

**MEMORANDUM OF AGREEMENT  
BETWEEN PIERCE TRANSIT AND THE CITY OF TACOMA  
REGARDING DESIGN AND CONSTRUCTION OF BUS PADS**

**THIS MEMORANDUM OF AGREEMENT** is entered into as of the 19<sup>th</sup> day of March, 2018 (Effective Date) by and between **PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, dba Pierce Transit**, a Washington state public transportation benefit area corporation (herein referred to as "Pierce Transit") and the **CITY OF TACOMA**, a municipal corporation of the State of Washington (herein referred to as "the CITY") (together, "Parties").

**SECTION 1.0 PURPOSE**

The purpose of this Agreement is to set forth the responsibilities and obligations of Pierce Transit and the City regarding the design and construction of Bus Pads in the City right of way along Pierce Transit bus routes.

**SECTION 2.0 CITY RESPONSIBILITIES AND OBLIGATIONS**

- 2.1 Once Pierce Transit's request for design and construction of a Bus Pad is submitted to the City, City will design and construct Bus Pads as requested by Pierce Transit along Pierce Transit bus routes within City right of ways.
- 2.2 Bus Pads will be designed in accord with: ADA Standards issued by the Department of Transportation and in conformance with the guidelines of Pierce Transit's Bus Stop Manual.
- 2.3 Bus Pads will be constructed by the City under this Agreement only in conjunction with and incorporated into City of Tacoma Public Works Department projects.
- 2.3 The City's Public Works Department will inspect and approve Bus Pads designed and constructed under this Agreement.
- 2.4 The City will invoice Pierce Transit for all costs related to the design and construction of bus pads under this Agreement.

**SECTION 3.0 PIERCE TRANSIT RESPONSIBILITIES AND OBLIGATIONS**

- 3.1 Pierce Transit will request in writing that the City design, permit and construct bus pads along Pierce Transit bus routes within City right of ways in accord with ADA Standards issued by the Department of Transportation and in conformance with the guidelines of Pierce Transit's Bus Stop Manual.
- 3.2 Upon City's completion of construction of the Bus Pad(s), and upon Pierce Transit's acceptance and approval of such construction, Pierce Transit will accept ownership and maintenance responsibilities for each Bus Pad in writing, with the format of such written acceptance and the Party recipient to be agreed upon by the Parties.
- 3.3 Within thirty days of receipt of an invoice from the City, Pierce Transit will reimburse City for all invoiced costs related to the design and construction of bus pads under this Agreement.

#### **SECTION 4.0 NOT TO EXCEED AMOUNT**

The total amount to be invoiced and reimbursed under this Agreement shall not exceed \$50,000 without written agreement of the Parties in the form of an amendment to this Agreement.

#### **SECTION 5.0 AGREEMENT PERIOD**

This Agreement begins as of its Effective Date stated above and expires five (5) years after its Effective Date unless renewed in writing by the Parties in the form of an amendment to this Agreement.

#### **SECTION 6.0 TERMINATION**

Either party may terminate the Agreement in whole or in part upon ten days' written notice to the other party whenever the terminating party, in its sole discretion, determines that such termination is in its best interest. Within thirty days of receipt of an invoice after termination of this Agreement by either Party for default or convenience, Pierce Transit shall reimburse City for all outstanding invoiced costs related to the construction of Bus Pads under this Agreement.

#### **SECTION 7.0 NOTICES**

Unless otherwise stated herein any formal notice or communication to be given by or between the Parties under this Agreement shall be deemed properly given if delivered by email or if mailed postage prepaid and addressed to:

City of Tacoma  
747 Market Street, Rm. 544  
Tacoma, WA 98402-3793  
Kkingsol@Cityoftacoma.org  
Attention: Kurtis D. Kingsolver, P.E.

PIERCE TRANSIT  
3701 96th St. SW  
P.O. Box 99070  
Lakewood WA 98496-0070  
dhenderson@piercetransit.org  
Attention: Dana Henderson, General Counsel

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 Party, by giving notice thereof to the other as herein provided.

#### **SECTION 8.0 INDEPENDENT CONTRACTOR**

Each party is 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 the Parties or any of the City's or Pierce Transit's agents or employees. Each Party shall retain all authority for services rendered, standards of performance, control of personnel, and other matters incident to the performance of obligations pursuant to this Agreement.

### **SECTION 9.0 THIRD PARTY BENEFICIARIES**

This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

### **SECTION 10.0 INDEMNIFICATION AND DEFENSE**

Each party shall indemnify, defend, and hold harmless the other party, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of indemnifying party's negligent acts or omissions relating to the subject matter of this Agreement. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the indemnitee. This defense and indemnification obligation shall survive the termination of this Contract.

### **SECTION 11.0 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 12.0 DISPUTE RESOLUTION**

In the event of a dispute pertaining to this Agreement, the Parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the City's right to terminate authorized by this Agreement.

### **SECTION 13.0 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 attorneys' fees and costs.

### **SECTION 14.0 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 15.0 ENTIRE AGREEMENT**

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

**SECTION 16.0 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 17.0 AUTHORITY TO ENTER INTO THIS AGREEMENT**

The undersigned representatives, by signature below, represent and warrant that they are duly authorized to execute this legally binding Agreement.

In witness whereof, Pierce Transit and the City of Tacoma have executed this Agreement as of the Effective Date written above.

**PIERCE TRANSIT**

By:

  
\_\_\_\_\_  
Sue Dreier, Chief Executive Officer


**CITY OF TACOMA**

By:

  
\_\_\_\_\_  
Kurtis D. Kingsolver, P.E.  
Public Works Director/City Engineer

Approved as to Form:

  
\_\_\_\_\_  
Deputy City Attorney

  
\_\_\_\_\_  
Andrew Cherullo, Finance Director