

**Interlocal Agreement for Service between the
Metropolitan Park District of Tacoma and
Pierce County Public Transportation Benefit Area Corporation**

This interlocal agreement (“Agreement”) is by and between Pierce County Public Transportation Benefit Area Corporation (“Pierce Transit”) and the Metropolitan Park District of Tacoma (“Metro Parks”), a municipal corporation, who are sometimes referred to hereinafter individually as “Party” or collectively as the “Parties.” The Parties are authorized to reach this Agreement pursuant to the Interlocal Cooperation Act, RCW 39.34.

RECITALS

Whereas, Pierce Transit and Metro Parks have identified a need and seek to enter into an agreement for Pierce Transit to provide a one day special transportation service in Point Defiance Park on May 18, 2014 (“the Service” or “Service”); and

Whereas, the Service will be a tailored transit solution that will play a significant role in the centennial celebration of the Point Defiance Pagoda (the “Event”) honoring the historic structure’s roots as a streetcar station, by providing use of two trolleys or buses wrapped as trolleys (“Trolleys”) to transport people from a single boarding / disembarking location, transiting through the Point Defiance Park on a prearranged route, and returning to the boarding / disembarking location; and

Whereas, in prior years, Pierce Transit has successfully provided transportation service to support other special events in Point Defiance Park; and

Whereas, Point Defiance Park is a significant attraction and asset to Pierce County, attracting more than 3 million annual visitors; and

Whereas, Metro Parks has agreed to offset the cost to Pierce Transit of providing the Event Service through the contribution of partnership funds; and

Whereas Pierce Transit has complied with all requirements of 49 USC § 604 by notifying registered charter providers of the opportunity to provide charter service; and

Whereas, Pierce Transit received no response from charter providers within the required comment period; and

Whereas, 49 USC § 604.9 authorizes Pierce Transit to provide charter service on its own initiative or at the request of third-party if no registered charter provider responds to the notice issued.

Now, therefore, the Parties agree as follows, incorporating by reference the above Recitals:

1. PURPOSE OF AGREEMENT

- 1.1 The purpose of this Agreement is to create a mutually beneficial contractual relationship to provide the Service in Point Defiance Park and to establish the general responsibilities of the Parties in relation to the Service.

2. SERVICE DESCRIPTION

- 2.1 On Sunday, May 18, 2014, beginning at noon and concluding at 4 p.m., Pierce Transit will provide two (2) Trolleys at Point Defiance Park to provide public transportation within the Park. Payment by Metro Parks shall include one hour additional service per trolley to compensate for drive time to and from the Park.
- 2.2 Public boarding and disembarking of the Trolleys shall be at Point Defiance Park adjacent to the Pagoda, which location is depicted on Exhibit A. A Trolley shall depart from this location approximately every 30 minutes and will complete the circuit through Point Defiance Park as depicted on Exhibit A. A Trolley may be stationed in the area depicted on Exhibit A as needed to allow for the departure of the other Trolley.
- 2.3 Metro Parks will provide a docent for each Trolley to provide an interpretive explanation of the Park to the riders.
- 2.4 The public will not be charged for riding the Trolleys.

3. PIERCE TRANSIT'S RESPONSIBILITIES

- 3.1 Pierce Transit will provide the Trolleys and drivers and any other operational support for the Service; will operate the Service; and will have both Trolleys at the area designated on Exhibit A by 12 noon on the day of the Event.
- 3.2 Pierce Transit will promote the Event through some of its regular communication channels, including: its website (including a link to Metro Park's website); social media; rider alert signage at boarding locations; and posters inside Pierce Transit buses and its SHUTTLE vehicles displayed from April 28, 2014 – May 11, 2014.
- 3.3 Pierce Transit will display supplemental advertising to promote the Event. Ad shelter displays will be coordinated between Metro Parks and Pierce Transit marketing staff, Metro Parks will design the art and provide to Pierce Transit Marketing. Approximately 15 ad shelter displays shall be posted from May 1, 2014 – May 18, 2014. Cost for raw materials to print the ad shelter posters shall be reimburse by Metro Parks, Pierce Transit staff will print and install ad shelter art.

4. METRO PARKS' RESPONSIBILITIES

4.1 Metro Parks shall reimburse Pierce Transit for the Service based on a flat rate formula of \$144 per Vehicle per hour that includes 60 minutes travel time to and from the Event which includes operator sign-in, vehicle prep before Event, vehicle inspection after Event and travel time between Pierce Transit's facility and the Park. Pierce Transit will be providing two (2) Vehicles for six (6) hours each (11 a.m. to 5 p.m.) which includes the one hour per Vehicle for transport to and from the Park for a total transportation cost of \$1,728. Additionally, Metro Parks shall reimburse Pierce Transit for raw materials utilized to print ad shelter art files for displays. Cost for raw material to produce ad shelter art is \$369.

Total Reimbursement for Point Defiance Pagoda Centennial Celebration:

Transportation Cost	\$1,728.00
Ad Shelter Production	<u>\$ 369.00</u>
Total Reimbursement	\$ 2,097.00

4.2 Metro Parks will promote Pierce Transit in its Event materials, which may include newspaper advertising, the Event program and social media. Metro Parks will reference and link to Pierce Transit bus rider information on its "Getting There" website. Prior to publishing transit service schedules, routing information, or Pierce Transit's logo, Metro Parks' staff will submit proofs to Pierce Transit's Marketing department for approval. Metro Parks will provide art files for posters and ad shelters to Pierce Transit Marketing for final printing and distribution.

4.3 Metro Parks will provide to Pierce Transit the anticipated ridership numbers for the event and any information regarding any known unusual concealed conditions in the Park.

5. INVOICES/PAYMENT PROCEDURES

5.1 Pierce Transit will invoice Metro Parks for the reimbursement cost on or after May 19, 2014.

5.2 Metro Parks shall provide the reimbursement payment to Pierce Transit within thirty (30) days after receipt of an invoice.

5.3 In kind donations by Metro Parks, if any, that further support marketing and outreach efforts for the event Service, are considered above and beyond Metro Parks' financial contribution as described in Section 5 herein, and will not be considered as partial payment of Metro Parks' reimbursement cost.

6. REPRESENTATIONS, INDEMNIFICATION, INSURANCE, REPORTING, AND DISPUTE RESOLUTION

6.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No partnership is formed as a result of this Agreement. No employees or agents of one Party or its contractors or

subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other Party.

- 6.2 Each Party shall comply, and shall ensure that its contractors and subcontractors, if any, comply with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.
- 6.3 Each Party shall defend, indemnify and hold harmless the other Party, its elected officials, officers, officials, employees, volunteers and agents while acting within the scope of their work or employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the indemnifying Party's own sole or concurrent wrongful acts or omissions in the performance of this Agreement. Each Party agrees that it is fully responsible for the acts and omissions of its own volunteers, employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its volunteers, employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity relating to claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 6.4 Metro Parks shall maintain commercial general liability insurance coverage including coverage for premises liability with no less than \$1,000,000 policy limits per occurrence and \$5,000,000 excess or umbrella coverage. Pierce Transit is and shall remain a member of the Washington State Transit Insurance Pool, a self-insured collective risk pool offering automobile liability coverage with at least \$1,000,000 in policy limits per occurrence. Each party shall be required to name the other as an additional named insured and provide certificates of insurance reflecting additional named insured status within thirty (30) days of the execution of this agreement.
- 6.5 Each Party will promptly report to the other any incident, accident and/or claim occurring or arising upon Pierce Transit or Metro Parks' property that is related in any manner to the Service under this Agreement to the extent that any such reporting Party does not otherwise accept responsibility for the complete management and resolution of such incident, accident or claim (the parties each recognizing that from time to time, minor incidents, accidents or claims may arise which may be resolved without the involvement or joinder of any other Party.) Each Party shall maintain complete and accurate records of any such known incident, accident or claim. Such records shall be maintained by each Party for a minimum term of six (6) years. Each of the Parties will cooperate with one another in the investigation and/or defense of any incident, claim or lawsuit arising under this Agreement, to the extent allowed by law; however no Party shall be required to reveal any matters protected by attorney-client privilege except as may be required by law.

- 6.6 Prior to the initiation of any action or proceeding to resolve disputes arising out of this Agreement, the Parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve the dispute through a mediation procedure with the assistance of persons or organizations experienced in mediation, initiated within thirty (30) days from the date of a written request for mediation unless this time period is extended by agreement of both parties. The good faith completion of negotiation efforts pursuant to this Article shall be a prerequisite to the filing of any litigation.

This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of Pierce County, Washington located in Tacoma, Washington, shall have exclusive jurisdiction and venue, as provided by law, over any legal action arising under this Agreement.

- 6.5 The Parties agree that each will be solely responsible for payment of its own attorney fees, witness fees, and/or costs associated with the creation, construction, interpretation, or application of this Agreement and for any disputes regarding the Parties' obligations under this Agreement.
- 6.6 The provisions of this section shall survive any termination of this Agreement.

7. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

Each party hereby acknowledges its obligation to conform to the Americans with Disabilities Act (ADA) together with any other local, federal, or Washington State laws that pertain to the accommodation of persons with disabilities in regard to their access to public facilities. As such:

- a. Pierce Transit agrees to maintain its transit facilities in a manner that conforms to the minimum requirements of the ADA and any applicable Building Code requirements. Metro Parks shall cooperate with Pierce Transit as to any matter involving their respective properties and Pierce Transit's ADA obligations under this Agreement or applicable laws.
- b. Metro Parks acknowledges its responsibility under local building codes and the ADA to provide accessible pathways to the grounds and transit facilities within and upon its property. Any new construction conducted on the property pertaining to this Agreement shall be in conformance with applicable Building Code requirements and the ADA.
- c. Metro Parks shall indemnify and hold harmless Pierce Transit, together with its directors, officers, agents and employees, (referred to as the "Indemnified Parties") from any claim brought against Pierce Transit or any Indemnified Party, as a result of, in connection with, or incident to, any claim or incident pertaining to the failure of Metro Parks to provide accessible public facilities

meeting the requirements of the ADA on Metro Parks' property, and Metro Parks shall process and defend at its own expense any and all such claims, of whatsoever kind or nature, brought against Pierce Transit or any Indemnified Party arising out of, in connection with, or incident to Metro Parks' failure to provide accessible public facilities on its property as may otherwise be required by the ADA and/or any comparable Washington State law or regulation applicable to Metro Parks' public facilities.

8. CHANGES AND MODIFICATIONS

This Agreement may be amended or modified only by prior written agreement signed by the Parties hereto.

9. TERMINATION

9.1 Either Party may terminate this Agreement, in whole or in part, for any reason provided, however, that insofar as practicable, the Party terminating the Agreement must give at least thirty (30) calendar days prior notice to non-terminating Party. Such termination shall be by written notice delivered by certified mail, return receipt requested, of intent to terminate.

9.2 If Metro Parks terminates, Metro Parks will pay Pierce Transit for any documented financial obligation incurred by Pierce Transit prior to cancellation up to the cost of service as described in paragraph 5 to offset the startup and operation costs for the Service.

10. FORCE MAJEURE

Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, earthquake or acts of nature; strikes or labor actions; commandeering material, products, or facilities by the federal, state or local government; and/or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party, and provided further that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event, however, shall this provision eliminate the obligation to make payment to Pierce Transit for the Services completed prior to the date of the inability to perform under this force majeure clause.

11. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized Parties and attached to this Agreement.

12. ASSIGNMENT

This Agreement shall be binding upon the Parties, their successors, and assigns; provided, however, that neither Party shall assign nor transfer in any manner any interest, obligation or benefit of this Agreement without the other's prior written consent.

13. NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties hereto and their respective successors and assigns any rights or remedies under or by virtue of this Agreement.

14. MUTUAL NEGOTIATION AND CONSTRUCTION

This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

15. ALL TERMS AND CONDITIONS

This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties related to the subject matter hereof and together with any attachments hereto, constitutes the entire agreement between the Parties. This Agreement may be amended only by written agreement of the Parties.

This Agreement and any attachments hereto contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

16. CONTACT PERSONS

The Parties shall designate a contact person for purposes of sending inquiries and notices regarding the execution and fulfillment of this Agreement.

	Metro Parks Tacoma
Contact Name	Nancy Johnson
Organization	Metro Parks Tacoma
Title	Communications & Public Relations Manager
Address	4702 S 19 th St Tacoma, WA 98405
Telephone	(253) 305-1092
Fax	(253) 305-1098
E-Mail	nancyj@tacomaparks.com

	Pierce Transit
Contact Name	Tina Lee
Title	Service Innovation Administrator
Address	PO Box 99070 Lakewood, WA 98496
Telephone	253-589-6887
Fax	253-581-8075
E-Mail	tlec@piercetransit.org

Each Party warrants and represents that its execution of this Agreement has been authorized by its governing body.

17. **Effective Date.** This Agreement shall take effect when it is signed by all the Parties hereto.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the 7th day of May, 2014.

METRO PARKS TACOMA

PIERCE TRANSIT

By: [Signature]

By: [Signature]
Lynne Griffith

Title: EXECUTIVE DIRECTOR

Title: Chief Executive Officer

Date: 5/7/14

Date: 5/6/14

EXHIBIT A
Depiction of the Event Locations

Point Defiance Park



Pagoda – Board zone and Start/End location for Special Event Service.