

A Special Study Session meeting will be held prior to this meeting at 3:00 p.m.

Agenda

Call to Order

Pledge of Allegiance

Roll Call

Presentations

- | | |
|--|---|
| 1. September 2018 Operator of the Month ~
Randy Robertson | Trish MacComber
Transit Operator Assistant Manager |
| 2. Appreciation for Transit Champions:
Representative Jake Fey and Senator Hans
Zeiger | Alex Mather
Govt. and Comm. Relations Officer |
| 3. Review of 2019 State and Federal Legislative
Priorities | Alex Mather
Govt. and Comm. Relations Officer |
| 4. Overview of Next Generation ORCA Contract | Jay Peterson
Transit Development Manager |
| 5. CTAG Third Quarter Update | Cody Bakken
CTAG Chair |
| 6. Limited Access Connection Project Update | Penny Grellier
Business partnership Administrator |
| 7. General Contractor/Construction Manager Job
Ordering Contract Method | Brett Freshwaters
Executive Director of Finance |

Public Hearing

(Citizens wishing to provide comment will be given three minutes to comment on the public hearing topic(s). The Chair, at his or her discretion, may reduce the comment time allowed to give sufficient time for the Board to conduct business.)

1. Implementation of Pierce Transit Specific Adult Monthly Pass

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. The Chair, at his or her discretion, may reduce the comment time allowed to allow sufficient time for the Board to conduct business.)

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.)

1. Approval of Vouchers, October 1, 2018
2. Minutes: Regular Board Meeting of September 10, 2018
3. FS 2018-085, Authorizing Amendments to Sections 6.2 and 6.3 of the Personnel Manual to Implement Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for Non-Represented Employees with Less than 22 Years of Service

Action Agenda

1. FS 2018-086, Amending the 2018 Capital Budget to Include Funding for the Pacific Avenue/SR7 Park and Ride, and Authorizing the Chief Executive Officer to Enter Into and Execute an Agreement with the Washington State Department of Transportation to Receive Regional Mobility Grant Funds for the Pacific Avenue/SR7 Park and Ride
Tina Lee
Community Development Manager

Staff Updates/Discussion

1. CEO's Report
Sue Dreier
Chief Executive Officer

Informational Board Item

1. Chair Report
Chair Henderson
2. Sound Transit Update
Any Sound Transit Board Member
3. PSRC Transportation Policy Update
Commissioner Ryan Mello
4. Commissioners' Comments

Executive Session

Adjournment

Pierce Transit Federal Legislative Agenda 2019

Pacific Avenue/SR 7 BRT Corridor (Capital Investment Grants - Small Starts)

Pierce Transit has requested entry into the Small Starts Project Development (SSPD) Phase seeking federal assistance in support of the Pacific Avenue/SR7 Corridor Bus Rapid Transit (BRT) Project through the Capital Investment Grant (CIG) Program.

The Pacific Avenue/SR7 Corridor is a 14-mile segment of Pacific Avenue S/SR 7 between the Commerce Street Transfer Center in Downtown Tacoma and 204th Street E in Spanaway, entirely within Pierce County. It is Pierce Transit's highest ridership corridor 5,950 average weekday boardings and over 18% of total fixed route ridership system wide. There are more than 3,500 weekday boardings along the portion of the Route 1 being considered for BRT. More than 1.7 million passengers were served in 2016, which is nearly 20 percent of Pierce Transit's fixed route ridership. Pierce Transit's Destination 2040 Long Range Plan, Sound Transit's ST3 Plan, and Puget Sound Regional Council's (PSRC) Transportation 2040 Long Range Plan all support this investment in the busiest transit corridor in Pierce County.

The project will: increase transit ridership through enhanced transit service; deliver cost-effective service that provides capacity to meet future demand; promote transportation equity in the corridor by ensuring that transit service is accessible to all populations; improve multi-modal access and connectivity; support a regional vision for the community as documented in land use and transportation plans; enhance safety and security for transit patrons and public health overall; support existing economic activity and be a catalyst for sustainable economic growth and corridor redevelopment; and promote environmental stewardship and sustainability.

The current 31,500 jobs located along the corridor will increase to an estimated 59,000 by 2040. Approximately 11% of the people living along the corridor are dependent on transit for their travel needs. The City of Tacoma and Pierce County have already identified this corridor for higher-density, mixed-use, transit-oriented development. The project will result in better access to educational, vocational and job opportunities, services, and businesses and commerce in the area.

Pierce Transit has already committed nonfederal resources totaling \$75 million, including \$60 million from Sound Transit 3 and \$15 million in state funding. The agency will seek federal assistance for the Pacific Avenue/SR7 Corridor through the Small Starts Program. We appreciate your continued support for this critical infrastructure project.

Appropriations Requests

Capital Investment Grants (Section 5309)

Protect and preserve the Capital Investment Grant program, specifically the Small Starts program and direct the Administration to continue reviewing applications and making investments in the Pacific Avenue Corridor and other critical projects throughout the country.

Low or No Emissions Vehicles (5339c)**Bus and Bus Facilities (5339)****Formula Grants (5339a)****Discretionary Grants (5339b)****Urbanized Formula Grants (5307)**

Maintain investment in key discretionary grant program, maintaining or exceeding the maximum annual levels authorized in the FAST Act.

Grant Applications**Transit Oriented Development Program****Bus and Bus Facilities Program**

We appreciate the Congressional delegation's continued support for Pierce Transit's pending and future federal grant applications. We will be sure to make you aware of any forthcoming proposals.

Tax Code

Preserve the Alternative Fuels Tax Credit, which resulted in \$852,617.60 in savings for Pierce Transit in 2017.

Surface Transportation Reauthorization Principles

As Congress prepares for the next surface transportation reauthorization when the FAST Act expires in FY2020, we encourage them to uphold these following principles.

Highway Trust Fund

Work toward bipartisan solution to address the solvency of the Highway Trust Fund to ensure long-term reliability.

Innovation

- Promote policies that build upon the innovative pilot programs and demonstrations implemented by Pierce Transit with support of FTA Grants since FY 2016.
- Collaborate toward regulatory solutions that will better enable local transit agencies to partner with TNCs and rideshare operators to implement innovative, cost-effective models of service that increase riders' mobility, such as Pierce Transit's piloted basis during the Limited Access Connection. This project is supported by federal funding from the FTA MOD Sandbox Demonstration.

Safety

- Support the deployment of new and emerging technologies that can enhance safety for the public, such as Mobileye.
- Engage and work with transit agencies to address industry concerns and promote best practices that will enhance safety for operators.

Pierce Transit 2019 State Legislative Agenda

Funding

- BRT 2 Feasibility Study: Planning & Phase 1 Implementation - \$3 Million
- Request a study examining the fiscal and social impacts of periods of economic downturn on Public Transportation Benefit Areas
- WSDOT Park & Ride parking management
- Retain \$15 million from Connecting Washington

Sustainability

- Support legislation which promotes incentives for use of Clean Fuels, including Compressed Natural Gas
- Clean energy incentives
- Through the Regional Mobility Vanpool program, promote the use of electric vanpools
- Electric Bus Fleet Diversification

Stewardship

- Extend RCW [39.26.030](#) to include Public Transportation Benefit Areas
 - Ensures bid submissions and bid evaluations are exempt from disclosure until the agency announces the apparent successful bidder.
- Work to include PTBA's as eligible to practice unit priced contracting, as stated in [RCW 39.04.010](#).
 - A form of public work contracting that allows government entities to enter into contract for an extended time period for public work without a known specific amount of work that will need to be done. Requires prevailing wage rates to be updated annually and intents to pay prevailing wages to be filed annually, rather than for individualized jobs.

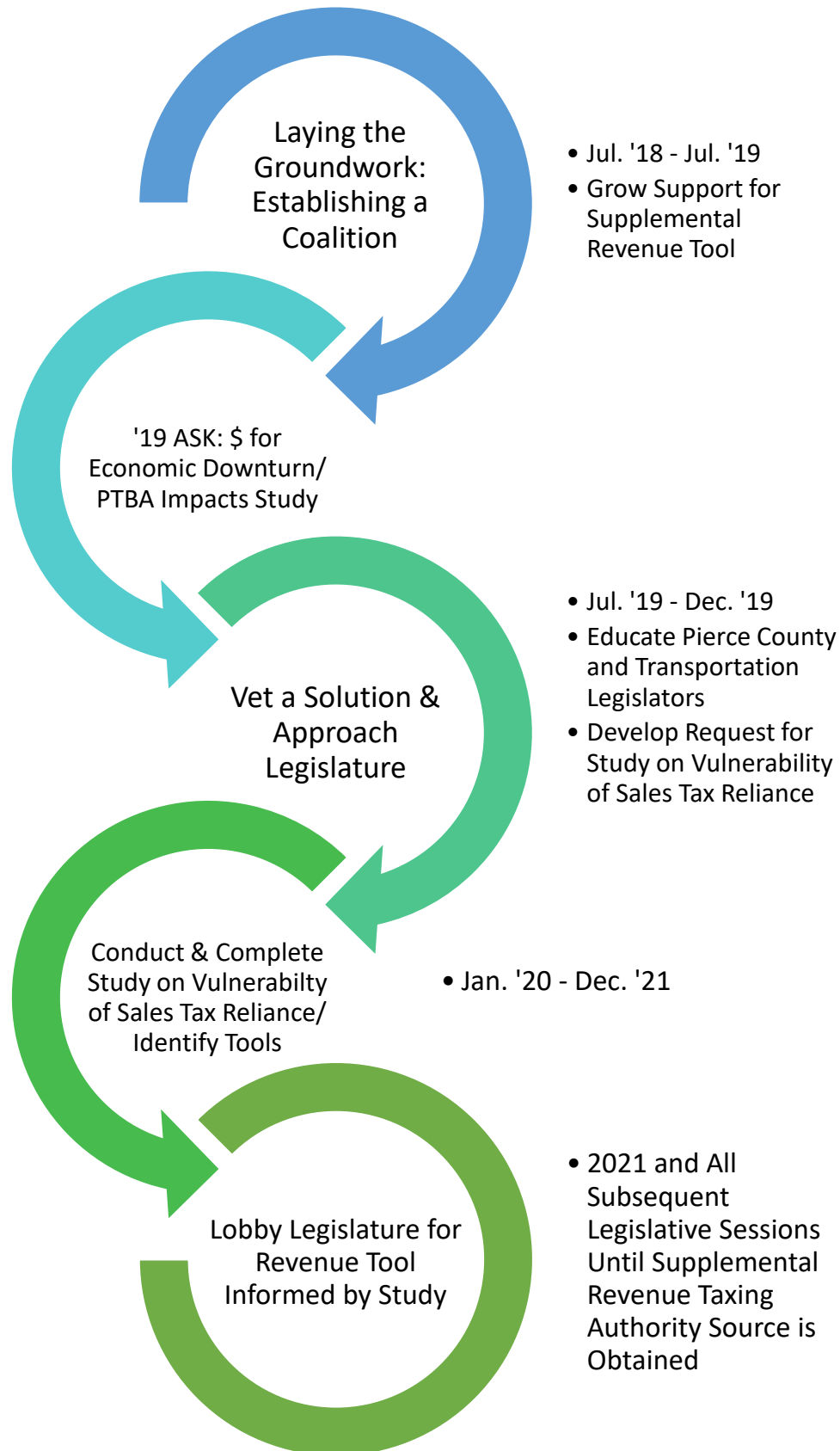
Partnership

- Support Washington State Transit Association's Legislative goals and priorities
- Support Pierce County Regional Council's multimodal transportation goals and priorities

Support and Encourage Policies which:

- Reduce congestion
- Promote environmental stewardship
- Improve local governmental operations
- Encourage investment in multimodal transportation and infrastructure
- Statewide funding mechanism to fund Mass Transit

Pierce Transit Supplemental Revenue Strategic Plan





**NOTICE OF PUBLIC HEARING
PROPOSED FARE CHANGE RELATING TO NEW PIERCE TRANSIT
SPECIFIC ADULT MONTHLY PASS, EFFECTIVE JANUARY 1, 2019**

A public hearing will be held as part of the Board of Commissioners' meeting on October 8, 2018. The meeting begins at 4:00 PM and will be held in the Pierce Transit Rainier Conference Room, 3720 96th Street SW, Lakewood, Washington. The purpose of the hearing is to allow public comment on the introduction of a Pierce Transit specific adult monthly pass. The new pass, if adopted, would be implemented January 1, 2019.

Currently, adult riders may purchase a monthly regional pass for \$72. This pass has a trip value of \$2.00, which covers the adult fare on Pierce Transit buses. The \$2.00 trip value also applies toward fares when using other regional services. Pierce Transit is proposing a lower priced adult monthly pass that may be used only on Pierce Transit local bus service. The pass would have a trip value of \$2.00 and be priced at \$62.

For our customers' convenience, Pierce Transit is proposing to offer two options for the new pass:

- 1) Load on an ORCA card and it is valid for unlimited rides on Pierce Transit during the calendar month.
- 2) Purchase the pass on PiercePaySM through the Hopthru app on mobile devices. This pass is a "rolling" 30-day pass. You may purchase the pass at any time. On the day you activate it, the rolling 30-day period begins. This pass is valid for unlimited rides on Pierce Transit buses during the 30-day period.

The Pierce Transit specific adult monthly pass would not be accepted and would have no transfer value on other regional services, nor on Pierce Transit SHUTTLE service. All other fares would remain the same.

If you are unable to attend the public hearing, you may call Customer Service at 253-581-8000, option 1, option 1 again, to register your comments with a Customer Service Representative. You may also send written comments by October 5, 2018. Please address your comments to:

Pierce Transit
ATTN: Jay Peterson, Transit Development Manager
3701 96th Street SW
Lakewood, WA 98499
Or email at ptcustomer@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
Clerk of the Board

**PIERCE TRANSIT
BOARD OF COMMISSIONERS
MINUTES**

September 10, 2018

CALL TO ORDER

Chair Henderson called the meeting to order at 4:03 p.m.

PLEDGE OF ALLEGIANCE

For those attendees who chose to participate, Chair Henderson led attendees in the pledge of allegiance.

ROLL CALL

Commissioners present:

Nancy Henderson, Chair of the Board, Town of Steilacoom Councilmember
(representing Auburn/Gig Harbor/Fircrest/Pacific/Ruston/Steilacoom)
Victoria Woodards, Mayor of City of Tacoma
Ryan Mello, City of Tacoma Councilmember
Robin Farris, Puyallup City Councilmember
Kent Keel, City of University Place Mayor
Bruce Dammeier, Pierce County Executive
Rick Talbert, Pierce County Councilmember

Commissioners excused

Daryl Eidinger, Vice Chair of the Board, City of Edgewood Mayor
(representing Fife/Milton/Edgewood)
Don Anderson, City of Lakewood Mayor

Staff present:

Sue Dreier, Chief Executive Officer
Dana Henderson, General Counsel
Deanne Jacobson, Clerk of the Board

PRESENTATIONS

1. Update on Parking Management and Plans for HOV and SOV Permit Parking at the Lakewood Sounder and Tacoma Dome Stations

Executive Director of Planning and Community Development Ryan Wheaton presented on the item. He noted that in 2015 Pierce Transit commissioned a parking study for the Tacoma Dome Station Garage, and staff is before the Board today to give an update on parking management since Sound Transit will soon be implementing parking strategies in the region that will impact Pierce County commuters.

Mr. Wheaton introduced Brian Brooke, Deputy Director of Innovation and Performance from Sound Transit, who updated the Board on the parking management strategies occurring in the region. Mr. Brooke noted that lack of parking is an issue all over the region and that the goal of parking management is to achieve more parking spaces for transit users.

Mr. Brooke reviewed Sound Transit's three parking strategies:

- 1st Strategy – In 2016 the Sound Transit Board implemented a carpool/HOV parking permit program and it has proven to be successful and these permits cost \$5.00/mo.
- 2nd Strategy – The Sound Transit Board approved last month to begin a Single Occupancy Vehicle (SOV) permit for transit riders. This program will start in the fall and will provide transit commuters a guaranteed parking spot. The permit costs will range from \$30/mo. to \$100/mo. depending on the market and location.
- 3rd Strategy – The Sound Transit Board will consider next year Day Use Permits. This method could be used to incentivize commuters and improve ease of use and convenience for the customer.

Mr. Brooke spoke in greater detail about the three parking strategies and how they will work, costs to the commuters, implementation of the strategies, and the logistic/technologic aspects of the strategies. It was noted that the implementation will begin in the north and will be rolled out to the south (*Commissioner Keel arrived at 4:20 p.m.*). Mr. Brooke confirmed that the Lakewood and Puyallup Sounder stations will be impacted by the parking management strategies.

Discussion ensued about whether ORCA LIFT could be incentivized in Pierce County. Commissioner Mello noted he would like the Board to have a future conversation on how ORCA LIFT could be implemented in Pierce County.

Upon inquiry, Mr. Wheaton clarified that Pierce Transit is looking to mimic parking strategies similar to Sound Transit's at the Tacoma Dome Station (*Commissioner Dammeier arrived at 4:23 p.m.*). He also noted that there already is a demand from people in the area to pay for parking and having a guaranteed parking spot would be helpful.

A short discussion ensued about whether there could be a reduced parking fee for certain eligible individuals and about the importance of ensuring that parking spots are available to commuters using the system and not for surrounding businesses and institutions.

Commissioner Farris noted that it is a luxury to have a guaranteed spot and Pierce Transit should want to promote people using mass transit to the greatest extent possible. She noted that she supports the SOV concept and also noted that she would like to see electric vehicle charging stations installed in our parking garages.

SPECIAL BUSINESS

Business Partnership Administrator Penny Grellier introduced the three awardees selected to receive Care-a-vans and spoke about the evaluation/selection process. She noted that Homeward Bound Freezing Nights is receiving its second Care-a-van due to the success of their program.

Commissioners Farris and Woodards **moved** and seconded to approve **Resolution No. 2018-030** awarding a Care-a-van vehicle to Homeward Bound, subject to the terms and conditions of the Care-a-van Agreement in substantially the same form as Exhibit A hereto; and

Approved **Resolution No. 18-031** awarding a Care-a-van vehicle to St. Leo Food Connection, subject to the terms and conditions of the Care-a-van Agreement in substantially the same form as Exhibit A hereto; and

Approved Resolution No. 18-032, awarding a Care-a-van vehicle to Road To Independence, subject to the terms and conditions of the Care-a-van Agreement in substantially the same form as Exhibit A hereto.

Chair Henderson on behalf of the Board thanked the recipients for their contributions to the community.

Motion **carried**, 7-0. [The award recipients joined the Board in a group photo.]

PUBLIC COMMENT

Chair Henderson provided directions for participating in public comment and the following individuals spoke:

1. Walt Hurd, Tacoma, commented on the Pierce Transit specific rolling 30-day pass that was discussed at the last meeting. He reported that the 594 is full, especially on game days, and noted that elderly and handicapped people are standing. He suggested 15-minute service on game days.
2. Tammy Cox, Lakewood, inquired if it is possible to make traffic stops for the vehicles to stop behind the bus. She reported that shopping carts and strollers are not being properly stored and some riders are not paying their fares. She inquired if Bus Rapid Transit meetings will be held in Lakewood and commented that raising the fares for Sound Transit riders would be too expensive.
3. Tom Ebenhod, Chair of the New Tacoma Neighborhood Council, spoke in favor of the proposed BRT. He encouraged the Board to look at other areas for future BRT routes. He noted that he is concerned about eliminating Pacific Avenue from the route when the BRT enters the downtown area and suggested using 26th Avenue as an alternative. He noted that eliminating Pacific Avenue as an entry point is going to be detrimental to Pacific Avenue being the corridor into the city. Routes in and out of the City should include Pacific Avenue. Written comments were submitted.

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.)

Commissioners Woodards and Keel **moved** and seconded to approve the consent agenda as amended.

Motion **carried**, 7-0.

1. Approval of Vouchers, September 1, 2018
Operating Fund #10
Self-Insurance Fund #40
Capital Fund #90
Voucher CK Nos. 364088 through 364677
Wire Nos. 2279 through 2305
Total \$11,807,896.66
2. Minutes: Regular Board Meeting of August 13, 2018.
3. FS 2018-072, Ratified the Declaration of Emergency and related contract with Air Systems Engineering, Inc., for repairs to the Commerce Operator Lounge HVAC System.
4. FS 2018-073, Ratified the Declaration of Emergency and Related Contract with Air Systems Engineering, Inc., for emergency repairs of the HVAC System in the Tacoma Dome Station Security/Surveillance Office.
5. FS 2018-074, Approved Resolution No. 2018-033, amending the 2018 Capital Budget for the Lakewood Towne Center Transit Center Renewal project to add \$240,000, and authorize the CEO to enter into and execute a contract with Olympic Peninsula Construction, Inc., to make repairs to the Lakewood Towne Center Transit Center in an amount not to exceed \$669,663.
6. FS 2018-075, Approved Resolution No. 2018-034, amending the 2018 Capital Budget by \$375,000 for the Building 6 Property Improvements Project 0522.

ACTIONN AGENDA

1. FS 2018-076, Adoption of Proposed Fee Schedule for the Production of Public Records

Clerk of the Board Deanne Jacobson provided an overview of the proposed Fee Schedule for the Production of Public Records, noting that the proposed costs reflect charges that are allowed under the statute.

Commissioners Woodards and Mello **moved** and seconded to Approve Resolution No. 2018-035, adopting the proposed Fee Schedule for the Production of Public Records as presented in Exhibit A.

Motion **carried**, 6-1. (Commissioner Dammeier dissenting.)

2. **FS 2018-077, Adoption of Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for Non-Represented Employees with Less than 22 Years of Service, Effective January 13, 2019**

Leave Administrator Tara Schaak reviewed the proposal for a new Paid Time Off and Major Sick Leave Plan applicable to non-represented employees. She reviewed the various elements of the plan. She noted the plan attracts more talent and is easier for staff to maintain. Employees with 22 years or service or more will be grandfathered in under the old plan. Comparisons of other agencies' plans were reviewed.

Commissioners Woodards and Mello **moved** and seconded to adopt the Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for non-represented employees with less than 22 years of service, effective January 13, 2019, and direct staff to return to the Board with revised leave policies.

Motion **carried**, 7-0.

3. **FS 2018-078, Amending the 2018 Capital Budget to Increase Funding for the High Capacity Transit Feasibility Study Project for Purposes of Conducting an Intersection Control Analysis (ICA) and Amending Contract with WSP-Parsons Brinckerhoff to Conduct ICA Analysis**

Principal Planner Darin Stavish presented on the item. He noted that the BRT Project was formally accepted into the FTA Project Development and that Pierce Transit is on schedule to continue to move forward to work with our partners and select station locations and the travel lane or running way treatment; either curbside or the median-hybrid option.

He noted that Pierce Transit recently learned from WSDOT of their requirement for an intersection Control Analysis (ICA). Pierce Transit needs to conduct an analysis which includes determining the best design for the affected intersections, including possible roundabouts. This is a new scope for the project and the approved remaining project contingency is not adequate to cover this work, nor accounted for under the original scope and existing consultant contract.

An additional traffic analysis task being added to the contract is to determine the most (*Commissioner Talbert left at 5:12 p.m.*) efficient and effective route to access Tacoma Dome Station using Puyallup Avenue eastbound to E. G Street to E. 26 Street westbound (clockwise). Or from Pacific Avenue to TDS and back using E. 26th Street exclusively.

With this budget adjustment, staff is seeking \$156,856 which includes a 10% contingency to add additional traffic analyses - especially the ICA - to the current contract with WSP in Seattle and Portland.

Commissioners Dammeier and Woodards **moved** and seconded to approve Resolution No. 2018-036, amending the 2018 Capital Budget to Increase Funding for the High Capacity Transit Feasibility Study Project for purposes of conducting an Intersection Control

Motion **carried**, 6-0.

Mr. Stavish reviewed the BRT public process meeting schedule and invited the Board to attend open houses.

4. FS 2018-079, Approving the 2018 Title VI Program Submittal to the Federal Transit Administration

Senior Planner Janine Robinson presented on the item and noted that the FTA requires submittal every three years. The goal is to make sure that Pierce Transit is providing services that are accessible and available to all. She reviewed the Title VI requirements and reviewed Pierce Transit's Title VI Policies in addition to various graphs and statistics pertaining to the monitoring results.

Commissioners Dammeier and Woodards **moved** and seconded to Adopt Resolution No. 2018-037, approving Pierce Transit's 2018 Title VI Program Submittal to the Federal Transit Administration in substantially the same form as Exhibit A.

Motion **carried**, 6-0.

5. FS 2018-080, Approval of the Transit Service Monitoring Results Contained within the 2018 Title VI Program Submittal to the Federal Transit Administration

Ms. Robinson reviewed the Transit Service Monitoring Results during the previous agenda item.

Commissioners Mello and Woodards **moved** and seconded to adopt Resolution No. 2018-038, approving the 2018 Title VI Transit Service Monitoring Results Contained within the 2018 Submittal to the Federal Transit Administration in substantially the same form as Exhibit A.

Motion **carried**, 6-0.

STAFF UPDATES/DISCUSSION

CEO's Report

CEO Dreier reported on the following matters:

On August 7, 2018, Government Relations staff participated in a roundtable discussion with Senator Muri's Office and it was a good conversation. The current administration wants to see a connection of transit to businesses. The BRT project went into project development and this project is currently in the rating period for the Small Starts Grant that will be determined early next year.

The Board is invited to attend the Electric event held at Pierce Transit on September 11. Representative Heck will be on site.

INFORMATIONAL BOARD ITEMS

Chair Report

Chair Henderson thanked Pierce Transit staff for providing the electric bus at the Steilacoom electric event. She reported on her most recent bus ride on the Route 48 and the Route 3, noting it was a good experience interacting with passengers. She reported that most feedback was very positive, with one person indicating that passengers are not paying their fares and another rider has experienced positive changes in their health and lifestyle.

Sound Transit Update

Commissioner Dammeier gave a short overview of the reorganization of various Sound Transit committee structures and delegated authority levels for their CEO.

PSRC Transportation Policy Board Update

Commissioner Mello reported that the August meeting is cancelled. He reviewed the September agenda.

Commissioners' Comments

Commissioner Woodards announced that she was in Washington DC this past weekend and met with our federal lobbyist and they noted that they are pleased with our 60/40 match.

Commissioner Farris reminded attendees that tomorrow there will be a Sound Transit parking open house for the parking structure that will be built in Puyallup.

EXECUTIVE SESSION

None.

ADJOURN

Commissioners Woodards and Dammeier **moved** and seconded to adjourn the meeting at 6:00 p.m.

Motion **carried**, 6-0.

Deanne Jacobson
Clerk of the Board

Nancy Henderson, Chair
Board of Commissioners

TITLE: Authorizing Amendments to Sections 6.2 and 6.3 of the Personnel Manual to Implement Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for Non-Represented Employees with Less than 22 Years of Service

DIVISION: Administration

SUBMITTED BY: Anh Hoang, Labor Relations Officer

RELATED ACTION: Fact Sheet No. 2018-077, Adoption of Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for Non-Represented Employees with Less than 22 Years of Service, Effective January 13, 2019.

ATTACHMENTS:

Proposed Resolution

Exhibit 1, red-lined version for Section 6.2 of the Personnel Manual (for adoption)

Exhibit 1-A, clean version of Section 6.2 of the Personnel Manual

Exhibit 2, red-lined version for Section 6.3 of the Personnel Manual (for adoption)

Exhibit 2-A, clean version of Section 6.3 of the Personnel Manual

Exhibit 3, Fact Sheet No. 2018-077, Adoption of PTO and MSL Plans (for information only)

Exhibit 4, parts 1 and 2 (for information only)

RELATION TO STRATEGIC PLAN: Employee

BUDGET INFORMATION

Is it Budgeted? ☐ Yes / ☒ No

Project Name or Number: N/A

☒ Operating Budget

☐ Capital Budget

FUNDING SOURCE:		EXPLANATION:
Local Amount	\$ <u>84,158</u>	<u>Five-year average cost difference from the current plan = \$84,158 per year in anticipated leave cash-out payments.</u>
Grant/Other Amounts	\$	
Total Expenditure	\$ <u>84,158 per year (5-yr average)</u>	

BACKGROUND:

On September 10, 2018, the Board approved FS #2018-077, which adopted the Paid Time Off (PTO) Plan and the Major Sick Leave (MSL) Plan for non-represented employees with less than 22 years of service, effective January 13, 2019, with an estimated average expenditure impact of \$84,158 per year over the next five years and directed staff to return to the Board with revised leave policies. The attached resolution and exhibits execute the Board's directive by providing the revised leave policies and propose to move up the effective date to December 30, 2018 to synchronize with the beginning of the pay period closest to January 1, 2019.

CURRENT PERSONNEL MANUAL PROVISIONS:

The Agency's current Personnel Manual has been incorporated into the Pierce Transit Code, Section 6. As such, the Personnel Manual contains not only policy direction of the Board, but also detailed workplace rules and procedures for the administration of the Agency's personnel. This means every change to the Personnel Manual, even procedural details, must be approved by the Board. Staff will be bringing a comprehensive revision of the Personnel Manual to the Board that will propose to keep Board policy and direction in one document and delegate to the CEO the authority to develop personnel policies and procedures in accord with Board policy. However, that comprehensive revision has not yet been completed, and at this point, staff seeks to implement the Board's recently-adopted PTO and MSL plans (Fact Sheet #2018-077) by making the Personnel Manual consistent therewith.

PROPOSED PERSONNEL MANUAL REVISIONS:

Currently, the Personnel Manual contains language related to Vacation Leave (Section 6.2) and Sick Leave, With or Without Pay (Section 6.3) for both represented and non-represented employees.

For union-represented employees, Sections 6.2 and 6.3 are duplicative and out of date, because major revisions to the Personnel Manual have not occurred since 2004 while collective bargaining agreements (CBAs) are re-negotiated and adopted by the Board every three to four years, which supersede the Personnel Manual. As such, it is recommended that language relating to vacation and sick leave benefits for represented employees be deleted from the Personnel Manual.

With the Board's adoption of the PTO and MSL plans for non-represented employees, it is further recommended that Sections 6.2 and 6.3 of the Personnel Manual be amended to reflect the PTO and MSL plans adopted by the Board, and that the Board authorize the CEO to develop and promulgate separate personnel policies and procedures to administer these policy directives of the Board. Revisions to Section 6.3 need to be made effective immediately in order for staff to implement the 2018 version of the Sick Leave policy; amendments to Section 6.2 should be adopted as of December 30, 2018 to allow for the PTO plan to be implemented in the new year.

NEXT STEPS

Once adopted by the Board, Sections 6.2 and 6.3 of the Personnel Manual will be amended per the attached Exhibits 1 and 2.

In addition, attached for the Board's information only as Exhibit 3 are Personnel Policies #4.2 Paid Time Off (and Vacation) and #4.3 Sick Leave, to be approved by the CEO, and implemented accordingly. These Personnel Policies are compliant with the Board's policy directives and allow flexibility for the CEO to develop and promulgate personnel policies and procedures in the administration of those directives.

STAFF RECOMMENDATION:

Staff recommends approval of the changes to Section 6.2 Paid Time Off (and Vacation) and Section 6.3 Sick Leave of the Personnel Manual as set forth in Exhibits 1 and 2.

ALTERNATIVES:

The alternative is to reject the proposed amendments to Sections 6.2 and 6.3 of the Personnel Manual. This would mean that the Board's PTO and MSL plans as adopted by Fact Sheet #2018-077 would be inconsistent with the Personnel Manual.

PROPOSED MOTION:

Approve Resolution No. 2018-039, adopting amendments to Sections 6.2 and 6.3 of the Personnel Manual pertaining to Paid Time Off and Major Sick Leave for non-represented employees as presented in Exhibits 1 and 2 with changes to Section 6.2 effective December 30, 2018 and changes to 6.3 effective immediately and to further authorize the CEO to develop personnel policies and procedures to administer Paid Time Off and Major Sick leave for non-represented employees in accord therewith.

RESOLUTION NO. 2018-039

1 A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing Amendments to Sections 6.2 and
2 6.3 of the Personnel Manual to Implement Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for Non-
3 Represented Employees with Less than 22 Years of Service.
4

5 WHEREAS, the Pierce Transit Code (Code) is the repository of policies adopted by the Pierce Transit
6 Board and is updated from time to time; and

7 WHEREAS, the Agency's Personnel Manual is incorporated into the Code at Section 6; and

8 WHEREAS, on September 10, 2018, the Board approved Fact Sheet #2018-077, adopting the Paid
9 Time Off (PTO) and Major Sick Leave (MSL) plans for non-represented employees with less than twenty-two (22)
10 years of service, effective January 13, 2019, and directing staff to return to the Board with revised leave policies;
11 and

12 WHEREAS, the January 13, 2019 date was previously selected for the implementation of the PTO and
13 MSL plans to allow sufficient time for staff to make appropriate system and process changes, but those changes
14 have been reviewed and staff will be ready for implementation by December 30, 2018; and

15 WHEREAS, the Personnel Manual currently contains language related to Vacation Leave (Section 6.2)
16 and Sick Leave, With or Without Pay (Section 6.3) for both represented and non-represented employees that
17 needs to be amended to reflect the Board's recently-adopted PTO and MSL plans; and

18 WHEREAS, for union-represented employees, Sections 6.2 and 6.3 are duplicative and out of date,
19 because collective bargaining agreements (CBAs) are re-negotiated and adopted by the Board every three to
20 four years, which supersede the Personnel Manual; and

21 WHEREAS, the CEO should be authorized to develop and promulgate separate personnel policies and
22 procedures to effectively administer leave policy directives of the Board.

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

24 Section 1. The Board of Commissioners authorizes amendments to the applicable sections of the
25 Personnel Manual as presented in Exhibit 1 (Section 6.2 of the Personnel Manual) and Exhibit 2 (Section 6.3
26 of the Personnel Manual) with changes to Section 6.2 effective December 30, 2018 and changes to 6.3
27 effective immediately; and

28 Section 2. The Board of Commissioners authorizes the Chief Executive Officer to develop and
29 promulgate personnel policies and procedures to effectively administer the leave policy directives of the
30 Board.

1
2 ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on
3 the 8th day of October 2018.

4 PIERCE TRANSIT

5
6
7 _____
8 Nancy Henderson, Chair
9 Board of Commissioners
10

11 ATTEST/AUTHENTICATED

12
13 _____
14 Deanne Jacobson, CMC
15 Clerk of the Board

TO BE EFFECTIVE Dec. 30, 2018:

-6.2 Paid Time Off (PTO) (and Vacation Leave)

6.2.1 Rate of Accrual of Vacation Leave

- A. PTO: Non-represented regular and probationary employees hired on/after December 30, 1996 are not eligible for vacation leave, rather, these employees shall accrue PTO in accordance with the following schedule:~~Regular or probationary full time represented employees shall accrue vacation leave for each biweekly pay period in accordance with the schedules set forth, provided that they have been in a paid status a minimum of fifty-six (56) hours. This requirement shall not apply to employees on union leave status or the Union's Business Representative. Part time employees shall accrue vacation leave for each eighty (80) hours in which they have been in a paid status. Eligible employees who are on a leave of absence for active duty training or for inductive purposes with the Armed Forces of the United States shall accrue vacation.~~

~~Represented employees shall accrue vacation leave by reason of tenure. Increases in the accrual rate shall begin in January of the year in which periods of aggregate service are completed according to the schedule below:~~

- ~~1) At hire through December 31 in which year 4 is completed: 3.6924 hours each pay period~~
- ~~2) On January 1 of the year in which year 5 is completed: 4.6154 hours each pay period~~
- ~~3) On January 1 of the year in which year 9 is completed: 5.2308 hours each pay period~~
- ~~4) On January 1 of the year in which year 14 is completed: 6.1539 hours each pay period~~

~~On January 1 of the year in which years 19 through 28 are completed: For each of these years an additional 0.3077 hour will be accrued per pay period.~~

<u>Completed Years of Service</u>	<u>PTO Annual Accruals (8- Hour Days)</u>	<u>Hours Accrued per Pay Period</u>
<u>0-4</u>	<u>22</u>	<u>6.7692</u>
<u>5-9</u>	<u>24</u>	<u>7.3846</u>
<u>10-14</u>	<u>26</u>	<u>8.0000</u>
<u>15-19</u>	<u>28</u>	<u>8.6154</u>

<u>20-24</u>	<u>30</u>	<u>9.2308</u>
<u>25-29</u>	<u>32</u>	<u>9.8462</u>
<u>30+</u>	<u>34</u>	<u>10.4615</u>

B. Vacation: Non-represented regular employees hired prior to December 30, 1996 are not eligible for PTO, rather, these employees shall accrue vacation leave by reason of tenure. Increases in the accrual rate shall begin in January of the year in which periods of aggregate service are completed according to the following schedule:

1. At hire through December 31 in which year 4 is completed: 4 hours each pay period (13 days per year)
2. On January 1 of the year in which year 5 is completed: 4.9231 hour each pay period (16 days per year)
3. On January 1 of the year in which year 9 is completed: 5.5385 hours each pay period (18 days per year)
4. On January 1 of the year in which year 14 is completed: 6.4616 hours each pay period (21 days per year)
5. On January 1 of the year in which years 19 through 28 are completed: For each of these years an additional 0.3077 hour will be accrued each pay period (1 additional day per year)

C. Regular Part-Time Employees: —Non-represented regular part-time employees shall accrue a pro-rated portion of the above PTO or Vacation schedule based on their proportion of paid hours to the 80-hour pay period.

D. At the discretion of the Chief Executive Officer, ~~which may be delegated to the Executive Director of Administration,~~ the Agency may offer accelerated leave-PTO accrual rates of up to ~~6.4616~~8.6154 hours each pay period (~~21-28~~ days per year), or a one-time allowance of a bank of up to forty (40) vacation-PTO hours upon hire for professional and management positions that are difficult to fill and/or to acquire a highly talented candidate.

~~C. Vacation accrual balances shall not exceed an amount equal to 2 years' accrual. A waiver may be requested in the event an employee is unable to use vacation prior to exceeding the 2-year limitation due to critical workload demands or a continued illness due to a job related disability. A written request must be submitted to the Executive Director of Administration or delegate, for such unused days to accumulate until vacation can be scheduled or the employee returns to work or is separated. Vacation in excess of 2 years' accrual, if not taken within 180 calendar~~

~~days after the employee returns to work, shall be forfeited.~~

~~D. Upon completion of probation all Relief Transit Operators will be eligible for five paid annual vacation leave days (40 hours) to be used within 12 calendar months.~~

6.2.2 ~~Permissible Use~~, Sharing or Payment of PTO or Vacation, Including Sharing and Payout Accruals with Pay

A. Employees may use accrued PTO or Vacation leave to take time off work with pay, to voluntarily share accrued leave with other eligible employees, or to sell-back accrued leave on an annual basis in accordance with personnel policies and procedures to be developed and promulgated by the Chief Executive Officer.

B. An employee separating from employment with the Agency after successful completion of a probationary period shall be compensated at the employee's base rate of pay for all PTO earned and accrued through the date of separation, up to a maximum of six hundred (600) hours.

C. An employee separating from employment with the Agency after successful completion of a probationary period shall be compensated at the employee's base rate of pay for all vacation leave earned and accrued through the date of separation, up to a maximum of two (2) times the employee's annual accrual.

D. An employee separating from employment for any reason within their probationary period shall not be compensated for PTO or vacation leave accrued.

~~Vacation leave may not be taken without the prior approval of the hiring authority and may not be taken in the pay period in which it was earned. Vacation leave shall be scheduled so as to meet the operating requirements of the Agency and, as far as practicable, the preferences of the employees.~~

~~If vacation leave is to be used during a leave of absence in conjunction with leave without pay, the vacation leave shall be used first. No additional vacation leave shall be used once the leave without pay begins. This provision does not apply to Transit Operators who are required to sign for vacation leave in the preceding year.~~

~~An employee may voluntarily donate vacation leave to another employee who has five days or less of leave available for use for a catastrophic illness of the employee or employee's dependent, the employee's pregnancy medical disability period or a catastrophic event of the employee. The employee shall submit a written request to the Executive~~

~~Director of Administration or delegate stating the number of vacation leave hours the employee desires to donate, the name of the employee to whom the hours are to be transferred, and the effective date of the donation.~~

~~The employee desiring to donate vacation leave must have the donated hours accrued at the time of the donation. Vacation leave may be donated only in full hourly increments. Vacation leave may not be donated in the same pay period in which it is earned.~~

~~Approval for the donation must be obtained from the supervisor of the recipient prior to the transfer of the vacation leave. Approval is at the sole discretion of the recipient's supervisor.~~

~~Donated vacation leave is available for use at the time the donation is received, and will be paid at the recipient's hourly rate.~~

~~Human Resources will review and approve each request for solicitation of donations on a case by case basis. Medical documentation may be required in order to validate the catastrophic, extraordinary or serious nature of the illness. Other factors, such as the length of the leave of absence, may be considered in determining qualification for coverage under this policy.~~

~~6.2.3 Payment for Vacation~~

~~An employee, when leaving the Agency, shall be compensated for vacation leave earned and accrued to the date of separation. New employees who separate during their six-month probationary period shall not be entitled to compensation.~~

~~An employee who has served in higher or lower positions on temporary appointments shall be paid for vacation leave at the rate of pay appropriate to the classification in which the employee worked the majority of the time in the previous six-month period.~~

~~Payment for vacation immediately prior to leaving on an authorized vacation may be made at the request of the employee, provided the request is made at least ten (10) days prior to the vacation period and the authorized vacation is for not less than ten working days. After such payment, the employee must take vacation for the entire period for which payment was made.~~

~~In November of each year, non-represented employees may sell back their vacation under the following conditions:~~

~~No more than 80 hours of vacation may be sold in any calendar year.~~

~~After payment, at least 80 hours of vacation must remain in the employee's accrual bank.~~

~~The employee must complete the appropriate form and submit it to their manager for approval.~~

~~Approval requests must be turned in to the Accounting Department no later than November 30 of each year. Payment will be issued no later than December 31 of that year.~~

~~Requests cannot be revoked once the Accounting Department has received the approved form.~~

~~For policy regarding vacation buy back as related to represented employees, refer to the Master Labor Agreement.~~

TO BE EFFECTIVE Dec. 30, 2018:

6.2 Paid Time Off (PTO) (and Vacation Leave)

6.2.1 Rate of Accrual of Vacation Leave

- A. **PTO:** Non-represented regular and probationary employees hired on/after December 30, 1996 are not eligible for vacation leave, rather, these employees shall accrue PTO in accordance with the following schedule:

Completed Years of Service	PTO Annual Accruals (8- Hour Days)	Hours Accrued per Pay Period
0-4	22	6.7692
5-9	24	7.3846
10-14	26	8.0000
15-19	28	8.6154
20-24	30	9.2308
25-29	32	9.8462
30+	34	10.4615

- B. **Vacation:** Non-represented regular employees hired prior to December 30, 1996 are not eligible for PTO, rather, these employees shall accrue vacation leave by reason of tenure. Increases in the accrual rate shall begin in January of the year in which periods of aggregate service are completed according to the following schedule:
1. At hire through December 31 in which year 4 is completed: 4 hours each pay period (13 days per year)
 2. On January 1 of the year in which year 5 is completed: 4.9231 hour each pay period (16 days per year)
 3. On January 1 of the year in which year 9 is completed: 5.5385 hours each pay period (18 days per year)
 4. On January 1 of the year in which year 14 is completed: 6.4616 hours each pay period (21 days per year)
 5. On January 1 of the year in which years 19 through 28 are completed: For each of these years an additional 0.3077 hour will be accrued each pay period (1 additional day per year)
- C. **Regular Part-Time Employees:** Non-represented regular part-time employees shall accrue a pro-rated portion of the above PTO or Vacation schedule based on their proportion of paid hours to the 80-hour pay period.

- D. At the discretion of the Chief Executive Officer, the Agency may offer accelerated PTO accrual rates of up to 8.6154 hours each pay period (28 days per year), or a one-time allowance of a bank of up to forty (40) PTO hours upon hire for professional and management positions that are difficult to fill and/or to acquire a highly talented candidate.

6.2.2 Use of PTO or Vacation, Including Sharing and Payout

- A. Employees may use accrued PTO or Vacation leave to take time off work with pay, to voluntarily share accrued leave with other eligible employees, or to sell-back accrued leave on an annual basis in accordance with personnel policies and procedures to be developed and promulgated by the Chief Executive Officer.
- B. An employee separating from employment with the Agency after successful completion of a probationary period shall be compensated at the employee's base rate of pay for all PTO earned and accrued through the date of separation, up to a maximum of six hundred (600) hours.
- C. An employee separating from employment with the Agency after successful completion of a probationary period shall be compensated at the employee's base rate of pay for all vacation leave earned and accrued through the date of separation, up to a maximum of two (2) times the employee's annual accrual.
- D. An employee separating from employment for any reason within their probationary period shall not be compensated for PTO or vacation leave accrued.

EFFECTIVE OCTOBER 9, 2018

6.3 Paid Sick Leave , ~~With and Without Pay~~

6.3.1 ~~Eligibility for Accruals and Use of Paid~~ Sick Leave

A. In general, regular full-time employees are eligible for paid sick leave accruals of approximately ninety-six (96) hours per year.

B. ~~Non-represented~~ employees on the Paid Time Off (PTO) plan are eligible to accrue approximately forty-eight (48) hours of paid sick leave per year.

C. ~~Non-represented~~ regular part-time employees are ~~also~~ eligible for pro-rated paid sick leave ~~at an accruals on a pro-rated basis rate proportionate to the employee's typical work schedule compared to a full time schedule.~~

D. Non-represented limited-term, temporary, and seasonal employees are eligible for pro-rated paid sick leave accruals as defined by state law.

~~Use of paid sick leave may be restricted to qualifying circumstances as set forth in Agency personnel rules or procedures.~~

6.3.2 ~~Sick Leave Banks~~

Employees' ~~paid~~ sick leave accruals may be maintained in various leave banks.

6.3.3 Payment of Accrued ~~Paid~~ Sick Leave at Separation

The following provisions, unless otherwise specified, apply to all regular or probationary employees:

~~Accrual. Regular or probationary employees shall accrue sick leave at the rate of 3.6924 hours for each biweekly pay period provided that bargaining employees must have a minimum of fifty six (56) hours in a paid status. This provision shall not apply to the Union's Business Representative and employees on union leave status. Eligible employees who are on a leave of absence for active duty training with the Armed Forces of the United States shall accrue sick leave.~~

A. ~~Sick leave earned shall be credited to an employee's accruals after the completion of each biweekly pay period and may not be used in the pay period earned.~~

B. ~~The provisions of this section shall not apply to Relief Transit Operators except that Relief Transit Operators shall start accruing sick leave at a rate of .046175 hours per hour worked upon completion of their sixth month of employment. Sick leave paid to Relief Transit Operators will be based on the average number of daily hours worked in the last pay period, but not less than four hours.~~

- ~~C. Part-time employees, except Relief Transit Operators, shall accrue sick leave at the rate of 3.6924 hours for each eighty (80) hours in which they are in a paid status.~~

~~6.3.2 Permissible Use of Paid Sick Leave~~

- ~~A. Injury or illness of the employee to such extent as to constitute a hazard to the safety or health of themselves or other employees.~~
- ~~B. Medical or dental care for the employee.~~
- ~~C. Quarantine of the employee by a public health official due to exposure to contagious disease.~~
- ~~D. On the job injuries during the first three days if not eligible for Workers' Compensation and as a supplement to Workers' Compensation at the rate of one-half day of sick leave per day of absence after the 60-day supplementary on-the-job injury benefits.~~
- ~~E. Death of the spouse, father, mother, foster parent, brother, sister, child, foster child, grandparent, or grandchild of employee or relatives of the spouse of the employee in the same categories of relationship, subject to the requirements of subsection 6.3.3 C, 6 hereinafter set forth.~~
- ~~F. Serious injury or illness to those relatives dependent upon the employee, constituting an emergency or crisis, subject to the requirements of subsection 6.3.3 C, 6 hereinafter set forth.~~
- ~~G. Pre induction physical for service in the Armed Forces of the United States.~~
- ~~H. Illness or disability due to pregnancy or related conditions.~~
- ~~I. For any health reason sufficient to serve as a qualifying condition for Family Medical Leave.~~

~~6.3.3 Requirements for all Paid Sick Leave~~

- ~~A. For represented and non-represented employees the sick leave balance may be frozen at the employee's request, before leave without pay is taken. If so elected, no sick leave may be used for the duration of the leave.~~
- ~~B. For represented employees, requirements for all paid sick leave are outlined in the Master Labor Agreement.~~
- ~~C. Requirements for all paid sick leave for non-represented employees are set forth below.~~

- ~~1) Employees must report to the designated representative of the hiring authority the reason for an absence prior to the beginning of the scheduled workday or such earlier time as required by the hiring authority.~~
- ~~2) An employee must keep the hiring authority informed of their condition if an absence is of more than four (4) working days in duration.~~
- ~~3) Employees must permit home visits or medical examinations at the expense and convenience of the Employer.~~
- ~~4) Sick leave shall be granted to an employee for a health condition suffered by a child under 18 years of age which requires treatment or supervision. In the event of any such absence, a statement by the attending physician attesting to the nature and seriousness of said injury or illness shall be required, if requested.~~
- ~~5) Sick leave shall be granted to an employee for a serious health condition or emergency condition suffered by a spouse, parent, parent in law or grandparent. The terms and conditions of this provision are outlined under the Washington State Family Care Act. Upon approval of the hiring authority a maximum of five (5) days of sick leave may be granted for a serious illness or injury suffered by a relative (other than those already described) who is dependent upon the employee. In the event of any such absence, a statement by the attending physician attesting to the nature and seriousness of said injury or illness shall be required, if requested by the hiring authority.~~
- ~~6) In addition to the bereavement leave outlined in another section, sick leave may be granted upon the death of a relative of an employee. Upon approval by the hiring authority, sick leave may be granted for the death of spouse, father, mother, foster parent, brother or sister, child or foster child, grandparents or grandchildren, son-in-law, or daughter-in-law of the employee or spouse of the employee.~~

~~6.3.4 Payment for Sick Leave~~

- ~~— An employee who has served in higher or lower positions on temporary appointments shall be paid for sick leave at the rate of pay appropriate to the classification in which the employee worked the majority of the time in the previous six month period.~~
- ~~— Employees shall accrue sick leave according to the provisions of this section, provided that any employee who leaves the Agency during the first six months of employment shall not be compensated for any accrued sick leave.~~

~~6.3.5 Enforcement of Sick Leave Provisions~~

- ~~A. Misrepresentation of any material facts in connection with paid sick leave by any employee shall constitute grounds for suspension or discharge.~~
- ~~B. It shall be the responsibility of the hiring authority or designated representative to:~~
- ~~1) Review all applications for sick leave and approve those which are bona fide and comply with the provisions of this section and forward same to the Executive Director of Administration. The Executive Director of Administration or delegate shall not certify the payment of sick leave until such approved applications have been received. Employees still absent at the end of a pay period may be certified for payment of sick leave by the Finance Manager upon recommendation of the hiring authority by signing the payroll, subject to the receipt of an approved application for sick leave pay immediately upon the employee's return to work.~~
 - ~~2) Investigate any suspected abuse of sick leave.~~
 - ~~3) Withhold approval of sick leave pay in the event of unauthorized use.~~
 - ~~4) Initiate disciplinary action if, as a result of investigation, it is determined that an employee has been guilty of willful misrepresentation in a request for sick leave pay.~~

~~6.3.6 Incentive Payments for Non-use of Sick leave Accruals~~

- A. When an employee dies or separates from the Agency ~~either~~ because of ~~any~~ regular or disability retirement, the employee or the employee's estate will receive payment for 50% of the balance of the employee's sick leave accruals.
- B. A regular employee separated in good standing from the Agency for any reason other than death or retirement shall be compensated to the extent of 20% of their sick leave accruals up to a maximum accrual of 120 days (or 960 hours).
- C. An employee separated from the Agency due to layoff may, if reinstated within a two-year period, have sick leave accrual restored upon repayment to the Agency of the 20% payment as herein provided.

~~6.3.7 Sick Leave Without Pay~~

- ~~A. A probationary or regular employee may be granted a leave of absence without pay by a hiring authority for the entire period of disability because of sickness or injury. The duration of such leave is subject to the limitations as outlined in the Pierce Transit Redeployment Program. The hiring authority or the Executive Director of Administration or delegate may, from time to time, require that the~~

~~employee submit a certificate from the attending physician or from a designated physician. In the event of a failure or refusal to supply such certificate, or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of regular duties, the hiring authority, with the approval of the Executive Director of Administration, may cancel such sick leave and require the employee to report for duty on a specified date.~~

- ~~B. Exempt or non-exempt employees who are absent due to illness and who have insufficient sick leave to cover the period of absence will be charged with sick leave without pay. Exempt employees who have insufficient sick leave accrued will be paid through the end of that workday for which they had accrued sick leave.~~

~~6.3.8 Donation of Sick Leave~~

- ~~A. An employee may voluntarily donate a portion of Pierce Transit accrued sick leave to another employee only if the following conditions are met:~~

- ~~1. A donating employee may donate to more than one recipient; however, that employee must have a minimum of 110 hours of sick leave in their accrual balance at the time of donation, and the employee's donations may not total more than 16 hours in a calendar year.~~
- ~~2. Donation of sick leave will be approved for employees who have a catastrophic, extraordinary or serious illness or impairment, which has caused their sick leave balance to be exhausted. Employees must draw down their own vacation leave balance to no more than five days prior to using donated time. Donations may also be solicited for employees with ill relatives who qualify under the sick leave guidelines as outlined in Section 6.3 of the Personnel Manual.~~
- ~~3. Sick leave may be donated only in full hour increments and will be converted from the value of the donator's hourly rate and paid at the recipient's hourly rate.~~
- ~~4. Sick leave donations will be approved by Human Resources and will be used in the order received. All unused donated sick leave will be returned to the donating employee's accrual balance and may not be carried over by the recipient.~~

- ~~B. Human Resources will review and approve each request for solicitation of donations on a case-by-case basis. Medical documentation may be required in order to validate the catastrophic, extraordinary, or serious nature of the illness. Other factors, such as the length of the leave of absence, may be considered in determining qualification for coverage under this policy.~~

~~An employee who wishes to donate shall submit a written request to the Executive Director of Administration stating the number of sick leave hours being donated, the intended recipient and the effective date of the donation. Forms are available in the Human Resources Department.~~

6.3.4 The Chief Executive Officer shall develop and promulgate personnel policies and procedures to administer sick leave benefits (e.g. the use, sharing and payment of/for sick leave accruals, etc.).

EFFECTIVE OCTOBER 9, 2018

6.3 Paid Sick Leave

6.3.1 Accruals of Paid Sick Leave

- A. In general, regular full-time employees are eligible for paid sick leave accruals of approximately ninety-six (96) hours per year.
- B. Non-represented employees on the Paid Time Off (PTO) plan are eligible to accrue approximately forty-eight (48) hours of paid sick leave per year.
- C. Non-represented regular part-time employees are eligible for pro-rated paid sick leave accruals on a pro-rated basis.
- D. Non-represented limited-term, temporary, and seasonal employees are eligible for pro-rated paid sick leave accruals as defined by state law.

6.3.2 Sick Leave Banks

Employees' paid sick leave accruals may be maintained in various leave banks.

6.3.3 Payment of Accrued Paid Sick Leave at Separation

- A. When an employee dies or separates from the Agency because of a regular or disability retirement, the employee or the employee's estate will receive payment for 50% of the balance of the employee's sick leave accruals.
- B. A regular employee separated in good standing from the Agency for any reason other than death or retirement shall be compensated to the extent of 20% of their sick leave accruals up to a maximum accrual of 120 days (or 960 hours).
- C. An employee separated from the Agency due to layoff may, if reinstated within a two-year period, have sick leave accrual restored upon repayment to the Agency of the 20% payment as herein provided.

6.3.4 The Chief Executive Officer shall develop and promulgate personnel policies and procedures to administer sick leave benefits (*e.g.* the use, sharing and payment of/for sick leave accruals, etc.).

TITLE: Adoption of Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for Non-Represented Employees with Less than 22 Years of Service, Effective January 13, 2019

DIVISION: Administration

SUBMITTED BY: Tara Schaak, Leave Administrator

RELATED ACTION: N/A

ATTACHMENTS: N/A

RELATION TO STRATEGIC PLAN: Employee

.....

BUDGET INFORMATION

Is it Budgeted? ☐ Yes / ☒ No

Project Name or Number: [Click here to enter text.](#)

☒ Operating Budget

☐ Capital Budget

FUNDING SOURCE:		EXPLANATION:
Local Amount	\$ <u>84,158</u>	<u>Five-year average cost difference from the current plan = \$84,158 per year in anticipated leave cash-out payments.</u>
Grant/Other Amounts	\$	
Total Expenditure	\$ <u>84,158 per year (5-yr average)</u>	

.....

BACKGROUND:

A Paid Time Off (PTO) Plan is proposed to provide greater flexibility to non-represented employees on how they may use accrued leave and support the agency in being more competitive for talent in the non-represented classifications.

Current Vacation and Sick Leave Plans:

Currently, non-represented employees earn twelve (12) days of sick leave and vacation leave depending on the employee's completed years of continuous service. The current policy provides that vacation leave may be used for any reason while sick leave may only be used for reasons like injury, illness, medical or dental care, or other health reasons sufficient to serve as a qualifying condition under family medical leave. When the employee leaves Pierce Transit, the employee is entitled to be paid out for 100% of all accrued vacation. For sick leave, if an employee separates due to death or retirement, the employee is entitled to payment for 50% employee's sick leave accruals, and if the employee separates in good standing, the employee is compensated at 20% of his/her accrued sick leave (up to a maximum accrual of 120 days).

Highlights of the proposed new PTO Plan include:

ELIGIBLE EMPLOYEES

Non-represented employees with twenty-two (22) or more years of service when this PTO plan is implemented would remain on the currently-existing vacation and sick leave plans. All other non-represented employees would move to the PTO plan in combination with a Major Sick Leave (MSL) plan.

BENEFITS OF A PTO PLAN

The PTO plan is intended to allow the employee greater flexibility in using accrued leave and is expected to assist in employee retention and recruitment.

ACCRUALS

Non-represented employees would accrue PTO based on continuous service, and would accrue MSL at a rate of six (6) days per year as compared to the current Vacation and Sick Leave plans below:

Completed Years of Service	Current Vacation Accruals	Current Sick Leave Accruals	Total Current Vacation & Sick Accruals		New PTO Accruals	New MSL Accruals	Total New PTO & MSL Accruals
0-4	13	12	25		22	6	28
5-8	16	12	28		24	6	30
9	18	12	30		24	6	30
10-13	18	12	30		26	6	32
14	21	12	33		26	6	32
15-18	21	12	33		28	6	34
19	22	12	34		28	6	34
20	23	12	35		30	6	36
21	24	12	36		30	6	36
22	25	12	37		30	6	36
23	26	12	38		30	6	36
24	27	12	39		30	6	36
25	28	12	40		32	6	38
26	29	12	41		32	6	38
27	30	12	42		32	6	38
28-29	31	12	43		32	6	38
30+	31	12	43		34	6	40

INITIAL CONVERSION

With implementation of this policy, all eligible non-represented employees may elect a one-time conversion of up to 160 hours of their existing sick leave to PTO, during the authorized conversion window. The conversion rate shall be two (2) hours of sick leave to one (1) hour of PTO. Allowing this conversion at 50% is of financial benefit to the Agency in that the conversion buys down the Agency's existing liability for sick leave if taken at the employee's full hourly rate.

ACCRUAL CAP

PTO accrual for all eligible non-represented employees shall be capped at 600 hours.

ANNUAL SELLBACK

Currently, employees may voluntarily sell back up to 80 hours of vacation leave at the end of each year.

On the PTO plan, employees may voluntarily sell back up to 120 hours of PTO on an annual basis, provided that they keep a minimum balance of 120 hours after the sell back and have used at least ½ of the annual accrual amount during the previous calendar year.

SEPARATION PAYOUT

PTO will be paid out at 100% of the employee's base rate of pay upon any separation.

NEXT STEPS

Next steps: the PTO and MSL plans will be incorporated into the Agency's leave policies, which will be presented to the Board on October 8, 2018 for adoption.

STAFF RECOMMENDATION:

Staff recommends approval of the PTO and MSL Plans.

ALTERNATIVES:

The alternative is to reject the proposed PTO plan and continue with the traditional vacation and sick leave plans for the non-represented staff.

PROPOSED MOTION:

Move to adopt a Paid Time Off (PTO) and Major Sick Leave (MSL) Plans for non-represented employees with less than 22 years of service, effective January 13, 2019, and direct staff to return to the Board with revised leave policies.

Personnel Policy Number 4.2

PAID TIME OFF (and VACATION)

Effective Date: December 30, 2018

Signed by: _____
Chief Executive Officer

Replaces: New

See Also: Personnel Manual Section 6.2 amended as of December 30, 2018 and 6.3 as amended October 8, 2018; ATU CBA; IAM CBA; Sick Leave Policy #4.3; Shared Leave Policy #4.4; and Addendum – Vacation Leave Accruals for Grandfathered Employees

Approved By: Executive Directors and Chief Executive Officer

4.2.1. POLICY STATEMENT

In an effort to increase competitiveness when recruiting for talent and to provide flexibility to employees when taking time off work, effective December 30, 2018, Pierce Transit will provide paid time off (PTO), in combination with major sick leave (MSL), for eligible employees. PTO is a flexible bank of leave time that eligible employees may use for vacation, personal leave and/or short term sick leave absences. This policy provides guidance to employees regarding the eligibility, accrual and use of paid time off.

4.2.2. EMPLOYEE ELIGIBILITY

All non-represented employees hired on or after December 30, 1996 and all employees promoted to non-represented positions on or after December 30, 2018 (regardless of the promoted employee's hire date) are eligible for PTO.

Employees hired prior to December 30, 1996 (who hold non-represented positions as of December 30, 2018) will be grandfathered into Pierce Transit's traditional vacation¹ and Pierce Transit sick leave² accrual plans.

An employee is either eligible for the PTO plan or the vacation plan, not both.

4.2.3. DEFINITIONS

- A. **Agency Seniority:** The length of continuous employment as a probationary or regular employee in a regular full-time or regular part-time position commencing on the employee's last date of hire less any unpaid leaves of absence of thirty (30) calendar days or more. However, regular employees who are recalled within twenty-four (24) months from the date of layoff shall be credited with seniority earned at the time of layoff.

¹ See attached addendum for Pierce Transit's traditional vacation accrual rates.

² See Pierce Transit Sick Leave Policy #4.3 for details.

- B. **Paid Time off (PTO):** Leave time accrued by eligible employees which can be used to take paid time away from work with prior approval or for the first two (2) days of sick leave for authorized purposes, when applicable.
- C. **Vacation Leave:** Leave time accrued by eligible grandfathered non-represented employees per Agency policy and by eligible represented employees per the employee's CBA, which can be used to take paid time off with prior approval.

4.2.4. ACCRUALS

- A. **Accrual of PTO:** Each eligible employee shall accrue PTO hours, which will be credited to the employee's PTO bank after the completion of each biweekly pay period as follows:
 - 1. Eligible regular and probationary employees are eligible to accrue PTO effective on their date of hire.
 - 2. Eligible full-time employees who are in paid status for at least fifty-six (56) hours during a pay period will accrue PTO pursuant to the following schedule based on the employees' Agency seniority:

Completed years of service	Number of 8-hour days per year	Number of hours per pay period
0-4	22	6.7692
5-9	24	7.3846
10-14	26	8.0000
15-19	28	8.6154
20-24	30	9.2308
25-29	32	9.8462
30+	34	10.4615

Eligible full-time employees who are in paid status for less than fifty-six (56) hours in a pay period will accrue a pro-rated portion of the above schedule based on their proportion of paid hours to the 80-hour pay period.

- 3. Eligible part-time employees will accrue a pro-rated portion of the above schedule based on the proportion of hours they are in paid status to the eighty (80) hour pay period.
- 4. Increases in the accrual rate shall begin the first full pay period after the above years of service are completed. For example, if an employee completes his 4th year of employment and is starting his 5th year of employment on February 4, 2019, the employee will begin accruing 7.3846 hours of PTO in the next pay period after his anniversary date, on February 10, 2019.
- 5. At the discretion of the Chief Executive Officer (CEO), the Agency may offer accelerated leave accrual rates of up to 8.6154 hours each pay period (28 days per year), or a one-time allowance of a bank of up to forty (40) PTO hours upon hire for professional or managerial positions that are difficult to fill and/or to acquire a highly talented candidate.

- B. **Accrual of Vacation:** Each eligible employee shall accrue vacation hours in accordance with the attached addendum.

4.2.5. **MAXIMUM ACCRUAL:**

- A. **PTO Maximum Accrual:** Each eligible employee's PTO accrual balance shall not exceed six hundred (600) hours. Any employee whose PTO balance reaches the 600-hour cap will cease accruing PTO until such time as the employee's balance falls below six hundred (600) hours.
- B. **Vacation Leave Maximum Accrual:** Vacation accrual balances shall not exceed an amount equal to two (2) years' accrual. Any employee whose vacation balance reaches the employee's accrual cap will cease accruing vacation until his/her balance falls below the cap.
- C. **Exception to the Accrual Limit:** A waiver to the maximum accrual limit may be requested in the event an employee is unable to use PTO or vacation leave prior to exceeding the accrual limit due to critical workload demands. A written request must be submitted to the Executive Director of Administration, or designee, for such unused days to accumulate until time off can be scheduled. Such authorized leave in excess of the accrual limit must be taken within one hundred eighty (180) days of the approval of the waiver.

4.2.6. **USE OF PTO AND VACATION LEAVE**

A. **Eligibility to Use PTO and Vacation Leave:**

1. Eligible employees, including new hires, are eligible to use PTO and vacation leave starting on the pay period after the leave is accrued. Employees may not use PTO or vacation leave in the pay period in which the leave was earned/accrued.
2. PTO and vacation leave cannot be taken without the prior approval of the hiring authority, or designee, except for authorized sick leave purposes in accordance with the Sick Leave policy. The hiring authority, or designee, may require the employee to submit a written request, and will approve or deny the request. PTO and vacation leave shall be scheduled to meet the operating requirements of the Agency and, as far as practicable, the preferences of the employees.
3. When applicable, an employee taking sick leave for an authorized purpose, must use PTO for the first two days of the sick leave absence.
4. Eligible employees may take PTO or vacation leave for personal or family emergencies, subject to the requirements and limitations per the employee's departmental policies. When leave is used for such emergencies, the employee must contact their hiring authority, or designee, at least one (1) hour before the start of the employee's work shift, or as soon as the need for the leave becomes known.
5. Eligible employees may use PTO or vacation leave for a reasonable period for purposes specified in the Washington State Domestic Violence (DV) Leave law, Chapter 49.76 RCW. When taking DV leave, the employee shall provide advance notice to the hiring authority, or designee. When advance notice cannot be given because of an emergency or unforeseen circumstance, the employee, or designee, must provide notice by no later than the end of the first day of such leave.

6. If PTO or vacation leave is used in conjunction with an authorized leave of absence without pay, PTO and vacation leave must be exhausted before using leave without pay.
7. Eligible employees may donate accrued PTO or vacation leave to another employee who is eligible to receive shared leave per the Agency's Shared Leave policy.

B. Use Increments for PTO and Vacation Leave:

1. Non-exempt employees – PTO and vacation leave may be taken in increments of one-tenth (0.10) of an hour.
2. Exempt employees – PTO and vacation leave shall be used in increments of one-half (0.50) hour, with a two-hour minimum.

4.2.7. ANNUAL SELL-BACK

In November of each year, non-represented employees may sell back their accrued PTO or vacation leave in accordance with the following requirements. Employees may elect to sell back hours by completing the appropriate form and submitting it to their manager for approval. Approved requests must be turned in to the Accounting Department by no later than November 30 of each year. Payment will be issued by no later than December 31 of that year. Approved requests cannot be revoked once received by the Accounting Department.

A. Annual Sell-Back of PTO:

1. A regular full-time employee may sell-back up to one hundred (100) hours of PTO provided that the employee has used at least one half (1/2) of their annual PTO accrual amount during the previous calendar year and has an accrual balance of at least one hundred and twenty (120) PTO hours following the sell-back.
2. A regular part-time employee may sell-back up to fifty (50) hours of PTO provided that the employee has used at least one half (1/2) of their annual PTO accrual amount during the previous calendar year and has an accrual balance of at least sixty (60) PTO hours following the sell-back.

- B. Annual Sell-Back of Vacation:** Each eligible employee may sell back no more than eighty (80) hours of vacation per calendar year provided the employee will have at least eighty (80) hours of vacation remaining after the sell-back.

4.2.8. CASH-OUT AT SEPARATION OF EMPLOYMENT

- A. An employee separating from employment with the Agency shall be compensated at the employee's base rate of pay for all PTO earned and accrued through the date of separation, up to a maximum of six hundred (600) hours.
- B. An employee separating from employment with the Agency shall be compensated at the employee's base rate of pay for all vacation leave earned and accrued through the date of separation, up to a maximum of two (2) times the employee's annual accrual.

- C. An employee who separates from employment for any reason during their first six (6) months of employment or prior to the completion of his/her new hire probationary period, whichever is later, shall not be compensated for any accrued, unused PTO or vacation leave.

4.2.9. **CONVERSION TO PTO:**

- A. Upon implementation of this policy, all eligible non-represented employees may elect, during a one-time conversion period, to convert up to one hundred sixty (160) hours of accrued sick leave to PTO. The conversion rate is two (2) hours of sick leave to one (1) hour of PTO.
- B. During the first thirty (30) days of a bargaining unit employee's appointment to a non-represented position, the employee may elect to convert up to one hundred sixty (160) hours of accrued sick leave to PTO. The conversion rate is two (2) hours of sick leave to one (1) hour of PTO.

4.2.10. **COLLECTIVE BARGAINING AGREEMENTS**

Employees covered by a collective bargaining agreement (CBA) will be subject to the specific terms of the CBA with respect to vacation leave, and should refer to their CBA. In the event the applicable CBA does not contain vacation leave provisions, then employees covered by the same shall be governed by this policy. Wherever provisions of this policy are in conflict with the employees' CBA, the provisions of the CBA shall control.

Paid Time Off (PTO) Policy Addendum Vacation Leave Accrual For Grandfathered Employees

Employees hired prior to December 30, 1996 (who hold non-represented positions as of December 30, 2018) will be grandfathered into Pierce Transit's traditional vacation and Pierce Transit sick leave³ accrual plans.

- A. Grandfathered non-represented employees shall accrue vacation leave by reason of tenure. Increases in the accrual rate shall begin in January of the year in which periods of aggregate service are completed according to the following schedule for full-time employees:
1. At hire through December 31 in which year 4 is completed: 4 hours each pay period (13 days per year);
 2. On January 1 of the year in which year 5 is completed: 4.9231 hours each pay period (16 days per year);
 3. On January 1 of the year in which year 9 is completed: 5.5385 hours each pay period (18 days per year);
 4. On January 1 of the year in which year 14 is completed: 6.4616 hours each pay period (21 days per year);
 5. On January 1 of the year in which years 19 through 28 are completed: For each of these years, an additional 0.3077 hour will be accrued each pay period (1 additional day per year).
- B. Grandfathered non-represented part-time employees shall accrue a pro-rated portion of the above schedule.

³ See Pierce Transit Sick Leave policy #4.3 for details.

Personnel Policy Number 4.3

SICK LEAVE

Effective Date: October 9, 2018

Signed by: _____
Chief Executive Officer

Replaces: New

See Also: Personnel Manual Section 6.3 – Paid Sick Leave as amended 2018.10.8; ATU CBA; IAM CBA; RCW 49.46; WAC 296-128; City of Tacoma Ordinance 28453, and/or other applicable sick leave laws or ordinances

Approved By: Executive Directors and Chief Executive Officer

A. Policy Statement

Pierce Transit provides paid sick leave benefits for eligible employees to care for themselves and eligible family member(s). Effective January 1, 2018, Washington Paid Sick Leave (WPSL) law requires employers in Washington State to provide a minimum accrual of paid sick leave, which are authorized to be used for specified purposes, and must be accounted for in a specified manner for all employees covered by the Washington Minimum Wage Act, Chapter 49.46 RCW. WPSL is not additional paid sick leave, but is a carve out from Pierce Transit's existing paid sick leave benefits for eligible employees. To ensure compliance with the WPSL laws and regulations, Pierce Transit tracks and administers employees' paid sick leave accruals as required by the WPSL regulations, with the balance of employees' accruals being maintained in their Pierce Transit Sick Leave (PTSL).

B. Employee Eligibility

Employees are eligible for sick leave as follows:

1. Regular overtime exempt ("exempt") employees¹ are only eligible for PTSL. Exempt employees are not covered by Washington's Minimum Wage Act, and therefore, do not qualify for WPSL. Exempt employees' existing sick leave accruals as of December 31, 2017 will be maintained as PTSL.
2. Regular overtime-eligible ("non-exempt") employees are eligible for both WPSL and PTSL. Regular non-exempt employees accrue sick leave at the same annual rate (*i.e.* 96 hours for full time employees) as they did prior to the implementation of the WPSL law. However, those sick leave hours will be accounted for separately as WPSL and PTSL. Any existing sick leave accruals as of December 31, 2017 will be maintained in the employee's PTSL.
3. Non-exempt temporary, seasonal and limited-term employees and trainees are eligible for WPSL. Exempt temporary, seasonal and limited-term employees are not eligible for WPSL. Non-exempt paid interns are also eligible to accrue WPSL, while unpaid interns are not eligible. Temporary employees

¹ Overtime exempt employees working within the City of Tacoma limits are covered by Tacoma ordinance 28453 for those hours. Pierce Transit will comply with any applicable city's paid sick leave legal requirements for such employees.

hired through a staffing agency are not eligible for WPSL through Pierce Transit. Independent contractors are not employees of PT, and are not eligible for WPSL through Pierce Transit.

C. **Definitions**

1. **Washington Paid Sick Leave (WPSL):** Sick leave to be accrued, used and accounted for per RCW 49.46, WAC 296-128 and this policy.
2. **Pierce Transit Sick Leave (PTSL):** Sick leave accrued per Pierce Transit policies and procedures and collective bargaining agreements (CBAs); such sick leave is above and beyond the WPSL requirements. Eligibility for PTSL differ slightly from that of WPSL.
3. **Family Medical Leave Act (FMLA):** Up to twelve (12) weeks of unpaid job-protected leave to allow eligible employees to care for themselves and/or FMLA-eligible family members with a qualifying serious health condition as provided by federal and state laws. The use of paid leave benefits during FMLA-qualifying leave is determined by Pierce Transit policies. FMLA-eligible family members are as defined by the Family Medical Leave Act as may be amended from time to time.
4. **Paid Sick Leave:** A combination of WPSL and PTSL, representing all of the employee's sick leave benefit.
5. **Eligible Family members:** For purposes of authorized use of WPSL and PTSL, an eligible family member is defined as:
 - a. **Child** of the employee to include a biological, adopted, foster, or step child, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
 - b. **Parent** of the employee, employee's spouse or employee's registered domestic partner to include a biological, adoptive, de facto, or foster parent, step parent, or legal guardian, or a person who stood in loco parentis when the employee was a minor child;
 - c. **Spouse;**
 - d. **Registered domestic partner;**
 - e. **Grandparent;**
 - f. **Grandchild;** or
 - g. **Sibling.**
6. **Hours worked:** For the purposes of WPSL, hours worked are hours actually worked by the employee, including overtime hours, but does not include paid or unpaid leave hours. Overtime hours worked will only be accounted for by actual hours worked, and not at the one and one-half (1.5) rate at which the hours are paid.
7. **Year:** For purposes of WPSL, the "year" shall be defined as the calendar year, from January 1 to December 31 of the same year.

D. **Accruals**

1. **Accrual of WPSL:** Each eligible employee will accrue one (1) hour of WPSL for every forty (40) hours worked. This is equal to .025 hour of WPSL accrued for each hour worked. Each pay period, the total hours worked by the eligible employee will be divided by forty (40) and the resulting amount will be credited to the employee's WPSL bank.
2. **Accrual of PTSL:** Eligible employees shall accrue PTSL, which will be credited to their PTSL bank after the completion of each biweekly pay period as follows:
 - a. Regular full-time employees are eligible to accrue PTSL effective on their date of hire. Regular full-time employees who are in paid status for at least fifty-six (56) hours during a pay period will accrue PTSL at the rate of 3.6924 hours less the number of WPSL hours accrued in the same pay period. Regular full-time employees with less than fifty-six (56) hours of pay in a pay period will accrue PTSL at a pro-rated rate equal to 3.6924 hours for each eighty (80) hours in which they are in paid status less the number of WPSL hours accrued in the same pay period.
 - b. Regular part-time employees are eligible to accrue PTSL effective on their date of hire. They accrue PTSL at a pro-rated rate equal to 3.6924 hours for each eighty (80) hours in which they are in paid status less the number of WPSL hours accrued in the same pay period.

E. **Annual Carry-Over**

1. **Carry-over of WPSL:** At the end of the year, all accrued, unused WPSL balances of forty (40) hours or less will carry over to the following year, and WPSL balances above forty (40) hours will be converted to the employee's PTSL. If the employee is not eligible for PTSL, the excess WPSL above forty (40) hours will be forfeited.
2. **Carry-Over of PTSL:** At the end of the year, all accrued, unused PTSL will be carried over to the following year.

F. **Use of Sick Leave**

1. **Employee Eligibility to Use WPSL:** Eligible employees, including new hires, may use WPSL and PTSL for authorized purposes starting on the pay period after the paid sick leave is accrued. Employees may not use WPSL or PTSL in the pay period in which the paid sick leave was earned/accrued.
2. **Authorized Uses of WPSL and PTSL:** Eligible employees may use accrued sick leave (WPSL and PTSL) for the following authorized purposes:
 - a. To care for, diagnose and/or treat the employee's or Eligible Family Member's mental or physical illness, injury or health condition;
 - b. For the employee's or eligible family member's preventative care such as medical, dental or optical appointments;

- c. For closure of the employee's place of business or employee's child's school/place of care by order of a public official for any health-related reasons;
- d. For absences that qualify for leave under the Washington State Domestic Violence Leave Act; or
- e. Represented employees may use paid sick leave for the death and/or funeral of a spouse or domestic partner, father, mother, step-parent, foster parent, sibling, child, foster child, grandparent, grandchild, son-in-law, daughter-in-law, aunt or uncle of the employee or the employee's spouse or registered domestic partner. Pierce Transit may approve a maximum of five (5) days of paid sick leave to be used for this purpose, subject to the verification requirements in Section I.3.
- f. Non-represented employees may use paid sick leave to extend paid bereavement leave for extenuating circumstances related to the death and/or funeral of an immediate family member as defined in Pierce Transit's Bereavement Leave policy or Personnel Manual. When extenuating circumstances exist, Pierce Transit may approve up to five (5) days of paid sick leave to be used for such extension, subject to the verification requirements in Section I.3.
- g. Non-represented employees may use paid sick leave for the death and/or funeral of a step-parent, son-in-law, daughter-in-law, aunt or uncle of the employee or the employee's spouse or registered domestic partner. Pierce Transit may approve a maximum of five (5) days of paid sick leave to be used for this purpose, subject to the verification requirements in Section I.3.
- h. Employees with a relative who does not meet the definition of "eligible family member" as defined in Section C.5, but is dependent upon the employee and who has a serious injury or illness, may have sick leave approved by Pierce Transit for up to a maximum of five (5) days to care for said relative. When requested by Pierce Transit, the employee must provide a statement by the attending physician attesting to the nature and seriousness of the injury or illness suffered by the relative and the relative's need for care or assistance by the employee.
- i. As a supplement to Workers' Compensation time loss payment for up to one-half (½) day of paid sick leave per day of absence after the 60-day supplementary on-the-job injury benefits is exhausted.

3. Priority and Usage:

- a. Employees who have absences for authorized purposes, as described in Section F.2 (including FMLA-qualifying absences), shall use accrued WPSL first until it is exhausted. Once the employee's WPSL is exhausted, the employee shall use accrued PTSL until the employee's PTSL is exhausted.
- b. Once the employee has exhausted all accrued paid sick leaves, the employee shall use other accrued paid leaves, such as vacation, personal holiday, etc. available to the employee before going into a sick leave without pay status², unless the employee's department has written policies and/or procedures to the contrary. If the employee's department has written policies and/or

² Refer to Section N of this policy for more details.

procedures regarding attendance and/or eligibility to use other accrued paid leaves for authorized sick leave purposes, the employee shall be subject to those departmental policies/procedures.

- c. **Family Care Act (FCA):** If the employee's absence is authorized per the Washington State FCA, the employee may elect to use any type of paid leave the employee has accumulated, to include WPSL, PTSL, vacation, personal holiday, etc.

G. **Payment for Use of Sick Leave**

1. **WPSL:** Employees using WPSL will be paid their normal hourly rate of compensation, including specialty pay (*e.g.* shift differential) that the employee would have been paid if the employee had worked. WPSL will not be paid at premium or overtime rates of time and one-half (1.5).

When an employee uses WPSL for an authorized purpose, and has not been requested to provide verification, the employee will be paid in the pay period in which the WPSL was used. If the hiring authority requests verification, as permitted in Section I.1 below, the employee will be paid in the pay period in which appropriate verification is provided.

2. **PTSL:** Employees using PTSL will be paid their base hourly wage excluding premium or specialty pays. However, an employee who has served in higher or lower positions on temporary appointments shall be paid for PTSL at the rate of pay appropriate to the classification in which the employee worked most of the time in the previous six-month period.
3. **Part-time Employees:** Regular part-time employees, to include Relief Transit Operators (RTOs), will be paid for each day of sick leave used (combining both WPSL and PTSL used) based on the average number of daily hours worked in the preceding pay period. Such daily average shall neither be less than four (4) hours nor more than eight (8) hours per day. This shall be calculated by dividing the total number of paid hours in the preceding pay period by ten (10).

H. **Required Notification**

1. **Foreseeable Use:** Where the need for paid sick leave is foreseeable, the employee must provide at least ten (10) days of advance written notice, or as soon as the need for leave is known thereafter, to Pierce Transit. The written notice should provide the reason(s) for and date(s) of the anticipated absence.
2. **Unforeseeable Use:** If an absence is unforeseeable, the employee must contact the hiring authority, or designee, at least one (1) hour before the start of the employee's work shift, or as soon as the need for leave becomes known, to report the absence. Such notice is to include the reason for the absence, the expected duration of the absence, and which paid leave type the employee will use for the absence. The employee must also submit a completed form to the hiring authority, or designee, on the first day the employee returns to work from the unforeseeable leave.

If the unforeseeable use of paid sick leave relates to domestic violence, sexual assault or stalking, the employee or a designee must provide notice to Pierce Transit by no later than the end of the first day of leave.

Exceptions of the employee's notice requirement may be considered if the employee was unable to provide notice due to incapacity.

3. **Notification for Absences Beyond Three (3) Work Days:** Employees must keep their hiring authority informed of their status if the absence is for more than three (3) working days in duration.

I. **Verification for Absences**

1. **Verification for Use of WPSL:** Employees who use WPSL for more than three (3) consecutive work days may be required by the hiring authority, or designee, to provide verification confirming that the use of WPSL is for an authorized purpose. If verification is required, the employee will have ten (10) calendar days to provide the required documentation. Such verification need not disclose the nature of the medical condition causing the need for leave. If health information is provided by the employee, it shall be kept confidential.

If an employee experiences an unreasonable burden or expense in obtaining verification, the employee shall advise Pierce Transit's Employee Services Department, and Pierce Transit will evaluate each request, considering the circumstances at issue, and identify a reasonable alternative for the employee.

2. **Verification for Use of PTSL:** Employees who are absent for more than three (3) consecutive work days (where WPSL does not cover the entire absence) may be required by the hiring authority, or designee, to provide verification from the employee's attending physician attesting to the nature and seriousness of the employee's health condition. If the absence is to care for an eligible family member or relative per subsection F.2.h, the statement from the attending physician must attest to the nature and seriousness of the injury or illness suffered by the family member/relative and the need for care or assistance by the employee.
3. **Verification for Use of Paid Sick Leave for Death/Funeral:** For each absence of any duration relating to the death and/or funeral of an eligible family member, an employee may be required by the hiring authority, or designee, to identify the family member, the nature of the relationship, and provide verification (e.g. death certificate, obituary notice, funeral program, etc.).
4. **Home Visits:** When authorized by law, employees must permit home visits or medical examinations at the expense and convenience of the Employer.
5. **Certification Requirements for Other Purposes:** The use of paid sick leave shall not preclude Pierce Transit from requiring an employee to provide documentation to verify that he/she may safely return to work following an absence (*i.e.*, a medical release, a fitness for duty examination, etc.), or to provide documentation/verification if such is permitted by other local, state or federal laws (*i.e.*, medical certification for FMLA leave, etc.).

J. **Sick Leave Cash-Out at Separation of Employment³**

1. An employee who separates from employment due to death, disability separation, or retirement will be paid for 50% of the employee's accrued, unused paid sick leave including WPSL and PTSL.
2. An employee who separates from employment in good standing for any reason other than death, disability separation or retirement will be paid for 20% of the employee's accrued, unused paid sick leave including WPSL and PTSL, up to a maximum of nine hundred and sixty (960) hours.
3. WPSL shall be cashed out at the employee's normal hourly rate.
4. PTSL shall be cashed out at the employee's base hourly rate.
5. When cashing out paid sick leave, all WPSL will be cashed out first, followed by accrued PTSL, to the maximum cash-out hours allowed.

Example: An employee who separates in good standing with forty (40) hours of WPSL and two thousand two hundred (2,200) hours of PTSL will be paid for forty (40) hours of WPSL and four hundred eight (408) hours of PTSL.

6. An employee who separates from employment for any reason during the first six (6) months of employment or prior to completion of his/her new hire probationary period, whichever is later, shall not be compensated for any accrued, unused paid sick leave.
7. An employee who is separated for cause or who separates not in good standing shall not be compensated for any accrued, unused paid sick leave.

K. **Reinstatement of Paid Sick Leave Upon Rehire**

1. **Reinstatement of PTSL When Rehired within Two (2) Years of Layoff:** An employee separated from the Agency due to layoff, if reinstated within a two-year period, may have PTSL restored upon repayment to the Agency of the 20% PTSL cash-out payment received by the employee at the time of separation.
2. **Reinstatement of WPSL When Rehired within 12 Months:** If applicable, an employee who is rehired within twelve (12) months of separation may be restored any portion of WPSL which was not cashed out at the time of the employee's separation as required by law. WPSL hours which were cashed out at the time of the employee's separation will not be restored.

L. **Retaliation for Use of WPSL is Prohibited**

Any discrimination or retaliation against an employee for lawful exercise of WPSL rights is not allowed. Employees will not be disciplined for the lawful use of WPSL. If an employee believes he/she is being discriminated or retaliated against for the use of WPSL, the employee may contact the Executive Director of Administration, or designee, in writing to explain why the employee believes he/she has

³ Each bargaining unit may have a different cash out maximum, and said CBA provisions supersede this policy. Please refer to the appropriate CBA for the bargaining unit employee's cash out cap.

been subject to discrimination or retaliation. Pierce Transit takes all allegations of discrimination and/or retaliation seriously, will review and investigate the complaint and provide a response to the complainant. If the employee is not satisfied with Pierce Transit's response, the employee may contact the Washington State Department of Labor & Industries.

M. **Sick Leave Without Pay**

1. Exempt or non-exempt employees who are absent due to an authorized use of paid sick leave and who have insufficient accrued paid sick leave to cover the entire period of absence will use all other accrued paid leaves (*i.e.*, vacation, personal holidays, etc.) before entering a leave without pay status. However, if the employee's department has written policies and/or procedures restricting the use of other paid leaves for authorized sick leave purposes, then those departmental policies/procedures shall supersede this provision.
2. Unless a sick leave without pay absence was pre-approved by Pierce Transit, it is an unexcused absence.
3. Regular employees who have exhausted all accrued leave may be granted a medical leave of absence without pay by Pierce Transit for the period of disability due to illness or injury. The duration of such unpaid leave of absence is subject to the limitations of Pierce Transit's operating needs and any applicable laws, and approved at the sole discretion of Pierce Transit.

Once the medical leave of absence without pay is approved, periodically, the Executive Director of Administration, or designee, may require the employee to submit a certificate from the attending health care provider or from a designated health care professional verifying the need for continued leave. In the event of a failure or refusal to supply such certificate, or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of essential duties, Pierce Transit may cancel such leave of absence and require the employee to report for duty on a specified date. If the employee fails to report for duty as required, the employee may be subject to employment separation.

N. **Enforcement**

1. Misuse of sick leave or misrepresentation of any material facts in connection with paid (WPSL or PTSL) or unpaid sick leave by any employee shall constitute grounds for disciplinary action, up to and including suspension or discharge.
2. Pay for sick leave use shall be withheld in the event of unauthorized use.
3. It shall be the responsibility of the hiring authority, or designee, to:
 - a. Review all requests for paid sick leave and approve those which are bona fide and comply with the provisions of this policy.
 - b. Investigate any suspected abuse of paid sick leave.
 - c. Withhold approval of sick leave pay in the event of unauthorized use.

- d. Initiate disciplinary action if the results of an investigation find willful misrepresentation in an employee's request for or use of any paid sick leave, including WPSL and PTSL.

O. **Collective Bargaining Agreements**

Employees covered by a collective bargaining agreement (CBA) will be subject to the specific terms of the CBA with respect to sick leave, and should refer to their CBA. In the event the applicable CBA does not contain sick leave provisions, then employees covered by the same shall be governed by this policy. Wherever provisions of this policy are in conflict with the employees' CBA, the provisions of the CBA shall control.

TITLE: A Resolution Amending the 2018 Capital Budget to Include Funding for the Pacific Avenue/SR7 Park and Ride and Authorizing the Chief Executive Officer to Enter Into and Execute an Agreement with the Washington State Department of Transportation to Receive Regional Mobility Grant Funds for the Pacific Avenue /SR7 Park and Ride

DIVISION: Planning & Community Development

SUBMITTED BY: Tina Lee, Community Development Manager

RELATED ACTION: N/A

ATTACHMENTS: Proposed Resolution
Exhibit A, Agreement with WSDOT

RELATION TO STRATEGIC PLAN: Customer

BUDGET INFORMATION

Is it Budgeted? ☐ Yes / ☒ No

Project Name or Number: N/A

☐ Operating Budget

☒ Capital Budget

FUNDING SOURCE:		EXPLANATION:
Local Amount	\$ 1,000,000	The 2018-2023 Six-Year Capital Plan includes the Pacific Ave SR7 Parking Structure and Bus Turnaround Facility proposed to begin in 2019.
Grant/Other Amounts	\$ 4,000,000	
Total Expenditure	\$ 5,000,000	

BACKGROUND:

Pierce Transit has been notified by the Washington State Department of Transportation of a \$4 million Regional Mobility Grant award for the Pacific Avenue/SR7 Park and Ride project. The funds are for construction of a park and ride that has both independent utility and can be utilized for the southern terminus of the future Pacific Avenue Bus Rapid Transit Corridor project.

The facility will include passenger boarding area, a bus turnaround, operator comfort station and up to 250 parking stalls for transit patrons. The project will replace the current Route 1 zone adjacent to the Walmart at SR7 and 204th Street E. That facility is a pullout located on the shoulder of SR7. The pullout is currently functioning beyond capacity as multiple Route 1 buses and SHUTTLE paratransit vehicles vie for limited passenger loading and unloading space. Current amenities are limited to one shelter and a small bench shared by over 300 passengers per weekday, but no parking. With construction of a new park and ride, the current on-street turnaround would be eliminated and operational efficiencies are expected to improve immediately.

The current six-year capital plan includes funding for a park and ride facility. This proposed capital budget amendment would accept \$4 million of the grant revenue and add \$1 million of local funding for project expense into the 2018 capital budget, so that Pierce Transit can start the project and meet the terms of the grant.

STAFF RECOMMENDATION:

Pierce Transit submitted the grant request in 2016, and this project was placed on a contingency list in case funds became available from the program. Staff recommends accepting the \$4 million grant and funding the \$1 million local match requirement. The Pacific Avenue/SR7 Park and Ride is an independent utility project that is needed to support existing services and can also be utilized by the future Pacific Avenue Bus Rapid Transit Corridor.

ALTERNATIVES:

Alternatives include not accepting the Regional Mobility Grant funds and (1) instead utilize local funds for construction of a future facility or (2) compete for other potential grant funds to construct this needed facility.

PROPOSED MOTION:

Approve Resolution No. 2018-040, authorizing amendments to the 2018 Capital Budget to include funding for the Pacific Avenue/SR7 Park and Ride and authorizing the Chief Executive Officer to enter into and execute an agreement with the Washington State Department of Transportation as presented in Exhibit A to receive Regional Mobility Grant Funds for the Pacific Avenue /SR7 Park and Ride.

RESOLUTION NO. 2018-040

1 A RESOLUTION of the Board of Commissioners of Pierce Transit Amending the 2018 Capital Budget to Include
2 Funding for the Pacific Avenue/SR7 Park and Ride and Authorizing the Chief Executive Officer to Enter Into and
3 Execute an Agreement with the Washington State Department of Transportation to Receive Regional Mobility
4 Grant Funds for the Pacific Avenue/SR7 Park and Ride

5
6 WHEREAS, the current Route 1 zone located near Pacific Avenue/SR7 and 204th Street E is over capacity
7 with multiple Route 1 buses and SHUTTLE paratransit vehicles vying for limited passenger loading and
8 unloading space; and

9 WHEREAS, current amenities at the existing bus stop are limited to one shelter and a small bench shared
10 by over 300 passengers per weekday and there is no designated parking for riders; and

11 WHEREAS, this location is the southern terminus of the current Route 1 and proposed future Pacific
12 Avenue Bus Rapid Transit corridor project; and

13 WHEREAS, Pierce Transit has been selected to receive \$4 million Regional Mobility Grant funds from
14 the Washington State Department of Transportation (WSDOT) for construction of the Pacific Avenue/SR7 Park
15 and Ride; and

16 WHEREAS, the local match requirement for the grant is \$1 million and these funds are available from
17 Pierce Transit's reserves; and

18 WHEREAS, Pierce Transit's 2018-2023 Six-Year Capital Plan includes the Pacific Avenue/SR7 Parking
19 Structure and Bus Turnaround Facility project programmed for project initiation in 2019; and

20 WHEREAS, the proposed park and ride has independent utility and will include a passenger boarding
21 zone with improved amenities, a bus turnaround around area, operator comfort station, and up to 250 parking
22 stalls; and

23 WHEREAS, with completion of the proposed park and ride, operational efficiencies are expected to
24 improve immediately as the current on-street turnaround used to end the route will be eliminated.

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

26 Section 1. The Board of Commissioners authorizes amendment of the 2018 capital budget to include
27 funding for the Pacific Avenue/SR7 Park and Ride in the amount of \$5,000,000;

Section 2. The Board of Commissioners authorizes the Chief Executive Officer to enter into and execute an agreement with WSDOT for the Pacific Avenue/SR7 Park and Ride in the amount of \$5,000,000.

ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the 8th day of October 2018.

PIERCE TRANSIT

Nancy Henderson, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

Capital Construction Grant Agreement	
Program Type:	<input type="checkbox"/> Consolidated Grant <input type="checkbox"/> Transit Projects (TIER) <input checked="" type="checkbox"/> Regional Mobility Grant <input type="checkbox"/> Transit Coordination
Funding Sources:	<input checked="" type="checkbox"/> State Funds <input type="checkbox"/> Federal Funds <input type="checkbox"/> State/Federal Funds
Washington State Department of Transportation Public Transportation Division 310 Maple Park Avenue SE PO Box 47387 Olympia, WA 98504-7387 WSDOT Contact: Jeff Pettersen (360) 705-7917 PetterJ@wsdot.wa.gov	Contractor: Pierce Transit PO Box 99070 Lakewood, WA 98496-0070 Contact Person: Barb Hunter (253) 984-8200 bhunter@piercettransit.org
Term of Project: November 1, 2018 through June 30, 2021	Federal ID #: 91-1103747
Scope of Project: Scope of Project as set forth in Exhibit I, Scope of Work and Budget.	Project Title: Project Title as set forth in Exhibit I, Scope of Work and Budget.
Service Area: As defined in attached Exhibit I	Project Costs:
PIN #: 20170029	Federal Funds \$ 0
DUNS: 017850363	State Funds \$ 4,000,000
Agreement Number: GCB3004	Contractor Funds \$ 1,000,000
	Total Project Cost \$ 5,000,000

THIS AGREEMENT, entered into by the Washington State Department of Transportation, hereinafter "WSDOT," and the contractor identified above, hereinafter the "CONTRACTOR," individually the "PARTY" and collectively the "PARTIES," WITNESSETH THAT:

WHEREAS, pursuant to chapter 44.48 RCW the Legislative Evaluation and Accountability Program (LEAP) Committee provides analysis and monitoring of state expenditures, budgets and related fiscal matters and consults with Legislative committees;

WHEREAS, the State of Washington in its Sessions Laws of 2017 Chapter 313 Section 220 (1), (2), (4), (5) (8) and (9) provides Rural Mobility, Paratransit/Special Needs, Regional Mobility, Transit Coordination, Transit Projects and other special proviso funding through the multimodal transportation account, rural mobility grant program account, and regional mobility program account, as identified in the budget through its 2017-2019 biennial appropriations to WSDOT;

WHEREAS, WSDOT Public Transportation Division administers Regional Mobility Grant Program funds to provide assistance solely for transportation projects as identified in LEAP Transportation Document 2017-2 ALL PROJECTS as developed on April 20, 2017, Program- Public Transportation Program (V);

NOW, THEREFORE, in consideration of the terms, conditions, performances, and mutual covenants herein set forth and the attached Exhibit I, "Project Scope, Schedule and Budget," IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1 **Purpose of Agreement**

A. The purpose of this AGREEMENT is for WSDOT to provide capital funding to the CONTRACTOR for the design, acquisition, construction and/or improvements of capital facilities and infrastructure to be used in the provision of transportation services to persons in the State of Washington, hereinafter referred to as the "Project." Reference to the "Project" shall include all such capital facilities, infrastructure and/or associated equipment (**Project Equipment**) designed, acquired, constructed, improved or installed under this AGREEMENT.

B. On projects where WSDOT is providing only state funds and the contractor is using funds received directly from the federal government as their share or part thereof on the project, the contractor must assume full responsibility for complying with all federal rules and regulations. If the contractor is found in non-compliance with federal rules and

regulations, the contractor shall provide a written notification to WSDOT supplying details related to the non-compliance. Both PARTIES will analyze and determine the impact on the scope, schedule, and funding of the project. Remedies required up to and including return of funds will be identified to ensure the project's scope of work is met as intended.

Section 2

Scope of Project

The CONTRACTOR agrees to perform the work and complete the Project as described and detailed in Exhibit I, "Scope of Project, Schedule and Budget," which is by this reference fully incorporated herein as if fully set out in this AGREEMENT, and to perform the Project within the area described in the caption space header titled "Service Area" in accordance with the terms and conditions of this AGREEMENT. The caption space header titled "Service Area" and all caption space headers are by this reference incorporated herein as if fully set out in this AGREEMENT.

Section 3

General Compliance Assurance

If the Consolidated Grant check box is marked in the caption space header titled, "Program Type", the CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>, which by this reference is incorporated herein as if fully set forth in this AGREEMENT.

If the Regional Mobility Grant, Transit Project (TIER) or Transit Coordination check box is marked in the caption space header titled, "Program Type", the CONTRACTOR agrees to comply with all instructions as prescribed in the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/regional-mobility-grants-program-guidebook.htm>, which by this reference is incorporated herein as if fully set forth in this AGREEMENT. The CONTRACTOR agrees that WSDOT, and/or any authorized WSDOT representative, shall have not only the right to monitor the compliance of the CONTRACTOR with respect to the provisions of this AGREEMENT but also have the right to seek judicial enforcement with regard to any matter arising under this AGREEMENT.

Section 4

Term of Project

The Project period of this AGREEMENT shall commence and terminate on the dates shown in the caption space header titled "Term of Project" regardless of the date of execution of this AGREEMENT, unless terminated as provided herein. The caption space header titled "Term of Project" and all caption space headers above are by this reference incorporated herein into the AGREEMENT as if fully set forth in the AGREEMENT.

Section 5

State Review of Project

WSDOT shall review the project identified in this AGREEMENT as Exhibit I, "Project Scope, Schedule and Budget", at least semiannually to determine whether the Project is making satisfactory progress. If WSDOT has awarded funds, but the CONTRACTOR does not report satisfactory activity within one (1) year of the initial grant award, WSDOT shall review the Project to determine whether the grant should be terminated as provided in Section 33, Termination.

Section 6

Project Costs and Minimum Contractor's Match Requirement

A. The reimbursable costs of the Project shall not exceed the amounts detailed in the caption space header titled "Project Costs." The CONTRACTOR agrees to expend eligible funds, together with other funds allocated for the Project, in an amount sufficient to complete the Project as detailed in Exhibit I, "Project Scope, Schedule and Budget". If at any time the CONTRACTOR becomes aware that the cost which it expects to incur in the performance of this AGREEMENT will exceed or be less than the amount identified as "Total Project Cost" in the caption space header titled "Project Costs," the CONTRACTOR shall notify WSDOT in writing within thirty (30) calendar days of making that determination.

B. The CONTRACTOR is required to provide a minimum match of funds for the Project as identified in the caption space header titled "Project Costs" in the amount indicated as "Contractor Funds." Any reduction in match will result in a proportional reduction in grant funds.

Section 7

Inspection of the Project

The CONTRACTOR shall inspect Project Equipment purchased pursuant to this AGREEMENT at the time of delivery to the CONTRACTOR. The CONTRACTOR has 15 calendar days from delivery to either accept or reject the Project Equipment. If rejected, the CONTRACTOR shall provide a written notice specifying the Project Equipment deficiencies to its vendor and WSDOT, allowing the vendor a reasonable amount of time to cure the deficiencies or defect. Upon receipt and acceptance of Project Equipment, the CONTRACTOR agrees that it has fully inspected the Project Equipment and accepts it as suitable for the purpose under this AGREEMENT, as being in good condition and state of

good repair, and that the CONTRACTOR is satisfied with the Project Equipment and that the Project Equipment complies with all regulations, rules, and laws. Payment to the vendor must occur within thirty days of the Project Equipment acceptance.

Section 8

Use of Park and Ride Facilities

In order to be eligible to receive a Regional Mobility grant, a transit agency must establish a process for private transportation providers to apply for the use of park and ride facilities.

Section 9

Miscellaneous Charges and Conditions

The CONTRACTOR shall pay and be solely responsible for all storage charges, parking charges, late fees, and fines, as well as any fees and taxes, except applicable state sales or use tax, which may be imposed with respect to the Project by a duly constituted governmental authority as the result of the CONTRACTOR's use or intended use of the Project. All replacements, repairs, or substitutions of parts or Project Equipment shall be at the cost and expense of the CONTRACTOR.

Section 10

Payment

A. State and/or federal funds shall be used to reimburse the CONTRACTOR for allowable expenses incurred in completing the Project as described in Exhibit I, "Scope of Work and Budget." Allowable Project expenses shall be determined by WSDOT as described in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/regional-mobility-grants-program-guidebook.htm>, whichever is applicable. In no event shall the total amount reimbursed by WSDOT exceed "State Funds" and/or "Federal Funds" identified in the caption space header titled "Project Costs," above.

B. Payment will be made by WSDOT on a reimbursable basis for actual net Project costs incurred within the timeframe in the caption space titled "Term of Project." Such costs to be reimbursed shall be calculated as described in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable. WSDOT shall make no payments for costs incurred prior to the beginning or after the end date of the "Term of the Project" as set forth in the caption space header above. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once a month and no less than once per quarter. If approved by WSDOT, said invoices shall be paid by WSDOT within thirty (30) days of submission to WSDOT. Payment is subject to the submission to and approval by WSDOT of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to WSDOT must include a record of the actual costs.

C. The CONTRACTOR shall submit an invoice for completed work in the same state fiscal period, as defined in RCW 43.88, starting on July 1 and ending on June 30 the following year within the timeframe set forth in the caption space header of this AGREEMENT entitled "Term of Project" during which the work was performed. Reimbursement requests must be received by July 15 of each state fiscal period. If the CONTRACTOR is unable to provide an invoice by this date, the CONTRACTOR shall provide an estimate of the charges to be billed so WSDOT may accrue the expenditures in the proper fiscal period. Any subsequent reimbursement request submitted will be limited to the amount accrued as set forth in this section. Any payment request received after the timeframe prescribed above will not be eligible for reimbursement.

Section 11

Assignments, Subcontracts, and Leases

A. Unless otherwise authorized in advance in writing by WSDOT, the CONTRACTOR shall not assign any completed Project facilities and/or infrastructure under this AGREEMENT, or execute any contract, amendment, or change order thereto pertaining to the Project or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT or lease or lend the Project or any part thereof to be used by anyone not under the CONTRACTOR's direct supervision.

B. The CONTRACTOR agrees to include Section 3, Sections 11 through 25 and Section 29, Section 32 and Section 33 of this AGREEMENT in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT. The PARTIES further agree that those clauses shall not be modified, except to identify the subcontractor or other person or

entity that will be subject to its provisions. In addition, the following provision shall be included in an advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

Statement of Financial Assistance:

“This AGREEMENT is subject to the appropriations of the State of Washington.”

Section 12

Reports and Project Use

A. The CONTRACTOR agrees that the Project shall be used for the provision of transportation services within the area indicated in Exhibit I, Project Scope, Schedule and Budget for the term of the Project’s plus four years after the project is complete, as set forth in WSDOT’s *Consolidated Grants Program Guidebook*, and any amendments thereto, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable. The CONTRACTOR further agrees that it will not use or permit the use of the Project in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project to become subject to any lien, charge, or encumbrance. Should the CONTRACTOR unreasonably delay or fail to use the Project during the project term and reporting period, the CONTRACTOR agrees that it may be required to refund up to the entire amount of the “State and/or Federal Funds” expended on the Project. The CONTRACTOR shall immediately notify WSDOT when any Project facilities and/or infrastructure is withdrawn from Project use or when the Project or any part thereof is used in a manner substantially different from that identified in Exhibit I, “Project Scope, Schedule and Budget”. If the Project is permanently removed from transportation services, the CONTRACTOR agrees to immediately notify WSDOT of its intentions regarding the disposal of the Project or any part of the Project thereof.

B. **Reports.** The CONTRACTOR shall submit quarterly reports to WSDOT for the Term of Project, regarding the progress of the Project. If this is a Regional Mobility or Transit project (TIER), annual performance reports for four calendar years after the project is operationally complete, as prescribed in WSDOT’s *Consolidated Grants Program Guidebook*, and any amendments thereto, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable, or as WSDOT may require, including, but not limited to, interim and annual reports. The CONTRACTOR shall keep satisfactory written records with regard to the use of Project and shall submit the following reports to, and in a form and at such times prescribed by WSDOT as set forth in WSDOT’s Washington State Guide to Managing Your Public Transportation Grant, and/or WSDOT’s *Regional Mobility Grants Program Guidebook*, and any subsequent amendments thereto:

1. A draft Performance Measurement Plan (PMP) must be submitted to WSDOT before submitting the first reimbursement request. If the contractor does not submit a PMP and is nonresponsive to requests from WSDOT for improvements and information, the contractor may be deemed out of compliance.

2. An Annual Performance Report that includes a summary of overall project performance and supporting data.

3. Reports describing the current usage of the Project and other data which WSDOT may request from the CONTRACTOR by memos, e-mails or telephone requests.

4. In the event any portion of the Project sustains disabling damage, the CONTRACTOR shall notify WSDOT immediately after the occasion of the damage, including the circumstances thereof.

5. The CONTRACTOR shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT

C. **Remedies for Misuse or Noncompliance.** The CONTRACTOR shall not use the Project or any part thereof in a manner different from that described in Exhibit I, Project Scope, Schedule and Budget, as set forth in Section 2 of the AGREEMENT. If WSDOT determines that the Project has been used in a manner different from Exhibit I, Project Scope, Schedule and Budget, WSDOT may direct the CONTRACTOR to repay WSDOT the State funded share of the “Project Costs.” WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT.

Section 13

Maintenance of the Project

The CONTRACTOR shall make all necessary repairs and reasonably maintain the Project to assure it remains in good and operational condition until the end of its useful life. The useful life of the constructed project is determined based on the Architectural/Engineering requirements for each type of structure, materials used, industry standards, and other federal and/or state standards and specifications. For Regional Mobility Projects, the useful life of a project is indicated in the “Financial Plan Table” of the original Regional Mobility Grant Application. All service, materials, and repairs in connection with the use and operation of the Project during its useful life shall be at the CONTRACTOR’s expense. CONTRACTORS who are transit agencies must also have a Transit Asset Management Plan certified by WSDOT that details the transit agency’s plan to maintain the Project. All other CONTRACTORS must submit a written Maintenance

Plan to WSDOT for approval prior to the occupation and/or operations of the Project. The CONTRACTOR agrees, at a minimum, to maintain the Project and service or replace parts at intervals recommended in the manuals and/or instructions provided by the subcontractors and/or component manufacturers, or sooner if needed. The CONTRACTOR shall have the Project routinely inspect and make arrangements for any appropriate service and repair under the manufacturer's warranty. WSDOT shall not be liable for repairs. The CONTRACTOR shall retain records of all maintenance and parts replacement performed on the Project in accordance with Section 21, Audits, Inspection, and Retention of Records. The CONTRACTOR shall provide copies of such records to WSDOT, upon request.

Section 14

Compliance with State Design Standards

The CONTRACTOR agrees the Project design must comply with all Washington State Standard Specifications for Road, Bridge, and Municipal Construction (www.wsdot.wa.gov/Publications/Manuals/M41-10.htm), and any revisions thereto. Projects that wish to use design standards that differ from state standards must submit a request to WSDOT's Public Transportation Division and obtain documented approval before design work commences.

Section 15

No Obligation by the State Government

No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability of WSDOT with regard to this AGREEMENT without WSDOT's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof and the CONTRACTOR hereby agrees to include this provision in all contracts it enters into for the design, acquisition, and construction of facilities and/or infrastructure related to the Project, or the performance of any work to be accomplished under this AGREEMENT.

Section 16

Ethics

A. **Relationships with Employees and Officers of WSDOT.** The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the CONTRACTOR rent or purchase any Project equipment and materials from any employee or officer of WSDOT.

B. **Employment of Former WSDOT Employees.** The CONTRACTOR hereby warrants that it shall not engage on a full, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.

Section 17

Compliance with Laws and Regulations

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in Chapter 49.60 RCW. Except when a federal statute or regulation pre-empts state or, local law, no provision of this AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. Thus if any provision or compliance with any provision of this AGREEMENT violates state, or local law, or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the Project.

Section 18

Labor Provisions

Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the Project work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. CONTRACTOR will comply with Title 49 RCW, Labor Regulations.

Section 19

Environmental Requirements and Archeological Preservation

The CONTRACTOR agrees to comply with all applicable requirements of chapter 43.21C RCW "State Environmental Policy Act" (SEPA). The CONTRACTOR also agrees to comply with all applicable requirements of Executive Order 05-05, Archeological and Cultural Resources, for all capital construction projects or land acquisitions for the purpose of a

capital construction project, not undergoing Section 106 review under the National Historic Preservation Act of 1966 (Section 106).

Section 20

Accounting Records

A. **Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible and available to WSDOT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.

B. **Documentation of Project Costs and Program Income.** The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project.

Section 21

Audits, Inspection, and Retention of Records

A. **Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the term of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six (6) year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

B. **General Audit Requirements.** The CONTRACTOR agrees to obtain any other audits required by WSDOT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. **Inspection.** The CONTRACTOR agrees to permit WSDOT, and the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its contractors pertaining to the Project. The CONTRACTOR agrees to require each third party contractor to permit WSDOT, the State Auditor, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project.

Section 22

Permitting

The CONTRACTOR agrees to be solely responsible for all required Federal, State and/or local permitting as related to the Project.

Section 23

Loss or Damage to the Project

A. The CONTRACTOR, at its own expense, shall cover any loss, theft, damage, or destruction of the Project's facilities, associated equipment and/or infrastructure using either of the following methods:

1. The CONTRACTOR shall maintain property insurance for facilities, associated equipment and/or infrastructure adequate to cover the value of the Project; the CONTRACTOR shall supply a copy of the Certificate of Insurance specifying such coverage to WSDOT with the first request for reimbursement, and supply proof of renewal annually thereafter; or

2. The CONTRACTOR shall certify that it has self-insurance and provide a written certificate of self-insurance to WSDOT with the first request for reimbursement, and annually thereafter. The CONTRACTOR will cover from its own resources the costs of repairing or replacing any Project facilities, associated equipment and/or infrastructure, if it is stolen, damaged, or destroyed in any manner.

B. If the damage to the Project does not result in a total loss, payments for damage shall be paid directly to the CONTRACTOR. The CONTRACTOR shall, within thirty (30) days, either:

1. Devote all of the insurance proceeds received to repair the Project and place it back in service, and the CONTRACTOR shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or

2. In the event the CONTRACTOR certified to self- insurance, devote all funds necessary to repair the Project and place it back into service.

C. If the Project is a total loss, either by theft or damage, the insurance proceeds or equivalent shall be paid directly to the CONTRACTOR and within fifteen (15) days the CONTRACTOR shall pay WSDOT its proportionate funded share

of such proceeds received. The CONTRACTOR shall within sixty (60) days of loss, theft, or damage, notify WSDOT that it either:

1. Intends to replace the lost Project facilities, associated equipment and/or infrastructure; or
2. Does not intend to replace the lost Project facilities, associated equipment and/or infrastructure.

D. If the CONTRACTOR intends to replace the Project facilities, associated equipment and/or infrastructure then WSDOT will reimburse the CONTRACTOR upon receipt of an approved invoice, funds up to the amount WSDOT received in insurance proceeds.

E. Coverage, if obtained or provided by the CONTRACTOR in compliance with this section, shall not be deemed as having relieved the CONTRACTOR of any liability in excess of such coverage as required by the limitation of liability section of this AGREEMENT, or otherwise.

Section 24

Liens on the Project

WSDOT shall be listed as the legal owner on titles and hold titles for all vehicles the CONTRACTOR acquires using federal funds through WSDOT's grant program. WSDOT will have legal ownership to any non-vehicle Project Equipment the CONTRACTOR acquires or modifies using the "Federal and/or State Funds" identified in the caption space of this AGREEMENT titled "Project Costs". When the Contractor acquires vehicles using state funds provided through WSDOT's grant program, WSDOT may within its discretion, allow the CONTRACTOR to be listed as the legal owner and hold title. In all cases, WSDOT will maintain a copy of titles for all funded vehicles under this agreement and oversight responsibility on those vehicles through their minimum useful life.

The CONTRACTOR accepts WSDOT's legal title to the Project and any portion thereof during its useful life as set forth in this Section and agrees that it shall not use the Project or any portion thereof as collateral, nor shall the CONTRACTOR encumber the Project in any way. The CONTRACTOR shall follow the terms stated in Section 11A regarding use and disposal of the Project and/or any portion thereof. WSDOT's lien shall equal the proportional Federal and/or State funded share, as identified in this AGREEMENT, of the disposable value of the Project and any portion thereof. Satisfaction of WSDOT's lien may be satisfied only by proper disposal of the Project and any portion thereof in a manner determined by WSDOT.

Section 25

Limitation of Liability

A. The CONTRACTOR shall indemnify and hold WSDOT, its agents, employees, and officers harmless from and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT arising out of, in connection with or incident to this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against WSDOT, its agents, employees and officers arising out of, in connection with or incident to the negligent acts or omissions of the CONTRACTOR, its agents, employees, officers and subcontractors. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify and hold harmless or defend the WSDOT, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the WSDOT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the CONTRACTOR its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. The indemnification and hold harmless provision shall survive termination of this AGREEMENT.

B. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be employees of WSDOT.

C. The CONTRACTOR specifically assumes potential liability for actions brought by CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

D. In the event either the CONTRACTOR or WSDOT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

Section 26

Personal Liability of Public Officers

No officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters he or she is acting solely as an agent of WSDOT.

Section 27
WSDOT Advice

The CONTRACTOR bears complete responsibility for the administration and success of the Project as it is defined by this AGREEMENT and any amendments thereto. If the CONTRACTOR solicits advice from WSDOT on problems that may arise, the offering of WSDOT advice shall not shift the responsibility of the CONTRACTOR for the correct administration and success of the Project, and WSDOT shall not be held liable for offering advice to the CONTRACTOR.

Section 28
Forbearance by WSDOT Not a Waiver

Any forbearance by WSDOT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

Section 29
Lack of Waiver

In no event shall any WSDOT payment of funds to the CONTRACTOR constitute or be construed as a waiver by WSDOT of any CONTRACTOR breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default

Section 30
Changed Conditions Affecting Performance

The CONTRACTOR hereby agrees to immediately notify WSDOT of any change in conditions or law, or of any other event, which may affect its ability to perform the Project in accordance with the provisions of this AGREEMENT.

Section 31
Agreement Modifications

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such written amendment to this AGREEMENT shall not be binding or valid unless signed by the persons authorized to bind each of the PARTIES. Provided, however, that changes to the federal award identification number, DUNS, project title, federal ID number, CFDA number, milestones, UPIN the contact person of either PARTY, or dollar amount changes that do not affect the project total cost, will not require a written amendment, but will be approved and documented by WSDOT through an administrative revision. WSDOT shall notify the CONTRACTOR of the revision in writing.

Section 32
Disputes

A. **Disputes.** Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the WSDOT Public Transportation Division's Assistant Director or designee. This decision shall be final and conclusive unless within ten (10) days from the date of CONTRACTOR'S receipt of WSDOT's written decision, the CONTRACTOR mails or otherwise furnishes a written appeal to the Director of the Public Transportation Division or the Director's designee. The CONTRACTOR's appeal shall be decided in writing by the Director of the Public Transportation Division within thirty (30) days of receipt of the appeal by the Director of the Public Transportation Division or the Director's designee. The decision shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

B. **Performance During Dispute.** Unless otherwise directed by WSDOT, CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.

C. **Claims for Damages.** Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.

D. **Rights and Remedies.** All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by the WSDOT or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Section 33
Termination

A. **Termination for Convenience.** WSDOT and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the other PARTY. WSDOT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not

limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However, if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

1. The requisite funding becomes unavailable through failure of appropriation or otherwise;
2. WSDOT determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds;
3. The CONTRACTOR is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
4. The CONTRACTOR is prevented from proceeding with the Project by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
5. The State Government or WSDOT determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of financial assistance for the Project.
6. In the case of termination for convenience under subsections A.1-5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to WSDOT. If the CONTRACTOR has any property in its possession belonging to WSDOT, the CONTRACTOR will account for the same, and dispose of it in the manner WSDOT directs.

B. Termination for Default. WSDOT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the CONTRACTOR, if the CONTRACTOR materially breaches or fails to perform any of the requirements of this AGREEMENT, including:

1. Take any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT;
2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
3. Failure to perform the Project or any part thereof including, but not limited to:
 - a) Failure to build the Project according to the design specifications and all building code required standards;
 - b) Failure to remedy all defects in the performance of the Project and correct all faulty workmanship by the CONTRACTOR or its subcontractors in a timely manner;
 - c) Failure to take any action which could affect the ability of the Project to perform its designated function or takes any action which could shorten its useful life for Project use or otherwise; or
 - d) Failure to make reasonable and appropriate use of the Project real property, facilities, equipment and/or infrastructure.
4. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; or
5. Fails to perform in the manner called for in this AGREEMENT, or fails, to comply with or, is in violation of, any provision of this AGREEMENT. WSDOT shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default hereunder. If it is later determined by WSDOT that the CONTRACTOR had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the CONTRACTOR, such as a strike, fire or flood, WSDOT may: a) allow the CONTRACTOR to continue work after setting up a new delivery of performance schedule, or b) treat the termination as a termination for convenience.

C. WSDOT, in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days, or such longer period as determined by WSDOT, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the CONTRACTOR

fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

D. In the event that WSDOT elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by WSDOT shall not limit WSDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

Section 34

Venue and Process

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Thurston County. The PARTIES agree that the laws of the State of Washington shall apply.

Section 35

Changed Conditions Affecting Performance

The CONTRACTOR hereby agrees to immediately notify WSDOT in writing of any change in conditions or law, or of any other event, including any current or prospective dispute, which may adversely affect WSDOT's interest in the Project or affect CONTRACTOR's ability to perform the Project in accordance with the provisions of this AGREEMENT.

Section 36

Subrogation

A. **Prior to Subrogation.** WSDOT may require the CONTRACTOR to take such action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to the Project or other property in which WSDOT has a financial interest.

B. **Subrogation.** WSDOT may require the CONTRACTOR to assign to WSDOT all right of recovery against any person or organization for loss, to the extent of WSDOT's loss. Upon assignment, the CONTRACTOR shall execute, deliver, and do whatever else necessary to secure WSDOT's rights. The CONTRACTOR shall do nothing after any loss to prejudice the rights of WSDOT.

C. **Duties of the Contractor.** If WSDOT has exercised its right of subrogation, the CONTRACTOR shall cooperate with WSDOT and, upon WSDOT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to WSDOT due to damage to the Project. The CONTRACTOR shall attend hearings and trials as requested by WSDOT, assist in securing and giving evidence as requested by WSDOT, and obtain the attendance of witnesses as requested by WSDOT.

Section 37

Severability

If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

Section 38

Counterparts

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONTRACTOR does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements and their supporting materials contained and/or mentioned herein, and does hereby accept WSDOT's grant and agrees to all of the terms and conditions thereof.

Section 39

Complete Agreement

This document contains all covenants, stipulations, and provisions agreed upon by WSDOT. No agent or representative of WSDOT has authority to make, and WSDOT shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

Section 40

Order of Precedence

Any conflict or inconsistency in this AGREEMENT and its attachments will be resolved by giving documents precedence in the following order:

1. Federal Law
2. Exhibit II, Federal Provisions, if applicable
3. This AGREEMENT
4. Exhibit I

Section 41

Agreement Close Out

The CONTRACTOR shall notify WSDOT if the AGREEMENT is completed prior to the end date set forth in the caption header, "Term of Project" by written notification and in its capital Quarterly Progress Report, as referenced in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable, for the quarter, in which the project is completed. WSDOT will prepare an amendment to modify the AGREEMENT to reflect the actual amount spent and the project completion date. WSDOT will send a close out letter to the CONTRACTOR.

Section 42

Execution

This AGREEMENT is executed by the Director, Public Transportation Division, State of Washington, Department of Transportation or the Director's designee, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of the State of Washington, Department of Transportation, in the capacity as Director, Public Transportation Division, or as a designee.

Section 43

Binding Agreement

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(ies) and/or entity(ies) to the obligations set forth herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year last written below.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

CONTRACTOR

Brian Lagerberg, Director
Public Transportation Division

Authorized Representative

Title

Print Name

Date

Date

Exhibit I
SCOPE OF WORK AND BUDGET

Funding by Project

Project: Pacific Avenue S/SR 7 Park-and-Ride/Bus
UPIN: 20170029

Scope of Work: Construct a new park-and-ride lot including a bus staging and turnaround facility as an anchor for higher capacity services in the future (e.g., Bus Rapid Transit), along Pacific Avenue/SR 7 at a location in Spanaway to be determined.

Fund Source	Total
2017-19 State Funds*	\$125,000
2019-21 State Funds**	\$3,875,000
Total State Funds	\$4,000,000
Contractor's Funds	\$1,000,000
Total	\$5,000,000

Budget: *The 2017-19 State Funds reflect total funding appropriated by the Washington State Legislature for this Project in the current biennium. **The 2019-21 State Funds are subject to appropriation by the Washington State Legislature. If these funds are not appropriated for the Project by the Legislature, the provisions of Section 33.A, Termination for Convenience, shall apply and WSDOT will not be financially responsible for any funding assistance or costs incurred by CONTRACTOR for the Project beyond the funds appropriated in the current biennium.

Project Milestone

Phases	Date
Preliminary Engineering Start Date	11/2018
Right of Way Certification (if applicable)	12/2019
Construction Contract Award Date	01/2020
Construction Operationally Complete	11/2020

Note: The Project Milestone table is for planning purposes. While the total funding and match (contractor's funds) must be maintained, funding may be moved to different phases as mutually agreed upon by both PARTIES.