

**AGREEMENT BETWEEN PIERCE TRANSIT AND
THE CITY OF TACOMA FOR A FAST FERRY FEASIBILITY STUDY**

This Agreement, made and entered into by Pierce Transit hereinafter referred to as "PT", and the City of Tacoma, hereinafter referred to as "Tacoma" for the purposes described herein.

WHEREAS; PT and Tacoma wish to undertake a Fast Ferry Feasibility Study ("Study") for a route between Tacoma and Seattle, and

WHEREAS; this Study will review background studies that directly relate to fast ferry operation on Puget Sound, passenger-only vessel technology that could provide a "travel time competitive" option on a Tacoma to Seattle route, and potential funding sources, and

WHEREAS; this Study will prepare a route identification and market analysis and identify potential opportunities for passenger ferries to provide transportation in emergency situations, and

WHEREAS; through this Fast Ferry Feasibility Study Agreement, Tacoma and PT will each fund up to \$37,000 of the Study on a matching basis, with PT adding in a \$30,000 grant from the Port of Tacoma.

NOW THEREFORE, it is agreed between the parties as follows:

1. Incorporation of Recitals: Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. Purpose: The purpose of this Agreement is to produce a detailed Fast Ferry Feasibility Study for a route between Tacoma and Seattle.

3. Term and Termination: This Agreement shall be June 1, 2018 through December 31, 2018, but shall extend for such additional period as may be necessary to complete the Program. Either party may terminate this Agreement. Termination shall terminate by delivering to the other party, a written Notice of Termination specifying the effective date of termination. Upon receipt of the Notice, any consultants funded through this Agreement shall be directed to immediately discontinue all services. Upon any termination, consultants shall be paid for total services performed through the effective date of termination, and reasonable termination expenses. There shall be no payment for anticipated profit, unperformed services, or unabsorbed overhead.

4. Project Area: The project area is Tacoma to Seattle.

5. Scope of Work: The Parties agreed Scope of Work is set forth in Attachment A to this Agreement.

6. Project Management: Following joint selection and approval of professional consultants by the Parties, PT in close collaboration with Tacoma, will be the lead agency for project management, including contract administration and public communications.

7. Budget and Payment: PT will invoice the City no more than monthly for one-third (33.3%) of the actual cost of outside professional services for the Program until the Port of Tacoma's \$30,000 grant has been exhausted, thereafter, PT will invoice the City no more than monthly for one-half (50%) of the actual cost of outside professional services for the Program up to Tacoma's agreed maximum of \$37,000. The PT invoice shall include the consultant's actual invoice. Payment will be made through the City's regular payment process.

8. Notices, Tacoma and MPT Representatives: All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

Tacoma Representative: Peter Huffman, Planning and Development Services Director
City of Tacoma 747 Market Street, Room 408 Tacoma, WA 98402

PT Representative: Peter Stackpole, Principal Planner, PO Box 99070
3701 96th St. SW, Lakewood, WA 98496-0070

9. Amendments: All provisions of this agreement, may be amended in writing at any time by the mutual consent of the parties hereto and such amendments shall take effect immediately. In the event of any conflict, inconsistency, or incongruity between the provision of this agreement and the provision of the amendment, the provisions of the amendment shall in all respects govern and control.

10. Dispute Resolution: Disputes regarding any matter contained herein shall be referred to the Tacoma Planning and Development Services Director and the PT Chief Executive Officer for mediation and/or settlement. Any controversy or claim arising out of, or relating to, this Agreement or the alleged breach thereof that cannot be resolved by the Planning and Development Services Director for Tacoma and the Chief Executive Officer for PT, shall be submitted to arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW. Tacoma will appoint one arbitrator and PT will appoint one arbitrator. The decision rendered by the arbitrators may be entered in Pierce County Superior Court. The cost of arbitrating the dispute will be borne equally by both Parties. Nothing in this Agreement shall preclude the use of a mediator to resolve disputes should the Parties agree to utilize the services of a mediator.

11. Indemnification and Insurance:

11.1 Indemnification: Each party (the Indemnitor) agrees to defend, indemnify and save harmless each other (the Indemnitees), their board or council members, officers, agents 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 for damages, penalties, or other relief based upon the Indemnitor's alleged negligence, or wrongful conduct, except for the injuries, penalties, and damages caused by the sole negligence or wrongful conduct of the Indemnitor. Such claims for damages or other relief include, but are not limited to, those for personal or bodily injury including death from such injury, property damage, torts, defamation, penalties imposed by any agency of the state or federal government for failure to comply with applicable law in the performance of this Agreement. If the claim, suit, or action involves concurrent negligence of the Parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each party's negligence. It is further and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11.2 Insurance. Each party is a Washington State municipal corporation and maintains sufficient insurance or self-insurance for all operations.

12. Ownership of Program Materials. Each party to this Agreement shall have full non-exclusive rights to utilize, reproduce and disseminate all materials produced by consultants funded through this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 25th day of July, 2018.

CITY OF TACOMA



Tadd Wille, Assistant City Manager

PIERCE TRANSIT



Sue Dreier, Chief Executive Officer

Approved:



Peter Huffman, Director
Planning and Development Services



RH Andrew K. Cherullo,
Finance Director

Approved as to form:

Deputy City Attorney


Sandra Gregorius

Risk Manager