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

THIS AGREEMENT (hereinafter, "Agreement") is made and entered into by and among **City of Redmond** ("Business Account") and King County ("Lead Agency") on behalf of the following Agencies (collectively referred to as the "Agency" or "Agencies").

The Snohomish County Public Transportation Benefit Area ("Community Transit")
The City of Everett ("Everett Transit")
King County Department of Transportation, Metro Transit Division ("King County")
The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
The Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")
The Central Puget Sound Regional Transit Authority ("Sound Transit")
The State of Washington acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

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 16 below.

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), 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 Business Account 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 12, this Agreement shall continue in effect for one (1) year, or such other term as may be specified in said Attachment 1.

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 *Agency(ies).* The following public transportation agencies that are participating in this Agreement to the extent provided herein:

a. The Snohomish County Public Transportation Benefit Area ("Community Transit")
b. The City of Everett ("Everett Transit")
c. King County Department of Transportation, Metro Transit Division ("King County")
d. The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
e. The Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")
f. The Central Puget Sound Regional Transit Authority ("Sound Transit")
g. The State of Washington acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

3.2 *Business Account.* The employer, 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.

3.3 *Business Account Website.* The website used by the Business Account to manage its account, currently at www.orcacard.biz.

3.4 *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)

3.5 *Business Cardholder(s) or Cardholder(s).* The individual(s) who are eligible to receive an ORCA Business Card from the Business Account. The eligibility requirements for Business Cardholders are more fully defined in Attachment 3, *Eligible Business Cardholders,* which is incorporated in this Agreement by this reference.

3.6 *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.

3.7 *Card Block.* An ORCA system process that culminates in invalidating an ORCA Business Card.

3.8 *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.

3.9 *ORCA.* The trademarked name of the system that enables use of a common fare card (One Regional Card for All) on the public transportation services provided by any of the Agencies.

3.10 *ORCA Business Card (or "Business Card").* An ORCA fare card issued to 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.

3.11 *ORCA Products.* Any transit fare payment mechanism or electronic voucher offered for sale within the ORCA system by any of the Agencies. Examples include, but are not limited to, monthly or period pass, E-purse, and electronic voucher.

3.12 *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.

3.13 *Parties.* The Business Account and the Agencies (which include the Lead Agency) may be collectively referred to as "Parties."

3.14 *Primary Contact Person.* The individuals identified as the primary contact points for the Lead Agency and the Business Account, as listed in Attachment 2 or as modified from time to time.

3.15 *Product Block.* An ORCA system process that culminates in invalidating an ORCA Product without invalidating the card on which it is loaded.

3.16 Transportation Services are those public transportation services provided by the Agencies that are specified in Attachment 1.

4.0 PRICES AND PAYMENT TERMS

4.1 The prices and payment terms applicable to this Agreement are specified in Attachment 1, *Products, Pricing and Terms.* Such terms shall include: (a) the amounts due for the Business Cards, Business Passport Product, and any other products, services and fees; (b) the timing of payments, and (c) the acceptable method of payment. 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.

4.2 The Business Account's purchase of any Business Choice Products via the Business Account 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.

4.3 Payment in full is due as specified in Attachment 1.

4.4 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) calendar days of such notification, the Lead Agency may:

a. refuse to process new orders for ORCA Business Cards and block the loading of new ORCA Products by or for the Business Account;
b. assess any late payment, NSF and collection fees to the maximum amount permitted by law;
c. initiate a Card Block or Product Block 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 collection fees, in a manner acceptable to the Lead Agency; and
d. suspend or terminate access rights to the Business Account's secured area of the website.

4.5 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 collection fees incurred in collecting amounts due from the Business Account.

5.0 PURCHASE, OWNERSHIP, 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 shall be required to pay both the standard card fee and the pro rata price for loading the Passport Product on such additional cards for the remaining months of this Agreement, as specified in Attachment 1.

5.2 *Receipt and Ownership of ORCA Business Cards.* Upon actual or constructive receipt of the ORCA Business Cards it has ordered, the Business Account shall become the owner 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 Block that may be initiated as provided below.

5.4 *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 remains the owner of all Business Cards it distributes but a cardholder may also purchase and load individual ORCA products on a Business Card and individually register the card. To enable Cardholders to register Business Cards as provided in Section 6 below, the Business Account may not register, or allow anyone other than the Cardholder to register, the Business Cards that are issued under this Agreement. The Business Account shall require, as a condition of receiving a Business Card, that the Cardholder sign the written Cardholder Rules of Use in the form of Attachment 4, which is incorporated in this Agreement by this reference, or such other form as may be approved by the Lead Agency, provided it includes the following at a minimum:

a. a prohibition on the sale or transfer of the Business Card;
b. notice that the Cardholder is required to pay any difference between a required fare and the value of the ORCA Product loaded onto the Business Card;
c. notice that any ORCA Products purchased by the Cardholder with his/her own funds and loaded on the Business Card, including but not limited to the E-purse, will become the property of the Business Account and any subsequent refund to the Cardholder would be the responsibility of the Business Account in accordance with its own refund policy. Individuals are encouraged to purchase an individual card if they have concerns about refund policies.
d. notice that the ORCA System will record data each time the Cardholder presents a Business Card to an ORCA device to prove fare payment, to load a product on it, or to review the amount and type of product on it. Such data will include, but not be *limited to, the date, time and route or other location related to the card being* presented. Such data is owned by the Agencies but accessible to the ORCA System contractor(s) that operate it, the Business Account, and the Agencies.
e. notice that use of an ORCA Business Card to ride an Agency Transportation Service requires more than showing the card to a driver or fare enforcement officer. The Cardholder must actually tap a valid ORCA Business Card on an ORCA card reader when boarding, deboarding or both, as required by the Agency's rules. For example, to show proof of payment of the required fare, riders on Sound Transit's Link light rail or Sounder train service must tap the ORCA card to an ORCA reader device before boarding and after deboarding (even if the rider boarded in a ride-free area).
f. notice that proof of fare 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.

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

5.5 *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.

5.6 *Card Blocks.* 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 Block via the Business Account Website to invalidate the subject Business Card. The Lead Agency may also initiate a Card Block or a Product Block as 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 4.4, or if it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder. Once initiated, a Card Block must be processed in the ORCA system and downloaded to all reader devices throughout the region. Until that occurs, there is the potential that the Business Passport Product and any e-purse value or other ORCA Products on the subject card will continue to be used. The Business Account, not the Agencies, remains responsible for all transactions, and any loss or costs arising there from, for forty-eight (48) hours after the Card Block was initiated.

5.7 *Restoration of Value After Card Block.* Following a Card Block, the Business Account may request the Lead Agency to restore value on a replacement of the blocked Business Card. An E-purse on a blocked card will be restored on the replacement card in approximately ten (10) calendar days after the replacement card is issued. The E-purse amount that remained on the lost or stolen card, forty-eight (48) hours after the Card Block was initiated in the ORCA system, will be restored to the replacement card via a remote revalue function.

5.8 *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 Block, and end of useful life. Provided, however, and notwithstanding the exclusion of warranties in Section 13, 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: (a) it will retire all of its ORCA Business Cards at some time within four years after they are issued by the Lead Agency to the Business Account; and (b) 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, although it remains the owner of ORCA Business Cards after distribution, the Cardholder has the following privileges in connection with the use of an ORCA Business Card.

a. 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.

b. 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.

c. The Cardholder may register his/her 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 any ownership rights in the card but does give the Cardholder the right to access the ORCA Cardholder Website to view the card's transaction history and current stored value, to modify travel zone preferences, and to add retail products.

7.0 NO RETURNS OR REFUNDS

Except as otherwise provided herein or in Section 12.2, the Business Account understands and agrees that its purchases of Business Cards, and Business Passport Products and Business Choice Products purchased for such cards, are final and it is not entitled to any refunds. Provided, however, the Business Account may request a refund of the E-purse value remaining on a Business Card if the card is surrendered by the Business Account to the Lead Agency. Upon surrender of the subject Business Card, *the Lead Agency shall initiate a Card Block and the refund processed approximately ten* (10) calendar days after the Card Block was initiated. The E-purse amount refunded will be that which remained on the surrendered card forty-eight (48) hours after the Card Block was initiated in the ORCA system. A processing fee of ten dollars ($10) shall be payable by the Business Account to the Lead Agency for each such E-purse refund that is processed, regardless of E-purse value 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.

8.0 BUSINESS ACCOUNT WEBSITE

8.1 The Business Account 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 Business Account Website when it is available and that each access and use of said website shall be subject to the Terms of Use and Privacy Statement that are in effect and posted on the Business Account Website at the time of such access and use.

8.2 The Business Account understands and agrees that uninterrupted access to and use of the Business Account 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.

8.3 At the time the Business Account enters into the ORCA program, the Lead Agency will provide a single password to the Business Account's Primary Contact (as specified in Attachment 2) to enable user access to the Business Account's secured area of the Business Account Website. The Business Account is required to change the temporary password to one of its own creation. The Business Account shall be solely responsible for the number and identity of those employees with whom the Business Account's password is shared. The Business Account is also solely responsible for complying with the security standards specified in Attachment 5, Security Standards, which is incorporated in this Agreement by this reference.

9.0 INFORMATION PROVIDED BY THE AGENCIES AND THE ORCA SYSTEM

9.1 The Business Account understands and agrees that the data, reports or any information provided to it via the Business Account 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 Business Account Website or otherwise, for any lawful purpose related to the administration of the transportation benefits program of the Business Account.

9.2 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 Business Account 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. The written request shall include the following:

a. card number or the date, time and other known details about the specific transaction for which a card serial number is being requested;
b. a statement as to why the information is germane to the prevention of fraud; and
c. 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 its Rules of Use or other lawful business purposes. The Business Account must maintain its own records if it wishes to identify the card serial number issued to an individual.

9.3 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.

10.0 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 Block or Product Block 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.

11.0 ORCA SERVICES SUBJECT TO CHANGE

The Agencies seek to continually improve and enhance the ORCA Services. With thousands of employers, 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 Business Account 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 12.2.

12.0 TERMINATION

12.1 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 Contractor cures the default within ten (10) calendar 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.

12.2 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.

12.3 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.

13.0 EXCLUSION OF WARRANTIES

13.1 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.

13.2 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 UNITERRUPTED, 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 WEBSITES, INCLUDING BUT NOT LIMITED TO THE CONTENT OR MATERIAL DOWNLOADED FROM SAID WEBSITES, WILL BE FREE OF DEFECTS, VIRUSES, MALWARE, HACKS OR POTENTIALLY HARMFUL INTRUSIONS.

13.3 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.

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

14.0 NOTICES

14.1 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 14.2.

14.2 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.

15.0 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, 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.

16.0 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 websites, shall be subject to all applicable federal, state and local law, regulations, ordinances, codes and policies, including but not limited to the ORCA Terms of Use and Privacy Statement (posted on the ORCA websites 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.

17.0 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.

18.0 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.

19.0 LEGAL RELATIONS

19.1 *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.

19.2 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 PASSWORD AND ACCOUNT 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 OF THE AGENCIES HARMLESS FROM, ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCURRED BY THE BUSINESS ACCOUNT UNDER ANY THEORY OF LIAIBILITY, 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.

19.3 *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.

19.4 *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 law's 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.

19.5 *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.

19.6 *Survival.* Sections 4, 5, 9, 13 and 19 shall survive and remain effective notwithstanding any termination of this Agreement.

19.7 *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.

20.0 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.

21.0 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.

22.0 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.

23.0 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.

24.0 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	LEAD TRANSPORTATION AGENCY
BY: John Marchione	BY: Victor Obeso
Title: Mayor, City of Redmond	Title: Manager, Transit - Service Development
Business Name: City of Redmond	Agency: King County
Date: 7/20/12	Date: 7/26/12

ATTACHMENT 1

Products, Pricing and Terms - Business Passport Flat Rate

Business Account: **City of Redmond**

ORCA Business ID#: **1282**
(Online Business Account name: **City of Redmond**)

Agreement Type: Passport Flat Rate
Program Term: August 1, 2012 - July 31, 2013

Business Passport Flat Rate Products

- Valid for full fare on
  - Regular bus services on Community Transit, Everett Transit, Kitsap Transit, Metro Transit, Pierce Transit, and Sound Transit.
  - Regular service on Sound Transit Link light rail.
  - Regular service on Sound Transit Sounder commuter rail (including Rail Plus partnership with Amtrak *Cascades*).
  - Regular service on Seattle Streetcar
  - Regular service on King County Water Taxi. (Vashon and West Seattle routes)
  - Regular service on Kitsap Transit Foot Ferry. (Port Orchard and Annapolis routes)
  - Access Transportation service on Kitsap Transit and Metro Transit (eligible riders only)
- Company logo printed on ORCA cards.

Business Passport Flat Rate Pricing

Community Transit		
Transit Trips (Source: ORCA: 04/01/2011 - 03/31/2012)	=	440
Transit rate per trip	x	$2.34
Total Transit cost (Note: rounded to $0.12 for ORCA)	=	$1,029.60
Total Cost	=	**$1,029.60**
Everett Transit		
Transit Trips (Source: ORCA: 04/01/2011 - 03/31/2012)	=	3
Transit rate per trip	x	$0.76
Total Cost (Note: rounded to $0.12 for ORCA)	=	**$2.28**

King County Metro Transit		
Transit Trips (Source: ORCA: 04/01/2011 - 03/31/2012)	=	5,895
Transit rate per trip	x	$1.89
Total Transit cost (Note: rounded to $0.12 for ORCA)	=	$11,141.52
King County Water Taxi Trips	=	7
Rate per trip	x	$3.69
Total King County Water Taxi cost	=	$25.80
Program administration fee ($1.50 per employee)	+	$754.50
Card fee ($5.50 per card)	+	$0.00
Total Cost	**=**	**$11,921.82**
Kitsap Transit		
Transit Trips (Source: ORCA: 04/01/2011 - 03/31/2012)	=	0
Transit rate per trip	x	$2.00
Total Transit cost (Note: rounded to $0.12 for ORCA)	=	$0.00
Total Cost	**=**	**$0.00**
Pierce Transit		
Transit Trips (Source: ORCA: 04/01/2011 - 03/31/2012)	=	1
Transit rate per trip	x	$2.00
Total Transit cost (Note: rounded to $0.12 for ORCA)	=	$2.04
Total Cost	**=**	**$2.04**
Sound Transit		
Total Cost (Note: rounded to $0.12 for ORCA)	=	**$15,373.80**
Total Business Passport Cost	=	**$28,329.54**

Business Passport Flat Rate Payment Terms

- Payment Terms: 1 payment. Net 60 days from Agreement start date.
- Invoice provided at least 30 days prior to the due dates.

Additional Items

Annual Rate per Employee	=	$56
Amount of Eligible Employee contribution (Note: employees may contribute up to 50% of the Annual Rate per Employee)	=	$0.00

Monthly Rate for Additional Eligible Employees

Monthly Rate for ONE additional Eligible Employee	=	$5.04

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.

Business Choice Products

Choice Products purchased by the Business Account will be prepaid by check or credit card, at prevailing retail rates.

ATTACHMENT 2

Designated Representatives

	BUSINESS ACCOUNT - Primary Contact	LEAD AGENCY – Primary Contact
Name	Kim Keeling	David Dunneback
Title	Employee Transportation Coordinator	Senior Transportation Planner
Address	City of Redmond	King County Metro Transit
	15670 N.E. 85th Street	KSC-TR-0411
	P.O. Box 97010	201 South Jackson Street
	Redmond, WA 98073-9710	Seattle, WA 98104
Telephone	425-556-2451	206-684-1858
Cell Phone		
Fax	425-556-4242	206-263-4809
E-Mail	khkeeling@redmond.gov	david.dunneback@kingcounty.gov
	BUSINESS ACCOUNT – Secondary Contact	**BUSINESS ACCOUNT - Billing and Card Delivery Address**
Name		Kim Keeling
Title		Employee Transportation Coordinator
Address		City of Redmond
		15670 N.E. 85th Street
		P.O. Box 97010
		Redmond, WA 98073-9710
Telephone		425-556-2451
Cell Phone		
Fax		425-556-4242
E-Mail		khkeeling@redmond.gov

ATTACHMENT 3

Eligible Business Cardholders

Definition and Number of Eligible Participants

Definition of Eligible Participants	All employees who work at the City of Redmond.
Number of Eligible Participants	Number = **503**

ATTACHMENT 4

Sample - ORCA Business Cardholders Rules of Use

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 not to 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 a lost ORCA Business Card will be replaced only once per year at the current card fee plus any additional fee charged by my company. A defective ORCA Business Card will be replaced free of charge.

3. I will return my assigned ORCA Business Card upon request or when I leave my employment or otherwise no longer 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 Everett Transit, Community Transit, Kitsap Transit, Metro Transit, Pierce Transit, Sound Transit, Seattle Streetcar, King County Water Taxi, and Kitsap Transit Foot Ferry.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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, light rail, or a bus that I have boarded in the Seattle downtown ride free area.

I acknowledge the receipt of my ORCA Business Card, and understand and agree to the terms stated above on using the ORCA Business Card.

Employee's Signature	Date
Employee's Printed Name	ORCA Card Serial #

Transportation Coordinator Use Only – ORCA Card returned:

Employee's Signature	Date
	ORCA Card Serial #

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) 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 System, whichever is shorter.

b. Elements: Contain 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 the employee(s) who have a business "need to know" and who are authorized by the Business Account ("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 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.