

CITY OF FEDERAL WAY

EXTRA DUTY POLICE SERVICES AGREEMENT

This agreement is made and entered into this 13th day of September 2019 by and between the City of Federal Way, Washington (hereafter "City") and Pierce County Public Transportation Benefit Area Corporation (hereinafter "Pierce Transit").

WHEREAS, the City and Pierce Transit previously entered into an Extra Duty Police Services Agreement dated June 1st, 2018 and executed Amendment No. 1 to said Agreement on January 29, 2018; and

WHEREAS, the parties desire to enter into this new Agreement to incorporate additional terms recently negotiated and agreed upon between the parties; and

WHEREAS, Pierce Transit's operations occur in and around the City;

WHEREAS, Pierce Transit seeks to contract with the City for police related services or assistance to support Pierce Transit's system; and

WHEREAS, the City normally has resources available and is able to provide duly commissioned law enforcement officers to provide police related services to Pierce Transit subject to the terms and conditions set forth in this Agreement and the approval of the City's Chief of Police or Designee; and

WHEREAS, the duly commissioned officers who may provide such service will be assigned to extra duty under this contract during their off-duty hours, which will not conflict with their law enforcement obligation to the City; and

WHEREAS, the parties intend that the City be reimbursed, as nearly as possible, for its cost of providing policing services to Pierce Transit and that there shall be neither profit nor subsidy in the rates for such services; and

WHEREAS, the parties are authorized to enter into this agreement by virtue of RCW 39.34 and 35.02.225;

NOW, THEREFORE, the parties agree as follows:

1. PURPOSE.

The purpose of this agreement is for the City to provide Pierce Transit with law enforcement services through the Federal Way Police Department (FWPD). It is the intent of all parties that the services provided herein shall be provided in conjunction with the Pierce

PT-Federal Way PD ILA

County Sherriff's Department to provide law enforcement services to support Pierce Transit's system.

2. SCOPE OF PERFORMANCE.

The City shall provide Pierce Transit with extra duty police officer services upon request by the Pierce Transit Chief of Public Safety. The parties acknowledge that the number of officers and number of hours requested by Pierce Transit may fluctuate depending on Pierce Transit's needs, and the City's Chief of Police and Pierce Transit's Chief of Public Safety shall work together to determine the appropriate staffing level. Service provided by the City will be as is generally described below:

- (a) Number of officers: As requested by Pierce Transit, subject to the approval of the City's Chief of Police. For planning purposes, in the first year of this Agreement, the City should plan to have at least one (1) officer per shift, per day available to support this Agreement.
- (b) Hours and dates to be worked: Pierce Transit anticipates requesting services from 0400 to 0800, 1500 to 1800, and 2100 to 2400 each day. Hours and dates of service may be changed as deemed necessary by either party and as agreed upon between the City's Chief of Police and Pierce Transit's Chief of Police.
- (c) Specific location of service: As requested by Pierce Transit, subject to the approval of the City's Chief of Police. Pierce Transit requests service at the Federal Way Transit Center (31621 23rd Ave S., Federal Way, WA.) and Pierce Transit vehicles, bus routes, bus stops, facilities and properties located in the City.
- (d) Duty of Officers: The officers assigned to support Pierce Transit pursuant to this agreement shall provide law enforcement services for and at various Pierce Transit stations, vehicles, bus routes, bus stops, facilities and properties and throughout Pierce Transit's system located within the City. Such services shall include but are not limited to addressing issues of safety and security, responding to calls for service, conducting criminal investigations, making arrests, writing official reports, and issuing exclusion orders as well as monitoring activities at or on various Pierce Transit stations, vehicles, bus routes, bus stops, facilities, properties, and parking lots. Service also includes working to ensure the safety and security of the patrons, employees, staff and visitors to the various Pierce Transit stations, vehicles, bus routes, bus stops, facilities and properties. FWPD officers are expected to be at Pierce Transit locations within the City serving as a visual deterrent and liaison to the patrons and employees for a majority of the work shift. These services shall be

provided in full uniform and shall be accompanied by a marked or other authorized police vehicle.

It is the expectation of the parties that the officers scheduled for a pre-determined shift will be present to complete his/her shifts, except for the following circumstances: agency callback, late call/report from primary employment, family emergency, personal illness, all of which will be considered excused. The officers will make appropriate notification to FWPD management and attempt to find a replacement for their shifts.

- (e) The City shall furnish and supply all necessary personnel, supervision, equipment, uniforms, communication equipment, vehicles and supplies necessary to maintain the level of service to be rendered hereunder, and shall pay all salaries and employee benefits and other costs in connection therewith.
- (f) The City shall maintain all records relating to the administration of this agreement and staffing for same, provided that Pierce Transit shall have access to all records (excluding personnel records) relating to this agreement and/or law enforcement services provided to Pierce Transit upon request.
- (g) When working pursuant to this contract, FWPD officers will monitor and respond to radio calls for service within the City that originate from Pierce Transit. Pierce Transit will designate a Primary Talk group that officers will listen to and respond to calls for service.

3. ADMINISTRATION OF PERSONNEL.

All personnel assigned to Pierce Transit shall be employed by the City and governed by the City and FWPD laws, rules, policies and collective bargaining agreements. Recruitment, replacement, and performance of all personnel shall be in accordance with such City laws, rules, policies, and agreement; provided however, that Pierce Transit may communicate performance concerns of City personnel to the City. Any assignment or re-assignment of personnel will be in the sole discretion of the City's Chief of Police.

4. CONTRACT TERM, EXTENSION AND TERMINATION.

(a) The term of performance of the contract shall be from October 15, 2019 through December 31, 2021.

(b) This contract may be extended for two additional one-year periods upon the written consent of both parties hereto, and subject to approval of their governing bodies.

(c) Either party may terminate this Agreement for any reason and at any time when, in its sole discretion, it is in the best interest of the terminating party, by giving one hundred twenty (120) days' prior written notice to the other party.

5. COMPENSATION.

Pierce Transit shall pay the City as full reimbursement for all police services furnished under this contract a fee of \$72.20 per hour, per officer, in calendar year 2019.

On Thanksgiving Day, Christmas, and New Year's Day, the rate shall be one and one-half times the hourly base rate. On Independence Day, the rate shall be two times the hourly base rate.

Beginning January 1, 2020, the hourly rates shall be increased by the same percentage of pay increase in the Federal Way Police Guild bargaining agreement with the City, not to exceed four percent (4%) per year. Hourly rate increases for any optional extension years shall be negotiated between the parties prior to execution of any contract amendment extending the term of this Agreement.

It is agreed upon that officers will be paid in 1/6 of an hour increments during times when officers work beyond their assigned shifts to complete reports, transports or other law enforcement duties that are Pierce Transit related.

6. PAYMENT.

Pierce Transit shall reimburse the City for law enforcement services described herein pursuant to the all-inclusive payment rate shown above. The City shall invoice Pierce Transit on or about the 15th of the month following the service and include detailed service information, including actual service hours and all-inclusive hourly rate per officer. Payment shall be made by a check payable to the City of Federal Way and sent to the City within thirty (30) calendar days after receipt of invoice. Payments will include a processing fee of \$10.00 per month. Payments to the City that are received later than thirty (30) days following the invoice dates shall accrue interest at the rate of twelve percent (12%) per annum on the balance due. All payments shall first be applied to the accrued interest.

Pierce Transit shall not be financially liable for scheduled law enforcement services which are not actually performed if non-performance occurred because an officer was unable to complete his shift. However, Pierce Transit is financially liable for scheduled law enforcement services at the designated hourly minimum in all other circumstances.

7. COORDINATION WITH CHIEF OF PUBLIC SAFETY.

Pierce Transit has contracted with Pierce County Sherriff s Department to provide a Chief of Public Safety who will be responsible for coordinating the daily delivery of policing services to Pierce Transit in conjunction and cooperation with the City and any

other applicable law enforcement agencies. Pierce Transit reserves the right to directly hire a Chief of Public Safety as a Pierce Transit employee. The Chief of Public Safety will be tasked with coordinating all law enforcement efforts along with the City's FWPD officers. It shall be the responsibility of the Chief of Public Safety to determine the appropriate coverage, amount of hours, and type of work needed by FWPD officers to support Pierce Transit's system. The Chief of Public Safety will coordinate with the City's Chief of Police as needed, to ensure appropriate levels of law enforcement coverage for Pierce Transit.

8. DUTY STATUS.

Each police officer assigned to work, pursuant to this contract, is subject to call or assignment elsewhere by the City's Chief of Police or the Chief's designee, at any time for emergencies, special assignment, or overtime duty. Extra duty employment shall not infringe or interfere with the officer's primary obligations associated with his or her employment obligations to the City.

9. ADHERENCE TO CITY POLICIES AND PROCEDURES-SCOPE OF WORK.

Police officers engaged in extra duty employment are obligated to discharge all duties of their office and adhere to the City's police department policies and procedures at all times. Such officers shall obey, uphold and enforce the laws of the City and State of Washington and the Constitutions of the State of Washington and the United States of America at all times. Such officers shall understand that while they are on duty or engaged in extra duty assignment under this contract, they may remain subject to the supervision, direction, and/or discipline by the City, and subject to any applicable collective bargaining agreement in effect with the City. Police officers performing work pursuant to this contract shall only provide law enforcement/peacekeeping services as specified in Section 2(d) of this contract and they are at all times while performing said services subject to the direction and control of the City police department only.

10. ACTIVITY REPORTS.

Upon request, the City will provide reports to Pierce Transit, through the Chief of Public Safety on criminal activity within the City of Federal Way on or involving Pierce Transit's system. Extra duty officers assigned by the City will report their daily activities for those hours worked in the Pierce Transit system pursuant to this Agreement. Pierce Transit will provide the City with an electronic activity reporting tool if needed.

11. NO SPECIAL DUTY TO CONTRACTOR OR OTHERS.

Police officers on extra duty assignment have a primary obligation to the City, not Pierce Transit. They are expected to discharge all duties of their office while performing pursuant to this contract and are not required to perform any non-law enforcement/peacekeeping functions for Pierce Transit. Furthermore, this contract and performance thereof by the City police officers shall not create any special relationship with

any person or duties to protect any specific persons from harm or injury including the party signing this contract. The law enforcement/peacekeeping duties to be performed pursuant to this contract are the same in extent and scope as those provided by police officers to every member of the public.

12. NONDISCRIMINATION.

The parties shall not discriminate on the basis of race, color, sex, religion, national origin, creed, age or the presence of any sensory, mental or physical handicap. The City and Pierce Transit certify that they are Equal Opportunity Employers.

13. INDEPENDENT CONTRACTOR.

The City is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between Pierce Transit and the City or any of the City's agents or employees. The City shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by the City pursuant to this Agreement.

Nothing in this agreement shall make any employee of Pierce Transit a City employee or any employee of the City a Pierce Transit employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded City or Pierce Transit employees by virtue of their employment.

14. 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.

15. LIABILITY AND INDEMNIFICATION.

Each party shall be responsible and liable for the consequences of any act or failure to act on the part of itself, its employees or officers. While providing services hereunder, the acts or omissions of extra duty officers in the course and scope of supporting or otherwise providing services to Pierce Transit under this Agreement shall be deemed to be acts or omissions of City employees which shall be the sole responsibility of the City. Each party shall be responsible for its own negligence and that of its employees. Each party shall defend, indemnify and save harmless, the other party or the other party's officers, employees and agents from any and all costs, claims, judgments or awards of damages, resulting or arising from the acts or omissions of the indemnifying party, its officers or employees arising out of or in connection with the performance of this agreement. This indemnity provision shall survive the expiration or termination of this Agreement.

16. DISPUTE RESOLUTION.

In the event of a dispute in the administration of this agreement, Pierce Transit CEO or her designee shall discuss the dispute with the City's Chief of Police in an attempt to resolve the problem. If Pierce Transit CEO and the City's Chief of Police are unable to resolve a claim or dispute stemming from this Agreement, the parties agree to participate in non-binding mediation before a third party professional mediator, whose selection will be mutually agreed upon. The cost of mediating the dispute will be borne equally by both parties, and mediation should occur within thirty (30) days of a request by either party to engage in mediation. No claim or suit may be brought until the dispute resolution procedures as set forth in this section have been exhausted. If dispute resolution efforts under this section are not successful, either party may institute legal action to enforce the terms and conditions of this agreement. Exclusive jurisdiction for any such dispute shall be Pierce County Superior Court in Tacoma, Washington.

17. NOTICES

All notices and other material to be delivered under this contract shall be in writing and shall be delivered or mailed to the following address:

City of Federal Way
33325 8th Ave. S.
Federal Way, WA 98003
Attn: Chief of Police

Pierce Transit
3701 96th St. SW
Lakewood, WA 98499
Attn: Chief Of Public Safety

Pierce Transit
3701 96th St. SW
Lakewood, WA 98499
Attn: General Counsel

Or such other addresses as either party may, from time to time, designate in writing.

18. SIGNATURES.

The parties agree that all signatures, whether original, copy or faxed on this agreement will be considered originals.

19. 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.

20. CONFLICTS.

In the event of a conflict between any other agreements between the parties, this Agreement shall govern.

21. ENTIRE AGREEMENT.

No modification or amendment of this contract shall be effective unless in writing and signed by authorized representatives of the parties after approval of their respective governing body. This contract contains the entire agreement between the parties and may not be enlarged, modified or altered except in writing signed by the parties.

In WITNESS hereof, the parties have executed this Agreement on this date, the 13th day of ~~October~~, 2019.
September

CITY of FEDERAL WAY:

Andy J. Hwang
Andy J. Hwang, Chief of Police / Date

PIERCE TRANSIT:

Susan Dreier 9/13/19
Susan Dreier, Chief Executive Officer / Date

Attest:

Deanne Jacobson 9/13/19
Deanne Jacobson, Clerk of the Board / Date

Approved as to legal form only:

JR Call 7/9/19
J. Ryan Call, City Attorney / Date

Approved as to legal form only:

Dana A. Henderson 9/12/19
Dana A. Henderson, General Counsel / Date