

FUNDING AGREEMENT

BETWEEN SOUND TRANSIT AND PIERCE TRANSIT

FOR BUS CAPITAL ENHANCEMENTS FOR SPEED, RELIABILITY, AND CONVENIENCE ALONG PACIFIC AVENUE/STATE ROUTE 7

GA 0326-18

This funding agreement ("Agreement") is between the Central Puget Sound Regional Transit Authority, a regional transit authority organized under RCW 81.112 ("Sound Transit"), and Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit"), a public transportation benefit area organized under RCW 36.57A, sometimes collectively referred to as "Parties" or individually as "Party."

RECITALS

- A. The Pierce Transit Board of Commissioners adopted Destination 2040, the agency's Long Range Plan ("Destination 2040"), in 2016. Destination 2040 identified the Pacific Avenue/State Route 7 corridor as the corridor with the most potential for upgrading to high capacity transit, and Pierce Transit began work on the Pacific Ave/State Route 7 Corridor High Capacity Transit Feasibility Study in 2017.
- B. The Sound Transit Board of Directors adopted Sound Transit 3, The Regional Transit System Plan for Central Puget Sound ("ST3") on June 23, 2016. ST3 includes, within the Early Deliverables Program, a funding contribution not to exceed \$60 million to bus capital enhancements for speed, reliability, and convenience along Pacific Avenue in Tacoma and Pierce County. The Sound Transit Board of Directors called an election to approve local taxes to implement ST3, which measure was approved by the electorate on November 4, 2016.
- C. As proposed by Pierce Transit, a Pacific Avenue/State Route 7 bus rapid transit (BRT) service ("Pacific Ave/SR 7 Project" or "Project") would provide fast, frequent, and reliable public transportation between downtown Tacoma, the Tacoma Dome Station area, and Spanaway, which is consistent with the objectives of Destination 2040 and ST3 to improve speed, reliability, and convenience of the bus service between these areas along the Pacific Avenue/State Route 7 corridor (hereafter referred to as the "project corridor"). The proposed BRT service would follow portions of Pierce Transit's existing Route 1, which generated almost 1.7 million passenger boardings in 2016, nearly 20 percent of Pierce Transit's fixed route ridership. A depiction of a potential BRT system within the project corridor is shown in **Exhibit B**.
- D. On August 22, 2019, the Sound Transit Board passed Motion No. M2019-91 authorizing staff to proceed with a first funding contribution for development of bus speed, reliability, and convenience capital improvements along the project corridor. Motion No. M2019-91 anticipates a second funding contribution to proceed with construction of such improvements following the completion of the required environmental documentation and identification of the specific elements to be constructed using Sound Transit's funding contributions. Sound Transit's funding of the identified improvements are subject to certification that Pierce Transit has sufficient funding to operate a service along the project corridor that meets the ST3 plan's objectives.

- E. Pierce Transit is responsible for administering state and local transportation services and complying with relevant land use laws and development regulations that will apply to the construction and operation of the Project.
- F. Both Sound Transit and Pierce Transit have determined that it is in the public interest for Pierce Transit to construct bus speed, reliability, and convenience improvements along the project corridor independent or as part of a proposed Pacific Avenue/State Route 7 BRT service.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree to the following:

AGREEMENT

1. Purpose. This Agreement provides for Sound Transit’s funding of bus speed, reliability, and convenience capital improvements (not to exceed \$60 million) along the project corridor, which may also serve as supportive elements for a Pacific Avenue/State Route 7 BRT service. Activities, products, and general capital improvements eligible for funding by Sound Transit are described in **Exhibit A (“Products, Activities, and General Capital Improvements Eligible for Sound Transit Funding”)**. Funds may be expended on eligible elements listed in **Exhibit A** up to the not to exceed amount of \$60 million provided through this Agreement.
2. Pierce Transit Work. Pierce Transit is responsible for the design and construction of the elements described and depicted in **Exhibit A**. Sound Transit will not undertake any design, construction, or other aspects of implementing the elements described and depicted in **Exhibit A** beyond review of plans, designs, environmental documentation, and other products at its discretion.
3. Designated Representatives. Each Party shall designate a representative who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for each Party. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed, to identify upcoming decisions related to the Pacific Ave/SR 7 BRT Project, to provide any information or input necessary to inform those decisions, and to resolve any issues or disputes related to the Pacific Ave/SR 7 BRT Project consistent with Section 9 of this Agreement.

The Designated Representatives are:

PIERCE TRANSIT

Sean Robertson, Senior Construction Project
Manager
3701 96th Street SW; Lakewood, WA 98499
253-983-3359
srobertson@piercetransit.org

SOUND TRANSIT

Eric Chipps, Senior Transportation Planner
401 S Jackson St
Seattle WA 98104
206-398-5020
eric.chipps@soundtransit.org

4. Environmental Review. For capital improvements funded under this Agreement, Pierce Transit is the “Lead Agency” for purposes of compliance with National Environmental Policy Act “NEPA” and State Environmental Policy Act “SEPA” as is determined to be required. Pierce Transit expects to complete environmental documentation for bus speed, reliability, and convenience capital improvements along the project corridor by June 30, 2020, and is responsible to design and obtain any necessary

permits to construct the improvements. The Sound Transit Board will consider authorizing funds for construction of improvements once it has determined that the environmental review for such improvements is adequate.

5. Compliance with Federal Requirements. Pierce Transit will be responsible for compliance with any federal requirements, including paying the Federal Transit Administration back for any remaining federal interest of FTA-funded assets removed and/or replaced as part of the improvements made.
6. Operations and Maintenance. Pierce Transit will implement capital improvements no later than 2024. Pierce Transit is responsible for all costs relating to the operations or maintenance of service and capital improvements within the project corridor. Sound Transit is not responsible for funding any service operations or for maintenance of any improvements implemented under this agreement.
7. Signage. Signage that is used during the construction of the Pacific Ave/SR 7 Project shall identify Sound Transit as a funding partner.
8. Contributions. Sound Transit anticipates making funding contributions for costs incurred after July 1, 2019 across two categories to Pierce Transit for the Pacific Ave/SR 7 Project: (1) an initial contribution for reimbursement of actual costs of project development of \$5 million; and (2) periodic contributions for reimbursement of actual costs of construction of the eligible elements listed in **Exhibit A** and pursuant to Section 9 of \$55 million. If Pierce Transit does not expend the entire amount of the contribution for actual costs of project development, the balance can be used for reimbursement for costs of construction. To request receipt of category 2 contributions, Pierce Transit must demonstrate that environmental review is complete and demonstrate how Sound Transit's contribution will be applied in support of the construction of an overall Pacific Ave/SR 7 BRT project.
9. Invoicing.
 - 9.1. Pierce Transit shall submit invoices and supporting documentation for Sound Transit's contribution payments. The invoices must include the appropriate purchase order number, which will be provided by Sound Transit after execution of this Agreement, a cover memo as described in **Exhibit C**, and supporting documentation detailing the work completed and associated costs. Invoices may be submitted monthly to cover expenditures of the prior month.
 - 9.2. Pierce Transit shall submit its invoices with the required documentation via email or mail to AccountsPayable@SoundTransit.org or Sound Transit, Accounts Payable, 401 S. Jackson St., Seattle, WA 98104-2826. Invoices are payable thirty (30) days upon Sound Transit's receipt of the invoice and acceptable documentation.
 - 9.3. If Sound Transit determines that an invoice lacks sufficient documentation to support payment, Sound Transit will notify Pierce Transit of its determination and request that Pierce Transit provide additional documentation. Sound Transit may withhold payment of the invoice until supporting documentation is provided, however such approval shall not be unreasonably withheld.

10. Termination

10.1. Termination for Cause. Sound Transit may terminate this Agreement for cause including the following circumstances:

10.1.1. If construction of the Pacific Ave/SR 7 BRT Project improvements identified in **Exhibit A** are not completed before December 31, 2024 unless otherwise agreed by the Parties.

10.1.2. If Pierce Transit fails to make progress towards completing the Project and Pierce Transit has not provided adequate assurances of its desire or ability to complete the Project and commence operations.

If the Agreement is terminated under this Subsection, Pierce Transit shall reimburse Sound Transit the full amount of all payments it made to Pierce Transit under this Agreement within 90 days of the date of termination. Pierce Transit may ask for an extension of time to complete the Project for good cause. Sound Transit's agreement to extend the completion will not be unreasonably withheld.

10.2. Dispute Resolution Required. Before either Party may terminate this agreement for cause, it must attempt to seek resolution through the dispute resolution process in Section 13.

10.3. Except as provided in this Section, a termination by either Party shall not extinguish or release the other Party from liability for costs or obligations existing as of the date of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement.

11. Indemnity.

11.1. To the maximum extent permitted by law, Pierce Transit will hold harmless from, and indemnify and defend Sound Transit (including its board members, officers, and employees) against claims, demands, losses, lawsuits, actions, or liability, relating to Pierce Transit's design, construction, or operation of the Pacific Ave/SR 7 BRT Project, including claims by Pierce Transit's employees. **PIERCE TRANSIT SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY PIERCE TRANSIT'S OWN EMPLOYEES OR FORMER EMPLOYEES AGAINST ANY INDEMNIFIED PARTY, AND FOR THAT PURPOSE PIERCE TRANSIT SPECIFICALLY WAIVES ALL IMMUNITY AND LIMITATIONS ON LIABILITY UNDER THE WORKERS COMPENSATION ACT, RCW TITLE 51, OR ANY INDUSTRIAL INSURANCE ACT, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM. THIS INDEMNITY OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR PIERCE TRANSIT OR A CONTRACTOR UNDER WORKERS' COMPENSATION, DISABILITY BENEFIT OR OTHER EMPLOYEE BENEFITS LAWS. PIERCE TRANSIT RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. PROVIDED, HOWEVER, PIERCE TRANSIT'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST PIERCE TRANSIT BY SOUND TRANSIT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY PIERCE TRANSIT'S EMPLOYEE(S) DIRECTLY AGAINST PIERCE TRANSIT.**

11.2. Each Party bears full responsibility for its tax liabilities arising from its responsibilities under this Agreement. Each Party will indemnify the other Party, and hold that other Party

harmless from the tax liability of the indemnifying Party, including, but not limited to, penalties, fines, and interest that are assessed by any tax authority against the indemnifying Party, attorney's fees and costs incurred in response to any claims or assessments against the indemnified Party.

- 11.3. The obligations in this Section shall survive termination or completion of this Agreement as to any claim, loss, or liability arising from events occurring prior to such termination or completion.

12. Insurance.

- 12.1. Coverage. During the construction phase of any eligible elements (per Section 8) within the project corridor, Pierce Transit shall provide primary insurance coverage in the amounts that it deems necessary for construction projects of similar size and cost. If Pierce Transit is self-insured, it shall provide to Sound Transit's risk manager a certificate of self-insurance. Pierce Transit shall require their contractor(s) and sub-contractors to obtain and maintain insurance in amounts and types suitable to protect Sound Transit and Pierce Transit from exposures presented by the work performed under this Agreement. The minimum insurance requirements during the entire term of this Agreement are set forth below:

a) Commercial General Liability in the amount of two million dollars (\$2,000,000) each occurrence limit, two million dollars (\$2,000,000) general aggregate limit, covering bodily injury including death, personal injury, property damage, Employers' Liability and contractual coverage endorsements, and utilize insurers and coverage forms acceptable to Sound Transit.

b) Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least one million dollars (\$1,000,000) combined single limit.

c) Worker's Compensation insurance coverage, where applicable, shall comply with State of Washington Labor and Industries requirements.

d) Builders Risk coverage will be the responsibility of all contractors and subcontractors.

e) Pollution Liability (if there is any potential environmental liability exposure) in the amount of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

f) Professional Liability (if there is a potential professional liability exposure) in the amount of one million dollars (\$1,000,000) per claim.

- 12.2. Certificates. Certificates of insurance must name Sound Transit as an "Additional Insured," and shall reference the number and title of this Agreement. Certificates of Insurance will be provided to Sound Transit before the start of any work performed under this Agreement. All insurance coverage obtained by Pierce Transit or its contractors and subcontractors must name Sound Transit, its officers and employees as "additional insured's"

and contain "severability of interest" (cross liability) provisions. Pierce Transit's and the contractor's insurance policies shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit and waive their right of Subrogation against Sound Transit.

13. Dispute Resolution

13.1. The Parties agree to work cooperatively and in good faith to resolve issues. The Parties agree that neither Party may take or join any action in any judicial or administrative forum to challenge the action of the other Party associated with this Agreement or the Project, except as otherwise set forth in this Agreement.

13.2. The Parties will use their best efforts to prevent and resolve potential sources of conflict at the lowest level possible.

13.3. Either Party may refer a dispute to this dispute resolution process by providing written notice of such referral to the other Party's Designated Representative. The Parties agree to use their best efforts to resolve disputes using good faith negotiations. The dispute resolution process is as follows:

13.3.1. Level One. Sound Transit's Designated Representative and Pierce Transit's Designated Representative will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 14 days, either Party may refer the dispute to Level Two below.

13.3.2. Level Two. Sound Transit's Executive Director of Planning, Environment and Project Development and the Pierce Transit's Executive Director of Planning and Community Development, or their designees, will confer to resolve the dispute. If they cannot resolve the dispute within 14 days, either Party may refer the dispute to Level Three below.

13.3.3. Level Three. Sound Transit's Chief Executive Officer or designee and Pierce Transit's Chief Executive Officer or designee will meet to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within 14 days, or a later date upon which they agree. Only after completion of Level Three may either Party may seek other legal remedies including through litigation.

13.4. At all times prior to resolving a dispute, the Parties must continue to perform undisputed obligations and make undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither Party must agree to participate in alternative dispute resolution processes such as arbitration or mediation.

14. Audits. The Parties will each maintain accounts and records, including contract and financial records that sufficiently and properly reflect all direct and indirect costs of any nature expended for work performed under this Agreement so as to ensure proper accounting for all monies paid to Pierce Transit by Sound Transit. These records must be maintained for a period of six years after termination or expiration of this Agreement unless permission to destroy the records is granted by

the Office of the Archivist in accordance with chapter 40.14 RCW, and agreed to by Pierce Transit and Sound Transit.

15. Duration. This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until the Project is completed and open to the public, unless this Agreement is extended by mutual agreement of the Parties in accordance with Section 19 below, superseded by a future agreement, or suspended or terminated in accordance with Section 8 above. This agreement will terminate 20 years after remittance of the first invoice provided by Pierce Transit toward category 2 capital improvements is made by Sound Transit.

16. Warranties

16.1. By execution of this Agreement, Pierce Transit warrants:

16.1.1. That Pierce Transit has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement Pierce Transit is not in violation of any law, regulation, or agreement; and

16.1.2. That the execution, delivery and performance of this Agreement by Pierce Transit has been duly authorized by all requisite corporate action, that the signatories for Pierce Transit hereto are authorized to sign this Agreement.

16.2. By execution of this Agreement, Sound Transit warrants:

16.2.1. That Sound Transit has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement Sound Transit is not in violation of any law, regulation or agreement; and

16.3. That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite corporate action, that the signatories for Sound Transit hereto are authorized to sign this Agreement.

17. Administration of Agreement

17.1. This Agreement will be jointly administered by Sound Transit's Designated Representative and Pierce Transit's Designated Representative.

17.2. Each Party shall be responsible for its own public records and public records requests.

18. Assignment. Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person is intended to have a cause of action based upon any provision of this Agreement.

19. Notices

All notices required under this Agreement must be in writing and addressed to the Designated Representative. All notices must be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other Party's Designated Representative. However, notice under

Section 9, termination, must be delivered in person or by certified mail, return receipt requested.

20. General Provisions.

- 20.1. The parties may not unreasonably withhold requests for information, approvals or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or the Pierce Transit Board are recognized to be legislative actions. The parties will take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. Pierce Transit and Sound Transit will work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 20.2. Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days unless otherwise noted. Any reference to "working days" shall exclude any legal holidays and weekend days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 20.3. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.
- 20.4. Neither Party is relieved by its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance, and such failure to enforce shall not constitute a waiver of rights or acquiescence in the other Party's conduct.
- 20.5. This Agreement has been reviewed and revised by legal counsel for both Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document applies to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.
- 20.6. Each Party is responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; however, nothing in this paragraph shall be construed to limit the Parties' rights to indemnification.
- 20.7. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

21. Severability. In case any term of this Agreement is held invalid, illegal, or unenforceable in whole or in part, by a court of law, the Parties will reform the agreement to satisfy the original intent of the Parties.

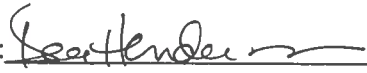
Each of the Parties has executed this Agreement by having its authorized representative sign below:

PIERCE TRANSIT

By: 
Susan Dreier, Chief Executive Officer

Date: 8/16/19

Approved as to form:

By: 
Name, Title Dana Henderson, General Counsel

SOUND TRANSIT

By: 
Peter M. Rogoff, Chief Executive Officer

Date: 9-9-19

Approved as to form:

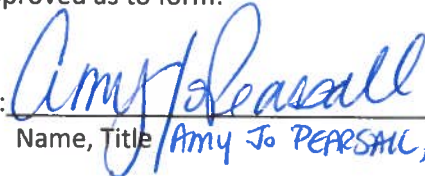
By: 
Name, Title Amy Jo PEARSALL, SR. LEGAL COUNSEL

Exhibit List:

Exhibit A: Products, Activities, and General Capital Improvements Eligible for Sound Transit Funding

Exhibit B: Pacific Ave/SR 7 BRT Concept Map

Exhibit C: Invoice Form

Exhibit A: Products, Activities, and General Capital Improvements Eligible for Sound Transit Funding

Sound Transit 3, the ballot measure approved by the voters in November 2016, includes a funding contribution for the Pacific Ave/SR 7 BRT Project for the following capital enhancements:

- Project development activities and products (through environmental documentation and preliminary engineering)
- Final design and construction management activities
- Transit treatments (transit signal priority, transit queue jump lanes and/or BAT lanes, and roundabouts where transit benefit can be shown)
- Bus stop stations with weather protection, passenger seating, and lighting
- Off-board fare payment options and/or ORCA card readers
- Real-time next bus arrival information
- Level boarding and alighting platforms
- Right of Way required for capital enhancements
- A park and ride and bus turnaround facility at the southern terminus of the route

NOTE: Purchase of vehicles or additional maintenance capacity, and operations and maintenance costs are not eligible for use with Sound Transit's funding contribution and are the responsibility of Pierce Transit.

Pacific Avenue/State Route 7 Bus Rapid Transit Project – Project Description

Pacific Avenue/State Route 7 bus rapid transit (BRT) will serve the 14.4-mile corridor along Pacific Ave/SR 7 between downtown Tacoma and Spanaway. This corridor is currently served by Route 1, one of Pierce Transit's four trunk routes and the highest ridership route in the system. The purpose of the Pacific Ave/SR 7 BRT project is to establish a north-south high capacity transit link in the heart of Pierce County. The project aims to:

- Increase transit ridership through an enhanced and higher quality transit service.
- Deliver cost-effective service that provides capacity to meet latent and future demand.
- Promote transportation equity in the corridor by ensuring that transit service is accessible to all populations
- Improve multi-modal access and connectivity.
- Support a regional vision for the community as documented in land use and transportation plans.
- Enhance safety and security for transit patrons and public health overall.
- Support existing economic activity and be a catalyst for sustainable economic growth and corridor redevelopment.
- Promote environmental stewardship and sustainability.

Exhibit B: Proposed Pacific Ave/SR 7 BRT Project Map (Source: Pierce Transit)



Exhibit C: Invoice Form

Invoice No. _____ Dated: _____

TO: Sound Transit
Accounts Payable
401 S Jackson Street
Seattle, WA 98104

accountspayable@soundtransit.org

Attention: Accounts Payable and [Sound Transit's Designated Representative]

Re: Bus Capital Enhancements for Speed, Reliability, and Convenience along Pacific Avenue/State Route 7

Pierce Transit's authorized representative certifies that Sound Transit's pro rata share of costs under this invoice is \$_____, and is due and payable to Pierce Transit in accordance with the provisions of the Agreement, and is supported by the attached invoice and supporting documentation.

[Identify the element(s), and the amounts by element, for which the amount due applies]

Pierce Transit makes the following representations and warranties to Sound Transit in connection with the Invoice:

- All work performed to date has been, unless otherwise specifically stated by Pierce Transit, performed in accordance with the terms and conditions of this Agreement.
- The amount specified above has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous invoice (unless disputed or rejected for payment) and is not the subject of any pending invoice from Pierce Transit.

Any liability of Sound Transit arising from these representations and warranties are governed by the terms and conditions of the Agreement.

Pierce Transit

By: _____ Date: _____

[Name, Position]