

**PILOT TRANSIT PASS INCENTIVE PROGRAM
FOR BUSINESSES AND NON-PROFITS PROJECT AGREEMENT – YEAR 2 (Y2)**

Between

KING COUNTY METRO TRANSIT DEPARTMENT

And

PIERCE TRANSIT

THIS PILOT TRANSIT PASS INCENTIVE PROGRAM FOR BUSINESSES AND NON-PROFITS PROJECT AGREEMENT – YEAR 2 (Y2) (the "Agreement") is made and entered into by and between the Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit" or "PT") and King County, a political subdivision of the State of Washington, through its Metro Transit Department ("County" or "Metro"), either of which entity may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, in May 2012, the County and the State of Washington ("State"), through its Department of Transportation ("WSDOT"), entered into GCA 6141, Master Agreement for Transportation Demand Management Work by King County ("Master TDM Agreement No. 1/GCA-6141"), effective through December 31, 2018, that sets forth the terms and conditions applicable to the County's performance of Transportation Demand Management ("TDM") work or services ("Work") for the State and that provides for TDM Work under Master TDM Agreement No. 1/GCA-6141 to be undertaken by the County via subsequent task order agreements ("Task Order(s)"); and

WHEREAS, in order to test the effectiveness of incentives to engage small businesses in establishing ORCA subsidy programs for their employees, the State in Session Laws of 2018 Chapter 313 Section 220(7)(b) appropriated \$1,000,000 of the multimodal transportation account for WSDOT to direct a pilot transit pass incentive program for the Central Puget Sound area targeting small businesses and nonprofit organizations with fewer than 100 employees that have not previously offered transit passes to their employees; and

WHEREAS, through its Small Business Transit Incentive Program ("Program"), WSDOT will provide a fifty percent (50%) rebate of the amount qualifying small businesses contribute to purchasing employee transit passes up to \$10,000 per business; and

WHEREAS, the Program is available to eligible small businesses located in King, Pierce and Snohomish counties and will be administered by each of these counties for those participating small businesses located in their jurisdictions; and

WHEREAS, in June 2018, the County and WSDOT entered into GCA6141–Task Order 1, to authorize the County’s use of the \$1,000,000 appropriation to implement the Program in coordination with CT and Pierce Transit; and

WHEREAS, in January 2019, the County and Pierce Transit entered into a Pilot Transit Pass Incentive Program for Businesses and Nonprofits Project Agreement (the "Year 1 (Y1) Agreement") pursuant to which PT would perform work to implement the Program in its service area; and

WHEREAS, the State in its Sessions Laws of 2019 Chapter 416 Section 220(7)(a) appropriated an additional \$1,000,000 of the multimodal transportation account (“Grant”) for WSDOT to continue to direct and fund the Program and its implementation through the County in coordination with other central Puget Sound transit agencies, including Pierce Transit and Community Transit; and

WHEREAS, in November 2019, to replace Master Agreement No. 1 the County and WSDOT entered into a new master TDM agreement, PTD0002–Master Agreement for Transportation Demand Management Work by King County ("Master TDM Agreement No. 2/PTD0002"), effective through December 31, 2026, that sets forth the terms and conditions applicable to the County’s ongoing performance of TDM Work for the State and that provides for TDM Work under Master TDM Agreement No. 2/PTD0002 to continue to be undertaken by the County via Task Orders; and

WHEREAS, in December 2019, the County and WSDOT entered into an additional Task Order, PTD0002–Task Order A1, pursuant to which the County will continue to coordinate with Pierce Transit and Community Transit to implement the Program in an ongoing effort to increase transit pass usage; and

WHEREAS, as part of its Program implementation efforts, the County will work with both Pierce Transit and with Community Transit (for Snohomish County Program implementation under a separate agreement); and

WHEREAS, the County will sub-grant WSDOT funds to PT in accordance with the terms and conditions of this Agreement to enable PT to implement elements of the Program; and

WHEREAS, under the terms and conditions of this Agreement, WSDOT Program funds will be passed through from the County to Pierce Transit to reimburse PT for funds paid by PT to eligible businesses in Pierce County that have signed up to participate in the Program and receive a rebate for establishing an ORCA transit subsidy program for their employees.

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

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish the terms and conditions pursuant to which the County will work with Pierce Transit to implement the Program and pass through WSDOT Program funds to reimburse PT for rebates given to eligible businesses in Pierce County that have signed up to participate in the Program and establish an ORCA transit subsidy program for their employees.

2. PIERCE TRANSIT 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 Scope of Work ("SOW"), which is attached hereto as Exhibit A and incorporated herein by this reference.
- 2.2 PT will work to carry out the Project objectives within the timelines and budget that are described in Exhibit A.
- 2.3 PT will comply with all applicable laws, rules and regulations in the performance of its responsibilities under this Agreement and in accordance with Subsection 5.1 of this Agreement.
- 2.4 PT will provide quarterly reports and invoices to the County as necessary to enable the County to report to WSDOT as detailed in Subsection 4.1 of this Agreement.

3. COUNTY 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 specified with particularity in the SOW. The County will reimburse PT up to a maximum, not-to-exceed amount of \$250,000 (the "Reimbursement Cap"), over the duration of this Agreement. Funding for this Agreement will be via a combination of WSDOT Program 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 PTD0002–Task Order A1, the County will serve as the lead agency for the Project and, in that capacity, will administer the Grant funds, including retaining responsibility for any reporting and/or invoicing for reimbursement from WSDOT

that may be required under the terms of the Grant award under Master TDM Agreement No. 2/PTD0002 and its associated PTD0002–Task Order A1.

4. INVOICE AND PAYMENT PROCEDURES

- 4.1 PT shall submit a completed report to the County detailing quarterly activities, outcomes, expenses and reimbursement amount due within thirty (30) days of each quarter's end. PT will provide thorough and complete 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.
- 4.2 Upon receipt of an invoice from PT, the County will review the invoice and supporting documentation. The County will promptly notify PT if it determines that the documentation provided is not adequate and/or does not support the amount invoiced. The County will pay PT within thirty (30) calendar days after the County receives and accepts a properly supported invoice.
- 4.3 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. The bill from the County to PT shall be supported by adequate supporting documentation. PT shall pay the County within thirty (30) days of receipt of an invoice for overpayment.
- 4.4 PT will invoice the County for reimbursements for new ORCA Business Passport accounts eligible for the Program at the time of account setup.
- 4.5 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 Master TDM Agreement No 2/PTD0002 and its associated PTD0002–Task Order A1 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 PTD0002–Task Order A1.

As the sub-grantee of these funds, PT agrees to comply, and ensure 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, not 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 30, 2021 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: Ina Percival, Market and Business Development Supervisor
King County Metro Transit Department
201 South Jackson Street Seattle, WA 98104
(206) 477-0313
ipercival@kingcounty.gov

For Pierce Transit: Kim McGilvery, Community Development Manager
Pierce Transit
3701 96th Street SW Lakewood, WA 98499-4431
(253) 581-8112
kmcgilvery@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 Department or her/his designee shall confer and exercise good faith to resolve the dispute.

- 7.4 In the event the PT Chief Executive Officer 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 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).

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.

- 7.5 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 its obligations under this Agreement in a timely and proper manner, 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 the 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. 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	Kim McGilvery	Alex Hughan
Title	Community Development Manager	Transportation Planner King County Metro
Address	Pierce Transit 3701 96 th Street SW Lakewood, WA 98499-4431	201 S Jackson Street Seattle, WA 98104
Telephone	(253) 581-8112	(206) 263-5786
E-mail	kmcgilvery@piercetransit.org	ahughan@kingcounty.gov

18. REPRESENTATION ON AUTHORITY OF SIGNATORIES

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

19. ALL TERMS AND CONDITIONS

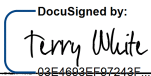
This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

20. EXECUTION OF AGREEMENT – COUNTERPARTS

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

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

KING COUNTY

By:  _____
Rob Gannon, General Manager
Metro Transit Department

Date: 9/10/2020

PIERCE TRANSIT

By:  _____
Sue Dreier, Chief Executive Officer

Date: 8/6/2020

EXHIBIT A Scope of Work

Program Background

In March 2018, the Washington State Legislature passed a bill to allow one million dollars (\$1,000,000) of the WSDOT budget be allocated to:

Direct a pilot transit pass incentive program. Businesses and nonprofit organizations located in a county adjacent to Puget Sound with a population of more than seven hundred thousand that have never offered transit subsidies to employees are eligible to apply to the program for a fifty percent rebate on the cost of employee transit subsidies provided through the regional ORCA fare collection system. No single business or nonprofit organization may receive more than ten thousand dollars from the program.

- (i) Businesses and nonprofit organizations may apply and be awarded funds prior to purchasing a transit subsidy, but the department may not provide reimbursement until proof of purchase or a contract has been provided to the department.
- (ii) The department shall report to the transportation committees of the legislature on the impact of the program by June 30, 2019, and may adopt rules to administer the program.

In June 2019, the Washington State Legislature extended the Program through the 2019-2021 biennium and allocated an additional one million dollars.

The County continues to administer the program for WSDOT, and oversees the implementation and execution of this pilot. The goal of the Program is to test the effectiveness of incentives to engage small businesses in establishing ORCA subsidy programs for their employees. An interagency team, consisting of Metro, Community Transit, and Pierce Transit will provide direction on program structure and elements, and target markets.

Approach to Services

The County's Program consultant ("Consultant") will create a strategic work plan to attract and engage small businesses and non-profits (under 100 employees) from King, Snohomish and Pierce counties, who do not currently have an ORCA program. The interagency team will develop the incentive delivery structure, including any necessary agreements and administrative processes. The

EXHIBIT A – SCOPE OF WORK

To Pilot Transit Pass Incentive Program for Businesses and Nonprofits

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Consultant will advise on the proposed incentive structure, help facilitate market feasibility as well as marketing, outreach, and in some cases 1:1 contact with small businesses. The goal is to bring onboard approximately 300 companies over three years in the three counties.

Pierce Transit's Responsibilities

1. Pierce Transit will work with the County and Community Transit in the development of the Project work plan, incentive delivery structure, and implementation of the Project.
2. Pierce Transit will assist in providing metrics and evaluation for the Pierce County program, as agreed upon by the interagency team.
3. Pierce Transit will administer ORCA Business Agreements within its service area for participating businesses.
4. Pierce Transit will invoice the County for incentive portion of ORCA Business Passport agreements. Pierce Transit will notify the County of incentive portion of ORCA Business Choice agreements for County to complete incentive fulfillment.

The County's Responsibilities

1. The County will act as Program lead and will support and manage its Program Consultant.
2. The County will work in collaboration with Pierce Transit in development of the Project work plan, incentive delivery structure, and implementation of the Project.
3. The County will assist in providing metrics and evaluation for the Program, as agreed upon by the interagency team.
4. The County will lead incentive administration for ORCA Business Choice agreements for all Project areas.
5. The County will reimburse Pierce Transit for actual eligible expenses incurred consistent with the terms and conditions of this Agreement, not to exceed \$250,000 as follows:

Pierce County Pilot Transit Pass Incentive Program – \$250,000 for ORCA product and card value and/or related expenses

EXHIBIT A – SCOPE OF WORK

To Pilot Transit Pass Incentive Program for Businesses and Nonprofits
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