

# REGIONAL TRANSIT ORCA MARKETING AND TDM PROJECT AGREEMENT

Between

**KING COUNTY, DEPARTMENT OF TRANSPORTATION,  
METRO TRANSIT DIVISION**

And

**PIERCE TRANSIT**

THIS REGIONAL TRANSIT ORCA MARKETING AND TDM PROJECT AGREEMENT (the "Agreement") is made and entered into by and between Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit" or "PT") and King County, a home rule charter county of the State of Washington, through its Department of Transportation, Metro Transit Division ("County"), either of which entity may be referred to hereinafter as "Party" or collectively as the "Parties."

WHEREAS, the County has been awarded a Puget Sound transit coordination grant ("Grant") from the Washington State Department of Transportation ("WSDOT") that is expected, among other things, to help integrate marketing efforts and improve outreach and customer coordination among various Puget Sound transit systems in order to improve the user experience, increase ridership, and make the most effective use of tax dollars; and

WHEREAS, under Agreement GCA 6141, Task Order F1 ("Task Order Agreement"), administered by WSDOT's Public Transportation Division, WSDOT and the County entered into a transportation demand management ("TDM") agreement under which the County will use Grant funds to work with Sound Transit, Pierce Transit, Community Transit, Everett Transit and the Seattle Department of Transportation to create and implement a public information program to raise regional awareness of the One Regional Card for All ("ORCA") card and implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region; and

WHEREAS, pursuant to the Task Order Agreement, the County will utilize the Grant funds to implement the Regional Transit ORCA Marketing and TDM project ("Project") and, in coordination with the Regional TDM Steering Committee ("Committee"), will serve as the lead agency for the Project, including administering and billing the Grant and providing WSDOT required Project progress reports.

WHEREAS, PT will also work with the Committee, comprised of the partner transit agencies listed above, to implement the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

**1. PURPOSE OF AGREEMENT**

Under the Task Order Agreement, the County will work with Sound Transit, Pierce Transit, Community Transit, Everett Transit, and the Seattle Department of Transportation to implement the Project, which is a TDM program intended to increase the number of ORCA card holders in the central Puget Sound region. The purpose of this Agreement is to establish the scope of work ("SOW") covered by the Agreement and the respective responsibilities of the Parties for implementation of the grant-funded community outreach and marketing activities that are the subject of the Project.

**2. PIERCE TRANSIT'S RESPONSIBILITIES**

- 2.1 PT shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to PT's performance of the tasks and responsibilities set forth with particularity in the SOW, which is attached hereto as Exhibit A and incorporated herein by this reference.
- 2.2 The Project objectives, timelines and budget are also described in Exhibit A.

**3. COUNTY'S RESPONSIBILITIES**

- 3.1 The County will reimburse PT for actual Grant-eligible costs incurred in performance of Project work performed pursuant to this Agreement as identified in the SOW. The County will reimburse PT up to a maximum, not-to-exceed amount of \$37,500.00 (the "Reimbursement Cap") over the duration of the Agreement. Funding for the Agreement will be via a combination of Grant funds and matching funds provided through the Regional ORCA fund, which will cover the card fee for cards purchased and distributed through this Project.
- 3.2 Pursuant to the Task Order Agreement, the County will serve as the lead agency for the Project and, in that capacity, will administer the Grant, including retaining responsibility for any reporting and/or invoicing for reimbursement from WSDOT that may be required under the terms of the Grant award.

**4. INVOICE AND PAYMENT PROCEDURES**

- 4.1 PT shall submit a completed invoice to the County detailing quarterly activities, outcomes, expenses and reimbursement amount due within thirty (30) days of each

quarter's end. PT will provide documentation to support its reimbursement request including copies of vendor invoices, print-outs from its financial system showing staff salaries and benefits, as well as other relevant documents. The County shall pay PT within thirty (30) calendar days after the County has received a completed invoice.

- 4.2 In the event that it is determined that an overpayment has been made to PT by the County, the County will bill PT for the amount of overpayment. PT shall pay the County within thirty (30) days of receipt of an invoice for overpayment.
- 4.3 In no event shall the total reimbursement to PT for work performed pursuant to this Agreement exceed the Reimbursement Cap provided for at Subsection 3.1 of this Agreement.

## 5. ASSIGNMENTS AND SUBCONTRACTS

- 5.1 Sub-grantee Compliance with Grant Assurances. This Agreement is subject to all applicable funding restrictions and/or grant assurances provided for in the Task Order Agreement and the Master Agreement for Transportation Demand Management Work (GCA 6141) (the "Master Agreement") between the County and WSDOT, which together are attached hereto as Exhibit B and incorporated herein by this reference. Any such funding restrictions and/or grant assurances shall be included in each subcontract and in all contracts PT enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished with funds awarded under the Task Order Agreement. As the sub-grantee of these funds, PT agrees to comply, and insure that any of its subcontractors comply, with the requirements of Exhibit B when performing work pursuant to this Agreement.
- 5.2 No Assignment without Consent. Neither this Agreement, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.

## 6. EFFECTIVE DATE AND DURATION

This Agreement will take effect upon the date the Agreement is signed by both Parties and will remain in effect until June 1, 2017, unless extended by agreement of the Parties consistent with Section 16 of this Agreement or earlier terminated pursuant to Section 8 of this Agreement.

## 7. DISPUTE RESOLUTION PROCESS

### 7.1 Designated Dispute Resolution Representatives.

The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement:

For the County: Bill Bryant, Manager  
Metro Transit Service Development  
201 South Jackson Street, MIS KSC-TR-0426  
Seattle, WA 98104 (206) 263-3109  
[Bill Bryant@kingcounty.gov](mailto:Bill.Bryant@kingcounty.gov)

For Pierce Transit: Dana Henderson, General Counsel  
Pierce Transit  
3701 96<sup>th</sup> Street SW  
Lakewood, WA 98499-4431  
(253) 777-4977  
[dhenderson@piercetransit.org](mailto:dhenderson@piercetransit.org)

- 7.2 The County representative and the PT representative shall confer to resolve disputes that arise under this Agreement as requested by either Party. The designated representatives shall use their best efforts and exercise good faith to resolve such disputes.
- 7.3 In the event the Designated Representatives are unable to resolve the dispute, the appropriate PT Chief Executive Officer or her/his designee and the General Manager of the County's Metro Transit Division or her/his designee shall confer and exercise good faith to resolve the dispute.
- 7.4 In the event the PT Chief Executive and the General Manager of Metro Transit are unable to resolve the dispute, the Parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the Parties are willing to discuss the disputed issue(s).
- 7.5 If the Parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either Party may institute legal action in the King County Superior Court situated

in Seattle, Washington, unless another venue is mutually agreed to in writing.

7.6 The Parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

## 8. TERMINATION

8.1 Termination for Convenience. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. In the event of termination of this Agreement, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

8.2 Termination for Cause. If either Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to initiate a correction of the violation or failure within fifteen (15) calendar days. If failure or violation is not corrected within the mutually agreed upon time period, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.

8.3 Termination for Non-Appropriation or Loss of Grant Funding. In addition to termination for default, the County may terminate this Agreement for non-appropriation or loss of state grant funding by giving not less than thirty (30) calendar days' written notice thereof to PT.

## 9. LEGAL RELATIONS

9.1 No Third Party Beneficiaries. It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity.

9.2 No Partnership or Joint Venture. No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement.

9.3 Independent Capacity. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

9.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

9.5 Jurisdiction and Venue. The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

9.6 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, both 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.

## 10. RECORDS RETENTION AND AUDIT

10.1 Maintenance of Records. During the term of the Agreement and for a period of not less than six (6) years from the date of its expiration or earlier termination, the records and accounts pertaining to this Agreement are to be kept available by both Parties for inspection and audit by the other Party and the State Auditor, and copies of all records, accounts, documents, or other data pertaining to the Agreement will be furnished upon reasonable notice. If any litigation, claim or audit is commenced, the records and accounts, along with supporting documentation, shall be retained until all litigation, claim, or audit has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

10.2 Disclosure of Public Records. The Parties acknowledge that all non-privileged, non-exempt records that may be maintained pursuant to Subsection 10.1 of this Agreement are subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW.

## 11. FORCE MAJEURE

Either Party to this Agreement shall be excused from performance of its responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: late delivery or nonperformance by vendors of materials or supplies; any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court or civil authority; commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this Agreement, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing.

## **12. NONDISCRIMINATION**

Pierce Transit agrees to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of any and all subcontractors providing services or performing any work using funds provided under this Agreement. During the performance of this Agreement, neither Pierce Transit nor any entity subcontracting under the authority of this Agreement, shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this Agreement. King County Code Chapter 12.16 and 12.17 are incorporated herein by reference, and such requirements shall apply to this Agreement.

## **13. INDEMNIFICATION**

Pierce Transit and its successors and assigns shall protect, save, defend, indemnify and hold harmless the County, its elected officials, officers, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, actions, judgments, and/or awards of damages or costs of any nature whatsoever, arising out of or in any way resulting from Pierce Transit's acts or omissions in performing its obligations under this Agreement. Pierce Transit agrees that it is fully responsible for the acts and omissions of its own contractors, subcontractors, employees, and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents.

Pierce Transit 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 employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Pierce Transit's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County, its elected officials, officers, employees, and agents with a full and complete indemnity of claims made by Pierce Transit's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

## **14. WAIVER**

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

**15. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**16. CHANGES AND MODIFICATIONS**

This Agreement may be changed, modified, or amended only by written agreement executed by authorized representatives of both Parties.

**17. REPRESENTATION ON AUTHORITY OF SIGNATORIES**

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

**18. ALL TERMS AND CONDITIONS**

This Agreement 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.



**19. CONTRACT MANAGEMENT**

All contact information for the management of this Agreement shall be identified herein and may be updated by either Party for its agency only and shall be submitted in writing or electronic mail to the other Party. Any update to the Contract Managers shall state the effective date of said update.

Contract Manager	Pierce Transit	King County
Contact Name	Sharon Stockwell	Penny Lara
Title	Senior Employer Services Coordinator	Transportation Planner III King County Metro
Address	Pierce Transit 3701 96 <sup>th</sup> Street SW Lakewood, WA 98499-4431	201 S Jackson Street MS KSC-TR-0411 Seattle, WA 98104
Telephone	(253) 581-8112	(206) 263-8372
E-mail	sstockwell@piercetransit.org	Penny.Lara@kingcounty.gov

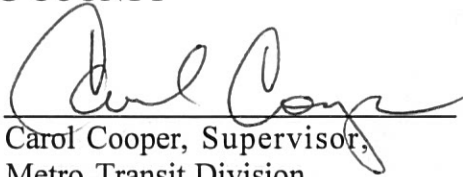
**20. EXECUTION OF AGREEMENT**

This Agreement may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

IN WITNESS THEREOF the Parties hereto have executed this Agreement by duly authorized representatives on the dates shown below their respective signatures.

KING COUNTY

By:



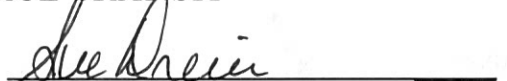
Carol Cooper, Supervisor,  
Metro Transit Division  
King County Department of  
Transportation

Date:

10.17.16

PIERCE TRANSIT

By:

  
Sue Dreier, Chief Executive Officer  
Pierce Transit

Date:

10/19/16

## **EXHIBIT A**

### **Scope of Work**

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The County will be working with Sound, Pierce, Community, Everett Transit and Seattle Department of Transportation to implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region. This Project will be coordinated with the Regional ORCA Marketing project being implemented by ST, in coordination with the ORCA Regional Marketing Committee.

The Project will be implemented in two phases. Phase I, to be conducted in Fall 2016, will be agency specific with each agency focusing ORCA card distribution through their existing TDM programs and focused on markets specific to their service needs. Phase II, to be conducted in Spring 2017, will be a unified regional TDM campaign implemented in conjunction with the Project.

#### **PT Responsibilities**

1. PT will participate in development of the Project work plan and performance measurement plan for the Project.
2. PT will implement a locally relevant ORCA card distribution TDM project in Fall 2016.
3. PT will develop a postcard for the Spring 2017 regional ORCA card distribution campaign. PT will coordinate with the participating TDM agencies, including the County, Sound Transit, Community Transit, Everett Transit and the Seattle Department of Transportation, in developing the postcard and finalizing print requirements.
4. PT will manage printing of the postcard for mailing, and will ensure delivery of the postcards to the mailhouse specified by COUNTY.
5. PT will provide metrics for evaluation of both the Fall 2016 and Spring 2017 campaigns, as agreed upon by the Parties through development of a performance measurement plan.

#### **Budget**

The County will reimburse PT for expenses incurred, not to exceed \$37,500, as follows:

1. Fall 2016 campaign - \$17,500 for ORCA card value, materials and/or related expenses
2. Spring 2017 campaign - \$20,000 for development and printing of approximately 350,000 postcards

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**Project Description, Deliverables, and Funding**

Concept	Increase access to ORCA cards.
Strategy	<p>Partner agencies will conduct outreach campaigns to distribute pre-loaded ORCA cards via existing TDM programs and outreach channels. ORCA card distribution will be achieved both through agency-specific and the regional campaign to be implemented under this Agreement. Agencies will identify target markets within their service areas, based on available data regarding low use of ORCA for fare payment. PT will manage development and printing of postcards. PT will send out a request for quotes to print the postcards, then select low bidder. PT will create artwork, get approval from the regional partner agencies, and work with the printer. PT will arrange for that low bid printer to deliver the postcards to the mailing vendor. The County will procure a mailing vendor, and lead and manage all work with the mailing vendor.</p>
Deliverables	<p>2.1 Project Work Plan including specific outcomes, timeline, milestones, and budget details addressing participant and match funds.                  2.2 Mutually agreeable Performance Measurement Plan.                  2.3 Produce a Project Summary Report which at a minimum includes the following: Overview of the Project, how grant funds were spent (participant and match funds), and the extent to which Project outcomes were met, and a description of best management practices that can be transferred to other transit agencies.</p>