

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 22-377

AUTHORIZING THE EXECUTIVE TO SIGN AN AGREEMENT WITH EVERETT
TRANSIT FOR THE PURCHASE OF ORCA BUSINESS CARDS AND ORCA
BUSINESS PASSPORT PRODUCTS

WHEREAS, Snohomish County wishes to continue the ORCA Passport program for the Employee Commute Trip Reduction Program through June 30, 2023; and

WHEREAS, the county has 735 ORCA current employee card holders as August 29, 2022; and

WHEREAS, the ORCA Passport program provides a free transit pass for employees working at the main county campus, 3000 Rockefeller Ave, and the Corrections Bureau facilities at 1918 Wall St and 3025 Oakes Ave. in Everett; and

WHEREAS, the ORCA Passport program provides for unlimited transit transportation access within the ORCA service area for a flat-rate pricing based upon actual program usage; and

WHEREAS, the county's cost for ORCA totaled \$23,942.00 and is based upon county employees program usage from July 1, 2021 through June 30, 2022;

NOW, THEREFORE, ON MOTION, the County Council approves and authorizes the County Executive to execute the attached contract for the purchase of ORCA Business Cards and ORCA Business Passport products for July 1, 2022 through June 30, 2023.

PASSED this 28th day of September, 2022.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Asst. Clerk of the Council



AGREEMENT FOR PURCHASE OF ORCA BUSINESS CARDS AND ORCA BUSINESS PASSPORT PRODUCTS

THIS AGREEMENT (hereinafter, "Agreement") is made and entered into by and among **Snohomish County, a political subdivision of the State of Washington (AKA, Snohomish County Government, AKA Snohomish County** ("Business Account") and **Everett Transit** ("Lead Agency") on behalf of the following agencies, individually referred to as the "Agency" and collectively as the "Agencies" in this Agreement.

The Snohomish County Public Transportation Benefit Area ("Community Transit")

The City of Everett ("Everett Transit")

The King County Metro Transit Department ("King County Metro")

The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")

Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")

The Central Puget Sound Regional Transit Authority ("Sound Transit")

The Washington State Department of Transportation, Ferries Division ("Washington State Ferries")

IN CONSIDERATION of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 PURPOSE

- 1.1 This Agreement establishes the terms under which certain fare payment-related services, referred to herein as "ORCA Services," will be provided to the Business Account, including but not limited to the prices and terms under which the Business Account may purchase and distribute ORCA Business Cards loaded with a Business Passport Product to its Eligible Business Cardholders. Such ORCA Business Cards may be used to access certain Transportation Services of the Agencies. The specific ridership privileges applicable to the Business Passport Product provided under this Agreement are specified in *Attachment 1, Products, Pricing and Terms*, which is incorporated in this Agreement by this reference, and are subject to Sections 6 and 18 below. Businesses must at a minimum cover all benefits-eligible employees except those who work 100% remote. Additional participants can be included. Eligibility is defined in *Attachment 3 Eligible Participants*.
- 1.2 Attachment 1 also establishes the terms under which specific optional products and services (e.g. use of an ORCA Business Card on vanpool; a guaranteed ride home program per *Attachment 6 Guaranteed Ride Home*, attached hereto), if any, shall be provided by one or more individual Agencies.
- 1.3 This Agreement also enables the Business Account to purchase Business Choice Products from the Agencies, via the myORCA.com website, at the prices and terms in effect at the time of purchase.
- 1.4 The Business Account understands and agrees that this Agreement applies to its use of ORCA Services including, but not limited to, its purchase of ORCA Business Cards and ORCA Products. This Agreement does not constitute a contract for transportation services. The Agencies have no obligation to the Business Account or any other entity or person to provide any particular level, frequency or routing of transportation service.

2.0 TERM OF AGREEMENT AND CONTACT PERSONS

- 2.1 This Agreement shall take effect upon the effective date specified in Attachment 1. Unless terminated in accordance with Section 14, this Agreement shall expire on the last day of the Program Term specified in Attachment 1, or an Amended Attachment 1 that has been signed by a person authorized to bind the Business Account.
- 2.2 The Business Account shall designate a Primary Contact Person in *Attachment 2 Designated Representatives*, which is incorporated in this Agreement by this reference. This Primary Contact Person shall be responsible for managing the Business Account's roles and responsibilities under this Agreement. A Secondary Contact Person shall also be designated in Attachment 2. The Lead Agency may communicate with and rely upon either the Primary or Secondary Contact Person on matters relating to this Agreement.

3.0 DEFINITIONS

- 3.1 *Business Account.* The organization, educational or human services institution, government agency or other entity that has entered into this Agreement enabling it to purchase ORCA Business Cards and ORCA Products for distribution to their employees, students, clients or other constituency.
- 3.2 *Business Choice Products.* The ORCA Products that may be purchased at retail prices to supplement the ORCA Business Passport Product for one or more Business Cardholders (e.g. a WSF monthly pass).
- 3.3 *Business Cardholder(s) or Cardholder(s).* The individual(s) whose ORCA cards are loaded by and/or may be provided by the Business Account.
- 3.4 *Business Passport Product.* The ORCA Product loaded on the Business Account's ORCA Business Cards under this Agreement that provides the Business Cardholders an unlimited right-to-ride the regularly scheduled Transportation Services of, or operated by, certain Agencies to the extent specified in Attachment 1.
- 3.5 *Card Close.* An ORCA system action that permanently invalidates an ORCA Card. The Business Account, Lead Agency or Cardholder with access may close cards.
- 3.6 *Card Lock.* An ORCA system process action that prevents an ORCA Business Card from being used until the action is reversed. The Business Account, Lead Agency or Cardholder with access can lock and unlock cards.
- 3.7 *Lead Agency.* The Agency that entered into this Agreement on behalf of itself and the other Agencies and that is responsible for administration of this Agreement on behalf of the Agencies, including invoicing, contract modifications and renewals, and ORCA system support
- 3.8 *ORCA Website.* The myORCA.com website used by the Business Account to manage its account.
- 3.9 *ORCA.* The trademarked name of the system that enables use of a common fare card on the public transportation services provided by any of the Agencies.
- 3.10 *ORCA Business Card (or "Business Card").* An ORCA fare card managed by a Business Account to enable the loading of ORCA Products for use by a Cardholder to whom it was

distributed by the Business Account to access Transportation Services as specified in Attachment 1. These cards must be purchased with the business card profile of full access or the account must be set to have the global ownership flag. The fare card may be a physical card or if approved by the Lead Agency, a virtual fare card application.

- 3.11 *Load-Only ORCA Card.* An ORCA fare card managed by an individual which can be linked to a Business Account with load-only privileges. Load-only privileges allow the Business Account to load products and/or E-purse value. The Business Account does not have the ability to close the card, transfer card balances or check card balance
- 3.12 *ORCA Products.* Any transit fare payment mechanism offered for sale within the ORCA system by any of the Agencies. Examples include, but are not limited to, monthly or period pass, and E-purse.
- 3.13 *ORCA Services.* The materials and services that may be provided, from time to time, under the ORCA program, including but not limited to the ORCA Business Cards, ORCA Products, ORCA Websites, data, information, and any equipment, systems and services related to the ORCA program.
- 3.14 *Parties.* The Business Account and the Agencies (which include the Lead Agency) referred to herein collectively as the "Parties" and individually as a "Party."
- 3.15 *Transportation Services.* Those public transportation services provided by the Agencies that are specified in Attachment 1.

4.0 PRICES AND PAYMENT TERMS

The prices and payment terms applicable to this Agreement are specified in Attachment 1. Such terms shall include: (a) the amounts due for the Business Cards, Business Passport Product, and any other products, services and fees and (b) the timing of payments. Each order submitted by the Business Account for ORCA Business Cards and/or any ORCA Products will be subject to the provisions of this Agreement.

- 4.1 The Business Account's purchase of any Business Choice Products via the myORCA.com website will be at the prices and terms in effect at the time of order. The Business Account is responsible for reviewing the prices in effect before submitting each order and shall be deemed to have agreed to the then-applicable prices by submitting the order.
- 4.2 Payment in full is due as specified in Attachment 1.
- 4.3 If for any reason payment in full is not received by the date due, if a payment is not honored due to non-sufficient funds (NSF), or if for any reason a payment is negated or reversed, the Lead Agency will notify the Business Account of the payment problem and if full and clear payment is not received within ten (10) days of such notification, the Lead Agency may:
 - 4.3.1. Refuse to process new orders for ORCA Business Cards and lock the loading of new ORCA Products by or for the Business Account;
 - 4.3.2. Assess any late payment, NSF and collection fees to the maximum amount permitted by law;
 - 4.3.3. Initiate a Card Lock on the Business Cards issued to the Business Account, rendering them ineffective for use by the Cardholders, until such time as the

Business Account pays the full amount due, including any late payment, NSF and fees, in a manner acceptable to the Lead Agency; and

- 4.3.4. Suspend or terminate access rights to the Business Account's secured area of the website.
- 4.4. In addition to any other obligations it may have under this Agreement and at law, the Business Account agrees to pay to the Lead Agency any reasonable court costs, attorney fees and collection fees incurred in collecting amounts due from the Business Account.
- 4.5. Sound Transit, on behalf of the Lead Agencies, will be responsible for invoicing amounts due per this Agreement.

Payments will be remitted to:

Central Puget Sound Regional Transit
LB 1194
PO BOX 35146
Seattle, WA 98124-5146

Wire/ACH instructions will also be available.

5.0 PURCHASE, MANAGEMENT, DISTRIBUTION AND REPLACEMENT OF ORCA BUSINESS CARDS

- 5.1 *Ordering ORCA Business Cards.* The Business Account shall order ORCA Business Cards via the ORCA Business Accounts Website, in accordance with the directions provided on that website, and shall make payment as provided in Attachment 1. If additional cards are required, the Business Account may be required to pay the standard card fee and other applicable fees as specified in Attachment 1.
- 5.2 *Receipt and Management of ORCA Business Cards.* Upon actual or constructive receipt of the ORCA Business Cards it has ordered, the Business Account shall be responsible for the management of the ORCA Business Cards. The Business Account shall be deemed to have constructively received all ordered ORCA Business Cards unless it notifies the Lead Agency of any non-delivery or incorrect delivery within thirty (30) days after the order was placed. If the Business Account notifies the Lead Agency that it has not received the ordered cards, the Lead Agency will ship a replacement order. If the Business Account subsequently receives the cards reported as missing, the Business Account is responsible for returning them to the Lead Agency.
- 5.3 *Storage and Risk of Loss.* The Business Account is responsible for the storage, distribution and use of the ORCA Business Cards issued to it. The Business Account bears the sole risk of any loss, damage, theft or unauthorized use of one of its cards, whether such card is held in its inventory or has been distributed for use. The Business Account is responsible for the cost of any use of its Business Cards until the effective date of a Card Close or Card Lock that may be initiated as provided below.
- 5.4 *Distance Based Transit Fare.* The Business Account is responsible for communicating to Cardholders that "distance based fares" are charged on some systems such as: Link light rail, and Sounder commuter rail systems. On distance based fare modes, when the Cardholder "taps on," the ORCA system will record the trip to the last stop on the line. When the Cardholder "taps off" at the end of the ride, ORCA will record the actual ride.

The Business Account then will be charged the correct fare for the actual ride taken. If the Cardholder fails to “tap off”, then ORCA will record a ride to the end of the line. The result of not “tapping off” is that the Business Account will be charged the largest fare for the ride even if a shorter ride was taken.

- 5.5 *Distribution of ORCA Business Cards.* The Business Account is responsible for distributing its Business Cards for use by its Eligible Business Cardholders. The Business Account manages all Business Cards it distributes but a cardholder may also purchase and load individual ORCA products on a Business Card. The Business Account understands that a Business Card it distributes to a Cardholder may be linked by the Cardholder to his/her/their personal account on myorca.com as provided in Section 6. The Business Account may not register the Business Cards that are issued under this Agreement to a personal account.

The Business Account shall require that the Cardholder, as a condition of receiving a Business Card, be informed of the Cardholder Rules of Use, incorporated in this Agreement as *Attachment 4 ORCA Business Cardholder Rules of Use*, through the Business Account’s standard means of communicating policies.

The Business Account understands and agrees that it is solely responsible for implementation and enforcement of the Cardholder Rules of Use.

- 5.6 *Proof of payment.* The Business Account is responsible for notifying Cardholders that proof of payment must be made by tapping the ORCA Card on the card reader in the manner required by each Agency; otherwise, the Cardholder may be subject to a fine if the ORCA Card is not tapped, and the Cardholder will be personally responsible for any fines that may be imposed.
- 5.7 *Business Account Access to Personally Identifying Information.* If an individual Cardholder opts to register one of the Business Cards issued to the Business Account, any personally identifying information provided to the ORCA System (e.g. name, address, telephone number, and credit card number) will not be accessible by the Business Account. If the Business Account collects any personally identifying information about individuals to whom it has distributed Business Cards, the Business Account is solely responsible for its collection, use, storage and disclosure of such information.
- 5.8 *Card Locks and Card Close.* In the event a Business Card is determined to be lost or stolen or if a Cardholder is determined by the Business Account to be no longer eligible to use the card, the Business Account may initiate a Card Lock, which is reversible action, or a Card Close, which is a permanent action, via the myORCA.com website to invalidate the subject Business Card. The Lead Agency may also initiate a Card Lock or Card Close to any of the Business Account’s Business Cards at the request of the Business Account, or at the sole discretion of the Lead Agency in accordance with Section 4.3, or if it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder.
- 5.9 *Restoration of Value After Card is Locked or Closed.* Following a Card Lock, a Business Account can request a transfer remaining e-purse funds onto a replacement card. Business Account will be responsible for card replacement fee.
- 5.10 *Card Replacement.* The Business Account is responsible for ordering and paying for any new cards needed to replace Business Cards that for any reason cease to be available or suitable for use by the Cardholders under the program of the Business Account, including but not limited to, if the unavailability or unsuitability is caused by damage, abuse, loss,

theft, Card Close, and end of useful life. Provided, however, and notwithstanding the exclusion of warranties in Section 15, if a Business Card malfunctions within twelve (12) months after it was delivered to the Business Account, it shall be replaced by the Lead Agency without additional charge to the Business Account if the malfunction was caused by a defect in design, material or workmanship and was not caused by misuse, an intentional act, negligence or damage, reasonable wear and tear excepted. The Business Account understands and agrees that to avoid the disruption and inconvenience caused by sporadic failures as its cards are used, it must plan for replacement of its Business Cards on a regular basis. As a condition of continuing under the Business Passport program, the Business Account agrees that it will purchase replacement Business Cards at the then-applicable rate.

6.0 CARDHOLDER USE OF ORCA BUSINESS CARDS

Cardholder Privileges. The Business Account understands and agrees that the Cardholder has the following privileges in connection with the use of an ORCA Business Card.

- 6.1 The Cardholder may present an ORCA Business Card, loaded with a valid, applicable Business Passport or Business Choice Product, to an ORCA fare transaction processor as proof of payment of all or a portion of a required fare on a regular transportation service operated by one or more of the Agencies. (Provided, however, an ORCA Product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a Cardholder will be required to make other payment to the extent a fare is not covered by an ORCA Product.
- 6.2 The Cardholder may individually purchase ORCA Products and load them on the Business Card in addition to any ORCA Product loaded by the Business Account. Individual ORCA Products may be used to pay all or a portion of a required fare on a transportation service not covered by a Business Passport Product or Business Choice Product. (Provided, however, an ORCA Product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a Cardholder will be required to make other payment to the extent a fare is not covered by an ORCA Product.
- 6.3 The Cardholder may link his/her/their name and other contact information with the ORCA system and link such personal information to the serial number of the Business Card provided to him/her. Such registration does not give the Cardholder full access to the card but may give the Cardholder the right to access the myORCA.com website to view the card's transaction history and current stored value, and to add retail products.
- 6.4 The Cardholder's personally identifying information is generally exempt from disclosure under the Washington Public Records Act (Chapter 42.56 RCW) as more specifically outlined in RCW 42.56.330(5).

7.0 BUSINESS RESPONSIBILITIES AND PRIVILEGES RELATING TO LOAD-ONLY CARDS

- 7.1 The Business Account understands that if it links an individual's ORCA card to their Business Account with load-only privileges the Business Account will have limited access. The Business Account will be able to load products and/or E-purse on the account and unlink the card from its account. The Business Account will not be able to close the card, transfer products and/or E-purse value, or view card balance.
- 7.2 When the load-only card holder is no longer eligible for a transit benefit, the Business Account is responsible for unlinking the card from their account.

8.0 NO RETURNS OR REFUNDS

Except as otherwise provided herein or in Section 14.2, the Business Account understands and agrees that its purchases of Business Cards, and Business Passport or Business Choice products purchased for such cards, are final and it is not entitled to any refunds. However, the Business Account may request a refund of the E-purse value remaining on a Business Card if the card is closed. The Lead Agency shall initiate a Card Close and the refund will be processed approximately ten (10) days after the Card Close was initiated. A processing fee of ten dollars (\$10) may be payable by the Business Account to the Lead Agency for each refund that is processed, regardless of number of cards refunded. The Business Account, not the Lead Agency, is responsible for the refunding of such E-purse value, if any, to the individual Cardholder to whom the Business Card had been distributed.

9.0 BUSINESS ACCOUNT WEBSITE

- 9.1. The myORCA.com website is the primary means by which the Business Account shall purchase ORCA Business Cards, Business Passport and Business Choice Products, manage its Business Cards and obtain information about the use of said cards. As a condition of participation in the Business Passport program, the Business Account agrees that it will use the myORCA.com website when it is available and that each access and use of said website shall be subject to the ORCA Terms of Use and ORCA Privacy Statement that are in effect and posted on the myORCA.com website at the time of such access and use.
- 9.2. The Business Account understands and agrees that uninterrupted access to and use of the myORCA.com website is not guaranteed and agrees that it will contact its representative at the Lead Agency by email or telephone if the website is not available.
- 9.3. At the time the Business Account enters into the ORCA program, the Business Account's Primary Contact (Super Admin) will be provided a password to access myorca.com. The Super Admin will be responsible for adding additional admins to the Business Account. The Business Account is solely responsible for managing their account's users. The Business Account is also solely responsible for complying with the security standards specified in *Attachment 5 ORCA Business Account Security Standards*, which is incorporated in this Agreement by this reference.

10.0 INFORMATION PROVIDED BY THE AGENCIES AND THE ORCA SYSTEM

- 10.1 The Business Account understands and agrees that the data, reports or any information provided to it via the myORCA.com website or otherwise, is and remains the sole property of the 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 Agencies hereby grant to the Business Account a non-exclusive license to use any data, reports or information provided by the Agencies, via the myORCA.com website or otherwise, for any lawful purpose related to the administration of the transportation benefits program of the Business Account.
- 10.2 The ORCA System will record data each time an ORCA Business Card is presented to an ORCA device for fare payment and to load a product. Such transaction data includes, but is not limited to, the date, time, and location (or route) of the transaction. The Business Account may routinely access such transaction data related to its Business Cards to the extent provided via the myORCA.com website. Said website and its reports do not provide the Business Account Business Card transaction data linked to card serial numbers for

the purpose of preventing fraud, the Primary Contact Person of the Business Account may submit a written request to the Lead Agency for transaction data related to a specific card number or for a card number linked to a specific transaction. Fraud is defined as intentional deception or misrepresentation by a person with knowledge that it will result in an unauthorized benefit to him, her, or some other person. The submittal is not intended to be used to request data for multiple cards or all cards managed by the Business Account. The written request shall include the following:

- 10.2.1 Card number or the date, time and other known details about the specific transaction for which a card serial number is being requested;
- 10.2.2 Detailed statement as to why the information is germane to the prevention of fraud; and
- 10.2.3 The signature of the Primary Contact Person.

If the Lead Agency determines that the subject transaction(s) is linked to a Business Card issued to the Business Account, the Lead Agency will provide the Business Account with the card serial number linked to the requested transaction(s). The Business Account agrees that it will use such card serial number information only for purposes of enforcing the Rules of Use, as provided to the Cardholder. The Business Account must maintain its own records if it wishes to identify the card serial number issued to an individual.

11.0 PUBLIC RECORDS

The Business Account understands and agrees that all records related to its participation in the ORCA System are public records under the Washington Public Records Act (Chapter 42.56 RCW) ("Act"), including but not limited to: (a) this Agreement and the sales activity hereunder; (b) the orders, communications, and any other information provided by the Business Account to the Lead Agency, the other Agencies or the ORCA System, whether provided via this website or otherwise and whether provided in hard copy or electronic form; (c) any communications, responses, requests, reports or information of any kind provided to the Business Account from the Lead Agency, the other Agencies or the ORCA System; and (d) all data, reports and information of any kind related to the loading of products on, and the use of, the Business Cards issued to the Business Account. As public records, these records will be made available for public inspection and copying upon request, unless the Lead Agency determines they are exempt from disclosure.

12.0 INDIVIDUAL USE OF BUSINESS CARD AFTER LEAVING A BUSINESS ACCOUNT

The Business Account is encouraged to collect Business Cards from Cardholders who are no longer eligible for the Business Account's transportation benefits program. In any case, the Business Account is solely responsible for initiating a Card Lock or Closing a Card in accordance with this Agreement to prevent any continued use of, and financial liability for, a card that had been distributed to a person who is no longer eligible.

13.0 ORCA SERVICES SUBJECT TO CHANGE

The Agencies seek to continually improve and enhance the ORCA Services. With thousands of organizations, schools, and other entities entering into business account agreements at varying dates in the year, the Agencies are unable to guarantee to each business account that the ORCA Services will not change during the term of its agreement. The Business Account understands and agrees that one or more ORCA Services may be changed, suspended or terminated from time to time without prior notice to, or agreement by, the Business Account, including but not

limited to changes in the look, feel, content and functions of the myORCA.com website. If the Business Account is dissatisfied with a change in the ORCA Services, however, it may terminate this Agreement for its convenience in accordance with the provisions of Section 14.2.

14.0 TERMINATION

- 14.1 The Lead Agency may at any time terminate this Agreement if the Business Account fails to make timely and effective payment of all amounts due, or otherwise materially breaches the Agreement, or acts in manner indicating that it intends to not comply, or is unable to comply, with the Agreement. To effect such a termination for cause, the Lead Agency shall send email notice to the last known email address for the last known Primary Contact Person of the Business Account describing the manner in which the Business Account is in default and the effective date of termination. If the basis for termination is a failure to perform that can be cured, the termination shall not take effect so long as the Business Account cures the default within ten (10) days of the sending of the email notice. Upon the effective date of such termination, the Lead Agency may immediately terminate the website access privileges of the Business Account, block the Business Cards issued to the Business Account and decline to accept and fulfill any pending or new orders from the Business Account. In the event of such a termination for cause, the Business Account shall not be entitled to any refund of any amounts paid.
- 14.2 Either the Business Account or the Lead Agency may terminate the Agreement without cause and for its own convenience by sending the other Party written or email notice at least thirty (30) days in advance of the effective date of the termination. Upon receipt of a notice of termination for convenience from the Business Account, the Lead Agency may, in its sole discretion, waive the advance notice period and immediately terminate the website access privileges of the Business Account, initiate a Card Block on the Business Cards issued to the Business Account, and decline to accept and fulfill any pending or new orders from the Business Account. In the event of such a termination for convenience and not cause, the amounts due under this Agreement shall be calculated by the Lead Agency. (The amounts due for the ORCA Passport Product and any optional products listed in Attachment 1 shall be the annual amounts due prorated for the number of months during which the Passport Product and optional products were valid for at least one day.) If the Business Account has not paid in full all of the amounts due under this Agreement as of the termination date, the Business Account shall immediately pay the remaining amount due. If the Business Account has paid more than all of the amounts due under this Agreement as of the termination date, the Business Account shall be entitled to a refund of the excess it has paid.
- 14.3 Notwithstanding any termination of the Agreement, the Business Account shall remain liable to satisfy and comply with all of its obligations under this Agreement and at law with regard to, or arising out of, any orders submitted or any of its acts or omissions occurring prior to the effective date of the termination, including but not limited to paying all amounts due or incurred prior to the effective date of the termination and any fees, charges, collection costs or other costs arising from a failure to make timely and effective payment.

15.0 EXCLUSION OF WARRANTIES

- 15.1 ALL ORCA SERVICES PROVIDED ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ANY USE OF THE ORCA SERVICES IS AT THE BUSINESS ACCOUNT'S SOLE DISCRETION AND RISK.

- 15.2 BY WAY OF EXAMPLE, AND NOT LIMITATION, THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SPECIFICALLY DO NOT REPRESENT AND WARRANT THAT:
- A. THE BUSINESS ACCOUNT'S USE OF THE ORCA SERVICES WILL BE UNINTERRUPTED, TIMELY, FREE FROM ERROR AND OTHERWISE MEETING ITS REQUIREMENTS;
 - B. ANY INFORMATION OBTAINED BY THE BUSINESS ACCOUNT AS A RESULT OF USING THE ORCA SERVICES WILL BE ACCURATE AND RELIABLE; AND
 - C. ANY USE OF THE ORCA WEBSITE, INCLUDING BUT NOT LIMITED TO THE CONTENT OR MATERIAL DOWNLOADED FROM SAID WEBSITE, WILL BE FREE OF DEFECTS, VIRUSES, MALWARE, HACKS OR POTENTIALLY HARMFUL INTRUSIONS.
- 15.3 TO THE EXTENT PERMITTED BY LAW, THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES 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.
- 15.4 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE AGENCIES OR THE ORCA SYSTEM SHALL REVISE OR CREATE ANY WARRANTY.

16.0 NOTICES

- 16.1 Any notice required to be given under the terms of this Agreement shall be directed either by email or regular mail to the Parties' Designated Representatives, as specified in Attachment 2, or to the last person and address provided by a Party in accordance with Section 16.2.
- 16.2 Each Party shall immediately notify the other Parties of any changes to its Designated Representatives' contact information. The Business Account shall also immediately notify the Lead Agency of any changes in any other information provided in its application.

17.0 FORCE MAJEURE

The Agencies and each of them shall be relieved of any obligations under this Agreement to the extent they are rendered unable to perform, or comply with such obligations as a direct or indirect result of a force majeure event, or any other circumstance not within such party's control, including, but not limited to, acts of nature, pandemics, acts of civil or military authorities, terrorism, fire or water damage, accidents, labor disputes or actions, shutdowns for purpose of emergency repairs, or industrial, civil or public disturbances.

18.0 APPLICATION OF AGENCY FARES AND OTHER POLICIES

The purchase, distribution and use of Business Cards and ORCA Products by the Business Account and its Cardholders, and access to and use of the ORCA website, shall be subject to all applicable federal, state and local law, regulations, ordinances, codes and policies, including but not limited to the ORCA Cardholder Terms of Use and ORCA Privacy Statement (posted on the

ORCA website and available in printed form upon request to the Lead Agency), and the Agencies' respective fares, transfer rules, codes of conduct and other operating policies and procedures.

19.0 PROHIBITED DISCRIMINATION

The Business Account shall 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 benefits program, the provision of ORCA Business Cards and ORCA Products, or the performance of any acts under this Agreement. The Business Account shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

20.0 COMPLIANCE WITH APPLICABLE LAW

The Business Account shall be solely responsible for compliance with all applicable federal, state and local laws, regulations, resolutions and ordinances, including, but not limited to, any provisions relating to the Business Account's provision of compensation, benefits or services to employees or others (e.g. including, but not limited to, transportation fringe benefits) and any reporting, tax withholding, or other obligations related thereto. The Business Account expressly acknowledges and agrees that it has not relied on any representations or statements by the Agencies and will not rely on them to provide any legal, accounting, tax or other advice with regard to the Business Account's provision of compensation, benefits or services to employees or others (e.g. including, but not limited to, transportation fringe benefits) and any reporting, withholding or other obligations related thereto.

21.0 LEGAL RELATIONS

21.1 *No Partnership, Agency or Employment Relationship Formed.* The Business Account and the 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. Without limiting the foregoing, the Business Account understands and agrees that none of its employees or agents shall be deemed employees or agent, for any purpose, of any of the Agencies and the Business Account is solely responsible for the acts of its agents and employees and their compensation, wages, withholdings and benefits.

21.2 LIMITATION ON LIABILITY

- A. THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SHALL NOT BE LIABLE FOR, AND THE BUSINESS ACCOUNT HOLDS EACH AGENCY HARMLESS FROM, ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO:
1. ANY RELIANCE PLACED BY THE BUSINESS ACCOUNT ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY INFORMATION PROVIDED TO THE BUSINESS ACCOUNT BY OR THROUGH THE ORCA SERVICES;
 2. ANY CHANGES TO THE ORCA SERVICES OR THE TEMPORARY OR PERMANENT CESSATION OF ANY SUCH SERVICES (OR FEATURES WITHIN A SERVICE);
 3. THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY INFORMATION MADE AVAILABLE TO THE BUSINESS ACCOUNT, OR

GENERATED BY THE USE OF THE ORCA SERVICES UNDER THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, THE USE OF THE ORCA BUSINESS CARDS ISSUED UNDER THIS AGREEMENT;

4. THE BUSINESS ACCOUNT'S FAILURE TO PROVIDE THE LEAD AGENCY WITH ACCURATE ACCOUNT INFORMATION; AND
 5. THE BUSINESS ACCOUNT'S FAILURE TO KEEP INFORMATION SECURE AND CONFIDENTIAL.
- B. THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SHALL NOT BE LIABLE FOR, AND THE BUSINESS ACCOUNT HOLDS EACH AGENCY HARMLESS FROM, ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCURRED BY THE BUSINESS ACCOUNT 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.
- C. TO THE EXTENT ONE OR MORE OF THE AGENCIES INCURS ANY LIABILITY FOR A BREACH OF THIS AGREEMENT, OR ANY DUTY RELATED TO THE ORCA SERVICES, AND SUCH LIABILITY THAT IS NOT EXCLUDED UNDER THE TERMS OF THIS AGREEMENT, THE EXCLUSIVE, AGGREGATE REMEDY AGAINST THE LEAD AGENCY AND EACH OTHER AGENCY WILL BE, AT THE OPTION OF THE APPLICABLE AGENCIES: (A) THE CORRECTION, SUBSTITUTION OR REPLACEMENT OF ALL OR PART OF THE ORCA SERVICES GIVING RISE TO THE BREACH, OR (B) A REFUND OF THE AMOUNT PAID BY THE BUSINESS ACCOUNT FOR THE ORCA SERVICE CAUSING THE DAMAGE, THE AMOUNT OF WHICH WILL NOT EXCEED THE DAMAGES (OTHER THAN THOSE EXCLUDED ABOVE) ACTUALLY INCURRED BY THE BUSINESS ACCOUNT IN REASONABLE RELIANCE.

THE DAMAGE EXCLUSIONS AND LIMITATIONS ON LIABILITY IN THE AGREEMENT SHALL APPLY EVEN IF ANY REMEDY FAILS FOR ITS ESSENTIAL PURPOSE.

- 21.3 No Waiver. The Business Account agrees that if the Lead Agency does not exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law, this will not be taken to be deemed to be a waiver or modification of the Lead Agency's rights and remedies, and that those rights or remedies will still be available to the Lead Agency.
- 21.4 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 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 the county in which the Lead Agency's primary administrative office is located. The Business Account hereby consents

to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions involving the Agencies in other forums.

- 21.5 Attorneys' Fees and Costs. In the event of litigation between the parties related to this Agreement, the Court is authorized to award the substantially prevailing party its costs, fees and expenses including reasonable attorney fees to the extent authorized by the Court and permitted by applicable law.
- 21.6 Survival. Sections 4, 5, 10, 15 and 21 shall survive and remain effective notwithstanding any termination of this Agreement.
- 21.7 Use of ORCA name and logos. The Business Account 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. The Agencies understand and agree the Business Account name and logo may be 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 Business Account without written permission.

22.0 SUCCESSORS AND ASSIGNS

This Agreement and all terms, provisions, conditions and covenants hereof shall be binding upon the parties hereto, and their respective successors and assigns; provided, however, no Party may assign or delegate the duties performed under this Agreement without the written agreement by the Lead Agency, the Business Account and the assignee.

23.0 ENTIRE AGREEMENT AND WRITTEN AMENDMENTS

This Agreement constitutes the entire agreement between the Business Account and the Lead Agency, on behalf of all Agencies, related to the Business Account's use of and access to ORCA Services (but excluding any services which Lead Agency may provide under a separate written agreement), and completely replaces and supersedes any prior oral or written representations or agreements in relation to fare media consignment and sales or to ORCA Services. No oral agreements or modifications will be binding on the parties and any changes shall be effective only upon a written amendment being signed by the parties.

24.0 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.


25.0 AUTHORITY TO EXECUTE

Each party to this Agreement represents and warrants that: (i) it has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein; and (ii) 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.

26.0 COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each one of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BUSINESS ACCOUNT Snohomish County Executive BY: Klein, Kenneth Klein, Kenneth 2022.09.29 09:35:38 -07'00' Name: Ken Klein Title: Executive Director Date: | Lead Transportation Agency Everett Transit BY:  Name: Tom Hingson Title: Director Date: 09/30/2022 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| |
|-----------------------------------------------------------------------------------------------------------------|
| COUNCIL USE ONLY Approved <u>9/28/2022</u> ECAF # <u>2022-0880</u> MOT/ORD <u>Motion 22-377</u> |
|-----------------------------------------------------------------------------------------------------------------|

ATTACHMENT 1

PRODUCTS, PRICING AND TERMS – BUSINESS PASSPORT Per Trip Rate

Business Account: Snohomish County Government

ORCA Business ID#: 2995

Federal Tax ID #: 91-6001368

Agreement Type: Per-Trip Passport Contract

Program Term: 7/1/2022 - 6/30/2023

Business Passport Products

- Valid for full and unlimited rides on:
 - **Bus:** King County Metro, Sound Transit, Community Transit, Everett Transit, Kitsap Transit, Pierce Transit.
 - **Ferry :** King County Water Taxi, Kitsap Local Ferries and Fast Ferries
 - **Monorail**
 - **Seattle Streetcar**
 - **Rail:** Sound Transit Link light rail and Sound Transit Sounder (including Rail Plus partnership with Amtrak Cascades
 - **ParaTransit Transportation:** King County Metro Access, Kitsap Transit Access, Pierce Transit SHUTTLE.

Business Passport Pricing

| Product | Cost |
|----------------------------------------|-----------------------|
| Transit | E-purse per trip rate |
| Cards | \$ 0.00 |
| Administrative Fee | \$ 1,500.00 |
| Vanpool/Vanshare— King County Metro | \$ 0.00 |
| Vanpool/Vanshare— Community Transit | \$ 0.00 |
| Vanpool/Vanshare— Kitsap Transit | \$ 0.00 |
| Vanpool/Vanshare— Pierce Transit | \$ 0.00 |
| GRH - KCM | \$ 0.00 |
| GRH - CT | \$ 0.00 |
| GRH - KT | \$ 0.00 |
| GRH - PT | \$ 0.00 |
| GRH - ET | \$ 0.00 |

Transit Per Trip Rate

The Transit Per Trip Rate uses ridership data from the ORCA System to calculate costs. The ORCA System calculates the apportioned value for each boarding based on the E-purse equivalent value. The E-purse equivalent value accounts for transfers as shown below.

- Single leg trips are apportioned to the transit agency where the boarding took place at CEFFV (Cash Equivalent Full Fare Value).
- Multi-leg trips are apportioned as follows:
 - Apportioned Value = Highest CEFFV among the linked boardings X Weight of Linked Trip
 - Weight of Linked Trip = Agency Trip Rate/ Sum of Trip Rates
- The values are then summed up by Participating Agency and invoiced to the customer.

Card Costs

Card orders can be placed by the customer on the Business Account website.
Cards cost three dollars (\$3) each and will be invoiced per payment terms.

Card Logo Permission

The Business Account hereby grants permission for the Agencies to print the Business Account's name and logo on the Business Account's ORCA Business Cards and no further permission is required.

Employee Contributions: Employees may contribute up to 50% of the price per eligible employees.

Business Passport Payment Terms

| |
|----------------------------------------|
| Net 30 days from start of program term |
|----------------------------------------|

ATTACHMENT 2

DESIGNATED REPRESENTATIVES

| | BUSINESS ACCOUNT - Primary | LEAD AGENCY – Primary |
|------------|-------------------------------------------|--------------------------------|
| Name | Lindsey Thompson | Brandon Hilby |
| Title | Senior Administrative Coordinator | Financial Analyst |
| Address | c/o Lindsey Thompson Everett, WA 98201 | |
| Telephone | (425) 388-6553 | |
| Cell Phone | | |
| E-Mail | lindsey.thompson@snoco.org | bhilby@everettwa.gov |
| | BUSINESS ACCOUNT - Secondary | LEAD AGENCY – Secondary |
| Name | | |
| Title | | |
| Address | | |
| Telephone | | |
| Cell Phone | | |
| E-Mail | | |
| | BUSINESS ACCOUNT - Billing | |
| Name | Anna Morton | |
| Title | Contract Specialist | |
| Address | c/o Lindsey Thompson Everett, WA 98201 | |
| Telephone | (425) 388-3896 | |
| Cell Phone | | |
| E-Mail | anna.morton@snoco.org | |

ATTACHMENT 3

ELIGIBLE BUSINESS CARDHOLDERS

Definition and Number of Eligible Participants

| | |
|--------------------------------------------|------------------------------------------------|
| Definition of Eligible Participants | All employees who work at the company worksite |
| Number of Eligible Participants | 2,900 |

ATTACHMENT 4

SAMPLE - ORCA BUSINESS CARDHOLDER RULES OF USE

(Note: business account can customize content for means of communicating with employees.)

As a Business Account Cardholder, I agree to the following:

1. I understand that the ORCA Business Card is owned by the employer that provided it to me and it has been provided to me for my personal use only. I agree that I will not sell or transfer my assigned ORCA Card to another person. If I violate these terms of use, my ORCA Card may be blocked from further use.
2. I will keep my assigned ORCA Business Card secure and in good condition, and I will immediately report a lost, stolen, or damaged ORCA Business Card to my company's Transportation Coordinator. I understand an ORCA Business Card will be replaced at the fee charged by my company.
3. I will return my assigned ORCA Business Card upon request or when I leave my employment or otherwise do not meet the eligibility requirements of my company. If I do not return my ORCA Business Card, I understand that it may be blocked for further use.
4. I understand that my ORCA Business Card is valid for the following provided by the listed transportation Agencies.
 - a. 100% of fares on regularly scheduled transportation service on Community Transit, Everett Transit, King County Metro, King County Water Taxi, Kitsap Transit and Kitsap Ferries, Monorail, Pierce Transit, Sound Transit, and Seattle Streetcar.
 - b. \$0 monthly of vanpool and \$0 monthly vanshare fares on vanpool services provided by Community Transit, King County Metro, Kitsap Transit, and Pierce Transit.
5. I understand and will comply with policies of my employer or other institution that provided my ORCA Business Card.
6. I understand that the ORCA Business Card is not valid for fare payment on transportation services not specified in Section 4 and I am responsible for paying any additional fares required for services not covered, or not fully covered, by my assigned ORCA Business Card.
7. I understand that any additional ORCA Products I load onto my assigned ORCA Card will become the property of the company that owns my ORCA Business Card and the refund, if any, of such products will be made by the company according to its refund policy.
8. I understand in the event any ORCA Products I load onto my assigned ORCA Card must be replaced, I am responsible for any fares required during the replacement period.
9. I understand the ORCA system will record data each time I use my assigned ORCA Business Card. Data will include the date, time and location of the card when it is presented. I understand this data is owned by the transit Agencies and is accessible to the company that owns my ORCA Business Card.
10. I understand that the ORCA Card must be "tapped" on a card reader to show proof of fare payment or issuance of a valid fare. Merely showing the ORCA Card on a bus, train, ferry or light rail vehicle does not constitute proof of fare payment or issuance of a valid fare. I will

be subject to a fine if the ORCA Card is not "tapped," and I understand I will be personally responsible for any fines that may be imposed.

11. I understand that for the correct fare to be recorded, I must "tap" off on a card reader when exiting some transit systems. For example, I must "tap" off when exiting from a Sounder train or Link light rail.

ATTACHMENT 5

ORCA BUSINESS ACCOUNT SECURITY STANDARDS

1.0 Application Security

- 1.1 At the time the Business Account enters into the ORCA program, the Lead Agency will provide a single Business Account user id and temporary password to the Business Account's Primary Contact (as specified in Attachment 2, *Designated Representatives*, to enable access to the Business Account's area of the Business Account Website.
- 1.2 The Business Account shall immediately change the temporary password to a strong password that meets the following criteria:
- a. Length - At least eight (8) characters in length or the maximum length permitted by the ORCA system, whichever is shorter.
 - b. Elements - Contains one each of at least three (3) of the following four (4) elements.
 1. English upper case letters (A, B, C...)
 2. English lower case letters (a, b, c...)
 3. Westernized Arabic numbers: 0, 1, 2...9
 4. Special characters: (@, #, %...)
- 1.3 The Business Account shall restrict access to the ORCA Business Account Website by providing its user id and password to only the employee(s) who have a business "need to know" and who are authorized by the Business Account as "system user(s)".
- 1.4 Access to the ORCA Business Account Website is restricted to the purpose of authorized administrative support for the ORCA Business Account program
- 1.5 The Business Account's password shall be changed at least quarterly but also immediately upon (a) a system user leaving the Business Account's employment or otherwise losing his/her status as an authorized user; and (b) the Business Account learning that the password has been obtained by unauthorized persons or entities.
- 1.6 The Business Account's Primary Contact will review security policies and guidelines with system users at least quarterly.

2.0 Physical Security

- 2.1 The Business Account shall require system users, when not at their workstations, to log off the Business Account Website, or lock their screen using a password protected screen-saver in order to prevent unauthorized access.
- 2.2 ORCA card stock shall be kept in a secure/locked location with access limited to those administering the program.
- 2.3 The Business Account shall require its employees to keep printed reports containing account information in a secure location.

3.0 Incident Management

- 3.1 The Business Account shall report any security incident or suspected incident immediately to the Lead Agency. Examples of possible security incidents would be: introduction of computer viruses, unauthorized transactions or blocked cards, or lost or stolen card stock.