



RESOLUTION NO. U-11325

1 A RESOLUTION relating to a land use permit to Pierce Transit.

2
3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division (dba "Tacoma Power") requests approval to grant a twenty (20) year
5 Land Use Permit ("Permit") to Pierce Transit Public Transportation Benefit Area
6 Authority Corporation ("Pierce Transit"), commencing on July 1, 2022, for their
7 use of 168,393 square feet (3.87 acres) of the Cushman Transmission line
8 right-of-way located on the east side of Highway 16, south of the Pioneer Way
9 exit in Gig Harbor, WA in conjunction with their operation of the Kimball Park
10 and Ride, and
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13 WHEREAS since 1984, Tacoma Power has authorized Pierce Transit to
14 use portions of the Cushman transmission right-of-way, and the current twenty-
15 five (25) year Agreement expires June 30, 2022, and

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17 WHEREAS although the Director is authorized under PUB Resolution U-
18 10604 to adopt fee schedules associated with the permitted uses of TPU owned
19 or controlled property, Section 7 of PUB Resolution No. U-10777, adopted May
20 20, 2015, provides that *"in the event the proposed use fee to be imposed*
21 *exceeds \$25,000 annually, the underlying use permit shall be brought before*
22 *the Board for approval of the use and fee,"* and

23
24 WHEREAS the annual use fee imposed in the Permit will be \$101,200,
25 with three percent (3%) escalators, which is based upon a third-party appraisal,
26 and



1 WHEREAS the Permit will require fee adjustments every five (5) years
2 throughout the term of the Permit to ensure Tacoma Power continues to receive
3 fair market value, and
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5 WHEREAS the Permit contains standard legal provisions, including
6 revocability with ninety (90) days' written notice, indemnity, and insurance
7 provisions to address liability, and
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9 WHEREAS the Permit has been reviewed by the City Attorney's Office,
10 and approved by Tacoma Power and Real Property Services; Now, therefore,
11 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

12 That the twenty (20) year Land Use Permit to Pierce Transit Public
13 Transportation Benefit Area Authority Corporation, commencing on July 1,
14 2022, is approved, for an annual use fee of \$101,200, with three percent (3%)
15 escalators, for the use of 168,393 square feet (3.87 acres) of the Cushman
16 Transmission line right-of-way located on the east side of Highway 16, south of
17 the Pioneer Way exit in Gig Harbor, WA in conjunction with the operation of the
18 Kimball Park and Ride, and the proper officers of the City are authorized to
19 execute said Land Use Permit substantially in the form as on file, and as
20 approved by the City Attorney.
21

22 Approved as to form:

23 _____
24 /s/
25 Chief Deputy City Attorney

26 Clerk

Chair

Secretary

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Chris Robinson, Tacoma Power Superintendent
Joe Wilson, Tacoma Power - T&D Section Manager
Patrick Sullivan, Real Estate Officer, Real Property Services
MEETING DATE: June 8, 2022
DATE: May 16, 2022

STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- | | |
|--|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion | <input type="checkbox"/> SD8 – Telecom |
| <input checked="" type="checkbox"/> SD2 – Financial Sustainability | <input type="checkbox"/> SD9 – Economic Development |
| <input type="checkbox"/> SD3 – Rates | <input checked="" type="checkbox"/> SD10 – Government Relations |
| <input type="checkbox"/> SD4 – Stakeholder Engagement | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input type="checkbox"/> SD5 – Environmental Leadership | <input type="checkbox"/> SD12 – Employee Relations |
| <input type="checkbox"/> SD6 – Innovation | <input type="checkbox"/> SD13 – Customer Service |
| <input type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning |

SUMMARY: To authorize the grant of a 20-year extended Land Use Permit to Pierce Transit Public Transportation Benefit Area Authority Corporation ("Pierce Transit") for their use of 168,393 square feet (3.87 acres) of the Cushman Transmission line right-of-way located on the east side of Highway 16, south of the Pioneer Way exit in Gig Harbor, WA in conjunction with their operation of the Kimball Park and Ride.

BACKGROUND: Since 1984, Tacoma Power has authorized Pierce Transit to use portions of the Cushman transmission line right-of-way located on the east side of Highway 16, south of the Pioneer Way exit in Gig Harbor, WA, in conjunction with their ongoing operation of the Kimball Park and Ride. The current 25-year Agreement expires June 30, 2022 and Tacoma Power desires to grant a new Land Use Permit with a twenty (20) year term.

The annual use fee will be \$101,200 with 3% annual escalators, which is based upon a third-party appraisal. The Permit will require fee adjustments every five (5) years throughout the term of the Permit to ensure Tacoma Power continues to receive fair market value. The permit form contains standard legal provisions, including revocability with ninety (90) days' written notice, indemnity, and insurance provisions to address liability. The Land Use Permit was reviewed by the City Attorney's Office and approved by Tacoma Power management and Real Property Services.

Pursuant to Resolution U-10777, adopted May 20, 2015, Section 7, states *"in the event the proposed use fee to be imposed exceeds \$25,000 annually, the underlying use permit shall be brought before the Board for approval of the proposed use and fee"*.



Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No

ATTACHMENTS: Land Use Permit P2572, Resolution U-10777, Map of Kimball Park and Ride

CONTACT: Patrick Sullivan, Real Estate Officer, (253) 502-8979, PSullivan@cityoftacoma.org
Dylan Harrison, Senior Real Estate Officer, (253) 502-8836, dharrison@cityoftacoma.org

MAP OF PREMISES





RESOLUTION NO. U-10777

A RESOLUTION to provide policy guidance and delegate authority to the Director of Utilities to approve use fees associated with the use of real property owned or controlled by the Department of Public Utilities ("TPU").

WHEREAS the Tacoma City Charter § 4.10 grants to the Public Utility Board ("Board") the authority to "construct, condemn and purchase, acquire, add to, maintain, and operate the electric, water, and belt line railway utility systems[.]", and

WHEREAS the Board may delegate its authority to the Director of Utilities ("Director") subject only to the limitations imposed by the City Charter and state law, and

WHEREAS, through its adoption of U-10604 on February 27, 2013, the Board delegated to the Director the authority to: (1) adopt a policy describing the acceptable secondary uses of TPU owned or controlled real property ("Policy"), and (2) upon adoption of the Policy, the Director and his/her designees are given the right to approve land use permits for uses of TPU owned or controlled real property in accordance with such Policy, and

WHEREAS fees associated with the permitted use of TPU owned or controlled real property ("Permit Fees") have historically been administered by the Department of Public Works, Real Property Services Section, providing real property services to TPU's operating divisions ("TPU Real Property Services"), and



1 WHEREAS the current Permit Fees have generally been set to recover
2 costs associated with processing, issuing, and administering the land use
3 permits from the party using TPU real property; however, in instances where
4 the proposed uses may involve significant impacts to TPU real property, are
5 complex to administer, or are for commercial gain, TPU Real Property Services
6 may recommend that the fair market value be used to determine the
7 appropriate consideration to be paid to TPU for such use of TPU Real Property,
8 and
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10
11 WHEREAS, because there are a number of significant, complex, and
12 commercial use requests of TPU real property, it is recommended that the
13 Board provide policy guidance on the establishment of Permit Fees and
14 recognize the authority of the Director to approve such Permit Fees within said
15 policy guidance; Now, therefore,
16

17 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

18 Sec. 1. In conjunction with the authority delegated by the adoption of
19 U-10604, the Director of Utilities is authorized to adopt fee schedules
20 associated with the permitted uses of TPU owned or controlled real property
21 ("Schedules") and to amend such Schedules as needed.

22 Sec. 2. The fees charged under such Schedules shall be designed to:

23 (a) recover the general costs associated with processing, issuing
24 and administering of land use permits and minimize the impact of such
25 costs to TPU and the City for processing, issuing, and administering said
26 land use permits, and



1
2 (b) recover the fair market value associated with proposed uses
3 that significantly impact real property, involve complex uses, or is done
4 for commercial gain, and

5 (c) recover other identified costs or burdens associated with
6 allowing use of TPU owned or controlled real property.

7 Sec. 3. The fees charged may take into account the benefits provided to
8 TPU by the user (including, but not limited to: maintenance and upkeep,
9 security, and improvements), which may be the basis for reducing or waiving
10 fees.

11 Sec. 4. All use fees established shall have a documented rational basis,
12 and shall not grant an undue or unreasonable preference or advantage to any
13 person, corporation, or locality.

14 Sec. 5. All proposed use fees shall be provided to the operating
15 divisions for review and input prior to adoption.

16 Sec. 6. All use fees shall be published and made available to the public.

17 Sec. 7. Notwithstanding the delegation of the authority approved
18 pursuant to Board Resolution U-10604, in the event the proposed use fee to be
19 imposed exceeds \$25,000 annually, the underlying use permit shall be brought
20 before the Board for approval of the proposed use and fee.
21

22 Sec. 8. The Director shall cause to be prepared, and submitted to the
23 Board during the month of January, an annual report summarizing the number
24
25
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1
2 of use applications filed, use permits issued, use permits renewed, and use
3 fees collected.

4 Sec. 9. All prior acts performed by staff in conformity with this delegation
5 are hereby ratified and approved.

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7 Approved as to form and legality:

8 William C. Joshe
9 Chief Deputy City Attorney

10 Charles Jacobs
11 Clerk

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For Chair [Signature]
Secretary [Signature]

Adopted 5-20-15

May 13, 2015

REQUEST FOR RESOLUTION

Date: May 1, 2015

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Provide policy guidance and delegate authority to the Director to approve fee schedules for land use permits for Utility owned real property.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

Provide policy guidance on use fees and delegate authority to the Director to approve use fee schedules associated with the secondary use of real property owned or controlled by TPU as authorized in U-10604.

3. Summarized reason for resolution:

Pursuant to U-10604 adopted February 27, 2013, the Board delegated to the Director the authority to adopt a policy describing the acceptable secondary uses of TPU owned or controlled real property, and upon adoption of the policy, gave the Director and his/her designees the right to approve limited revocable permits for uses of said property. The fees associated with the permitted uses have historically been established via a combination of published schedules, staff analysis, and/or fair market value of the real property. Most of the charges are administered by the Department of Public Works, Real Property Section ("RPS"), providing services to TPU's operating divisions.

The fees have generally been set to recover costs associated with processing, issuing, and administering the permits; however, in certain instances, where the proposed uses may significantly impact TPU real property, and they are complex to administer, or are for commercial gain, a greater fee is charged that takes into consideration the fair market value associated with the use of the real property. Recently, RPS has been working with TPU's operating divisions to update the existing permits, and this effort has identified a number of significant, complex, and commercial uses. Further, there is an ongoing effort to establish consistent parameters for determining appropriate land use fees. Therefore, it is recommended that the Board provide policy guidance on the establishment of permit fees and recognize the authority of the Director to approve such permit fees within said policy guidance.

4. Attachments:

5. ☐ Funds available ☒ Proposed action has no budgetary impact

6. Deviations requiring special waivers: . None

Originated by:

TPU BOARD REQUESTED

Section Head

Requested by:

Division Head

Approved:

Director of Utilities

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. 2572**

Reference No.:	P2021-095
Licensors:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	Pierce Transit Public Transportation Benefit Area Authority Corporation (AKA Pierce Transit)
Legal Description:	Portion of Cushman Transmission Line Right-of-way, SW¼, Section 8, Township 21 North, Range 2 East, W.M.
Tax Parcel No.(s):	Portion 0221083025
County:	Pierce
Supersedes and Replaces:	This Permit supersedes and replaces Tacoma Power Permit No. P1996-067, A2597, recorded under Auditor's No. 9708280684
Permit Expiration Date:	June 30, 2042

CONTACT INFORMATION

LICENSEE:

Pierce Transit
3701 96th St SW
Lakewood, WA 98499
(253) 495-8187
meldridge@piercetransit.org

LICENSOR:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, Washington 98409
(253) 396-3060

This Permit ("Permit") made and entered into on July 1, 2022, ("Effective Date"), by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Licensor" and PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA AUTHORITY CORPORATION, a municipal corporation, hereinafter referred to as "Licensee."

RECITALS

A. Licensor owns, operates, and maintains the Premises defined below as part of and in relation to its utility operations.

B. Licensee desires to use a specified portion of said Premises for the use specified in this Permit.

C. Licensor is willing to grant permission to Licensee to access and use a portion of its real property strictly for the use specified in this Permit and issue Licensee a real property license to use said real property per the terms and conditions specified in this Permit.

NOW THEREFORE, in consideration of the mutual promises contained in this Permit, the parties agree as follows:

1. LICENSE.

A. Grant of License / Description of Premises. Licensor grants to the Licensee limited, non-exclusive, revocable permission to use the following described Premises for the Permitted Use stated below subject to all the terms and conditions of this Permit:

That portion of that certain 100 foot wide right-of-way conveyed to the City of Tacoma by Quit Claim Deed recorded under Pierce County Auditor's File No. 8205070163 for the Potlatch transmission line within the Southwest Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington, commonly known as the Kimball Drive Park and Ride, lying Southerly of the Westerly extension of the Southerly margin of Erickson Street, Easterly of Highway 16, Westerly of Kimball Drive and Northwesterly of the Cushman Powerline Trail.

(hereinafter "Premises")

Map of Premises is attached to this Permit as Exhibit A.

B. Purpose.

i. Permitted Use. Licensor permits the Premises to be used by the Licensee, and Licensee's agents, contractors, employees, customers, guests, and invitees, only for the express purpose of:

Operate and maintain an existing public transit facility.

And

Landscaping and vegetation control on those undeveloped portions of the Premises.

(hereinafter "Permitted Use")

ii. No Other Use Is Permitted. Licensee may only use the Premises in strict accordance with this Permit. Licensee shall make no other use of the Premises or change or enlarge Licensee's use thereof without prior written approval of Licensor.

C. No Property Rights Are Granted. This Permit does not convey any right, title, or interest in real property or in the above described Premises. The permission granted by this

Permit is a license in real property only.

D. CONDITION OF PREMISES. LICENSEE HAS INSPECTED THE PREMISES AND ACCEPTS IT IN ITS PRESENT CONDITION "AS-IS." LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE PERMITTED USE.

E. Third Party Obligations. Licensee shall ensure that its agents, contractors, employees, customers, guests, and invitees shall comply with all the requirements, obligations, limitations, and restrictions of this Permit. The Permit and permissions granted herein are contingent upon Licensee and Licensee's agents, contractors, employees, customers, guests, and invitees complying with all the terms and conditions of this Permit.

F. Special Conditions.

Special Conditions are attached to this Permit as Exhibit B "Special Conditions"

2. PERMIT PERIOD

A. Term. The term of this Permit and the permission and license granted herein shall be effective for a twenty (20) year period beginning on July 1, 2022 and terminating on June 30, 2042.

B. Permit Extension. Licensee may submit a term extension request and applicable fee to Licensor no later than sixty (60) days before the Permit terminates per Section 2.A. A mandatory site inspection will be required for all Permit term extensions. After receipt of the request and site inspection, Licensor may, in its sole discretion, increase the term of this Permit. Permit extensions will not be granted if any conditions have changed since the original Permit was granted and/or any permitted structures or improvements are not in compliance with the terms and conditions of this Permit.

C. Permit Re-Issuance. In the event this Permit is terminated and Licensor thereafter grants a new Permit to Licensee, Licensee shall pay all fees owing to process a new permit.

3. FEES AND COSTS

A. Fees. Licensee shall pay all fees, deposits, and charges specified in and in accordance with Exhibit C "Land Use Permit Fees" attached.

B. Licensee Assumes all Costs. Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use.

C. Licensee to Pay Costs to Enforce Conditions of Permit. Licensee agrees to reimburse Licensor for any costs (including reasonable attorney's fees) that Licensor may incur in enforcing the terms and conditions of this Permit.

D. Licensee Liable for Damages. Licensee shall pay or reimburse Licensor for all damages to Licensor's property or the Premises resulting from the actions of Licensee or any of Licensee's agents, guests, or invitees.

E. Leasehold Excise Tax. In addition to the Land Use Permit Fees, Licensee shall pay Licensors:

- i. all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Permit,
- ii. any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and
- iii. any taxes levied or assessed in lieu of the foregoing, in whole or in part.

Leasehold excise tax is calculated by the State, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the rent/use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in rent/use fee/permit fee/license fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Licensee provides Licensors with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be required to obtain documented renewal of such exemption and provide such to Licensors in order to claim continued exemption under this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS

A. Maintenance Requirements. The Premises, including any improvements, structures, facilities, and/or equipment will be maintained at the Licensee's sole cost, in a safe condition, in a clean and neat manner, and in accordance with the specifications of the Permit and attached Exhibits.

B. Assumption of Risk. Any improvements, facilities, or equipment allowed per this Permit on the Premises shall be subject to being damaged by Licensors's use or operations. Licensee assumes the risk of these limited use rights and will be responsible for the costs and expenses in restoring the Premises.

C. Maintenance Notice. Licensee shall notify Licensors four (4) weeks prior to scheduled maintenance of the Premises or improvements permitted by this Permit that could potentially interfere with Licensors's use of the Premises. The parties agree that if maintenance schedules result in a construction or use conflict, Licensors's schedule shall prevail. If emergency maintenance is required on Licensee's facilities, Licensee shall notify Licensors as soon as reasonably practical.

5. NO WARRANTY

Licensors does not warrant its authority to permit the above described Permitted Use and Licensee shall secure any other rights or permissions that are needed for Licensee's lawful use of the Premises.

6. PURPOSE AND CONTROL OF PREMISES

Licensor owns the Premises as part of its utility system and the Premises are necessary for the operation, maintenance, and improvement of its utility system facilities. Licensee therefore acknowledges that the primary purpose of the Premises is Licensor's operations. Thus, the permission granted by this Permit is subject and subordinate to Licensor's paramount rights and operations. Licensee shall not in any way interfere with Licensor's use of or operations on the Premises. Licensee shall not prohibit or in any way limit access to the Premises by any city, state, or federal regulatory agency, Licensor, or other party granted permission by Licensor to access and use the Premises. Licensor may, in its sole discretion, require Licensee to move or modify its use, operations, facilities, or structures at Licensee's expense. Further, Licensee, its agents, employees, or property is subject to the hazards of Licensor's utility operations, which Licensee hereby expressly assumes.

7. TEMPORARY EXCLUSIVE CONTROL

A. Exclusive Control. Licensor, in its sole discretion, may assert temporary exclusive control over the Premises, including temporarily excluding Licensee from the Premises, when exclusive control is needed for Licensor's operations.

B. Hold Harmless. Licensee agrees to hold Licensor harmless against any claims, demands or damages related to denial of access and use of the Premises.

8. PERMIT NON-EXCLUSIVE / SUBJECT TO REGULATION AND CITY OF TACOMA POLICY

A. Other Permits. This Permit is nonexclusive and shall not prohibit Licensor from granting permits or licenses to the same Premises to others.

B. Other Agreements. The rights granted by this Permit shall be subject to any prior, concurrent, or subsequent agreements or contracts entered into or that may be entered into by Licensor or the City of Tacoma.

C. Regulation. Licensee shall obtain all applicable permits or approvals from federal, state, or local agencies prior to use of or construction on the Premises as allowed by this Permit. The Licensee shall give full cooperation to any federal, state, county, or local agencies having jurisdiction over the Premises or use of the Premises.

D. City of Tacoma Policy. Licensor and the City of Tacoma reserves the right to prescribe additional rules, policies, and regulations relating to the rights, use, and permission granted under this Permit. Licensor will endeavor to give sixty (60) days' notice to Licensee of any such additional rules, policies, and regulations.

9. SUPERVISION

Licensee shall give the conduct, operation, and maintenance of the Premises and Permitted Use its personal supervision and direction.

10. NUISANCES PROHIBITED

The Licensee will maintain the Premises in a clean, neat, and orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

11. NONLIABILITY

Licensor shall not be liable to the Licensee or to any third parties entering upon the Premises related to or in furtherance of any act or thing done in connection with the Permitted Use or other use of the Premises. Licensee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Use or other use of the Premises.

12. INDEMNIFICATION

Licensor shall in no way be liable or responsible for any injury or damage done or occasioned by the actions or operations of Licensee or Licensee's contractors, agents, employees, customers, guests, and invitees under this Permit, and Licensee binds and obligates itself to pay and satisfy any and all claims arising on account of its operations under this Permit. To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor and the City of Tacoma, its officers and employees, from and against any and all claims for damages or loss to the Licensor's or the City of Tacoma's operations or property and from any and all claims or litigation arising in connection with this Permit and/or Licensee's use of the Premises. This includes damages to or loss of property and personal injury, including injury to or death of Licensee or Licensee's agents, contractors, employees, customers, guests, and invitees, which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Permit or associated with the license granted hereunder, or caused or occasioned by any act, deed or omission of the Licensee, Licensee's contractors, agents, employees, guests, customers or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and acknowledges that this provision has been mutually negotiated. The Licensor and the City of Tacoma agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

13. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

A. No goods, merchandise or material shall be kept, stored or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises; provided, however, that nothing in this paragraph shall preclude Licensee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the authorized uses under this Permit.

B. In the event such uses include keeping or storing inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or dispensed in the manner prescribed by the regulations of Licensor or other public body having authority in the matter and, in any event, in the safest manner reasonably possible. Licensee shall be solely liable for the remediation of any Hazardous Substance and/or conditions on the Premises resulting from Licensee's use of Premises. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup.

14. INSPECTION

This Permit is a Real Property license and conveys no possessory interests whatsoever. Licensor may, therefore, enter the Premises at any time for any reason.

15. TERMINATION

A. Notice of Termination. This Permit may be terminated by the Licensee or Licensor upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Licensee at 3701 96th Street SW, PO Box 11007, Tacoma, WA 98499, OR to Licensor at P.O. Box 11007, Tacoma, Washington 98411.

B. Operational Necessity. In the event it should become necessary, as determined by Licensor in its sole discretion, for Licensor to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Licensee, Licensor may terminate this Permit by giving Licensee written notice of such termination at any time. Said notice to be given by certified mail addressed to Licensee at 3701 96th Street SW, PO Box 11007, Tacoma, WA 98499, and termination shall be effective IMMEDIATELY upon delivery thereof.

C. Insolvency/Bankruptcy. It is hereby agreed that if the Licensee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Licensor may, upon giving ten (10) days' notice to the Licensee, cancel this Permit and Licensee shall cease the Permitted Use and vacate the Premises.

D. Vacation of Premises. Upon the termination of this Permit for any reason, the Licensee agrees to promptly and peaceably vacate the subject Premises and to return said Premises and any structures and/or improvements located on the Premises prior to the beginning date of this Permit to Licensor in as good condition as the same existed prior to the execution of this Permit, reasonable wear and tear excepted. If the Licensee's structures and/or improvements existed prior to this Permit, the Licensee shall return the Premises to the Licensor in a condition that is satisfactory to the Licensor. Satisfactory condition of the returned Premises shall be determined at the Licensor's sole discretion. Any damages to the subject Premises or to cultural resources on the Premises shall be repaired at Licensee's expense.

16. ASSIGNMENT

This Permit is non-assignable and non-transferable.

17. MISCELLANEOUS

A. Entire Agreement. This Permit constitutes the entire agreement and understanding of the parties and supersedes all discussions and other agreements between the parties. There are no representations or understandings of any kind not set forth herein. Notwithstanding anything to the contrary in this section, Licensor policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.

B. Amendments. Any amendments to this Permit must be in writing and executed by both Parties.

C. Governing Law. This Permit shall be construed in accordance with the laws of the State of Washington.

D. Enforceability. Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

E. Exhibits. All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

F. Mutual Negotiation. Licensee acknowledges that this Permit has been mutually negotiated and any ambiguity regarding the terms and conditions herein shall not be construed or interpreted against Licensor as the drafter of this Permit.

G. Recording. This Permit or a memorandum hereof shall, at the Licensor's sole discretion, be recorded in any public office.

H. No Waiver. Failure of Licensor to insist on the performance of any of the terms and conditions of this Permit, or the waiver of any breach of any of the terms and conditions of this Permit, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

I. Section Headings. The titles to the sections and paragraphs of this Permit are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Permit.

J. Survival

The following sections will survive the termination of this Permit and remain enforceable against Licensee after termination:

Sections 2.C, 7, 12, 13, 15, 17.C and 17D.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WE HAVE READ THE ABOVE TERMS AND CONDITIONS AND AGREE TO COMPLY THEREWITH.

LICENSOR:

Joseph Wilson
Transmission and Distribution Manager

Date

Accepted:

John Nierenberg
T&D Assistant Division Manager

Date

Form Approved:

Michael Smith
Deputy City Attorney

Date

LICENSEE: PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
AUTHORITY CORPORATION

DocuSigned by:

Mike Griffus

1730746692E241A

Michael Griffus, Chief Executive Officer

05/16/2022

Date

**EXHIBIT A
MAP OF PREMISES**

**EXHIBIT B
SPECIAL CONDITIONS**

1. ACCESS

Licensee shall at all times provide Licensor unconditional and unrestricted access over and across Licensee's abutting property to and from the Premises for any purposes deemed necessary by the Licensor.

2. LANDSCAPING/TREES

A. Licensee shall not install any landscaping or plant any trees or shrubs on the Premises that are not included on Licensor's approved tree list ("Right Tree in the Right Place") unless and until approved in writing by Licensor.

B. Licensor, at its sole discretion, may remove any and all vegetation, trees or landscaping and Licensee agrees to compensate Licensor for any costs associated with said removal.

3. ECONOMIC LOSS

Licensor shall not be liable to the Licensee or to any third parties for any losses whatsoever that are associated with the termination of this Permit.

To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the City of Tacoma, its officers and employees, from any and all claims or litigation arising in connection with reduced parking or drive thru area upon termination of this Permit.

4. INSPECTION

Upon termination of the Permit/License, the Licensee agrees to meet with Licensor at the Premises to allow inspection of the property and ensure that all conditions of the Permit/License have been fulfilled. Licensor can be contacted at Real Property Services at (253) 396-3060.

5. INSPECTIONS AND APPROVALS

A. Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

B. Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve

Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

6. ENVIRONMENTAL

- A.** Licensee shall not adversely impact any wetlands on the Premises. All wetland inspection and mitigation shall be satisfied before construction can begin.
- B.** Runoff from Licensee's Permitted Use shall not be directed onto Licensors property. Licensee shall prevent pooling of water on the Premises and adjacent Licensors lands, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands.
- C.** Licensee shall not use herbicides on the Premises, and shall prevent use on adjoining lands, which could contaminate or injure Licensors land or facilities.
- D.** No blasting shall be done on the Premises.
- E.** Licensors may revoke this Permit/License if, in its sole opinion, cultural resources may be threatened.

7. RISK ASSESSMENT

A Phase 1 Environmental Risk Assessment, identifying potential exposures and hazards, may be required at the commencement of the Permit/License period and upon termination of said Permit/License period.

Licensee agrees to pay ONE HUNDRED DOLLARS (\$100.00), as hereafter may be amended, for each such assessment.

8. INSURANCE

- A.** During the term of this Permit/License, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:
 - i.** A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the Licensors property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the Licensors as an additional insured.
 - ii.** The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensors property, a policy of Commercial Automobile Liability coverage, with the Licensors named as an additional insured.
- B.** For all insurance policies required by this section:

- i. Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensors reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.
- ii. Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the Licensors.
- iii. Coverage shall be primary over and non-contributing to the Licensors's own insurance coverage or program.
- iv. No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensors's prior written approval. To assure that the Licensors receives the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensors, notwithstanding any negligence or liability on the part of the Licensors.
- v. All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
- vi. All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.
- vii. The Licensee and the Licensors, shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensors is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensors to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Permit/License:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Permit/License and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Permit/License, then, in that event, the Licensee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit/License.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Permit/License, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

9. TRANSMISSION LINE SAFETY

A. Clearances. Licensee shall use good and reasonable judgment with regard to type and height of vehicles allowed to access the Premises, and in allowing any use of tools or activities which could endanger Licensee's employees, licensees, agents, patrons, invitees, or any other person(s). Licensee expressly acknowledges the high voltage transmission lines over the licensed Premises and the extreme danger and hazard to life and property associated with such high voltage power lines.

B. Work under Power Lines. Licensee, for itself and on behalf of its agents and contractors and personnel, agrees to adhere to WAC 296-24-960, "Working On Or Near Energized Parts" and WAC 296-155-53408, "Power Line Safety", and Tacoma's standards.

C. Grading, Digging. No filling and/or grading within said Premises shall be accomplished in such manner as to reduce vertical distance between the ground surface and Licensor's wires or jeopardize the lateral support of any of Licensor's poles or anchors. Licensee shall not excavate deeper than twenty-four inches (24") within twenty-five feet (25') of poles or anchors, nor shall Licensee excavate more than six inches (6") within four feet (4') of existing poles or anchors, with a transition to other grades not to exceed 6:1 to allow for vehicular travel, without obtaining Licensor's prior written approval. No excavation on the Premises is allowed which impedes Licensor's access to its facilities. Licensee shall fill any ditches or holes it digs on the licensed Premises each day before sunset. Prior to commencing any such approved digging, Licensee agrees to comply with RCW Chapter 19.122.

D. Electromagnetic Fields. Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that the findings to-date do not support claims that EMF fields are harmful to a person's health, the Licensee is hereby notified that potential causal connections between EMF and human diseases may exist. Licensor does not warrant that use of this Licensor's real property (the Premises) is without risk of exposure to EMF. In spite of this concern, the Licensee has

decided to enter into this Permit/License with Licensor and expressly assumes all risk of harm as set forth herein.

E. Static Electrical Charge. Metallic structures (fences, metal buildings, etc.) installed near high voltage power lines may, under some conditions, become energized with a "static" electrical charge. Licensee shall take necessary measures to eliminate the possibility of static electrical shock to persons coming in contact with such structures.

**EXHIBIT C
PERMIT/LICENSE FEES**

1. FEES

A. Use Fee. A Use Fee in the sum of ONE HUNDRED ONE THOUSAND TWO HUNDRED DOLLARS (\$101,200) per year shall be payable by Licensee to Licensor in advance on or before the Effective Date and each year thereafter during the Permit/License period. Licensor will provide an invoice for the property Use Fee due each year.

B. Payment. Payment of all Fees shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate. Each payment shall reference P2021-095/P2572.

2. CHARGE FOR LATE PAYMENTS

A. Licensee hereby acknowledges that the late payment of any Use Fee, or other sums due hereunder, will cause Licensor to incur costs not contemplated by this Permit/License, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting cost, and loss of interest income. Accordingly, if any payment of fees due hereunder is not paid within 30 days of the initial invoice date, a late charge of one percent (1%) per month on the delinquent balance with a minimum late payment charge of \$3.00, in addition to the past due amount itself, shall become immediately due and payable to Licensor.

B. Acceptance by Licensor of such late charges and/or any portion of the overdue payment shall in no event constitute a waiver of Licensee's default with respect to such overdue payment, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder or by any provision of law.

3. FEE ADJUSTMENTS

A. Licensor may review and, by letter, amend this Permit/License for the purpose of increasing the Use Fee amounts provided for herein.

B. The Use Fee specified in paragraph 1 above shall automatically increase by three (3%) percent every year on the anniversary of the Effective Date. The Licensor has the right to review and adjust the Annual Permit Fee every five (5) years, to ensure the Annual Use Fee reflects market rates. Licensor shall notify Permittee twenty (20) calendar days prior to the increase of the new Annual Use Fee amount.

SCANNED



P1996-067



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RECORDED
CATHY PEARSALL-STIPEK
AUDITOR PIERCE CO. WASH**WHEN RECORDED RETURN TO:****Tacoma Public Utilities**

Real Estate Management

P.O. Box 11007 • Tacoma, WA 98411

DO NOT MARK OUTSIDE THE BORDER LINES OF THIS DOCUMENT

CITY OF TACOMA

DEPARTMENT OF PUBLIC UTILITIES

AGREEMENT

Reference No: 96-067CAB/A2597
Grantor: City of Tacoma, Department of Public Utilities, Light Division
Grantee: Pierce County Public Transportation Benefit Area Authority Corporation
Legal Description: Cushman Transmission Line right-of-way, SW¼ of Section 8, Township 21 North, Range 2 East, W.M.
Tax Parcel No: 0221083025

WHEREAS, the **CITY OF TACOMA**, for and on behalf of its Department of Public Utilities, Light Division, hereinafter referred to as the "City", owns or has an interest in property situate in Pierce County, Washington, described as a 100 foot wide corridor from the West side of Kimball Drive to Hunt Street NW, more commonly known as the Cushman Transmission Line right-of-way, as located in Section 8, Township 21 North, Range 2 East, W. M., and

WHEREAS, **PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA AUTHORITY CORPORATION**, a municipal corporation, hereinafter referred to as "Pierce Transit", has requested the right to use said property as shown on Exhibit A, attached hereto and incorporated herein, for a **"TRANSIT FACILITY FOR ITS CUSTOMERS**, and

WHEREAS, *this agreement replaces and supersedes City easement E-8995, granted to Pierce Transit and recorded under Pierce County Auditor Fee No. 8404300269;*

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WHEREAS, this agreement replaces and supersedes City easement E-8995, granted to Pierce Transit and recorded under Pierce County Auditor Fee No. 8404300269;

NOW, THEREFORE, the City and Pierce Transit hereby agree as follows:

1. Ownership

The City owns and controls the herein identified Cushman Transmission Line property consistent with and as part of a Federal Energy Regulatory Commission (FERC) hydroelectric project. This agreement is subordinate to and subject to the paramount right of the City to use said lands under its federal power license, any amendments or extensions of said license or other regulatory authorizations. The real property described herein is necessary for the operation, maintenance or improvements of the City. Therefore, Pierce Transit or its agents, employees, or property may be subject to hazards of utility operation which Pierce Transit hereby assumes. Except as provided herein, Pierce Transit agrees to make no other use of the property without the prior written consent of the City.

- a. Pierce Transit's facilities, and use of the property, are subject to and subordinate to the City's use of this property, and any licenses applicable to this property.
- b. Pierce Transit shall not damage or interfere with the City's use of the premises, structures or facilities of the City or that of any other entity holding a real property interest on this property, including but not limited to interference or conflict with the City's access road and other uses.

2. Agreement Period

The period of this Agreement shall be twenty (20) years commencing on the 1st day of July, 1997, and terminating on the 31st day of July, 2017. Pierce Transit shall have the option to renew this Agreement upon the terms as may be agreed to and upon a rental to be determined pursuant to this paragraph for an additional term of five (5) years. Provided Pierce Transit shall give the City six (6) months written notice prior to expiration of this Agreement of the intent to exercise this option. It is understood and agreed that the term may be shortened and is subject to Paragraph 16 below.

3. Agreement Fee

- a. Pierce Transit agrees to pay the sum of EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00) for pole relocation which will be paid at the beginning of construction and;

- b. The City provides monthly bus passes to each employee using public transportation as defined in Exhibit "B", attached hereto and incorporated herein. Pierce Transit agrees to issue bus passes or equivalent consideration, to the Light Division to meet the demand of the Department of Public Utilities, as determined by the Light Division, as consideration for use of the premises. Bus passes shall be limited to 100 each month or equivalent consideration up to the value of 100 bus passes per month during said period.

4. Fee and Insurance Adjustments

- a. The City has a Charter obligation to reevaluate the property rental amount every five years and adjust the rent amount accordingly every five years. The City and Pierce Transit acknowledge this obligation and believe that the value of the initial \$85,000 consideration plus transit passes will also increase in value (to the Light Division) at a rate comparable to the increase in value of the subject property. However, every five years the City shall evaluate whether there is substantial equivalency in the percent of increase in value of the property rent amount and percent increase in value (to the Light Division) of the transit passes that are provided to the Light Division. If there is substantial equivalency, no adjustment need be made, but if the property rental value increase rate is significantly above the increase rate for the value of the transit passes to the Light Division, then the consideration shall be adjusted as required by the City Charter.
- b. The City may review, and by letter, amend this Agreement for the purpose of increasing the liability insurance coverage amounts in order to be consistent with comparable properties and considering the City's liability exposure.

5. Use

Pierce Transit shall use the subject property as a Transit Facility including transit customer type services such as coffee, juice and snack sales; car washing, windshield/glass replacement and oil changes; concierge service to accommodate off-site needs; a Goodwill or similar collection site with security observation responsibilities; an on-going Farmer's market and a private airport shuttle for its customers. Pierce Transit shall be responsible for acquiring all additional rights for its use of the property as required by local, state, and federal regulations. This Agreement is non-exclusive and shall not prevent the City from using any of the subject property for transmission or communication purposes or allowing other compatible uses. By way of example and not limitation, the City retains the right to close its

transmission line right-of-way at any time for the purposes of repair, improvement, maintenance, or any other reason it deems necessary for public or worker safety and will provide advance notice when feasible.

6. Indemnification

To the greatest extent allowed by law, Pierce Transit assumes the risk of all damages, loss, cost, penalties and expense and agrees to indemnify, defend and hold harmless the City, from and against any and all liability which may occur to or be sustained by the City on account of any claims, suit or legal action made or brought against the City for the death of or injury to persons including Pierce Transit's contractor's and Pierce Transit's employees or damage to property involving Pierce Transit and its employees or agents, arising out of and in connection with or incident to Pierce Transit's use of or work on the permitted property including if the City is found to have a non-delegable duty relating to the electric transmission lines, except for injuries or damages caused by negligence of the City. For purposes of this paragraph, "Pierce Transit's use" includes but is not limited to the use of the premises by Pierce Transit's invitees. In this regard, Pierce Transit recognizes that Pierce Transit is waiving immunity under Industrial Insurance Law, Title 51 RCW. This indemnification extends to the officials, officers and employees of the City and also includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City. Provided however, this provision is intended to be applicable to the parties to this agreement and it shall not be interpreted to allow a Pierce Transit employee or other person to have a claim or cause of action against Pierce Transit.

7. Liability Insurance

Pierce Transit shall procure and keep effective during the term of this Agreement a policy of general comprehensive liability and property damage insurance as follows:

- a. Names the City as an additional insured, protecting the City and Pierce Transit with coverage of not less than \$5,000,000 combined single limit for each occurrence of property damage and/or personal injury including death.
- b. Includes contractual type coverage which will obligate Pierce Transit's insurance carrier if you, Pierce Transit, fail to abide by the terms of this Agreement.
- c. States that Pierce Transit's insurance is primary over any insurance or self-insurance program the City maintains for its own protection.
- d. States that the City will be provided 30 days' prior written notice in the event of cancellation of policy.

This Agreement is conditioned upon Pierce Transit's maintaining the minimal insurance requirements and said Agreement shall not become effective until the City has approved Pierce Transit's self insurance capacity. A letter shall be sent to the City obligating Pierce Transit's self-insurance fund to the herein above stated responsibilities and said letter shall be signed by a person with appropriate authority to obligate Pierce Transit.

If Pierce Transit's self-insured funds, or other financial reserves, or assets are unable to maintain sufficient solvency to indemnify the City from liability, this Agreement shall be subject to cancellation by the City upon ten (10) days prior written notice to Pierce Transit and Pierce Transit's rights in this Agreement shall be cancelled and terminated if such insufficiency is not cured within ten (10) day period or such additional period as may be agreed to by the City.

8. Assigning

Agreement is non-assignable and non-exclusive.

9. Risk Assessment

A Level 1 Environmental Risk Assessment, identifying potential exposures and hazards, shall be conducted by the City at the commencement of the Agreement and upon termination of the Agreement.

Pierce Transit agrees to pay SEVENTY-FIVE DOLLARS (\$75.00) for each assessment.

10. Hazardous Substance

No goods, merchandise, or material shall be kept, stored, or sold on the premises which are in any way explosive or hazardous; and no offensive or dangerous trade business or occupation shall be carried on therein or thereon, and nothing shall be done on or from the premises other than as provided for in this Agreement. No machinery or apparatus shall be used or operated on the premises which will in any way injure the premises; provided, however, that nothing in this paragraph shall preclude Pierce Transit from bringing, keeping, or using on or about the premises such materials, supplies, equipment, and machinery as are necessary or customary in carrying out the required uses of this Agreement.

In the event such uses include keeping or storage of inflammable or explosive substances, such substances shall be store in closed containers, and shall be stored, used, or dispensed in the manner prescribed by the regulations of the City or other public body having authority in the matter,

and in any event, in the safest possible manner. Pierce Transit shall be liable for the remediation of any hazardous substance on the premises resulting from Pierce Transit's use of said premises.

Pierce Transit warrants that no hazardous substances, toxic waste, or other toxic substance will be produced, disposed of, or will be kept on the premises which if found on the property would subject the City to any damages, penalty, or liability under an applicable local, state or federal law or regulation. Pierce Transit shall indemnify and hold harmless the City with respect to any and all damages, costs, attorney fees, and penalties arising from the presence of such substances on the premises, except for such substances as may be placed on the premises by the City.

11. Environmental/Cultural Resources

- a. Landscaping installation and maintenance practices that minimize chemical applications are to be used. Use of soil sterilants for maintenance are prohibited. Landscaping plant height shall not exceed 15 feet at maturity.
- b. Ground disturbing activity shall cease immediately if any cultural resources are found at the site. The City shall be notified immediately and the site secured.
- c. If cultural resources surveys conducted by the City as required by federal, state or local governing agencies indicate that cultural resources will be impacted by this agreement, then Pierce Transit may be responsible for further studies and mitigation as required by federal, state, and local laws and regulations. Alternatively, the City may revoke this Agreement if, in its sole opinion, cultural resources may be threatened.
- d. Any runoff from construction or from any facilities designed or constructed by Pierce Transit shall be appropriately treated to avoid impacts to City improvements, siltation of waters, creation of wetlands on City land and any other actions that could impair City use of its property.

12. Electromagnetic Fields

Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Scientific research to date is not clear and further study is needed. It appears that it will take several more years before sufficient scientific research data are available to establish whether EMF affects

public health. Pierce Transit is hereby notified that potential causal connections between EMF and human diseases may exist. The City does not warrant that this use of City real property is without risk of exposure to EMF. In spite of this concern, Pierce Transit has decided to enter into this real property agreement with the City and expressly assumes all risk of harm as set forth in Paragraph 6.

Should any subsequent transactions pertaining to resale, lease, or permitted use of the property subject to this agreement occur, it is the undersigned's duty to provide notice to each subsequent purchaser, lessee, permittee, assignee, and user.

13. General Terms and Conditions

Notwithstanding the responsibilities assumed by Pierce Transit under this agreement, all of which are hereby acknowledged, Pierce Transit additionally agrees to abide by the following additional terms and conditions in connection with the Transit Facility :

- a. For the purposes of this Agreement, "Public" is defined as the general public and not restricted to any particular group or geographical area.
- b. Pierce Transit shall not enlarge or change its use of the City's property without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, short-term events like Fair day, Public Market, and Fun Runs may be authorized by Pierce Transit and shall be subject to this Agreement.
- c. Complaints or damage regarding the Transit Facility will be referred to Pierce Transit for resolution. Pierce Transit will be the primary contact and will be solely responsible for inquiries, complaints, disputes, and resolution of all issues arising by and between users of the Transit Facility, property owners, and the City.
- d. All Transit Facility construction, maintenance, access, facilities, and amenities shall meet the requirements of federal, state, and local laws, rules, and regulations.
- e. Including but not limited to all FERC licensing conditions, Pierce Transit will conduct all activities in a proper manner and in conformance with all local, state, or federal rules, regulations, or laws, and further that the permission granted herein is subject to any lawful rules or regulations now in effect or which hereafter might

become effective which are imposed upon said property by any regulating authority.

- f. Political advertising shall not be allowed on the premises except on buses.
- g. Vehicles shall be parked only in designated parking stalls as designed in construction plans approved by the City. Vehicles blocking City access shall be removed by Pierce Transit immediately upon City request. Pierce Transit shall maintain a towing contract to fulfill this requirement.
- h. Pierce Transit shall prohibit non-customers using site for advertising sale of vehicles.

14. Construction Requirements

Pierce Transit shall design and construct facilities to ensure safe conditions. Construction requirements are outlined in Exhibit B, attached hereto and incorporated herein.

15. Facilities and Maintenance

Pierce Transit shall maintain its facilities, and the property subject to this Agreement, in a clean and neat manner. Any improvements that the City may allow Pierce Transit to install are subject to being disrupted by the City's operations. Pierce Transit assumes the risk of such limited use rights and will be responsible for its own additional costs and expenses in restoring any such areas.

It is Pierce Transit's sole responsibility to maintain the Transit Facility and any improvements associated with this Agreement.

16. Termination

This Agreement may be terminated by either the City or Pierce Transit upon 180 days written notice, if required by FERC or any other agency with appropriate authority, mailed by certified mail to Pierce Transit at 3701 96th Street SW, Tacoma, WA, 98499 or the City, Light Division at 3628 South 35th Street, P.O. Box 11007, Tacoma, Washington 98411, for any reasons stated in said notice.

If terminated by City prior to the end of the first 20 year period, City will reimburse Pierce Transit a prorated portion of Federal money owed, due to early termination. Said prorated portion shall not exceed, \$27,600 for each

year remaining in the 20 year period. Pierce Transit, upon termination of this Agreement, shall restore the property to the condition it was in at the beginning of this Agreement unless otherwise permitted in writing by the City. It is not anticipated that such restoration will include permanent improvements. Provided, however, it is understood and agreed that in the event of termination or abandonment of this Agreement, the terms, conditions, and covenants agreed to herein shall continue to be effective until such time as the use of the City's said property has discontinued and the property has been restored to the satisfaction of the City.

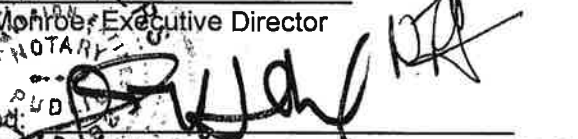
This Agreement may be executed in counterparts. It shall be interpreted and enforced in accordance with the laws of the State of Washington. The Agreement will be interpreted equally against all parties. No greater scrutiny will be applied against the City as the drafter of the Agreement.

IN WITNESS WHEREOF, I/We have executed this instrument at Pierce
Transit said company has caused its corporate name and seal to be hereunto subscribed and affixed and these presents to be executed by its officers thereunto duly authorized, this 15th day of August, 1997.

AGREED:

PIERCE COUNTY PUBLIC TRANSPORTATION
BENEFIT AREA AUTHORITY CORPORATION


Don S. Monroe, Executive Director

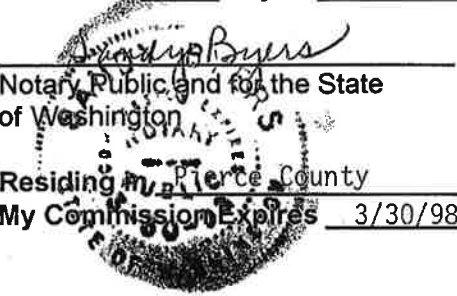
Reviewed: 
Project Lead **JOHN L. HUBBARD**



STATE OF WASHINGTON)
) SS
 COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Don S. Monroe
 and John L. Hubbard are the persons who appeared before me,
 and said persons acknowledge that they signed this instrument, on oath stated that
 they were authorized to execute the instrument and acknowledges it as the
Executive Director and Project Lead of PIERCE COUNTY
 PUBLIC TRANSPORTATION BENEFIT AREA AUTHORITY CORPORATION to be
 the free and voluntary act of such party for the uses and purposes mentioned in
 the instrument.

Dated this 15th day of August, 1997


 Notary Public and for the State
 of Washington

Residing in Pierce County
 My Commission Expires 3/30/98

Attention Notary:

RCWs 65.04.45 and 65.04.47 require the Notary Seal and all signatures to be within the one
 inch margins, as shown by the lined border. Failure to comply will result in rejection of this
 instrument for recording.

96-067CAB/A2597

Page 10 of 11

9708280684

96-067CAB/A2597

Dated this 9th day of July, 1997

Approved:

**CITY OF TACOMA
Department of Public Utilities**


Director of Utilities

Approved:



Light Division Superintendent

Accepted:



Transmission & Distribution ManagerApproved
as to Form:

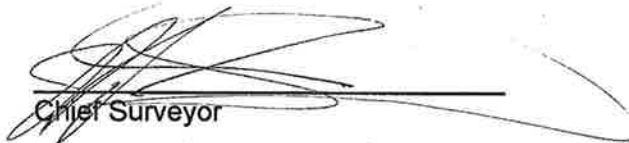
Assistant City Attorney

Reviewed:



Project Lead:

Reviewed:



Chief Surveyor

Reviewed:



Real Estate Management Supervisor

EXHIBIT "A"

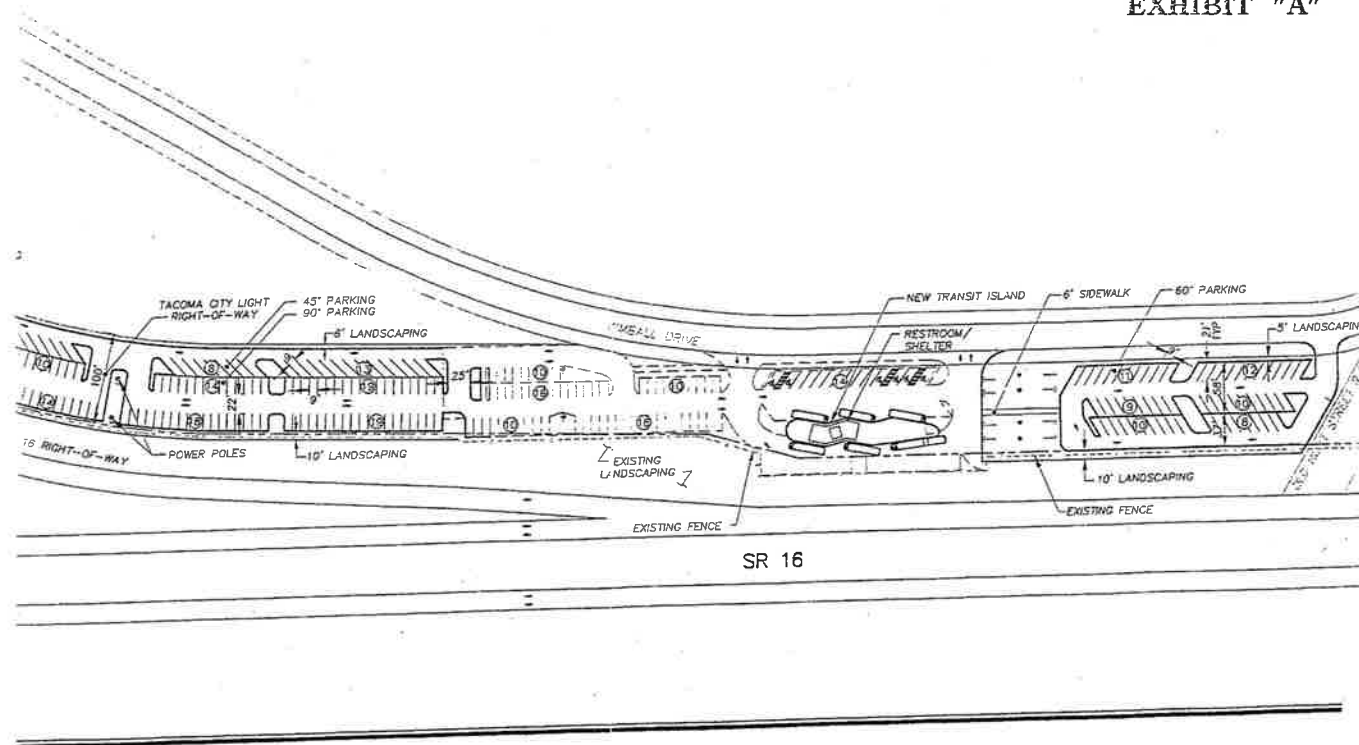


Figure 1
KIMBALL DRIVE PARK-AND-RIDE

9708280684

BK1381PG3164

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
AGREEMENT A2597**

EXHIBIT "B"

Notwithstanding the responsibilities assumed by Pierce Transit under Agreement A2597, Pierce Transit additionally agrees to abide by the following additional terms and conditions in connection with the Park & Ride:

1. Agreement Fee

The City encourages its employees to use public transportation by providing monthly bus passes to each employee using such service. Ordinance No. 25871 authorizes the City to subsidize permanent and temporary City employees' and volunteers monthly public transportation tokens or passes by paying up to the full price of said monthly public transportation or the IRS tax exempt benefit (which ever is less) per month. Pierce Transit agrees to issue bus passes or equivalent consideration, to the Light Division as needed each month to meet the demand of the Department of Public Utilities during said period in exchange for use of the premises. Bus passes shall be limited to 100 bus passes each month or equivalent consideration up to the value of 100 bus passes per month during said period. Light Division shall own and control bus passes or equivalent consideration received under this Agreement.

2. Construction Requirements

- a. Pierce Transit shall maintain a safe distance between construction equipment and City towers and/or conductors in accordance with National Electric Safety Code and City standards.
- b. Pierce Transit shall submit final construction plans and drawings to the City for review and approval at least two weeks prior to planned construction. Pierce Transit shall not begin construction until all

EXHIBIT "B"

plans and drawings are approved by the City and written notice has been delivered to Pierce Transit.

- c. Inspection of the said area shall be performed by the City before, during, and after construction to ensure that Agreement requirements are met. Pierce Transit agrees to pay the City a \$250 inspection fee to cover these inspections.
- d. All underground utilities shall be clearly marked with signage. The limits of any underground utilities shall be marked. The marks should be clearly labeled "Utility" or equivalent for easy field identifications.
- e. A pre-construction meeting with the City is required to coordinate required inspections. Pierce Transit shall notify the City's Transmission and Distribution Manager, or other designee, P.O. Box 11007, Tacoma, WA 98411 at (206) 502-8115 at least two (2) weeks prior to the commencement of construction activities, and the parties agree that if construction or use conflicts exist, the City's schedule shall prevail. If emergency maintenance is required on Pierce Transit's facilities, Pierce Transit shall notify the City as soon as reasonably practical.
- f. Pierce Transit shall obtain necessary surface water management approval from the City of Gig Harbor and/or Pierce County. Final plans showing surface water run off must be approved by the City of Gig Harbor and Pierce County prior to final Light Division approval.
- g. Design shall allow City vehicles access at each end of lot.
- h. The landscaping plan shall include the location, type of trees, shrubs, irrigation, maintenance schedule, and a description of any chemical application. Plan must be approved by the City prior to construction.

