



ORDINANCE NO. 28535

1 AN ORDINANCE relating to City real property and right-of-way; approving the
2 renewal and extension of the Right of Use Agreement and Non-Exclusive
3 Franchise between the City of Tacoma and Pierce Transit for a five-year
4 period, from January 1, 2019, to January 1, 2024, for transit-related
5 infrastructure within City rights-of-way.

6 WHEREAS the Pierce County Public Transportation Benefit Area
7 Corporation ("Pierce Transit") was established under RCW 36.57A and is vested
8 with the powers necessary to construct and operate a public transportation
9 system benefitting Pierce County residents, and

10 WHEREAS, pursuant to Ordinance No. 28365, passed July 12, 2016, the
11 City entered into a Non-Exclusive Franchise and Right-Of-Use Agreement with
12 Pierce Transit, retroactive to January 1, 2014, to construct, install, operate, own,
13 control, repair, and maintain bus stops, shelters, amenities, and advertising
14 shelters within the public right-of-way areas, and

15 WHEREAS the initial term of the agreement was for a five-year period,
16 which will expire on January 1, 2019, and

17 WHEREAS the agreement includes an option to renew for an additional
18 five-year period, which Pierce Transit has requested to exercise, and

19 WHEREAS during the five-year renewal period, staff from the City and
20 Pierce Transit will work toward an amendment to the agreement, with the intent
21 to establish an extended term and to consider any other adjustments to current
22 language that either party feels are necessary; Now, Therefore,
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BE IT ORDAINED BY THE CITY OF TACOMA:

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That the renewal and extension of the Right of Use Agreement and Non-Exclusive Franchise between the City of Tacoma and Pierce Transit for a five-year period, from January 1, 2019, to January 1, 2024, for transit-related infrastructure within City rights-of-way, is hereby approved.

Passed NOV 20 2018




Mayor

Attest:



City Clerk

Approved as to form:



Deputy City Attorney



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1 Section 1. Definitions. For purposes of this agreement, the following terms,
2 phrases, words, and their derivations shall have the meaning given herein where
3 capitalized; words not defined herein shall have their ordinary and common
4 meaning. When not inconsistent within the context, words used in the present
5 tense include the future, words in the plural number include the singular number,
6 words in the singular number include the plural number, and the use of any gender
7 shall be applicable to all genders whenever the sense requires. The words "shall"
8 and "will" are mandatory and the word "may" is permissive. A reference to the
9 City's Charter or Code refers to the same, as amended from time to time.

10 References to governmental entities (whether persons or entities) refer to those
11 entities or their successors in authority. If specific provisions of law referred to
12 herein be renumbered, then the reference shall be read to refer to the renumbered
13 provision. References to laws, ordinances, or regulations shall be interpreted
14 broadly to cover government actions, however nominated, and include laws,
15 ordinances and regulations now in force or hereinafter enacted or amended.
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17 A. ADA. "ADA" shall mean the Americans with Disabilities Act of
18 1990.
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20 B. ADA Compliance. "ADA Compliance" or "ADA Compliant" shall
21 mean meeting all federal, state, and local laws, ordinances, and departmental rules,
22 regulations, and practices.
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24 C. Ad Shelter. "Ad Shelter" shall mean a Bus Shelter and related bus
25 stop amenities where Advertising is sold and which is located in the Right-of-Way
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and constructed, installed, and maintained by Pierce Transit in accordance with this Agreement.

D. Advertising. "Advertising" shall mean the commercial advertising posters, signs, messages and other materials sold to a third party advertiser or its agent and posted by Pierce Transit or its agents in an Ad Shelter. "Advertising" does not include public service announcements or campaigns made by a governmental entity or non-profit organization which do not to promote a commercial use or for-profit sales to the extent that Pierce Transit does not charge for the placement of such materials. "Advertising" also does not include Pierce Transit's use of its Facilities or vehicles for Pierce Transit's use, including, but not limited to: rider education or information; promotion of transit programs; marketing of Pierce Transit service; public art; or partnership programs between Pierce Transit and another public or private organization.

E. Advertising Space. "Advertising Space" shall mean the space available on a Bus Shelter for Advertising.

F. Agreement. "Agreement" shall collectively mean all terms and conditions of this ordinance whether related to the Right of Use sections or the Franchise.

G. Bus Shelter. "Bus Shelter" shall mean a Facility that provides protection from the weather for passengers waiting for a Pierce Transit bus, and this term shall include any bus stop amenities installed by Pierce Transit attached or immediately adjacent thereto, including, but not limited to: trash receptacles; signage; benches; or art.



1 H. Bus Stop. "Bus Stop" shall mean a place designated for transit
2 vehicles to stop and load or unload passengers and this term shall include any bus
3 stop amenities installed by Pierce Transit attached or immediately adjacent thereto,
4 including, but not limited to: trash receptacles; signage; benches; or art.

5 I. Facilities. "Facilities" or "Facility," as used herein, shall mean any
6 and all Pierce Transit improvements in the City Right-of-Way, including Bus
7 Shelters, Ad Shelters, Bus Stops, also including, but not limited, to the following bus
8 stop amenities:

- 9 1. Medium for Advertising;
- 10 2. Advertising Space;
- 11 3. Benches;
- 12 4. Garbage Receptacles;
- 13 5. Shelters;
- 14 6. Poles/Posts;
- 15 7. Signs;
- 16 8. Illumination; and/or
- 17 9. Bus Beacon/Blinking Light.

18 J. Franchise. "Franchise" shall mean the non-exclusive rights granted
19 by the City in Section 3 of this Agreement, pursuant to the authority in Section VIII of
20 the Tacoma City Charter, to Pierce Transit for the non-exclusive use of City
21 Right-of-Way in accordance with the terms and conditions of this Agreement.

22 K. General Transit Use. "General Transit Use" shall mean all
23 services, contracts, construction, maintenance, and/or repairs related to the
24 provision of public transportation services by Pierce Transit and all Bus Stops and
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1 Bus Shelters placed by Pierce Transit within the Right-of-Way, excepting therefrom
2 Ad Shelters.

3 L. Gross Receipts. "Gross Receipts," as used in Section 3 below,
4 shall mean all revenue actually received by Pierce Transit for the sale of Advertising
5 on Pierce Transit Ad Shelters located within the City of Tacoma limits.

6 M. Public Rights-of-Way. "Public Rights-of-Way" or "Right-of-Way"
7 shall mean the public streets and easements which, under the City Charter, the
8 Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority
9 to grant permits, franchises, or licenses for use thereof or has regulatory authority
10 therefor, excluding railroad rights- of-way, airport, and harbor areas. Public Rights-
11 of-Way, for the purpose of this Agreement, do not include buildings, parks, poles,
12 conduits, or similar facilities or property, owned by or leased to the City, including, by
13 way of example and not limitation, structures in the Public Rights-of-Way such as
14 utility poles and light poles.

15 N. Site Plan. "Site Plan" shall mean a plan view drawing showing the
16 relationship between the Facility and the other infrastructure within the Right-of-Way,
17 to include elements required by Public Works for site plan review.

18 O. Third Party. "Thlr Party" shall mean any person other than the
19 City and any person other than Pierce Transit.

20 P. Use Area. "Use Area" shall mean those areas within the Rights-of-
21 Way in which Pierce Transit is authorized pursuant to this Agreement to construct,
22 operate, maintain and repair its Facilities. "Use Area" also includes (1) Facilities
23 previously permitted and existing in the Rights-of-Way at the Effective Date of this
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1 Agreement, and (2) the part of the Right-of-Way that extends ten feet on all sides of
2 a Facility, except that the Use Area shall not extend to any area in a street or
3 roadway nor to private property adjacent to a Use Area.

4 Section 2. Grant of Right-of-Use for General Transit Use.

5 A. Grant of Non-Exclusive Right-of-Use. For each Use Area
6 established under this Agreement, the City hereby grants to Pierce Transit a non-
7 exclusive privilege to enter upon the Use Area to construct, operate, and maintain
8 its Facilities and for General Transit Use as well as all other applicable purposes
9 expressly provided in this Agreement, but subject to all preexisting rights, interests
10 and estates of Pierce Transit and Third Parties in and affecting the Use Area,
11 including, without limitation, any franchise agreements, leases, licenses, permits,
12 easements, liens, ownership interests or encumbrances in existence as of the
13 Effective Date of this Agreement. The City shall, where and as practicable, protect
14 from subsequent occupancies the Pierce Transit Use Areas where occupancy
15 would have the risk of interference with a Facility. Pierce Transit expressly agrees
16 that it will construct, install, operate, repair, maintain, use, own, or control its Use
17 Areas in compliance with this Agreement and all applicable City ordinances and
18 state and federal laws, rules, and regulations.

19 B. Rights Subject to Right-of-Way Uses. The City intends to continue
20 using the Right-of-Way as Public Right-of-Way and for any other related activities
21 that do not impair the ability of Pierce Transit to construct, operate, and maintain its
22 Facilities. The rights granted Pierce Transit herein are subject and subordinate to
23 the prior and continuing right of the City: (1) to use and maintain the entire
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1 Right-of-Way, subject to the terms and conditions of the Agreement; (2) the City's
2 right to dispose of all or part of the property, including, but not limited to, the air
3 space above and the subsurface area below the Pierce Transit Facilities, subject to
4 the terms and conditions of this Agreement; and (3) to construct and operate, and to
5 change or modify, pipelines, electric lines, and other Facilities in, on, upon, over,
6 under, along, across, or through any or all parts of the Right-of-Way, or permit
7 others to do so for City or for other public improvement projects, all or any of which
8 may be freely done at any time or times by the City or others with the City's
9 permission, without liability to the City or to any other party for compensation or
10 damages, unless and except to the extent that this Agreement otherwise expressly
11 provides therefor. The City agrees that it will provide a minimum of five (5) working
12 days' notice to Pierce Transit whenever it reasonably believes that a Facility located
13 in the Right-of-Way will require temporary or permanent relocation or removal,
14 temporary closure, modification to, or support of a Facility and/or transit routes,
15 unless in an emergency condition as declared by the City Engineer. If the City
16 determines that as a result of any public project, the location of any Pierce Transit
17 Facilities and/or transit routes must be temporarily changed or relocated; or for any
18 other purpose where the work involved would be aided by the temporary removal or
19 relocation of the Facility and/or transit routes, the City shall notify Pierce Transit of
20 such plans and Pierce Transit shall, at its sole cost and expense, by a time
21 specified by the City, protect, support, temporarily disconnect, relocate, or remove
22 any of its Facilities and/or transit routes as directed by the City.
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1 C. Usual and Customary Use. The Parties understand that the
2 Right-of-Way is used by Pierce Transit for the transportation of persons and agree
3 that the usual and customary use of the Use Area for such purposes alone does not
4 constitute an interference with the City's use of the Right-of-Way.

5 D. Third Party Requests. If any Third Party requests that Pierce
6 Transit protect, support, temporarily disconnect, remove, or relocate Facilities
7 and/or transit routes to accommodate the Third Party's non-public project
8 construction, operation, or repair of the facilities of such Third Party, Pierce Transit
9 and the requesting Third Party shall be responsible for working out a satisfactory
10 resolution to the request between themselves as to costs, logistics and etc.

11 E. Termination of Right of Use. As to each Use Area, the City may
12 terminate the rights granted to Pierce Transit when: (1) all Facilities for such Use
13 Area have been intentionally removed from the applicable Use Area, and such
14 removal is not a result of maintenance or construction on the Use Area or a *force*
15 *majeure* event; or (2) at such time as the Facilities have been formally abandoned;
16 or (3) at such earlier time as the terms of this Right-of-Use Agreement may provide;
17 or (4) upon mutual agreement of the Parties. Pierce Transit may terminate this
18 Agreement upon breach or nonperformance of any material term of this Agreement.
19 Either party may give written notice of its intent to terminate under this provision.
20 Upon receipt of notice of intent to terminate, a party will have ninety (90) days from
21 its receipt of the termination notice to remedy or cure the conditions of the
22 termination notice.
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1 F. Use Restricted. This Agreement does not authorize the provision
2 of any services or uses by Pierce Transit other than the services reasonably
3 involved in the provision of transit services or in any way relieve Pierce Transit of
4 any obligation to obtain any additional permits, authorizations, licenses, or
5 agreements to use the Right-of-Way to provide other services or uses. The
6 provisions of this Agreement are not a bar to the imposition of similar, different, or
7 additional conditions with respect to the use of the Rights-of-Way.

8 G. No Warranty of Any Conditions of Use Area. Pierce Transit
9 acknowledges that City has made no representation whatsoever to Pierce Transit
10 concerning the state or condition of any Use Area, or any personal property or
11 improvements located thereon, or the nature or extent of the City's ownership
12 interest in any Use Area. Pierce Transit has not relied on any statement or
13 declaration of the City, oral or in writing, as an inducement to entering into this
14 Right-of-Use Agreement, other than as set forth herein. THE CITY HEREBY
15 DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS
16 OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY
17 PRESENT ON OR CONSTITUTING ANY USE AREA, ITS MERCHANTABILITY
18 OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE
19 MATERIAL, OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE
20 CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. THE CITY
21 SHALL NOT BE RESPONSIBLE TO PIERCE TRANSIT OR ANY OF PIERCE
22 TRANSIT'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN,
23 CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY
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1 PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR
2 CONSTITUTING ANY USE AREA, OR THE CONFORMITY OF ANY SUCH
3 PROPERTY TO ITS INTENDED USES. PIERCE TRANSIT ACCEPTS ALL
4 RIGHTS GRANTED UNDER THIS RIGHT-OF-USE AGREEMENT IN ALL USE
5 AREAS "AS IS," "WHERE IS," AND "WITH ALL FAULTS" AND SUBJECT TO ALL
6 LIMITATIONS ON THE CITY'S RIGHTS, INTERESTS, AND TITLE TO ALL USE
7 AREAS. THE CITY DOES NOT WARRANT ITS TITLE OR PROPERTY
8 INTEREST IN OR TO ANY USE AREA NOR UNDERTAKE TO DEFEND PIERCE
9 TRANSIT IN THE PEACEABLE POSSESSION OR USE THEREOF NO
10 COVENANT OF QUIET ENJOYMENT IS MADE. Pierce Transit has inspected or
11 will inspect each applicable Use Area, and enters upon any Use Area with
12 knowledge of its physical condition and the danger inherent in operations
13 conducted in, on, or near any Use Area. Pierce Transit acknowledges that this
14 Right-of-Use Agreement does not contain any implied warranties that Pierce Transit
15 or Pierce Transit's Contractors can successfully construct or operate the Facilities.
16 In case of eviction of Pierce Transit or Pierce Transit's Contractors by anyone
17 owning or claiming title to, or any interest in the Use Area, the City shall not be
18 liable to Pierce Transit or Pierce Transit's Contractors for any costs, losses or
19 damages of any Party.
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23 H. Third-Party Uses of Use Area.

24 1. Pierce Transit Third-Party Uses of Use Area. The Parties
25 acknowledge that Pierce Transit has, or may have in the future, agreements with
26 Third Parties for joint use of the Use Area for the installation and operation of



1 Third-Party Facilities, and further, that such Facilities may be installed and operated
2 within the Use Area. The installation and operation of such Third-Party Facilities
3 are subject to the terms and conditions of this Right-of-Use Agreement.

4 2. Other Third-Party Uses of Use Area. Except as otherwise
5 expressly stated herein, the City shall not enter into any easement, right-of-use
6 agreement, franchise, license, permit or agreement, which would interfere with
7 Pierce Transit's ability to exercise its rights under this Right-of-Use Agreement or to
8 utilize the Facilities covered by this Right-of-Use Agreement. Unless the matter is
9 governed by a valid contract, this Right-of-Use Agreement, or a state or federal law
10 or regulation, or unless the Pierce Transit Facilities were not properly installed, any
11 Third Party that is authorized by the City to place Facilities in the Use Area pursuant
12 to an easement, Right-of-Use Agreement, franchise, license, permit or other
13 agreement, executed subsequent to this Agreement, shall bear the cost and
14 expense of any work necessary to ensure that, in the exercise of its rights, it does
15 not Interfere with the Facilities or Pierce Transit's use of, or operation on, the Use
16 Area.
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19 I. Inconsistent Use. Notwithstanding the above, no Public Rights-of-
20 Way shall be used by Pierce Transit in a manner that is inconsistent with the terms,
21 conditions, or provisions by which such Public Rights-of-Way were created or
22 dedicated, or presently used under applicable laws.

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



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

4 2. Any permit, agreement, or authorization required in
5 connection with operations on or in Public Rights-of-Way or property; or

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

9 K. Utility Agreements. This Agreement shall not be read to diminish,
10 or in any way affect, the authority of the City to control and charge for the use of the
11 light, power, water, storm, refuse, and sewer utilities. Therefore, if Pierce Transit
12 desires to use such utilities, it must obtain necessary agreements or consents for
13 such uses, and pay any and all associated fees as may be required by the City.

14 Section 3. Grant of Non-Exclusive Franchise Rights By the City For
15 Advertising Shelters.
16

17 A. Conformance with the Totality of this Agreement. Pierce Transit
18 understands and agrees that this Grant of Non-exclusive Franchise Rights by the
19 City for Advertising Shelters is subject to, and must conform and adhere to, any and
20 all portions of the foregoing and remaining sections of this Agreement.
21

22 B. Additional Grant of Non-Exclusive Franchise Rights for Advertising
23 Shelters. In addition to the non-exclusive franchise rights granted by the City to
24 Pierce Transit for General Transit Use as set forth in Section 2 herein, the City also
25 grants to Pierce Transit a non-exclusive Franchise to construct, install, maintain,
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1 repair, control, and own Ad Shelters and License Advertising Space on said Ad
2 Shelters under the terms and conditions of this Agreement. Pierce Transit
3 expressly agrees that it will construct, install, operate, repair, maintain, use, own, or
4 control its Advertising Shelters in compliance with this Agreement and all applicable
5 City ordinances and state and federal laws, rules, and regulations.

6 C. Use Restricted to Advertising. This Agreement does not authorize
7 the provision of any services or uses by Pierce Transit or its agents other than
8 those which are reasonably related to the construction, installation, maintenance,
9 repair, control, and/or ownership of Ad Shelters and the lease of Advertising Space
10 on said Ad Shelters under the terms and conditions of this Agreement, nor shall this
11 section be construed in any way to relieve Pierce Transit of any obligation to obtain
12 any additional permits, authorizations, licenses, or agreements to use the
13 Right-of-Way to provide other services or uses. The provisions of this Agreement
14 are not a bar to the imposition of similar, different, or additional conditions with
15 respect to the use of the Rights-of-Way.
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18 D. Advertising Policy and Content Management. Any Advertising on
19 Pierce Transit Ad Shelters will be in accord with and subject to the Pierce Transit
20 Advertising Policy as may be amended by Pierce Transit from time to time. It shall
21 not be a violation of this Agreement for Pierce Transit to utilize Advertising Space
22 on Ad Shelters for its own use, for public service announcements, art, or for any
23 other non-profit use in accord with the Pierce Transit Advertising Policy. In the
24 event that the City receives any complaint regarding Advertising or other content
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1 within the Advertising Shelters, the City shall refer such complaint to Pierce
2 Transit's Marketing Manager.

3 E. Ownership and Maintenance. Pierce Transit may, pursuant to this
4 Franchise, authorize a Third Party ("Authorized Third Parties") to maintain
5 Ad Shelter(s) or retain an ownership interest, in whole or in part, in an Ad Shelter(s)
6 located in the Right-of-Way; provided that, such Authorized Third Parties shall not
7 be authorized to construct, install, operate, maintain, repair, control, remove, or
8 relocate such Ad Shelter(s) except as an Agent of Pierce Transit and subject to the
9 terms and conditions of this Franchise; and provided further, that such interest of
10 Authorized Third Parties shall not create a lien or encumbrance upon the
11 Right-of-Way and shall be subject and subordinate to the rights of the City under
12 this Franchise, and other applicable law. Nothing in this Franchise shall be
13 construed as granting to Pierce Transit any interest or right in the Use Area other
14 than the rights expressly provided herein.
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16 F. Lease of Advertising Space. Pierce Transit is authorized to
17 license the use of Advertising Space for placement of Advertising; provided that,
18 such licensees shall not be authorized under this Franchise to install, maintain,
19 repair, relocate, or remove Advertising in or upon the Shelters, except as an Agent
20 of Pierce Transit and subject to the terms and conditions of this Franchise; and
21 provided further, that the rights of licensees shall be subject and subordinate to the
22 rights of the City under this Franchise and other applicable law. Upon request from
23 the City, Pierce Transit shall, within ten (10) days of receipt, provide the City with
24 full and complete copies of any contracts that Pierce Transit has with vendors for
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1 advertising sales and placement services together with any amendments and
2 extensions or renewals thereof. Upon request from the City, upon reasonable
3 notice and no more frequently than on an annual basis, Pierce Transit will provide
4 the City with copies of the most recent audit conducted by Pierce Transit of its
5 vendor for advertising services.

6 G. Payment.

7 1. Pierce Transit will pay to the City 90 percent ("Payment")
8 of the Gross Receipts received by Pierce Transit for advertising on Ad Shelters
9 located within the City of Tacoma and Pierce Transit will retain 10 percent of the
10 Gross Receipts to offset the costs of administration and management of this
11 Agreement as well as the costs of construction and maintenance of Ad Shelters
12 located in the City. This payment will be divided by the City as follows:

14 a. Ten percent (10%) of the Gross Receipts will be
15 deposited into a City Property Management Fund to cover costs associated with
16 administering and managing this Agreement; and

18 b. Eighty percent (80%) of the Gross Receipts will be
19 deposited into a fund designated by the City to be used for Right-of-Way
20 improvements with emphasis on ADA improvements adjacent to Bus Stops and
21 Shelters within the City of Tacoma.
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c. SAMPLE CALCULATION:

Gross Receipts: \$1,000

Payment Distribution:

\$100 to Pierce Transit;

\$900 to the City which shall be divided as follows:

\$100 to the City Property Management Fund; and

\$800 to the City designated fund.

2. Each payment shall be made quarterly and shall be due within forty-five (45) days after the end of the quarter.

3. Pierce Transit will also pay or reimburse the City for all taxes and assessments that may be levied or addressed against Pierce Transit by reason of the presence of the Ad Shelter Advertising.

4. The first payment made to the City by Pierce Transit under this Agreement shall include all monies owed from the Effective Date to the end of the first quarter after all parties have executed this Agreement.

5. Interest. Pierce Transit shall pay to the City 12 percent interest per annum on any fee or charge not paid when due and for all costs of collection of any fee or charge past due more than forty-five (45) days.

6. Survival of Terms. All obligations of Pierce Transit to pay the City any fee or charge required pursuant to this Franchise shall survive expiration and/or termination of this Agreement.

H. Books/Records/Reports. Pierce Transit shall prepare and furnish to the City, within forty-five (45) days of the end of a quarter and upon request, such reports with respect to Pierce Transit's Advertising revenue from Ad Shelters



1 located within the City of Tacoma as may be reasonably necessary and appropriate
2 to ensure compliance with the material provisions of this Franchise, or to permit the
3 performance of any of the rights, functions, or duties of the City or such other
4 regulatory entity in connection with the Franchise. Unless otherwise indicated by
5 the City, the standard form submitted by Pierce Transit shall be Revenue Detail
6 Sheets (see Appendix A). Upon request from Pierce Transit, the City shall prepare
7 and furnish to Pierce Transit no more frequently than on an annual basis, an
8 SAP report showing the City's expenditures from the fund referenced in
9 subsection G.1.b. above.
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11 Section 4. Construction and Maintenance of Facilities.

12 A. New or Improved Facilities and Site Plans/Location. Prior to
13 installation of any proposed new Facility or improvements to an existing Facility,
14 Pierce Transit shall, at its expense, submit to the City's Planning and Development
15 Services Department a list of locations, a Site Plan for each location, and other
16 documents as needed, which may include, but are not limited to, traffic control
17 plans.
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19 B. Existing Facilities. For all Facilities existing at time of execution of
20 this Agreement, Pierce Transit shall, at its expense, provide to the City a complete
21 list of locations denoting the site of said existing Facilities, as well as any additional
22 documentation, including, but not limited to, existing Site Plans and/or Facility
23 designs.
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25 C. Approval Process for New Facilities. Upon the City's receipt of the
26 required documents for new Facilities, the City shall, within 30 days from receipt,



1 review and approve or disapprove of the construction proposed therein. To the
2 extent that the City disapproves of all or any part of the construction, in its
3 response, the City shall provide to Pierce Transit a written explanation of the
4 reasons for disapproval and suggested alternatives, if any. Pierce Transit may then
5 submit revised documents, which shall be subject to the same review and approval
6 or disapproval procedures. Pierce Transit shall not commence construction at any
7 site until the City has approved the documents for such site. All submittals from
8 Pierce Transit must be initialed and approved by a City-designated representative
9 from each of the following City departments or their successors:
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- 11 1. Traffic Engineering;
- 12 2. Real Property Services;
- 13 3. ADA Coordinator;
- 14 4. Planning and Development Services; and
- 15 5. Site Development.

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17 D. Process for Approval of Facilities when ADA Improvements
18 Needed in Path of Travel; Prioritization. In those instances where ADA
19 improvements have not been made in the path of travel leading to a proposed new
20 or improved Facility, Pierce Transit's permit application for a new Facility may not
21 be immediately approved by the City and will instead be placed in "pending" status
22 until funds are available to make the ADA improvements in the path of travel
23 adjacent to the proposed Pierce Transit Facility. Pierce Transit will be responsible
24 for prioritizing the locations of its Facilities so that accessibility improvements will be
25 made in the area around the highest priority transit Facilities. In coordination with
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1 Pierce Transit, the City will make or construct those improvements in order of
2 priority as funding is available.

3 E. Entry Upon Right-of-Way. Pierce Transit, its servants, employees,
4 agents, contractors, and/or subcontractors shall have the right to enter upon the
5 Right-of-Way for the purposes of constructing, operating, and maintaining the
6 Facilities.

7 F. Compliance with Laws, Rules, and Regulations. Pierce Transit
8 shall construct, operate, maintain, and repair its Facilities in compliance with all
9 federal, state, and local laws, ordinances, and departmental rules, regulations, and
10 practices affecting such system, which include, by way of example and not
11 limitation, the obligation to operate, maintain, and repair its Facilities in accordance
12 with zoning codes, safety codes, and City construction standards. New, altered, or
13 relocated bus stops shall be ADA Compliant and may trigger the construction of
14 new sidewalks, curb ramps, and other pedestrian facilities. The City, in
15 coordination with Pierce Transit, will install and/or construct the accessibility
16 improvements that are beyond the Use Area, as funding allows. In addition, the
17 construction, operation, and repair of all Facilities and ADA improvements within
18 the Public Right-of-Way shall be performed in a manner consistent with industry
19 standards. Pierce Transit shall exercise reasonable care in the performance of all
20 activities and shall use industry-accepted methods and devices for preventing
21 failures and accidents that are likely to cause damage, injury, or nuisance to the
22 public or to property.
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1 G. Inspection. The City shall have the right to verify, by inspection,
2 that the location of the work and the materials used in construction or operation of
3 the Pierce Transit Facilities are in compliance with the plans as approved by the
4 City. The City shall further have the right to verify, by inspection, that City Facilities
5 relocated and/or constructed by Pierce Transit are to a standard acceptable to the
6 City.

7 H. Restoration of Right-of-Way. Pierce Transit shall promptly, at its
8 sole cost and expense, repair any and all Public Rights-of-Way (in compliance with
9 the City's right-of-way restoration policy) and public or private property that is
10 disturbed or damaged as a result of the construction, use, relocation, or destruction
11 of Pierce Transit Facilities. This section shall not be construed to require Pierce
12 Transit to make repairs or other restoration in the Right-of-Way for damage that is
13 caused by the usual wear and tear and use of the Right-of-Way in areas outside of
14 Pierce Transit's Use Area, such as City streets, sidewalks, and curbs. Repair of
15 damage to the Right-of-Way caused by use other than usual use, or in excess of
16 usual wear and tear, shall be the responsibility of the party causing the damage.
17 Upon completion of the initial construction of any Facility, Pierce Transit shall
18 ensure that the Right-of-Way and all other public and private property that is
19 disturbed or damaged as a result of the construction of the Facility is promptly
20 returned to as good a condition as before the disturbance or damage occurred, or
21 if to a lesser condition, then to the satisfaction of the City or the private property
22 owners. In the event Pierce Transit does not comply with the foregoing
23 requirements, the City may, upon thirty (30) days' advance notice to Pierce Transit,
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1 take action to restore the Public Rights-of-Way or public property at Pierce Transit's
2 sole cost and expense.

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

6 J. Level of Operation/Maintenance. All Facilities 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 Facilities shall be maintained in a safe condition, in good
9 repair and appearance.

10 K. Appointment of Agent. Pierce Transit may appoint an agent to
11 exercise some or all of Pierce Transit's rights under this Agreement, subject to the
12 terms and conditions of this Agreement.

13 L. Responsibility for Facilities. The City shall have no responsibility
14 for maintaining, servicing, or repairing any Facilities and shall not be responsible for
15 the clearing or removal of trees, shrubs, plants, ice, snow, or debris therefrom.

16 M. Permits Required. Except in cases of emergency repairs, Pierce
17 Transit's construction, operation, or repair of Facilities shall not commence until all
18 required permits have been properly filed for and obtained from the City and all
19 required permits and associated fees paid. In case of emergency repairs,
20 appropriate permits shall be obtained no later than the second business day
21 following repairs.
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Section 5. Accessibility Improvements.

1 A. Cooperation to Improve Accessibility. Both parties agree to work
2 together toward improving ADA accessibility at transit Facilities within the City. For
3 purposes of this Agreement, "ADA Accessibility" means that facilities must comply
4 with all ADA standards and are usable by persons with disabilities.
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6 B. Pedestrian Routes/Path of Travel. The City acknowledges
7 responsibility for the design, construction, and maintenance of all sidewalk
8 connections and/or curb ramps that lead or connect to but are not within a Use
9 Area. In the event there are not sufficient City funds to bring a given area into
10 compliance, a permit application by Pierce Transit for approval of a new or altered
11 Facility in that area may be delayed until such time as City funds are available for
12 improvements.
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14 C. Bus Stops, Shelters/Pierce Transit Use Areas. Pierce Transit is
15 obligated to and shall construct and maintain its Facilities and Use Areas in
16 compliance with Federal Transit Authority and ADA regulations for bus boarding
17 and alighting areas.
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19 D. Transition Plan/Existing Bus Stops. Pierce Transit will create and
20 provide an inventory and prioritization of its existing and proposed Facilities to the
21 City within ninety (90) days of the execution of this Agreement. The City and
22 Pierce Transit agree to cooperate to develop an ADA Self-Evaluation and Transition
23 Plan ("Plan") for all Pierce Transit Facilities within the City of Tacoma, which Plan
24 will include an assessment of pedestrian access routes leading to and from such
25 Facilities. This Plan will also include the prioritization of areas adjacent to Bus
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1 Stops for ADA improvements and will provide for a reporting mechanism to be
2 utilized by staff to report areas with deficiencies. Once the Plan has been
3 completed, the City of Tacoma and Pierce Transit will identify barriers for removal
4 and develop a plan for completion of the work within the Parties' respective areas of
5 responsibility. The Plan will be updated and modified as funding opportunities
6 arise, transit routes or ridership change, or other factors influence the priority of the
7 improvements.

8 Section 6. Insurance. Pierce Transit shall maintain, throughout the term of
9 this Agreement, the following self-funding levels or membership in a self-insurance
10 pool, such as the Washington State Transit Insurance Pool, to protect the City, its
11 trustees, elected and appointed officers, agents, and employees against claims and
12 damages that may arise as a result of the construction, installation, operation,
13 maintenance, or repair of the Facilities. This obligation shall require Pierce Transit
14 to maintain self-insurance funding levels in no less than the following amounts and
15 forms:
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18 A. Comprehensive general liability self-insurance funding levels to
19 cover liability, bodily injury, and property damage. Exposures to be covered are:
20 premises, operations and products/completed operations. Coverage must be
21 written on an occurrence basis, with the following limits of liability:
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23 1. Bodily Injury:

- 24 a. Each Occurrence \$1,000,000
25 b. Annual Aggregate \$3,000,000
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2. Property Damage:

- a. Each Occurrence \$1,000,000
- b. Annual Aggregate \$3,000,000

3. Personal Injury:

- a. 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 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 coverage for Pierce Transit employees 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 subcontractors to similarly provide workers' compensation insurance for all the latter's employees.

E. Employer's liability insurance shall be maintained by Pierce Transit in the following minimum limits:

- 1. Employer's Liability: \$1,000,000 per occurrence



1 F. Comprehensive auto liability coverage shall include owned, hired,
2 and non-owned vehicles.

3 1. Bodily Injury:

- 4 a. Each Occurrence \$1,000,000
5 b. Annual Aggregate \$3,000,000

6 2. Property Damage:

- 7 a. Each Occurrence \$1,000,000
8 b. Annual Aggregate \$3,000,000

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

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

17 I. Minimum Requirements. The parties agree that insurance
18 coverage required herein shall:

- 19 1. Provide coverage on an occurrence basis;
20 2. Cover any and all costs including defense costs, losses and
21 damages resulting from any personal injury and/or death (including coverage under
22 the Federal Employers Liability Act), and/or property damage;
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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 Facilities have been removed from Public Rights-of-Way and for six years thereafter;
8. Have no non-standard exclusions unless approved of by the City's Risk Manager;
9. Name the City as an additional insured without limitation for both ongoing and completed operations, pursuant to an endorsement approved of by the City's Risk Manager;
10. Be issued by a financially sound self-insurance pool or by an 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;



1 11. Be endorsed to state that coverage under the policy shall
2 not be suspended, voided, cancelled, or amended except after 30 days' prior
3 written notice of such has been given to the City;

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

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

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

13 K. In the event that the insurance certificate provided indicates that
14 the insurance shall terminate or lapse during the period of the Right-of-Way then, in
15 that event, Pierce Transit shall furnish, at least 30 days prior to the expiration of the
16 date of such insurance, a renewed certificate of insurance as proof to the expiration
17 of the date of such insurance, a renewed certificate of insurance as proof that equal
18 and like coverage has been or will be obtained prior to any such lapse or
19 termination during the balance of the period of the Right-of-Way.

20 Section 7. Liability; Indemnification.

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

4 B. Pierce Transit hereby releases the City from, and agrees to
5 indemnify, defend, protect, and hold the City harmless from and against any and all
6 claims, suits, judgments, liabilities, defense costs, and expenses (including, but not
7 limited to, attorneys' fees) arising out of any loss of and/or damage to the real or
8 tangible personal property of the City, and any loss of and/or damage to the
9 property of any Third Parties or Pierce Transit; any loss and/or damage on account
10 of injury to or death of any persons whomsoever (including employees and agents
11 of the parties hereto and all other persons) caused by or growing out of the
12 presence of Pierce Transit or its employees, Agents, Authorized Third Parties,
13 servants, contractors, or subcontractors in, upon, or along the Use Area or the plan,
14 design, construction, and installation, or subsequent operations, maintenance,
15 repair, reinstatement, replacement, relocation, or removal of Facilities or any part
16 thereof; service interruption, cessation, or unreliability of the Transit Facilities, libel,
17 slander, infringement of copyright, or unauthorized use of any trademark, trade
18 name, or service mark arising out of the material, data, information, or other content
19 transmitted or received over, or otherwise posted at the Facilities, unless such
20 claims, suits, judgments, or liabilities arise from the sole actions or inaction of the
21 City, its employees, servants, agents, contractors, or subcontractors.

22 C. The parties hereby agree that no damages shall be recoverable
23 from one another because of any dispossession that results from any failure of or
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defect in the City's title or the rights granted herein by the City to Pierce Transit.

1 The City will cooperate with Pierce Transit's actions to rectify any title defect and
2 shall stipulate to judgment upon demand with regard to Pierce Transit's title.
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4 D. The party in whose favor an indemnification runs, pursuant to any
5 of Sections 7(A), 7(B), and 7(C) (the "Protected Party"), shall give the other party
6 (the "Indemnifying Party") prompt notice of any claims or actions of which it is aware
7 against the Protected Party under this Agreement. The Indemnifying Party shall
8 promptly assume responsibility for the claim or undertake the defense of any
9 litigation on behalf of the Protected Party, its agents, contractors, and employees;
10 hold the Protected Party harmless for any expense associated therewith; and
11 promptly pay any settlement or judgment that may be agreed to by the parties or
12 entered by a court. The Protected Party shall cooperate fully with the Indemnifying
13 Party in the defense of any such claim or action without the prior written consent of
14 the Indemnifying Party, which consent shall not be unreasonably withheld. In the
15 event that the indemnifying Party does not assume and meet its obligations under
16 Section 7(D) promptly upon receiving written notice from the Protected Party, the
17 Protected Party may, at its option, make any expenditures or incur any obligations
18 for the payment of money in connection with or arising out of the matters referred to
19 in Sections 7(A), 7(B), and 7(C), including, but not limited to, attorney's fees. Such
20 sums paid or obligations incurred shall be deemed to be additional obligations of
21 the Indemnifying Party under this Agreement and shall be paid by the Indemnifying
22 Party upon the rendering of a statement to the Indemnifying Party therefore.
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Section 8. Liens.

1 A. The Right-of-Way is not subject to a claim of lien. In the event that
2 any City property becomes subject to any claims for mechanics', artisans' or
3 materialmen's liens, or other encumbrances chargeable to or through Pierce Transit
4 which Pierce Transit does not contest in good faith, Pierce Transit shall promptly,
5 and in any event within 30 days, cause such lien claim or encumbrance to be
6 discharged or released of record (by payment, posting of bond, court deposit, or
7 other means), without cost to the City, and shall indemnify the City against all costs
8 and expenses (including attorneys' fees) incurred in discharging and releasing such
9 claim of lien or encumbrance. If any such claim or encumbrance is not so
10 discharged and released, the City may pay or secure the release or discharge
11 thereof at the expense of Pierce Transit after first giving Pierce Transit five business
12 days' advance notice of its intention to do so.

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

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

19 Section 9. Term; Termination.

20 A. The Effective Date of this Agreement shall be retroactive to
21 January 1, 2014 (the "Effective Date"), and unless sooner terminated pursuant to
22 the terms hereof, shall remain in effect for five (5) years from such date ("Initial
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1 Term”) with the right of the parties to renew this Agreement for an additional five (5)
2 year term subject to the approval of each party’s governing board.

3 B. Pierce Transit’s option to renew this Agreement for an additional
4 five year term upon the same terms and conditions shall be subject to City Council
5 approval, and the requirements of the City Charter. Notice of Pierce Transit’s intent
6 to exercise any renewal option shall be given to the City no sooner than one year
7 and no later than 180 days prior to the expiration of the initial term. Time shall not
8 be “of the essence” with respect to the notice provisions in this subsection.

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

14 D. Either party may terminate this agreement after ninety (90) days’
15 notice of intent to terminate to the other party and opportunity to cure any breach or
16 nonperformance cited therein.

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19 Section 10. Remedies in Event of Breach.

20 A. Remedies. Either party has the right to exercise any and all of the
21 following remedies, singly or in combination, in the event the other party violates
22 any provision of this Agreement:
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- 24 1. Commence an action at law for monetary damages;
- 25 2. Commence action for equitable or other relief;
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3. Seek specific performance of any provision that reasonably lends itself to such remedy.

B. Cumulative Remedies. In determining which remedy or remedies are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

C. Failure to Enforce. Neither party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the other party to enforce prompt compliance, and either party's failure to enforce shall not constitute a waiver of rights or acquiescence in the conduct.

D. Alternative Remedies. No provision of this Agreement shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the ordinance or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages for such violation or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

Section 11. Revocation. In addition to any rights set out elsewhere in this Agreement or the City Charter, the City reserves the right to declare a forfeiture or



1 otherwise revoke the Agreement, and all rights and privileges pertaining thereto, in
2 the event that:

3 A. Pierce Transit is in material non-compliance with this Agreement;

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

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

9 D. At any time during the term of the Agreement, Pierce Transit fails
10 to provide and maintain the insurance levels required by this Agreement or fails to
11 satisfy the indemnity set out in this Agreement.

12
13 Before this Agreement, or any portion herein, is revoked, Pierce Transit shall
14 be given notice and opportunity to cure (except in those cases where notice and
15 opportunity to cure are not required, or would be otherwise futile).

16
17 If, after notice and opportunity to cure, the City finds that there has been an
18 act or omission that would justify revocation or forfeiture of the Agreement, or any
19 portion herein, the City may make an appropriate reduction in the remaining term of
20 the Agreement or revoke the Agreement. However, the Agreement may only be
21 revoked or forfeited if: (1) Pierce Transit was given written notice of the default;
22 (2) Pierce Transit was given 30 days to cure the default; and (3) Pierce Transit
23 failed to cure the default, or to propose a schedule for curing the default acceptable
24 to the City when it is impossible to cure the default in 30 days. No opportunity to
25 cure is required for repeated violations and fraud shall be deemed incurable.
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1 Notwithstanding the foregoing, the City may declare an Agreement forfeited
2 or revoked without opportunity to cure when Pierce Transit: (1) transfers any right
3 or obligation hereunder without prior consent of the City; (2) fails to pay any monies
4 owed hereunder; or (3) defrauds or attempts to defraud the City or Pierce Transit's
5 customers. However, Pierce Transit shall have the right to receive 30 days' prior
6 notice of an intent to declare the Agreement, or any portion herein, forfeited and
7 shall have the opportunity to show cause before the Director of Public Works why
8 the Agreement should not be forfeited or revoked.

9
10 Section 12. Right to Require Removal of Property/Right to Remove
11 Property.

12 A. Upon termination of this Agreement, or termination of any Facility
13 defined herein, and upon a demand by the City, Pierce Transit may be required to
14 remove Facilities from any Public Right-of-Way, and restore such Right-of-Way and
15 accompanying Use Area to its same or better condition that existed just prior to
16 installation of the Facility(ies) to be removed, subject to any rights Pierce Transit
17 may have to abandon property in place. If Pierce Transit fails to complete a City
18 required removal and/or does not complete repairs to the Right-of-Way to the
19 satisfaction of the City Public Works Director, the City may perform the work and
20 collect the cost thereof from Pierce Transit after removal.
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23 B. To the extent any portion of the Facilities in the Rights-of-Way or
24 on any other public property is not removed by Pierce Transit within three months of
25 the later of the end of the term of this Agreement or any continuation period, the
26 Facility(ies) will be deemed abandoned and shall become the property of the City if



1 the City wishes to own it. Provided that, in no case shall Pierce Transit be provided
2 less than three months to remove its Facilities, measured from the date Pierce
3 Transit is ordered to remove its Facilities.

4 C. Any demand issued, pursuant to Section 12 (A), to remove the
5 Facilities in whole or in part shall be sent by registered or certified mail to Pierce
6 Transit not later than three months following the date of termination of this
7 Agreement, except as may be otherwise agreed to by the parties. Removal of
8 Facilities and repairs to the Right-of-Way shall be completed (except with respect to
9 property that Pierce Transit is permitted or required to abandon in place) not later
10 than three months following the date of notification to remove the Facilities.

11
12 Section 13. Covenants and Warranties.

13 A. By execution of this Agreement, the City warrants:

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

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

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

5 1. That Pierce Transit has full right and authority to enter into
6 and perform this Agreement in accordance with the terms hereof, and by entering
7 into or performing this Agreement, Pierce Transit is not in violation of its charter or
8 bylaws, or any law, regulation or agreement by which it is bound or to which it is
9 subject; and
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11 2. That the execution, delivery, and performance of this
12 Agreement by Pierce Transit has been duly authorized, and that the joinder or
13 consent of any other party, including a court or trustee or referee, is not necessary
14 to make valid and effective the execution, delivery and performance of this
15 Agreement.
16

17 Section 14. Recording, Taxes, and Other Charges.

18 A. Pierce Transit shall pay all transfer taxes, documentary stamps,
19 recording costs or fees, or any similar expense in connection with the recording
20 costs or fees, or any similar expense in connection with the recording or filing of any
21 permits which may be granted hereunder. Pierce Transit further agrees that if it is
22 determined by any federal, state, or local governmental authority that the sale,
23 acquisition, license, grant, transfer, or disposition of any part or portion of any
24 Facility advertising or rights herein described requires the payment of any tax, levy,
25 excise, assessment, or charges (including, without limitation, property, sales, or
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1 use tax) under any statute, regulation, or rule, Pierce Transit shall pay the same,
2 plus any penalty and/or interest thereon, directly to said taxing authority and shall
3 hold the City harmless therefrom. Pierce Transit shall pay all taxes, levies, excises,
4 assessments, or charges, including any penalties and/or interest thereon, levied or
5 assessed on the Facilities, or on account of their existence or use (including
6 increases thereof attributable to such existence or use, and excluding taxes based
7 on the income of the City), and shall indemnify the City against payment thereof.
8 Pierce Transit shall have the right to claim, and the City shall reasonably cooperate
9 with Pierce Transit in the prosecution of any such claim, for refund, rebate,
10 reduction, or abatement of such tax(es).
11

12 B. The City may pay any tax, levy, excise, assessment, or charge,
13 plus any penalty and/or interest thereon, imposed upon Pierce Transit for which
14 Pierce Transit is obligated pursuant to this section, if Pierce Transit does not pay
15 such tax, levy, excise, assessment, or charge within 30 days after it becomes due.
16 Pierce Transit shall reimburse the City for any such payment made, pursuant to the
17 previous sentence, plus interest at the rate of 8 percent per annum.
18

19 C. The City and Pierce Transit will cooperate in good faith to resolve
20 any tax dispute that arises under this Agreement, which cooperation will include, but
21 not be limited to, sharing of documents and cooperation of legal counsel.
22

23 Section 15. Assignability; Beneficiary.

24 A. This Agreement shall be binding upon and inure to the benefit of
25 the parties hereto and their respective successors or assigns. Except as otherwise
26 provided herein, no assignment hereof or sublease shall be valid for any purpose



1 without the prior written consent of the other party, and any attempt by one party to
2 assign or license the rights or obligations hereunder without prior written consent
3 will give the other party the right, at its written election, immediately to terminate this
4 Agreement or take any other lesser action with respect thereto. The above
5 requirement for consent shall not apply to: (1) any disposition of all or substantially
6 all of the assets of a party; (2) any corporate merger, consolidation, or
7 reorganization, whether voluntary or involuntary; (3) a sublease or assignment of
8 this Agreement (in whole or in part) to a wholly-owned subsidiary, affiliate, or parent
9 company; (4) a license of the use of Advertising Space for commercial advertising
10 as authorized pursuant to Section 3 of this Agreement; or (5) a sale, lease, or other
11 conveyance by the City; provided, however, that no sublease or assignment under
12 Subsections (2) or (3) shall be permitted to a company not under common control
13 with Pierce Transit; and provided further, that no uncontested assignment shall
14 relieve Pierce Transit of its obligations and liabilities under this Agreement.
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17 B. Either party hereto may assign any monetary receivables due
18 them under this Agreement; provided however, such assignment shall not relieve
19 the assignor of any of its rights or obligations under this Agreement.
20

21 C. Pierce Transit acknowledges and agrees that the City may
22 designate, in writing, a designee to: (1) receive information (including information
23 designated or identified as confidential) and notices under this Agreement; and
24 (2) provide certain approvals or consents required from the City under this
25 Agreement. In the event of such designation, Pierce Transit may rely on approvals
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1 or consents by such designee on behalf of the City as fully as if such actions were
2 performed by the designator itself.

3 Section 16. Notices.

4 A. Unless otherwise provided herein, all notices and communications
5 concerning this Agreement, shall be in writing and addressed to (one copy each):

6 PIERCE TRANSIT
7 Attention: Clerk of the Board
8 3701 96th Street SW
9 Lakewood, WA

10 and to:

11 CITY OF TACOMA
12 Attention: City Clerk
13 733 Market Street, Room 11
14 Tacoma, WA 98402

15 CITY OF TACOMA
16 Attention: Real Property Services
17 747 Market Street, Room 737
18 Tacoma, WA 98402

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

20 B. Unless otherwise provided herein, notices shall be sent by
21 registered or certified United States Mail, or other verifiable physical or electronic
22 transmission, and shall be deemed served or delivered to addressee, or its office,
23 upon date of actual receipt (if such acknowledgment, or other means), return receipt
24 acknowledgment, or, if postal claim notice is given, on the date of its return marked
25 "unclaimed"; provided, however, that upon receipt of a returned notice marked
26 "unclaimed," the sending party shall make reasonable effort to contact and notify
the other party by telephone.

Section 17. Miscellaneous.

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



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B. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.

C. The parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the parties' control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns or power outages exceeding back-up power supplies. This Agreement shall not be revoked or the parties penalized for such noncompliance; provided, that the parties take immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

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

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

F. Section headings are intended as information only, and shall not be construed with the substance of the section they caption.



1 G. This Agreement may be executed in several counterparts, each of
2 which shall be deemed an original, and all counterparts together shall constitute but
3 one and the same instrument.

4 H. No Recourse. Without limiting such immunities as the City or
5 other persons may have under applicable law, Pierce Transit shall have no
6 monetary recourse whatsoever against the City or its officials, boards,
7 commissions, agents, or employees for any loss or damage arising out of the City's
8 exercising its authority, pursuant to this Agreement or other applicable law; provided
9 that, this section shall not apply in the event the Agreement is repealed, pursuant to
10 Article VIII, Section 8.1(a) of the Tacoma City Charter.
11

12 I. Notwithstanding Section 17(H) above, Pierce Transit shall maintain
13 all of its rights regarding the enforcement of this Agreement at law and in equity.

14 Section 18. Legal Forum. This Agreement shall be interpreted, construed
15 and enforced in accordance with the laws of the state of Washington. Venue for
16 any action under this Agreement shall be Pierce County, Washington.
17

18 Section 19. Interpretation. This Agreement is executed by all parties under
19 current interpretations of applicable federal, state, or local statute, ordinance, law, or
20 regulation.
21

22 Section 20. Severability.

23 A. In case any term of this Agreement shall be held invalid, illegal, or
24 unenforceable in whole or in part, neither the validity of the remaining part of such
25 term nor the validity of the remaining terms of this Agreement shall in any way be
26 affected thereby.



1 B. Notwithstanding the foregoing, the material provisions of this
2 Agreement are not severable. In the event that a court, agency, or legislature of
3 competent jurisdiction acts or declares any nonmaterial provision of this Agreement
4 is unenforceable according to its terms, or otherwise void, said provision shall be
5 considered a separate, distinct, and independent part of this Agreement, and such
6 holding shall not affect the validity and enforceability of all other provisions hereof.
7 In the event that a court, agency, or legislature of competent jurisdiction acts so
8 that, or declares that, any material provision of this Agreement is unenforceable
9 according to its terms, or is otherwise void, the City and Pierce Transit agree to
10 immediately enter into negotiations in good faith to restore the relative burdens and
11 benefits of this Agreement, consistent with applicable law. If the City and Pierce
12 Transit are unable to agree to a modification of this Agreement within 60 days,
13 either party may resort to litigation. Pierce Transit and the City agree to participate
14 in up to 16 hours of negotiation during the 60-day period.

17 C. Notwithstanding the foregoing, if either Pierce Transit or the City
18 believes a provision is not material then, within 14 days of a request by the other,
19 both parties shall enter into negotiations to resolve the provision at issue. The
20 obligation to negotiate is not tolled, and the City and Pierce Transit must discharge
21 their negotiation responsibility notwithstanding the dispute as to materiality. If there
22 is a dispute as to materiality, the remedies provided for in the preceding paragraph
23 shall be additive, not alternative. The remedies provided for herein do not prevent
24 the City or Pierce Transit from contending that a particular provision is enforceable,
25 or foreclose any remedies if a provision is unenforceable.
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Section 21. Execution. Pierce Transit shall execute and return to the City three original countersigned copies of this ordinance and a signed acceptance of the Agreement granted hereunder within 30 days after the date of passage of the ordinance by the City Council and authorization to enter into this Agreement by the Pierce Transit Board of Commissioners. The acceptance shall be in a form acceptable to the City Attorney, and in accepting this Agreement, Pierce Transit warrants that it has carefully read the terms and conditions of this Agreement and unconditionally accepts all of the terms and conditions of this Agreement and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept this Agreement, that this Agreement represents the entire agreement between Pierce Transit and the City. The countersigned ordinance and acceptance shall be returned to the City accompanied by: (1) evidence of insurance; and (2) a payment for publication costs. The rights granted herein shall not become effective until all of the foregoing is received in



1 acceptable form. Upon passage by the City and acceptance of this Agreement by
2 Pierce Transit, any prior franchise agreement between the parties shall terminate
3 and be replaced in its entirety by this Ordinance.
4

5 Passed JUL 12 2016

6
7 
8 _____
Mayor

9 Attest:

10 
11 _____
City Clerk

12 Approved as to form:

13 
14 _____
15 Deputy City Attorney
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ACCEPTANCE OF CITY FRANCHISE

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Ordinance No. 28365, effective July 25, 2016.

I, Sue DREIER, am the CEO of the
Pierce County Public Transportation Benefit Area Corporation, and am the
authorized representative to accept the above referenced City franchise ordinance
on behalf of the Pierce County Public Transportation Benefit Area Corporation.

I certify that this franchise and all terms and conditions thereof are accepted
by Pierce County Public Transportation Benefit Area Corporation.

DATED this 25th day of July, 2016.

Pierce County Public Transportation Benefit Area Corporation

By *Sue Dreier*

Its CEO

APPENDIX "A"

Sample Revenue Detail Sheet

Pierce County Public Transportation
 Revenue Detail
 Feb-2011

MEDIA	ADVERTISER	CLIENT	CONTRACT	REQ POST	END POST	QUANTITY	NET REVENUE	Plan 63%	TACOMA REVENUE	COA
BUS Signage				3/28/2011	3/27/2011	30				8=1
BUS Signage				1/12/2011	3/4/2011	4				14=1
BUS Signage				2/9/2011	3/4/2011	4				14=1
BUS Signage Total										2001
Full Back				7/14/2011	8/13/2011	80				34=1
Full Back				1/20/2011	2/16/2011	2				
Full Back				1/11/2011	2/1/2011	1				
Full Back				3/4/2011	3/2/2011	1				
Full Back				2/13/2011	3/14/2011	3				
Full Back Total										
Full Wrap				1/2/2011	4/12/2011	1				
Full Wrap Total										
Vendor Card (11x17)				1/5/2011	3/1/2011	15				
Vendor Card (11x17)				3/25/2011	3/1/2011	15				
Vendor Card (11x17)				1/11/2011	3/1/2011	10				
Vendor Card (11x17)				3/4/2011	3/1/2011	10				
Vendor Card (11x17)				1/25/2011	2/1/2011	60				
Vendor Card (11x17)				2/23/2011	3/1/2011	60				
Vendor Card (11x17) Total										
Vendor Card (11x34)				1/21/2011	3/21/2011	50				
Vendor Card (11x34)				2/7/2011	3/21/2011	50				
Vendor Card (11x34) Total										
Kang (30x14)				2/1/2011	3/24/2011	14				
Kang (30x14)				2/1/2011	3/27/2011	10				
Kang (30x14)				2/1/2011	2/29/2011	20				
Kang (30x14)				1/21/2011	2/1/2011	2				
Kang (30x14)				1/13/2011	2/1/2011	3				
Kang (30x14)				2/28/2011	3/21/2011	3				
Kang (30x14)				2/14/2011	3/1/2011	17				
Kang (30x14)				2/11/2011	3/1/2011	20				
Kang (30x14)				1/21/2011	2/1/2011	14				
Kang (30x14)				1/17/2011	2/1/2011	10				
Kang (30x14)				1/20/2011	2/24/2011	2				
Kang (30x14)				2/21/2011	2/24/2011	3				
Kang (30x14)				1/23/2011	2/1/2011	5				
Kang (30x14)				1/28/2011	2/25/2011	10				
Kang (30x14)				2/24/2011	3/23/2011	10				
Kang (30x14) Total										
Kang Kang				1/11/2011	2/1/2011	7				
Kang Kang				2/14/2011	3/1/2011	7				
Kang Kang				1/11/2011	2/1/2011	10				
Kang Kang				2/28/2011	3/21/2011	10				
Kang Kang Total										
Quinn (30x18)				1/11/2011	2/1/2011	4				
Quinn (30x18)				2/9/2011	3/1/2011	4				
Quinn (30x18) Total										
Taxi (21x7)				1/11/2011	2/1/2011	10				
Taxi (21x7)				2/28/2011	3/1/2011	10				
Taxi (21x7)				1/28/2011	2/1/2011	10				
Taxi (21x7)				2/28/2011	3/2/2011	10				
Taxi (21x7)				1/29/2011	2/1/2011	3				
Taxi (21x7)				2/22/2011	3/1/2011	3				
Taxi (21x7) Total										