs. No office costs related to management or maintenance will be charged directly.
- B. Equipment cost rates will be calculated based on the County's equipment rental rate in effect during the period of service performance. Equipment charges will be calculated based on the hours in use (in .1 increments) for each type of equipment and billed to the CITY.
- C. Materials and supplies will be billed at cost.
- D. The costs of services as outlined will be calculated and invoiced based on the services or supplies provided in a previous month. The County will make every effort to bill the monthly charges by the thirtieth (30th) day of the following month. Payments by the CITY will be due within thirty days of receipt of the invoice. 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 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 also be included in any increases to billing rates. A list of labor and/or equipment cost rates can be provided upon request.

Attachment 1-Continued

SECTION 5. DURATION. This agreement shall remain in full force and effect upon the date that the last signature is affixed hereto until midnight December 31, 2019. After which, the contract shall be automatically renewed annually on January 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.