

**TRANSIT SERVICE FINANCIAL PARTNERSHIP AGREEMENT**

**BY AND BETWEEN**

**KING COUNTY**

**AND**

**THE CITY OF AUBURN, WASHINGTON**

**AND**

**PIERCE TRANSIT**

THIS TRANSIT SERVICE FINANCIAL PARTNERSHIP AGREEMENT ("Agreement") is made by and between King County, a political subdivision of the State of Washington and home rule charter county with broad powers to provide public transportation within the County's geographic boundaries, by and through the King County' Metro Transit Department ("County" or "Metro Transit"), the City of Auburn ("City") and the Pierce County Public Transportation Benefit Authority (or "Pierce Transit") (both Washington municipal corporations referred to collectively as "Service Partner," whether one entity or multiple entities), all of which entities may be collectively referred to as the "Parties."

WHEREAS, in December 2008, the Service Partners signed a Transit Service Financial Agreement to provide commute alternatives to Pierce County residents who work in King County; and

WHEREAS, in 2009, as a result of the Transit Service Financial Agreement, Pierce Transit started the operation of route 497; and

WHEREAS, since 2008, the Service Partners signed five (5) amendments to the Transit Service Financial Agreement to provide additional service to meet the added train service at the Auburn station, and to extend the terms of the agreement to September 2020.

WHEREAS, original Transit Service Agreement expires in September 2020, and is replaced by this new Transit Service Financial Partnership Agreement upon the effective date; and

WHEREAS, the Pierce Transit holds the authority to provide public transportation on its Route 497 serving Lakeland Hills and the Auburn Transit Center; and

WHEREAS, the Parties have identified funding within their organizations to participate in a financial partnership to each fund a share of Pierce Transit's cost of operating Route 497; and

WHEREAS, the Parties have determined that the Route 497 serves and benefits customers and employees of all three Parties; and

WHEREAS, Pierce Transit has determined it has the resources available to operate the Route 497 service hours in accordance with the schedule specified within this Agreement; and

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND AGREEMENTS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES, THE PARTIES HEREBY AGREE AS FOLLOWS:

**1. PURPOSE OF AGREEMENT**

The purpose of this Agreement to establish the terms, conditions and responsibilities of the Parties in relation to this transit service partnership, including methods of financing, operations, monitoring, improving and terminating the partnership.

**2. PIERCE TRANSIT'S RESPONSIBILITIES**

- 2.1 Pierce Transit will provide transit service on Route 497 in accordance with the service specifications set forth in Attachment A, which is incorporated herein and made a part of this Agreement by this reference.
- 2.2 While Pierce Transit will hold authority and responsibility for conducting public participation processes in advance of any significant service modification, as defined by Pierce Transit's adopted service modification procedures, Pierce Transit will work together with the County and the City of Auburn in the design and implementation of such changes.
- 2.3 Pierce Transit's cost allocation model will be used to determine the Parties' financial contributions in accordance with this Agreement.
- 2.4 Pierce Transit will provide performance data using its standard ridership and service monitoring practices. The Parties understand and agree that, notwithstanding the Parties' financial contributions, the transit service referenced herein will be open to the general public.
- 2.5 Promotion. Pierce Transit will advertise the Route 497 via its normal marketing channels, and will include the service information in Pierce Transit timetables and on Pierce Transit's Web site.

**3. PARTIES' FINANCIAL RESPONSIBILITIES**

- 3.1 Each Party to this Agreement will be responsible for contributing one-third (1/3) of the cost for operating the Route 497, based on Pierce Transit's fully allocated operating hourly rate and a capital cost component for the transit vehicles. The cost each Party will be responsible for on an annual basis shall be determined in accordance with Attachment A of this Agreement.

**4. TERM OF AGREEMENT**

- 4.1 This Agreement shall commence upon signing by the Parties (the “effective date”) and, for the service specified in Attachment A, expire five (5) years after the start of the effective date, unless extended or earlier terminated pursuant to the terms of this Agreement. If after five (5) years the Parties desire to continue this Agreement beyond the initial five-year period, this Agreement may be extended by the Parties for up to an additional five (5) years without additional approval by the Pierce Transit Board of Commissioners, City of Auburn City Council, or the King County Council.
- 4.2 This Agreement is subject to review and approval by the King County Council and, if necessary, the governing bodies of any other governmental entities that are Party to this Agreement.

**5. INVOICES/PAYMENT PROCEDURES**

- 5.1 Pierce Transit will invoice the County and the City of Auburn at the end of each quarter for each Parties’ share based on one-third of the actual cost to operate the service during that quarter. The invoices will be based on the Pierce Transit service costs specified in Attachment A.
- 5.2 Estimates of the total service costs based on scheduled service hours are shown in Attachment A. These estimates will be adjusted in January each year, based on Pierce Transit’s fully allocated cost and the capital cost associated with the transit vehicles. Pierce Transit will provide the annual adjustments to King County and the City of Auburn for the service described in Attachment A.
- 5.3 The County and the City of Auburn shall make payment to Pierce Transit within forty-five (45) days after receipt of an invoice. Should either the County or the City of Auburn fail to pay Pierce Transit the amount due within forty-five (45) days of receipt of a billing invoice from Pierce Transit, a late payment assessment shall be applied to any outstanding balance due for that invoice. The late payment assessment shall be fixed at the maximum rate allowable under Washington State law.

**6. RECORDS**

- 6.1 Maintenance of Records. The Parties shall maintain books, records, and documents directly pertinent to performance of the work under this Agreement for a period of six (6) years after the expiration or earlier termination of the Agreement or longer if required by the Washington State Archivist retention schedule.
- 6.2 Disclosure of Public Records. The Parties acknowledge that all non-privileged, non-exempt records that may result from access to records under this Agreement are subject to public disclosure.

**7. INDEMNIFICATION AND LEGAL RELATIONS**

- 7.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other Party.
- 7.2 Each Party shall comply, and shall ensure that its contractors and subcontractors, if any, comply with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.
- 7.3 Each Party shall protect, defend, indemnify and save harmless the other Party, its elected officials, officers, officials, employees and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 7.4 Each Party's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- 7.5 This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, located in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 7.6 The provisions of this Section 7 shall survive any termination of this Agreement.

**8. INSURANCE REQUIREMENTS**

Each party shall self-insure or procure and maintain for the duration of the Agreement, insurance or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by the Parties.

**9. CHANGES AND MODIFICATIONS**

This Agreement may be amended or modified only by a prior written amendment signed by authorized representatives of the Parties hereto. Such amendments and modifications may be executed by the

General Manager of the County's Metro Transit Department without additional King County Council approval, so long as any such amendments are consistent with the intent and purpose of this Agreement.

## **10. TERMINATION OF AGREEMENT**

- 10.1 Any Party may terminate this Agreement in writing if another Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other; provided, however, that, insofar as practicable, the Party terminating the Agreement will give not less than 135 calendar days prior to Pierce Transit's next scheduled service change date, by written notice delivered by certified mail, return receipt requested, of intent to terminate.
- 10.2 In addition to termination under Subsection 10.1 of this Agreement, any Party may terminate this Agreement for its convenience, provided that the other Parties will be given not less than 135 calendar days prior to the Pierce Transit's next scheduled service change date, by written notice delivered by certified mail, return receipt requested, of intent to terminate.
- 10.3 Performance of any responsibilities undertaken by the County pursuant to this Agreement beyond the County's current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the work provided for in this Agreement. Should such an appropriation not be approved, the Agreement shall terminate at the close of the current appropriation year. King County is on a biennial budgeting cycle and appropriations end on December 31st of the last year of the biennium (even calendar years).
- 10.4 Performance of any responsibilities undertaken by the City of Auburn pursuant to this Agreement beyond the City's current appropriation year is conditional upon the appropriation by the City Council of sufficient funds to support the work provided for in this Agreement. Should such an appropriation not be approved, the Agreement shall terminate at the close of the current appropriation year. The City of Auburn is on a biennial budgeting cycle and appropriations end on December 31st of the last year of the biennium (even calendar years).
- 10.5 Performance of any responsibilities undertaken by Pierce Transit pursuant to this Agreement beyond the agencies current appropriation year is conditional upon the appropriation by Pierce Transit Board of Commissioners sufficient funds to support the work provided for in this Agreement. Should such an appropriation not be approved, the Agreement shall terminate at the close of the current appropriation year. Pierce Transit is on an annual budget cycle and appropriations end on December 31st.
- 10.6 If any Party terminates, the other Parties will pay Pierce Transit a pro-rated amount for services performed in accordance with the Agreement to the date of termination.

## **11. FORCE MAJEURE**

All Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, earthquake or acts of nature, including adverse winter weather; strikes or

labor actions; commandeering material, products, or facilities by the federal, state or local government; a declared State of Emergency due to a public health emergency or pandemic; and/or national fuel shortage; when satisfactory evidence of such cause is presented to the other Parties, and provided further that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event, however, shall this provision eliminate obligation to make payment to Pierce Transit for services performed in accordance with this Agreement.

**12. WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized Parties and attached to the Agreement as an exhibit.

**13. ASSIGNMENT**

This Agreement shall be binding upon the Parties, their successors, and assigns; provided, however, that no Party shall assign nor transfer in any manner any interest, obligation or benefit of this Agreement without the other's prior written consent.

**14. NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties hereto and their respective successors and assigns any rights or remedies under or by virtue of this Agreement.

**15. MUTUAL NEGOTIATION AND CONSTRUCTION**

This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against any Party.

**16. ALL TERMS AND CONDITIONS**

This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties related to the subject matter hereof, contains all the terms and conditions agreed upon by the Parties, and constitutes the entire agreement between the Parties. This Agreement may be amended only by written agreement of the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto.

**17. CONTACT PERSONS**

The Parties shall designate a contact person for purposes of sending inquiries and notices regarding the execution and fulfillment of this Agreement.

	<b>City of Auburn</b>
Contact Name	Cecile Malik
Department	Public Works
Title	Senior Transportation Planner
Address	25 West Main Street, Auburn, WA 98001-4998
Telephone	253-876-1964
E-Mail	cmalik@auburnwa.gov

	<b>Pierce Transit</b>
Contact Name	Duane Wakan
Department	Planning
Title	Senior Planner
Address	3701 96 <sup>th</sup> Street SW Lakewood, WA 98499
Telephone	(253) 983-3396
E-Mail	dwakan@piercetransit.org

	<b>King County</b>
Contact Name	Ryan Miller
Department	Transit, Service Planning
Title	Transportation Planner
Address	201 S Jackson Street, Seattle, WA 98104
Telephone	206.477.5044
E-Mail	Ryan.Miller@kingcounty.gov

Each Party agrees to advise the other Parties in writing with updates to its contact information as needed.

**18. EXECUTION OF AGREEMENT – COUNTERPARTS**

This Agreement may be executed in three (3) counterparts, either of which shall be regarded for all purposes as an original.

**19. EFFECTIVE DATE**

This Agreement shall take effect on the last date it has been executed by all Parties.

**KING COUNTY**

**CITY OF AUBURN**

By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

**PIERCE TRANSIT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Attachment A

### TRANSIT SERVICE FINANCIAL PARTNERSHIP AGREEMENT

City of Auburn  
Pierce Transit  
King County Metro

#### A. Service Description

The Lakeland Hills-Auburn Sounder Station route (Route 497) is a commuter service established and operated by Pierce Transit through a funding partnership with the King County and City of Auburn. The Lakeland Hills feeder operates between Lake Tapps Parkway and Auburn Station, with one-way service to the station in the a.m. peak and from the station to Lakeland Hills in the p.m. peak.

The purpose of the service on the Lakeland Hills feeder is to provide peak service to connect residential areas to Auburn Station to facilitate transfers to Sounder commuter rail, Sound Transit express bus service, and Metro bus service.

##### Service Level:

- Annual Service Hours: 4,340.10
- Number of Weekday A.M. Trips: 9NB
- Number of Weekday P.M. Trips: 9SB

**Start Date for Service.** Service under this Agreement will begin on October 1, 2020.

#### B. Service Costs

##### 1. Operating Cost

The operating cost for the Lakeland Hills service (Rt. 497) beginning October 1, 2020 will be based on Pierce Transit's hourly rate of \$102.97. The Parties agree that the operating hourly rate may be adjusted each year to reflect changes to Pierce Transit's service operation costs, however it is agreed that the operating hourly rate for this Agreement shall not increase by more than three percent (3%) each year.

##### 2. Capital Cost

In addition to the operating costs, the Parties agree to pay for a share of Pierce Transit's capital costs related to the provision of transit coaches for the Lakeland Hills

service. The capital cost for this service from October 1, 2020 through December 31, 2020 is \$21,320.21. This cost will be equally shared by the Parties.

**3. Monetary Contributions**

The Parties agree that beginning October 1, 2020 and through the term of this Agreement, the costs for providing weekday AM northbound and weekday PM southbound trips on the Lakeland Hills service (Route 497) will be divided equally between the three parties, King County, City of Auburn and Pierce Transit.

The total Service costs for the period of October 1, 2020 through December 31, 2020 are estimated below. The Parties will each be responsible for one-third (1/3) of the total costs

<b>October 1, 2020 – December 31, 2020</b>	<b>Operating Cost</b> (\$102.97/hr x 1089.28 quarterly hrs.)	<b>Capital Cost</b>	<b>TOTAL COST</b>
<b>City of Auburn</b>	<b>\$37,387.72</b>	<b>\$7,106.74</b>	<b>44,494.46</b>
<b>King County</b>	<b>\$37,387.72</b>	<b>\$7,106.74</b>	<b>44,494.46</b>
<b>Pierce Transit</b>	<b>\$37,387.72</b>	<b>\$7,106.74</b>	<b>44,494.46</b>
<b>Total:</b>	<b>112,163.16</b>	<b>\$21,320.21</b>	<b>133,487.38</b>