CONTRACT # 5696

TRANSIT SERVICE DIRECT FINANCIAL PARTNERSHIP AGREEMENT BY AND BETWEEN KING COUNTY AND THE CITIES OF SAMMAMISH, REDMOND AND ISSAQUAH, WASHINGTON AND MICROSOFT CORPORATION

THIS TRANSIT SERVICE DIRECT FINANCIAL PARTNERSHIP AGREEMENT (the "Agreement") is made by and between King County, a political subdivision of the State of Washington and home rule charter county with broad powers to provide public transportation within the County's geographic boundaries, by and through the King County Department of Transportation, Metro Transit Division (the "County" or "Metro Transit"), the cities of Sammamish, Redmond and Issaquah (each a Washington municipal corporation) and Microsoft Corporation (a Washington corporation) ("Service Partner," whether one entity or multiple entities), all of which entities may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, in September 2006 the King County Council adopted Ordinance 15582, the *Transit Now* ordinance, directing the submission of a proposition to King County voters to fix and impose an additional sales and use tax of one-tenth of one percent to fund expansion of the King County Metro public transportation system and a variety of transit service improvements; and

WHEREAS, the *Transit Now* ordinance identified a number of transit service measures to be implemented using the one-tenth of one percent sales and use tax collected through *Transit Now* that focus on capital, operating, and maintenance improvements that are expected to expand and improve bus service on local streets and arterials within King County; and

WHEREAS, mutually beneficial contractual arrangements with other public and private entities ("service partnerships") that leverage public and private funds to provide both new and better bus service to cities and major employers is one of four key strategies (the "Service Partnership Program") identified in the *Transit Now* proposition approved by King County voters in the general election on November 7, 2006; and

WHEREAS, the Service Partnership Program is also designed and intended to support the service development objectives and financial strategies of the *Six-Year Transit Development Plan for 2002-2007,* and its successor, the *Ten-Year Strategic Plan for Public Transportation 2007-2016*;

WHEREAS, the *Ten-Year Strategic Plan for Public Transportation 2007 – 2016* adopted by the King County Council November 13, 2007 Strategy IM-3 exempts service partnerships, schedule maintenance, contracted services or partnership agreements from subarea allocation and reduction requirements; and

WHEREAS, Service Partner has submitted an application for a direct financial partnership for transit service and has met the criteria established by the County for awarding such partnerships; and

WHEREAS, the proposal submitted by Service Partner has been deemed to show a potential gain in ridership; and

WHEREAS, the proposal submitted by Service Partner has been approved by the King County Council,

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

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to enter into a mutually beneficial contractual relationship for enhanced transit services consistent with the goals and directives of the *Transit Now* ordinance and initiative as authorized by King County Council Ordinance 15582 (approved in September 2006) and passed by the voters of King County as *Transit Now* in the general election on November 7, 2006 to leverage sustainable local resources for transit service and to increase transit ridership.

This Agreement establishes the responsibilities of the Parties in relation to the transit service partnership, including methods for financing, implementing, monitoring, improving and terminating the partnership.

2. COUNTY'S RESPONSIBILITIES

2.1 The County will provide transit service enhancements in accordance with the service specifications set forth in Attachment A, which is incorporated herein and made a part of this Agreement by this reference, pursuant to which the County and Service Partner will share the fully allocated cost of the increased service hours at a rate of not more than two-thirds from County funds to not less than one-third from Partner funds (actual contribution specified in Attachment A). Fully allocated costs include the cost of fuel, maintenance, driver wages, service supervision, infrastructure maintenance, revenue collection, scheduling, rider information, data analysis; and administrative and management costs. The County's cost allocation model will be used to determine the Service Partner's contribution. The County will manage the service in accordance with its regular procedures and as may be further specified in this Agreement. The Parties understand and agree that, notwithstanding Service Partner's financial contribution, the transit service referenced herein will be open to the general public.

2.2 The County will include the new transit service enhancements provided for under this Agreement in its annual route performance monitoring. Enhanced transit service provided for via service partnerships will be expected to perform at or above the subarea average for its particular type of service in at least three of the four standard indicators monitored in Metro's annual *Route Performance Report:*

a) Rides per revenue hour;
b) The ratio of fare revenue to operating expense;
c) Passenger miles per revenue hour; and
d) Passenger miles divided by platform miles.

2.3 More specific benchmarks applicable to the enhanced transit service provided for herein are set forth in Attachment A. Three (3) years after implementation of the enhanced transit service provided for herein and annually thereafter, the County will make a determination as to the productivity and viability of the service. The County will notify Service Partner of its assessment of the service's productivity, performance, and ongoing viability. If the County deems that changes can be made to improve the service, the County and Service Partner will discuss possible modifications and may agree on any decisions to modify the service enhancements provided for herein, provided, however, that any such modifications shall be consistent with the requirements set forth in KCC 28.94.020(B)(2). After consultation with Service Partner, if the County determines that the enhanced service provided for herein is not viable based upon performance, and proposed changes are insufficient to boost productivity beyond a minimum threshold as may be established and the Parties cannot agree on a substitute investment on a different route or a different corridor, the County will notify Service Partner of its intention to terminate the Agreement.

3. SERVICE PARTNER'S RESPONSIBILITIES

3.1 **Monetary Contributions.** Service Partner will contribute, via payment of billings from the County twice per year, as specified in Section 5.1 of this Agreement, at least one-third of the fully allocated cost of the enhanced service described in Attachment A, in an amount not less than US$100,000 per year for at least five (5) years to add to existing transit service or a minimum of US$200,000 per year for at least five (5) years to implement new transit service. The foregoing dollar amounts represent the minimum monetary contributions that Service Partner will be responsible for pursuant to this Agreement. The amount of Service Partner's actual yearly monetary contributions, over and above the minimum yearly contributions specified in this Subsection 3.1, are to be determined by application of the cost allocation calculation specified in Attachment A, which is attached hereto and incorporated herein by this reference. If application of that cost allocation formula yields a higher dollar amount, Service Partner shall pay the larger amount.

3.2 **Transit Service Enhancements.** In addition to the financial contributions referenced in Subsection 3.1, Service Partner will undertake a number of additional actions that are expected to increase ridership on the enhanced bus services provided for herein, including, but not limited to implementation of transportation demand management programs, parking management, service promotions, and communication infrastructure and transit signal priority improvements. The transit service enhancements to be undertaken by Service Partner pursuant to this Agreement are set forth more fully in Attachment A, which is attached hereto and incorporated herein by this reference. The Parties acknowledge and agree that the goal of this Agreement is to increase ridership. Toward that end, the Parties agree to work together in good faith to refine the details of the required transit service enhancements in order to assure effective and timely implementation.

4. TERM OF AGREEMENT AND APPROVAL BY KING COUNTY COUNCIL

4.1 This Agreement shall commence upon signing by the Parties and, for each service specified in Attachment A, expire five (5) years after the start of that service, unless extended or earlier terminated pursuant to the terms of this Agreement. If after five (5) years the enhanced transit service is deemed viable by the County pursuant to the performance indicators set forth in Section 2.2 of this Agreement and the additional performance benchmarks specified in Attachment A, and Service Partner desires to have Metro Transit continue to provide the enhanced transit service beyond the initial five year period, this Agreement may be extended by the Transit General Manager for an additional five years without additional approval by the King County Council.

4.2 This Agreement is subject to review and approval by the King County Council and, if necessary, the governing bodies of any other governmental entities that are a Party to this Agreement.

5. INVOICES/PAYMENT PROCEDURES

5.1 The County will invoice Service Partner twice each year for its contribution, as specified in Section 3.1 of this Agreement, to the transit service provided for herein. Service Partner will receive two (2) billings each calendar year for the actual costs incurred by the County to operate or manage the service.

5.2 An estimate of the total service costs based on scheduled service hours is shown in Attachment A. This estimate will be adjusted in January each year, based on the per mile and per hour rates for that year. This adjustment will be provided to the Service Partner.

5.3 Service Partner shall make payment within forty-five (45) days after receipt of an invoice. Should Partner fail to pay the County the amount due within forty-five (45) days of receipt of a billing invoice from the County, a late payment assessment shall be applied to any outstanding balance due for that invoice. The late payment assessment shall be fixed at the maximum rate allowable under Washington state law.

6. INDEMNIFICATION AND LEGAL RELATIONS

6.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other Party.

6.2 Each Party shall comply, and shall ensure that its contractors and subcontractors, if any, comply with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.

6.3 Each Party shall protect, defend, indemnify and save harmless the other Party, its elected officials, officers, officials, employees and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

6.4 Each Party's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

6.5 This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, located in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

6.6 The provisions of this section shall survive any termination of this Agreement.

7. CHANGES AND MODIFICATIONS

This Agreement may be amended or modified only by prior written agreement signed by the Parties hereto. Such amendments and modifications may be executed by the General Manager of the County's Transit Division without additional Council approval, so long as any such amendments are consistent with the intent and purpose of this Agreement.

8. TERMINATION OF AGREEMENT

8.1 Either Party may terminate this Agreement, in whole or in part, in writing if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other; provided, however, that, insofar as practicable, the Party terminating the Agreement will give not less than 135 calendar days prior to the County's February, June or September service change, by written notice delivered by certified mail, return receipt requested, of intent to terminate.

8.2 In addition to termination under Paragraph 8.1 of this Section, the County may terminate this Agreement pursuant to the provisions of Section 2.3 of this Agreement, in whole or in part, provided, that Service Partner will be given not less than 135 calendar days prior to the County's February, June or September service change, by written notice delivered by certified mail, return receipt requested, of intent to terminate.

8.3 If either Party terminates, Partner will pay the County a pro-rated amount for services performed in accordance with the Agreement to the date of termination.

9. FORCE MAJEURE

Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, earthquake or acts of nature; strikes or labor actions; commandeering material, products, or facilities by the federal, state or local government; and/or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party, and provided further that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event, however, shall this provision eliminate the obligation to make payment to the County for work performed in accordance with this Agreement.

10. WAIVER OF DEFAULT

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

11. ASSIGNMENT

This Agreement shall be binding upon the Parties, their successors, and assigns; provided, however, that neither Party shall assign or transfer in any manner any interest, obligation or benefit of this Agreement without the other's prior written consent.

12. NO THIRD PARTY BENEFICIARIES

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

13. MUTUAL NEGOTIATION AND CONSTRUCTION

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

14. ALL TERMS AND CONDITIONS

This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties related to the subject matter hereof and constitutes the entire agreement between the Parties. This Agreement may be amended only by written agreement of the Parties.

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

15. CONTACT PERSONS

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

	Service Partner	**Service Partner**
Contact Name	Erika Vandenbrande	Jim Stanton
Organization	City of Redmond	Microsoft Corporation
Title	Senior Transportation Planner	Senior Community Affairs Manager, Microsoft Real Estate & Facilities
Address	15670 NE 85th St.	One Microsoft Way
	P.O. Box 97010	Redmond, WA 98052-6399
	Redmond, WA 98073- 9710	
Telephone	425-556-2457	425-707-5076
Fax	425-556-4242	425-936-7329
E-Mail	evandenbrande@redmond.gov	jstanton@microsoft.com

	Service Partner	**Service Partner**
Contact Name	Jeff Brauns	Gary Costa
Organization	City of Sammamish	City of Issaquah
Title	Senior Transportation Program Engineer	Transportation Manager
Address	801-228th Ave. SE	P.O. Box 1307
	Sammamish, WA 98075	Issaquah, WA 98027
Telephone	425-295-0561	425-837-3443
Fax	425-295-0600	425-837-3029
E-Mail	jbrauns@ci.sammamish.wa.us	garyc@ci.issaquah.wa.us

	King County
Contact Name	Matt Hansen
Title	Supervisor, Market Development, Metro Transit Division
Address	YES-TR-0600
	400 Yesler Way
	Seattle, WA 98104
Telephone	206-263-3598
Fax	206-684-2058
E-Mail	matt.hansen@kingcounty.gov

16. Each Party warrants and represents that its execution of this Agreement has been authorized by its governing body, via King County Ordinance No.16041 dated March 24, 2008, and via City of Sammamish motion dated April 15, 2008, and via City of Redmond Ordinance No. 2393 dated April 15, 2008 and via City of Issaquah motion dated April 21, 2008 and, in the case of a non-governmental entity, by an officer duly authorized to do so.

17. **Effective Date.** This Agreement shall take effect when it is signed by all the Parties hereto.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the _____ day of _____, 2008.

KING COUNTY

By: _____

Title: _____

Date: 5/13/08

SERVICE PARTNER

By: _____

Title: MAYOR

Date: 4/25/08

SERVICE PARTNER

By: _____

Title: Council President

Date: 4-29-08

SERVICE PARTNER

By: _____

Title: City Manager

Date: 04/28/08

SERVICE PARTNER

By: _____

Title: _____

Date: 4/30/08

Susan Wagner, Director
America's Facilities & Services
Microsoft RE&F

ATTACHMENT A

Direct Financial Service Partnership Scope of Work
City of Issaquah
City of Redmond
City of Sammamish
Microsoft Corporation

A. Monetary Contributions

1. Monetary Contributions to be Made by Service Partners

   Service Partners agree to contribute one-third of the fully allocated annual cost per year for five (5) years for additional service on Route 269 as defined in Service Description in Section C of this Attachment A. The actual annual cost the Service Partners agree to pay on an annual basis shall be determined in accordance with Section 5.2 of this Agreement. The proportion of the fully allocated annual cost that each Service Partner agrees to pay is specified in Section D of this Attachment A.

2. Monetary Contributions to be Made by County

   The County agrees to operate the service as defined in Service Description in Section C of this Attachment A and Section 2.1 of this Agreement.

B. Transit Service Enhancements

1. Service Partners agree to implement additional actions that are likely to increase ridership on the new services, including all those listed below or similar activities, if authorized in advance by the King County Metro Transit General Manager. Such additional actions shall be implemented no later than two (2) years from the effective date of this Agreement. At least six months prior to the start of the new services, Service Partners will contact King County Metro's Market Development group to refine the details of these actions to help assure effective and timely implementation. Service Partners remain responsible for the cost and implementation of the following actions or similar activities as agreed with Market Development staff:

   City of Issaquah

   - Continue to offer development incentives which take into account the availability of transit such as allowing parking credits (reductions) for the incorporation of shuttle service and if an applicant can demonstrate pedestrian, bicycle, or mass transit use by employees or customers.
   - The City's Resource Conservation Office will continue to promote transit-oriented development as a green building strategy and encourage transit ridership as a sustainable living element.
   - Continue to support the creation of an affordable housing project adjacent to the Issaquah Highlands Park-and-Ride.
   - Continue to provide Commute Trip Reduction incentives and promote transit ridership, both generally for errand and commuting transportation, and specifically

for its "Salmon Friendly Commuting" program that promotes alternatives to single-occupancy travel both in and out of the city for businesses and residents.
- Continue to review and develop transportation demand management strategies such as parking limits, pedestrian access improvements, and connectivity to transit.

City of Redmond
- Support the proposal through the R-TRIP program between King County Metro, the Greater Redmond Transportation Management Association, and the City of Redmond through employer and commuter outreach, incentives, and employer marketing of Route 269 and other commute alternatives.
- Implement an Overlake Growth and Efficiency Center as part of its CTR program.
- Update the Overlake Neighborhood Plan to reinforce transit-oriented development in the Overlake Urban Center.

City of Sammamish
- Provide transit information on City Web site and in City newsletter about new service on Route 269, connections available at nearby park-and-ride facilities and King County Metro's online Trip Planner.
- Publish a transit article in the City newsletter to demonstrate benefits of transit ridership and highlight employer transportation programs.
- Promote transit use at community events.
- Consider placing display advertisements in Sammamish Review to promote transit use.
- Consider promotions such as "Thanks a Latte" during the first month of new 269 service in which the first 100 people who board the bus and fill out a survey on the new service would be eligible to receive a prize for using the service.
- Seek opportunities to distribute free ride tickets to citizens.
- Conduct outreach to local employers to promote ridership to their employees.
- Provide transit routing information for City events.

Microsoft Corporation
- Actively market the expanded Route 269 service to employees living in Redmond, Sammamish and Issaquah.
- Continue to support this service through the provision of subsidized fare media to employees, hosting transportation-related promotional events on-site, and other elements of the company's Commute Trip Reduction program.

2. The County agrees to undertake the following supporting actions:

Additional Promotion of Service
- Designate new service funded by partnership in the bus timetables for the affected routes.
- Work with Service Partners to promote transit use on the enhanced service routes.

C. Service Description

County and Service Partners agree to share in the cost and responsibilities of adding to service on route 269. Peak direction, peak period frequency will be increased to 20 minutes. At a later date, an express variant to reduce travel time may be investigated. The service will initially operate with a standard 40-foot diesel coach. The proposed improvement would provide additional commuting options, particularly for residents of the Cities of Sammamish and Issaquah, by improving peak period, peak-direction service frequency to and from the Overlake Urban Center. The service implemented will be generally consistent in scope and service levels and may vary from this description should County and Service Partners mutually agree to implement alternative service of similar scope following any required public outreach and any necessary King County Council authorization.

1. Start Date for Service

Service described above shall commence with Metro service change of September 2008.

D. Service Cost Estimate

The estimated cost is a planning-level estimate based on the hours and miles identified on the spreadsheet attached hereto as Exhibit 1 entitled "Preliminary Cost Estimate," which is incorporated into and made a part of this Agreement by this reference. The actual hours and miles needed to operate the service is determined by the County during the scheduling of the service prior to implementation. The actual fully allocated cost may be higher or lower than the estimate provided in Exhibit 1.

Total estimated annual hours: 4,157
Total estimated annual miles: 85,791

Estimated 2008 fully allocated annual cost (County's + Service Partners' cost):
$565,178

City of Issaquah annual share of fully allocated annual cost:
Three and one-third percent ($18,840 based on 2008 fully allocated annual cost)

City of Redmond annual share of fully allocated annual cost:
Ten percent ($56,520 based on 2008 fully allocated annual cost)

City of Sammamish annual share of fully allocated annual cost:
Ten percent ($56,520 based on 2008 fully allocated annual cost)

Microsoft Corporation annual share of fully allocated annual cost:
Ten percent ($56,520 based on 2008 fully allocated annual cost)

The actual annual cost Service Partners agree to pay on an annual basis shall be determined in accordance with Section 5.2 of this Agreement.

E. Benchmarks for Evaluating Route Performance

Metro has a consistent, formal route-performance evaluation process to identify individual routes that may require modification, expansion or termination. Routes are grouped by subarea and time period for similarity in operating conditions. Each partnership route will be compared by time period to other routes in its subarea to ascertain performance level. Data for a particular year is typically available by the middle of the following year. The comparison will be made at the time the data is available.

The benchmarks for the service additions applicable to this Agreement are as follows:

East Subarea – Peak
Rides/revenue hour: Average – 26.1
Fare revenue/operating expense: Average – 14%
Passenger miles/platform miles: Average – 7.00
Passenger miles/revenue hour: Average - 225

EXHIBIT 1

Preliminary Cost Estimate

Route	Day	Direction	Time	Description	# of trips	Est'd hours	Rate/hour $84.57	Est'd miles	Rate/mile $2.49	Total Cost
269	M-F	North	All Day	Issaquah to Overlake	6	2,468	$208,719	52,692	$131,203	$339,922
269	M-F	South	All Day	Overlake to Issaquah	4	1,689	$142,839	33,099	$82,417	$225,256
			Subtotal		**10**	**4,157**	**$351,569**	**85,791**	**213,620**	**$565,178**

King County Metro Transit contribution	**$376,778**
Partner contribution	**$188,400**