

**Joint Board Meeting
March 11, 2019**

Approval item: Business Rule (BR) 300 Approval of New Affiliate and Terms for Agreement Between Affiliate and Sponsor Agency

Purpose: To approve the City of Seattle as an Affiliate in order to allow ORCA Cards to be used for fare payment on the Seattle Monorail, and to approve terms for the Agreement between the City of Seattle and King County to establish and govern the Affiliate relationship.

Business Rule: King County (“Sponsor Agency”) may enter into an agreement with the City of Seattle (“Affiliate”) to allow use of the ORCA Card for fare payment on the Seattle Monorail (“Affiliate Agreement”). The Affiliate Agreement will set forth the responsibilities of the parties and the payments required of the Affiliate.

The provisions listed in *Attachment A ORCA Affiliate Agreement – Required Provisions*, shall be included in the Affiliate Agreement. As the Affiliate, the City of Seattle will pay an Annual Participation Fee to compensate for the region’s capital investment. This fee will be shared among the ORCA agencies proportionally based on their capital shares. In addition King County Metro, as Sponsor, will bill the City for a share of the actual Annual Regional Operating Costs. See below for details.

A. Annual Participation Percentage

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: $50 / 10,000 = .5\%$

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 – 19/30/2019
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

B. Annual Participation Fee:

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

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

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. 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.
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

C. Annual Regional Operating Costs:

1. The Affiliate shall pay its percentage share of the actual Annual Regional Operating Costs calculated as follows:

$$(\text{Actual Regionally-Shared Costs}) \times (\text{Affiliate Participation Percentage}) = (\text{Estimated Affiliate's Annual Share of Annual Regional Operating Costs})$$

For example, if the Annual Participation Percentage was .5%, and the approved Operating Budget was fully expended, the Annual Regional Operating Costs for 2019 would be:

$$\$11,678,275 * .005 = \$58,391$$

2. The Affiliate's percentage share of the actual Annual Regional Operating Costs will be charged 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.
3. The Sponsor will bill the Affiliate once a year in the fourth quarter retroactively for the prior twelve (12) month service period as shown in the table below. In the start-up year, the Affiliate will be billed in 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

Attachment A ORCA Affiliate Agreement – Required Provisions

1. Term: The Affiliate Agreement shall take effect on the date when it has been signed by the parties and shall remain in effect until terminated by one or more of the parties as provided in the Affiliate Agreement.
2. Affiliate's Relationship to the ORCA System and ORCA Agencies:
 - A. The Affiliate's sole rights and obligations in connection with the ORCA System will be defined in the Affiliate Agreement;
 - B. The Affiliate is not a party to, or a third-party beneficiary of, the ORCA Agencies' interlocal agreements or ORCA contracts;
 - C. The Affiliate is not entitled to representation on the Joint Board; and
 - D. The Affiliate transportation service shall be identified as a service of the Sponsor Agency within the ORCA System.
3. Use of ORCA Equipment and ORCA System: The Sponsor Agency may grant a revocable license to the Affiliate and the Affiliate staff to use ORCA equipment for the sole purpose of enabling use of ORCA Cards presented by customers for proof of fare payment on the Affiliate's service.
4. Responsibilities of the Sponsor Agency:
 - A. Serve as the point of contact for the Affiliate for any and all issues related to use of ORCA equipment and the ORCA system.
 - B. Manage system operations for the Affiliate's service including incident management and system repairs.
 - C. Work with the ORCA Operations Manager to comply with any applicable change management processes in completing all required ORCA system contract change requests, change orders, contract amendments, ORCA Equipment orders and other steps necessary to implement the plan.
 - D. Work with the Affiliate to ensure compliance with all ORCA-related business rules, procedures, and policies.
 - E. Train Affiliate staff on the use of ORCA equipment.
 - F. Provide the Affiliate with ORCA System reports as they relate to the routes/services provided by the Affiliate.
 - G. Prior to termination of the Affiliate Agreement, develop a cessation plan with the Affiliate for all activities necessary to end the use of the ORCA system on Affiliate's service/routes.
5. Responsibilities of the Affiliate:
 - A. Comply with all ORCA-related business rules, procedures, and policies as provided by the Sponsor.

- B. Respond to Public Disclosure requests addressed to the Affiliate regarding the ORCA System in accordance with the Public Disclosure Act (Ch. 42.56 RCW).
- C. Establish and maintain procedures and responsibilities with the Sponsor Agency for handling incidents and emergencies related to the ORCA System.
- D. Review device connections, apportioned revenue, and ridership reports provided by the Sponsor Agency and promptly notify the Sponsor Agency of any errors.
- E. Forward all media and public information requests involving the ORCA System to Sponsor Agency for response.
- F. Not add to or modify any ORCA equipment, software or Agency Sponsor-provided documentation.
- G. Give written notice to the Sponsor Agency no less than ninety (90) days prior to the implementation date of any changes in fares and fare policies with a written report of possible effects of such changes on the ORCA system.
- H. Manage network equipment to enable connectivity between the fare transaction processors and system servers.
- I. Distribute general ORCA orientation/promotion materials and Rider Alerts produced by the ORCA Agencies.
- J. Obtain prior written approval from the Sponsor Agency before disseminating the Affiliate's own ORCA-related information/promotion material and signage for use on Affiliate's vehicles, facilities, boarding zones, and customer assistance offices.
- K. Obtain prior written approval from the Sponsor Agency prior to referring to the use of ORCA cards on its website or including links on its website to the ORCA websites.
- L. Not sell ORCA cards or ORCA products.
- M. Not encumber, assign, sell or transfer in any way, in whole or in part, of the ORCA equipment or any interest therein.
- N. At all times, maintain an accurate inventory record of all ORCA equipment provided to it under the Affiliate Agreement and make said record available to the Sponsor Agency upon request.
- O. Not install any patches, upgrades, service packs, or any other software on, or otherwise attempt to modify, the ORCA equipment.
- P. Comply with secure equipment storage, incident reporting, and applicable security requirements.
- Q. Use confidential information only for the activities authorized under the Affiliate Agreement and take reasonable measures to prevent any unauthorized use, disclosure, copying, dissemination or distribution of confidential information.
- R. Not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, 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 the Affiliate Agreement, and to fully comply with all applicable federal,

state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

- S. Maintain insurance as specified in the Affiliate Agreement.
 - T. Protect, defend, indemnify and save harmless the ORCA Agencies, 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 Affiliate's performance of the Affiliate Agreement; or (b) the provision of the Affiliate's ORCA transportation services.
 - U. Hold the Agencies harmless from any indirect, incidental, special, consequential, or exemplary damages incurred by the Affiliate 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 the Affiliate 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.
 - V. Protect, defend, indemnify and save harmless each Agency, its elected officials, officers, officials, employees, and agents against claims, demands, suits, actions, damages, or liability (collectively "Claims") for labor protections provided to the 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 ORCA transportation services provided under the Affiliate Agreement. The obligation to indemnify the ORCA Agencies shall apply whether brought under an ORCA Agency's or the Affiliate's 13(c) agreement, or both.
 - W. Maintain accounts, records, and documents as required by state law and grant provisions, and make such accounts, records, and documents available for review or audit by the Sponsor Agency or its auditors.
6. ORCA Equipment: The Sponsor Agency shall provide the Affiliate with the required ORCA equipment, including sufficient spares, as specified in the Affiliate Agreement and shall retain title to, and ownership of, such ORCA equipment at all times.
7. Data Communications Network:
- A. The Sponsor Agency shall require the Affiliate to 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 Agency and/or the ORCA central system.
 - B. Regarding any applicable communications services and systems, the Sponsor Agency shall require the Affiliate to:
 - (1) Install security patches, bug fixes, updates and upgrades as needed to support ORCA operations;
 - (2) Notify the Sponsor Agency of any planned outage at least two (2) business days in advance;

- (3) Report to the Sponsor Agency any unplanned outage or other issues within two (2) hours after the outage or issue is discovered; and
 - (4) Repair and reinstate communications within thirty-six (36) hours from the discovery of a network outage.
8. ORCA System Data and Information: The data, reports or other information provided to the Affiliate by any ORCA Agency shall remain 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 authorize the Sponsor Agency to 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 ORCA transportation services and the Affiliate Agreement.
9. Reimbursements: The Affiliate shall reimburse the Sponsor Agency for actual payments made by the Sponsor Agency to ORCA contractors or any other third party for any added costs incurred in connection with the Affiliate's use of the ORCA system.
10. Sponsor Agency Fee: The Affiliate shall pay fees to cover the Sponsor Agency's costs of administering the Affiliate Agreement and performing the other support activities related to the Affiliate's use of the ORCA system.
11. Allocation of ORCA Revenue: No changes are made to the ORCA system allocation of revenue to the Sponsor. The Sponsor is responsible for identifying Affiliate boardings and associated revenue for the Affiliate's ORCA transportation services.
12. ORCA System Subject to Change: The Sponsor Agency shall ensure 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.
13. Use of ORCA Name and Logo: The "ORCA" name and logos are trademarked and the Sponsor Agency shall not allow the Affiliate to 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.