

Letter of Agreement
To Implement ORCA, Improve the Monorail System,
and subject to approval,
Amend the Monorail Concession Agreement

Seattle Center (a department of The City of Seattle) and Seattle Monorail Services LLC (SMS) (Monorail concessionaire) agree to the provisions described in this Letter of Agreement (LOA) and, subject to City Council authorization, commit to work together with urgency and in good faith to execute an amendment as herein described to the current Monorail System Concession Agreement (Agreement). This LOA and the future amendment address SMS' use of the One Regional Card for All (ORCA) smart card as a method of payment for Monorail passage and privately funded capacity improvements. Subject to City Council authorization and full execution by the parties, the amendment shall be effective October 7, 2019.

Purpose and Overview

The new and modified provisions are intended to facilitate Monorail participation in the regional ORCA program, optimize passenger service through targeted system changes (such as separating fare payment from redemption), and potentially increase system capacity through SMS-funded improvements to the Westlake Center Monorail station and accessways. Westlake Center is owned by Brookfield Properties Retail, Inc., and improvements there are subject to their approval, which SMS is pursuing in consultation with Seattle Center. Regardless, SMS agrees to privately fund a minimum of \$3.5M of Monorail system improvements by December 31, 2022.

In support of the above, the parties have also agreed to extend the operating term through 2034, to adjust fares and pace them with inflation, to modify how the City concession fee is determined, to grant SMS more leeway in developing and growing ancillary streams of revenue, and to other items detailed herein. This LOA describes the items that will be added to or amended in the current Concession Agreement; all other elements of the current Concession Agreement will remain unchanged.

Related but Separate Agreements

The Monorail System is accommodated at Westlake Center through a City Council-approved 1987 Monorail Operating and Easement Agreement (Easement Agreement) between the City and Westlake Center. Seattle Center and SMS believe that this agreement may need amendment to enable SMS' improvements to the Westlake Center station and accessways. Any such amendment would require City Council approval.

The Monorail's participation in ORCA requires that the City of Seattle become an ORCA Affiliate of King County, which will serve as its ORCA Sponsor. The terms of that relationship are detailed in the attached Agreement for Use of ORCA System by an Affiliate (Affiliate Agreement) between the City and King County and are material to this LOA and will be incorporated into the Concession Agreement amendment.

Monorail System Concession Agreement - Amendment Details

ORCA Integration

Effective October 7, 2019 SMS will utilize the ORCA smart card as a fare payment method for Monorail passage as follows:

- All existing or substantially similar ORCA products will be accepted, including but not limited to E-purse, Puget Pass, Passport, Lift, Day Pass, and associated internal transfers and external transfers from other systems.
- An ORCA “tap” will result in the cardholder receiving a one-way trip.
- The initial ORCA equipment costs will be a City capital expense and all subsequent ORCA equipment costs will be a Monorail capital expense and included in the Monorail TAMP/CMMP program.
- All ORCA fare and pass revenue will be remitted to SMS from the City upon receipt, as provided in the Affiliate Agreement.
- The ORCA system will recognize Monorail “event” fares (described later) as the Monorail fare due during event fare periods and charge ORCA card holders and allocate ORCA pass revenue accordingly.
- Daily ORCA utilization reports and regular accounting reports will be provided to SMS in a timeliness, frequency, format, and level of detail that supports SMS’s revenue control and management environment and as provided in the Affiliate Agreement.
- Seattle Center will manage the ORCA relationship with King County.
- ORCA Participation, Affiliation, and Sponsor fees will be borne and paid directly by the City through 2021. Then, beginning January 1, 2022 these fees will be borne by SMS as a Monorail operating expense.

Fare Structure

The “fare structure” refers to the range of ages that fall into the Senior, Adult, Youth, and Children fare categories. Amending the current fare structure is necessary to enable the ORCA integration described above.

Effective October 7, 2019 the Monorail fare structure will be modified to comport with that of King County; in particular, Seniors – ages 65 and over; Adult – ages 19 thru 64; Youth – ages 6 thru 18; and Children – ages 5 and under.

Fares

The parties agree that:

- Effective October 7, 2019 “regular” Monorail one-way fares will be \$3.00 for adults, \$1.50 for youth, and \$1.50 for senior/reduced fares. Children 5 and under will ride free of charge. Regular round-trip fares will remain twice that of regular one-way fares.
- On January 1, 2022, “regular” fares will be adjusted to reflect the cumulative change in the Consumer Price Index for All Urban Consumers – Seattle-Tacoma-Bellevue (CPI-U) as compared to the published CPI-U as of the beginning of 2019. Thereafter, fares will similarly adjust on January 1st of every third year (2025, 2028, 2031, and 2034). Fare adjustments will be rounded up to the nearest quarter. Based on mutual agreement such adjustments could be timed to account for slower or faster rates of inflation.

- Regular Monorail one-way fares shall not exceed \$4.00 and one-way discounted fares may not exceed \$2.00 without amendment of the Agreement authorized by the Seattle City Council.
- Group fares and Monorail-specific pass prices (non-ORCA) will be established by SMS but will not be less per ride than the “regular” fare unless approved by the Director.
- With the Director’s approval, SMS will have the discretion to establish “event” fares which will apply to both ORCA and non-ORCA passengers during arena events beginning up to two hours before the event start time at up to twice the “regular” fare, and which will not be subject to the regular fare cap.
- SMS will have the discretion to add a credit card surcharge (that is equal to the fee charged by the credit card companies) to recover the processing fees it incurs through patron use of that payment method.

Station Improvements and Capital Funding Plan

The parties agree to pursue improvements to the Monorail stations to improve Monorail capacity, accessibility, and connections to other transit systems.

These improvements fall into two categories – 1) those administered through the City/SMS TAMP/CMMP program and funded through a combination of FTA grants, City funds, and SMS Irrevocable Renewal Account funds; and, 2) those funded privately by SMS, which include specific Westlake Center station and access improvements funded and administered solely by SMS. The parties agree that:

1. As a public TAMP/CMMP project(s), the City and SMS will complete up to \$3.5M of station upgrades. Priority elements include new passenger fare gates and separately located vending of Monorail tickets at both stations, refurbished extension ramps and passenger safety gates at Westlake Center station, and upgrades to the Seattle Center station, including the platform, to the extent funds remain of the \$3.5M after the Westlake projects are funded. The scope of Station improvements will be further defined in a CMMP Project Agreement between SMS and Seattle Center. Target completion – Sept 2021.
2. SMS shall privately fund at least \$3.5M in system improvements (confirmed by mutual agreement) by December 31, 2022. Should SMS and the City (participating with respect to any rights of succession and beneficial use) reach agreement with Westlake Center allowing station improvements there, then as a privately funded and administered project SMS will complete up to \$12M of Westlake Center station improvements to enlarge the station area and increase the capacity of the passenger accessways between the station area, the Sound Transit tunnel, and the street by adding/improving elevators, improving escalators or stairs, and improvements to leased space (Westlake Improvements). Target completion: Sept 2021. If SMS is unable to reach acceptable terms with Westlake Center, then its \$3.5M funding of system improvements will be applied to the project(s) to which the parties agree. In any case, the amortization of SMS funded improvements together with any associated Westlake Center newly leased space and related security and janitorial costs paid in cash (“Improvement Expense”) up to a maximum of \$1.1M annually, shall be included as an annual operating expense in determining the Monorail net operating income.

To achieve the above, the parties commit to working together to coordinate public efforts, communicate with stakeholders, negotiate with Westlake Center and others, and fast track permitting and construction.

Non-Fare Revenue

The current Concession Agreement grants SMS varying (exclusive and non-exclusive) rights to ancillary revenue opportunities related to the Monorail system, depending on the nature of the opportunity itself and its location within the system. Effective beginning upon execution of an amendment to the concession agreement, SMS will be granted the exclusive right to merchandising, promotions and sponsorships on the Monorail System within the roofed portion of Seattle Center station and, subject to future agreement with the owners of Westlake Center, within the Westlake station footprint. Seattle Center retains the right to site directional and informational signage within the roof portion of the Seattle Center station. SMS' exercise of these rights shall be subject to existing promotional/sponsorship agreements currently in place between the City and private sponsors with sponsorship benefits within the station platform, which the City shall not renew or extend. These continued and modified rights to ancillary revenue opportunities will be pursued by SMS to create "Non-Fare Revenue." The parties agree that SMS shall have the exclusive rights to Non-Fare Revenue, subject to the Director's approval as currently required.

Further, SMS agrees to make up to 20% of its digital signage display opportunities available to Seattle Center for use as the Director determines, but not with pass-through sponsorship rights.

SMS shall also be granted the exclusive advertising, merchandising, licensing, vending, and promotional rights with respect to the SMS Monorail logo as currently designed or modified in the future, subject to City of Seattle approval; provided, that Seattle Center shall have the right to use the logo at no cost in its promotions and materials.

SMS shall be prohibited from displaying on the Monorail system any promotional content related to the categories of guns, pornography or "adult" entertainment, tobacco, marijuana (or marijuana products), or illegal drugs or paraphernalia. In facilitating approval of promotional materials by the Seattle Center Director, SMS shall provide such detail regarding the proposed sponsor and proposed activations as reasonably requested by the Seattle Center Director.

SMS may employ agents to generate Non-Fare Revenue only with the prior written approval of the Director; SMS shall be responsible for the solicitation, marketing, and sale of such promotional opportunities, and the negotiation, execution, administration, and servicing of agreements entered into by SMS.

SMS shall develop Non-Fare Revenue opportunities (i) in compliance with all Laws, (ii) in a professional manner consistent with industry standards for other third-party service providers performing similar services for world-class entertainment areas, and (iii) for the mutual benefit of City and SMS, with an objective of maximizing revenues for both parties.

All costs and expenses of SMS in generating Non-Fare Revenue shall be borne solely by and paid for by SMS and will not be a Monorail operating expense. SMS is solely responsible for the conduct and content of its promotions and advertising, and all related materials and activities.

Payments to the City

The current Agreement stipulates that SMS pay the City two-thirds of Monorail net operating income with a minimum guaranteed amount, a City Management Fee of \$32K (2018), and a City Services Fees of \$64K (2018).

To maintain alignment of the parties' respective interests with the integration of ORCA and the private funding of system improvements, the parties agree to amend the Agreement to provide that:

Unless and until the SMS funded Westlake Improvements come on-line, SMS will pay the City

- A Concession Fee of Two-thirds of the Monorail net operating income, exclusive of Non-Fare Revenues and expenses, without a minimum guaranteed amount.
- A Non-Fare Revenue fee of \$30K per year for 2019, 2020, and 2021. The Non-Fare Revenue fee will increase to \$60K in 2022 and be adjusted in 2025 and every three years thereafter by the accumulated change in CPI-U (coincident with the inflation driven fare increases).
- A City Services Fee of \$50K, beginning January 1, 2019, and adjusting annually thereafter by the change in the CPI-U.
- A City Management Fee as stipulated through 2021, increasing to \$50K in 2022, and adjusting every three years thereafter by the accumulated change in CPI-U (coincident with the inflation driven fare increases).

Beginning the January following the SMS-funded Westlake Improvements coming on-line, SMS will pay the City:

- A Concession Fee of Sixty-percent of the Monorail net operating income, exclusive of Non-Fare Revenue, without a minimum guaranteed amount.
- A Non-Fare Revenue fee of \$30K per year for 2019, 2020, and 2021. The Non-Fare Revenue fee will increase to \$90K in 2022 and be adjusted in 2025 and every three years thereafter by the accumulated change in CPI-U (coincident with the inflation driven fare increases).
- A City Services Fee of \$50K, beginning January 1, 2019 and adjusting annually thereafter by the change in CPI-U.
- A City Management Fee as stipulated through 2021, increasing to \$50K in 2022, and adjusting every three years thereafter by the accumulated change in CPI-U (coincident with the inflation driven fare increases).

ORCA Adjustments and City Provided Backstops

Adjustment for foregone ORCA Passport fares during the ORCA Passport phase in period –

“Foregone ORCA Passport fares” refers to those fares not remitted by King County due to the phase-in of the ORCA Passport program. As a new member to the ORCA program, the Monorail will be priced into the Passport product as existing contracts between ORCA and participating entities come up for renewal. During this phase-in period, passengers utilizing the ORCA Passport product may use the Monorail, but no fare will be remitted to the City (and ultimately SMS) until such time as the Passport agreement for the business partner providing the ORCA pass to the Monorail rider has renewed. As time progresses, the City (and SMS) will begin receiving a portion of each Passport product sale as each Passport agreement is renewed, a phasing process that will transition from 0% to 100% over the following eighteen months.

SMS and Seattle Center have contrasting views as to whether ORCA integration itself will drive sufficient Monorail ridership growth to overcome the financial impact of foregone ORCA Passport fares during this phase-in period. SMS holds the view that they will not, and Seattle

Center is optimistic that they will. Nonetheless, the parties agree that if Seattle Center's view proves correct and that total paid fares (that is, not including foregone fares) are greater than 2,000,000 riders (approximately 95% of the historical average from 2016 thru 2018), then any financial hardship to SMS is offset by ORCA-driven ridership growth and no adjustment to SMS' payments to the City is warranted. On the other hand, if that is not the case, then the parties agree that SMS's payment to the City will be reduced by one-third of the difference between the historical average and the actual paid fares, multiplied by the average ORCA Passport fare due, as defined in the ORCA Affiliate Agreement, for the period beginning on the implementation date and ending eighteen months thereafter.

City Provided Backstops -

The ORCA program has system-wide software settings and regionally accepted protocols that may have adverse financial impacts on SMS beyond what has already been addressed through other elements of this LOA, therefore the parties agree that the City will "backstop" potential "Annual ORCA Revenue Impacts" on SMS. Annual ORCA Revenue Impacts are those resulting from ORCA Monorail riders that make a free Monorail return trip due to ORCA's system-wide free 2-hour transfer window (Internal Transfers); to backstop SMS's financial exposure the City will:

1. For the first \$100,000 of Annual ORCA Revenue Impact (Internal Transfers), the City of Seattle will offset SMS' share of the impact through SMS deducting from the City's concession fee the fraction of Annual ORCA Revenue Impact that is equal to the percentage of the SMS NOI share.
2. If the Annual ORCA Revenue Impact (Internal Transfers) exceeds \$200,000 during or after the second full year of ORCA acceptance, then during a one-year waiting period in which the offset mentioned in Section 1 herein shall still apply, the City shall work with King County to change the ORCA protocols applied to the Monorail through the Affiliate Agreement so that the initial ORCA "tap" results in the card holder receiving round-trip passage good for that day and be recorded in the ORCA system as a round trip fare on the condition that SMS, the City, and King County are able to develop and implement a combination of ORCA rules/protocols and operational procedures to safeguard against double-charging riders for a single round-trip. This protocol shall begin at the conclusion of the one-year waiting period and remain in effect until ORCA can implement a system to prohibit internal transfers on the monorail. Should round trip fares be implemented then beginning in January of the following year the City will no longer offset SMS share of the Annual ORCA Revenue Impact (Internal Transfers).

Term

The current Concession Agreement establishes a 10-year term, commencing on January 1, 2015 and ending December 31, 2024 and provides an option for an addition 10-year term by mutual agreement of the parties. The initial term together with the option period extend to December 31, 2034.

The parties agree to modify the current term to include the option period so that the term will extend through 2034.

Additional Non-Fare Revenue Term

The maximum allowable concession term under Federal Transit Administration (“FTA”) rules is limited to 20-years in total. As applicable in this case, that requires the current (and amended) Concession Agreement to terminate on December 31, 2034. That time period limits the duration in which SMS can recover its investment in Westlake Improvements, if it is able to implement them.

The parties hold that an annual Improvement Expense of more than \$1.1M would unduly burden the operation and be in neither party’s interest. The FTA maximum allowable concession term provides just over 13-years of SMS operation after the improvements would be made. The parties wish to not overly constrain SMS funding of improvements and therefore agree that if, after factoring in the Westlake Improvements newly leased spaces and security and janitorial costs, the remaining balance of the maximum \$1.1M annual Improvement Expense is not sufficient to fully amortize SMS’ funded improvements during the concession term, then SMS’s Non-Fare Revenue rights will continue beyond the term of the concession rights, and that the Non-Fare Revenue fee paid to the City by SMS will continue. This additional Non-Fare Revenue Term will be 5-years (2035 thru 2039).

Other Miscellaneous Items

- The Concessionaire’s Management Fee is stipulated in the current Concession Agreement as 5% of Total Revenues, including Non-Fare Revenue. The parties agree to amend this so that it does not include Non-Fare Revenue.
- The current Concession Agreement sets SMS’ annual Irrevocable Renewal Account (IRA) contribution level at 7.5% of ridership revenue. The parties agree that beginning in 2022, the contribution level will decrease to 5% of ridership revenue and remain at that level for the remainder of the term. At the end of the term, any uncommitted IRA fund balance will be applied first to cover any accumulated negative Monorail net operating income during the term and then as set forth in the current Agreement.
- The current Concession Agreement includes a provision that establishes an Irrevocable Marketing Account and sets SMS’ contribution level to it at 0.6% of ridership revenue. The parties agree to eliminate this provision effective January 1, 2019.
- The current Concession Agreement requires free Monorail passage for Seattle Center employees. The Parties agree to eliminate this provision and require Seattle Center and all City badged employees to use their City provided ORCA smart card. SMS understands and agrees that for certain Seattle Center work groups covered by collective bargaining agreements, this current allowance may need to continue until the labor contract changes.
- The current Concession Agreement requires that quarterly installments of the Concession Fee be paid within 30 days after the end of each calendar quarter. The parties agree to alter this provision so that quarterly Concession Fee payments become due within 30 days of the City’s remittance of all ORCA revenues for the respective calendar quarter.
- The current Concession Agreement allows the Seattle Center Director, upon such official’s sole determination in redeveloping Seattle Center (consistent with the Seattle Center Master Plan) to materially alter the Monorail system without recourse by SMS. The parties agree to temper this language through affirmative mention that the Monorail system is vital to Seattle Center and critical to achieving the Master Plan and that the Director will work with SMS to minimize any disruptions and mitigate their impacts. Further, the parties agree that if, through no fault of SMS, the City causes through action or omission within its control the concession term or additional

ancillary term to be cut short, the City will remit to SMS the then remaining unamortized portion of its funded improvements.

Conclusion

To accomplish all that is envisioned by this Letter of Agreement, the parties together and separately will be working multiple elements on parallel tracks, each with its own timeline. For instance, SMS has begun discussions with Westlake Center, but these may not conclude before City Council action is taken or be successful. Similarly, certain notice periods and lead times are required to implement ORCA and change fares.

Therefore, we each pledge to move forward on all fronts with openness between us, due prudence, and urgency.

Lastly, while the parties agree as to the terms and conditions of this Letter of Agreement and to mutually comply with its provisions until the Agreement is amended, we understand that the Concession Agreement can only be formally amended after approval to do so by the City Council.

Signed:



Robert Nellams, Director
Seattle Center

9/6/19
Date



Tom Albro, Manager
Seattle Monorail Services LLC

9/6/2019
Date

Attachment: Agreement for Use of ORCA System by an Affiliate