

**COST SHARING AGREEMENT
FOR PIERCE TRANSIT BASE EXPANSION PROJECT**

This Agreement is made on 8/26/2020, 2019 and entered into by Puget Sound Regional Transit Authority (“Sound Transit”) and Pierce County Public Transportation Benefit Area Corporation (“Pierce Transit”), which may be referred to individually as “Party” or collectively as “Parties.”

RECITALS

- A. Sound Transit is a duly organized regional transit authority under chapters 81.104 and 81.112 RCW and has all powers necessary to construct transit facilities, operate transit services, and enter into this Agreement.
- B. Pierce Transit is a municipal corporation pursuant to Chapter 36.57A RCW with all powers necessary to construct transit facilities, operate transit services, and enter into this Agreement.
- C. Pierce Transit operates and maintains a portion of Sound Transit's regional bus fleet in accordance with the terms of the Interagency Agreement for ST Express Bus Service Operations and Maintenance that initially expired on December 31, 2017, and was extended through 2018 with one optional extension year remaining ("Service Agreement").
- D. Pierce Transit's current bus operating facility in Lakewood is at or near maximum capacity. Currently, there are 290 fixed route buses on site, 129 of which are Sound Transit buses.
- E. In order to accommodate both Pierce Transit's and Sound Transit's bus fleet, Pierce Transit needs to upgrade and expand its current transit base facilities, which include maintenance, operations, and administration (“Base”).
- F. Pursuant to a cost sharing agreement dated June 15, 2016, Sound Transit and Pierce Transit shared the costs for a Facility Needs Assessment and Base Master Plan Update for Pierce Transit’s Maintenance, Operations and Administrative base.
- G. The results of the Base Master Plan established that the Base is at maximum capacity and included recommendations for three phases of changes and improvements to the Base, including acquisition and utilization of additional properties: the first two parcels being located at 9411 and 9515 39th Ave. Ct. SW in Lakewood, WA contiguous to the western portion of existing Base facilities (referred to as “West Base”); and an additional property and building near Base located at 9622 40th Ave. SW in Lakewood, WA (referred to as “Building 6”). Together, West Base and Building 6 are referred to herein as “the Properties.”
- H. Pierce Transit acquired the Properties in accord with the recommendations in the Base Master Plan in order to create additional space at Base for operation of Sound Transit’s fleet and to provide the service outlined in the Service Agreement.

- I. Pierce Transit is entering the design phase of certain Phase I recommendations of the Base Master Plan, which, at this time, include: development of and revisions to parking areas for employees, non-revenue vehicles, and fleet vehicles; new or refurbished fuel and wash facilities; and expansion of the existing fleet Maintenance building.
- J. The Parties acknowledge that the need for expansion of Pierce Transit's Base is due in large part to Sound Transit's fleet and operations at Pierce Transit's Base.
- K. Sound Transit and Pierce Transit believe that it would be of public benefit for the Parties to share in the costs for Pierce Transit's acquisition of the Properties and for Phase I design of the Base Master Plan.

The Parties therefore agree as follows:

1. PROPERTY ACQUISITION

1.1 West Base Property Acquisition

Pierce Transit will purchase the West Base Property in fee and will develop it to allow for expansion of operations and support for service supervisors for Sound Transit routes.

1.2 Building 6 Property Acquisition and Improvements

Pierce Transit will purchase the Building 6 Property in fee and will develop it to allow for expansion of Pierce Transit's base to accommodate expansion of operations and support for Sound Transit routes.

2. BASE MASTER PLAN PHASE I DESIGN

Pierce Transit will contract for the preliminary engineering for the Base Master Plan (Base Master Plan Phase I Design). The scope of work for the Base Master Plan Phase I Design (sometimes referred to as "Work") includes design of: development of and revisions to parking areas for employees, non-revenue vehicles, and fleet vehicles; new or refurbished fuel and wash facilities; and expansion of the existing fleet Maintenance building. Pierce Transit will begin design of the Work in 2018. Pierce Transit has awarded a contract to a consultant to complete the design Work for the following funded or programmed elements of Phase 1 (listed as Phase 1, 1A and 1B in table below). The rough schedule for the Work is as follows:

Sub-Phase	Design	Construction
Phase 1 Overall Schematic Design	2018	N/A
Phase 1A Expand South Base Parking	2018	2019
Phase 1A Building 4 Parking Improvements	2018	2019
Phase 1B Expand Bus Parking	2018	2019
Phase 1B Refurbish or Replace Existing Fuel and Wash	2018	2019

Sound Transit's contribution to the Work does not create nor confer on Sound Transit any ownership rights in or responsibilities for the property and facilities at Base, except as otherwise provided herein.

Additional design work will likely be needed for the remainder of the Base Master Plan. Any cost sharing for other parts of the Base Master Plan, including construction costs, will be the subject of a separate agreement.

3. WORK ADMINISTRATION AND OVERSIGHT

3.1. Selection and Execution of Contract for the Work:

Pierce Transit will procure services for the Work through its applicable competitive public works or procurement processes. Pierce Transit will involve Sound Transit's representative in proposal evaluations and contract negotiations.

3.2. Administration of and Responsibility for the Work:

Pierce Transit will provide Sound Transit adequate time to review and provide input to planned Work. Pierce Transit is responsible for final decision-making and administration of the Work under this Agreement using its own staff and consultants.

Pierce Transit may make changes to the Work in order to meet project goals and will provide all change order documentation to Sound Transit's Designated Representative for review. Pierce Transit will provide proposed change orders to Sound Transit's designated representative for review prior to authorizing its design consultants to proceed with scope changes to the Work. Pierce Transit will manage the production of the Work in good faith.

Pierce Transit will issue a periodic report on the status of project activities. This report will contain schedule, completed work, and upcoming milestones.

3.3. Oversight

Sound Transit will provide or has provided the following services:

- a) Participation in proposal review and consultant selection process;
- b) Participation in meetings to review and coordinate the work; and
- c) Review change orders.

4. DESIGNATED REPRESENTATIVES

To ensure effective intergovernmental cooperation and efficiencies, Sound Transit and Pierce Transit will each designate a representative ("Designated Representative") who will be responsible for coordination of communications between the Parties as well as its consultants and will act as a central point of contact for each agency. The Designated Representatives will also be responsible for ensuring his or her agency's performance under this Agreement, including compliance with schedule, budget, and funding limitations.

Either Party may change its Designated Representatives, by written notice to the other Party. Each Party's Designated Representative is named below with the individual's contact information.

	PIERCE TRANSIT	SOUND TRANSIT
Contact:	Janine Robinson, AICP Senior Planner Capital Planning T: 253-984-8156 jarobinson@piercetransit.org	Barry Alavi, PE, PMP Project Manager Capital Projects T: 206-398-5433 F: 206-398-5216 Barry.Alavi@soundtransit.org
Address:	PO Box 99070 3701 96th Street SW Lakewood, WA 98496-0070	401 S. Jackson Street Seattle, WA 98104

5. MAXIMUM REIMBURSEMENT AND PAYMENT PROCEDURE

5.1. Sound Transit's Maximum Contribution

A. Property Acquisition.

1. West Base Property. Sound Transit will pay to Pierce Transit the amount of \$575,000 as contribution toward Pierce Transit's acquisition of the West Base property.
2. Building 6 Property. Sound Transit will pay to Pierce Transit the amount of \$920,000 as contribution toward the acquisition of the Building 6 property.

B. Design. Sound Transit will pay 46% of the actual cost of the Work for the Base Master Plan Phase 1 design up to \$402,500.

C. Rights Relating to Contributions. Sound Transit's contribution will not create nor confer ownership rights in, or operations or maintenance responsibilities for, the Properties. Sound Transit makes this capital contribution to the Base Master Plan expansion project because Sound Transit typically has at least one hundred twenty nine (129) buses that are operated, maintained, and stored by Pierce Transit at its base, and the presence of Sound Transit's buses has put Pierce Transit's base at maximum capacity and has created the need for the expansion of Pierce Transit's base. For at least the next five years, Pierce Transit is expected to continue to operate and maintain at least one hundred twenty nine (129) Sound Transit buses and is expected to continue to operate and maintain a portion of Sound Transit's bus fleet throughout the useful life of the built-out Base Master Plan, which for purposes of this Agreement, is 40 years. Sound Transit's contribution is based upon the principle that Pierce Transit will continue to provide operations and maintenance services to Sound Transit on an "at-cost" basis, where Pierce Transit neither turns a profit, nor takes a loss.

Under the current Interagency Agreement for ST Express Bus Service Operations and Maintenance (“O&M Agreement”), the Parties have expressed this “at-cost” principle through a cost allocation model. While the Parties are not bound to express the “at-cost” principle through a cost allocation model, they are required to negotiate further extensions or new operations and maintenance agreements in good faith in accordance with an “at-cost” principle as it has since 1999.

Pierce Transit is not obligated to reimburse Sound Transit’s contributions to the acquisition of the Properties and base master planning Phase 1 design if Sound Transit terminates the Operations and Maintenance Agreement with Pierce Transit at its convenience; or if upon expiration of an existing Operations and Maintenance Agreement, Sound Transit declines to enter into a new Operations and Maintenance Agreement in accordance with the “at-cost” principle described above. However, if Pierce Transit terminates the Operations and Maintenance Agreement for its convenience, or if Pierce Transit declines to enter into a new Operations and Maintenance Agreement in accordance with the principle above, upon the expiration of the previous Operations and Maintenance Agreement, then Pierce Transit will reimburse a pro rata share of Sound Transit’s contribution to Sound Transit for the remaining years of the 40-year commitment that Pierce Transit makes herein.

5.2. Invoicing and Payment.

Pierce Transit will submit an invoice or invoices to Sound Transit in the amounts of \$575,000 for the West Base property acquisition and \$920,000 for the Building 6 property acquisition. Pierce Transit will attach documentation of the purchase of the Properties to the invoices.

Pierce Transit shall submit properly documented invoices upon approval and acceptance of Work for the Base Master Plan Phase 1 design, including copies of Work consultant invoices. Pierce Transit will submit invoice request to Sound Transit in an amount equal 46% of the invoiced amount up to \$402,500.

Pierce Transit will send all invoices and necessary documentation to Sound Transit at the following address:

**Accounts Payable
Sound Transit
401 S. Jackson St.
Seattle, Washington 98104-2826**

5.4. Reimbursement

Sound Transit will reimburse Pierce Transit within 30 days of receipt of a properly completed invoice and related documentation supporting the cost of the Work completed and send payment to the following address:

**Accounts Receivable
Pierce Transit
PO Box 99070
3701 96th Street SW
Lakewood, WA 98496-0070**

6. ADMINISTRATION

6.1 Availability of Records

All project records in support of all costs incurred and actual expenditures kept by Pierce Transit will be maintained in accordance with procedures prescribed by the state auditor's office and the applicable federal funding agencies. The records will be open to inspection by Sound Transit and the federal government during normal business hours, and be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to Pierce Transit. Copies of these records will be furnished to Sound Transit and the federal government upon request. This requirement will be included in all subcontracts related to the Work entered into by Pierce Transit to fulfill the terms of this Agreement.

6.2 Audit of Records

If an audit is requested by Sound Transit or required by any applicable federal agency requirements, Pierce Transit will cooperate fully with an independent auditor chosen and retained by Sound Transit for auditing costs incurred under this Agreement or with any audit required by the federal funding agency. In the event that Sound Transit has paid Pierce Transit in excess of Sound Transit's funding commitment under this Agreement, the excess amount will be repaid to Sound Transit, or if underpaid, Sound Transit will pay such amount to Pierce Transit.

6.3 Compliance with Law

Sound Transit and Pierce Transit will comply, and to the best of their ability will ensure, that their employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the Work and services to be performed. Pierce Transit will ensure that the Work complies with all applicable public works and procurement laws and regulations, including bonding, prevailing wage, non-discrimination, retainage, insurance, and workers compensation requirements. In addition, to the extent federal funds are utilized, Pierce Transit will comply with federal contract and funding requirements.

6.4 Disadvantaged Business Enterprises

Pierce Transit will be the contract administrator and project manager of this project and will comply with the Disadvantaged Business Enterprises (DBE) program it has established in accordance with the regulations of the U.S. Department of Transportation (USDOT) 49 CFR 26 and the terms of Section 3.4(c) of Exhibit B (FTA Provisions) of this Agreement.

6.5 EEO Commitment

Pierce Transit will be the contract administrator and project manager of this project and will comply with any employment goals or programs it has established and the terms of Section 5.4 of Exhibit B (FTA Provisions) of this Agreement.

7 PUBLIC COMMUNICATIONS

7.1 Public Disclosure Requests

Under the Washington State Public Disclosure Act (chapter 47.17 RCW) the Parties may be required to disclose documents requested by the public, unless such requests call for documents that are specifically exempted from disclosure. If a Party receives such public disclosure requests for disclosure of documents, it will request that such public disclosure requests be made in writing in a stipulated form to the Party having possession or control of the document. If public disclosure requests are made for documents under the control of Pierce Transit or its consultant(s), Sound Transit will refer the request to Pierce Transit and Pierce Transit will be responsible for the collection, compilation, indexing, copying, and production of actual records and vice versa if the request is made for documents under the control of Sound Transit.

Pierce Transit will require that its consultants maintain records in a condition that will facilitate such responses and will provide necessary staff for this purpose.

7.2 Pierce Transit Activities

Pierce Transit will be the lead agency in public and community involvement activities. Should Sound Transit elect to provide additional public outreach activities, Sound Transit will coordinate its efforts with Pierce Transit.

8 INDEMNIFICATION

To the extent permitted by applicable law, each Party will defend, indemnify, and hold harmless the other Party, its respective officials, agents and employees, from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the negligent acts or omissions of the indemnifying Party and its officials, agents, employees acting within the course and scope of their employment and its contractors ("actors") in performing the Party's obligations under this Agreement. In the event any liability arises from the concurrent negligence of the Parties, then the indemnity obligation of this Section will apply only to the extent of the negligence of the indemnifying Party and its

actors. The foregoing provision specifically and expressly is intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, with respect to the other Party's employees, 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. This waiver has been expressly negotiated by the Parties. This indemnity provision survives the termination or expiration of this Agreement.

9 TERMINATION OF AGREEMENT

9.1 Termination for Convenience

Either Party may terminate this Agreement for convenience. The terminating Party will pay an amount for services satisfactorily performed under this Agreement to the date of termination, in addition to termination settlement costs that Pierce Transit's contractors reasonably incurred relating to commitments that had become firm for Work before the termination. If Pierce Transit terminates for convenience, then it will reimburse Sound Transit in accordance with section 5.1.C, above.

9.2 Activities upon Termination

In the event of termination due to default, the defaulting Party will compensate the other Party for all costs expended, committed, or otherwise encumbered up to the date of termination up to the maximum amount of the other Party's commitments under this Agreement.

9.3 Survival of Provisions

The provisions of this section survive and remain applicable to each Party notwithstanding any termination or expiration of this Agreement.

10 DISPUTE RESOLUTION

Pierce Transit and Sound Transit will work collaboratively to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of hierarchy. The following is a guide intended to resolve the maximum number of issues at the lowest organizational level:

The Designated Representatives will use their best efforts to resolve disputes and issues arising out of or related to the tasks covered by this Agreement. The Designated Representatives will communicate regularly to discuss the status of the tasks to be performed and to resolve any issues or disputes related to the successful performance of this Agreement.

A Designated Representative will notify the other in writing of any problem or dispute that the Designated Representative believes needs formal resolution. The Designated Representatives will meet within five business days of receiving the written notice in an attempt to resolve the dispute. The Parties may utilize the services of a mediator to assist with problem identification and resolution.

In the event the Designated Representatives cannot resolve the dispute within ten business days of first meeting to resolve the dispute, they will notify Pierce Transit's Executive Director of Service Delivery and Support and Sound Transit's Deputy Executive Director of Transportation & Maintenance, or designees, and they will meet and engage in good faith negotiations to resolve the dispute.

In the event that these Directors cannot resolve the dispute within ten business days of the Directors' first meeting to resolve the dispute, Pierce Transit's Chief Executive Officer and Sound Transit's Chief Executive Officer will meet and engage in good faith negotiations to resolve the dispute.

The Parties have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted. The preceding sentence does not apply to the extent that any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above provided, however, that that any legal proceeding brought during such period may be stayed, if consistent with applicable law, and if the rights of the Parties will not be prejudiced thereby, while the procedural steps set forth above are satisfied.

11 MISCELLANEOUS

11.1 Relationship of Parties

No joint venture or partnership is formed because of this Agreement. No employees, agents, or subcontractors of one Party are, deemed, or represent themselves to be, employees of the other Party. By contributing to the cost of the referenced properties and to the design of Phase 1 of the Base Master Plan, Sound Transit takes no ownership interest in such properties or the Base. Nothing herein shall be construed to create or confer to Sound Transit any ownership rights or responsibilities in West Base, Building 6 or any improvements thereto, or in the resulting improvements or facilities from the Work of the Phase I Base Master Plan design.

11.2 Parties in Interest

Nothing in the Agreement, whether express or implied, is intended to (1) confer any rights or remedies under or by reason of the Agreement on any persons other than the Parties and their respective successors and permitted assigns; (2) relieve or discharge the obligation or liability of any third party to a Party to the Agreement; nor (3) give any third parties any right of subrogation or action over or against a Party to this Agreement.

11.3 Assignment

Neither Party will assign, transfer, or otherwise substitute its obligations under the Agreement without the prior written consent of the other Party. Any assignment made in violation of this provision is invalid.

11.4 Waiver of Default

Waiver of any default will not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement will not be deemed a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of this Agreement.

11.5 Entire Agreement

This Agreement, including exhibits, constitutes the entire Agreement between the Parties relative to the Work.

11.6 Amendments and Modifications

This Agreement may only be amended or modified in writing, signed by personnel authorized to bind the Parties.

11.7 Environmental Compliance

Pierce Transit is the lead agency for compliance with SEPA (State Environmental Policy Agency). If determined to be necessary, Pierce Transit will also be the lead agency along with the relevant federal partner agency (FTA) for compliance with NEPA (National Environmental Act). Pierce Transit will prepare the necessary environmental documentation and issue the appropriate determinations under NEPA and SEPA. Pierce Transit will also process or procure any environmental or other permits and approvals necessary for the Work. Pierce Transit will coordinate with Sound Transit environmental and project staff in the preparation and issuance of environmental documentation and determinations. Sound Transit will be given an opportunity to review and comment on environmental documentation before it is finalized and issued to the public and other agencies. Pierce Transit represents that the property acquisitions funded under this Agreement are exempt transactions under SEPA.

11.8 Future Agreements

The fact that the Parties have entered into this Agreement may not be construed to be a commitment for future funding of any future projects or other work.

11.9 Authority

The persons signing this Agreement represent that they are authorized to do so.

11.10. Counterparts

This Agreement may be executed in two counterparts, each of which are deemed an original, but both of which together constitute the same instrument.

The Parties are signing this Agreement on the date below their respective signatures.

PIERCE TRANSIT

PUGET SOUND REGIONAL TRANSIT AUTHORITY

DocuSigned by:
Sue Dreier
AB72E79D3B574B8...

Susan Dreier
Chief Executive Officer

DocuSigned by:
Kimberly Farley
1AE8DE71EE6Z417...

Peter Rogoff
Chief Executive Officer

8/26/2020

Date

8/25/2020

Date

Approved as to Form:

DocuSigned by:
Jordan Wagner
B109A3B7803A44E...

Sound Transit Legal Counsel