

CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 2/13/17

AGENDA ITEM:	
Interlocal with Marysville School District re: Automated School Bus Safety Cameras	
PREPARED BY:	DIRECTOR APPROVAL:
Colin Olivers, Deputy City Attorney	
DEPARTMENT:	
Executive, Legal, Municipal Courts, and Police	
ATTACHMENTS:	
Interlocal Agreement approved by Marysville School District	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	
<p>State law requires vehicles to stop when encountering a school bus that has activated its lights and stop arm to receive or discharge children. State law also authorizes the Marysville School District to install and operate automated school bus safety cameras on school buses to detect vehicles that fail to stop as required by state law.</p> <p>The Marysville School District has entered an agreement with American Traffic Solutions, Inc., to have automated school bus safety cameras installed on school buses operating within the City limits. The School District requires the assistance of the City to have Police Officers review possible violations occurring within the City and to issue infractions and to have the Marysville Municipal Court process those infractions.</p> <p>The interlocal agreement defines the responsibilities of the City and the School District as it relates to the detection, review, issuance, and processing of infractions detected by the School District's automated school bus safety cameras. The interlocal provides that the School District will reimburse the City for its administrative and operating costs related to processing infractions detected by automated school bus safety cameras and adjusts the costs annually to account for inflation. The Police Department felt that its costs associated with enforcement activities could be absorbed without compensation (the interlocal permits the parties to reconsider compensation for law enforcement activities if necessary).</p>	

RECOMMENDED ACTION:
Staff recommends that Council authorize the Mayor to sign the Interlocal Agreement with the Marysville School District related to the District's use of automated school bus safety cameras.

**INTERLOCAL AGREEMENT FOR PROVISION OF SERVICES BETWEEN
THE CITY OF MARYSVILLE AND THE MARYSVILLE SCHOOL DISTRICT**

This Interlocal Agreement (the “Agreement”) is entered into this 12th day of January, 2017, by and between the City of Marysville (the “City”) and the Marysville School District (the “School District”) related to the issuance, prosecution, collection, and remittance of certain traffic infractions.

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 January 23, 2017; and

WHEREAS, the School District executed, on October 17, 2016, a contract with American Traffic Solutions, Inc., a company that provides automated school bus safety camera services (the “ATS Contract”); 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. REQUIREMENTS OF THE INTERLOCAL COOPERATION ACT

2.1. Purpose of Agreement. This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW. The purpose and intent of this Agreement is

for the City to provide Law Enforcement and Municipal Court Services to issue and process infractions detected by the School District's automated school bus safety cameras. The City will provide the necessary services and the School District will reimburse the City for the City's administration and operation costs.

2.2. No Separate Entity. The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

2.3. Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either Party in connection with its performance under this Agreement will remain the sole property of such Party and the other Party shall have no interest therein.

2.4. Administrators. Each Party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such Party's participation in this Agreement. The parties' initial Administrators shall be the following individuals:

Marysville's Initial Administrator:	School District's Initial Administrator:
Chief Administrative Officer Gloria Hirashima 1049 State Avenue Marysville, WA 98270	Superintendent Dr. Becky Berg 4220 80th Street NE Marysville, WA 98270

Either Party may change its Administrator at any time by delivering written notice of such Party's new Administrator to the other Party.

3. LAW ENFORCEMENT SERVICES

3.1. Law Enforcement Services. The City's Police Department shall provide Law Enforcement Services to the School District for infractions detected by the School District's automated school bus safety cameras. Law Enforcement Services as used in this Agreement shall mean and include: inspection/review of photographs, microphotographs, or electronic images produced by the School District's automated school bus safety cameras, accessed through an internet portal provided by American Traffic Solutions, Inc., the School District's contractor, 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.

3.2. Law Enforcement Decisions. Decisions made by Marysville Police Department officers

on whether or not to issue a notice of infraction are not subject to School District consent or approval. Marysville Police Department officers are responsible for exercising their independent discretion, in conformance with Marysville Police Department policies and procedures and all applicable laws, rules, and regulations, with regards to performing activities under this Agreement.

3.3. Workload. The City will attempt to have a Marysville Police Department officer timely and regularly review possible infractions. However, the School District specifically acknowledges that Marysville Police Department officers are at all times subject to call by the Chief of Police or the Chief's designee for emergencies, special assignment, or overtime duty. As such, the City makes no assurances that an officer will be available to review possible infractions detected by the School District's automated school bus safety cameras. In no circumstance shall the City be liable for the failure to review, approve/reject, or issue possible infractions detected by the School District's automated school bus safety cameras.

4. MUNICIPAL COURT SERVICES

4.1. Municipal Court Services. The City's Municipal Court shall provide Municipal Court Services for all infractions detected by the School District's automated school bus safety cameras filed in the Marysville 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 infractions detected by the School District's automated school bus safety cameras filed in the Marysville Municipal Court.

4.2. 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 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 contained therein.

4.3. 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.

4.4. Availability of Evidence. The School District shall assure that all evidence collected by its automated school bus safety cameras is available for download and inclusion in the court file in an acceptable format.

5. COMPENSATION FOR ADMINISTRATION AND OPERATING COSTS

5.1. Administration and Operating Costs. The Parties agree that the City will be paid for the administration and operating costs of the automated school bus safety cameras. Pursuant to state law, administration and operating costs include infraction enforcement and processing costs incurred by the City's Police Department 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.

5.2. Annual Increase. The per case cost as set forth in Exhibit A shall increase annually at a rate of 100% of the Seattle CPI-W June Index for the year prior with a minimum of 0% to a maximum of 2.25%. The rate increase will occur on January 1 of each year unless otherwise negotiated and agreed by the parties.

5.3. 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 infractions detected by the School District's 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.

5.4. Close Out Services and Costs. Upon termination or expiration of this Agreement, the Municipal Court shall continue to process infraction cases detected by the School District's automated school bus safety cameras 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 5.3 above, until all infractions detected by the School District's automated school bus safety cameras have been closed. The School District shall pay invoices for the Municipal Court's and Police Department'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.

6. TERM/TERMINATION

6.1. Term. This Agreement shall be effective upon being fully executed by the parties and shall remain in effect until December 31, 2017. Thereafter, the Agreement shall automatically renew for successive one-year terms, indefinitely, unless either Party provides advance written notice, by December 1, of its intent to terminate the Agreement or unless earlier terminated as

provided in Section 6.2.

6.2. Termination and Notice of Termination.

6.2.1. Termination for Convenience. This Agreement is terminable by either Party without cause and in the Party's sole discretion upon thirty (30) days' advance written notice to the other Party.

6.2.2. 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; (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible; or (3) the expiration or termination of the ATS Contract.

7. RE-OPENER

7.1. 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.

7.2. Staffing Study Re-Opener. The City may re-open negotiations regarding the costs set forth in Exhibit A if, in the City's sole determination, the results of a study of the City's Municipal Court or Law Enforcement staffing indicates 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. Specifically, and without limiting the City's other rights to renegotiate, the City also reserves the right to renegotiate, at any time, an immediate change to the administration and operating costs attributable to the Law Enforcement Services should the City determine that the administration and operating costs are non-negligible.

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

9. 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 the School District's automated school bus safety cameras.

10. INDEMNIFICATION

10.1. 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.

10.2. City Held Harmless. The School District shall defend, indemnify, and hold harmless the City and its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever (1) relating to or arising out of the acts or omissions of the School District, its officials, officers, employees, contractors, and agents in performance of this Agreement; (2) relating to or arising out of the City's provisions of Law Enforcement Services or Municipal Court Services related to infractions detected by the School District's automated school bus safety cameras; (3) relating to or arising out of the City's use of photographs, microphotographs, or electronic images captured by the School District's automated school bus safety cameras; (4) relating to or arising out of the School District's use of automated school bus safety cameras; or (5) relating to or arising out of the ATS Contact. In the event that any suit based upon such a claim, action, loss or damages is brought against the City, its officials, officers, employees, or agents, 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 is rendered against the City, and its officials, officers, employees, or agents or jointly against the City and the School District and their respective officials, officers, employees, or agents, the School District shall satisfy the same. However, nothing in this section shall require the School District to defend, indemnify, or hold harmless the City and its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expenses, or damages arising out of the sole negligence of the City and its officials, officers, employees, or agents. This indemnification shall survive the expiration or termination of this Agreement.

10.3. Actions Contesting Agreement. Each Party may 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.

11. PUBLIC RECORDS ACT COMPLIANCE

RCW 46.63.180 authorizes the use of automated school bus safety cameras in certain circumstances to detect violations of RCW 46.61.370(1), but places restrictions on the use of the photographs, microphotographs, or electronic images (collectively, the "Images"). The City's Law Enforcement officers will have access to the Images through a web portal provided by the School District's contractor, American Traffic Solutions, Inc., but will not possess or control the Images. Pursuant to Section 4.4, above, certain Images may be included in Municipal Court case files. If the City receives a public records request under Chapter 42.56 RCW for the Images or a request for Municipal Court records including the Images, the City will deny the request, citing RCW 46.63.180 as exempting the records from disclosure. In addition to the indemnification obligations contained in Section 10, the School District will defend, indemnify, and hold harmless the City and its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever relating to or arising out of the City's denial of a public records request, a request for Municipal Court records, or the City's release of the Images.

12. 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 City employees by virtue of their employment. Nothing in this Agreement shall make any employee of the City a School District 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.

13. GENERAL PROVISIONS

13.1. Entire Agreement and Negotiated Understanding. This Agreement represents the entire, final, and complete agreement of the Parties with respect to the School District's automated school bus safety 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.

13.2. 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.

13.3. 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.

13.4. 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 Snohomish County Superior Court.

13.5. 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.

13.6. 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.

13.7. 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.

13.8. 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 sections, subsections, sentences, clauses, phrases, or other portions of this Agreement.

13.9. 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.

13.10. Notice. Unless otherwise provided herein, any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the other Party's Administrator, or sent by certified or registered mail, return receipt requested, addressed to the other Party's Administrator.

13.11. 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.

13.12. 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 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.

13.13. 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.

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

CITY OF MARYSVILLE

MARYSVILLE SCHOOL DIST. NO. 25

Jon Nehring, Mayor



Dr. Becky Berg, Superintendent

Attest:

April O'Brien, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A

CITY INFRACTION ENFORCEMENT AND PROCESSING COSTS PER CASE BASIS

Bus Paddle Citation Fine	\$419.00
Less Law Enforcement Services Cost	\$0.00
Less Municipal Court Services Cost	\$46.92
Remaining Funds to Marysville School District	\$372.08

RCW 46.63.180**Automated school bus safety cameras—Definition.**

(1) School districts may 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) if the use of the cameras is approved by a vote of the school district board of directors. School districts are not required to take school buses out of service if the buses are not equipped with automated school bus safety cameras or functional automated safety cameras. Further, school districts shall be held harmless from and not liable for any criminal or civil liability arising under the provisions of this section.

(a) Automated school bus safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(b) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (2)(a)(i) of this section. The law enforcement officer issuing the notice of infraction shall include a certificate or facsimile of the notice, based upon inspection of photographs, microphotographs, or electronic images produced by an automated school bus safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated school bus safety camera may respond to the notice by mail.

(c) The registered owner of a vehicle is responsible for an infraction under RCW **46.63.030**(1)(e) unless the registered owner overcomes the presumption in RCW **46.63.075**, or, in the case of a rental car business, satisfies the conditions under subsection (2) of this section. If appropriate under the circumstances, a renter identified under subsection (2)(a)(i) of this section is responsible for an infraction.

(d) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(e) If a school district installs and operates an automated school bus safety camera under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment. Further, any repair, replacement, or administrative work costs related to installing or repairing automated school bus safety cameras must be solely paid for by the manufacturer or vendor of the cameras. Before entering into a contract with the manufacturer or vendor of the equipment used under this subsection (1)(e), the school district must follow the competitive bid process as outlined in RCW **28A.335.190**(1).

(f) Any revenue collected from infractions detected through the use of automated school bus safety cameras, less the administration and operating costs of the cameras, must be remitted to school districts for school zone safety projects as determined by the school district using the automated school bus safety cameras. The administration and operating costs of the cameras includes infraction enforcement and processing costs that are incurred by local law enforcement or local courts. During the 2013-2015 fiscal biennium, the infraction revenue may also be used for school bus safety projects by those school districts eligible to apply for funding from the school zone safety account appropriation in section 201, chapter 306, Laws of 2013.

(2)(a) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction is issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(i) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred;

(ii) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection (2)(a)(ii) must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(iii) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(b) Timely mailing of a statement under this subsection to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(3) For purposes of this section, "automated school bus safety camera" means a device that is affixed to a school bus that is synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a vehicle at the time the vehicle is detected for an infraction identified in RCW 46.61.370(1).

[2013 c 306 § 716; 2011 c 375 § 2.]

NOTES:

Effective date—2013 c 306: See note following RCW 47.64.170.

Intent—2011 c 375: "The legislature recognizes that the safe transportation of children to and from school is a shared responsibility of the school district and the driving public. In order to increase public awareness of their responsibility, it is the intent of the legislature that the state superintendent of public instruction coordinate with school districts and any other relevant agencies who voluntarily choose to participate in a national stop arm violation day annually between March 1st and May 15th." [2011 c 375 § 1.]