

**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND PIERCE TRANSIT
REGARDING
THE TRIP REDUCTION SUPPORT SERVICES PROGRAM**

THIS AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "the COUNTY") and **PIERCE TRANSIT**, the PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION (herein referred to as "TRANSIT").

SECTION 1.0 PURPOSE

The purpose of this Agreement is to set forth the responsibilities and obligations of the COUNTY and TRANSIT concerning the management and expenditure of federal CMAQ grant funds for a Trip Reduction Support Services Program.

SECTION 2.0 TRANSIT RESPONSIBILITIES AND OBLIGATIONS

- 2.1** TRANSIT shall collaborate with the COUNTY in the planning, development and implementation of the Trip Reduction Support Services Program.
- 2.2** TRANSIT shall collaborate with the COUNTY to develop a workplan for the Trip Reduction Support Services program. The workplan tasks shall include:
 - 2.2.1** Provide education programs and services tailored to meet the needs of employers and/or residents, with the goal of reducing drive alone trips;
 - 2.2.2** Provide personalized assistance, marketing materials, and incentives aimed at encouraging the use of transportation options;
 - 2.2.3** Provide an Emergency Ride Home program, incentive based program, campaigns, recognition program and, when identified as a need by the COUNTY and TRANSIT, other related programs; and
 - 2.2.4** Staffing to support the project.
- 2.3** TRANSIT agrees to expend Federal funds in accordance with the provisions of WSDOT's Local Agency Guidelines and LAA #7524.
- 2.4** TRANSIT shall establish and maintain for the project, either a separate set of accounts or accounts within the framework of an established accounting system in order to sufficiently and properly reflect all eligible project costs incurred in the performance of this Agreement. All staff time records shall use or clearly cross-reference the tracking account code established for this Agreement.
- 2.5** TRANSIT shall submit to the COUNTY, monthly, a report describing all activities, results, and tally of expenses and in accordance with the COUNTY's federal CMAQ reporting requirements associated with LAA #7524. The report shall include copies of materials developed to promote the program and all supporting documentation.

SECTION 3.0 COUNTY RESPONSIBILITIES AND OBLIGATIONS

- 3.1** The COUNTY shall collaborate with TRANSIT in the planning, development and implementation of the Trip Reduction Support Services Program.
- 3.2** The COUNTY shall provide purchasing guidelines.
- 3.3** The COUNTY shall participate in a consulting role in the selection process for any necessary consultant services, but TRANSIT shall have the final decision in identifying and engaging any consultants it deems necessary to perform the obligations contemplated by this Agreement.
- 3.4** The COUNTY shall reimburse TRANSIT 86.5% of eligible grant expenses incurred directly by TRANSIT. Final reimbursement to the TRANSIT will not exceed 86.5% of its incurred costs or \$180,000.00, whichever is less. Compensation, as detailed in SECTION 4.0, will be based on the program report, invoice, and documentation submitted by TRANSIT.

SECTION 4.0 COMPENSATION

TRANSIT shall submit to the COUNTY quarterly progress reports, a copy of all products produced that quarter, a line-item invoice, and all supporting documentation.

TRANSIT will submit, with the invoice, supporting documentation including properly executed payrolls, time records, invoices, contracts, receipts, and payment vouchers evidencing in sufficient detail the nature and propriety of the costs claimed. For any incurred staff costs, documentation must include the units of work actually performed, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested.

These items are due to the COUNTY monthly, until the agreement expires or TRANSIT exhausts the compensation amount, whichever comes first.

Upon receipt of the progress report, invoice, and appropriate documentation, the COUNTY shall pay the TRANSIT 86.5% of the invoice amount. The unreimbursed 13.5% will be counted as TRANSIT's contribution to the required match amount.

TRANSIT's invoices over the term of this agreement shall not total more than \$208,093. The total reimbursement amount to TRANSIT over the term of this agreement will not exceed 86.5% of its total incurred costs or \$180,000, whichever is less.

SECTION 5.0 AGREEMENT PERIOD

Regardless of the execution date, the effective date of this AGREEMENT shall be January 1, 2015. The expiration date shall be December 31, 2018.

SECTION 6.0 RECAPTURE PROVISION

In the event WSDOT determines that TRANSIT has failed to expend Federal funds in accordance with the provisions of LAA #7524, WSDOT reserves the right to recapture Federal funds in an amount equivalent to the extent of noncompliance.

The COUNTY reserves the right to withhold further reimbursements to TRANSIT until WSDOT notifies the COUNTY that reimbursements may be resumed.

Such right of recapture shall exist for a period of three (3) years following the termination of this agreement. Repayment by TRANSIT of Federal funds under this provision shall occur within thirty (30) days of demand.

SECTION 7.0 ASSIGNMENT AND SUBCONTRACTING

No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of the COUNTY.

SECTION 8.0 NO THIRD PARTY BENEFICIARY

The COUNTY does not intend by this agreement to assume any contractual obligations to anyone other than TRANSIT, and TRANSIT does not intend by this agreement to assume any contractual obligations to anyone other than the County. The COUNTY and TRANSIT do not intend that there be any third-party beneficiary to this agreement.

SECTION 9.0 COUNTY AND TRANSIT AS INDEPENDENT CONTRACTOR

Both TRANSIT and the COUNTY are, and shall at all times be deemed to be independent contractors. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between TRANSIT and the COUNTY or any of TRANSIT's or COUNTY's agents or employees. TRANSIT and the COUNTY shall each retain all authority for services rendered, standards of performance, control of personnel, and other matters incident to the performance of services by TRANSIT and the COUNTY, respectively, pursuant to this Agreement.

SECTION 10.0 REGULATIONS AND REQUIREMENT

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington.

SECTION 11.0 RIGHT TO REVIEW

This agreement is subject to review by any Federal or State auditor. The COUNTY or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the COUNTY. Such review may occur with or without notice, and may include, but is not limited to, onsite inspection by COUNTY agents or employees, inspection of all records or other materials that the COUNTY deems pertinent to the Agreement and its performance, and all communications with or evaluations by service recipients under this Agreement. TRANSIT shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for not less than three (3) years from the final payment of any federal aid funds to TRANSIT.

SECTION 12.0 MODIFICATIONS

Either party may request changes in the Agreement. No such modification, however, shall be

effective unless in writing and signed by duly authorized agents of both parties.

SECTION 13.0 TERMINATION OF THE AGREEMENT

This Agreement will terminate when the terms of the Agreement are complete or upon mutual written consent of both parties to this Agreement.

SECTION 14.0 TERMINATION FOR PUBLIC CONVENIENCE

The COUNTY may terminate the agreement in whole or in part whenever the COUNTY, in its sole discretion, determines that such termination is in the interests of the COUNTY. Whenever the Agreement is terminated in accordance with this paragraph, TRANSIT shall be entitled to 1) two weeks written notice of termination and 2) payment for actual work performed prior to termination. Termination of this agreement by the COUNTY at any time during its term, whether for default or convenience, shall not constitute a breach of contract by the COUNTY.

SECTION 15.0 DEFENSE AND INDEMNITY

The parties agree to defend, indemnify and save harmless each other, and each party's appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims or demands for damages because of the indemnifying party's acts or omissions giving rise to claims or demands for personal or bodily injury, including death at any time resulting from, sustained by any person or persons and for damages to property including loss of use thereof, but in the event of alleged concurrent negligence of the parties, this provision applies only to the extent of the indemnifying party's proportionate share of any such negligence. This defense, indemnity, and hold harmless provision does not apply in instances in which such injury or damage as shall have been occasioned by the sole negligence of a party or, its appointed or elected officials or employees.

The indemnification provided herein shall apply to and require each party to defend, indemnify and hold harmless the other party for claims brought by an employee of one party against the other party if said claims are alleged to have arisen from the alleged negligent actions or omissions of the employee's employer, and in such case, the parties, with respect to each other only, waive and will not assert against each other, any immunity under the Washington State Industrial Insurance Act (RCW Title 51). This waiver is limited to actions by and between parties only and does not extend to the employees of either party. The parties expressly do not waive their immunity against claims brought by their own employees.

SECTION 16.0 NON-DISCRIMINATION

The COUNTY and TRANSIT certify that they are Equal Opportunity Employers.

SECTION 17.0 INSURANCE COVERAGE

TRANSIT shall, at its own expense, maintain, with an insurance carrier licensed or eligible under

RCW 48.15 to do business in the State of Washington or through a program of self insurance pool as provided for in RCW 48.62, with minimum coverage as outlined below, commercial automobile liability insurance and commercial general liability insurance.

Commercial Automobile Liability

Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence
OR combined single limit coverage of \$2,000,000 with a deductible no greater than \$1000.

Commercial General Liability

Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence
OR combined single limit coverage of \$2,000,000 with a deductible no greater than \$1000.

The COUNTY shall be named as an additional insured on all required policies and such insurance as is carried by TRANSIT shall be primary over any insurance carried by the COUNTY. TRANSIT shall provide a certificate of insurance to be approved by the COUNTY Risk Manager prior to execution of this Agreement. The certificate shall be attached to the Agreement.

The COUNTY shall have no obligation to report occurrences unless a claim is filed with the COUNTY Auditor; nor shall the COUNTY have an obligation to pay premiums.

SECTION 18.0 INDUSTRIAL INSURANCE WAIVER

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

SECTION 19.0 APPLICABLE LAW AND VENUE

This Agreement shall be governed, construed, and interpreted according to the laws of the State of Washington. 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 or proceedings shall be brought in Pierce County Superior Court. The Parties shall be responsible for their own attorney's fees and costs.

SECTION 20.0 FUTURE NON-ALLOCATION OF FUNDS

Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the COUNTY will not be obligated to make payment for services or amounts after the end of the fiscal period through which funds have been appropriated and allocated. No penalty or expense shall accrue to the COUNTY in the event this provision applies. COUNTY shall, however, within ten (10) days of learning that inadequate funds have been appropriated for any future fiscal period, shall notify TRANSIT of such funding shortage.

SECTION 21.0 NOTICE

Any formal notice or communication to be given by the COUNTY to TRANSIT under this Agreement shall be deemed properly given if delivered or if mailed postage prepaid and addressed to:

PIERCE TRANSIT
POB 99070
Lakewood, WA 98496
Attention: General Counsel

Any formal notice or communication to be given by TRANSIT to the COUNTY under this Agreement shall be deemed properly given if delivered or if mailed postage prepaid and addressed to:

PIERCE COUNTY
Pierce County Public Works and Utilities
4301 South Pine Street, Suite, 628
Tacoma, WA 98409-7207
Attention: Traffic Engineer, Public Works and Utilities

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either TRANSIT or the COUNTY, by giving notice thereof to the other as herein provided.

SECTION 22.0 SEVERABILITY

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 23.0 WAIVER

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

SECTION 24.0 AMENDMENT

Either party may request changes in the Agreement. No such modification, however, shall be effective unless in writing and signed by duly authorized agents of both parties.

SECTION 25.0 ENTIRE AGREEMENT

This written Agreement represents the entire Agreement between the parties and supersedes any prior oral statements, discussions, or understandings between the parties.

IN WITNESS WHEREOF, Pierce County and Pierce Transit have executed this Agreement as of the date and year written above.

PIERCE TRANSIT:

By: James P. Watson 12/2/14
Chief Executive Officer Date

Approved:

By: [Signature] 12/2/14
Chief Financial Officer Date

Attest:

By: Deanne Jacobson 12/15/14
Clerk of the Board Date

PIERCE COUNTY:

Approved as to legal form only:

By: [Signature] 12-23-2014
Deputy Prosecuting Attorney Date

Recommended:

By: [Signature] 1/13/15
Budget & Finance Date

Approved:

By: [Signature] 1/5/15
Department Director Date
(less than \$250,00)

By: n/a
Pierce County Executive Date
(\$250,000 or more)

