



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 119655

Record No.: CB 119655

Type: Ordinance (Ord)

Status: Passed

Version: 2

Ord. no: Ord 125942

In Control: City Clerk

File Created: 09/06/2019

Final Action: 10/04/2019

**Title:** AN ORDINANCE relating to the Seattle Monorail; approving a letter of agreement between Seattle Monorail Services, LLC and the Seattle Center Department; authorizing the Seattle Center Director to negotiate and execute an amendment to the Monorail Concession Agreement previously authorized by Ordinance 124674, on terms consistent with the letter of agreement, which include but are not limited to implementation of One Regional Card for All (“ORCA”) smartcard as a form of fare payment on the Monorail, alignment of the Monorail fare structure with ORCA and amendment of other fare types, establishment of a triennial schedule for future inflation based fare adjustments, extension of the term of the concession agreement through 2034, and extension of the concessionaire’s right to pursue Monorail system non-fare revenues through 2039 conditioned upon concessionaire making privately-funded improvements to the Westlake Station; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Juarez

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

**Attachments:** Att 1 - Letter of Agreement, Monorail ORCA and Improvements, Att 1 Ex A - ORCA Affiliate Use Agreement

**Drafter:** denise.wells@seattle.gov

**Filing Requirements/Dept Action:**

### History of Legislative File

Legal Notice Published:

Yes

No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	09/10/2019	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	09/10/2019	sent for review	Council President's Office			

- Action Text:** The Council Bill (CB) was sent for review. to the Council President's Office
- 1 Council President's Office                      09/13/2019   sent for review                      Civic Development, Public Assets, and Native Communities Committee
- Action Text:** The Council Bill (CB) was sent for review. to the Civic Development, Public Assets, and Native Communities Committee
- 1 City Council                                      09/16/2019   referred                                      Civic Development, Public Assets, and Native Communities Committee
- 1 Civic Development, Public Assets, and Native Communities Committee                      09/18/2019   pass as amended                                      Pass
- Action Text:** The Committee recommends that City Council pass as amended the Council Bill (CB).  
In Favor: 3    Chair Juarez, Vice Chair Bagshaw, Member González  
Opposed: 0
- 2 City Council                                      09/23/2019   passed    Pass
- Action Text:** The Council Bill (CB) was passed by the following vote, and the President signed the Bill:  
**Notes:**  
*Councilmember O'Brien entered the Council Chamber at 5:41 p.m.*
- In Favor: 7    Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Juarez, Councilmember Mosqueda, Councilmember O'Brien, Councilmember Pacheco
- Opposed: 0
- Absent(NV): 2    Councilmember Herbold, Councilmember Sawant
- 2 City Clerk                                      09/27/2019   submitted for Mayor's signature                                      Mayor
- 2 Mayor    10/04/2019   Signed
- Action Text:** The Council Bill (CB) was Signed.
- 2 Mayor    10/04/2019   returned    City Clerk
- Action Text:** The Council Bill (CB) was returned. to the City Clerk
- 2 City Clerk                                      10/04/2019   attested by City Clerk
- Action Text:** The Ordinance (Ord) was attested by City Clerk.
-

CITY OF SEATTLE

ORDINANCE 125942

COUNCIL BILL 119655

AN ORDINANCE relating to the Seattle Monorail; approving a letter of agreement between Seattle Monorail Services, LLC and the Seattle Center Department; authorizing the Seattle Center Director to negotiate and execute an amendment to the Monorail Concession Agreement previously authorized by Ordinance 124674, on terms consistent with the letter of agreement, which include but are not limited to implementation of One Regional Card for All (“ORCA”) smartcard as a form of fare payment on the Monorail, alignment of the Monorail fare structure with ORCA and amendment of other fare types, establishment of a triennial schedule for future inflation based fare adjustments, extension of the term of the concession agreement through 2034, and extension of the concessionaire’s right to pursue Monorail system non-fare revenues through 2039 conditioned upon concessionaire making privately-funded improvements to the Westlake Station; and ratifying and confirming certain prior acts.

WHEREAS, the Seattle Center Monorail was constructed in 1962 by Alweg International of Germany as part of the 1962 Seattle World’s Fair and is an iconic symbol of Seattle; and

WHEREAS, the Monorail trains are a designated Seattle Historic Landmark; and

WHEREAS, the Monorail provides a public transportation link between downtown Seattle and Seattle Center; and

WHEREAS, more than two million riders utilize the Monorail each year; and

WHEREAS, Monorail ridership is anticipated to increase with the opening of a new arena at Seattle Center; and

WHEREAS, Seattle Center issued a Request for Proposals in 2013 to select a concessionaire to operate and maintain the Monorail; and

WHEREAS, Seattle Monorail Services was selected as the preferred provider; and

WHEREAS, Ordinance 124674 authorized execution of the Monorail Concession Agreement with Seattle Monorail Services (“Concession Agreement”) and directed Seattle Center to

1 deliver an analysis of and possible proposal for utilizing the One Regional Card for All  
2 (ORCA) card as a method of fare payment; and

3 WHEREAS, Seattle Center's analysis of fare integration impacts estimated that use of the ORCA  
4 card would increase Monorail ridership, but revenue impacts could be expected during  
5 the early years of integration; and

6 WHEREAS, there are financial impacts associated with accepting the ORCA card, including  
7 administrative agency fees, allocation of fare revenues among agencies for transfers and  
8 adjusted fare categories necessary to align with the regional fare categories; and

9 WHEREAS a planned fare increase will partially address the financial impacts of accepting  
10 ORCA; and

11 WHEREAS, the Concession Agreement anticipates possible amendment to reasonably address  
12 material and adverse operating and/or financial impacts of accepting ORCA cards; and

13 WHEREAS, Seattle Monorail Services has also agreed to utilize private funding, in excess of the  
14 requirements under the current Concession Agreement, to provide improvements to  
15 Monorail station infrastructure to improve Monorail capacity, accessibility, and  
16 connections to other transit systems; and

17 WHEREAS, the Monorail will accept ORCA cards as a method of fare payment effective  
18 October 7, 2019; and

19 WHEREAS, the Seattle Center and Seattle Monorail Services entered into a letter of agreement  
20 outlining the material terms of amendments to the Concession Agreement that are  
21 mutually desirable to implement the ORCA card and to facilitate the capital  
22 improvements; NOW, THEREFORE,

23 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

1 Section 1. As requested by the Director of the Seattle Center (the “Director”) and  
2 recommended by the Mayor, the Letter of Agreement between Seattle Monorail Services, LLC  
3 and the Seattle Center (the “LOA”) attached to this ordinance as Attachment 1 is hereby  
4 approved.

5 Section 2. The Director is authorized to incorporate the terms of the LOA into an  
6 amendment of the Monorail Concession Agreement authorized by Ordinance 124674 (the  
7 “Concession Agreement”). The Director is further authorized to negotiate deletions, additions,  
8 and amendments to the Concession Agreement as the Director deems to be consistent with the  
9 LOA and necessary and advisable to fully incorporate the terms of the LOA into the Concession  
10 Agreement and to negotiate and execute, for and on behalf of The City of Seattle, an amended  
11 and restated Concession Agreement consistent with the substantive terms of the LOA. The  
12 Director is authorized to approve increases to the fares so long as the fares do not exceed the  
13 maximum fares established under the Concession Agreement.

14 Section 3. Prior to its execution, the Director shall submit the amended and restated  
15 Concession Agreement for review to the chair of the City Council’s Civic Development, Public  
16 Assets, and Native Communities Committee.

17 Section 4. The Director’s authority under this ordinance is conditioned upon an amended  
18 and restated Concession Agreement being fully executed no later than December 31, 2019. If  
19 the Director and Seattle Monorail Services, LLC have not come to final agreement on the  
20 incorporation of the LOA into an amended and restated Concession Agreement by December 31,  
21 2019, the Director’s authority under this ordinance shall be of no further effect.

22 Section 5. Any act consistent with this ordinance taken after its passage and prior to its  
23 effective date is ratified and confirmed.

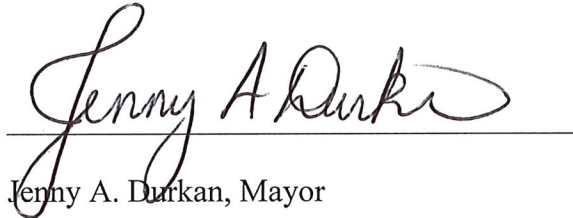
1 Section 6. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 23<sup>rd</sup> day of September, 2019,  
5 and signed by me in open session in authentication of its passage this 23<sup>rd</sup> day of  
6 September, 2019.

7 

8 President \_\_\_\_\_ of the City Council

9 Approved by me this 4<sup>th</sup> day of October, 2019.

10   
11 Jenny A. Durkan, Mayor

12 Filed by me this 4<sup>th</sup> day of OCTOBER, 2019.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)

16 Attachments:

17 Attachment 1 – Letter of Agreement to Implement ORCA, Improve the Monorail System, and  
18 subject to approval, Amend the Monorail Concession Agreement between Seattle Monorail  
19 Services, LLC and the Seattle Center

20 Exhibit A – Agreement for Use of ORCA System by an Affiliate  
21

**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 1<sup>st</sup> 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.

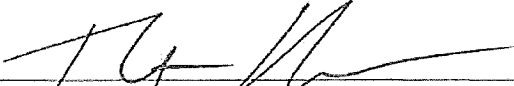
**Conclusion**

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

EXHIBIT A  
**AGREEMENT FOR USE OF ORCA SYSTEM BY AN AFFILIATE**

Table of Contents

	Page
1.0 Definitions	2
2.0 Term	4
3.0 Affiliate's Relationship to the ORCA System and ORCA Agencies	4
4.0 Affiliate's Authorized Use of ORCA Equipment and ORCA System	4
5.0 General Responsibilities	4
6.0 ORCA-Related Customer Service	5
7.0 Provision of ORCA Equipment	6
8.0 Commissioning, Maintenance, Replacement and Return of ORCA Equipment	6
9.0 Data Communications Network	7
10.0 Security	7
11.0 Configuration Data and Fare Tables	7
12.0 Training and Supervision of Affiliate Staff	8
13.0 Confidential Information	8
14.0 ORCA System Data and Information	9
15.0 Costs, Fees and Payments	9
16.0 ORCA System Subject to Change	11
17.0 Discrimination Prohibited	11
18.0 Insurance	12
19.0 Notices	12
20.0 Force Majeure	12
21.0 Termination, Expiration and Close-out of Agreement	12
22.0 Exclusion of Warranties	13
23.0 Legal Relations	14
24.0 Use of ORCA Name and Logo	15
25.0 Maintenance of Records; Right of Access to Records	16
26.0 Assignment	16
27.0 Mutual Negotiation and Construction	16
28.0 Entire Agreement and Written Amendments	16
29.0 Severability	16
30.0 Authority to Execute	16
31.0 Counterparts	16
Attachment A Service Description	
Attachment B ORCA Equipment and Data Communications	
Attachment C Schedule of Regional Costs and Fees	
Attachment D Sponsor Fees	
Attachment E Revenue Allocation	
Attachment F ORCA-Related Customer Services	
Attachment G Security Requirements	
Attachment H Insurance Requirements	

## AGREEMENT FOR USE OF ORCA SYSTEM BY AN AFFILIATE

THIS AGREEMENT is entered into by and between King County ("County" or "Sponsor") and The City of Seattle ("City" or "Affiliate"), which are herein also referred to individually as a "Party" or collectively as "Parties."

### RECITALS

- A. The Parties provide public transportation services within their service areas and, as part of such services, collect fares from riders.
- B. The Sponsor is one of seven "ORCA Agencies" that are parties to that certain Amended and Restated Interlocal Cooperation Agreement for Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System, dated June 13, 2019. ("ORCA ILA"). The other six parties are the Snohomish County Public Transportation Benefit Area ("Community Transit"), the Kitsap County Public Transportation Benefit Area ("Kitsap Transit"), the Central Puget Sound Regional Transit Authority ("Sound Transit"), the State of Washington, acting through the Washington State Department of Transportation, Ferries Division ("Washington State Ferries"), and the Pierce County Public Transportation Benefit Area ("Pierce Transit"), and the City of Everett ("Everett").
- C. Through the ORCA ILA, the ORCA Agencies jointly operate a common, non-cash fare system throughout their service areas in order to improve the availability, reliability and convenience of public transportation services.
- D. The Affiliate desires to enable use of ORCA Cards for fare payment on the Seattle Center Monorail that links with services provided by the Sponsor and other ORCA Agencies.
- E. The ORCA Agencies are willing to allow the Affiliate's use of ORCA Cards for fare payment on its services subject to the terms of Business Rule 300 adopted by the ORCA Joint Board on March 11, 2019.
- F. The Sponsor is willing to sponsor the Affiliate for purposes of the Affiliate's use of ORCA Cards for fare payment on the public transportation services specified herein subject to the terms of this Agreement.
- G. The purpose of this Agreement is to set forth the responsibilities of the Parties and the payments required of the Affiliate in connection with enabling its customers to use ORCA Cards on the public transportation services specified herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree to the above Recitals and the following:

#### 1.0 DEFINITIONS

- 1.1 "Affiliate Staff" means the employees of the Affiliate, or an Affiliate's subcontractor if approved and identified in Attachment A, or subsequent amendments thereto.
- 1.2 "Configuration Data" or "CD" means a generic term for data that is sent to a device or host to configure its functionality.



- 1.3 "Change Order" means a change to the ORCA Contract terms, conditions, specifications, scope, schedule or price.
- 1.4 "Change Request" means any written request issued by either the ORCA Contractor or the ORCA Agencies making changes in the ORCA System.
- 1.5 "Confidential Information" means all documents and information which are identified as "Confidential," "Proprietary" or the copyright, trade secret, or other intellectual property of the ORCA Contractor, an ORCA Agency or other persons or entities.
- 1.6 "Consistent Set" means a collection of Configuration Data which is distributed as a single package.
- 1.7 "Day" means a calendar day.
- 1.8 "Device Connections Report" means a detailed list of devices showing when they connected to the data acquisition computer installed for the collection and transmission of data in the ORCA System.
- 1.9 "Fiscal Agent" means the ORCA Agency staff that provide the services authorized by the Joint Board including management of ORCA-related funds.
- 1.10 "Joint Board" means the governing body comprised of a representative from each ORCA Agency as established under the ORCA ILA.
- 1.11 "Operations Manager" means the individual who is approved by, and reports to, the Joint Board and is responsible for the day-to-day administration of the ORCA Contract, consultant contracts, and the combined ORCA Agency activities.
- 1.12 "ORCA" means the trademarked name of the system that enables use of a common fare card on the public transportation services provided by any of the ORCA Agencies.
- 1.13 "ORCA Boardings" means the count of fare card taps on ORCA fare transaction processors.
- 1.14 "ORCA Card" means any smart card used by the ORCA System, including a fare card of any type, an operator card and a training card.
- 1.15 "ORCA Contract" means the contract between the ORCA Contractor and the ORCA Agencies under which the ORCA Contractor designs, implements, operates, and maintains the ORCA System.
- 1.16 "ORCA Contractor" means the vendor, or its successor or assign that is under contract with the Agencies to design, implement, operate, and maintain the ORCA System.
- 1.17 "ORCA Equipment" means all equipment, operator cards, training cards and any other thing provided to the Affiliate to enable its use of the ORCA System, including but not limited to the items listed in Attachment B, or subsequent amendments thereto.
- 1.18 "ORCA Implementation" means the date the ORCA Card begins to be accepted on the Seattle Center Monorail as a fare card.

1.19 "ORCA Participation Fee" means the fee specified in Attachment C, or subsequent amendments thereto, payable to the ORCA Agencies in consideration of the customer services and other support of the ORCA System they provide during the operating phase and their original investments in the development of the ORCA System.

1.20 "ORCA Program Regionally-shared Costs" means the costs that include costs of operating, maintaining, enhancing and replacing the ORCA System and equipment during the operating phase that are approved by the Joint Board for cost-sharing among the Agencies.

1.21 "ORCA System" means the system implemented by the ORCA Agencies to use smart cards as the common media for fare payment on their public transportation services, including the equipment, software and systems, facilities, ORCA Cards, ORCA Products, websites, data, information, and any other products and services related to the system.

1.22 "Security Incident" means, in the ORCA System, technical failures or breaches of ORCA System safeguards; revalue or payment instrument actions that indicate possible fraudulent activity; denial of service attacks; transaction anomalies suggesting misuse of fare payment or disposable cards; breaches of access privileges; wireless LAN security breaches or denial of service; breaches of the information classification system, theft of card stock, devices or other ORCA Equipment; misuse of ORCA System network facilities for unrelated purposes; and alarms or other events deemed to constitute an incident.

1.23 "Sponsor Fee" means the fee specified in Section 15.3 to cover the Sponsor's costs of administering this Agreement and performing the other support activities described in this Agreement including but not limited to staff training, ordering and delivering ORCA Equipment, processing repair/replacements of ORCA Equipment, providing device connection, revenue apportionment and ridership reports.

## **2.0 TERM**

This Agreement shall take effect upon the date below when it has been signed by all parties ("Effective Date"). Unless terminated earlier in accordance with Section 21.0, this Agreement shall continue in effect for the initial Term specified in Attachment A Service Description, attached hereto. This Agreement will be automatically extended for successive calendar years unless either Party gives written notice to the other Party by August 31 that it does not agree to an extension to cover the next calendar year, in which case the Agreement will expire on December 31 of the then-current year.

## **3.0 AFFILIATE'S RELATIONSHIP TO THE ORCA SYSTEM AND ORCA AGENCIES**

3.1 The Affiliate acknowledges and agrees that: (a) its sole rights and obligations in connection with the ORCA System are defined in this Agreement; (b) it is not a party to, or a third-party beneficiary of, the ORCA ILA, the ORCA Contract, or any other ORCA contracts; and (c) it is not entitled to representation on the Joint Board established under the ORCA ILA.

3.2 The Seattle Center Monorail, Affiliate's transportation service authorized to use the ORCA System, shall be identified as a service of the Sponsor within the ORCA System. The Affiliate acknowledges and agrees, however, that it is solely responsible for the provision of such transportation service.

## **4.0 AFFILIATE'S AUTHORIZED USE OF ORCA EQUIPMENT AND ORCA SYSTEM**

Subject to the duration and other terms and conditions of this Agreement, the ORCA Agencies hereby grant a revocable license to the Affiliate and the Affiliate Staff to use the ORCA Equipment for the sole purpose of enabling use of ORCA Cards presented by customers for proof of fare payment on its service, as described and limited in Attachment A, Service Description, or subsequent amendments thereto.

## **5.0 GENERAL RESPONSIBILITIES**

### **5.1 The Affiliate shall:**

- 5.1.1 Comply with all ORCA-related rules as provided by the Sponsor.
- 5.1.2 Report any ORCA System problems to Sponsor.
- 5.1.3 Respond to Public Disclosure requests addressed to the Affiliate in accordance with the Public Disclosure Act (Ch. 42.56 RCW).
- 5.1.4 Establish and maintain procedures and responsibilities with the Sponsor for handling incidents and emergencies related to the ORCA System. Provide a designated contact to the Sponsor who will be available within two (2) hours' notice, to respond to such incidents and emergencies.
- 5.1.5 Review device connections, apportioned revenue, and ridership reports provided via the Sponsor and promptly notify the Sponsor of any errors.
- 5.1.6 Forward all media and public information requests involving the ORCA System to Sponsor for response.
- 5.1.7 Not add to or modify any ORCA Equipment, software or Sponsor-provided documentation.
- 5.1.8 Give notice to the Sponsor no less than ninety (90) calendar days prior to the implementation date of any changes in fares and fare policies. Said notice shall be in writing and shall be accompanied by a written report of possible effects of such changes on the ORCA System. Changes in fares and fare policies that require changes to the ORCA System must be submitted through the ORCA change management process established by the ORCA Joint Board and may require longer to implement. The Sponsor will request a Change Order or Change Request as needed.
- 5.1.9 Manage network equipment to enable connectivity between the fare transaction processors and system servers.

### **5.2 The Sponsor shall:**

- 5.2.1 Serve as the point of contact for the Affiliate for any and all issues related to the Affiliate's use of ORCA Equipment and the ORCA system.
- 5.2.2 Manage system operations for the Affiliate's service including incident management and system repairs.

- 5.2.3 Work with the ORCA Operations Manager to comply with any applicable change management processes in completing all required Change Requests, Change Orders, Contract Amendments, ORCA Equipment orders and other steps necessary to implement the plan.
- 5.2.4 Work with the Affiliate to ensure the Affiliate's compliance with all ORCA-related rules as provided by the Sponsor.
- 5.2.5 Act as point of contact for media communications related to Affiliate's use of the ORCA System.
- 5.2.6 Communicate with the ORCA Contractor to address conditions that adversely affect the use of ORCA Cards, as determined by Sponsor.

## **6.0 ORCA RELATED CUSTOMER SERVICES**

The Parties shall provide the information, promotions and other customer services as defined and assigned to each of them in Attachment F, ORCA-Related Customer Services, attached hereto, or subsequent amendments thereto.

## **7.0 PROVISION OF ORCA EQUIPMENT**

7.1 The Sponsor shall provide the required ORCA Equipment, including sufficient spares, as specified in Attachment B ORCA Equipment and Data Communications, attached hereto, or subsequent amendments thereto.

7.2 The Sponsor is responsible for delivery of ORCA Equipment to the Affiliate's designated facility. The Affiliate assumes possession and control of the ORCA Equipment upon delivery of same to the Affiliate's facility. Affiliate shall take all reasonable and necessary actions to protect such property but, regardless of cause, the Affiliate is thereafter responsible for any damage, theft or other occurrences of loss to the ORCA Equipment that occur prior to redelivery of the ORCA Equipment to the Sponsor's designated facility.

7.3 Legal title to, and ownership of, such ORCA Equipment shall remain with the Sponsor at all times and nothing in this Agreement or in the delivery of possession shall constitute, or be construed to constitute, a transfer to the Affiliate of any right, title, ownership or interest in the ORCA Equipment other than the right to possess and use the Sponsor's property for the purposes authorized under this Agreement.

7.4 The Affiliate shall not encumber, assign, sell or transfer in any way, in whole or in part, the ORCA Equipment or any interest therein.

7.5 At all times, the Affiliate shall maintain an accurate inventory record of all ORCA Equipment provided to it under this Agreement and make said record available to the Sponsor upon request.

7.6 The Sponsor shall order parts and peripherals as available for the Affiliate's use under the terms of this Agreement. The Sponsor shall advise the Affiliate of typical lead times for delivery of parts and peripherals but makes no guarantees of delivery by a date certain.

7.7 The Affiliate shall allow access to its facilities and assist the Sponsor and the ORCA Contractor with any necessary site surveys, installation, commissioning and maintenance functions under the ORCA Contract.

7.8 The Affiliate shall not install any patches, upgrades, service packs, or any other software on, or otherwise attempt to modify, the ORCA Equipment.

## **8.0 COMMISSIONING, MAINTENANCE, REPLACEMENT AND RETURN OF ORCA EQUIPMENT**

8.1 The Sponsor shall manage communications and tasks with the ORCA Operations Manager and the ORCA Contractor for the installation, commissioning, maintenance and replacement of the ORCA Equipment provided to the Affiliate under this Agreement.

8.2 The Sponsor shall verify that all ORCA Equipment has been correctly entered into the ORCA Contractor's systems.

8.3 The Affiliate shall comply with all applicable operational and maintenance activities specified in any Operations and Maintenance manuals, Service Bulletins and other procedures provided by the Sponsor.

8.4 The Affiliate shall review the Device Connections Report provided by the Sponsor and promptly notify the Sponsor if any devices assigned to the Affiliate are not connecting as required.

8.5 In the event a unit of ORCA Equipment is damaged or appears to be malfunctioning in any way, the Affiliate shall deliver said unit to the Sponsor. The Affiliate shall complete a Return Materials Authorization (RMA) form and shall comply with all other processes required by the Sponsor.

8.6 The Affiliate shall reimburse the Sponsor for the costs, if any, incurred by the Sponsor in connection with the shipment, repair and/or replacement of ORCA Equipment.

8.7 The Affiliate agrees that it will return the ORCA Equipment to the Sponsor's designated facility within twenty (20) days after the expiration or termination of this Agreement. The Affiliate shall redeliver the ORCA Equipment in the same condition as it was when delivered to the Affiliate, reasonable wear and tear excepted. The Affiliate shall reimburse the Sponsor for replacement and repair costs associated with any ORCA Equipment not redelivered as required by this section.

## **9.0 DATA COMMUNICATIONS NETWORK**

9.1 If, and to the extent specified in Attachment B, ORCA Equipment and Data Communications, the Affiliate shall be responsible for providing and maintaining the lines, networks, equipment, and/or software needed for the secure communication of data between the ORCA Equipment, the Sponsor and/or the ORCA central system.

9.2 Regarding any applicable communications services and systems, the Affiliate shall:

9.2.1 Install security patches, bug fixes, updates and upgrades as needed to support ORCA operations;

9.2.2 Notify the Sponsor of any planned outage at least two (2) business days in advance;

9.2.3 Report to the Sponsor any unplanned outage or other issues within two (2) hours after the outage or issue is discovered; and

9.2.4 Repair and reinstate communications within thirty-six (36) hours from the discovery of a network outage.

## **10.0 SECURITY**

The Affiliate shall comply with the secure equipment storage and incident reporting requirements under Attachment G, Security Requirements, attached hereto or subsequent amendments thereto.

## **11.0 CONFIGURATION DATA AND FARE TABLES**

11.1 The Affiliate shall provide data required to update fare table and other service information updates to the Sponsor at least seventy-five (75) days in advance of the date any changes will take effect.

11.2 The Sponsor shall:

11.2.1 Verify that the Affiliate's Configuration Data (CD) does not conflict with the Sponsor data.

11.2.2 Integrate the Affiliate data into the Sponsor CD for the ORCA Contractor to distribute to Sponsor and Affiliate devices.

11.2.3 Create a new Consistent Set and CD for Affiliate as required.

11.3 At the request of the Sponsor, the Affiliate will participate in Agency-specific and regional testing and test script development as may be required, using regional or other test beds or test configurations of CD.

## **12.0 TRAINING AND SUPERVISION OF AFFILIATE STAFF**

12.1 The Sponsor and the Affiliate shall be responsible for the training of Affiliate Staff.

12.2 The Affiliate shall establish personnel practices for Affiliate Staff that ensure security of the ORCA System including but not limited to immediate reporting of any loss or theft of any ORCA Equipment.

12.3 The Affiliate shall monitor use of the ORCA Equipment by Affiliate Staff and promptly correct and report to the Sponsor any inconsistencies with the requirements of this Agreement.

## **13.0 CONFIDENTIAL INFORMATION**

13.1 The Affiliate may use Confidential Information only for its activities as authorized under this Agreement. The Affiliate shall take reasonable measures to prevent any unauthorized use, disclosure, copying, dissemination or distribution of Confidential Information. Without limiting the foregoing, the Affiliate specifically shall:

13.1.1 Ensure that proper and secure storage is provided for the Confidential Information.

- 13.1.2 Not make notes or allow notes to be made except as necessary in connection with an authorized purpose;
- 13.1.3 Make the Confidential Information available only to those employees or other persons who have a need to know for an authorized purpose; and retrieve the Confidential Information from such person upon termination of employment or any need to know for an authorized purpose;
- 13.1.4 Make copies or excerpts of the Confidential Information only as reasonably required for the authorized purpose;
- 13.1.5 Not deliver, distribute, display, demonstrate or otherwise make available the Confidential Information to any person(s) except as allowed with the prior written consent of the Sponsor;
- 13.1.6 Not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature; and
- 13.1.7 Take all reasonable steps to prevent unauthorized use or disclosure of Confidential Information and to regain possession of Confidential Information if unauthorized use or disclosure is discovered.
- 13.1.8 Promptly enforce any violation of the Nondisclosure Agreements referred to above.
- 13.1.9 Immediately notify the Sponsor if the Affiliate becomes aware of any loss or unauthorized use, access, copying or disclosure of any of the Confidential Information.

13.2 The Affiliate will maintain copies of all Nondisclosure Agreements and will provide copies to the Sponsor upon request.

13.3 If a public disclosure request under the Washington Public Disclosure Act, RCW 42.56 et seq., is made for Confidential Information or the Affiliate is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose Confidential Information, the Affiliate must immediately notify the Sponsor of the public disclosure request or legal requirement and use its best endeavors (without breach of applicable law) to delay and withhold disclosure until the Sponsor or the ORCA Contractor has had a reasonable opportunity to oppose disclosure by lawful means.

13.4 The Affiliate shall destroy all Confidential Information provided to it in accordance with record retention requirements set forth in this Agreement and in applicable law.

13.5 The requirements of this Section 13 shall survive the expiration of this Agreement.

#### **14.0 ORCA SYSTEM DATA AND INFORMATION**

14.1 The Sponsor shall provide to the Affiliate the following ORCA System reports as they relate to the routes/service specified in Attachment A or subsequent amendments thereto.

14.1.1 Daily Device Connections

14.1.2 Financial reports

- 14.1.3 Daily ridership reports
- 14.1.4 Monthly ORCA Boardings by Fare and Passenger Type
- 14.1.5 Monthly Boardings by Product Type
- 14.1.6 Monthly Boardings by Route

14.2 The Sponsor will provide, upon request, additional data necessary for the Affiliate to meet its reasonable business needs related to the routes/service specified in Attachment A. Sponsor is not required to provide Affiliate with any data related to routes or services other than those identified in Attachment A.

14.3 The Affiliate understands and agrees that the data, reports or other information provided by or related to the ORCA System is and remains the sole property of the ORCA Agencies and nothing shall be construed as a transfer or grant of any copyright or other property interest in such data, reports or information. The ORCA Agencies hereby grant to the Affiliate a non-exclusive license to use any data, reports or information provided by the ORCA Agencies for any lawful purpose related to the administration of the Affiliate's transportation service and this Agreement.

## **15.0 COSTS, FEES AND PAYMENTS**

### **15.1 Regional Participation Fee and Share of Regional Operating Costs**

#### **15.1.1 Annual Participation Fee**

15.1.1.1 In consideration of the customer services and other support of the ORCA System provided by the ORCA Agencies during the operating phase and their original investments in the development of the ORCA System, the Affiliate shall pay an Annual Participation Fee as specified in Attachment C, Schedule of Regional Costs and Fees, as amended from time to time in accordance with Section 15.1.4. The fee shall be invoiced by, and paid to, the ORCA Agencies' Fiscal Agent annually in the fourth quarter retroactively for the prior twelve (12) months. For the first Annual Participation Fee, the Affiliate will be billed in the fourth quarter of the year following the start-up year for the appropriate portion of the start-up year plus the current calendar year.

#### **15.1.2 Annual Regional Operating Costs**

15.1.2.1 The Affiliate shall pay its percentage share of the actual Annual Regional Operating Costs. The Affiliate's percentage share shall be determined in accordance with Attachment C, as amended from time to time in accordance with Section 15.1.4. Attachment C also includes a sample estimate of the ORCA Program Regionally-shared Costs based on the budget adopted by the Joint Board.

15.1.2.2 The Affiliate's share of the Annual Regional Operating Costs will be charged to the Affiliate retroactively to the date of ORCA Implementation. The Annual Regional Operating Costs will be calculated annually. One fourth (1/4) of the annual amount will be billed each quarter and will be pro-rated for the first quarter if ORCA equipment is not in active service for a full quarter. The Annual Regional Operating Costs shall be invoiced by, and paid to, the Sponsor.



- 15.1.3 Following the start-up year of the Agreement, the Affiliate's percentage share of total ORCA Boardings shall be determined annually at the same time as the ORCA Agencies' shares are determined and in accordance with Attachment C, as amended from time to time in accordance with Section 15.1.4.
- 15.1.4 Not later than August 31 of each year, the Sponsor, on behalf of all the ORCA Agencies, and the Affiliate shall sign a written amendment of Attachment C to adjust the Affiliate's percentage share and to include the budget estimates of the Annual Regional Operating Costs adopted by the Joint Board for the next calendar year. Unless the Parties agree otherwise, if an amended Attachment C is not signed by August 31, the Affiliate shall be deemed to have indicated that it is unwilling to extend this Agreement and this Agreement shall expire on December 31 in accordance with Section 2.0.

## 15.2 Reimbursements

The Affiliate shall reimburse the Sponsor for actual payments made by the Sponsor to the ORCA Contractor or any other third party for any added costs incurred in connection with the Affiliate's use of the ORCA System, including but not limited to any costs for system revisions, ORCA Equipment, site surveys, commissioning and decommissioning, "per transaction" fees (if any) and "per incident" maintenance fees (if any). The Affiliate understands and agrees that the actual costs shall be included in the Sponsor's invoice after they are incurred and shall be due and payable by the Affiliate when due by the Sponsor.

## 15.3 Sponsor Fee

- 15.3.1 The Affiliate shall pay to the Sponsor the amounts specified in Attachment D, Sponsor Fees, attached hereto and as subsequently amended, to cover its costs of administering this Agreement and performing the other support activities described in this Agreement including but not limited to staff training, ordering and delivering ORCA Equipment, processing repair/replacements of ORCA Equipment, providing device connection, revenue apportionment and ridership reports. The Sponsors Fees shall be pro-rated for the first and last years of ORCA Implementation if not in service for a full year. The Sponsor Fee shall be invoiced quarterly.
- 15.3.2 Not later than August 31 of each year, the Sponsor and the Affiliate shall sign a written amendment of Attachment D Sponsor Fees for the next calendar year. Unless the Parties agree otherwise, if an amended Attachment D is not signed by August 31, the Affiliate shall be deemed to have indicated that it is unwilling to extend this Agreement and this Agreement shall expire on December 31 in accordance with Section 2.0.

## 15.4 Allocation of ORCA Revenue

- 15.4.1 The Sponsor shall pay to the Affiliate the ORCA revenue allocations the system assigns to the ORCA Boardings on the routes/service described in Attachment A, or subsequent amendments thereto. Said allocations, and the times when they are determined and payable, are described in Attachment E, Revenue Allocation, attached hereto, or subsequent amendments thereto.

- 15.4.2 The payment of ORCA revenue to the Affiliate shall be based solely on the data produced by the ORCA System. The Affiliate understands and agrees that it will not receive any revenue allocation for ORCA transactions occurring on the Affiliate's routes/service if data about such transactions is not collected and successfully transmitted within seven (7) days of collection, whether due to failure of a customer's ORCA Card, failure of the ORCA Equipment, customer failure to load value, operator error or any other reason, known or unknown.

#### 15.5 Invoicing of Affiliate Payments

- 15.5.1 The Sponsor shall provide Affiliate with a quarterly invoice that itemizes the payments due to the Sponsor under Section 15.1.2, Section 15.2 and Section 15.3.
- 15.5.2 In the fourth quarter of each calendar year, the Fiscal Agent shall provide Affiliate with an invoice for the Annual Participation Fee under Section 15.1.1.
- 15.5.3 All payments under this Section shall be paid within thirty (30) days of the date of the invoice.

#### 16.0 ORCA SYSTEM SUBJECT TO CHANGE

The ORCA Agencies seek to continually improve and enhance the ORCA System. The Affiliate understands and agrees that aspects of the ORCA System may be changed, suspended or terminated from time to time without agreement by the Affiliate, subject to the Affiliate's right to terminate this Agreement for convenience in accordance with Section 21.0.

#### 17.0 ORCA REGIONAL DAY PASS

The Affiliate may opt out of the regional day pass if 1) the next gen ORCA technology allows it and 2) all transit agencies allow the ability to opt-out via policy. All transit agencies participating in ORCA would need to agree to this change in policy.

#### 18.0 EVENT FARES

The Sponsor will make a good faith effort to deliver by June 1, 2020, options for the Affiliate to charge an event fare for ORCA riders. The Affiliate understands that implementation of such a fare may be contingent on approval by the Joint Board and that if ORCA system changes are required, then the Affiliate will be responsible for paying for those changes.

#### 19.0 DISCRIMINATION PROHIBITED

The Affiliate shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, gender identity or expression, age, or presence of any sensory, mental, or physical handicap in the administration of its transportation services, use of the ORCA System or the performance of any acts under this Agreement. The Affiliate shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

#### 20.0 INSURANCE

Insurance coverages, if required of the Affiliate, are specified in Attachment H Insurance Requirements, attached hereto.

## **21.0 NOTICES**

Each Party shall identify a designated ORCA representative for purposes of sending and receiving inquiries and notices regarding this Agreement. The list of designated representatives is made a part of this Agreement as Attachment A Service Description. Each Party shall immediately notify the other Parties of any changes to its designated representatives' contact information.

Any notice required to be given under the terms of this Agreement shall be directed either by email or regular mail to the other Party's designated ORCA representatives, as specified in Attachment A, or to the last person and address provided by a Party in accordance with this Agreement. All inquiries and notices shall be deemed received one (1) business day after being emailed and three (3) business days after hard copy mailing.

## **22.0 FORCE MAJEURE**

Either Party shall be excused from performing its obligations, except as otherwise provided, 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; acts of terrorism; 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 breach, fault or negligence of the Party not performing.

In no event, however, shall this provision eliminate the obligation to make payments in accordance with this Agreement.

## **23.0 TERMINATION, EXPIRATION AND CLOSE-OUT OF AGREEMENT**

23.1 Each Party may terminate this Agreement, in whole or in part, for any or no reason including but not limited to its convenience; provided, however, the Party terminating the Agreement shall provide the other Party at least one hundred twenty (120) calendar days' advance written notice of intent to terminate. Such termination shall designate an effective date at the end of full month that is at least 120 days after the notice is received.

Provided, however, either Party may terminate this Agreement on an expedited basis in the event the other Party fails to comply with a material provision of the Agreement, including but not limited to the payment and security provisions. To terminate this Agreement on an expedited basis, the terminating Party shall serve a Notice of Termination by certified mail (return receipt requested), or other delivery service capable of providing a receipt, on the defaulting Party setting forth the manner in which the defaulting Party is in material breach at least 30 days before the effective date of termination. The defaulting Party shall have ten (10) days to cure the default. If within that time the defaulting Party has not cured the default or provided a plan to cure the default acceptable to the terminating Party, the termination shall take effect on the date specified in the Notice of Termination.

23.2 In the event a Party provides a termination notice or provides notice under Section 2.0 that it is unwilling to extend this Agreement, the following close-out provisions shall apply.

23.2.1 The Affiliate and the Sponsor shall develop a cessation plan for all activities necessary to end the use of the ORCA System on Affiliate's service/routes. The cessation plan shall address at a minimum the plans and schedules for the following:

23.2.1.1 Implementing any changes to the ORCA System.

23.2.1.2 Communications program for Affiliate's customers and any Business Accounts and sales locations that may be affected.

23.2.1.3 Training of the ORCA Agencies' call center staff and the Affiliate's customer service staff.

23.2.1.4 Removal of ORCA-related signage.

23.2.1.5 Final inventory and return of all ORCA Equipment to the Sponsor.

23.2.2 The Affiliate shall be responsible for all of its own costs arising from any termination or expiration of this Agreement.

23.2.3 Through and including the end of the month that is the effective date of any termination or expiration, the Affiliate shall remain responsible for paying the applicable ORCA Participation Fee, Sponsor Fee, share of ORCA Program Regionally-shared Costs and reimbursements as provided in Section 15.0. In addition, the Affiliate shall be responsible for reimbursing the Sponsor and the ORCA Agencies for (i) any costs they incur to implement the cessation plan beyond the activities covered by the monthly fees; and (ii) any actual payments made to the ORCA Contractor or any other third party in connection with removing the Affiliate from the ORCA System.

#### **24.0 EXCLUSION OF WARRANTIES**

THE ORCA SYSTEM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ANY USE OF THE ORCA SYSTEM IS AT THE AFFILIATE'S SOLE DISCRETION AND RISK.

BY WAY OF EXAMPLE AND NOT LIMITATION, THE ORCA AGENCIES AND EACH OF THEM SPECIFICALLY DO NOT REPRESENT AND WARRANT THAT:

- A. THE AFFILIATE'S USE OF THE ORCA SYSTEM WILL BE UNINTERRUPTED, TIMELY, FREE FROM ERROR AND OTHERWISE MEETING ITS REQUIREMENTS;
- B. ANY INFORMATION OBTAINED BY THE AFFILIATE AS A RESULT OF USING THE ORCA SYSTEM WILL BE ACCURATE AND RELIABLE; AND
- C. ANY USE OF THE ORCA EQUIPMENT WILL BE FREE OF DEFECTS, VIRUSES, MALWARE, HACKS OR POTENTIALLY HARMFUL INTRUSIONS.

TO THE EXTENT PERMITTED BY LAW, THE ORCA AGENCIES AND EACH OF THEM DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO: ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; ANY WARRANTIES OF QUIET ENJOYMENT OR NON-INFRINGEMENT; AND ANY WARRANTIES CREATED BY TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE ORCA AGENCIES OR THE ORCA SYSTEM SHALL CREATE ANY WARRANTY.

## 25.0 LEGAL RELATIONS

25.1 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. The Affiliate and each of the ORCA Agencies are independent parties and nothing in this Agreement shall be construed as creating any joint venture, partnership, agency or employment relationship between and among them or their respective employees. 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.

25.2 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.

### 25.3 Indemnification

25.3.1 The Affiliate shall protect, defend, indemnify and save harmless the ORCA Agencies (including the Sponsor), and each of them, from any and all claims, demands, suits, actions, damages, expenses (including attorneys' fees and related costs whether or not litigation is commenced) and liabilities of any kind arising out of or in connection with the intentional or negligent acts or omissions of the Affiliate, its elected officials, officers, officials, employees, agents, subcontractors, and employees of subcontractors in: (a) the performance of the Affiliate's obligations under this Agreement; or (b) the provision of the Affiliate's transportation service described in the Attachment A to this Agreement.

25.3.2 Subject to the exclusions and limits provided herein, the Sponsor shall protect, defend, indemnify and save harmless the Affiliate from any and all claims, demands, suits, actions, damages, expenses (including attorneys' fees and related costs whether or not litigation is commenced) and liabilities of any kind, arising out of or in connection with the intentional or negligent acts or omissions by the Sponsor, its elected officials, officers, officials, employees, agents, subcontractors, and employees of subcontractors in the performance of the Sponsor's obligations under this Agreement.

25.3.3 Each Party agrees that its obligations under this Section 23.3 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 Parties only, and only to the extent necessary to provide the indemnified Parties 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.

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

### 25.4 LIMITATION ON LIABILITY

NEITHER THE ORCA AGENCIES, INCLUDING THE SPONSOR, NOR THE AFFILIATE SHALL BE LIABLE FOR, AND EACH PARTY HOLDS THE OTHER (AND AFFILIATE HOLDS THE OTHER ORCA AGENCIES) HARMLESS FROM, ANY INDIRECT, INCIDENTAL, SPECIAL,

CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCURRED BY A PARTY UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, LOSS OF PRIVACY, LOSS OF DATA, LOSS OF GOODWILL OR BUSINESS REPUTATION, WHEN SUCH DAMAGES ARISE OUT OF OR ARE RELATED TO THIS AGREEMENT OR THE ORCA SERVICES, WHETHER OR NOT ONE OR MORE AGENCIES HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH DAMAGES ARISING.

25.5 Affiliate shall protect, defend, indemnify and save harmless the ORCA Agencies, their elected officials, officers, officials, employees, and agents against claims, demands, suits, actions, damages, or liability (collectively "Claims") for labor protections provided to the other Affiliate's transit employees or contractors under 49 U.S.C. 5333(b) that are based upon an ORCA Agency's 13(c) agreement or arise out of, are connected to, or are materially related to the commencement, operation, modification, or termination of the service provided under this Agreement. The obligation to indemnify shall apply whether brought under an ORCA Agency's or the Affiliate's 13(c) agreement, or both.

25.6 Governing Law and Forum. This Agreement and all provisions hereof shall be interpreted and enforced in accordance with, and governed by, the applicable law of the State of Washington and of the United States of America without regard to its conflict of laws and provisions. The exclusive jurisdiction and venue for conducting any legal actions arising under this Agreement shall reside in either the Federal District Court or the State of Washington Superior Court, as applicable, that is located in King County. The Affiliate hereby consents to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions regarding this Agreement in other forums.

25.7 Each Party agrees that a Party's failure to exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law will not be deemed to be a waiver or modification of any rights and remedies. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. A waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default and a waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach.

25.8 The provisions of sections 13, 15, 21, 22, 23 and 25 shall survive any expiration or termination of this Agreement to the extent related to any acts or omissions occurring, or any costs or revenue incurred, prior to the date the expiration or termination took effect.

## **26.0 USE OF ORCA NAME AND LOGOS**

The Affiliate understands and agrees that the "ORCA" name and logos are trademarked and that it will not copy or use them and any other trade names, trademarks, service marks, logos, domain names, and other distinctive features or intellectual property of the Agencies without written permission. Any materials developed by the Affiliate referencing the ORCA System or ORCA services must be reviewed by the Sponsor prior to publication to ensure compliance with rules and guidelines established by the ORCA Agencies and provided by the Sponsor.

## **27.0 MAINTENANCE OF RECORDS, RIGHT OF ACCESS TO RECORDS**

For a period and not less than six years from final payment of funds under this Agreement, each Party shall establish and maintain accounts, and keep records and documents, as required by state

law and grant provisions. Any accounts, records and documents related to matters under this Agreement shall be subject to inspection, review or audit by each Party and its auditors.

### **28.0 ASSIGNMENT**

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

### **29.0 MUTUAL NEGOTIATION AND CONSTRUCTION**

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

### **30.0 ENTIRE AGREEMENT AND WRITTEN AMENDMENTS**

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. No oral agreements or modifications will be binding on the Parties and all changes to this Agreement shall be effective only upon a written amendment being signed by all the Parties. Provided, however, Attachments A, B, C, and D may be amended by written amendments signed by the Affiliate and the Sponsor on behalf of all ORCA Agencies.

### **31.0 SEVERABILITY**

In the event any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable or invalid then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of the Agreement which shall remain in full force and effect unless the provisions that are invalid and unenforceable substantially impair the value of the entire Agreement to any party.

### **32.0 AUTHORITY TO EXECUTE**

Each party to this Agreement represents and warrants that: (a) it has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein; and (b) the person(s) executing this Agreement below on the Party's behalf is/are duly authorized to do so and that the signatures of such person(s) is/are legally sufficient to bind the Party hereunder.

### **33.0 COUNTERPARTS**

This Agreement may be executed in counterparts, each one of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the space provided below.

**King County**

By: \_\_\_\_\_  
John Resha  
Assistant General Manager

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

**City of Seattle**

By: \_\_\_\_\_  
Robert Nellams  
Seattle Center Director

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



**ATTACHMENT A**  
**Service Description**

1. Sponsor: King County Metro
2. Affiliate Agency (and Subcontracted service operator, if applicable): City of Seattle and Subcontractor: Seattle Monorail Services
3. Initial Term of Agreement: Date of execution through 12/31/22.
4. Sponsor's Contact Person: Sunny Knott, 206-477-5812, sunny.knott@kingcounty.gov
5. Affiliate's Contact Person for emergency response pursuant to Section 5.1.4: Megan Ching, Seattle Monorail Services, 425-246-9368, meganc@seattlemonorail.com
6. Affiliate's Contact Person for notices pursuant to Section 19: Denise Wells, City of Seattle, Seattle Center Department, [denise.wells@seattle.gov](mailto:denise.wells@seattle.gov), 206-643-5814
7. Affiliate Agency's Rider Information Phone number: 206-905-2620
8. Affiliate Agency's Website: seattlemonorail.com
9. Description (including type, route numbers, quantity, etc.) of Affiliate's service for which the ORCA System will be used: Monorail service from Seattle Center to Westlake. One route, or two if applicable, will be set up in King County fare tables.
10. Transfer points with ORCA Agency services: All ORCA agency services
11. Sponsor's route number(s) for Affiliate's service: 91
12. Existing fare products, including business account products, to be accepted on Affiliate's service: All ORCA products accepted by King County Metro
13. New fare products to be accepted on Affiliate's service (note RFI, CR, CO or Amendment number): n/a
14. Transfer rules and credits (note RFI, CR, CO or Amendment number if changes requested): All existing King County Metro transfer rules apply
15. Fare payment rules (tap on and/or tap off, round trip or single trip): Tap on, single trip

**ATTACHMENT B**  
**ORCA Equipment and Data Communications**

Equipment specific to Affiliate service.

1. ORCA Equipment licensed by Sponsor (type and quantity): 8 Portable Fare Transaction Processors (PFTPs). Chargers, docking stations and operator cards sufficient to support these devices.
2. ORCA Equipment location: PFTPs will be secured at the Monorail offices at Seattle Center or in the ticket booths operated by the Monorail.
3. Description of data communications method and equipment (including location and Party responsible for provision, operation and maintenance): Data will be transmitted wirelessly from a router located in the Monorail office at Seattle Center to the King County tunnel to the Vix backend.
4. Data acquisition computer (DAC) location: King County Sabey Center in Tukwila

## ATTACHMENT C Schedule of Regional Costs and Fees

### 1.0 Calculation of Affiliate's Annual Participation Percentage

1.1 The Affiliate Participation Percentage shall be calculated as follows:  
 $(\text{Affiliate ORCA Boardings}) \div (\text{Regional ORCA Boardings}) = (\text{Affiliate Participation Percentage})$

For example, if Affiliate ORCA boardings were 50 and total Regional ORCA boardings were 10,000, the Affiliate Participation Percentage would be:  $50 / 10,000 = .5\%$

1.2 Assuming launch at September 2019 service change, Affiliate Participation Percentage will be calculated annually as per the table below:

Budget Year:	Affiliate Participation based on actual ORCA boardings:
2019	from launch – 12/31/2019
2020	from 10/1/2019 – 9/30/2020
2021	from 10/1/2020 – 9/30/2021
2022	from 10/1/2021 – 9/30/2022
2023	quarter to quarter as needed

**Note:** The October thru September timing is aligned with the 4<sup>th</sup> quarter invoicing schedule for the Annual Participation Fee, so a full year's worth of data can be used to calculate the Affiliate Participation Percentage.

### 2.0 Annual Participation Fee

2.1 The Affiliate shall pay an Annual Participation Fee calculated as follows:

$$(\text{Regional Project Cost}) \div (11 \text{ years useful life of system}) \times (\text{Affiliate Participation Percentage}) = (\text{Annual Participation Fee})$$

For example, if the Annual Participation Percentage was .5%, the Annual Participation Fee would be:  $\$49,000,000 / 11 = \$4,454,545 * .005 = \$22,273$

2.2 The Annual Participation Fee will be charged to the Affiliate retroactively to the initial use of ORCA equipment and pro-rated for the first year if ORCA equipment is not in active service for a full twelve (12) months.

2.3 The Fiscal Agent will bill the Affiliate once a year in the fourth quarter retroactively for the prior twelve (12) months as shown in the table below. In the start-up year the Affiliate will be billed in December 2020 for the appropriate portion of 2019 plus the 2020 service period.

Service period:	Affiliate billed:
Launch – 9/30/2020	December 2020
10/1/2020 – 9/30/2021	December 2021
10/1/2021 – 9/30/2022	December 2022
10/1/2022 – 12/31/2022	Quarter 1 2023
2023	quarter to quarter as needed

### 3.0 Annual Regional Operating Costs

- 3.1 The Affiliate shall pay its percentage share of the actual Regional Operating Costs calculated as follows:

$(\text{Total Annual Regional Operating Costs} * \text{Actual KCM Share of the Annual Regional Operating Costs}) \times (\text{Affiliate Percentage of Metro Boardings}) = \text{Affiliate's Annual Share of Regional Operating Costs.}$

Affiliate Percentage of Metro Boardings equals Affiliate Annual ORCA boardings divided by Metro Annual ORCA Boardings. For example, if Affiliate Annual ORCA boardings were 50 and Metro Annual ORCA Boardings were 5,000, the Affiliate Participation of Metro Boardings would be:  $50 / 5,000 = 1\%$

And, continuing the example, if the Affiliate Percentage of Metro Boardings was 1% and the approved Operating Budget was fully expended, the Affiliate's Annual Share of Regional Operating Costs for 2019 would be:  $(\$11,678,275 * 61.95\%) * 1\% = \$72,347.$

- 3.2 The Affiliate's share of the actual Annual Regional Operating Costs will be charged retroactively to the date of ORCA Implementation. The Affiliate's Annual Share of Regional Operating Costs will be billed quarterly and pro-rated for the first quarter if ORCA equipment is not in active service for a full quarter.
- 3.3 The Sponsor will bill the Affiliate once a quarter retroactively for the prior quarter. For example, for the service period from Launch thru 12/31/2019, Affiliate will be billed in March 2020.

**ATTACHMENT D  
Sponsor Fees**

**Startup Costs**

System	\$2,660
Equipment	\$3,976
Staff	\$25,600
<b>Total Startup</b>	<b>\$32,236</b>

**Annual Costs - 2019**

Customer, Communications and Services share	\$42,279
General Overhead	\$3,697
PFTP repair + cellular connection	\$5,293
<b>Total Ongoing</b>	<b>\$51,269</b>

## **ATTACHMENT E Revenue Allocation**

### **1.0 Revenue Allocation**

Revenue will be calculated at the end of each month for disbursement to the Affiliate. In general ORCA boarding information is available in the system as follows:

1.1 For boardings using E-purse, final data is available 60 days after the end of the month in which trips were taken. The ORCA Boardings by Product Report will be used to provide the apportioned value that will be disbursed to the Affiliate.

1.2 For boardings using an ORCA Pass Product, final data is available sixty (60) days after the end of the month in which trips were taken. The ORCA Boardings by Product Report will be used to provide the apportioned value that will be disbursed to the Affiliate.

1.3 For boardings using an ORCA Regional Passport, revenue distribution to the City will be phased to follow revenue collection by the ORCA Agencies.

Passport agreements are priced based on the previous 12 months of actual boardings activity. Passport agreements each have a unique renewal schedule and are renewed throughout the year. At approximately 4 months after the Affiliate begins using ORCA equipment, Passport agreements will begin to have Affiliate trips included in the pricing analysis. Pricing for Passport agreements will incorporate additional Affiliate ridership data as it becomes available in the ORCA system.

Revenue distribution will be determined based on the Institutional Transfer Summary Report. 60 days following the month Passport agreements begin to incorporate Affiliate trips and for all future months, the data analyst will run the Institutional Transfer Summary Report to determine the apportioned value to be disbursed to the Affiliate. For the first month during which pricing begins to be incorporated, the Affiliate will be allocated 1/12 of the revenue shown in the report, 2/12 in the second month, 3/12 in the third month and so on. Until approximately 18 months after ORCA Implementation, the Affiliate will be allocated 100% of the Affiliate's revenue shown in the report.

For example, if Affiliate service begins in September 2019, then Affiliate boardings will begin to be incorporated into the Passport agreements in February 2020. 60 days following the end of February 2020, the Institutional Transfer Summary Report will be available to run. Then the Sponsor follows the process outlined in 1.4 of this attachment to provide the revenue to the Affiliate.

In addition, during the initial 18 month transition to 100% revenue distribution for Passport, the Sponsor will provide revenue to the Affiliate based on boardings that include a transfer to or from King County Metro service. This will begin 60 days after the end of the first month in which fares begin to be collected, This revenue, which KCM receives upon ORCA Implementation, will be shared with the Affiliate based on ORCA apportionment rules. This revenue sharing will decrease over time as Passport contracts are renewed and revenue distribution increases. For the three months (the first may be a partial month)

following ORCA Implementation, the Affiliate will be allocated 12/12 of the share of transfer boardings. For the first month during which pricing begins to be incorporated, the Affiliate will be allocated 11/12 of the share of the transfer boardings, 10/12 in the second month, 9/12 in the third month and so on. Until approximately 18 months after ORCA Implementation, the Affiliate will be allocated 0% of the share of transfer boardings.

1.4 The Sponsor will transfer revenue to the Affiliate approximately 30 days from the data being pulled. For example, ridership data for January will be available April 1<sup>st</sup>. The data analyst pulls reports and provides draft revenue distribution for review by the Sponsor contact person identified in Attachment A. After review and approval, the Sponsor contact person will forward the spreadsheet to KCM finance staff for processing.

## **ATTACHMENT F ORCA-Related Customer Services**

### **1.0 Written Information and Signage**

1.1 Sponsor shall provide, and the Affiliate shall distribute from its customer assistance offices, current versions of the following:

- a. General ORCA orientation/promotion materials produced by the ORCA Agencies from time to time.
- b. Rider Alerts produced by the ORCA Agencies from time to time.

1.2 Subject to prior written approval by the Sponsor and compliance with applicable design specifications adopted by the ORCA Agencies, the Affiliate, at its sole expense, may produce and disseminate its own ORCA-related information/promotion material and signage for use on Affiliate's vehicles, facilities, boarding zones, and customer assistance offices.

### **2.0 Websites**

2.1 Subject to prior written approval by the Sponsor and compliance with applicable design specifications adopted by the ORCA Agencies, the Affiliate may refer to use of ORCA cards on its website and may include links to the ORCA websites.

2.2 The ORCA Agencies may include on the ORCA websites a reference to the Affiliate's routes/service covered under this Agreement.

### **3.0 Sales of ORCA Cards and ORCA Products**

The ORCA Agencies shall sell ORCA cards and ORCA Products to Affiliate's customers using the methods and facilities as are generally available. The Affiliate shall not sell ORCA cards or ORCA products.

### **4.0 Customer Calls and Emails**

Calls and emails related to the use of the ORCA cards on authorized Affiliate's routes/service will be handled by the Sponsor in accordance with their established processes.

### **5.0 Retail Revalue Network**

Establishing a Retailer Revalue location within the Affiliate's service area is subject to availability of necessary equipment and prior written approval by the ORCA Agencies.



## **ATTACHMENT G Security Requirements**

1. The Affiliate shall cooperate with, and participate in, any ORCA security-related reviews and investigations, including but not limited to self-assessments and reviews conducted by ORCA Agencies, auditors, outside consultants, insurance providers and the ORCA Contractor and its auditors, contractors and consultants. Such cooperation includes, but is not limited to, allowing access to the Affiliate's facilities and records.
2. The Sponsor will notify the Affiliate of any potential changes to the ORCA Agencies' Security Plan that could apply to the Affiliate's use of the ORCA System.
3. When not being used, ORCA Equipment shall be secured in areas that restrict physical access to individuals whose job responsibilities require access and who are documented as being permitted to access those areas. This access must be restricted using keys or equivalent access systems that limit access to authorized individuals. Documentation must be maintained by Affiliate indicating individuals having access to such areas. Affiliate's staff person responsible for technology security administration shall review such access lists on not less than a quarterly basis.
4. The Affiliate shall perform an annual inventory that includes a count of all ORCA Equipment units that contain Secure Access Modules (SAMs), including those that are not in production such as training equipment and spare equipment.
5. Sponsor will provide, and the Affiliate shall review, the Device Connections Report daily on business days.
6. The Affiliate shall investigate non-reporting devices, any discrepancies identified in the periodic inventory and any other suspected security incident. The Affiliate shall submit a Security Incident Report to the Sponsor within two (2) hours after detecting that a unit of ORCA Equipment appears to be missing or was tampered with, or that some other risk is posed to the ORCA System's security. The Affiliate shall attempt to collect evidence regarding what caused the security incident, and if applicable, who was responsible for the Security Incident. Affiliate shall report its findings to the Sponsor.
7. Subject to public disclosure laws and regulations, any information regarding security incidents shall be coordinated with Sponsor before distribution to the public.
8. The Affiliate shall ensure that any network cabling connected to ORCA System network segments is restricted to secure spaces that are not readily accessible from public areas.
9. Sponsor will manage user access and resetting passwords for ORCA Affiliate staff. ORCA Affiliate will submit an email request to Sponsor's Network Administration Specialist when these tasks are needed.
10. The Affiliate shall maintain separation of duties among information technology staff operating the ORCA System in order to mitigate potential for fraud.

**ATTACHMENT H**  
**Insurance Requirements**

The Affiliate maintains a fully funded self-insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. The parties acknowledge, agree, and understand the Affiliate is self-funded for all of its liability exposures for this Agreement. The Affiliate agrees to provide the Sponsor with at least thirty (30) days' prior written notice of any material change in the Affiliate's self-funded insurance program and will provide the Sponsor with a letter of self-insurance as adequate proof of coverage, if the Sponsor so requests.