



PIERCE TRANSIT BOARD MEETING
Training Center, Rainier Room
3720 96th Street SW, Lakewood, WA
May 9, 2016, 4:00 PM

AGENDA

CALL TO ORDER

ROLL CALL

PRESENTATION

- April Operator of the Month ~ Lisa Hardy
Scott Gaines
Transit Operator Assistant Manager
- Vanshare 30th Anniversary Promotion
Lani Fowlkes
Vanpool Assistant Manager

PUBLIC COMMENT

(Citizens wishing to provide comment will be given three minutes to comment on any transit-related matters regardless of whether it is an agenda item or not.)

PUBLIC HEARING

(Citizens wishing to provide comment will be given three minutes to comment on the subject(s) listed below.)

p. 1 No. 1 ~ NE Tacoma Demonstration Project

p. 2 No. 2 ~ Surplus of Vehicles

CONSENT AGENDA

(Items listed below were distributed to Commissioners in advance for reading and study and are enacted with one motion. Item(s) may be moved to the Action Agenda at the request of a Commissioner.)

p. 5 1. Approval of Vouchers, April 1, 2015

p. 17 2. Minutes: Study Session and Regular Board Meeting of April 11, 2016

p. 25 3. First Quarter - Sole Source and 100K Report

- p. 27 4. FS 16-027, A Resolution Declaring Surplus of Twenty-Four (24) Ford E350 Vanpool Vans, Seven (7) Dodge Grand Caravan Vanpool Vans, and One (1) Chevrolet Express 3500 Vanpool Van and Authorization for Sale or Donation Thereof
- p. 33 5. FS 16-031, A Resolution Amending the 2016 Capital Project Budget CAD/AVL GPS Repeater 450 MHz Data Radio Project

ACTION AGENDA

- p. 37 1. FS 16-028, A Resolution Authorizing Pierce Transit to Enter Into, Execute, and Accept a Right-of Use Agreement and Non-Exclusive Franchise Agreement with the City of Tacoma Via a Proposed City of Tacoma Ordinance Relating to the Construction, Installation, Operation and Maintenance of Bus Stops, Bus Shelters, Bus Amenities and Advertising Shelters Within the City of Tacoma Monica Adams
Project Manager
- p. 69 2. FS 16-029, A Resolution Authorizing the Chief Executive Officer to Enter Into a Cost Sharing Agreement with Sound Transit for Pierce Transit's Base Master Plan Update Doug Middleton
Interim E.D. of Service Delivery and Support
- p. 83 3. FS 16-030, A Resolution Amending the 2016 Capital Budget to Add High Capacity Transit Feasibility Study Project to the Budget Darin Stavish
Principal Planner
- p. 89 4. FS 16-032, Resolutions Donating Surplussed Vehicles to PSESD – The Road to Independence and BASE – Before and After School Program Pursuant to the Pierce Transit Care-a-van Program Cherry Thomas
Senior Planner Paratransit

STAFF UPDATES/DISCUSSION

- CEO Report

Sue Dreier
Chief Executive Officer

INFORMATIONAL BOARD ITEMS

- Chair Report
- Sound Transit Update
- Commissioners' Comments

Chair Talbert

EXECUTIVE SESSION

ADJOURNMENT

American Disability Act (ADA) accommodations are available with a 72-hour notice. An interpreter for the hearing impaired will be provided upon request with a minimum notice of two weeks. Please contact the Clerk's office at 253-581-8066 for special accommodations. Meeting room is wheelchair accessible. Registered SHUTTLE customers may obtain specialized transportation to and from the hearing by calling SHUTTLE at 253-581-8000 from one to five days in advance of the hearing.



**PIERCE TRANSIT
NOTICE OF PUBLIC HEARING
PROPOSED SERVICE CHANGES EFFECTIVE SEPTEMBER 11, 2016**

Date: April 28, 2016

A public hearing will be held as part of the Board of Commissioners' meeting on May 9, 2016. The meeting begins at 4:00 p.m. and is held in the Pierce Transit Training Center, Rainier Conference Room, 3720 96th Street S.W., Lakewood, Washington. The purpose of the hearing is to allow public comment on proposed changes to Pierce Transit bus service.

Pierce Transit is proposing to continue operating peak commute oriented Route 63 NE Tacoma Express service from NE Tacoma to Downtown Tacoma. The agency will also continue its partnership with King County Metro that provides for Route 903 feeder service to the local Route 63. These community-based routes provide links to both Downtown Tacoma and Federal Way. This recommendation will also go before the Board of Commissioners to take action at their June 13, 2016 meeting.

Information about this proposal is available through Pierce Transit's website www.piercetransit.org/route-63-demonstration-project or by calling Pierce Transit at (253) 581-8000. If you are unable to attend the public hearing, forward comments by May 27, 2016. Please address your comments to:

Pierce Transit Community Development Division
ATTN: Tina Lee, Community Development Administrator
P.O. Box 99070
Lakewood, WA 98496-0070
Or email at tlee@piercetransit.org

Registered SHUTTLE customers may obtain specialized transportation to and from the hearing by calling SHUTTLE at 253-581-8000, option 2, from one to five days in advance of the hearing. An interpreter for the hearing impaired will be provided upon request with a minimum notice of five days.

Deanne Jacobson, CMC
Clerk of the Board

Published in the Tacoma Daily Index and Tacoma News Tribune on April 28, 2016.



**PIERCE TRANSIT
NOTICE OF PUBLIC HEARING
FOR PROPOSED SALE OF SURPLUS PROPERTY**

Date: April 28, 2016

Notice is hereby given that a public hearing will be held by Pierce Transit as part of the Board of Commissioners meeting on May 9, 2016. The meeting begins at 4:00 p.m. and is held in the Pierce Transit Training Center, Rainier Conference Room, 3720 96th Street S.W., Lakewood, Washington. The purpose of the hearing is to allow public comment on the proposal to declare the following surplus property and to dispose of said property by public sale: twenty-four (24) Ford E350 Vanpool vans, seven (7) Dodge Grand Caravan Vanpool vans, and one (1) Chevrolet Express 3500 Vanpool van.

A description of the property to be disposed of is available for inspection at the reception desk on the first floor of Pierce Transit headquarters, 3701 - 96th Street S.W., Lakewood, Washington, or by calling 581-8000.

Specialized transportation for disabled persons to and from the hearing can be obtained by calling SHUTTLE at 581-8000, option 2, from one to five days in advance of the hearing. An interpreter for the hearing impaired will be provided upon request with a minimum notice of five days.

Deanne Jacobson, CMC
Clerk of the Board

Published in the Tacoma Daily Index and Tacoma News Tribune on April 28, 2016.

**PIERCE TRANSIT
BOARD OF COMMISSIONERS SPECIAL STUDY SESSION
MINUTES**

April 11, 2016

CALL TO ORDER

Vice Chair Keel called the meeting to order at 3:04 pm.

Commissioners present:

Don Anderson, City of Lakewood Mayor
Daryl Eidinger, City of Edgewood Mayor (*representing Fife/Milton/Edgewood*)
Kent Keel, City of University Place Mayor Pro Tem
Nancy Henderson, Town of Steilacoom Councilmember
(*representing Auburn/Gig Harbor/Fircrest/Pacific/Ruston/Steilacoom*)
Ryan Mello, City of Tacoma Councilmember
Heather Shadko, City of Puyallup Councilmember

Commissioners excused:

Marilyn Strickland, Mayor of the City of Tacoma
Pat McCarthy, Pierce County Executive
Rick Talbert, Chair of the Board, Pierce County Councilmember

Staff present:

Sue Dreier, Chief Executive Officer
Wayne Fanshier, Executive Director of Finance/Chief Financial Officer
Dana Henderson, General Counsel
Deanne Jacobson, Assistant to the CEO/Clerk of the Board
Kristol Bias, Records Coordinator/Deputy Clerk of the Board
Vivienne Kamphaus, Interim Executive Director of Employee Services
Doug Middleton, Executive Director of Service Delivery & Support

DISCUSSIONS

Vice Chair Keel noted that Item 2 on the agenda -- **On-Time Performance Standards** will be pulled from today's agenda and reviewed at a future date.

Current and Future Investment in the Pierce Transit System, Including Restoration of Service Hours, Refreshing/Renewing Transit Facilities and Bus Shelters

Executive Director of Finance/Chief Financial Officer Wayne Fanshier spoke on the use of reserves and the current standings and goals to bring them down. He noted the fund is divided into Capital Reserve, System Refresh, System Renewal and Service Restoration. Items for System Renewal and Service Restoration will be completed over the course of a few years.

Reserve balances were noted as high and continuing to grow due to sales tax and how it's budgeted versus what is collected. Findings show balances will grow at 5.35%.

staff noted a revised revise policy will come before the Board for consideration in the near future.

System Refresh will focus on increasing name recognition, paint touch ups, replacement of glass panels and improvement of ground maintenance and cleanliness. System Renewal will consist of Transit center roof repairs, painting, ground maintenance, asphalt replacement, security cameras and lighting improvements.

A question and answer period ensued about future restoration of service hours and staff resources needed to support the restoration of service. Staff explained that it is important that Pierce Transit begin the hiring process now due to the lead time for recruiting and training operators and noted that the related budget amendments to add the additional staff is on the consent agenda this evening for consideration.

Fleet Manager Kevin Zinski responded to questions relating to the purchase and costs associated with the expansion buses, which are on the consent agenda for consideration this evening as well.

Discussion also ensued about how staff allocates and trues-up Sound Transit cost and the ratio of managers to employees at Pierce Transit.

Finance staff was confident that the agency is financially stable to support the upcoming service restoration with the help of a healthy economy. Pierce Transit will grow conservatively and more than likely surpass the projected growth.

ADJOURNMENT

Commissioners Eiding and Anderson **moved** and seconded to adjourn the meeting at 4:07 pm.

Motion **carried**, 6-0.

Deanne Jacobson
Assistant to the CEO/ Clerk of the Board

Kent Keel, Vice Chair
Board of Commissioners

**PIERCE TRANSIT
BOARD OF COMMISSIONERS
MINUTES**

April 11, 2016

CALL TO ORDER

Vice Chair Keel called the meeting to order at 4:13 pm.

Commissioners present:

Don Anderson, City of Lakewood Mayor
Daryl Eidinger, City of Edgewood Mayor (*representing Fife/Milton/Edgewood*)
Kent Keel, City of University Place Mayor Pro Tem
Nancy Henderson, Town of Steilacoom Councilmember
(*representing Auburn/Gig Harbor/Fircrest/Pacific/Ruston/Steilacoom*)
Ryan Mello, City of Tacoma Councilmember
Heather Shadko, City of Puyallup Councilmember

Commissioners excused:

Marilyn Strickland, Mayor of the City of Tacoma
Pat McCarthy, Pierce County Executive
Rick Talbert, Chair of the Board, Pierce County Councilmember

Staff present:

Sue Dreier, Chief Executive Officer
Wayne Fanshier, Executive Director of Finance/Chief Financial Officer
Dana Henderson, General Counsel
Deanne Jacobson, Assistant to the CEO/Clerk of the Board
Kristol Bias, Records Coordinator/Deputy Clerk of the Board
Vivienne Kamphaus, Interim Executive Director of Employee Services
Doug Middleton, Executive Director of Service Delivery & Support

PRESENTATIONS

Commemorating Leo Randolph, Sr.

Scott Gaines, Transit Operator Assistant Manager, commemorated Operator Leo Randolph, Sr. for winning the gold medal in the Flyweight boxing division at the 1976 Olympic Games in Montreal. In addition to detailing his boxing career, Mr. Gaines also commended Mr. Randolph for his involvement and volunteerism in the community and for being an exemplary and respected operator at Pierce Transit for 28 years.

Various commissioners reflected on their memories of Mr. Randolph winning the gold medal in 1976.

March Operator of the Month Bob Andersen

Scott Gaines, Transit Operator Assistant Manager, honored Bob Andersen for being selected March 2016 Operator of the Month. Mr. Gaines honored Mr. Andersen for the great customer services he provides to citizens and for operating the Gig Harbor trolley services. Mr. Gaines read passenger compliments that Mr. Andersen has received.

Mr. Andersen extended his appreciation, stating he has relied on transit most of his career and is proud to now work for a transit company where he can provide the same type of transportation he once received from others.

Employee of the Month Darin Stavish

Jay Peterson, Transit Development Manager, honored Principal Planner Darin Stavish for being selected Employee of the Month for April 2016. Mr. Peterson commended Mr. Stavish for his recent extensive work in developing the Destination 2040 Plan, the Agency's Long Range Plan, and for the good work he performs in the planning department.

Mr. Stavish extended thanks to many additional employees who were instrumental in developing the plan or for assisting in outreach.

Efficiency & Effectiveness Award Ryan Wheaton

Dena Withrow, Transportation Manager, presented the Efficiency & Effectiveness Award to Ryan Wheaton, Pierce Transit's Specialized Transportation Manager. Mr. Wheaton was commended for significantly improving the scheduling process of SHUTTLE reservations by using existing technology.

Mr. Wheaton extended his appreciation and commended the Information Technology team for their hard work with the database impact portion of the project.

Quarterly CTAG Update

Sandy Paul, CTAG Member, provided a short committee structure update and noted members have developed a specific work plan to provide purpose rather than merely attending meetings to discuss their passion for public transportation. The group expressed concern regarding smoking at bus stops and transit centers and being able to work towards receiving specific, meaningful assignments from the board.

PUBLIC COMMENT

Vice Chair Keel provided direction for public comment and the following individual(s) spoke:

Walt Hurd, Tacoma, expressed frustration about patrons not paying fares and being disrespectful and using foul language. He also stated that in his opinion the 9700 bus series are not user friendly; they are too narrow.

CONSENT AGENDA

(Items listed below were distributed to Commissioners in advance for reading and study and are enacted with one motion.)

Commissioners Anderson and Mello, **moved** and seconded to approve the consent agenda as presented.

Motion **carried**, 6-0.

1. Approval of Vouchers, April 1, 2016
Operating Fund #10
Self-Insurance Fund #40
Capital Fund #90
Voucher CK Nos. 348384 through 348993
Advance Travel Checks 1084 through 1091
Wire Nos. 1659 through 1677
Total \$5,962,792.92
2. Minutes: Regular Board Meeting of March 14, 2016
3. FS 16-017, Approved Resolution No. 16-006, amending the 2016 Operating Budget, increasing the 2016 Operating Budget by \$206,999 and adding seven (7) staff positions.
4. FS 16-018, Approved Resolution No. 16-007 authorizing amendment of the 2016 Budget to increase the Operating Budget by \$1,040,469 for the addition of 35 staff positions in preparation of 2017 Pierce Transit service increase.
5. FS 16-019, Approved Resolution No. 16-008 amending the 2016 Capital Budget to add the 2016 Bus Expansion Project to the 2016 Capital Budget, and authorize the purchase of seven (7) forty-foot Compressed Natural Gas Expansion Coaches, pursuant to the Department of Enterprise Services Contract No. 09214 in the amount of \$4,467,631.
6. FS 16-024, Approved motion authorizing the purchase of two (2) warehouse replacement support vehicles, thirteen (13) facilities replacement support vehicles, and two (2) fleet maintenance replacement support vehicles from Washington State Contract Nos. 03613 and 03813.

Motion **carried**, 6-0.

ACTION AGENDA

1. **FS 16-020, Approved Resolution No. 16-009, adopting Destination 2040, the Agency's Long Range Plan, in substantially the same form as Exhibit A**

Commissioners Keel and Mello **moved** and seconded to affirm adoption of Destination 2040, the Agency's Long Range Plan, in substantially the same form as Exhibit A and as stated in FS 16-020.

Principal Planner Darin Stavish provided plan details and noted that Pierce Transit received a total of 25 comments on the Plan, most of which pertained to clarification. He reported that staff is still monitoring the Sound Transit 3 package.

Commissioner Mello commended Mr. Stavish on his work with the Plan, stating that it really highlights frequency in a good manner; however, he noted that, in his opinion, the Plan didn't speak to improvements needed in the JBLM corridor and advocated for more collaboration with Intercity Transit to improve congestion. He also noted that the Plan should set a goal for the ORCA Lift Program and could do a better job in planning for span of service. He inquired if the Board would consider postponing adoption of the plan to address some of these deficiencies. There was no consensus to postpone adoption.

Mr. Stavish provided clarification that the Plan is a living, amendable document that serves as a vision and is not constrained.

Commissioner Anderson agreed with Commissioner Mello that the agency needs to be adaptive to meet future requirements and he also noted he is disappointed that ST-3 changed its plan with regard to its spine being in King County. He noted more work is needed to serve the JBLM base.

Sue Dreier, Chief Executive Officer, recommended the plan be adopted as it sits today and assured all parties that the plan is a living document that will be revised accordingly as time goes on.

Motion **carried**, 6-0.

2. **FS 16-021, Authorized the Chief Executive Officer to enter into and execute a contract with Nova Contracting, Inc., for the construction of the TDS East G Street Bus Bay Expansion Project in the amount of \$349,500**

Commissioners Keel and Mello **moved** and seconded to authorize the Chief Executive Officer to enter into and execute a contract with Nova Contracting, Inc., for the construction of the TDS East G Street Bus Bay Expansion Project in the amount of \$349,500 and as stated in FS 16-021.

Project Manager Monica Adams presented on the project.

Motion **carried**, 6-0.

3. **FS 16-022, Authorized the Chief Executive Officer to implement the Cost-of-Living and Benefit Adjustments as presented in FS 16-022, effective May 1, 2016**

Commissioners Mello and Anderson **moved** and seconded to authorize the Chief Executive Officer to implement the Cost-of-Living and Benefit Adjustments effective May 1, 2016 and as stated in FS 16-022.

Interim Executive Director of Employer Services Vivienne Kamphaus presented on the item and noted that the related expenditure is incorporated in the 2016 Budget.

Commissioner Eidinger thanked the non-represented employees for their work and noted that he is happy to see parity between the non-represented and represented employees.

Motion **carried**, 6-0.

4. **FS 16-023, Approved Resolution No. 16-010 amending Section 6.2 B of the Personnel Rules - Vacation Leave to allow for accelerated vacation leave accruals or a vacation bank of hours upon hire for hard to fill professional positions, effective May 1, 2016**

Commissioners Anderson and Mello **moved** and seconded to approve Resolution No. 16-010, amending Section 6.2 B of the Personnel Rules – Vacation Leave to allow for accelerated vacation leave accruals or a vacation bank of hours upon hire for hard to fill professional positions, effective May 1, 2016.

Interim Executive Director of Employer Services Vivienne Kamphaus presented on the item, stating that this tool would be utilized for hard to fill positions.

A short discussion ensued about whether the agency’s vacation rate accrual is aligned with other transit agencies, and it was reported that Pierce Transit is in alignment with other agencies.

Motion **carried**, 6-0.

STAFF UPDATES/DISCUSSIONS

CEO Report

Chief Executive Officer Sue Dreier reported on the following items:

Next Generation of ORCA is kicking off and is set for 2021. There will be a need for an organized meeting made up of elected officials to weigh in on the categorization of fees in the future. Pierce Transit Rodeo is scheduled for May 21, 2016.

INFORMATIONAL BOARD ITEMS

Chair Report

None.

Sound Transit Update

None.

Commissioners’ Comments

Commissioner Henderson shared a good experience she encountered with Pierce Transit’s customer service department and lost and found department.

EXECUTIVE SESSION

None.

ADJOURNMENT

Commissioners Mello and Henderson **moved** and seconded to adjourn the meeting at 5:22 pm.

Motion **carried**, 6-0.

Deanne Jacobson
Assistant to the CEO/ Clerk of the Board

Kent Keel, Vice Chair
Board of Commissioners

Sole Source and 100K Report - First Quarter 2016

Change Orders & Amendments - Sole Source Over \$10,000				
Name	Description/Project	Explanation	Amount	Eff. Date
None				
Contracts/Proprietary - Sole Source Over \$10,000				
Name	Description/Project	Explanation	Amount	Eff. Date
Trapeze Software Group	Software support	Annual maintenance and support for the EAM Maintenance Management System.	\$87,051	2/10/2016
Other - Sole Source Over \$10,000				
Name	Description/Project	Explanation	Amount	Eff. Date
Devon Industries	Maintenance pit covers	Pit covers for maintenance pits to prevent falls when a vehicle is not occupying a pit. Other manufacturers were researched but were cost prohibitive and not suitable for the design of the pits as they did not allow for ambient light or ventilation.	\$30,000	2/16/2016
Technical Security Integration	CCTV video	CCTV video retention expansion 2016 project.	\$35,000	2/26/2016
Contracts Awarded Over \$100,000 and Below \$200,000				
Name	Description/Project	Explanation	Amount	Eff. Date
Pierce County Community Connections	Agreement	Memo of understanding between Pierce County and Pierce Transit support Beyond the Borders Special Needs Transportation.	\$150,000	1/1/2016
Nelson/Nygaard Consulting Associates	PT-49-15	Comprehensive local fixed route network analysis, 2015.	\$132,550	1/6/2016

Change Orders & Amendments: Master Agreements sometimes have change orders and amendments. The reasons could include time extensions to a contract, or a situation where changing a contractor before the work is complete could cause delays, hardships, and/or added cost to the project. Change orders and amendments most often happen with construction contracts.

Contracts/Proprietary: The service or product is not provided by another vendor.

Other: A circumstance when specialized knowledge or skill is needed for a project and there is limited time and vendors with the expertise.

FACT SHEET

TITLE: A Resolution Declaring Surplus of Twenty-Four (24) Ford E350 Vanpool Vans, Seven (7) Dodge Grand Caravan Vanpool Vans, and One (1) Chevrolet Express 3500 Vanpool Van and Authorization for Sale or Donation Thereof

DIVISION: Operations

ORIGINATOR: Kevin Zinski, Fleet Manager

PRECEDING ACTION: N/A

COORDINATING DEPARTMENT: Maintenance/Purchasing

APPROVED FOR SUBMITTAL: _____
Chief Financial Officer

APPROVED FOR AGENDA: _____
Chief Executive Officer General Counsel

ATTACHMENTS: Proposed Resolution
Exhibit A, Proposed Surplus List

BUDGET INFORMATION

2016 Budget Amount	Required Expenditure	Impact
N/A	N/A	N/A

Explanation: N/A

BACKGROUND:

This resolution requests that the Board of Commissioners declare twenty-four (24) Ford E350 Vanpool vans, seven (7) Dodge Grand Caravan Vanpool vans, and one (1) Chevrolet Express 3500 Vanpool van as surplus and authorize the sale or donation thereof.

Staff has verified that these vehicles exceed their useful life requirements for use in transit, have been replaced by new equipment, and are no longer required for use by Pierce Transit. A detailed list of the surplus vehicles is attached to the resolution.

FACT SHEET
PAGE 2

ALTERNATIVES:

Do not declare the proposed vehicles as surplus and do not authorize the sale or donation thereof.

RECOMMENDATION:

Approve Resolution No. 16-011, declaring twenty-four (24) Ford E350 vanpool vans, seven (7) Dodge Grand Caravan vanpool vans, and one (1) Chevrolet Express 3500 vanpool van as surplus and authorize the sale or donation thereof.

RESOLUTION NO. 16-011

1 A RESOLUTION of the Board of Commissioners of Pierce Transit Declaring Surplus of Twenty-Four (24) Ford
2 E350 Vanpool Vans, Seven (7) Dodge Grand Caravan Vanpool Vans, and One (1) Chevrolet Express 3500
3 Vanpool Van and Authorization for Sale or Donation Thereof
4

5 WHEREAS, Pierce Transit is a municipal corporation as defined in the Revised Codes of Washington;
6 and

7 WHEREAS, Pierce Transit has complied with the provisions of RCW 39.34.020 Disposal of Surplus
8 Property; and

9 WHEREAS, Pierce Transit has twenty-four (24) Ford E350 Vanpool vans, seven (7) Dodge Grand
10 Caravan Vanpool vans, and one (1) Chevrolet Express 3500 Vanpool van (Exhibit A) that need to be declared
11 surplus; and

12 WHEREAS, the Ford E350 Vanpool vans are of an age and condition where they are no longer
13 economical to maintain and have been replaced; and

14 WHEREAS, the Dodge Grand Caravan Vanpool vans are of an age and condition where it is no longer
15 economical to maintain and has been replaced; and

16 WHEREAS, the Chevrolet Express 3500 Vanpool van is of an age and condition where it is no longer
17 economical to maintain and has been replaced; and

18 WHEREAS, the Board of Commissioners of Pierce Transit finds it in the best interest of Pierce Transit to
19 declare the vehicles identified in Exhibit A and attached hereto to this resolution as surplus vehicles and
20 authorize the sale or donation of said property; and

21 NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

22 Section 1. Declares the vehicles listed on Exhibit A as surplus vehicles; and

23 Section 2. Authorizes staff to sell to the public said surplus property that is not otherwise appropriate
24 for donation.

25 ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the
26 9th day of May, 2016.
27
28

PIERCE TRANSIT

Rick Talbert, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

Pierce Transit Vehicles to be Surplused

EXHIBIT A

5/9/16

Vehicle #	Year	Make	Model	VIN #	Lic#	LTD Miles
7000	2005	Dodge	GRAND CARAVAN	2D4GP44L35R183741	RS04933	136704
7002	2005	DODGE	GRAND CARAVAN	2D4GP44L75R183743	RS04945	138807
7006	2005	DODGE	GRAND CARAVAN	2D4GP44L45R183747	RS05035	130996
7007	2005	DODGE	GRAND CARAVAN	2D4GP44L65R183748	RS04944	129744
7010	2005	DODGE	GRAND CARAVAN	2D4GP44L65R183751	RS04942	132761
7011	2005	DODGE	GRAND CARAVAN	2D4GP44L85R183752	RS04941	134079
7012	2005	DODGE	GRAND CARAVAN	2D4GP44LX5R183753	RS04943	135698
7016	2005	FORD	E350XL	1FBNE31L15HA87759	RS05353	129257
7018	2005	FORD	E350XL	1FBNE31LX5HA87761	RS05351	136136
7019	2005	FORD	E350XL	1FBNE31L15HA87762	RS05350	135706
7033	2005	FORD	E350XL	1FBNE31L15HA87776	RS05377	121644
7035	2005	FORD	E350XL	1FBNE31L55HA87778	RS07028	136071
7036	2005	FORD	E350XL	1FBNE31L75HA87779	RS05374	135660
7037	2005	FORD	E350XL	1FBNE31L35HA87780	RS07131	143267
7045	2005	FORD	E350XL	1FBNE31LX5HB13212	RS05414	127177
7048	2005	FORD	E350XL	1FBNE31L55HB13215	RS05417	135523
7049	2005	FORD	E350XL	1FBNE31L75HB13216	RS05418	112028
7077	2006	Ford	E350	1FBNE31L66HA09270	RS05736	137776
7081	2006	FORD	E350	1FBNE31L36HA09274	RS05740	146438
7083	2006	FORD	E350	1FBNE31L76HA09276	RS05742	142843
7086	2005	FORD	E350XL	1FBNE31L55HA87778	RS05725	133299
7087	2006	FORD	E350	1FBNE31L96HA09280	RS05726	143080
7088	2006	FORD	E350	1FBNE31L06HA09281	RS05727	144720
7091	2006	FORD	E350	1FBNE31L66HA09284	RS05730	126739
7099	2006	FORD	E350	1FBNE31L56HA09292	RS05749	152039
7103	2006	FORD	E350	1FBNE31L26HA09296	RS05753	139944
7106	2006	FORD	E350	1FBNE31L86HA09299	RS05756	136660
7110	2006	FORD	E350	1FBNE31L66HA09303	RS05760	132386
7112	2006	FORD	E350	1FBNE31LX6HA09305	RS05762	129579
7156	2006	FORD	E350	1FBNE31L76DA24691	RS06351	151710
7158	2006	FORD	E350	1FBNE31L06DA24693	RS06349	139912
7223	2008	CHEVROLET	Express 3500	1GAHG35K681113864	RS07134	172338

FACT SHEET

TITLE: A Resolution Amending the 2016 Capital Project
Budget CAD/AVL GPS Repeater 450 MHz Data Radio Project

DIVISION: Operations

ORIGINATOR: Carlos Davis,
Communication Technology Administrator

PRECEDING ACTION:

Resolution No. 06-004, Authority to Negotiate and Execute a Master Agreement for the Mobile Communications System, Task Order No. 1 for Voice and Data Radio and Task Order No. 2 for CAD/AVL with Motorola and Amendment of the 2006 Capital Budget

Resolution No. 10-024, Authority to Amend the 2010 Operating Budget and Execution of Sole Source Purchases of Radio/CAD/AVL Equipment with Motorola and ACS for Installation on Sound Transit Coaches

Resolution No. 11-004, Authority to execute an Interlocal Agreement with Pierce County for the Operations of a Combined Communications Network

Resolution No. 14-063, Authority to enter into and execute an agreement with Motorola Solutions, Inc., and Aviat Networks for the purchase of UHF CAD/AVL/GPS Data Communication Equipment from Washington State Contract No. 02702

Resolution No. 14-074, Authority to execute an Interlocal Agreement with Pierce County for the Creation, Operation, Sustainment and Governance of a Combined Communication Network

Resolution No. 15-056, Authority to Amend Lease with PRC Tacoma-1, LLC until March 31, 2016; and Authority to Purchase a Communication Tower and Site Assets from PRC Tacoma-1, LLC

Resolution No. 15-065, Authority to Execute a Multi-Year Land Lease Agreement with IWG Towers Assets I, LLC (d/b/a and referred to as In-Site Wireless)

Resolution No. 15-071, Adoption of the 2016 Budget

COORDINATING DEPARTMENT: Budget; Communication Technology

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS: Proposed Resolution

BUDGET INFORMATION

Project Budget Amount
\$3,402,197

New Budget Amount
\$3,612,319
\$210,122 increase
\$3,612,319

Impact
\$210,122

Explanation: Increase the 2016 CAD/AVL GPS Repeater 450 MHz Data Radio Budget \$3,612,319 to meet engineering and OEM (Original Equipment Manufacturer) requirements. The increase will be funded from available reserves.

BACKGROUND:

This resolution requests an amendment to add \$210,122 to the 2016 CAD/AVL GPS Repeater 450 MHz Data Radio Budget to complete necessary engineering and OEM requirements.

In February 2006, the Board of Commissioners approved the purchase of a mobile communications system from Motorola Solutions. This mobile communication system consisted of a voice network on 700 MHz and a data network on UHF 450 MHz. The voice network was upgraded in 2014 to meet FCC Narrowband requirements and the data network installed in 2006 is at the end of its lifecycle. In addition, the data network's initial coverage design of 85 percent does not meet current or future service requirements. These coverage gaps create potential safety conditions and operational inefficiencies through loss of communications and critical data. Therefore, the Board of Commissioners in 2014 approved the upgrade of the CAD/AVL GPS Repeater 450 MHz Data Radio Project to increase overall coverage to 95 percent to meet current and future service requirements.

The business case developed in 2014 for the CAD/AVL GPS Repeater 450 MHz Data Radio Project was based on best case estimates for upgrading the necessary radio frequency (RF) equipment expected to complete the project since the detailed design review (DDR), site selection, and engineering needs assessments were yet to be completed.

During the DDR process, staff was able to reduce the total number of sites anticipated for the project, thereby reducing costs by taking advantage of the newly developed 700 MHz sites, which provided better overall coverage due to their strategic locations. This achievement reduced the expected 18 site configuration down to 8 sites while still improving the overall data service coverage area from 85 to 95 percent. This design change created a limited project balance for site improvements and for necessary engineering and construction related expenses. Upon completing site assessments for the project, it was determined, that the OEM site requirements needed to complete the project would exceed the current budget authorization. Staff has performed a careful financial analysis and determined that there are adequate capital contingency reserves within current Board approved 2016 Budget Authorization to complete the necessary requirements for the CAD/AVL GPS Repeater 450 MHz Data Radio Project.

Staff requests the Board's approval to authorize the Chief Executive Officer to increase the CAD/AVL GPS Repeater 450 MHz Data Radio Project budget of \$3,402,197 by \$210,122 for a total of \$3,612,319 using available contingency reserves for completing the necessary engineering and system design requirements.

ALTERNATIVES:

Do not approve completion of this project, the result of which will be that coverage will not reach the current and future service requirements of 95 percent.

RECOMMENDATION:

Approve Resolution No. 16-014 amending the 2016 Capital Budget to increase the CAD/AVL GPS Repeater 450 MHz Data Radio Project budget by \$210,122, from \$3,402,197 to \$3,612,319.

RESOLUTION NO. 16-014

A RESOLUTION of The Board Of Commissioners of Pierce Transit
Amending the 2016 Capital Budget CAD/AVL GPS Repeater 450 MHz Data Radio Project

WHEREAS, by Resolution No. 06-004, approved on the 13th day of February, 2006, the Board of Commissioners of Pierce Transit authorized execution of a master agreement for a Mobile Communications System, Task Order No. 1 for Voice and Data Radio and Task Order No. 2 for CAD/AVL with Motorola and Amendment of the 2006 Capital Budget; and

WHEREAS, by Resolution No. 10-024, approved on the 13th day of September, 2010, the Board of Commissioners of Pierce Transit Amended the 2010 Operating Budget and authorized the execution of Sole Source purchases of Radio/CAD/AVL equipment with Motorola and ACS for installation on Sound Transit coaches; and

WHEREAS, by Resolution No. 11-004, approved on the 10th day of January, 2011, the Board of Commissioners of Pierce Transit authorized entering into an interagency agreement with Pierce County for the Operations of a Combined Communications Network; and

WHEREAS, by Resolution No.14-063, approved on the 5th day of September, 2014, the Board of Commissioners of Pierce Transit authorized the purchase of Radio Communications Equipment from Motorola Solutions, Inc. and Aviat Networks to Upgrade the UHF Data Communications Network to reach a 95 percent coverage area; and

WHEREAS, The business case developed in 2014 for upgrade project was based on best case estimates since the detailed design review (DDR), site selection, and engineering needs assessments were yet to be completed;

WHEREAS, During the DDR process, staff was able to reduce the total number of sites anticipated for the project, from the expected 18 sites down to 8 sites while still improving the overall data service coverage area from 85 to 95 percent, and this design change resulted in a determination that the requirements needed to complete the project would exceed the current budget authorization.

WHEREAS, by Resolution No. 15-071, approved on the 14th day of December, 2015, the Board of Commissioners of Pierce Transit Adopted the 2016 Budget; and

WHEREAS, \$210,122 in reserve funds is available in the 2016 Budget; and

WHEREAS, the Board of Commissioners of Pierce Transit finds it in the best interest of Pierce Transit to amend the 2016 CAD/AVL GPS Repeater 450 MHz Data Radio Project budget to \$3,612,319 to complete the engineering and system design requirements; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

Section 1. The 2016 Capital Budget is hereby amended to increase the CAD/AVL GPS Repeater 450 MHz Data Radio Project by \$210,122, from \$3,402,197 to \$3,612,319.

ADOPTED by the Board of Commissioners of Pierce Transit at a regular meeting thereof, held on the 9th day of May, 2016.

PIERCE TRANSIT

Rick Talbert, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

FACT SHEET

TITLE: A Resolution Authorizing Pierce Transit to Enter Into, Execute, and Accept a Right-of Use Agreement and Non-Exclusive Franchise Agreement with the City of Tacoma Via a Proposed City of Tacoma Ordinance Relating to the Construction, Installation, Operation and Maintenance of Bus Stops, Bus Shelters, Bus Amenities and Advertising Shelters Within the City of Tacoma

DIVISION: Transit Development

ORIGINATOR: Monica Adams, Project Manager

PRECEDING ACTION: Acceptance of City of Tacoma Ordinance 26829 non-Exclusive Franchise agreement July 17, 2001.

COORDINATING DEPARTMENT: Transit Development, Project Management Office, Marketing, General Counsel

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution
Exhibit A, Proposed City of Tacoma Ordinance

BUDGET INFORMATION

2015 Budget Amount
\$0

Required Expenditure
\$0

Impact
N/A

Explanation: N/A

There is no budget impact. Any payments to the City will be made based on a percentage of advertising shelter revenue generated by Pierce Transit. If the Agency earns no revenue from advertising, no payment will be due to the City.

BACKGROUND:

In 2001, Pierce Transit entered into a Franchise Agreement with the City of Tacoma which allowed the agency to occupy City Right of Way for the purpose of installing bus stop passenger shelters and to generate revenue through the sale of advertising space. ("Prior Agreement"). The Prior agreement expired in 2012.

Pierce Transit and City of Tacoma staff have been working collaboratively for the past few years to develop a proposed new Right of Use and Non-Exclusive Franchise Agreement as is set forth in Exhibit A ("New Agreement"). The New Agreement more clearly defines payment structure, responsibilities and expectations. The City of Tacoma will retain a percentage of the advertising revenue Pierce Transit earns and deposit it into a fund designated for right of way improvements with an emphasis on Americans with Disabilities Act improvements adjacent to bus stops and shelters with City of Tacoma. Under this New Agreement, the City of Tacoma will also design, oversee, and construct such right of way improvements, which is more efficient than if Pierce Transit were to undertake construction. The agreement to emphasize use of the revenues for ADA improvements around bus facilities is new and will be of benefit to Pierce Transit customers in Tacoma in that it is expected to improve the paths of travel around bus stops and may result in more people being able to use fixed route service as opposed to paratransit.

Tacoma's Government Performance and Finance Committee reviewed the proposed agreement at their April 20, 2016, and it is scheduled to go before the Tacoma City Council for consideration on June 14, 2016.

ALTERNATIVES:

Do not authorize the execution and acceptance of the Right of Use and Franchise Agreement. Failure to adopt the Ordinance will put the entire financial responsibility for Right of Way improvements adjacent to bus stops on Pierce Transit. This would include design, construction, and inspection costs, which are significantly less expensive and more efficient if performed by the City of Tacoma. This would severely limit the number of new and improved bus stops within the City of Tacoma. Failure to adopt would also bring an end to the advertising shelter program within the City of Tacoma, which would also include advertising on buses, and eliminate a revenue stream that is intended to be utilized for ADA improvements around bus facilities.

RECOMMENDATION:

Approve Resolution No. 16-012, authorizing the Chief Executive Officer to enter into, execute, and accept a Right-of Use Agreement and Non-Exclusive Franchise Agreement with the City of Tacoma, retroactive to January 1, 2014, in substantially the same form as Exhibit A.

RESOLUTION NO. 16-012

1 A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing Pierce Transit to Enter Into,
2 Execute, and

3 Accept a Right-of Use Agreement and Non-Exclusive Franchise Agreement with the City of Tacoma Via a
4 Proposed City of Tacoma Ordinance Relating to the Construction, Installation, Operation and Maintenance of
5 Bus Stops, Bus Shelters, Bus Amenities and Advertising Shelters Within the City of Tacoma
6

7 WHEREAS, Pierce Transit has a number of bus stops and shelters, including advertising shelters within
8 the City of Tacoma; and

9 WHEREAS, the City of Tacoma grants Pierce Transit the right to occupy the public right of way for the
10 purpose of providing bus stops and shelters; and

11 WHEREAS, advertising within the shelters generates revenue; and

12 WHEREAS, as a condition of permitting Pierce Transit the continued right of use of the public right of
13 way for bus stops and shelters, the City of Tacoma and Pierce Transit have agreed to deposit a percentage of
14 the advertising revenue from advertising shelters within the City of Tacoma into a City of Tacoma-
15 administered fund designated for right of way improvements with an emphasis on Americans with Disabilities
16 Act (ADA) improvements adjacent to bus stops and shelters with the City of Tacoma; and

17 WHEREAS Pierce Transit and the City of Tacoma have long operated under a prior Franchise
18 Agreement which provided for a similar contribution of payment of advertising revenues to the City, but
19 which prior agreement did not designate that such funds would be used for ADA improvements adjacent to
20 bus stops and shelters; and

21 WHEREAS, due to the expiration of the prior Franchise Agreement and the time required to negotiate
22 this new Agreement, the proposed Right-of Use Agreement and Non-Exclusive Franchise Agreement attached
23 hereto would be retroactive to January 1, 2014.

24 NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

25 Section 1. The Board of Commissioners authorizes the Chief Executive Officer to enter into, execute,
26 and accept the proposed Right-of Use Agreement and Non-Exclusive Franchise Agreement with the City of
27 Tacoma , in substantially the same form as Exhibit A, and retroactive to January 1, 2014.

28 ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on
29 the 9th day of May, 2016.

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PIERCE TRANSIT

Rick Talbert, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

DRAFT ORDINANCE

AN ORDINANCE relating to City real property and right-of-way, granting both a non-exclusive Right of Use to the Pierce County Public Transportation Benefit Area Corporation, to construct, install, operate, own, control, repair, and maintain bus stops, bus shelters and bus stop amenities within the City of Tacoma, and a non-exclusive Franchise to construct, install, operate, own, control, repair, and maintain Advertising Shelters within the City of Tacoma, setting forth provisions, terms, and conditions of said grants under the Tacoma Municipal Code and the City of Tacoma Charter.

WHEREAS, Pierce County Public Transportation Benefit Area Corporation (“Pierce Transit”) was established under RCW 36.57A and is vested with the powers necessary to construct and operate a public transportation system benefitting Pierce County residents; and

WHEREAS, the City of Tacoma (the “City”) is a first-class city operating under the laws of the State of Washington; and

WHEREAS the City owns and operates streets, public utilities, and other infrastructure improvements within the City boundaries, where transit improvements currently exist and are proposed; and

WHEREAS, both parties are committed to ensuring that people with disabilities in the City have access to public facilities, including public transportation and to improvement of accessibility throughout the City; and

WHEREAS this Ordinance functions as both a right-of use agreement (Sections 1, 2 and 4-21) as well as a non-exclusive franchise (Sections 1 and 3-21) with the grant of rights under each handled separately in Sections 2 and 3 respectively and all other Sections herein being equally applicable to both grants;

Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That, in consideration of mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the respective parties hereto, it is mutually agreed that Right of Use privileges and a non-exclusive Franchise are hereby granted to Pierce Transit, to construct, install, operate, repair, maintain, use, control, and own Bus Stops, Bus Shelters, and Ad Shelters within City of Tacoma right-of-way as individually approved under City permits upon the following terms and conditions:

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Section 1. DEFINITIONS. For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent within the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. A reference to the City’s Charter or Code refers to the same as amended from time to time. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- A. ADA. “ADA” shall mean the Americans with Disabilities Act of 1990.
- B. ADA Compliance. “ADA Compliance” or “ADA Compliant” shall mean meeting all federal, state, and local laws, ordinances, and departmental rules, regulations, and practices.
- C. Ad Shelter. “Ad Shelter” shall mean a Bus Shelter and related bus stop amenities where Advertising is sold and which is located in the Right-of-Way and constructed, installed, and maintained by Pierce Transit in accordance with this Agreement.
- D. Advertising. “Advertising” shall mean the commercial advertising posters, signs, messages and other materials sold to a third party advertiser or its agent and posted by Pierce Transit or its agents in an Ad Shelter. “Advertising” does not include public service announcements or campaigns made by a governmental entity or non-profit organization which do not to promote a commercial use or for-profit sales to the extent that Pierce Transit does not charge for the placement of such materials. “Advertising” also does not include Pierce Transit’s use of its Facilities or vehicles for Pierce Transit’s use, including but not limited to: rider education or information; promotion of transit programs; marketing of Pierce Transit service; public art; or partnership programs between Pierce Transit and another public or private organization.
- E. Advertising Space. “Advertising Space” shall mean the space available on a Bus Shelter for Advertising.
- F. Agreement. “Agreement” shall collectively mean all terms and conditions of this ordinance whether related to the Right of Use sections or the Franchise.
- G. Bus Shelter. “Bus Shelter” shall mean a Facility that provides protection from the weather for passengers waiting for a Pierce Transit bus and this term shall include any bus stop amenities installed by Pierce Transit attached or immediately adjacent thereto, including but not limited to: trash receptacles; signage; benches; or art.

H. Bus Stop. “Bus Stop” shall mean a place designated for transit vehicles to stop and load or unload passengers and this term shall include any bus stop amenities installed by Pierce Transit attached or immediately adjacent thereto, including, but not limited to: trash receptacles; signage; benches; or art.

I. Facilities. “Facilities” or “Facility” as used herein shall mean any and all Pierce Transit improvements in the City Right-of-Way including Bus Shelters, Ad Shelters, Bus Stops, also including but not limited to the following bus stop amenities:

- a. Medium for Advertising;
- b. Advertising Space;
- c. Benches;
- d. Garbage Receptacles;
- e. Shelters;
- f. Poles/Posts;
- g. Signs;
- h. Illumination; and/or
- i. Bus Beacon/Blinking Light.

J. Franchise. “Franchise” shall mean the non-exclusive rights granted by the City in Section 3 of this Agreement, pursuant to the authority in Section VIII of the Tacoma City Charter, to Pierce Transit for the non-exclusive use of City Right-of-Way in accordance with the terms and conditions of this Agreement.

K. General Transit Use. “General Transit Use” shall mean all services, contracts, construction, maintenance and/or repairs related to the provision of public transportation services by Pierce Transit and all Bus Stops and Bus Shelters placed by Pierce Transit within the Right-of-Way, excepting therefrom Ad Shelters.

L. Gross Receipts. “Gross Receipts” as used in Section 3 below shall mean all revenue actually received by Pierce Transit for the sale of Advertising on Pierce Transit Ad Shelters located within the City of Tacoma limits.

M. Public Rights-of-Way. “Public Rights-of-Way” or “Right of Way” shall mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant permits, franchises or licenses for use thereof or has regulatory authority therefor, excluding railroad rights-of-way, airport, and harbor areas. Public Rights-of-Way for the purpose of this Agreement do not include buildings, parks, poles, conduits, or similar facilities or property, owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

N. Site Plan. “Site Plan” shall mean a plan view drawing showing the relationship between the Facility and the other infrastructure within the Right-of-Way, to include elements required by Public Works for site plan review.

O. Third Party. “Third Party” shall mean any person other than the City and any person other than Pierce Transit.

P. Use Area. "Use Area" shall mean those areas within the Rights-of-Way in which Pierce Transit is authorized pursuant to this Agreement to construct, operate, maintain and repair its Facilities. "Use Area" also includes (1) Facilities previously permitted and existing in the Rights-of-Way at the Effective Date of this Agreement, and (2) the part of the Right-of-Way that extends ten feet on all sides of a Facility, except that the Use Area shall not extend to any area in a street or roadway nor to private property adjacent to a Use Area.

Section 2. GRANT OF RIGHT OF USE FOR GENERAL TRANSIT USE

- A. Grant of Non-Exclusive Right of Use. For each Use Area established under this Agreement, City hereby grants to Pierce Transit a non-exclusive privilege to enter upon the Use Area to construct, operate, and maintain its Facilities and for General Transit Use as well as all other applicable purposes expressly provided in this Agreement, but subject to all preexisting rights, interests and estates of Pierce Transit and Third Parties in and affecting the Use Area, including, without limitation, any franchise agreements, leases, licenses, permits, easements, liens, ownership interests or encumbrances in existence as of the Effective Date of this Agreement. City shall, where and as practicable, protect from subsequent occupancies the Pierce Transit Use Areas where occupancy would have the risk of interference with a Facility. Pierce Transit expressly agrees that it will construct, install, operate, repair, maintain, use, own, or control its Use Areas in compliance with this Agreement and all applicable City ordinances and state and federal laws, rules, and regulations.
- B. Rights Subject to Right-of-Way Uses. The City intends to continue using the Right-of-Way as Public Right-of-Way and for any other related activities that do not impair the ability of Pierce Transit to construct, operate and maintain its Facilities. The rights granted Pierce Transit herein are subject and subordinate to the prior and continuing right of the City: (1) to use and maintain the entire Right-of-Way subject to the terms and conditions of the Agreement; (2) the City's right to dispose of all or part of the property, including but not limited to, the air space above and the subsurface area below the Pierce Transit Facilities, subject to the terms and conditions of this Agreement; and (3) to construct and operate, and to change or modify, pipelines, electric lines, and other Facilities in, on, upon, over, under, along, across, or through any or all parts of the Right-of-Way, or permit others to do so for City or for other public improvement projects, all or any of which may be freely done at any time or times by the City or others with the City's permission, without liability to the City or to any other party for compensation or damages, unless and except to the extent that this Agreement otherwise expressly provides therefor. The City agrees that it will provide a

minimum of five (5) working days' notice to Pierce Transit whenever it reasonably believes that a Facility located in the Right of Way will require temporary or permanent relocation or removal, temporary closure, modification to, or support of a Facility and/or transit routes, unless in an emergency condition as declared by the City Engineer. If the City determines that as a result of any public project, the location of any Pierce Transit Facilities and/or transit routes must be temporarily changed or relocated; or for any other purpose where the work involved would be aided by the temporary removal or relocation of the Facility and/or transit routes, the City shall notify Pierce Transit of such plans and Pierce Transit shall, at its sole cost and expense, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its Facilities and/or transit routes as directed by the City.

- C. Usual and Customary Use. The Parties understand that the Right-of-Way is used by Pierce Transit for the transportation of persons and agree that the usual and customary use of the Use Area for such purposes alone does not constitute an interference with the City's use of the Right-of-Way.
- D. Third Party Requests. If any Third Party requests that Pierce Transit protect, support, temporarily disconnect, remove, or relocate Facilities and/or transit routes to accommodate the Third Party's non-public project construction, operation, or repair of the facilities of such Third Party, Pierce Transit and the requesting Third Party shall be responsible for working out a satisfactory resolution to the request between themselves as to costs, logistics and etc.
- E. Termination of Right of Use. As to each Use Area, the City may terminate the rights granted to Pierce Transit when: (a) all Facilities for such Use Area have been intentionally removed from the applicable Use Area, and such removal is not a result of maintenance or construction on the Use Area or a *force majeure* event; or (b) at such time as the Facilities have been formally abandoned; or (c) at such earlier time as the terms of this Right-of-Use Agreement may provide; or (d) upon mutual agreement of the Parties. Pierce Transit may terminate this Agreement upon breach or nonperformance of any material term of this Agreement. Either party may give written notice of its intent to terminate under this provision. Upon receipt of notice of intent to terminate, a party will have ninety (90) days from its receipt of the termination notice to remedy or cure the conditions of the termination notice.
- F. Use Restricted. This Agreement does not authorize the provision of any services or uses by Pierce Transit other than the services reasonably involved in the provision of transit services or in any way relieve Pierce Transit of any obligation to obtain any additional permits, authorizations, licenses, or agreements to use Right-of-Way to provide other services or uses. The provisions of this Agreement are not a bar to the imposition of similar,

different, or additional conditions with respect to the use of the Rights-of-Way.

- G. No Warranty of Any Conditions of Use Area. Pierce Transit acknowledges that City has made no representation whatsoever to Pierce Transit concerning the state or condition of any Use Area, or any personal property or improvements located thereon, or the nature or extent of City's ownership interest in any Use Area. Pierce Transit has not relied on any statement or declaration of City, oral or in writing, as an inducement to entering into this Right-of-Use Agreement, other than as set forth herein. CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING ANY USE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL, OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO PIERCE TRANSIT OR ANY OF PIERCE TRANSIT'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING ANY USE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. PIERCE TRANSIT ACCEPTS ALL RIGHTS GRANTED UNDER THIS RIGHT-OF-USE AGREEMENT IN ALL USE AREAS "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AND SUBJECT TO ALL LIMITATIONS ON CITY'S RIGHTS, INTERESTS AND TITLE TO ALL USE AREAS. CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY USE AREA NOR UNDERTAKE TO DEFEND PIERCE TRANSIT IN THE PEACEABLE POSSESSION OR USE THEREOF NO COVENANT OF QUIET ENJOYMENT IS MADE. Pierce Transit has inspected or will inspect each applicable Use Area, and enters upon any Use Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Use Area. Pierce Transit acknowledges that this Right-of-Use Agreement does not contain any implied warranties that Pierce Transit or Pierce Transit's Contractors can successfully construct or operate the Facilities. In case of eviction of Pierce Transit or Pierce Transit's Contractors by anyone owning or claiming title to, or any interest in the Use Area, City shall not be liable to Pierce Transit or Pierce Transit's Contractors for any costs, losses or damages of any Party.
- H. Third Party Users of Use Area.

- a. Pierce Transit Third Party Uses of Use Area. The Parties acknowledge that Pierce Transit has, or may have in the future, agreements with Third Parties for joint use of the Use Area for the installation and operation of Third Party Facilities, and further that such Facilities may be installed and operated within the Use Area. The installation and operation of such Third Party Facilities are subject to the terms and conditions of this Right-of-Use Agreement.
- b. Other Third Party Uses of Use Area. Except as otherwise expressly stated herein, City shall not enter into any easement, right-of-use agreement, franchise, license, permit or agreement, which would interfere with Pierce Transit's ability to exercise its rights under this Right-of-Use Agreement or to utilize the Facilities covered by this Right-of-Use Agreement. Unless the matter is governed by a valid contract, this Right-of-Use Agreement, or a state or federal law or regulation, or unless the Pierce Transit Facilities were not properly installed, any Third Party that is authorized by the City to place Facilities in the Use Area pursuant to an easement, Right-of-Use Agreement, franchise, license, permit or other agreement, executed subsequent to this Agreement, shall bear the cost and expense of any work necessary to ensure that, in the exercise of its rights, it does not Interfere with the Facilities or Pierce Transit's use of, or operation on, the Use Area.
- I. Inconsistent Use. Notwithstanding the above, no Public Rights-of-Way shall be used by Pierce Transit in a manner that is inconsistent with the terms, conditions, or provisions by which such Public Rights-of-Way were created or dedicated, or presently used under applicable laws.
- J. No Rights by Implication. No rights shall pass to Pierce Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:
 - a. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City; or
 - b. Any permit, agreement, or authorization required in connection with operations on or in Public Rights-of-Way or property; or
 - c. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.
- K. Utility Agreements. This Agreement shall not be read to diminish, or in any way affect, the authority of the City to control and charge for the use of the light, power, water, storm, refuse, and sewer utilities. Therefore, if Pierce

Transit desires to use such utilities it must obtain necessary agreements or consents for such uses, and pay any and all associated fees as may be required by the City.

Section 3. GRANT OF NON-EXCLUSIVE FRANCHISE RIGHTS BY CITY FOR ADVERTISING SHELTERS.

- A. Conformance with the Totality of this Agreement. Pierce Transit understands and agrees that this Grant of Nonexclusive Franchise Rights by City for Advertising Shelters is subject to, and must conform and adhere to, any and all portions of the foregoing and remaining Sections of this Agreement.
- B. Additional Grant of Non-Exclusive Franchise Rights for Advertising Shelters. In addition to the non-exclusive franchise rights granted by the City to Pierce Transit for General Transit Use as set forth in Section 2 herein, the City also grants to Pierce Transit a non-exclusive Franchise to construct, install, maintain, repair, control, and own Ad Shelters and License Advertising Space on said Ad Shelters under the terms and conditions of this Agreement. Pierce Transit expressly agrees that it will construct, install, operate, repair, maintain, use, own, or control its Advertising Shelters in compliance with this Agreement and all applicable City ordinances and state and federal laws, rules, and regulations.
- C. Use Restricted to Advertising. This Agreement does not authorize the provision of any services or uses by Pierce Transit or its agents other than those which are reasonably related to the construction, installation, maintenance, repair, control, and/or ownership of Ad Shelters and the lease of Advertising Space on said Ad Shelters under the terms and conditions of this Agreement, nor shall this section be construed in any way to relieve Pierce Transit of any obligation to obtain any additional permits, authorizations, licenses, or agreements to use the Right-of-Way to provide other services or uses. The provisions of this Agreement are not a bar to the imposition of similar, different, or additional conditions with respect to the use of the Rights-of-Way.
- D. Advertising Policy and Content Management. Any Advertising on Pierce Transit Ad Shelters will be in accord with and subject to the Pierce Transit Advertising Policy as may be amended by Pierce Transit from time to time. It shall not be a violation of this Agreement for Pierce Transit to utilize Advertising Space on Ad Shelters for its own use, for public service announcements, art, or for any other non-profit use in accord with the Pierce Transit Advertising Policy. In the event that the City receives any complaint regarding Advertising or other content within the Advertising Shelters, they City shall refer such complaint to Pierce Transit's Marketing Manager.

- E. Ownership and Maintenance. Pierce Transit may, pursuant to this Franchise, authorize a Third Party (“Authorized Third Parties”) to maintain Ad Shelter(s) or retain an ownership interest in whole or in part in an Ad Shelter(s) located in the Right-of-Way; provided that, such Authorized Third Parties shall not be authorized to construct, install, operate, maintain, repair, control, remove, or relocate such Ad Shelter(s) except as an Agent of Pierce Transit and subject to the terms and conditions of this Franchise; and provided further, that such interest of Authorized Third Parties shall not create a lien or encumbrance upon the Right-of-Way and shall be subject and subordinate to the rights of the City under this Franchise, and other applicable law. Nothing in this Franchise shall be construed as granting to Pierce Transit any interest or right in the Use Area other than the rights expressly provided herein.
- F. Lease of Advertising Space. Pierce Transit is authorized to license the use of Advertising Space for placement of Advertising; provided that, such licensees shall not be authorized under this Franchise to install, maintain, repair, relocate, or remove Advertising in or upon the Shelters, except as an Agent of Pierce Transit and subject to the terms and conditions of this Franchise; and provided further, that the rights of licensees shall be subject and subordinate to the rights of the City under this Franchise and other applicable law. Upon request from the City, Pierce Transit shall, within ten days of receipt, provide the City with full and complete copies of any contracts that Pierce Transit has with vendors for advertising sales and placement services together with any amendments and extensions or renewals thereof. Upon request from the City, upon reasonable notice and no more frequently than on an annual basis, Pierce Transit will provide the City with copies of the most recent audit conducted by Pierce Transit of its vendor for advertising services.
- G. Payment.
1. Pierce Transit will pay to City ninety percent (90%) (“Payment”) of the Gross Receipts received by Pierce Transit for advertising on Ad Shelters located within the City of Tacoma and Pierce Transit will retain ten percent (10%) of the Gross Receipts to offset the costs of administration and management of this Agreement as well as the costs of construction and maintenance of Ad Shelters located in the City. This payment will be divided by the City as follows:
 - a. Ten percent (10%) of the Gross Receipts will be deposited into a City Property Management Fund to cover costs associated with administering and managing this Agreement; and
 - b. Eighty percent (80%) of the Gross Receipts will be deposited into a fund designated by the City to be used for Right of Way improvements

with emphasis on ADA improvements adjacent to Bus Stops and Shelters within the City of Tacoma.

c. **SAMPLE CALCULATION:**

Gross Receipts: \$1,000

Payment Distribution:

\$100 to Pierce Transit;

\$900 to City which shall be divided as follows:

\$100 to City Property Management Fund; and

\$800 to City designated fund

2. Each payment shall be made quarterly and shall be due within forty-five (45) days after the end of the quarter.
 3. Pierce Transit will also pay or reimburse City for all taxes and assessments that may be levied or addressed against Pierce Transit by reason of the presence of the Ad Shelter Advertising.
 4. The first payment made to the City by Pierce Transit under this Agreement shall include all monies owed from the Effective Date to the end of the first quarter after all parties have executed this Agreement.
 5. Interest. Pierce Transit shall pay to the City twelve percent (12%) interest per annum on any fee or charge not paid when due and for all costs of collection of any fee or charge past due more than forty-five (45) days.
 6. Survival of Terms. All obligations of Pierce Transit to pay City any fee or charge required pursuant to this Franchise shall survive expiration and/or termination of this Agreement
- H. Books/Records/Reports. Pierce Transit shall prepare and furnish to the City, within forty-five (45) days of the end of a quarter and upon request, such reports with respect to Pierce Transit's Advertising revenue from Ad Shelters located within the City of Tacoma as may be reasonably necessary and appropriate to ensure compliance with the material provisions of this Franchise, or to permit the performance of any of the rights, functions, or duties of the City or such other regulatory entity in connection with the Franchise. Unless otherwise indicated by the City, the standard form submitted by Pierce Transit shall be Revenue Detail Sheets (see Appendix A). Upon request from Pierce Transit, the City shall prepare and furnish to Pierce Transit no more frequently than on an annual basis, an SAP report showing the City's expenditures from the fund referenced in subsection G.1.b. above.

Section 4. CONSTRUCTION AND MAINTENANCE OF FACILITIES.

- A. New or Improved Facilities and Site Plans/Location. Prior to installation of any proposed new Facility or improvements to an existing Facility, Pierce Transit shall, at its expense, submit to the City's Planning and Development Services Department a listing of locations, a Site Plan for each location, and other documents as needed, which may include, but are not limited to, traffic control plans.
- B. Existing Facilities. For all Facilities existing at time of execution of this Agreement, Pierce Transit shall, at its expense, provide to the City a complete list of locations denoting the site of said existing Facilities, as well as any additional documentation, including but not limited to, existing Site Plans and/or Facility designs.
- C. Approval Process for New Facilities. Upon City's receipt of the required documents for new Facilities, the City shall, within 30 days from receipt, review and approve or disapprove of the construction proposed therein. To the extent that the City disapproves of all or any part of the construction, in its response, the City shall provide to Pierce Transit a written explanation of the reasons for disapproval and suggested alternatives, if any. Pierce Transit may then submit revised documents, which shall be subject to the same review and approval or disapproval procedures. Pierce Transit shall not commence construction at any site until the City has approved the documents for such site. All submittals from Pierce Transit must be initialed and approved by a City-designated representative from each of the following City departments or their successors:
- a. Traffic Engineering;
 - b. Real Property Services;
 - c. ADA Coordinator;
 - d. Planning and Development Services; and
 - e. Site Development.
- D. Process for Approval of Facilities when ADA Improvements Needed in Path of Travel; Prioritization. In those instances where ADA improvements have not been made in the path of travel leading to a proposed new or improved Facility, Pierce Transit's permit application for a new Facility may not be immediately approved by the City and will instead be placed in 'pending' status until funds are available to make the ADA improvements in the path of travel adjacent to the proposed Pierce Transit Facility. Pierce Transit will be responsible for prioritizing the locations of its Facilities so that accessibility improvements will be made in the area around the highest priority transit Facilities. In coordination with Pierce Transit, the City will make or construct those improvements in order of priority as funding is available.

- E. Entry Upon Right-of-Way. Pierce Transit, its servants, employees, agents, contractors, and/or subcontractors shall have the right to enter upon the Right-of-Way for the purposes of constructing, operating, and maintaining the Facilities.
- F. Compliance with Laws, Rules, and Regulations. Pierce Transit shall construct, operate, maintain, and repair its Facilities in compliance with all federal, state, and local laws, ordinances, and departmental rules, regulations, and practices affecting such system, which include, by way of example and not limitation, the obligation to operate, maintain, and repair its Facilities in accordance with zoning codes, safety codes, and City construction standards. New, altered, or relocated bus stops shall be ADA Compliant and may trigger the construction of new sidewalks, curb ramps, and other pedestrian facilities. The City, in coordination with Pierce Transit, will install and/or construct the accessibility improvements that are beyond the Use Area, as funding allows. In addition, the construction, operation, and repair of all Facilities and ADA improvements within the Public Right of Way shall be performed in a manner consistent with industry standards. Pierce Transit shall exercise reasonable care in the performance of all activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- G. Inspection. The City shall have the right to verify, by inspection, that the location of the work and the materials used in construction or operation of the Pierce Transit Facilities are in compliance with the plans as approved by the City. The City shall further have the right to verify, by inspection, that City Facilities relocated and/or constructed by Pierce Transit are to a standard acceptable to the City.
- H. Restoration of Right-of-Way. Pierce Transit shall promptly, at its sole cost and expense, repair any and all Public Rights-of-Way (in compliance with the City's right-of-way restoration policy) and public or private property that is disturbed or damaged as a result of the construction, use, relocation or destruction of Pierce Transit Facilities. This section shall not be construed to require Pierce Transit to make repairs or other restoration in the Right of Way for damage that is caused by the usual wear and tear and use of the Right of Way in areas outside of Pierce Transit's Use Area such as City streets, sidewalks, and curbs. Repair of damage to the Right of Way caused by use other than usual use, or in excess of usual wear and tear shall be the responsibility of the party causing the damage. Upon completion of the initial construction of any Facility, Pierce Transit shall ensure that the Right-of-Way and all other public and private property that is disturbed or damaged as a result of the construction of the Facility is promptly returned to as good a condition as before the disturbance or damage occurred, or if to a lesser condition, then to the satisfaction of the City or the private property owners. In the

event Pierce Transit does not comply with the foregoing requirements, the City may, upon thirty (30) days' advance notice to Pierce Transit, take action to restore the Public Rights-of-Way or public property at Pierce Transit's sole cost and expense.

- I. Dispute. In the event of any dispute over the adequacy of restoration, the Director of the City's Department of Public Works shall in his or her sole discretion, make the final determination.
- J. Level of Operation/Maintenance. All Facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights-of-Way. All Facilities shall be maintained in a safe condition, in good repair and appearance.
- K. Appointment of Agent. Pierce Transit may appoint an agent to exercise some or all of Pierce Transit's rights under this Agreement, subject to the terms and conditions of this Agreement.
- L. Responsibility for Facilities. The City shall have no responsibility for maintaining, servicing, or repairing any Facilities and shall not be responsible for the clearing or removal of trees, shrubs, plants, ice, snow, or debris therefrom.
- M. Permits Required. Except in cases of emergency repairs, Pierce Transit's construction, operation, or repair of Facilities shall not commence until all required permits have been properly filed for and obtained from the City and all required permits and associated fees paid. In case of emergency repairs, appropriate permits shall be obtained no later than the second business day following repairs.

Section 5. ACCESSIBILITY IMPROVEMENTS.

- A. Cooperation to Improve Accessibility. Both parties agree to work together toward improving ADA accessibility at transit Facilities within the City. For purposes of this Agreement, "ADA Accessibility" means that facilities must comply with all ADA standards and are usable by persons with disabilities.
- B. Pedestrian Routes/Path of Travel. The City acknowledges responsibility for the design, construction, and maintenance of all sidewalk connections and/or curb ramps that lead or connect to but are not within a Use Area. In the event there are not sufficient City funds to bring a given area into compliance, a permit application by Pierce Transit for approval of a new or altered Facility in that area may be delayed until such time as City funds are available for improvements.
- C. Bus Stops, Shelters/Pierce Transit Use Areas. Pierce Transit is obligated to and shall construct and maintain its Facilities and Use Areas in compliance with Federal Transit Authority and ADA regulations for bus boarding and alighting areas.

- D. Transition Plan/Existing Bus Stops. Pierce Transit will create and provide an inventory and prioritization of its existing and proposed Facilities to the City within ninety (90) days of the execution of this Agreement. The City and Pierce Transit agree to cooperate to develop an ADA Self-Evaluation and Transition Plan ("Plan") for all Pierce Transit Facilities within the City of Tacoma, which Plan will include an assessment of pedestrian access routes leading to and from such Facilities. This Plan will also include the prioritization of areas adjacent to Bus Stops for ADA improvements and will provide for a reporting mechanism to be utilized by staff to report areas with deficiencies. Once the Plan has been completed, the City of Tacoma and Pierce Transit will identify barriers for removal and develop a plan for completion of the work within the Parties' respective areas of responsibility. The Plan will be updated and modified as funding opportunities arise, transit routes or ridership change, or other factors influence the priority of the improvements.

Section 6. INSURANCE. Pierce Transit shall maintain, throughout the term of this Agreement, the following self-funding levels or membership in a self-insurance pool such as the Washington State Transit Insurance Pool to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the construction, installation, operation, maintenance, or repair of the Facilities. This obligation shall require Pierce Transit to maintain self-insurance funding levels in no less than the following amounts and forms:

- A. Comprehensive general liability self-insurance funding levels to cover liability, bodily injury, and property damage. Exposures to be covered are: premises, operations and products/completed operations. Coverage must be written on an occurrence basis, with the following limits of liability:
- a. Bodily Injury
 - i. Each Occurrence \$1,000,000
 - ii. Annual Aggregate \$3,000,000
 - b. Property Damage
 - i. Each Occurrence \$1,000,000
 - ii. Annual Aggregate \$3,000,000
 - c. Personal Injury
 - i. Annual Aggregate \$3,000,000
- B. Completed operations and product liability self-insurance shall be maintained for two years after the termination of this Agreement (in the case of Pierce Transit or operator) or completion of the work for the Pierce Transit or operator (in the case of a contractor or subcontractor).
- C. Property damage liability self-insurance shall include coverage for the following hazards: X – explosion; C – collapse; U – underground.

- D. Workers' compensation coverage for Pierce Transit employees shall be maintained during the life of this contract to comply with statutory limits for all employees and, in the case any work is sublet, Pierce Transit shall require its contractors and subcontractors to similarly provide workers' compensation insurance for all the latter's employees.
- E. Employer's liability insurance shall be maintained by Pierce Transit in the following minimum limits:
- a. Employer's Liability \$1,000,000 per occurrence
- F. Comprehensive auto liability coverage shall include owned, hired, and non-owned vehicles.
- a. Bodily Injury
 - i. Each Occurrence \$1,000,000
 - ii. Annual Aggregate \$3,000,000
 - b. Property Damage
 - i. Each Occurrence \$1,000,000
 - ii. Annual Aggregate \$3,000,000
- G. If Pierce Transit, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.
- H. Certificates of insurance, reflecting evidence of the required insurance, and naming the City as an additional insured under its insurance or self-insurance program, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Agreement, and annually thereafter, as provided in Sections H and I below.
- I. Minimum Requirements. The parties agree that insurance coverage required herein shall:
- a. Provide coverage on an occurrence basis;
 - b. Cover any and all costs including defense costs, losses and damages resulting from any personal injury and/or death (including coverage under the Federal Employers Liability Act), and/or property damage;
 - c. Include blanket contractual coverage, including coverage for written contracts and specific coverage for the indemnity provisions set forth in this Agreement, and completed operations and products liability coverage; provided that, there shall not be an exclusion for liability not contracted for;
 - d. Have no exclusion for incidents occurring within 25 feet, or any distance, from a railroad track, or on, over, or under a railroad track;
 - e. Have an aggregate limit location endorsement for each construction location;

- f. Commence and be in force and effect before any work is done under this Agreement;
- g. Be maintained in place until all Facilities have been removed from Public Rights-of-Way and for six years thereafter;
- h. Have no non-standard exclusions unless approved of by the City Risk Manager;
- i. Name the City as an additional insured without limitation for both ongoing and completed operations, pursuant to an endorsement approved of by the City's Risk Manager;
- j. Be issued by a financially sound self-insurance pool or by an insurer that is authorized to do business in the state of Washington with a financial rating no less than an "A XII" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Company;
- k. Be endorsed to state that coverage under the policy shall not be suspended, voided, cancelled, or amended except after 30 days' prior written notice of such has been given to the City;
- l. Include a waiver of subrogation rights to the extent that any liability for costs, losses, and damages resulting from any personal injury, death, and/or property damage may be covered by the proceeds of such insurance policies;
- m. Include an endorsement that such policy is primary and noncontributing;
- J. The certificates shall contain a provision that coverage afforded under these policies will not be cancelled until at least 30 days' prior written notice has been given to the City.
- K. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Right-of-Way then, in that event, Pierce Transit shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Right-of-Way.

Section 7. LIABILITY; INDEMNIFICATION.

- A. Pierce Transit hereby agrees to indemnify, defend and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, installation, maintenance, operation, repair, removal, occupancy, use, and ownership of the Facilities by Pierce Transit, its Agents or Authorized Third Parties.

- B. Pierce Transit hereby releases the City from, and agrees to indemnify, defend, protect, and hold the City harmless from and against any and all claims, suits, judgments, liabilities, defense costs, and expenses (including but not limited to attorneys' fees) arising out of any loss of and/or damage to the real or tangible personal property of the City, and any loss of and/or damage to the property of any Third Parties or Pierce Transit; any loss and/or damage on account of injury to or death of any persons whomsoever (including employees and agents of the parties hereto and all other persons) caused by or growing out of the presence of Pierce Transit or its employees, Agents, Authorized Third Parties, servants, contractors, or subcontractors in, upon, or along the Use Area or the plan, design, construction, and installation, or subsequent operations, maintenance, repair, reinstallation, replacement, relocation, or removal of Facilities or any part thereof; service interruption, cessation, or unreliability of the Transit Facilities, libel, slander, infringement of copyright, or unauthorized use of any trademark, trade name, or service mark arising out of the material, data, information, or other content transmitted or received over, or otherwise posted at the Facilities, unless such claims, suits, judgments, or liabilities arise from the sole actions or inaction of the City, its employees, servants, agents, contractors, or subcontractors.
- C. The parties hereby agree that no damages shall be recoverable from one another because of any dispossession that results from any failure of or defect in the City's title or the rights granted herein by the City to Pierce Transit. The City will cooperate with Pierce Transit's actions to rectify any title defect and shall stipulate to judgment upon demand with regard to Pierce Transit's title.
- D. The party in whose favor an indemnification runs, pursuant to any of Sections 7(A), 7(B), and 7(C) (the "Protected Party"), shall give the other party (the "Indemnifying Party") prompt notice of any claims or actions of which it is aware against the Protected Party under this Agreement. The Indemnifying Party shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the Protected Party, its agents, contractors, and employees; hold the Protected Party harmless for any expense associated therewith; and promptly pay any settlement or judgment that may be agreed to by the parties or entered by a court. The Protected Party shall cooperate fully with the Indemnifying Party in the defense of any such claim or action without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. In the event that the indemnifying Party does not assume and meet its obligations under Section 7(D) promptly upon receiving written notice from the Protected Party, the Protected Party may, at its option, make any expenditures or incur any obligations for the payment of money in connection with or arising out of the matters referred to in Sections 7(A), 7(B), and 7(C),

including, but not limited to, attorney's fees. Such sums paid or obligations incurred shall be deemed to be additional obligations of the Indemnifying Party under this Agreement and shall be paid by the Indemnifying Party upon the rendering of a statement to the Indemnifying Party therefore.

Section 8. LIENS.

- A. The Right-of-Way is not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to or through Pierce Transit which Pierce Transit does not contest in good faith, Pierce Transit shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to City, and shall indemnify City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, City may pay or secure the release or discharge thereof at the expense of Pierce Transit after first giving Pierce Transit five business days' advance notice of its intention to do so.
- B. Nothing herein shall preclude Pierce Transit's or City's contest of a claim of lien or other encumbrance chargeable to or through Pierce Transit or City, or of a contract or action upon which the same arose.
- C. Nothing in this Agreement shall be deemed to give, and the City hereby expressly waives any claim of ownership in and to any part or the whole of Pierce Transit Facilities, except as may be otherwise provided herein.

Section 9. TERM; RENEWAL OF TERM; TERMINATION.

- A. The Effective Date of this Agreement shall be retroactive to January 1, 2014 (the "Effective Date") and unless sooner terminated pursuant to the terms hereof, shall remain in effect for five (5) years from such date ("Initial Term") with the right of the parties to renew this Agreement for an additional five (5) year term subject to the approval of each party's governing board.
- B. Pierce Transit's option to renew this Agreement for an additional five year term upon the same terms and conditions shall be subject to City Council approval, and the requirements of the City Charter. Notice of Pierce Transit's intent to exercise any renewal option shall be given to City no sooner than one year and no later than 180 days prior to the expiration of the initial term. Time shall not be "of the essence" with respect to the notice provisions in this subsection.
- C. Upon expiration or termination of this Agreement, Pierce Transit agrees to prepare, execute, and deliver to City all documentation necessary to evidence such expiration/termination of this Agreement or portion thereof terminated. No

such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at termination.

- D. Either party may terminate this agreement after ninety (90) days' notice of intent to terminate to the other party and opportunity to cure any breach or nonperformance cited therein.

Section 10. REMEDIES IN EVENT OF BREACH.

- A. Remedies. Either party has the right to exercise any and all of the following remedies, singly or in combination, in the event the other party violates any provision of this Agreement:
- Commence an action at law for monetary damages;
 - Commence action for equitable or other relief;
 - Seek specific performance of any provision that reasonably lends itself to such remedy.
- B. Cumulative Remedies. In determining which remedy or remedies are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.
- C. Failure to Enforce. Neither party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the other party to enforce prompt compliance, and either party's failure to enforce shall not constitute a waiver of rights or acquiescence in the conduct.
- D. Alternative Remedies. No provision of this Agreement shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the ordinance or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages for such violation or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

Section 11. REVOCATION. In addition to any rights set out elsewhere in this Agreement or the City Charter, the City reserves the right to declare a forfeiture or otherwise revoke the Agreement, and all rights and privileges pertaining thereto, in the event that:

- Pierce Transit is in material non-compliance with this Agreement;
- Pierce Transit is found to have engaged in any actual or attempted fraud or deceit upon the City, persons, or customers;

- C. Pierce Transit fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction, repair, and operation of the Facilities in the Right-of-Way; or
- D. At any time during the term of the Agreement, Pierce Transit fails to provide and maintain the insurance levels required by this Agreement or fails to satisfy the indemnity set out in this Agreement.

Before this Agreement, or any portion herein, is revoked, Pierce Transit shall be given notice and opportunity to cure (except in those cases where notice and opportunity to cure are not required, or would be otherwise futile).

If, after notice and opportunity to cure, the City finds that there has been an act or omission that would justify revocation or forfeiture of the Agreement, or any portion herein, the City may make an appropriate reduction in the remaining term of the Agreement or revoke the Agreement. However, the Agreement may only be revoked or forfeited if: (1) Pierce Transit was given written notice of the default; (2) Pierce Transit was given 30 days to cure the default; and (3) Pierce Transit failed to cure the default, or to propose a schedule for curing the default acceptable to the City when it is impossible to cure the default in 30 days. No opportunity to cure is required for repeated violations and fraud shall be deemed incurable.

Notwithstanding the foregoing, the City may declare an Agreement forfeited or revoked without opportunity to cure when Pierce Transit: (1) transfers any right or obligation hereunder without prior consent of the City; (2) fails to pay any monies owed hereunder or (3) defrauds or attempts to defraud the City or Pierce Transit's customers. However, Pierce Transit shall have the right to receive 30 days' prior notice of an intent to declare the Agreement, or any portion herein, forfeited and shall have the opportunity to show cause before the Director of Public Works why the Agreement should not be forfeited or revoked.

Section 12. RIGHT TO REQUIRE REMOVAL OF PROPERTY/RIGHT TO REMOVE PROPERTY.

- A. Upon termination of this Agreement, or termination of any Facility defined herein, and upon a demand by the City, Pierce Transit may be required to remove Facilities from any Public Right-of-Way, and restore such Right-of-Way and accompanying Use Area to its same or better condition that existed just prior to installation of the Facility(ies) to be removed, subject to any rights Pierce Transit may have to abandon property in place. If Pierce Transit fails to complete a City required removal and/or does not complete repairs to the Right-of-Way to the satisfaction of the City Public Works Director, the City may perform the work and collect the cost thereof from Pierce Transit after removal.
- B. To the extent any portion of the Facilities in the Rights-of-Way or on any other public property is not removed by Pierce Transit within three months of the later

of the end of the term of this Agreement or any continuation period, the Facility(ies) will be deemed abandoned and shall become the property of the City if the City wishes to own it. Provided that, in no case shall Pierce Transit be provided less than three months to remove its Facilities, measured from the date Pierce Transit is ordered to remove its Facilities.

- C. Any demand issued, pursuant to Section 12 (A), to remove the Facilities in whole or in part shall be sent by registered or certified mail to Pierce Transit not later than three months following the date of termination of this Agreement, except as may be otherwise agreed to by the parties. Removal of Facilities and repairs to the Right-of-Way shall be completed (except with respect to property that Pierce Transit is permitted or required to abandon in place) not later than three months following the date of notification to remove the Facilities.

Section 13. COVENANTS AND WARRANTIES.

- A. By execution of this Agreement, City warrants:
- a. That City has the full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its Charter or Bylaws, or any law, regulation, or agreement by which it is bound or to which it is bound or to which it is subject; it being understood, however, that the covenant and warranty contained in this section does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to Pierce Transit hereunder; and
 - b. That the execution, delivery, and performance of this Agreement by City has been duly authorized by all requisite corporate action, that the signatories for City hereto are authorized to sign this Agreement, and that, upon approval by City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.
- B. By execution of this Agreement, Pierce Transit warrants:
- a. That Pierce Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, Pierce Transit is not in violation of its charter or bylaws, or any law, regulation or agreement by which it is bound or to which it is subject; and
 - b. That the execution, delivery, and performance of this Agreement by Pierce Transit has been duly authorized, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to

make valid and effective the execution, delivery and performance of this Agreement.

Section 14. RECORDING, TAXES, AND OTHER CHARGES.

- A. Pierce Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording costs or fees, or any similar expense in connection with the recording or filing of any permits which may be granted hereunder. Pierce Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of any Facility advertising or rights herein described requires the payment of any tax, levy, excise, assessment, or charges (including, without limitation, property, sales, or use tax) under any statute, regulation, or rule, Pierce Transit shall pay the same, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold City harmless therefrom. Pierce Transit shall pay all taxes, levies, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Facilities, or on account of their existence or use (including increases thereof attributable to such existence or use, and excluding taxes based on the income of City), and shall indemnify City against payment thereof. Pierce Transit shall have the right to claim, and City shall reasonably cooperate with Pierce Transit in the prosecution of any such claim, for refund, rebate, reduction, or abatement of such tax(es).
- B. City may pay any tax, levy, excise, assessment, or charge, plus any penalty and/or interest thereon, imposed upon Pierce Transit for which Pierce Transit is obligated pursuant to this section, if Pierce Transit does not pay such tax, levy, excise, assessment, or charge within 30 days after it becomes due. Pierce Transit shall reimburse the City for any such payment made, pursuant to the previous sentence, plus interest at the rate of 8 percent per annum.
- C. City and Pierce Transit will cooperate in good faith to resolve any tax dispute that arises under this Agreement, which cooperation will include, but not be limited to, sharing of documents and cooperation of legal counsel.

Section 15. ASSIGNABILITY; BENEFICIARY.

- A. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. Except as otherwise provided herein, no assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above

requirement for consent shall not apply to: (1) any disposition of all or substantially all of the assets of a party; (2) any corporate merger, consolidation or reorganization, whether voluntary or involuntary; (3) a sublease or assignment of this Agreement (in whole or in part) to a wholly-owned subsidiary, affiliate, or parent company; (4) a license of the use of Advertising Space for commercial advertising as authorized pursuant to Section 3 of this Agreement; or (5) a sale, lease, or other conveyance by City; provided, however, that no sublease or assignment under Subsections (2) or (3) shall be permitted to a company not under common control with Pierce Transit; and provided further, that no uncontested assignment shall relieve Pierce Transit of its obligations and liabilities under this Agreement.

- B. Either party hereto may assign any monetary receivables due them under this Agreement; provided however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.
- C. Pierce Transit acknowledges and agrees that City may designate, in writing, a designee to: (1) receive information (including information designated or identified as confidential) and notices under this Agreement; and (2) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Pierce Transit may rely on approvals or consents by such designee on behalf of City as fully as if such actions were performed by the designator itself.

Section 16. NOTICES.

- A. Unless otherwise provided herein, all notices and communications concerning this Agreement, shall be in writing and addressed to (one copy each):

PIERCE TRANSIT
Attention: Clerk of the Board
3701 96th St SW
Lakewood, WA 98499

and to:

CITY OF TACOMA
Attention: City Clerk
733 Market Street, Room 11
Tacoma, WA 98402

CITY OF TACOMA
Attention: Real Property Services
747 Market Street, Room 737
Tacoma, WA 98402

or at such other addresses as may be designated in writing by the other party.

- B. Unless otherwise provided herein, notices shall be sent by registered or certified United States Mail, or other verifiable physical or electronic transmission, and shall be deemed served or delivered to addressee, or its office, upon date of actual receipt (if such acknowledgment, or other means), return receipt acknowledgment, or, if postal claim notice is given, on the date of its return marked "unclaimed"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

Section 17. MISCELLANEOUS.

- A. This Agreement shall survive delivery and/or recordation of each permit which may be granted hereunder.
- B. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.
- C. The parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the parties' control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns or power outages exceeding back-up power supplies. This Agreement shall not be revoked or the parties penalized for such noncompliance; provided, that the parties take immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.
- D. This Agreement may be amended only by a written instrument executed by each of the parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power, or privilege hereunder shall operate as a waiver hereof and no single or partial exercise of any other rights, power, or privilege, except as expressly provided herein.
- E. This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

- F. Section headings are intended as information only, and shall not be construed with the substance of the section they caption.
- G. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- H. No Recourse. Without limiting such immunities as the City or other persons may have under applicable law, Pierce Transit shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss or damage arising out of the City's exercising its authority, pursuant to this Agreement or other applicable law; provided that, this section shall not apply in the event the Agreement is repealed, pursuant to Article VIII, Section 8.1(a) of the Tacoma City Charter.
- I. Notwithstanding Section 17(I) above, Pierce Transit shall maintain all of its rights regarding the enforcement of this Agreement at law and in equity.

Section 18. LEGAL FORUM. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington. Venue for any action under this Agreement shall be Pierce County, Washington.

Section 19. INTERPRETATION. This Agreement is executed by all parties under current interpretations of applicable federal, state, or local statute, ordinance, law, or regulation.

Section 20. SEVERABILITY.

- A. In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.
- B. Notwithstanding the foregoing, the material provisions of this Agreement are not severable. In the event that a court, agency, or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court, agency, or legislature of competent jurisdiction acts so that, or declares that, any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the City and Pierce Transit agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Agreement, consistent with applicable law. If the City and Pierce Transit are unable to agree to a modification of this Agreement within 60 days, either party may resort to litigation. Pierce Transit and

the City agree to participate in up to 16 hours of negotiation during the 60-day period.

- C. Notwithstanding the foregoing, if either Pierce Transit or the City believes a provision is not material then, within 14 days of a request by the other, both parties shall enter into negotiations to resolve the provision at issue. The obligation to negotiate is not tolled, and the City and Pierce Transit must discharge their negotiation responsibility notwithstanding the dispute as to materiality. If there is a dispute as to materiality, the remedies provided for in the preceding paragraph shall be additive, not alternative. The remedies provided for herein do not prevent the City or Pierce Transit from contending that a particular provision is enforceable, or foreclose any remedies if a provision is unenforceable.

Section 21. EXECUTION. Pierce Transit shall execute and return to the City three original countersigned copies of this ordinance and a signed acceptance of the Agreement granted hereunder within 30 days after the date of passage of the ordinance by the City Council and authorization to enter into this Agreement by the Pierce Transit Board of Commissioners. The acceptance shall be in a form acceptable to the City Attorney, and in accepting this Agreement, Pierce Transit warrants that it has carefully read the terms and conditions of this Agreement and unconditionally accepts all of the terms and conditions of this Agreement and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept this Agreement, that this Agreement represents the entire agreement between Pierce Transit and the City. The countersigned ordinance and acceptance shall be returned to the City accompanied by: (1) evidence of insurance; and (2) a payment for publication costs. The rights granted herein shall not become effective until all of the foregoing is received in acceptable form. Upon passage by the City and acceptance of this Agreement by Pierce Transit, any prior franchise agreement between the parties shall terminate and be replaced in its entirety by this Ordinance.

Passed _____

Mayor Strickland

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

Sue Dreier
Pierce Transit CEO

Attest:

Assistant to the CEO/Clerk of the Board

Approve as to form:

Pierce Transit General Counsel

FACT SHEET

TITLE: A Resolution Authorizing the Chief Executive Officer to Enter Into a Cost Sharing Agreement with Sound Transit for Pierce Transit's Base Master Plan Update

DIVISION: Service Delivery & Support

ORIGINATOR: Doug Middleton, Interim Executive Director of Service Delivery and Support

PRECEDING ACTION: Resolution No. 15-038, Authorizing the Chief Executive Officer to Enter Into and Execute a New Multi-Year Interlocal Agreement with Sound Transit (ST) for ST Express Bus Operations and Maintenance, Effective July 1, 2015.

COORDINATING DEPARTMENT: Planning

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution
Exhibit A, Proposed Interlocal/Cost-Sharing Agreement

BUDGET INFORMATION

2016 Budget Amount
\$253,000

Required Expenditure
Anticipated \$152,000 (PT Share)

Impact
0

Explanation: Pierce Transit and Sound Transit believe it would be of public benefit for the parties to share the costs for a Facility Needs Assessment and Base Master Plan Update for Pierce Transit's Maintenance, Operations and Administrative facilities. Sound Transit has agreed to share in 40% of the actual cost of consulting services not to exceed \$101,000.00.

BACKGROUND:

Pierce Transit (PT) operates and maintains a significant portion of Sound Transit's regional bus fleet in accordance with the terms of the Interagency Agreement for ST Express Bus Service Operations and Maintenance that extends through 2019. Accommodating both local and regional transit operations needs is important. In addition, both PT and ST are interested in having flexibility of fleet types that are able to be maintained and operated from this facility, including the potential for double decker buses, additional articulated buses, and electric fleet and support vehicles. The proposed Base Master Plan Update will examine the facility needs for Pierce Transit and Sound

Transit in a comprehensive manner that creates a flexible short and long term plan that can be implemented as growth warrants. Efforts are currently underway to secure the services of a consulting firm to conduct the Base Master Plan assessment in 2016 and a contract is expected to come before the Executive Finance Committee on May 26, 2016 or the Board of Commissioners meeting on June 13, 2016 for consideration.

ALTERNATIVES:

Do not authorize the CEO to enter into the Cost Sharing Agreement with Sound Transit for Pierce Transit's Base Master Plan Update. The result of this would be that Pierce Transit would incur the full cost of the Base Master Plan Update.

RECOMMENDATION:

Approve Resolution No. 16-013 authorizing the Chief Executive Officer to enter into a Cost Sharing Agreement with Sound Transit for Pierce Transit's Base Master Plan Update contingent upon the successful negotiation and award of a professional services contract for the Base Master Plan Update.

RESOLUTION NO. 16-013

A RESOLUTION of The Board Of Commissioners of Pierce Transit
Authorizing the Chief Executive Officer to Enter Into a Cost Sharing Agreement with Sound Transit for the
Pierce Transit's Base Master Plan Update

WHEREAS, Pierce Transit and Sound Transit are authorized to contract for public transportation services pursuant to RCW 36.57.080 and RCW 39.33.050; and

WHEREAS, by Resolution No 15-038, approved on the 8th day of June 2015, the Board of Commissioners of Pierce Transit authorized the Chief Executive Officer to enter into a multi-year interlocal agreement with Sound Transit for ST Express Bus Service Operations and Maintenance; and

WHEREAS, Pierce Transit is a municipal corporation pursuant to Chapter 36.57A RCW with all powers necessary to construct transit facilities, operate transit services, and enter into this agreement; and

WHEREAS, Pierce Transit operates and maintains a portion of Sound Transit's regional bus fleet in accordance with the terms of the Interagency Agreement for Sound Transit Express Bus Service Operations and Maintenance, which expires on December 31, 2017, with an option to extend through 2019; and

WHEREAS, Pierce Transit's bus operating facility is near maximum capacity at 289 fixed route buses on site, with 116 belonging to Sound Transit; and

WHEREAS, To accommodate the projected growth of both Pierce Transit's and Sound Transit's bus fleet, Pierce Transit needs to evaluate its current operating facilities for possible upgrade and expansion and will be conducting a Facilities Needs Assessment and Base Master Plan Update in 2016; and

WHEREAS, Pierce Transit and Sound Transit believe it is in the interest and benefit to the public for the parties to share the costs for the Base Master Plan Update to evaluate Pierce Transit's Maintenance, Operations and Administration facilities and future needs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

Section 1. The Chief Executive Officer is hereby authorized to enter into a Cost Sharing Agreement with Sound Transit for Pierce Transit's Base Master Plan Update in substantially the same form as Exhibit A hereto, contingent upon the successful negotiation and award of a contract for the Base Master Plan Update.

ADOPTED by the Board of Commissioners of Pierce Transit at a regular meeting thereof held on the 9th day of May, 2016.

PIERCE TRANSIT

Rick Talbert, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson
Clerk of the Board

COST SHARING AGREEMENT
FOR ENGINEERING AND DESIGN OF BASE EXPANSION PROJECT

This Agreement is made on _____, 2016 and entered into by Puget Sound Regional Transit Authority ("Sound Transit") and Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit"), which may be referred to individually as "Party" or collectively as "Parties."

RECITALS

- A. Sound Transit is a duly organized regional transit authority under chapters 81.104 and 81.112 RCW and has all powers necessary to construct transit facilities, operate transit services, and enter into this Agreement.
- B. Pierce Transit is a municipal corporation pursuant to Chapter 36.57A RCW with all powers necessary to construct transit facilities, operate transit services, and enter into this Agreement.
- C. Pierce Transit operates and maintains a portion of Sound Transit's regional bus fleet in accordance with the terms of the Interagency Agreement for ST Express Bus Service Operations and Maintenance that expires on December 31, 2017 with an option to extend through 2019 ("Service Agreement").
- D. Pierce Transit's current bus operating facility in Lakewood is reaching maximum capacity. Currently, there are 289 fixed route buses on site, 116 of which are Sound Transit buses.
- E. In order to accommodate the projected growth of both Pierce Transit's and Sound Transit's bus fleet, Pierce Transit may need to upgrade and expand its current transit base facilities.
- F. Sound Transit and Pierce Transit believe that it would be of public benefit for the parties to share the costs for a Facility Needs Assessment and Base Master Plan Update for Pierce Transit's Maintenance, Operations and Administrative base..

The Parties therefore agree as follows:

1. SCOPE OF WORK

The scope of work (sometimes referred to as "Work") includes: Pierce Transit Maintenance, Operations, and Administrative Base facility needs assessment and space programming; master planning; implementation and phasing planning; and estimating and budgeting.

2. WORK ADMINISTRATION AND OVERSIGHT

2.1. Selection and Execution of Contract for the Work

Pierce Transit will procure services for the Work through its applicable competitive public works or procurement processes. Pierce Transit will involve Sound Transit's representative in proposal evaluations and contract negotiations.

2.2. Administration of the Work

Pierce Transit will provide Sound Transit adequate time to review and provide input to planned Work. Pierce Transit will administer the Work under this Agreement using its own staff and consultants.

Pierce Transit may make changes to the Work in order to meet project goals and will provide all change order documentation to Sound Transit's Designated Representative for review. Pierce Transit will provide proposed change orders to Sound Transit's designated representative for review and approval prior to authorizing its master planning consultants to proceed with scope changes to the Work. Pierce Transit will manage the production of the Work in good faith.

Pierce Transit will issue a periodic report on the status of project activities. This report will contain schedule, completed work, and upcoming milestones.

2.3. Oversight

Sound Transit will provide the following services:

- a) Participation in proposal review and consultant selection process;
- b) Participation in meetings to review and coordinate the work; and
- c) Review change orders.

3. DESIGNATED REPRESENTATIVES

To ensure effective intergovernmental cooperation and efficiencies, Sound Transit and Pierce Transit will each designate a representative ("Designated Representative") who will be responsible for coordination of communications between the Parties as well as its consultants and will act as a central point of contact for each agency. The Designated Representatives will also be responsible for ensuring his or her agency's performance under this Agreement, including compliance with schedule, budget, and funding limitations.

Either Party may change its Designated Representatives, by written notice to the other Party. Each Party's Designated Representative is named below with the individual's contact information.

	PIERCE TRANSIT	SOUND TRANSIT
Contact:	Janine Robinson, AICP Senior Planner Capital Planning T: 253-984-8156 jarobinson@piercetransit.org	Barry Alavi, PE, PMP Project Manager Capital Projects T: 206-398-5433 F: 206-398-5216 Barry.Alavi@soundtransit.org
Address:	PO Box 99070 3701 96th Street SW Lakewood, WA 98496-0070	401 S. Jackson Street Seattle, WA 98104

4. MAXIMUM REIMBURSEMENT AND PAYMENT PROCEDURE

4.1. Budget

The budget established for the Work is \$253,000.

4.2. Sound Transit's Maximum Contribution

Sound Transit will reimburse Pierce Transit for 40% of the actual cost of the consultant services for the Work in an amount not to exceed \$101,000.00.

4.3. Invoicing

Pierce Transit will request reimbursement by way of a properly documented invoice upon approval and acceptance of the final engineering and design Work. Pierce Transit will submit an invoice request to Sound Transit in an amount equal to 40% of the invoiced amount up to \$101,000.00. A copy of the appropriate consultant invoices must accompany the Pierce Transit invoice. Pierce Transit will send its invoice and documentation of Work completed to Sound Transit at the following address:

**Accounts Payable
Sound Transit
401 S. Jackson St.
Seattle, Washington 98104-2826**

4.4. Reimbursement

Sound Transit will reimburse Pierce Transit within 30 days of receipt of a properly completed invoice and related documentation supporting the cost of the Work completed and send payment to the following address:

**Accounts Receivable
Pierce Transit
PO Box 99070
3701 96th Street SW
Lakewood, WA 98496-0070**

5. ADMINISTRATION

5.1 Availability of Records

All project records in support of all costs incurred and actual expenditures kept by Pierce Transit will be maintained in accordance with procedures prescribed by the state auditor's office and the applicable federal funding agencies. The records will be open to inspection by Sound Transit and the federal government during normal business hours, and be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to Pierce Transit. Copies of these records will be furnished to Sound Transit and the federal government upon request. This requirement will be included in all subcontracts related to the Work entered into by Pierce Transit to fulfill the terms of this Agreement.

5.2 Audit of Records

If an audit is requested by Sound Transit or required by any applicable federal agency requirements, Pierce Transit will cooperate fully with an independent auditor chosen and retained by Sound Transit for auditing costs incurred under this Agreement or with any audit required by the federal funding agency. In the event that Sound Transit has paid Pierce Transit in excess of Sound Transit's funding commitment under this Agreement, the excess amount will be repaid to Sound Transit, or if underpaid, Sound Transit will pay such amount to Pierce Transit.

5.3 Compliance with Law

Sound Transit and Pierce Transit will comply, and to the best of their ability will ensure, that their employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the Work and services to be performed. Pierce Transit will ensure that the Work complies with all applicable public works and procurement laws and regulations, including bonding, prevailing wage, non-discrimination, retainage, insurance, and workers compensation requirements. In addition, to the extent federal funds are utilized, Pierce Transit will comply with federal contract and funding requirements.

5.4 Disadvantaged Business Enterprises

Pierce Transit will be the contract administrator and project manager of this project and will comply with the Disadvantaged Business Enterprises (DBE) program it has established in accordance with the regulations of the U.S. Department of Transportation (USDOT) 49 CFR 26 and the terms of Section 3.4(c) of Exhibit B (FTA Provisions) of this Agreement.

5.5 EEO Commitment

Pierce Transit will be the contract administrator and project manager of this project and will comply with any employment goals or programs it has established and the terms of Section 3.4 of Exhibit B (FTA Provisions) of this Agreement.

6 PUBLIC COMMUNICATIONS

6.1 Public Disclosure Requests

Under the Washington State Public Disclosure Act (chapter 47.17 RCW) the Parties may be required to disclose documents requested by the public, unless such requests call for documents that are specifically exempted from disclosure. If a Party receives such public disclosure requests for disclosure of documents, it will request that such public disclosure requests be made in writing in a stipulated form to the Party having possession or control of the document. If public disclosure requests are made for documents under the control of Pierce Transit's consultant, Sound Transit will refer the request to Pierce Transit for the collection, compilation, indexing, and copying of the actual records and vice versa if the request is made for documents under the control of Sound Transit.

Pierce Transit's will ensure that its consultants maintain the records in a condition that will facilitate such responses and will provide necessary staff for this purpose.

6.2 Pierce Transit Activities

Pierce Transit will be the lead agency in public and community involvement activities. Should Sound Transit elect to provide additional public outreach activities, Sound Transit will coordinate its efforts with Pierce Transit.

7 INDEMNIFICATION

To the extent permitted by applicable law, each Party will defend, indemnify, and

hold harmless the other Party, its respective officials, agents and employees, from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the negligent acts or omissions of the indemnifying Party and its officials, agents, employees acting within the course and scope of their employment and its contractors ("actors") in performing the Party's obligations under this Agreement. In the event any liability arises from the concurrent negligence of the Parties, then the indemnity obligation of this Section will apply only to the extent of the negligence of the indemnifying Party and its actors. The foregoing provision specifically and expressly is intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, with respect to the other Party's employees, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been expressly negotiated by the Parties. This indemnity provision survives the termination or expiration of this Agreement.

8 TERMINATION OF AGREEMENT

8.1 Termination for Convenience

Either Party may terminate this Agreement for convenience. The terminating party will pay an amount for services satisfactorily performed to the date of termination, in addition to termination settlement costs that Pierce Transit's contractors reasonably incurred relating to commitments that had become firm before the termination.

8.2 Duties of the Parties upon Termination

A termination by any Party will not extinguish or release either Party from liability, claims or obligations to third parties existing as of the time of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement. Upon request of the non-terminating Party, the other Party will assign its contract to the other Party.

8.3 Activities upon Termination

In the event of termination due to default, the defaulting Party will compensate the other Party for all costs expended, committed, or otherwise encumbered up to the date of termination up to the maximum amount of the other Party's commitments under this Agreement.

8.4 Survival of Provisions

The provisions of this section survive and remain applicable to each Party notwithstanding any termination or expiration of this Agreement.

9 DISPUTE RESOLUTION

Pierce Transit and Sound Transit will work collaboratively to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of hierarchy. The following is a guide intended to resolve the maximum number of issues at the lowest organizational level:

The Designated Representatives will use their best efforts to resolve disputes and issues arising out of or related to the tasks covered by this Agreement. The Designated Representatives will communicate regularly to discuss the status of the tasks to be performed and to resolve any issues or disputes related to the successful performance of this Agreement.

A Designated Representative will notify the other in writing of any problem or dispute that the Designated Representative believes needs formal resolution. The Designated Representatives will meet within five business days of receiving the written notice in an attempt to resolve the dispute. The Parties may utilize the services of a mediator to assist with problem identification and resolution.

In the event the Designated Representatives cannot resolve the dispute within ten business days of first meeting to resolve the dispute, they will notify Pierce Transit's Executive Director of Planning and Community Development and Sound Transit's Executive Director of Design, Engineering and Construction Management, or designees, and they will meet and engage in good faith negotiations to resolve the dispute.

In the event that these Directors cannot resolve the dispute within ten business days of the Directors' first meeting to resolve the dispute, Pierce Transit's Chief Executive Officer and Sound Transit's Chief Executive Officer will meet and engage in good faith negotiations to resolve the dispute.

The Parties have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted. The preceding sentence does not apply to the extent that any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above provided, however, that the Parties agree that any legal proceeding brought during such period may be stayed, if consistent with applicable law and if the rights of the Parties will not be prejudiced thereby, while the procedural steps set forth above are satisfied.

10 MISCELLANEOUS

10.1 Relationship of Parties

No joint venture or partnership is formed because of this Agreement. No employees, agents, or subcontractors of one Party are, deemed, or represent themselves to be, employees of the other Party.

10.2 Parties in Interest

Nothing in the Agreement, whether express or implied, is intended to (1) confer any rights or remedies under or by reason of the Agreement on any persons other than the Parties and their respective successors and permitted assigns; (2) relieve or discharge the obligation or liability of any third party to a Party to the Agreement; nor (3) give any third parties any right of subrogation or action over or against a Party to this Agreement.

10.3 Assignment

Neither Party will assign, transfer, or otherwise substitute its obligations under the Agreement without the prior written consent of the other Party. Any assignment made in violation of this provision is invalid.

10.4 Waiver of Default

Waiver of any default will not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement will not be deemed a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of this Agreement.

10.5 Entire Agreement

This Agreement, including exhibits, constitutes the entire Agreement between the Parties relative to the Work.

10.6 Amendments and Modifications

This Agreement may only be amended or modified in writing, signed by personnel authorized to bind the Parties.

10.7 Environmental Compliance

Pierce Transit will be the lead agency for compliance with SEPA (State Environmental Policy Agency). If determined to be necessary, Pierce Transit will also be the lead agency along with the relevant federal partner agency (FTA) for compliance with NEPA (National Environmental Act). Pierce Transit will prepare the necessary environmental documentation and issue the appropriate determinations under NEPA and SEPA. Pierce Transit will also be responsible to process or procure any environmental or other permits and approvals necessary for the Work. Pierce Transit will coordinate with Sound Transit environmental and project staff in the preparation and issuance of environmental documentation and determinations. Sound Transit will be given an opportunity to review and comment on environmental documentation before it is finalized and issued to the public and other agencies.

10.8 Future Agreements

The fact that the Parties have entered into this Agreement may not be construed to be a commitment for future funding of any future projects or other work.

10.9 Authority

The persons signing this Agreement represent that they are authorized to do so.

10.10. Counterparts

This Agreement may be executed in two counterparts, each of which are deemed an original, but both of which together constitute the same instrument.

The Parties are signing this Agreement on the date below their respective signatures.

PIERCE TRANSIT

**PUGET SOUND REGIONAL TRANSIT
AUTHORITY**

Sue Dreier
Chief Executive Officer


Peter Rogoff
Chief Executive Officer

Date

4-6-16
Date

Approved as to Form:


Sound Transit Legal Counsel

FACT SHEET

TITLE: A Resolution Amending the 2016 Capital Budget to Add the High Capacity Transit Feasibility Study Project to the Budget

DIVISION: Transit Development

ORIGINATOR: Darin L. Stavish
Principal Planner

PRECEDING ACTION: Resolution 15-071, Adoption of 2016 Budget

COORDINATING DEPARTMENTS: Budget, Purchasing, Project Management Office (PMO), Portfolio Management Board (PMB)

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution

BUDGET INFORMATION

2016 Budget Amount
\$0

New Budget Amount
\$850,000

Impact
\$850,000

Explanation: Add a High Capacity Transit (HCT) Feasibility Study Project for the Pacific Avenue S/SR 7 Corridor to the Capital Budget, increase the 2016 Capital Budget by \$850,000. The study will be funded from available local reserves, but this amount may be eligible for reimbursement if the project moves forward and is federalized.

BACKGROUND:

This resolution requests an amendment to add a High Capacity Transit Feasibility Study project to the 2016 Capital Budget in the amount of \$850,000 to evaluate alternatives, identify infrastructure requirements, conduct a cost-benefit analysis, and begin environmental review under the National Environmental Policy Act of 1970 (NEPA) for the 14-mile Pacific Avenue S/SR 7 corridor from Downtown Tacoma to Spanaway.

Pierce Transit, in cooperation with the Central Puget Sound Regional Transit Authority (Sound Transit), the Washington Department of Transportation (WSDOT), the Federal Transit Administration (FTA), the City of Tacoma, and Pierce County, Washington, proposes to study the feasibility of implementing a corridor-based

Bus Rapid Transit (BRT) system in a 14-mile north-south corridor connecting the City of Tacoma's central business district (CBD) to Parkland (vicinity of SR 512) and continuing south to Spanaway (both census-designated places) in Pierce County, Washington.

The Agency needs to conduct a feasibility study on implementing a new high capacity rapid transit service along Pacific Highway S/WA State Route 7 (aka Mountain Highway) between Downtown Tacoma and Spanaway; entirely within Pierce County, Washington. The feasibility study project will compare and evaluate the various alternatives, assist Pierce Transit in selecting a preferred High Capacity Transit (HCT) alternative through cost-benefit analysis, complete the environmental review process, and identify the infrastructure required to operate the preferred HCT alternative.

The project is intended to:

- Improve transit service to better accommodate already existing high transit ridership on Route 1;
- Increase transit ridership by providing a fast, frequent, and reliable alternative to single-occupant automobile travel in a Puget Sound Regional Council (PSRC) recognized congested corridor;
- Better connect a Regional Growth Center (Downtown Tacoma) to the southern end of the Pierce County Public Transportation Benefit Area boundary (Spanaway);
- Serve local and regional, high capacity, multi-modal, and multi-agency transit via the Tacoma Dome Station including:
 - Pierce Transit local bus
 - Sound Transit Tacoma Link streetcar
 - Future Sound Transit Central Link "spine" light rail
 - Sound Transit regional express bus
 - Sounder commuter rail
 - Amtrak passenger rail
 - Greyhound interstate bus
 - Intercity Transit bus (serving Thurston County)
 - Taxicab and Transportation Network Companies (e.g., Uber, Lyft)
 - Car sharing companies (e.g., Zipcar, Car2Go, ReachNow)
- Support local and regional goals of stimulating urban infill projects through compact land use, transit-oriented development, and targeted growth in employment opportunities by providing a frequent, enhanced, and high capacity transit alternative in the 14-mile Pacific Avenue/SR 7/Mountain Highway E corridor.

ALTERNATIVES:

An alternative would be to not conduct the study. However, if this study is not completed in a timely manner, Pierce Transit may not be eligible to receive the \$15 million that was in the 2015 Washington State Transportation Package (LEAP List) which was designated for a new High Capacity Bus service in this corridor. The project has also

been identified for a possible \$60 million capital improvements contribution from Sound Transit in the DRAFT ST3 System Plan under “Early Deliverables: 2019-2024.” The ST3 contribution would also require completion of a feasibility study with a Locally Preferred Alternative identified in order for Pierce Transit to be eligible for those funds if ST3 passes in the upcoming November general election.

RECOMMENDATION:

Approve Resolution No. 16-015, amending the 2016 Capital Budget to add a High Capacity Transit Feasibility Study project to the 2016 Capital Budget.

RESOLUTION NO. 16-015

A RESOLUTION of the Board of Commissioners of Pierce Transit Amending the 2016 Capital Budget to Add High Capacity Transit Feasibility Study Project to the Budget

WHEREAS, by Resolution No 15-071, approved on the 14th day of December 2015, the Board of Commissioners of Pierce Transit adopted the 2016 Agency Budget; and

WHEREAS, the Washington State Senate's \$16.1 billion Transportation Package of 2015 awarded \$15 million to Pierce Transit for Express Service on SR 7 from Tacoma to Parkland/Spanaway (per the Legislative Evaluation & Accountability Program Committee's Transportation Document 2015 NL-3, as developed June 28, 2015); and

WHEREAS, Sound Transit's Draft ST3 System Plan has identified Bus Capital Improvements for Pacific Avenue in Tacoma for a \$60 million contribution under the "Early Deliverables: 2019-2024" category; and

WHEREAS, staff proposes to conduct a feasibility study on implementing a new high capacity rapid transit service along Pacific Highway S/WA State Route 7 (aka Mountain Highway) between Downtown Tacoma and Spanaway in order to evaluate alternatives, select a locally preferred alternative using cost-benefit analysis, identify High Capacity Transit infrastructure requirements, and begin the environmental review process under the National Environmental Policy Act of 1970 (NEPA).

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

Section 1. The 2016 Capital Budget is herewith amended to reflect a new capital project: High Capacity Transit Feasibility Study in the Pacific Avenue S/SR 7 Corridor from Downtown Tacoma to Spanaway in the amount of \$850,000, which includes sales tax and contingency funds.

ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the 9th day of May, 2016.

PIERCE TRANSIT

Rick Talbert, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

FACT SHEET

TITLE: Resolutions Authorizing the Donation of Surplussed Vehicles to Puget Sound Educational Service District (PSESD) – The Road to Independence, and BASE – Before and After School Program Pursuant to the Pierce Transit Care-a-van Program

DIVISION: Specialized Transportation

ORIGINATOR: Cherry Thomas, Senior Planner
Paratransit

PRECEDING ACTION:

Resolution 15-061 Creating the Care-a-Van Grant Program for Donation of Surplus Vehicles to Qualifying Non-Profit Organizations

COORDINATING DEPARTMENT: Paratransit; Fleet Maintenance

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution for PSESD
Proposed Resolution for BASE
Exhibit A, Care-a-van Program Agreement

BUDGET INFORMATION

2016 Budget Amount
\$0

Required Expenditure
\$0

Impact
\$(3500)/vehicle
Estimated value if vehicle auctioned

Explanation:

The following vehicles have been identified by the Maintenance Department as being appropriate for donation through the Care-a-van program, and would be expected to earn at auction the following approximate amounts, based on mileage and the Agency's past experience with auction of similar vehicles:

- VIN: 1FBNE31L05HA87768 Mileage: 124,006 Estimated value at auction: \$3500
- VIN: 1FBNE31L05HA87770 Mileage: 133,243 Estimated value at auction: \$3500

BACKGROUND:

From time to time, Pierce Transit surpluses rolling stock that has exceeded its useful life for public transit and in the past, Pierce Transit has sold surplus rolling stock at auction for relatively small amounts, because when a vehicle is surplussed, it typically is beyond its reasonable service life and usually has little appreciable market value. Certain non-profit organizations have expressed a need for and interest in utilizing Pierce Transit's surplussed vehicles to provide transportation services to Pierce County residents and visitors.

Pierce Transit has identified the above-listed surplussed vehicles as having potential to meet the needs of non-profit organizations based on the vehicles' mileage and maintenance history.

By Resolution 15-068, the Board of Commissioners created the Care-a-van program that provides for the donation of surplussed vehicles to certain non-profit organizations expected to utilize the vehicle to defray the cost of Pierce Transit's service, since many of those organizations would be providing trips that would otherwise be provided by Pierce Transit, including trips that would be SHUTTLE eligible. Through the Care-a-van vehicle donation program, interested non-profit organizations have applied for the surplus vehicles through a competitive selection process. Staff received 19 applications for the 2 available vehicles.

After review and a competitive assessment of the applications, staff recommends the award of a Care-a-van vehicle to the following organizations. Of applications received, the following organizations have demonstrated the financial capacity to follow all state and federal laws regarding maintaining and insuring the vehicle and have provided a description of how the vehicle will best meet the transportation needs of Pierce County residents and visitors. These non-profit organizations are also able to sign a contract in substantially the same form as Exhibit A hereto.

PSESD – The Road to Independence serves individuals with special needs in Pierce County. Their Care-a-van will transport their clients to and from their job sites, work activities, trainings and other necessary services. It is estimated that PSESD – The Road to Independence will provide 7,800 trips per year to special needs passengers in this vehicle.

BASE – Before and After School Enrichment serves over 65 low-income, at-risk students in Pierce County. Their Care-a-van will transport these children to and from field trips that broaden the exposure for these students to a wider range of educational opportunities. It is estimated that BASE will provide over 11,000 trips per year to these students.

Applications from organizations that meet donation requirements but which did not score high enough to be recommended for a vehicle at this time will be kept on file and considered for future donations.

ALTERNATIVES:

An alternative would be to not award one or more of these vehicles, in which case, staff will sell the vehicle(s) at auction.

RECOMMENDATION:

Approve Resolution Nos. 16-016 and 16-017, authorizing the donation of a Care-a-van vehicle to PSES – The Road to Independence, and to BASE – Before and After School Enrichment, subject to the terms and conditions of the Donation Agreement in substantially the same form as Exhibit A.

RESOLUTION NO. 16-016

1 A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing the Donation of Vehicle VIN
2 1FBNE31L25HA87768 to Puget Sound Educational Service District (PSESD) – The Road to Independence
3

4 WHEREAS, by Resolution No. 15-068, on the 9th day of November 2015, the Board of Commissioners
5 of Pierce Transit adopted the Care-a-van Program pursuant to which the Agency may donate an otherwise
6 surplussed vehicle to a qualified organization, provided that the recipient organization agrees, among other
7 contractual requirements, to maintain and insure the vehicle and provide and report on a certain level of
8 transportation services to Pierce County residents and visitors sufficient to cover the approximate value of the
9 surplus vehicle if it were otherwise sold at auction; and

10 WHEREAS, an application has been submitted by PSESD – The Road to Independence for donation
11 of a surplus vehicle from the Care-a-van Program; and

12 WHEREAS, PSESD – The Road to Independence is a qualified government agency organized under
13 and existing pursuant to the laws of the State of Washington; and

14 WHEREAS, after a competitive evaluation process, Pierce Transit staff has recommended that
15 PSESD – The Road to Independence be the recipient of a vehicle pursuant to the terms of Pierce Transit's
16 Care-A-Van Grant Program Agreement; and

17 WHEREAS, Pierce Transit has a surplus 2005 Ford E350, 12 Passenger van, VIN
18 1FBNE31L25HA87768, and Pierce Transit's Maintenance Department has determined that the vehicle is
19 appropriate for donation through the Care-a-van program; and

20 WHEREAS, the donation of the vehicle will aid PSESD – the Road to Independence in their work for
21 the community while benefiting Pierce Transit by offsetting transportation services that would otherwise be
22 provided by Pierce Transit at greater expense; and

23 WHEREAS, PSESD – The Road to Independence is an organization recommended due to their vast
24 need to provide over 7800 estimated annual trips to and from their job sites, work activities, trainings and
25 other necessary services; and

26 WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of
27 Pierce County that vehicle VIN 1FBME31LL25HA87768 be donated to PSESD – The Road to Independence.
28
29
30

1 NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

2 Section 1. The Board of Commissioners hereby donates Vehicle VIN 1FBME31LL25HA87768 to
3 PSES – The Road to Independence pursuant to the terms and conditions in substantially the same form as
4 the Care-A-Van Grant Program Agreement attached hereto as Exhibit A.

5 ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on
6 the 9th day of May, 2016.

7 PIERCE TRANSIT
8

9
10 _____
11 Rick Talbert, Chair
12 Board of Commissioners
13

14 ATTEST/AUTHENTICATED
15

16 _____
17 Deanne Jacobson, CMC
18 Clerk of the Board
19
20

RESOLUTION NO. 16-017

1 A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing the Donation of Vehicle VIN
2 1FBNE31L05HA87770 to BASE – Before and After School Enrichment
3

4 WHEREAS, by Resolution No. 15-068, on the 9th day of November 2015, the Board of Commissioners
5 of Pierce Transit adopted the Care-A-Van Program pursuant to which the Agency may donate an otherwise
6 surplussed vehicle to a qualified non-profit organization, provided that the recipient organization agrees,
7 among other contractual requirements, to maintain and insure the vehicle and provide and report on a certain
8 level of transportation services to Pierce County residents and visitors sufficient to cover the approximate
9 value of the surplus vehicle if it were otherwise sold at auction; and

10 WHEREAS, an application has been submitted by BASE – Before and After School Enrichment for
11 donation of a surplus vehicle from the Care-A-Van Program; and

12 WHEREAS, BASE – Before and After School Enrichment is a qualified 501c3 organized under and
13 existing pursuant to the laws of the State of Washington; and

14 WHEREAS, after a competitive evaluation process, Pierce Transit staff has recommended that BASE
15 – Before and After School Enrichment be the recipient of a vehicle pursuant to the terms of Pierce Transit's
16 Care-A-Van Grant Program Agreement; and

17 WHEREAS, Pierce Transit has a surplus 2005 Ford E350, 12 Passenger van, VIN1FBNE31L05HA87770,
18 and Pierce Transit's Maintenance Department recommends that said vehicle be surplussed and has
19 determined that the vehicle is appropriate for donation through the Care-A-Van program; and

20 WHEREAS, the donation of the vehicle will aid BASE – Before and After School Enrichment in their
21 work for the community while benefiting Pierce Transit by offsetting transportation services that would
22 otherwise be provided by Pierce Transit at greater expense; and

23 WHEREAS, BASE – Before and After School Enrichment is an organization that will provide over
24 11,000 trips annually to low-income, at risk youth in Pierce County; and

25 WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of
26 Pierce County that vehicle VIN 1FBNE31L05HA87770 be donated to BASE – Before and After School
27 Enrichment.

1 NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

2 Section 1. The Board of Commissioners authorizes the donation of Vehicle VIN
3 1FBNE31L05HA87770 is hereby donated to BASE – Before and After School Enrichment pursuant to the
4 terms and conditions in substantially the same form as the Care-A-Van Grant Program Agreement attached
5 hereto as Exhibit A.

6 ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on
7 the 9th day of May, 2016.

8 PIERCE TRANSIT

9
10 _____
11 Rick Talbert, Chair
12 Board of Commissioners
13

14
15 ATTEST/AUTHENTICATED

16
17 _____
18 Deanne Jacobson, CMC
19 Clerk of the Board
20
21

AGREEMENT RELATING TO THE CONVEYANCE OF VEHICLE FOR
TRANSIT RELATED SERVICES
PIERCE TRANSIT CARE-A-VAN PROGRAM

THIS AGREEMENT (“Agreement”) dated as of _____, 20____ (the “Effective Date”) is made by and between Pierce County Public Transportation Benefit Area, a Washington municipal corporation (“Pierce Transit”) and _____ a Washington nonprofit corporation [describe mission of nonprofit organization] (the “Recipient”)(individually, a “Party” and collectively, the “Parties”) with reference to the following facts:

RECITALS

WHEREAS, Pierce Transit provides public transportation services within Pierce County, Washington; and

WHEREAS, Pierce Transit, from time to time, declares vehicles to be surplus when it has vehicles that have a useful life of more than a year, but has insufficient capacity to continue to maintain, store or insure those vehicles; and

WHEREAS, in order to support its public mission, Pierce Transit desires to increase efficiency, reduce waste and duplication of service and expand and improve the quality of reliable and accessible transportation to better serve the special or other needs of Pierce County residents or visitors to supplement the existing fixed route bus service and paratransit services operated by Pierce Transit within its service area of Pierce County, Washington; and

WHEREAS, an increase in reliable and accessible transportation services will benefit both Pierce Transit and the residents of Pierce County by increasing access to jobs and education, health care, social services and social events for Pierce County residents and better integration of all persons into the economic and social life of the community; and

WHEREAS, pursuant to Pierce Transit Board of Commissioners Resolution No. 15-061, Pierce Transit may, after a competitive evaluation process and subject to Board of Commissioners’ approval, convey title to surplus vehicles to one or more nonprofit corporations that agree to use such vehicle(s) to transport Pierce County residents and visitors on the terms and conditions set forth in this Agreement; and

WHEREAS, Recipient submitted an application to the Pierce Transit Board of Commissioners (“Application”) for a surplus vehicle that Recipient intends to use to provide _____ (#) hours of _____ (type) service per month for a term of twelve (12) consecutive months (the “Term”) commencing on the Effective Date to individuals who live, work or travel within Pierce County, which transportation services would, if provided by Pierce Transit, exceed the value the vehicle would otherwise have generated had Pierce Transit disposed of the vehicle at public auction; and

WHEREAS, the disposition of the vehicle to Recipient on the terms and conditions set forth in this Agreement is intended to improve the transportation services available in Pierce County and enable Pierce Transit to use the cost savings to make other improvements to transportation services provided within its service area.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. Definitions; Recitals. All capitalized terms not otherwise defined herein shall have the same definition as set forth in the Application. Each of the Recitals set forth above is by this reference incorporated herein.

2. Description of the Vehicle. Pierce Transit shall transfer its title to the following described vehicle to Recipient on the Effective Date on the express condition that Recipient provide the transportation services set forth in Section 4 this Agreement during the Term.

Make:

Year:

Model:

VIN:

Estimated Fair Market Value if sold at public auction:

Mileage:

As used in this Agreement, the term "Vehicle" means the above-described vehicle together with copies of related maintenance records.

3. Inspection and Evaluation of the Vehicle; "AS IS" Transfer. Pierce Transit has provided Recipient with copies of maintenance records for the Vehicle. Recipient acknowledges that during the Application process it had an opportunity to inspect the Vehicle, and/or had the Vehicle inspected by qualified mechanics of its own choosing. Recipient acknowledges and agrees that Recipient has agreed to enter into this Agreement and accept title to the Vehicle based upon Recipient's inspection and evaluation of the Vehicle and its suitability for Recipient's intended purpose. Recipient further acknowledges and agrees that Pierce Transit does not make any representations or warranties of any kind, either express or implied, with respect to the Vehicle, including, but not limited to the size, mileage, quality, configuration or condition of, or accessories for, the Vehicle, accuracy or completeness of records for the Vehicle or compliance with federal, state or local laws, rules and regulations governing motor vehicles, including, but not limited to compliance with air emissions or safety regulations. PIERCE TRANSIT SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO RECIPIENT. PIERCE TRANSIT MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE MAINTENANCE, REPAIR, CONDITION, FUNCTIONALITY, DESIGN, DEFECTS, SOFTWARE, ACCURACY OF DATA OR SENSORS, OR VALUE OF THE VEHICLE INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, (C) ANY IMPLIED OR EXPRESS DUTY OF

WORKMANLIKE EFFORT, OF INDEMNIFICATION OR OF LACK OF NEGLIGENCE, OR (D) THE COMPLIANCE OF LACK THEREOF OF THE VEHICLE WITH APPLICABLE GOVERNMENTAL LAWS, RULES AND REGULATIONS, IT BEING THE EXPRESS INTENT OF THE PARTIES THAT THE VEHICLE WILL BE TRANSFERRED AND DELIVERED TO RECIPIENT IN ITS PRESENT CONDITION AND STATE OF REPAIR, **“AS IS”, WHERE IS” WITH ALL FAULTS**. RECIPIENT ACKNOWLEDGES AND AGREES THAT PIERCE TRANSIT HAS NO OBLIGATION TO MAINTAIN, REPAIR, REPLACE OR INSURE THE VEHICLE. THERE IS NO WARRANTY OF TITLE TO THE VEHICLE.

4. Use of the Vehicle. In consideration of Pierce Transit’s transfer of all of its right, title and interest to the Vehicle, Recipient shall at all times during the Term of this Agreement:

(a) use the Vehicle solely to provide a minimum of trips providing transportation services for passengers who live, work, or travel within Pierce County as described in Recipient’s application for grant of vehicle at Sec. 2, “Description of Proposed Vehicle’s Use” which is attached hereto as Exhibit A and by this reference incorporated herein. All trips must have an origin or destination within Pierce County. Recipient shall not use the Vehicle to provide transportation to the general public. Recipient shall not use the Vehicle for any other purpose during the Term of this Agreement without the prior written consent of Pierce Transit, which consent may be granted or withheld by Pierce Transit in its sole discretion.

(b) not accept advertising or use or permit the Vehicle or any transit related facilities associated with the Vehicle including transit shelters, bus stops, or maintenance or storage facilities for such Vehicle to be used in a manner that promotes or opposes a political party, the election of any candidate or group of candidates for federal, state or local government offices, or for the promotion of or opposition to any initiative, referendum or other ballot measures.

(c) at its sole cost and expense, obtain all permits, certificates, licenses and approvals that are required under applicable federal, state and local laws to operate the Vehicle to provide transportation services for persons.

(d) operate and maintain the Vehicle in a safe, sanitary and operable condition and in compliance with all applicable federal, state and local laws. All vehicle parts and accessories must be maintained in a safe and proper working condition at all times. Recipient acknowledges that the Vehicle and associated equipment is subject to inspection as required by federal and state law and may be removed from service if the Vehicle is not being operated or maintained in accordance with applicable legal requirements.

(e) ensure that all drivers operating the Vehicle are properly licensed and identified when operating the Vehicle and have the requisite training, qualification and experience to provide safe and reliable transportation to Recipient’s passengers.

(f) preserve and maintain its legal existence and remain qualified as a nonprofit corporation organized and qualified to do business in the State of Washington exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(g) comply with all applicable federal and state nondiscrimination laws including but not limited to the Americans with Disabilities Act, as amended from time to time and Title 49.60, RCW, Washington Law Against Discrimination.

(h) not sell, transfer, donate or lease the Vehicle or otherwise allow any person who is not an employee of Recipient to operate or use the Vehicle without the express prior written consent of Pierce Transit, which consent shall not be unreasonably withheld if the proposed assignee is a nonprofit corporation with the professional qualifications, financial capacity and creditworthiness to perform the Recipient's obligations hereunder and demonstrates to the satisfaction of Pierce Transit in its sole good faith discretion that the assignee intends to use the Vehicle for a community benefit which improves the transportation services available to Pierce Transit residents comparable to the Recipient's plan of use. The proposed assignee shall also execute an assignment and assumption agreement in form and substance satisfactory to Pierce Transit. Any purposed assignment that fails to comply with the requirements of this Section 4(h) shall be null and void and will have no force and effect.

In the event that Recipient fails to operate, maintain and use the Vehicle in accordance with the provisions of this Section 4, the Parties acknowledge that Pierce Transit would be damaged by such failure by the loss of the estimated sales price it would have received had the Vehicle been sold at public auction and the resulting transportation needs of the passengers Recipient had agreed to transport during the Term, which actual damages would be extremely difficult or impracticable to determine. Therefore by entering into this Agreement, the Parties acknowledge that the Estimated Fair Market Value of the Vehicle set forth in Section 2 above has been agreed upon, after negotiation, as liquidated damages and as the Parties' reasonable estimate of Pierce Transit's monetary damages in the event of a default by Recipient. Any violation of the terms of this Agreement, including, but not limited to the terms of this Section 4, shall constitute an Event of Default under this Agreement and Pierce Transit shall have the right to exercise the rights and remedies set forth in Sections 6(b) and 9 below.

5. Reports. During the Term of this Agreement, Recipient shall provide Pierce Transit with a complete and accurate report on or before the 10th of each month, containing Vehicle odometer readings, number of passengers carried, hours and miles of service and description of trip purpose(s) made by the Vehicle. For purposes of determining the number of qualifying trips, only trips that have an origin or destination within Pierce County shall be included in the monthly reports. Reports shall be submitted to Cherry Thomas, Senior Planner-Paratransit, Pierce Transit Authority, 3701 96th St SW, Lakewood, WA 98496, or emailed to cthomas@piercetransit.org. Recipient shall also maintain accurate and complete records relating to its ownership, operation and maintenance of the Vehicle including, but not limited to, maintenance records, drivers' logs and hours of service, and pay all fees and file all reports with federal and state regulators as may be required under applicable federal and state law.

6. Insurance and Security.

(a) At all times during the Term of this Agreement, Recipient shall, at its sole cost and expense, obtain and maintain in full force and effect, the insurance set forth in Exhibit B.

(b) As security for the performance of its obligations under this Agreement, Recipient shall deposit cash, letter of credit, a bond, or other financial security reasonably acceptable to Pierce Transit in the amount of the Estimated Fair Market Value of the Vehicle set forth in Section 2 above (the

“Deposit”). The Deposit shall be held by Pierce Transit to secure the faithful performance by Recipient of all of the terms, covenants and conditions of this Agreement to be kept by Recipient during the Term. If Recipient defaults with respect to any provision of this Agreement, including, but not limited to provisions dealing with insurance, reporting or use of the Vehicle, Pierce Transit may (but shall not be required to) use, apply or retain all or any part of the Deposit for the payment of any amount which Pierce Transit may spend by reason of Recipient’s default or to compensate Pierce Transit for any other loss or damage which Pierce Transit may suffer by reason of Recipient’s default, including, but not limited to, payment of liquidated damages in the amount set forth in Section 2 above. Pierce Transit shall not be required to keep this Deposit separate from its general funds and Recipient shall not be entitled to interest on such deposit. If Recipient shall fully and faithfully perform all of the terms and conditions of this Agreement, Pierce Transit shall return the Deposit or any balance thereof to Recipient within thirty (30) days following the expiration of the Term of this Agreement.

7. Indemnification.

(a) Recipient assumes all liability and all risk of loss resulting from its acceptance of title to the Vehicle and the use and the operation of the Vehicle in accordance with the terms and conditions of this Agreement. Recipient acknowledges and agrees that Pierce Transit shall have no liability in the event that the Vehicle or any equipment associated therewith is damaged, destroyed, lost or stolen for any reason whatsoever.

(b) Recipient agrees to protect, defend, indemnify and hold Pierce Transit and its appointed and elected officials, officers and employees harmless to the maximum extent possible under law. Accordingly, Recipient agrees for itself, its successors and assigns to protect, defend, indemnify, and hold harmless Pierce Transit, its appointed and elected officials, officers and employees from and against any and all claims, demands, causes of action, suits, sums paid in settlement of any of the foregoing, judgments, losses, damages, injuries, liabilities, penalties, enforcement actions, fines, taxes, liens, encumbrances, costs or expenses (including without limitation, reasonable attorney’s fees and costs of defense) and claims for personal injury, death or property damage which is caused by, arises out of or is related to any use of the Vehicle or the exercise of rights under this Agreement by Recipient or any of its officers, members, agents or employees. Recipient’s obligation under this Section 7 shall include: (a) Indemnification for such claims whether or not they arise from the sole negligence of either Pierce Transit or Recipient, the concurrent negligence of both Parties, or the negligence of one or more third parties; (b) The duty to promptly accept tender of defense and provide defense to Pierce Transit at Recipient’s own expense; (c) Indemnification of claims made by Recipient’s own employees or agents; and (d) Waiver of Recipient’s immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the Parties. This indemnification has been the subject of specific negotiation between the Parties and shall survive the expiration or termination of this Agreement.

In the event it is necessary for Pierce Transit to incur attorneys’ fees, legal expenses or other costs to enforce the provisions of this Section 7, all such fees, expenses and costs shall be paid by Recipient.

8. Damage or Destruction of Vehicle. In the event that the Vehicle is damaged or destroyed for any reason during the Term of this Agreement, Recipient shall immediately notify Pierce Transit of the occurrence and the extent of the damage and availability of insurance proceeds to repair or replace the Vehicle. Unless Pierce Transit agrees otherwise, the insurance proceeds shall be used solely to repair the Vehicle to substantially the condition it was in immediately prior to such damage or destruction or purchase a replacement vehicle in size and utility comparable to the Vehicle that was damaged or

destroyed in which event this Agreement shall remain in full force and effect and Recipient shall use the replacement vehicle solely for the purposes set forth in Section 4 above for the remainder of the Term of this Agreement. In the event that the Vehicle is not repaired or replaced, the insurance proceeds shall be paid first to Pierce Transit in the amount of the Estimated Fair Market Value of the Vehicle set forth in Section 2 above, the remainder shall be retained by Recipient, this Agreement shall terminate and except as otherwise expressly provided herein, neither Party shall have any further rights, duties or obligations under this Agreement

9. Events of Default; Remedies; DAMAGE EXCLUSIONS AND LIMITATIONS OF LIABILITY.

(a) The occurrence of any of the following events shall constitute an “Event of Default” under this Agreement:

(1) The failure by Recipient to (i) obtain any license, permit or certificate required under applicable law, (ii) pay any fee, or (iii) maintain the insurance required to be provided under Exhibit B to this Agreement which failure continues for a period of ten (10) days after the date such performance or payment was due; or

(2) The failure of Recipient to perform any other covenants, conditions or terms of this Agreement where such failure has continued for thirty (30) days after written notice from Pierce Transit

(b) Upon the occurrence of an Event of Default, Pierce Transit shall have the right to the following remedies:

(1) enforce the provisions of this Agreement through injunctive, declaratory or other equitable relief and/or an action for specific performance, it being understood and agreed between the Parties that the non-monetary obligations of Recipient set forth in this Agreement are unique and that monetary damages would be an insufficient remedy for their breach, and/or

(2) Obtain monetary damages in the amount of the Estimated Fair Market Value of the Vehicle set forth in Section 2 of this Agreement as liquidated damages and not as a penalty and Pierce Transit shall have the right to use and apply the Deposit in payment of such liquidated damages.

(c) Notwithstanding any other provision of this Agreement, in no event, whether as a result of breach of contract, tort liability (including negligence), strict liability or any other cause of action, shall either Party be liable to the other Party for indirect, consequential, incidental, special, punitive or exemplary damages of any nature whatsoever, including, but not limited to, losses or damages caused by reason of loss of use, lost profits or revenue, interest charges or cost of capital and each Party expressly releases the other Party therefrom.

(D) IF FOR ANY REASON PIERCE TRANSIT HAS BREACHED THIS AGREEMENT OR IS LIABLE TO RECIPIENT FOR ANY CLAIM (INCLUDING ANY TORT CLAIM), ANY DEMAND, CAUSE OF ACTION, SUIT, SUMS PAID IN SETTLEMENT OF ANY OF THE FOREGOING, JUDGMENT, LOSS, DAMAGE, INJURY, LIABILITY, PENALTY, ENFORCEMENT ACTION, FINE, TAX, LIEN, ENCUMBRANCE, COST OR EXPENSE (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY’S FEES AND COSTS OF DEFENSE) OR CLAIM FOR

PERSONAL INJURY, DEATH OR PROPERTY DAMAGE WHICH IS CAUSED BY, ARISES OUT OF OR IS RELATED TO ANY USE OF THE VEHICLE (COLLECTIVELY "CLAIMS"), RECIPIENT'S SOLE AND EXCLUSIVE REMEDY AGAINST PIERCE TRANSIT FOR ANY BREACH OF THIS AGREEMENT OR ANY SUCH CLAIMS SHALL BE LIMITED TO THE ESTIMATED FAIR MARKET VALUE OF THE VEHICLE SET FORTH IN SECTION 2.

(e) The remedies provided in this Section 9 are intended to be in addition to, and not in lieu of, any other remedies available to Pierce Transit at law and in equity, and Pierce Transit shall have, in addition to the remedies set forth in this Section, all such remedies at law and in equity.

10. Miscellaneous.

(a) This Agreement including Recipient's Application, Exhibits A through B which are attached hereto and by this reference incorporated herein, sets forth the entire agreement of the Parties as to the subject matter hereof and supersedes all prior discussions, negotiations and understandings between them, both oral and written. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by either Party. This Agreement may not be amended or rescinded in any manner except by a non-electronic record signed by a duly authorized officer or representative of each Party hereto. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing between the Parties.

(b) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree to be subject to exclusive in personam jurisdiction in the Pierce County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively in Pierce County, Washington.

(c) Should any of the provisions of this Agreement be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the allocation of rights, duties and obligations of the Parties under this Agreement.

(d) No delay or forbearance by a Party in exercising any right or remedy accruing to such Party upon the occurrence of any breach or default by the other Party under this Agreement shall impair any such right or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. No waiver of any right under this Agreement shall be effective unless contained in writing signed by a duly authorized officer or representative of the Party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or of any other right arising under this Agreement.

(e) The Parties acknowledge that this Agreement was negotiated fairly between them at arms' length and that the final terms of this Agreement are the product of the Parties' negotiations. Each Party represents and warrants that it has sought and received legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The Parties intend that this Agreement is deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement, therefore, should not be construed against any Party on the grounds that such Party drafted or was more responsible for drafting such provision.

(f) The headings and titles of the articles, sections and paragraphs of this Agreement shall not be deemed to limit or supersede any of the terms or provisions of this Agreement. As used in this Agreement the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural and the plural shall include the singular, as the context may require.

(g) The Parties are independent contractors for all purposes, and nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership, or impose a trust or partnership obligation or liability on or with regard to either Party except that of parties to a contract. Each Party to this Agreement is individually responsible for its own covenants, obligations and liabilities under this Agreement. Each Party shall act hereunder only in its individual capacity and shall not be authorized to act as agent or representative of the other Party nor have the power or authority to bind the other Party for any purpose. No Party shall represent to anyone that it has the authority to bind the other Party, or make any other representation about or on behalf of any other Party.

(h) The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto, and their respective successors and permitted assigns. None of the rights or obligations of the Parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right, whatsoever upon or otherwise inure to the benefit of any other person, including but not limited to, any worker, supplier, mechanic, insurer, surety, passenger, customer, invitee, member of the public or other third parties having dealings with either of the Parties or involved, in any manner, with the Vehicle.

(i) Each of the Parties shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other Party may reasonably require to effectively carry out, clarify or more completely evidence or perfect the full intent and meaning of this Agreement.

(j) All notices or requests required or permitted under this Agreement shall be in a non-electronic record (except for notices delivered by facsimile), shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier or by facsimile transmission and shall be deemed given when so delivered, received or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests shall be sent as follows:

If to Pierce Transit:

Cherry Thomas, Senior Planner, Paratransit
3701 96th St. SW
Lakewood, WA 98499-4431

With copies to:

Dana Henderson, General Counsel
3701 96th St. SW
Lakewood, WA 98499-4431

If to Recipient :

With a copy to:

Any Party may change the address to which notices shall be sent by notice to the other Party in the manner and with the effect set forth in this Section 10 (j).

(k) Time is of the essence in the performance of each Party's obligations under this Agreement.

(l) WAIVER OF JURY TRIAL. PIERCE TRANSIT AND RECIPIENT HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PIERCE TRANSIT OR RECIPIENT AGAINST THE OTHER.

(m) Each person executing this Agreement in a representative capacity acknowledges, represents and warrants that he or she is an official representative of the entity in whose name he or she is executing this Agreement and that he or she possesses full and complete authority to bind such entity to the full and faithful performance of all conditions, terms, provisions, covenants, warranties and representations as contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

PIERCE TRANSIT

BY: _____

TITLE: _____

DATE: _____

RECIPIENT

BY: _____

TITLE:

DATE:

EXHIBIT A

Description of Proposed Vehicle's Use

EXHIBIT B

Insurance

Prior to the Effective Date of this Agreement and delivery of a certificate of title to the Vehicle, Recipient shall procure and maintain, for the Term of this Agreement, insurance or coverage against claims for damage to the Vehicle and injuries to persons or damage to property which may arise from and in connection with the rights and privileges granted by this Agreement to Recipient.

By requiring such minimum insurance coverage, Pierce Transit shall not be deemed or construed to have assessed the risks that may be applicable to Recipient under this Agreement. Recipient shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

For All Coverages: The cost of such insurance shall be paid by Recipient. Each insurance policy shall be written on an "Occurrence Form" and Recipient shall be responsible for all deductibles.

(a) Minimum Scope and Limits of Insurance. Recipient shall carry bodily injury and property damage liability insurance covering the Vehicle with a minimum limit of \$1,000,000 combined single limit coverage, \$2,000,000 aggregate. The insurance policy must include a "uniform motor carrier bodily injury and property damage liability certificate of insurance" endorsement and the insurance agency or company must submit evidence of insurance on a "uniform motor carrier bodily injury and property damage liability certificate of insurance (Form E)". Recipient shall also carry worker's compensation insurance, as required by the Industrial Insurance Act of the State of Washington and such other insurance as may be required under applicable federal and state law for persons providing the transportation services described in the Agreement.

(b) Deductibles and Self-Insured Retentions. The deductible and/or self-insured retention of the policies shall not limit or apply to Recipient's liability to Pierce Transit and shall be the sole responsibility of Recipient.

(c) Other Insurance Provisions. The insurance policies required in this Agreement (other than worker's compensation) are to contain, or be endorsed to contain the following provisions:

1. Pierce Transit, its appointed and elected officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Recipient in connection with this Agreement.

2. Insurance coverage shall be primary insurance as respects Pierce Transit, its appointed and elected officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Pierce Transit, its officers, officials, employees or agents should not contribute with Recipient's insurance or benefit Recipient in any way.

3. Recipient's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(d) All Policies: Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits prior to the expiration date of this Agreement, unless thirty (30) days prior notice, return receipt requested, has been given to Pierce Transit and the Washington State Utilities and Transportation Commission, if required. The thirty (30) day notice period will commence to run from the date notice is actually received by Pierce Transit and/or the Commission.

(e) Acceptability of Insurers. All insurance must be placed with an insurance company authorized to issue insurance in the state of Washington. Unless otherwise approved by Pierce Transit, insurance is to be placed with insurers with a Best's rating of no less than A: VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII. If at any time, any of the foregoing policies shall fail to meet the above minimum standards, Recipient shall, upon notice to that effect from Pierce Transit, promptly obtain a new policy and shall submit the same to Pierce Transit, with certificates and endorsements for approval.

(f) Verification of Coverage. Recipient shall furnish Pierce Transit with the certificates of insurance required by this Exhibit B prior to transfer of title to the Vehicle.