

**ORDINANCE NO. 26829**



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AN ORDINANCE granting a non-exclusive Franchise to the Pierce Transit Authority ("Pierce Transit"), a Public Transit Benefit Area Authority organized under the laws of the state of Washington, to construct, install, operate, own, control, repair, and maintain bus shelters within the City of Tacoma, and setting forth provisions, terms, and conditions of the grant of a franchise under the Tacoma Municipal Code and the City of Tacoma Charter.

WHEREAS Pierce Transit is a Public Transit Benefit Area Authority, established under RCW 36.57A, vested with the powers necessary to construct and operate a public transportation system benefiting Pierce County residents, and

WHEREAS the City of Tacoma is a first-class city operating under the laws of the state of Washington, and

WHEREAS the City owns and operates streets, public utilities, and other infrastructure improvements within the City boundaries, where transit improvements are proposed; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That, in consideration of mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the respective parties hereto, it is mutually agreed that a Franchise is hereby granted to Pierce Transit, a government authority organized under the laws of the state of Washington ("Pierce Transit"), to construct, install, operate, repair, maintain, use, control, and own Shelters and license the use of Advertising Space upon such Shelters

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1 installed within City of Tacoma right-of-way and upon the following terms and  
2 conditions:

3 Section 1. DEFINITIONS. For purposes of this Franchise, the following  
4 terms, phrases, words, and their derivations shall have the meaning given  
5 herein where capitalized; words not defined herein shall have their ordinary and  
6 common meaning. When not inconsistent with the context, words used in the  
7 present tense include the future, words in the plural number include the singular  
8 number, words in the singular number include the plural number, and the use of  
9 any gender shall be applicable to all genders whenever the sense requires.  
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11 The words "shall" and "will" are mandatory and the word "may" is permissive. A  
12 reference to the City's Charter refers to the same as amended from time to  
13 time. References to governmental entities (whether persons or entities) refer to  
14 those entities or their successors in authority. If specific provisions of law  
15 referred to herein be renumbered, then the reference shall be read to refer to  
16 the renumbered provision. References to laws, ordinances, or regulations shall  
17 be interpreted broadly to cover government actions, however nominated, and  
18 include laws, ordinances and regulations now in force or hereinafter enacted or  
19 amended.  
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22 A. Advertising. "Advertising" shall mean the commercial  
23 advertising posters, signs, messages and other materials sold to a third party  
24 advertiser or its agent and posted by franchisee in a Shelter.  
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B. Advertising Space. "Advertising Space" shall mean the commercial space available on a Shelter for the posting of Advertising.

C. Agent. "Agent" shall mean, for purposes of this Agreement only, the independent contractor providing Advertising by contract to Pierce Transit and which is currently Pattison Outdoor (U.S.) Inc.

D. Agreement. "Agreement" shall mean this Franchise ordinance.

E. Facilities. "Facilities" or "Facility" shall mean any and all improvements, equipment, or property, including panels for Advertising, Advertising Space, benches, and garbage receptacles controlled, owned, or maintained by Pierce Transit or its Agent which are necessary for the installation and operation of a Shelter.

F. Franchise. "Franchise" shall mean the rights granted by the City, pursuant to Section VIII of the Tacoma City Charter, to Pierce Transit for the non-exclusive use of the rights-of-way of the City within the Right-of-Way in accordance with the terms and conditions of the Agreement.

G. Gross Revenue. "Gross Revenue(s)" shall mean the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees, or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest

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1 therein, and proceeds from the sale of notes, bonds, mortgages, or other  
2 evidences of indebtedness, or stocks and the like) and without any deduction  
3 on account of the cost of the property sold, the cost of materials used, labor  
4 costs, interest or discount paid, or any expense whatsoever, and without any  
5 deduction on account of losses.

6 H. Liability. "Liability" shall mean all loss, damages, cost, expense  
7 (including costs of investigation and attorneys fees and expenses at arbitration,  
8 trial, or appeal and without institution of arbitration or suit), liability, claims, and  
9 demands of whatever kind or nature (including those arising under the Federal  
10 Employers Liability Act), arising out of an occurrence relating to this Agreement.

11 I. Pierce Transit. "Pierce Transit" shall mean the Pierce County  
12 Area Transportation Authority Corporation, and any other entity to the extent  
13 such entity, as permitted under this Agreement, is exercising any rights to  
14 operate bus shelter advertising pursuant to a specific written grant of such  
15 rights by Pierce Transit, including, any operator.

16 J. Public Rights-of-Way. "Public Rights-of-Way" shall mean the  
17 public streets and easements which, under the City Charter, the Tacoma  
18 Municipal Code, City ordinances, and applicable laws, the City has authority to  
19 grant rights-of-way, permits, or licenses for use thereof or has regulatory  
20 authority therefor, excluding railroad rights of way, airport, and harbor areas.  
21 Public Rights-of-Way for the purpose of this Agreement do not include  
22 buildings, parks, poles, conduits, or similar Facilities or property owned by or  
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leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

K. Right-of-Way. "Right-of-Way" shall mean the Public Rights-of-Way.

L. Shelter. "Shelter" shall mean a commercial bus shelter and Facilities located in the Right-of-Way and constructed, installed, and maintained by franchisee in accordance with this Franchise.

M. Shelter Site. "Shelter Site" shall mean that portion of the Right-of-Way occupied by a Shelter and that portion of the Right-of-Way within a ten-foot radius of the Shelter.

N. Site Plan. "Site Plan" shall mean a plan view drawing showing the relationship between the Shelter and the other infrastructure within the Right-of-Way, including, but not limited to, sidewalks, curbs, poles, and gutters.

O. Surplus Revenues. "Surplus Revenues," for purposes of Section 3.A of this Franchise, shall mean all revenues received by Pierce Transit from the uses authorized pursuant to this Franchise, less: (1) 1 percent payment of Gross Revenues as provided at Section 3.A of this Franchise; (2) all applicable fees, taxes, and tariffs due and payable by Pierce Transit or the City upon Gross Revenues received by Pierce Transit or the City from the uses authorized pursuant to this Franchise; and (3) 15 percent of Gross Revenues for Pierce Transit franchise and related costs.

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P. Third Party. "Third Party" shall mean any person other than the City and any person other than Pierce Transit.

Section 2. GRANT OF RIGHTS BY CITY.

A. Grant of Non-Exclusive Right of Use. The City grants to Pierce Transit a non-exclusive Franchise to construct, install, operate, maintain, repair, control, and own Shelters and License Advertising Space on said Shelters, in accordance with the terms and conditions of this Agreement. Pierce Transit expressly agrees that it will construct, install, operate, repair, maintain, use, own, or control the Facilities in compliance with this Agreement and all applicable City ordinances and state and federal laws, rules, and regulations.

B. Rights Limited. The Franchise is granted solely for the purpose of construction, installation, maintenance, repair, operation, use, control, and ownership of the Shelters for transit services and licensing of Advertising Space and for no other purpose. The licensing of Advertising Space shall be subject to the conditions of this Franchise.

C. Rights Subject to Right-of-Way Uses. The City intends to continue using the Right-of-Way, as burdened by Pierce Transit for use as a right-of-way and any other activities that do not impair the ability of Pierce Transit to maintain the Facilities. The rights of Pierce Transit are subject and subordinate to the prior and continuing right of City: (1) to use and maintain the entire Right-of-Way subject to the terms and conditions of the Agreement;

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1 (2) the City's right to dispose of all or any part of the property, including (but not  
2 limited to) the air space above and the subsurface area below the Pierce  
3 Transit Facilities, subject to the terms and conditions of this Agreement; and  
4 (3) to construct and operate, and to change or modify, pipelines, electric lines,  
5 and other facilities in, on, upon, over, under, along, across, or through any or all  
6 parts of the Right-of-Way, or permit others to do so for City or for other public  
7 improvement projects, all or any of which may be freely done at any time or  
8 times by the City or others with the City's permission, without liability to the City  
9 or to any other party for compensation or damages, unless and except to the  
10 extent that this Agreement otherwise expressly provides therefor. The City  
11 agrees that it will provide reasonable notice to Pierce Transit whenever it  
12 reasonably believes that a Right-of-Way use, Right-of-Way improvement  
13 project, or conveyance of Right-of-Way property will require temporary or  
14 permanent relocation or removal, temporary closure, modification to, or support  
15 of a Shelter.  
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18 D. City Use of Right-of-Way/Relocation. Pierce Transit

19 understands and agrees that the normal course of Public Right-of-Way use by  
20 City may involve construction, maintenance, demolition, leasing, licensing,  
21 permitting, and similar activities for public projects that have the potential to  
22 impair the Facilities, including the Advertising attached thereto. Pierce Transit  
23 understands and agrees that such activities may be caused, from time to time,  
24 by reasons including, but not limited to: (1) traffic conditions; (2) public safety;  
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1 (3) Public Rights-of-Way construction; (4) Public Rights-of-Way repair (including  
2 resurfacing or widening); (5) change of Public Rights-of-Way grade; and  
3 (6) construction, installation, or repair of sewers, drains, water pipes, power  
4 lines, signal lines, tracks, government-owned communications systems, public  
5 works, public facilities or improvements, or any government-owned utility.

6 Except as may be otherwise provided herein, if the City determines that as a  
7 result of such a public project, the location of any of Pierce Transit Facilities  
8 must be changed or relocated; or for any other purpose where the work  
9 involved would be aided by the removal or relocation of the Facility, the City  
10 shall notify Pierce Transit of such plans and Pierce Transit shall, at its sole cost  
11 and expense, by a time specified by the City, protect, support, temporarily  
12 disconnect, relocate, or remove any of its Facilities.

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15 If any person that is authorized to place Facilities in the  
16 Right-of-Way requests Pierce Transit to protect, support, temporarily  
17 disconnect, remove, or relocate Facilities to accommodate the construction,  
18 operation, or repair of the Facilities of such other person, Pierce Transit shall,  
19 after 30 days' advance written notice, take action to effect the necessary  
20 changes requested. Unless the matter is governed by a valid contract or a  
21 state or federal law or regulation, or unless Pierce Transit Facilities were not  
22 properly installed, the reasonable cost of the same shall be borne by the person  
23 requesting the protection, support, temporary disconnection, removal, or  
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1 relocation at no charge to the City, even if the City makes the request for such  
2 action.

3 E. Non-Exclusive Use. Pierce Transit understands that the rights  
4 granted herein are nonexclusive. City shall have the right to agree to other  
5 nonexclusive occupancies of the Right-of-Way by one or more other person(s);  
6 provided, however, that all such subsequent occupancies shall not  
7 unreasonably interfere with Pierce Transit's rights. City shall, where and as  
8 practicable, protect from subsequent occupancies the Pierce Transit Facilities  
9 where occupancy would have the risk of interference with the bus shelter  
10 advertising.  
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12 F. Use Restricted. This Agreement does not authorize the  
13 provision of any services or uses by Pierce Transit other than the services  
14 reasonably involved in the provision and operation of transit services and the  
15 uses reasonably involved in the license of Advertising Space or in any way  
16 relieve Pierce Transit of any obligation to obtain any additional permits,  
17 authorizations, licenses, or agreements to use the Right-of-Way to provide  
18 other services or uses. The provisions of this Agreement are not a bar to the  
19 imposition of similar, different, or additional conditions with respect to the use of  
20 the Rights-of-Way.  
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23 G. Ownership. Pierce Transit may, pursuant to this Franchise,  
24 authorize a Third Party ("Authorized Third Parties") to retain an ownership  
25 interest in whole or in part in a Shelter or Shelters located in the Right-of-Way;  
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1 provided that, such Authorized Third Parties shall not be authorized to  
2 construct, install, operate, maintain, repair, control, remove, or relocate such  
3 Shelters except as an Agent of Pierce Transit and subject to the terms and  
4 conditions of this Franchise; and, provided further, that such interest of  
5 Authorized Third Parties shall not create a lien or encumbrance upon the  
6 Right-of-Way and shall be subject and subordinate to the rights of the City  
7 under this Franchise, and other applicable law.

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9 Nothing in this Agreement shall be construed as granting to  
10 Pierce Transit any interest or right in the property or the improvements on the  
11 property other than the rights expressly provided herein.

12 H. License of Advertising Space. Pierce Transit is authorized to  
13 license the use of Advertising Space for placement of Advertising; provided  
14 that, such licensees shall not be authorized under this Franchise to install,  
15 maintain, repair, relocate, or remove Advertising in or upon the Shelters, except  
16 as an Agent of Pierce Transit and subject to the terms and conditions of this  
17 Franchise; and, provided further, that the rights of licensee shall be subject and  
18 subordinate to the rights of the City under this Franchise and other applicable  
19 law. Pierce Transit shall, within ten days of execution, provide the City with full,  
20 complete, and executed copies of all license agreements and amendments  
21 thereto and extensions or renewals thereof.

22 I. Inconsistent Use. Notwithstanding the above, no Public  
23 Rights-of-Way shall be used by Pierce Transit in a manner that is inconsistent  
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1 with the terms, conditions, or provisions by which such Public Rights-of-Way  
2 were created or dedicated, or presently used under applicable laws.

3 J. No Rights by Implication. No rights shall pass to Pierce Transit  
4 by implication. Without limiting the foregoing, by way of example and not  
5 limitation, this Agreement shall not include or be a substitute for:

6 1. Any other permit or authorization required for the  
7 privilege of transacting and carrying on a business within the City that may be  
8 required by the ordinances and laws of the City;

9 2. Any permit, agreement, or authorization required in  
10 connection with operations on or in Public Rights-of-Way or property, including  
11 by way of example and not limitation, street cut permits; or

12 3. Any permits or agreements for occupying any other  
13 property of the City or private entities to which access is not specifically granted  
14 by this Agreement.

15 K. Utilities Agreements. This Agreement shall not be read to  
16 diminish, or in any way affect, the authority of the City to control and charge for  
17 the use of the light, water, storm, refuse, and sewer utilities. Therefore, if  
18 Pierce Transit desires to use such utilities it must obtain necessary agreements  
19 or consents for such uses, and pay any and all associated fees as may be  
20 required by the City.  
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Section 3. PAYMENT.

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2 A. Payment. As payment for the rights granted herein, Pierce  
3 Transit will pay quarterly to City 1 percent of the Gross Revenues received by  
4 Pierce Transit from the uses authorized herein. Each payment shall be due  
5 within 30 days after the end of the quarter for which the payment is due. Pierce  
6 Transit will also pay or reimburse City for all taxes and assessments that may  
7 be levied or assessed against the Pierce Transit by reason of the presence of  
8 the bus shelter advertising. As further payment for the rights granted herein,  
9 Pierce Transit will pay quarterly to the City, all surplus revenues received by  
10 Pierce Transit from the services authorized herein. Surplus revenues shall be  
11 disbursed to the City by Pierce Transit, pursuant to separate agreement which  
12 terms and conditions shall be negotiated in good faith and mutually agreed  
13 upon by the parties and which may be amended from time to time. The City  
14 Manager is hereby authorized to execute any such agreement on behalf of the  
15 City and any amendments thereto. In the event that the parties have not  
16 executed such an agreement within 12 months of Pierce Transit acceptance of  
17 this Franchise, and thereafter until such an agreement is fully executed, all  
18 Surplus Revenues shall be disbursed to the City and deposited in a restricted  
19 fund for use to improve Rights-of-Way in business districts in which the Shelters  
20 are located.  
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24 B. Right-of-Way Improvements. Pierce Transit and the City  
25 recognize the mutual benefit to the parties associated with improvements to  
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1 and the maintenance and repair of the City Rights-of-Way in the vicinity of the  
2 Shelters. Pierce Transit, therefore, agrees that it will disburse quarterly to the  
3 City, all surplus revenues received by Pierce Transit from the uses authorized  
4 herein. Said Surplus Revenues shall be deposited in a special project fund to  
5 be used for cost reimbursement for City Right-of-Way improvements,  
6 maintenance, and repair. Eligibility for cost reimbursement shall be as  
7 determined pursuant to separate agreement between the City and Pierce  
8 Transit, which terms and conditions shall be negotiated in good faith and  
9 mutually agreed upon by the parties, and which may be amended from time to  
10 time. Said Surplus Revenues shall also be available to reimburse the parties  
11 for any tax deficiencies resulting from tax obligations under this Franchise or  
12 related agreements. The City Manager is hereby authorized to execute any  
13 such agreement on behalf of the City and any amendments thereto. In the  
14 event that the parties have not executed such an agreement within 12 months  
15 of Pierce Transit acceptance of this Franchise and thereafter until such an  
16 agreement is fully executed, all Surplus Revenues shall be disbursed to the  
17 City and deposited in a restricted fund for use to improve Rights-of-Way in  
18 business districts in which the Shelters are located.  
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22 C. Interest. Pierce Transit shall pay to City 12 percent interest  
23 per annum of any fee or charge not paid when due and for all costs of  
24 collection of any fee or charge past due more than 30 days.  
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D. Survival of Terms. All obligations of Pierce Transit to pay City any fee or charge required pursuant to this Franchise shall survive termination of this Agreement.

E. Books/Records/Reports. Pierce Transit shall prepare and furnish to the City, upon request, at the times and in the form prescribed by the City, such reports with respect to the Pierce Transit 's operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to ensure compliance with the material provisions of this Franchise, or to permit the performance of any of the rights, functions, or duties of the City or such other regulatory entity in connection with the Franchise.

Pierce Transit shall manage all of its Facility advertising operations in accordance with a policy of keeping books and records open and accessible to the City. Without limiting its obligations under this Franchise, Pierce Transit agrees that it will collect and make available books and records for inspection and copying by the City. Pierce Transit shall be responsible for collecting the information and producing it. Books and records shall be produced to the City at the Tacoma Municipal Building, or such other location as the parties may agree. If documents are too voluminous, or for security reasons cannot be produced at the Tacoma Municipal Building or a mutually agreeable location within the City, then Pierce Transit may produce the material at another central location, provided it also agrees to pay the additional reasonable costs incurred by the City in reviewing the materials.

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Pierce Transit shall be responsible for redacting any data that federal or state law prevents it from providing to the City.

Records shall be kept for at least six years. Pierce Transit shall maintain records sufficient to show its compliance with the requirements of this Franchise, and shall produce those records within 30 days of a City request.

Pierce Transit agrees to meet with a representative of the City, upon request, to review its methodology of record-keeping, financial reporting, computing fee obligations, and other procedures, the understanding of which the City deems necessary for understanding the meaning of reports and records.

The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary as part of a bona fide exercise of its authority under this Franchise or other applicable law.

**Section 4. CONSTRUCTION, OPERATION, MAINTENANCE, AND REPAIR.**

A. Site Plans/Location. Prior to installation of the bus shelter advertising, Pierce Transit shall, at its expense, submit to the City a listing of locations, a Site Plan for each location, and a typical Shelter design including the dimensions of available Advertising Space.

B. Approval. Upon the City's receipt of the required documents, the City shall, within 30 days from said receipt, review and approve or

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1 disapprove of the construction specified therein; provided, however, that  
2 approval shall not be unreasonably withheld. To the extent that the City  
3 disapproves of all or any part of the construction, the City shall, within said  
4 30-day period, provide to Pierce Transit or its Agent a written explanation of the  
5 reasons for disapproval and suggested cures, if any. Pierce Transit shall then  
6 submit revised documents, which shall be subject to the same review and  
7 approval or disapproval procedures. Pierce Transit shall not commence  
8 construction at any site until the City has approved documents for such site.  
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10 C. Entry Upon Right-of-Way. Pierce Transit, its servants,  
11 employees, agents, contractors, and/or subcontractors shall have the right to  
12 enter upon the Right-of-Way for the purpose of constructing, operating, and  
13 maintaining the bus shelter advertising.  
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15 D. Compliance with Laws, Rules, and Regulations. Pierce  
16 Transit shall construct, operate, maintain, and repair its bus shelter advertising  
17 in compliance with all federal, state, and local laws, ordinances, and  
18 departmental rules, regulations, and practices affecting such system, which  
19 include, by way of example and not limitation, the obligation to operate,  
20 maintain, and repair in accordance with zoning codes, safety codes, and City  
21 construction standards. In addition, the construction, operation, and repair shall  
22 be performed in a manner consistent with industry standards. Pierce Transit  
23 shall exercise reasonable care in the performance of all its activities and shall  
24 use industry-accepted methods and devices for preventing failures and  
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1 accidents that are likely to cause damage, injury, or nuisance to the public or to  
2 property.

3 E. Installation. All Facilities and installations must meet or  
4 exceed applicable specifications of the City and be in compliance with all  
5 existing federal, state, or local laws, ordinances, and regulations.

6 F. Inspection. The City shall have the right to verify, by  
7 inspection, that the location of the work and the materials used in construction  
8 or operation of the Pierce Transit Facilities are in compliance with the plans, as  
9 approved by the City. The City shall further have the right to verify, by  
10 inspection, that City Facilities relocated and/or constructed by Pierce Transit  
11 are to a standard acceptable to the City.

12 G. Restoration of Right-of-Way. Pierce Transit shall promptly  
13 repair any and all Public Rights-of-Way and public or private property that is  
14 disturbed or damaged during the construction of its bus shelter advertising.  
15 Upon completion of the initial construction, Pierce Transit shall ensure that the  
16 unimproved Right-of-Way and all other public and private property that is  
17 disturbed or damaged during construction is promptly returned to as good a  
18 condition as before the disturbance or damage occurred, or if to a lesser  
19 condition, then to the satisfaction of the City or the private property owners. In  
20 the event Pierce Transit does not comply with the foregoing requirements, the  
21 City may, upon reasonable advance notice to Pierce Transit, take action to  
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1 restore the Public Rights-of-Way or public property at Pierce Transit's sole cost  
2 and expense.

3 H. Dispute. In any dispute over the adequacy of a restoration,  
4 the Director of the Department of Public Works shall, in his or her sole  
5 discretion, make the final determination.

6 I. Level of Operation/Maintenance. All Shelters shall be operated  
7 and maintained in such a manner as to minimize disruption to other users of the  
8 Public Rights-of-Way. All Shelters shall be maintained in a safe condition, in  
9 good repair and appearance.

10 J. Permissible Advertising. The City does not intend by  
11 authorizing franchisee to license Advertising Space to create a public forum for  
12 the receipt and dissemination of speech. Advertising will be located only upon  
13 Shelters and shall not be authorized to be placed in other locations within the  
14 Right-of-Way or within the Shelter Site. Pierce Transit shall be responsible for  
15 implementation and enforcement of policies for screening objectionable  
16 Advertising.

17 K. Appointment of Operator. Pierce Transit may appoint an  
18 operator as Pierce Transit's agent to exercise some or all of Pierce Transit's  
19 rights under this Agreement, subject to the terms and conditions of this  
20 Agreement.

21 L. Responsibility for Facilities. The City shall have no  
22 responsibility for inspecting, maintaining, servicing, or repairing any Shelters  
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1 and shall not be responsible for the clearing or removal of trees, shrubs, plants,  
2 ice, snow, or debris therefrom.

3 Section 5. PERMITS.

4 A. Permits and Licenses. Pierce Transit, at its sole cost and  
5 expense, shall: (1) secure and maintain in effect all federal, state, and local  
6 permits and licenses required for the construction, operation, and maintenance  
7 of the bus shelter advertising; and (2) indemnify the City against payment of the  
8 costs thereof and against any fines or penalties that may be levied for failure to  
9 procure, or to comply with, such permits or licenses, as well as any remedial  
10 costs incurred by the City in curing any such failures.

11 B. Permits Required. Except in cases of emergency repairs,  
12 Pierce Transit's construction, operation, or repair of Shelters and Advertising  
13 shall not commence until all required permits have been properly filed for and  
14 obtained from the proper City officials and all required permits and associated  
15 fees paid. In case of emergency repairs, appropriate permits shall be obtained  
16 no later than the second business day following repairs.

17 Section 6. INSURANCE. Pierce Transit, as a self-insured entity, shall  
18 maintain, throughout the term of this Agreement, adequate self-funding levels  
19 to protect the City, its trustees, elected and appointed officers, agents, and  
20 employees against claims and damages that may arise as a result of the  
21 construction, installation, operation, maintenance, or repair of the Shelters and  
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Advertising. This obligation shall require Pierce Transit to maintain self-insurance funding levels in no less than the following amounts and form:

A. Comprehensive general liability self-insurance funding levels to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- 1. Bodily Injury
  - i. Each Occurrence           \$1,000,000
  - ii. Annual Aggregate       \$3,000,000
  
- 2. Property Damage
  - i. Each Occurrence       \$1,000,000
  - ii. Annual Aggregate     \$3,000,000
  
- 3. Personal Injury
  - i. Annual Aggregate       \$3,000,000

B. Completed operations and product liability self-insurance shall be maintained for two years after the termination of this Agreement (in the case of the Pierce Transit or operator) or completion of the work for the Pierce Transit or operator (in the case of a contractor or subcontractor).

C. Property damage liability self-insurance shall include coverage for the following hazards: X – explosion; C – collapse; U - underground.

D. Workers' compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees and, in the case any work is sublet, Pierce Transit shall require its contractors and

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subcontractors to similarly provide workers' compensation insurance for all the latter's employees, unless such employees are covered by the protection afforded by Pierce Transit. Pierce Transit shall also maintain, during the life of this policy, employer's liability insurance. The following minimum limits must be maintained:

Workers' Compensation:	Statutory
Employer's Liability:	\$500,000 per occurrence

E. Comprehensive auto liability coverage shall include owned, hired, and non-owned vehicles.

- 1. Bodily Injury
  - i. Each Occurrence      \$1,000,000
  - ii. Annual Aggregate      \$3,000,000
  
- 2. Property Damage
  - i. Each Occurrence      \$1,000,000
  - ii. Annual Aggregate      \$3,000,000

F. If Pierce Transit, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

G. Certificates of insurance, reflecting evidence of the required insurance, and naming the City as an additional insured under its insurance or self-insurance program, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in Sections H and I below.

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H. Minimum Requirements. The parties agree that the insurance

coverage required herein shall:

1. Provide coverage on an occurrence basis;
2. Cover any and all costs including defense costs, losses and damages resulting from any personal injury and/or death (including coverage under the Federal Employers Liability Act), and/or property damage;
3. Include blanket contractual coverage, including coverage for written contracts and specific coverage for the indemnity provisions set forth in this Agreement, and completed operations and products liability coverage; provided that, there shall not be an exclusion for liability not contracted for;
4. Have no exclusion for incidents occurring within 25 feet, or any distance, from a railroad track, or on, over, or under a railroad track;
5. Have an aggregate limit location endorsement for each construction location;
6. Commence and be in force and effect before any work is done under this Agreement;
7. Be maintained in place until all Shelters have been removed from the Public Rights-of-Way and for six years thereafter;
8. Have no non-standard exclusions unless approved of by the City Risk Manager;

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9. Name the City as an additional insured without limitation, pursuant to an endorsement approved of by the City's Risk Manager;

10. Be issued by a financially sound insurer that is authorized to do business in the state of Washington with a financial rating no less than an "A XII" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Company;

11. Be endorsed to state that coverage under the policy shall not be suspended, voided, canceled, or amended except after 60 days prior written notice of such has been given to the City;

12. Include a waiver of subrogation rights to the extent that any liability for costs, losses, and damages resulting from any personal injury, death, and/or property damage may be covered by the proceeds of such insurance policies;

13. Include an endorsement that such policy is primary and noncontributing.

I. The certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the City.

J. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Right-of-Way then, in that event, Pierce Transit shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as

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proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Right-of-Way.

Section 7. LIABILITY; INDEMNIFICATION.

A. Pierce Transit hereby agrees to indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, installation, maintenance, operation, repair, removal, occupancy, use, and ownership of the Shelters by Pierce Transit, its Agents or Authorized Third Parties.

B. Pierce Transit hereby releases the City from, and agrees to indemnify, defend, protect, and save the City harmless from and against any and all claims, suits, judgments, liabilities, defense costs, and expenses (including, but not limited to, attorneys' fees) arising out of any loss of and/or damage to the real or tangible personal property of the City, and any loss of and/or damage to the property of any Third Parties or Pierce Transit; any loss and/or damage on account of injury to or death of any persons whomsoever (including employees and agents of the parties hereto and all other persons) caused by or growing out of the presence of Pierce Transit or its employees, Agents, Authorized Third Parties, servants, contractors, or subcontractors in, upon, or along the Right-of-Way or the plan, design, construction, and installation, or subsequent operations, maintenance, repair, reinstallation,

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replacement, relocation, or removal of Facilities or any part thereof; service interruption, cessation, or unreliability of the Transit Facilities, libel, slander, infringement of copyright, or unauthorized use of any trademark, trade name, or service mark arising out of the material, data, information, or other content transmitted or received over the Facilities, unless such claims, suits, judgments, or liabilities arise from the sole actions or inaction of the City, its employees, servants, agents, contractors, or subcontractors.

C. The parties hereby agree that no damages shall be recoverable from one another because of any dispossession that results from any failure of or defect in the City's title or the rights granted herein by the City to Pierce Transit. The City will cooperate with Pierce Transit's actions to rectify any title defect and shall stipulate to judgment upon demand with regard to Pierce Transit's title.

D. The party in whose favor an indemnification runs, pursuant to any of Sections 7(A), 7(B), and 7(C) (the "Protected Party"), shall give the other party (the "Indemnifying Party") prompt notice of any claims or actions of which it is aware against the Protected Party under this Agreement. The Indemnifying Party shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the Protected Party, its agents, contractors, and employees; hold the Protected Party harmless for any expense associated therewith; and promptly pay any settlement or judgment that may be agreed to by the parties or entered by a court. The Protected

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Party shall cooperate fully with the Indemnifying Party in the defense of any such claim or action. The Protected Party shall not settle any such claim or action without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. In the event that the Indemnifying Party does not assume and meet its obligations under Section 7(D) promptly upon receiving written notice from the Protected Party, the Protected Party may, at its option, make any expenditures or incur any obligations for the payment of money in connection with or arising out of the matters referred to in Sections 7(A), 7(B), and 7(C), including, but not limited to, attorney's fees. Such sums paid or obligations incurred shall be deemed to be additional obligations of the Indemnifying Party under this Agreement and shall be paid by the Indemnifying Party upon the rendering of a statement to the Indemnifying Party therefor.

Section 8. LIENS.

A. The Right-of-Way is not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to or through Pierce Transit which Pierce Transit does not contest in good faith, Pierce Transit shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to City, and shall indemnify City against all costs and expenses (including attorneys' fees) incurred in

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discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, City may pay or secure the release or discharge thereof at the expense of Pierce Transit after first giving Pierce Transit five business days' advance notice of its intention to do so. City shall use its reasonable best efforts to keep Pierce Transit's Facilities free of all liens that may adversely affect the bus shelter advertising.

B. Nothing herein shall preclude Pierce Transit's or City's contest of a claim for lien or other encumbrance chargeable to or through Pierce Transit or City, or of a contract or action upon which the same arose.

C. Nothing in this Agreement shall be deemed to give, and City hereby expressly waives, any claim of ownership in and to any part or the whole of the Pierce Transit Facilities, except as may be otherwise provided herein.

Section 9. TERM; TERMINATION.

A. This Agreement shall be effective as of the date first hereinabove written and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for 126 months from such date ("Initial Term").

B. Pierce Transit shall have the option to seek renewal of this Agreement for an additional ten-year term upon the same terms and conditions; provided that, renewal is subject to Council approval, which shall not be unlawfully withheld, and requirements of the City Charter. Notice of Pierce Transit's intent to exercise any renewal option shall be given to City no sooner

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than two years and no later than 180 days prior to the expiration of the initial term. Time shall not be "of the essence" with respect to the notice provisions in this subsection.

C. Upon termination of this Agreement, Pierce Transit agrees to prepare, execute, and deliver to City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

D. Any right of the City to acquire Shelters as provided for by the City Charter shall be subject to and exercised in accordance with applicable federal and state law.

Section 10. REGULATORY PROVISIONS.

A. Remedies. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event Pierce Transit violates any provision of this Agreement:

1. Commence an action at law for monetary damages;
2. Commence an action for equitable or other relief;
3. Seek specific performance of any provision that reasonably lends itself to such remedy.

B. Cumulative Remedies. In determining which remedy or remedies for Pierce Transit's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to

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1 prevent such violations in the future, whether Pierce Transit has a history of  
2 previous violations of the same or similar kind, and such other considerations  
3 as are appropriate under the circumstances. Remedies are cumulative; the  
4 exercise of one shall not foreclose the exercise of others.

5 C. Failure to Enforce. Pierce Transit shall not be relieved of any  
6 of its obligations to comply promptly with any provision of this Agreement by  
7 reason of any failure of the City to enforce prompt compliance, and the City's  
8 failure to enforce shall not constitute a waiver of rights or acquiescence in  
9 Pierce Transit's conduct.  
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11 D. Alternative Remedies. No provision of this Agreement shall be  
12 deemed to bar the right of the City to seek or obtain judicial relief from a  
13 violation of any provision of the ordinance or any rule, regulation, requirement,  
14 or directive promulgated thereunder. Neither the existence of other remedies  
15 identified in this Franchise nor the exercise thereof shall be deemed to bar or  
16 otherwise limit the right of the City to recover monetary damages for such  
17 violation by Pierce Transit, or to seek and obtain judicial enforcement of Pierce  
18 Transit's obligations by means of specific performance, injunctive relief or  
19 mandate, or any other judicial remedy at law or in equity.  
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22 Section 11. REVOCATION. In addition to any rights set out elsewhere  
23 in this Franchise or the City Charter, the City reserves the right to declare a  
24 forfeiture or otherwise revoke the Franchise, and all rights and privileges  
25 pertaining thereto, in the event that:  
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A. Pierce Transit is in substantial non-compliance with the Franchise;

B. Pierce Transit is found to have engaged in any actual or attempted fraud or deceit upon the City, persons, or customers;

C. Pierce Transit fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction, repair, and operation of the Facilities in the Right-of-Way; or

D. At any time during the term of the Franchise, Pierce Transit fails to provide and maintain the insurance required by this Franchise or fails to satisfy the indemnity set out in this Franchise).

Before the Franchise is revoked, Pierce Transit shall be given notice and opportunity to cure (except in those cases where notice and opportunity to cure are not required).

If, after notice and opportunity to cure, the City finds that there has been an act or omission that would justify revocation or forfeiture of the Franchise, the City may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. However, the Franchise may only be revoked or forfeited if: (1) Pierce Transit was given written notice of the default; (2) Pierce Transit was given 30 days to cure the default; and (3) Pierce Transit failed to cure the default, or to propose a schedule for curing the default acceptable to the City when it is impossible to cure the default in 30 days. No

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1 opportunity to cure is required for repeated violations and fraud shall be  
2 deemed incurable.

3 Notwithstanding the foregoing, the City may declare a Franchise  
4 forfeited or revoked without opportunity to cure when Pierce Transit:

5 (1) transfers without the prior consent of the City; (2) fails to pay the Franchise  
6 fees owed hereunder, if any; or (3) defrauds or attempts to defraud the City or  
7 Pierce Transit's customers. However, Pierce Transit shall have the right to  
8 receive 30 days' prior notice of an intent to declare a Franchise forfeited and  
9 shall have the opportunity to show cause before the Director of Public Works  
10 why the Franchise should not be forfeited or revoked.  
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12 Section 12. RIGHT TO REQUIRE REMOVAL OF PROPERTY/RIGHT  
13 TO REMOVE PROPERTY.  
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15 A. Upon termination of this Agreement, Pierce Transit may be  
16 required to remove Shelters from any Public Right-of-Way, and restore such  
17 Right-of-Way to its same or better condition as existed just prior to such  
18 removal, subject to any rights Pierce Transit may have to abandon property in  
19 place. If Pierce Transit fails to remove property that the City requires it to  
20 remove, the City may perform the work and collect the cost thereof from Pierce  
21 Transit after removal.  
22

23 B. To the extent any portion of the Shelters in the Rights-of-Way  
24 or on any other public property is not removed by Pierce Transit within three  
25 months of the later of the end of the term of this Agreement or any continuation  
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period, the property will be deemed abandoned and shall become the property of the City if the City wishes to own it. Provided that, in no case shall Pierce Transit be provided less than three months to remove its Facilities, measured from the date Pierce Transit is ordered to remove its Facilities.

C. Any order issued, pursuant to Section 12.A, to remove the Shelters in whole or in part shall be sent by registered or certified mail to Pierce Transit not later than three months following the date of termination of this Agreement, except as may be otherwise agreed to by the parties. Removal shall be completed (except with respect to property that Pierce Transit is permitted or required to abandon in place) not later than three months following the date of notification to remove the Facilities.

Section 13. COVENANTS AND WARRANTIES.

A. By execution of this Agreement, City warrants:

1. That City has the full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its Charter or Bylaws, or any law, regulation, or agreement by which it is bound or to which it is bound or to which it is subject; it being understood, however, that the covenant and warranty contained in this section does not constitute a warranty, expressed or implied, by City, of the right or rights granted by City to Pierce Transit hereunder; and





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2. That the execution, delivery, and performance of this Agreement by City has been duly authorized by all requisite corporate action, that the signatories for City hereto are authorized to sign this Agreement, and that, upon approval by City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

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

1. That Pierce Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, Pierce Transit is not in violation of its charter or bylaws, or any law, regulation or agreement by which it is bound or to which it is subject; and

2. That the execution, delivery, and performance of this Agreement by Pierce Transit has been duly authorized by all requisite Board action, that the signatories for Pierce Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

Section 14. RECORDINGS, TAXES, AND OTHER CHARGES.

A. Pierce Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits which may be granted hereunder. Pierce

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1 Transit further agrees that if it is determined by any federal, state, or local  
2 governmental authority that the sale, acquisition, license, grant, transfer, or  
3 disposition of any part or portion of the bus shelter advertising or rights herein  
4 described requires the payment of any tax, levy, excise, assessment, or  
5 charges (including, without limitation, property, sales, or use tax) under any  
6 statute, regulation, or rule, Pierce Transit shall pay the same, plus any penalty  
7 and/or interest thereon, directly to said taxing authority and shall hold City  
8 harmless therefrom. Pierce Transit shall pay all taxes, levies, excises,  
9 assessments, or charges, including any penalties and/or interest thereon,  
10 levied or assessed on the Transit Facilities, or on account of their existence or  
11 use (including increases thereof attributable to such existence or use, and  
12 excluding taxes based on the income of City), and shall indemnify City against  
13 payment thereof. Pierce Transit shall have the right to claim, and City shall  
14 reasonably cooperate with Pierce Transit in the prosecution of any such claim,  
15 for refund, rebate, reduction, or abatement of such tax(es).  
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18 B. City may pay any tax, levy, excise, assessment, or charge,  
19 plus any penalty and/or interest thereon, imposed upon Pierce Transit for which  
20 Pierce Transit is obligated pursuant to this section, if Pierce Transit does not  
21 pay such tax, levy excise, assessment, or charge within 30 days after it  
22 becomes due. Pierce Transit shall reimburse the City for any such payment  
23 made, pursuant to the previous sentence, plus interest at the rate of 8 percent  
24 per annum.  
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1 C. City and Pierce Transit will cooperate in good faith to resolve  
2 any tax dispute that arises under this Agreement, which cooperation will  
3 include, but not be limited to, sharing of documents and cooperation of legal  
4 counsel.

5 Section 15. ASSIGNABILITY; BENEFICIARY.

6 A. This Agreement shall be binding upon and inure to the benefit  
7 of the parties hereto and their respective successors or assigns. Except as  
8 otherwise provided herein, no assignment hereof or sublease shall be valid for  
9 any purpose without the prior written consent of the other party, and any  
10 attempt by one party to assign or license the rights or obligations hereunder  
11 without prior written consent will give the other party the right, at its written  
12 election, immediately to terminate this Agreement or take any other lesser  
13 action with respect thereto. The above requirement for consent shall not apply  
14 to: (1) any disposition of all or substantially all of the assets of a party; (2) any  
15 corporate merger, consolidation or reorganization, whether voluntary or  
16 involuntary; (3) a sublease or assignment of this Agreement (in whole or in part)  
17 to a wholly-owned subsidiary, affiliate, or parent company; (4) a license of the  
18 use of Advertising Space for commercial advertising as authorized pursuant to  
19 Section 2(H) of this Franchise; or (5) a sale, lease, or other conveyance by City;  
20 provided, however, that no sublease or assignment under Subsections (2) or  
21 (3) shall be permitted to a company not under common control with Pierce  
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1 Transit; and, provided further, that no unconsented assignment shall relieve  
2 Pierce Transit of its obligations and liabilities under this Agreement.

3 B. Either party hereto may assign any monetary receivables due  
4 them under this Agreement; provided however, such assignment shall not  
5 relieve the assignor of any of its rights or obligations under this Agreement.

6 C. Pierce Transit acknowledges and agrees that City may  
7 designate, in writing, a designee to: (1) receive information (including  
8 information designated or identified as confidential) and notices under this  
9 Agreement; and (2) provide certain approvals or consents required from City  
10 under this Agreement. In the event of such designation, Pierce Transit may  
11 rely on approvals or consents by such designee on behalf of City as fully as if  
12 such actions were performed by the designator itself.  
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15 Section 16. NOTICES.

16 A. Unless otherwise provided herein, all notices and  
17 communications concerning this Agreement, shall be in writing and addressed  
18 to (one copy each):  
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20 PIERCE TRANSIT AUTHORITY  
21 Attention: Don S. Monroe  
22 PO Box 9970  
23 Tacoma, WA 98499

24 and to:

25 CITY OF TACOMA  
26 Attention: City Clerk  
27 747 Market Street, Room 220  
28 Tacoma, WA 98402

29 CITY OF TACOMA  
30 Attention: Leslie Rowen  
31 747 Market Street, Room 220  
32 Tacoma, WA 98402

33 or at such other addresses as may be designated in writing by the other party.



1 B. Unless otherwise provided herein, notices shall be sent by  
2 registered or certified United States Mail, or other verifiable physical or  
3 electronic transmission, and shall be deemed served or delivered to addressee,  
4 or its office, upon the date of actual receipt (if such acknowledgment, or other  
5 means), return receipt acknowledgment, or, if postal claim notice is given, on  
6 the date of its return marked "unclaimed"; provided, however, that upon receipt  
7 of a returned notice marked "unclaimed," the sending party shall make  
8 reasonable effort to contact and notify the other party by telephone.  
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10 Section 17. MISCELLANEOUS.

11 A. This Agreement shall survive delivery and/or recordation of  
12 each permit which may be granted hereunder.

13 B. Each party shall be responsible for its own costs, including  
14 legal fees, incurred in negotiating or finalizing this Agreement.  
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16 C. The parties shall not be deemed in default with provisions of  
17 this Agreement where performance was rendered impossible by war or riots,  
18 civil disturbances, floods, or other natural catastrophes beyond the parties'  
19 control; the unforeseeable unavailability of labor or materials; labor stoppages  
20 or slow downs or power outages exceeding back-up power supplies. This  
21 Agreement shall not be revoked or the parties penalized for such  
22 noncompliance; provided, that the parties take immediate and diligent steps to  
23 bring itself back into compliance and to comply as soon as practicable under  
24 the circumstances without unduly endangering the health, safety, and integrity  
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1 of the parties' employees or property, or the health, safety, and integrity of the  
2 public, Public Rights-of-Way, public property, or private property.

3 D. This Agreement may be amended only by a written instrument  
4 executed by each of the parties hereto. No failure to exercise and no delay in  
5 exercising, on the part of any party hereto, any rights, power, or privilege  
6 hereunder shall operate as a waiver hereof and no single or partial exercise of  
7 any other rights, power, or privilege, except as expressly provided herein.  
8

9 E. This Agreement constitutes the entire agreement of the parties  
10 with respect to the subject matters hereof, and supersedes any and all prior  
11 negotiations (oral and written), understandings and agreements with respect  
12 hereto.

13 F. Section headings are intended as information only, and shall  
14 not be construed with the substance of the section they caption.  
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16 G. In construction of this Agreement, words used in the singular  
17 shall include the plural and the plural the singular, and "or" is used in the  
18 inclusive sense, in all cases where such meanings would be appropriate.  
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20 H. This Agreement may be executed in several counterparts,  
21 each of which shall be deemed an original, and all counterparts together shall  
22 constitute but one and the same instrument.

23 I. No Recourse. Without limiting such immunities as the City or  
24 other persons may have under applicable law, Pierce Transit shall have no  
25 monetary recourse whatsoever against the City or its officials, boards,  
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1 commissions, agents, or employees for any loss or damage arising out of the  
2 City's exercising its authority, pursuant to this Agreement or other applicable  
3 law; provided that, this section shall not apply in the event the Franchise is  
4 repealed, pursuant to Article VIII, Section 8.1(a) of the Tacoma City Charter.

5 J. Notwithstanding Section 17.I above, Pierce Transit shall  
6 maintain all of its rights regarding the enforcement of this Agreement at law and  
7 in equity, including, without limitation, the recovery of monetary damages  
8 arising from and related to the City's negligence in performance of this  
9 Agreement or the City's breach of this Agreement.  
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11 Section 18. LEGAL FORUM. This Agreement shall be interpreted,  
12 construed and enforced in accordance with the laws of the state of Washington.  
13 Venue for any action under this Agreement shall be Pierce County,  
14 Washington.  
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16 Section 19. INTERPRETATION. This Agreement is executed by all  
17 parties under current interpretations of applicable federal, state, or local statute,  
18 ordinance, law, or regulation.  
19

20 Section 20. SEVERABILITY.

21 A. In case any term of this Agreement shall be held invalid,  
22 illegal, or unenforceable in whole or in part, neither the validity of the remaining  
23 part of such term nor the validity of the remaining terms of this Agreement shall  
24 in any way be affected thereby.  
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B. Notwithstanding the foregoing, the material provisions of this Agreement are not severable. In the event that a court, agency, or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court, agency, or legislature of competent jurisdiction acts so that, or declares that, any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the City and Pierce Transit agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Agreement, consistent with applicable law. If the City and Pierce Transit are unable to agree to a modification of this Agreement within 60 days, either party may resort to litigation. Pierce Transit and the City agree to participate in up to 16 hours of negotiation during the 60-day period.

C. Notwithstanding the foregoing, if either Pierce Transit or the City believes a provision is not material, it must commence an action challenging the materiality within 14 days of a request by the other that it enter into negotiations. The obligation to negotiate is not tolled, and the City and Pierce Transit must discharge their negotiation responsibility notwithstanding the dispute as to materiality. If there is a dispute as to materiality, the remedies provided for in the proceeding paragraph shall be additive, not alternative. The

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1 remedies provided for herein do not prevent the City or Pierce Transit from  
2 contending that a particular provision is enforceable, or foreclose any remedies  
3 if a provision is enforceable.

4 Section 21. EXECUTION. Pierce Transit shall execute and return to the  
5 City three original countersigned copies of this ordinance and a signed  
6 acceptance of this Agreement granted hereunder within 30 days after the date  
7 of passage of the ordinance by the City Council. The acceptance shall be in a  
8 form acceptable to the City Attorney, and in accepting this Agreement, Pierce  
9 Transit warrants that it has carefully read the terms and conditions of this  
10 Agreement and unconditionally accepts all of the terms and conditions of this  
11 Agreement and agrees to abide by the same and acknowledges that it has  
12 relied upon its own investigation of all relevant facts, that it has had the  
13 assistance of counsel, that it was not induced to accept this Agreement, that  
14 this Agreement represents the entire agreement between Pierce Transit and  
15 the City. The countersigned ordinance and acceptance shall be returned to the  
16 City accompanied by: (1) evidence of insurance; and (2) a payment for  
17 publication costs. The rights granted herein shall not become effective until all  
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of the foregoing is received in acceptable form.

Passed JUL 17 2001

*Mike Green*  
Mayor

Attest:

*Doris Sorum*  
City Clerk

Approved as to form and legality

*Christopher De...*  
Assistant City Attorney

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PIERCE TRANSIT AUTHORITY  
ACCEPTANCE OF CITY FRANCHISE

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Ordinance No. 26829, effective August, 2001.

I, Don S. Monroe, am the Chief Executive Officer of PIERCE TRANSIT AUTHORITY and am the authorized representative to accept the above-referenced City Franchise ordinance on behalf of PIERCE TRANSIT AUTHORITY.

I certify that this Franchise and all terms and conditions thereof are accepted by PIERCE TRANSIT AUTHORITY, without qualification or reservation.

DATED this 21 day of August, 2001.

PIERCE TRANSIT AUTHORITY

By: *Don S. Monroe*  
Its: CEO

Witness: \_\_\_\_\_



# REQUEST FOR ORDINANCE OR RESOLUTION RECEIVED

CITY CLERK USE

Request #:	8593
Ordinance #:	26829
Resolution #:	

2001 MAY 18 PM 3:30

1. DATE: May 18, 2001

CITY CLERK'S OFFICE

2. REQUESTING DEPARTMENT/DIVISION/PROGRAM Public Works/Engineering	3. CONTACT PERSON (for questions): Alan M. Tebaldi, P.E.	PHONE/EXTENSION 5272
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4. PREPARATION OF AN ORDINANCE IS REQUESTED FOR THE CITY COUNCIL MEETING OF TUESDAY JUNE 12, 2001

5. SUMMARY TITLE/RECOMMENDATION: (A concise sentence, as it will appear on the Council Agenda)

Granting a non-exclusive franchise to Pierce Transit for bus shelter advertising in City right-of-way.

6. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Pierce Transit requested permission from the City to contract for advertising on bus shelters in City right-of-way. Two pilot locations have been in place for over a year with no negative comments received from the public. The Pierce Transit Board and City Council have been informed about the proposal and are both enthusiastic to move forward with the franchise. The franchise will provide for constructing bus shelters at no cost to the City or Pierce Transit while also providing revenue to the City, Pierce Transit and potentially to business districts.

7. FINANCIAL IMPACT: (Future impact on the budget.)

None

8. LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:

Source Documents/Backup Material	Location of Document
Draft Franchise	City Attorney's Office

9. FUNDING SOURCE: (Enter amount of funding from each source)

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
N/A				

If an expenditure, is it budgeted?  Yes  No Where? Org # Acct #  
N/A

10. ATTORNEY CONTACT: (Enter Name of Attorney that you've been working with)  
Chris Bacha

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11. <i>Alan Tebaldi</i> Department Director/Utility Division Approval	Approved as to Availability of Funds Director of Finance	<i>Patsy Foster</i> City Manager/Director Utilities Approval
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Ordinance No. 26829

First Reading of Ordinance: JUN 26 2001

Final Reading of Ordinance: JUL 17 2001

Passed: JUL 17 2001

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Dahl	✓			
<del>Mr. De Forrest</del>	<i>deceased</i>			
Mr. Evans	✓			
Dr. McGavick				✓
Mr. Miller	✓			
Ms. Moss	✓			
Mr. Phelps	✓			
Mrs. Scarbrough	✓			
Mayor Crowley	✓			

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Dahl				
<del>Mr. De Forrest</del>				
Mr. Evans				
Dr. McGavick				
Mr. Miller				
Ms. Moss				
Mr. Phelps				
Mrs. Scarbrough				
Mayor Crowley				