

**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND THE CITY OF FIFE
REGARDING
TRANSPORTATION DEMAND MANAGEMENT**

THIS MEMORANDUM OF AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "COUNTY") and **the CITY OF FIFE**, a municipal corporation of the State of Washington (herein referred to as "CITY").

WITNESSETH

WHEREAS, RCW 70.94.527, (Commute Trip Reduction Efficiency Act "ACT") requires counties containing urban growth areas and cities and towns with "major employers," that are located within urban growth areas with a state highway segment exceeding the threshold of one hundred person hours of delay or jurisdictions that are located in contiguous urban growth areas, or are within an urban growth area with a population greater than seventy thousand people that adopted an ordinance before the year 2000 or jurisdictions that are located in contiguous urban growth areas, or contain a major employment installation in an affected county to develop ordinances, plans and programs to reduce Vehicle Miles Traveled (VMT) and drive alone commute trips, and thereby reduce vehicle-related air pollution, traffic congestion and energy use, and

WHEREAS, RCW 70.94.541 (2) provides for technical assistance to counties, cities, and towns in developing and implementing Commute Trip Reduction ("CTR") plans and programs, and

WHEREAS, RCW 70.94.521 through RCW 70.94.555 establishes the State's leadership role, and the requirements and parameters to reduce traffic congestion, fuel use, and air pollution through the Commute Trip Reduction programs, including the Growth and Transportation Efficiency Centers in Washington State; and

WHEREAS, RCW 47.06.050 requires that when planning capacity and operational improvements, the State's first priority is to assess strategies to enhance the operational efficiency of the existing system, and states that strategies to enhance the operational efficiencies include, but are not limited to, access management, transportation system management, and demand management ("Strategies"); and

WHEREAS, RCW 47.01.078 directs the State to develop strategies to reduce the per capita vehicle miles traveled, to consider efficiency tools including commute trip reduction and other demand management tools, and to promote the integration of

multimodal planning in support of the transportation system policy goals described in RCW 47.04.280; and

WHEREAS, the Legislature has directed the State to increase the integration of public transportation and the highway system, to facilitate coordination of transit services and planning, and to maximize opportunities to use public transportation to improve the efficiency of transportation corridors (RCW 47.01.330); and

WHEREAS, RCW 47.80.010 encourages the State and local jurisdictions to identify opportunities for cooperation to achieve statewide and local transportation goals; and

WHEREAS, the State of Washington in its Sessions Laws of 2015, Chapter 10, Section 220 (6) and (7), authorizes funding for Public Transportation and Commute Trip Reduction programs and other special proviso funding through the multi-modal transportation account as identified in the budget through its 2015-2017 biennial appropriations to WSDOT; and

WHEREAS, the COUNTY and CITY have agreed upon a Statement of Work for the City as set forth in "Attachment B," attached hereto and incorporated herein by this reference; and

WHEREAS, the COUNTY and CITY have agreed that the COUNTY should perform certain tasks outlined in the City Statement of Work.

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

SECTION 1.0 PURPOSE

The purposes of this AGREEMENT are: (1) to allocate to the CITY its proportionate share of State funds for implementing and administering a CTR plan, (2) to continue a cooperative approach among the CITY, the COUNTY, Pierce Transit and other jurisdictions in Pierce County required to plan and administer programs under the ACT in order to address interjurisdictional issues and to meet the statutory requirements of coordination and consistency among the jurisdictions' respective CTR plans, and (3) transfer to the COUNTY the CITY'S responsibilities as defined in Attachment B, Statement of Work for the City, except for Section 2. A., "Work to be Performed."

SECTION 2.0 FUNDING

The sole funding source for this AGREEMENT is funds obtained by Pierce County from WSDOT. Distribution of WSDOT funds to the CITY shall be based on the methodology set forth in "Attachment A," Fund Allocation Methodology for Washington State Department of Transportation Commute Trip Reduction Funds, attached hereto and

incorporated herein by this reference. Funding under this AGREEMENT is dependent upon the COUNTY'S receipt of funds from WSDOT in accordance with the provisions of Agreement Number GCB2163.

SECTION 3.0 SERVICE PROVISIONS

The funds provided to the CITY under this AGREEMENT shall be used solely for the activities described in Attachment B, "Statement of Work for the City," which, by this reference, is made a part of this AGREEMENT.

SECTION 4.0 AGREEMENT PERIOD

Regardless of the execution date, the effective date of this AGREEMENT shall be July 1, 2015. The expiration date shall be June 30, 2017.

SECTION 5.0 REIMBURSEMENT PROVISION

Payment requests by the CITY must be made before July 7, 2017 or within eight (8) days of the termination of this AGREEMENT, whichever occurs sooner. Untimely payment requests need not be honored by the COUNTY.

All invoices and warrants shall be based on and paid on eligible work performed and eligible costs incurred up to the Agreement amount. Upon the COUNTY'S receipt of funds from WSDOT, the COUNTY will remit a warrant for payment of these funds to the CITY by using the methodology set forth in Attachment A.

The COUNTY will retain all of the CITY'S funds as set forth in Attachment A. In exchange, the COUNTY in cooperation with Pierce Transit shall complete the CITY'S responsibilities as defined in Attachment B, "Statement of Work for the City (except for 2.A.)," hereto attached shall be performed by the COUNTY for all affected employer worksites doing business in the CITY.

SECTION 6.0 PLAN/PROGRAM FOR CITY EMPLOYEES

The COUNTY shall not be responsible for providing, assisting in the development of, record keeping, or otherwise participating in the CITY'S Commute Trip Reduction Program or Plan for its own employees.

SECTION 7.0 PROJECT RECORDS

The CITY agrees to establish and maintain for the project either a separate set of accounts or accounts within the framework of an established accounting system, in order to sufficiently and properly reflect all eligible direct and related indirect project costs claimed to have been incurred in the performance of this AGREEMENT. Such accounts are referred to herein collectively as the "Project Account." All costs claimed against the Project Account must be supported by properly executed payrolls, time

records, invoices, contracts, and payment vouchers evidencing in sufficient detail the nature and propriety of the costs claimed.

SECTION 8.0 PROGRESS REPORTS

The CITY shall submit to the COUNTY quarterly progress reports so that the COUNTY and WSDOT may adequately and accurately assess the progress made under the terms of this AGREEMENT. The progress reports shall be prepared as prescribed by WSDOT on the forms provided in Attachment C, "Project Progress Report" and/or as provided and modified by WSDOT staff. The CITY shall provide a final progress report, as prescribed in Attachment D, "Final Project Progress Report" and/or as provided and modified by WSDOT staff. Project Progress Reports for the first seven (7) quarters are to be submitted to the COUNTY no later than thirty-five (35) days from the end of each calendar quarter. The Final Project Progress Report for the eighth quarter is due to the COUNTY no later than July 7, 2017 or eight (8) days past termination of the contract, whichever is applicable.

SECTION 9.0 AUDITS, INSPECTIONS AND RECORDS RETENTION

- a) The CITY shall cooperate with and freely participate in any monitoring or evaluation activities conducted by WSDOT that are pertinent to the intent of this AGREEMENT.
- b) WSDOT, State Auditor, and any of their representatives shall have full access to and the right to examine during normal business hours and as often as they deem necessary, all the CITY'S records with respect to all matters covered in this AGREEMENT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and audits of all contracts, invoices, materials, payrolls, and other matters covered by this AGREEMENT. In order to facilitate any audits and inspections, all documents, papers, accounting records, and other materials pertaining to this AGREEMENT shall be retained by the CITY for six (6) years from the date of completion of the project or the project final payment date; or, in case of litigation, the CITY must retain all records until litigation is completed. The CITY shall be responsible to assure that it, WSDOT, the State Auditor, and any of their representatives, retain comparable audit rights with respect to subcontractors to the CITY within the scope of this Agreement.

SECTION 10.0 STATEMENT OF WORK

The CITY shall complete the tasks set forth in "Attachment B," Statement of Work for the City, attached hereto and incorporated herein by this reference.

SECTION 11.0 SUBCONTRACTING

As allowed under RCW 70.94.521-551, the CITY may elect to enter into a contract with a third party as a means of meeting the requirements of ACT. A separate

agreement/contract shall be adopted by affected parties. This action does not release the jurisdiction from meeting requirements of RCW 70.94.521-551.

Any subcontract entered into must identify the work being provided by the subcontractor and must contain an agreement to comply with all of the conditions and requirements associated with RCW 70.94.521-551. Each subcontract must also include a statement of indemnification that indemnifies Washington State, WSDOT, and the COUNTY.

Any party to this AGREEMENT may enter into agreements through the interlocal cooperation act or by resolution or ordinance, as appropriate, with other jurisdictions, local transit agencies, or regional transportation-planning organizations to coordinate the development and implementation of CTR plans. Parties entering into such agreements must provide notice to the COUNTY.

SECTION 12.0 COMPLIANCE WITH LAWS AND REGULATIONS

In carrying out the terms of this agreement, the CITY agrees to abide by all applicable state and federal laws and regulations, including but not limited to those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence agreement compliance, and retention of all such records. In carrying out the terms of this agreement, the CITY will adhere to all of the nondiscrimination provisions in Chapter 49.60 RCW and will also comply with the Americans with Disabilities Act, Public Law 101-336, which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment public accommodations, state and local government services and telecommunication. In carrying out the terms of this agreement, the CITY will adhere to RCW 73.16.010 which provides employment preference in every public department and upon all public works of the state for certain veterans.

SECTION 13.0 AGREEMENT MODIFICATIONS

Either party may request changes to this agreement, including changes in the Statement of Work. Such changes which are mutually agreed upon shall be incorporated as written amendments to the AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

SECTION 14.0 TERMINATION OF AGREEMENT

This AGREEMENT may be terminated immediately upon provision of written notice by one party in the event the other fails to perform its obligations as described in this AGREEMENT.

Any party may also terminate this AGREEMENT for convenience and without cause by providing the other party with written notice not less than sixty (60) days in advance.

This AGREEMENT may be terminated upon provision of written notice not less than (14) fourteen days prior to the effective date of termination, if the requisite state funding is reduced or becomes unavailable through failure of appropriation or otherwise.

This AGREEMENT may be terminated immediately upon provision of written notice should WSDOT determine that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds.

If this AGREEMENT is terminated prior to fulfillment of the terms stated herein, the CITY shall be reimbursed only for actual and eligible expenses incurred under this AGREEMENT prior to the date of termination and only to the extent of appropriated funds available at the time of termination.

SECTION 15.0 SPECIAL PROVISION

The COUNTY'S or CITY'S failure to insist upon the strict performance of any provision of this AGREEMENT, or to exercise any right based upon breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this AGREEMENT.

SECTION 16.0 INDEMNIFICATION AND DEFENSE

The CITY agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and for damages to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the CITY, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees.

The preceding paragraph is valid and enforceable only to the extent of the CITY's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural, landscape architectural,

engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the CITY or the CITY's agents or employees.

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the CITY expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the CITY. This waiver is mutually negotiated by the parties to this Agreement.

SECTION 17.0 GOVERNING LAW AND VENUE

This AGREEMENT shall be construed and enforced in accordance with and the validity and performance thereof shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this AGREEMENT shall be the Superior Court of Pierce County, Washington.

SECTION 18.0 SEVERABILITY

In the event that any term or condition of this AGREEMENT or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms or conditions of this AGREEMENT which can be given effect without the invalid term or condition. To this end the terms and conditions of this AGREEMENT are declared severable.

SECTION 19.0 RECAPTURE PROVISION

In the event WSDOT determines that the CITY fails to expend State funds in accordance with state law and/or the provisions of this AGREEMENT, WSDOT reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. The COUNTY reserves the right to withhold further reimbursements to the CITY until WSDOT notifies the COUNTY that reimbursements may be resumed.

Such right of recapture shall exist for a period not to exceed three (3) years following the termination of this AGREEMENT. Repayment by the CITY of State funds under this provision shall occur within thirty (30) days of demand.

SECTION 20.0 ADDITION OF PARTIES OR CHANGE IN STATUS

In the event a jurisdiction becomes affected by RCW 70.94.521-551, the COUNTY will assist the jurisdiction in the development of their CTR ordinance and plan until state funds can be reassessed on the quarterly schedule. The CITY is a party to this AGREEMENT, and if it finds it is no longer required to implement a CTR Plan, it may continue to be a party to this AGREEMENT for purposes of participating in the Technical Work Group for information

sharing but shall not receive state funds effective with the quarter following the change in status.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date and year written above.

PIERCE COUNTY

CITY OF FIFE

BRIAN J. ZIEGLER
Public Works Director

SUBIR MUKERJEE
City Manager

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

City Attorney

Date

Date

Budget and Finance

Date

Attachment A

FUND ALLOCATION METHODOLOGY FOR WASHINGTON STATE DEPARTMENT OF TRANSPORTATION COMMUTE TRIP REDUCTION (CTR) FUNDS

Funding allocated by WSDOT for local implementation of CTR activities is based on the following formula:

1. Fifty percent of the WSDOT allocation to Pierce County shall be allocated to Pierce Transit.
2. The remaining state funding for local CTR implementation will be allocated to the affected jurisdictions based on the number of affected worksites in each jurisdiction.
3. At the end of the final quarter any unclaimed state funds shall be allocated to the entities which have reported expenses beyond their allocations. The allocation of unclaimed amounts shall follow steps 1 and 2 as stated above. Unclaimed state funds and over expenditures will be determined by the amounts reported in the final progress report.

July 1, 2015 – June 30, 2017 Allocation Based on numbers as of April 15, 2017

	Number of Worksites	Total Allocation
Pierce Transit	n/a	\$64,437
Pierce County	10	\$18,950
City of DuPont	4	\$7,581
City of Fife	3	\$5,686
City of Gig Harbor	2	\$3,791
City of Lakewood	7	\$13,265
City of Puyallup	4	\$7,581
City of Sumner	2	\$3,791
City of University Place	2	\$3,791
TOTAL	34	\$128,873

ATTACHMENT B

STATEMENT OF WORK FOR THE CITY

CITY Statement of Work

The CITY shall perform the following tasks:

1. Administrative Work Plan

The CITY agrees to submit to WSDOT an administrative work plan by the end of the first quarter of this agreement or when the CITY submits its first invoice, whichever is sooner.

- A. The work plan shall identify the deliverables, schedule, expected outcomes, performance measures and the budget specific to strategies associated with this AGREEMENT and other strategies as defined in approved and locally adopted CTR or GTEC plans. These may include, but are not limited to, recruiting new employer worksites, reviewing employer programs, administering surveys, reviewing program exemption requests, providing employer training, providing incentives, performing promotion and marketing, and providing emergency ride home and other commuter services.
- B. The administrative work plan budget shall identify how the CITY will use the state funds provided in this AGREEMENT for each task. The work plan shall also provide an estimate of the other financial resources not provided in this AGREEMENT will be used to complete each task.
- C. The administrative work plan must be approved in writing by the WSDOT Project Manager and signed by the CITY, and shall be incorporated as a written amendment to the AGREEMENT. The work plan may be amended based on mutual written agreement between the WSDOT Project Manager and the CITY.

2. Work to be Performed

- A. The CITY has enacted or will enact a Commute Trip Reduction (CTR) ordinance in compliance with RCW 70.94.521-.555.
- B. The CITY agrees to implement a CTR program based on the approved administrative work plan and the draft or adopted local CTR plan and to comply with all provisions of the CITY ordinance.

3. Use of State Funds for Incentives

The CITY agrees to use State funds provided as part of this AGREEMENT in accordance with incentives guidance to be provided by WSDOT.

4. Implementation Plans

The CITY shall incorporate appropriate sections of the Project Scope of Work and Incentives Guidance, as well as the approved Work Plan, in all agreements with eligible contracting partner(s), as necessary, to coordinate the development, implementation, and administration of the CTR plans, and compliance with applicable ordinances.

5. Appeals, Exemptions, and Modifications

The CITY shall maintain an appeals process consistent with this AGREEMENT and applicable ordinances, and procedures contained in the Commute Trip Reduction Guidelines which may be obtained from WSDOT or found at <http://www.wsdot.wa.gov/transit/ctr/law.htm>.

6. Survey Coordination

The CITY agrees to coordinate with WSDOT and its contracting partners for commute trip reduction employer surveys.

7. Database Updates

The CITY agrees to provide WSDOT, the COUNTY and Pierce Transit with updated lists of affected or participating worksites, employee transportation coordinators, and jurisdiction contacts, as requested. These updates will be submitted in a format specified by WSDOT.

8. Planning Data

The CITY agrees to provide WSDOT with the CTR program goals established for newly affected worksites when they are established by the local jurisdiction. The CITY agrees to provide WSDOT with updated program goals for affected worksites and jurisdictions as requested. These updates shall be submitted electronically in a format specified by WSDOT.

9. Coordination with Local CTR Efforts

The CITY agrees to be an active member of the Pierce County TDM/CTR Technical Work Group.

10. Coordination with Regional Transportation Planning Organization

The CITY shall coordinate the development and implementation of its CTR plan and programs with the applicable regional transportation planning organization (RTPO). The CITY agrees to notify the RTPO of any substantial changes to its plans and programs that could impact the success of the regional CTR plan. The CITY agrees to provide information about the progress of its CTR plan and programs to the RTPO upon request.

ATTACHMENT C
Project Progress Report

Commute Trip Reduction (CTR) Quarterly Project Report

Reporting quarter:		Date:	
Organization:		Agreement number:	GCB 2163
Biennial targets	Estimate of drive-alone trips to reduce to meet goal:		
Key deliverables: <i>(from work plan)</i>	•		
Completed activities this quarter			
•			
Planned activities for next quarter			
•			
Describe issues, risks or challenges and resolutions			
•			
Estimated expenditures of state funds for this quarter			
•			

ATTACHMENT D Final Project Progress Report

Commute Trip Reduction (CTR) Final Project Report

Biennium:	2015-2017	Date:	
Organization:		Agreement number:	GCB 1567
Biennial targets	Estimate of drive-alone trips to reduce to meet goal:		
	•		
Deliverables: <i>(from work plan)</i>	•		
Describe your progress on each of your deliverables this biennium.			
•			
Did you meet your targets for this biennium? Why or why not?			
What were your major successes this biennium? How did they help you make progress toward the goals in your jurisdiction's CTR plan(s)?			
•			
What were your major challenges this biennium? How did they hinder your progress toward the goals in your jurisdiction's CTR plan(s)?			
•			
How do you measure the performance of your strategies?			
•			
What did you learn this biennium?			
•			
What would help you be more successful in the future? Please be specific (If it's more resources, how much and what would they be for, etc.).			
•			

For each of the strategies in your administrative work plan, describe your expected outcomes, whether you met those outcomes, and why or why not.

Strategy	Expected outcomes	Performance measures	Outcomes met?	Why or why not?

If your organization used other financial resources besides state CTR funds to implement the activities in your administrative work plan for this agreement, please provide the information below.

Source of local funds	Total spent this agreement	How the funds were used
Total local funds:		

If your organization disbursed any state CTR funds to other organizations to implement the activities in your administrative work plan for this agreement, please list the total amount disbursed for the biennium below.

Organization	Total disbursed this agreement	Purpose of disbursement
Total disbursement:		