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Attachment A

AMENDED AND RESTATED
INTERLOCAL COOPERATION AGREEMENT
for
DESIGN, IMPLEMENTATION, OPERATION AND MAINTENANCE
of the
REGIONAL FARE COORDINATION SYSTEM

March __, 2009

Amended and Restated Interlocal Cooperation Agreement for
Design, Implementation, Operation and Maintenance of the
Regional Fare Coordination System

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AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
for
DESIGN, IMPLEMENTATION, OPERATION AND MAINTENANCE
of the
REGIONAL FARE COORDINATION SYSTEM

This Amended and Restated Interlocal Cooperation Agreement for design, implementation, operation and maintenance of the Regional Fare Coordination System is entered into by the Snohomish County Public Transportation Benefit Area ("Community Transit"), the Kitsap County Public Transportation Benefit Area ("Kitsap Transit"), the Central Puget Sound Regional Transit Authority ("Sound Transit"), the State of Washington, acting through the Washington State Department of Transportation, Ferries Division ("Washington State Ferries"), the Pierce County Public Transportation Benefit Area ("Pierce Transit"), the City of Everett ("Everett") and King County ("King County"), individually referred to as an "Agency" and collectively known as "the Agencies" in this Agreement.

RECITALS

- A. The Agencies provide public transportation services within their service areas and as part of such services, collect fares from riders.
- B. Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the Agencies desire to jointly exercise their powers to better coordinate their respective services and fare payment systems in order to improve the availability, reliability and convenience of public transportation services within their service areas and throughout the region served by the Agencies.
- C. The Agencies desire to implement a Regional Fare Coordination ("RFC") System to establish a common, non-cash fare system throughout their service areas.
- D. The Agencies previously entered into an agreement dated September 30, 2000, which established a framework to regionally procure a RFC System.
- E. Pursuant to such agreement, the Agencies jointly conducted a procurement process and selected a contractor to design, implement, operate and maintain the RFC System (hereinafter the "RFC Contractor").

The Agencies previously entered into the "Interlocal Cooperation Agreement for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System," dated April 29, 2003, as amended, (hereinafter the "2003 Agreement") to establish the respective roles and responsibilities of the Agencies in the Development and Operating Phases of the RFC System and in the administration of the RFC Contract and Joint Consultant contracts. The Agencies expect the Development Phase of the RFC System to be completed in 2009. At the time when the RFC System is determined to be operational, the Agencies will begin the transition from overseeing the Development Phase of the RFC System by the RFC Contractor to managing the Operating Phase of the RFC System.

With the benefit of experience and more detailed information gained during the design and implementation of the RFC System under the 2003 Agreement, the Agencies have determined it is in the best interest of the Agencies and the RFC System to amend the 2003 Agreement to better address the Operating Phase of the RFC System.

The Agencies agree that it is now time to add more specificity regarding the Operating Phase and, therefore, the 2003 Agreement, as amended, is hereby amended and restated as set forth in this Agreement.

NOW, THEREFORE, in consideration of the following terms and conditions and the above recitals which are incorporated into this Agreement and other valuable consideration, the sufficiency of which is hereby acknowledged, the Agencies agree to the above Recitals and the following:

TERMS AND CONDITIONS

1.0 BACKGROUND AND PURPOSE

1.1 Agreement Purposes. This Agreement expresses the common interests of the Agencies in the successful implementation and operation of the RFC System to encourage the use of public transportation and achieve efficiencies and increased conveniences to the public in the payment of public transportation fares. This Agreement, among other things, establishes the framework for the management of the Operating Phase, the respective roles and responsibilities of the Agencies, the RFC Contractor and other vendor and service providers to the Agencies, the allocation of revenue collected utilizing the RFC System and the Agencies' commitments to fund their own and the regionally-shared costs of operating, maintaining and updating the RFC System.

1.2 Joint Board. The Agencies have created the Joint Board for the purpose of acting in the common good for all Agencies on the matters covered by this Agreement.

1.3 Naming Convention. The Agencies have agreed that the RFC System during the Operating Phase shall be known as ORCA (One Regional Card for All). As provided in this Agreement, the Agencies will use the trademarked name "ORCA" in furtherance of the RFC System for informing and educating the public, marketing materials and documents, and undertaking other activities related to the Operating Phase of the RFC System.

2.0 TRANSITION PERIOD

2.1 Need for Transition Period. The Agencies agree it is necessary to provide for the Transition Period to accommodate the concurrent performance of the final activities related to the Development Phase of the RFC System and the initial and subsequently on-going activities necessary during the Operating Phase of the RFC System. Development Phase activities will substantially end upon the Joint Board issuing Notice of Full System Acceptance in accordance with the RFC Contract. The Joint Board determined that certain Operating Phase activities needed to commence as early as January 1, 2009 and such determinations are hereby ratified and approved for purposes of this Agreement and the regional sharing of costs.

2.2 Need for Regional Staff During Transition. The Agencies acknowledge and agree that during the Transition Period, regional staff will be necessary both for Development Phase and Operating Phase activities while they are running concurrently. As provided in this Agreement, the Agencies will share in the costs of regional staff necessary for such activities.

2.3 Development Phase Cost Sharing. The Agencies agree the cost-sharing formula specified in Section II in Exhibit C shall continue to be applied to RFC System shared costs and regional grant revenues during and until the end of the Development Phase.

2.4 Operating Phase Cost Sharing. The Agencies agree that during the Transition Period and the Operating Phase, the ORCA Program Operating Costs will be shared as set forth in Section 9.2 of this Agreement and in Exhibits D-1 and D-2. Provided, however, Fiscal Agent Fees shall not be considered ORCA Program Operating Costs until the first month in which ORCA commences live revenue service.

3.0 DEFINITIONS

The following definitions shall apply under this Agreement unless the context requires otherwise or another definition is expressly provided in this Agreement.

3.1 "2003 Agreement" means the "Interlocal Cooperation Agreement for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System," dated April 29, 2003, as amended.

3.2 "Administrative/Project Management Fee" means the fees paid by the Agencies during the Development Phase of the RFC System to King County to cover the actual labor, material, overhead and other costs of the Project Team, as well as the fees paid by the Agencies to the Fiscal Agent to cover its actual labor, material, overhead and other costs incurred in providing services as a Fiscal Agent prior to the month in which ORCA commences live revenue service.

3.3 "Agency" means each of the public transportation agencies that is a party to this Agreement.

3.4 "Agency Site Manager" means the person designated by an Agency to act as the primary point of contact for the Agency and the person authorized to speak for that Agency in matters relating to the Contract Administrator, the Operations Manager, the Regional Program Administrator, Joint Consultants, the Fiscal Agent and/or the RFC Contractor during the Development and Operating Phases of the RFC System. The Agency may authorize a person within the Agency other than the Agency Site Manager, to manage the Agency's bank accounts and to communicate directly with the Fiscal Agent. The duties of the Agency Site Manager are described in Exhibit A-1 for the Development Phase and Exhibit A-2 for the Operating Phase.

3.5 "Budget" means, depending on the context, the RFC Project Budget for costs applicable to the Development Phase or the ORCA Budget for costs applicable to the Operating Phase.

3.6 "Business Account" means an entity other than an individual customer, including, but not limited to, an employer, educational institution or social service agency, that purchases ORCA Cards and Products for distribution to its employees, students or other program participants according to the terms of an agreement with a Business Account Lead Agency.

3.7 "Business Account Lead Agency" means an Agency authorized by the Joint Board to enter into agreements with Business Accounts on behalf of itself and other Participating Agencies.

3.8 "Central Payments Account" means the payments account(s) maintained by the ORCA Regional Administration Agency on behalf of the Agencies for the collection of individual Agency

funds and subsequent transmission of payments on behalf of the Agencies to the RFC Contractor, Joint Consultants, Retail Revalue Entities and Agencies acting as Regional Service Providers.

3.9 "Contract Administrator" means the King County employee responsible for the day-to-day administration of the RFC Contract, Joint Consultant contracts, and the combined Agency activities during the Development Phase of the RFC System, including Development Phase activities during the Transition Period. In the event the Contract Administrator and the ORCA Operations Manager are not the same person during the Transition Period, the Contract Administrator shall remain the point of contact with the RFC Contractor through the Transition Period. During the Transition Period, the Contract Administrator shall work with the ORCA Operations Manager and the ORCA Regional Program Administrator for the benefit of the RFC System.

3.10 "Day" or "day" means a calendar day unless otherwise expressly provided.

3.11 "Development Phase" means the period of the design and implementation of the RFC System, whether under the 2003 Agreement or any period under this Agreement, until the Joint Board issues Notice of Full System Acceptance in accordance with the RFC Contract or as otherwise determined by the Joint Board.

3.12 "Escrow Agreement" means the agreement identifying the terms of the escrow services and any related verification services.

3.13 "Federal Grant" means any financial assistance provided by a department of the U.S. government in support of the RFC System.

3.14 "Fiscal Agent" means the Agency designated in accordance with this Agreement to provide the services described in Section 7.0 and Exhibit F-1 of this Agreement.

3.15 "Fiscal Agent Fee" means the fees paid by the Agencies to the Fiscal Agent to cover the Fiscal Agent's actual labor, material, overhead and other costs incurred in providing services as a Fiscal Agent under this Agreement, including but not limited to the costs incurred by the Fiscal Agent under any contracts entered into by the Fiscal Agent as authorized by the Joint Board and included in the ORCA Budget.

3.16 "FTA" means the Federal Transit Administration.

3.17 "GAAP" means U.S. generally accepted accounting principles as in effect from time to time.

3.18 "Joint Board" means the Joint Board established by Section 5.0 of this Agreement.

3.19 "Joint Consultant" means any contractor, other than an Agency, that is retained by authority of the Joint Board and on behalf of all the Agencies to provide legal, financial, technical and other services during the Development Phase or Operating Phase.

3.20 "Local Retail Revalue Entity" means an entity not designated by the Joint Board as a Regional Retail Revalue Entity that enters into an agreement with an Agency, the terms of which are approved by the Joint Board, for the purpose of providing revalue services for customers with ORCA Cards. The entity may have one or multiple locations.

3.21 "Operating Phase" means the period of operating and maintenance of the RFC System beginning on January 1, 2009 and continuing until the termination of this Agreement.

3.22 "ORCA" means the RFC System during Operating Phase.

3.23 "ORCA Accounts" means collectively the bank accounts listed in Exhibit F-2 that receive or hold payments made by customers, Business Accounts and Regional and Local Retail Revalue Entities arising from the sales of ORCA Cards and ORCA Products, to be held on behalf of or disbursed to the Agencies. Such accounts shall be held in the name of the Fiscal Agent as "Fiscal Agent for the Regional Fare Coordination System."

3.24 "ORCA Budget" means the annual budget approved by the Joint Board that contains ORCA Program Regionally-shared Costs as defined in this Agreement.

3.25 "ORCA Card" or "RFCS Card" means the smart card that can be presented for payment of fare to ride train, bus and ferry services provided by, and in accordance with the terms established by, the Agencies. ORCA Card can mean cards issued to individuals and Business Accounts, unless the context indicates it means one or the other.

3.26 "ORCA Operations Agency" means the Agency designated by the Joint Board that is responsible for performing the functions specified in Exhibit B-2 during the Operating Phase.

3.27 "ORCA Operations Group" means the persons assigned by the ORCA Operations Agency to perform the functions of the ORCA Operations Agency during the Operating Phase. This term does not include employees of the ORCA Operations Agency acting as that Agency's Site Manager or performing the functions of a Regional Service Provider.

3.28 "ORCA Operations Manager" or "Operations Manager" means the employee of the ORCA Operations Agency who is approved by, and reports to, the Joint Board during the Operating Phase. The ORCA Operations Manager is responsible for managing the functions of the ORCA Operations Group and coordinating the provision of regional services by the Fiscal Agent, Regional Mail Center and Regional Inventory Distribution Center. The ORCA Operations Manager's duties are more specifically described in Exhibit B-2. In the event the ORCA Operations Manager and the Contract Administrator are not the same person during the Transition Period, the ORCA Operations Manager will work with the Contract Administrator for the benefit of the RFC System.

3.29 "ORCA Product(s)" or "Product(s)" means any transit fare payment option offered for sale within the ORCA Program, including, but not limited to, monthly or period passes and E-purse.

3.30 "ORCA Program" means the equipment, systems, facilities, ORCA Cards, ORCA Products, ORCA Websites, data, information, and any products and services related to the ORCA System implemented by the Agencies using smart cards as the common media for fare payment on their public transportation services.

3.31 "ORCA Program Agency-specific Costs" means the costs incurred by an individual Agency during the Operating Phase which are not shared by other Agencies, including but not limited to the costs of: providing internal networks, equipment and staffing related to ORCA operations and maintenance; complying with the security, records, change management, and

other processes and procedures established under this Agreement; acting as a Business Account Lead Agency or Retail Revalue Lead Agency; performing the Agency's obligations under this Agreement; and making payments due to the RFC Contractor that are not regionally-shared costs, including but not limited to the cost of purchases and maintenance of Agency equipment.

3.32 "ORCA Program Regionally-shared Costs" means all the actual costs of operating, maintaining, enhancing and replacing the ORCA system and equipment during the Operating Phase that are approved in the annual ORCA Budget by the Joint Board for cost-sharing among the Agencies. ORCA Program Regionally-shared Costs include the ORCA Program Operating Costs, the ORCA Program Capital Costs, and other regionally shared costs as may be approved by the Joint Board. Provided, however, ORCA Program Operating Costs do not include the costs of goods or services that may be contributed by an Agency to the ORCA Program.

3.33 "ORCA Program Operating Costs" means the actual costs of operating and maintaining the ORCA System and equipment during the Operating Phase that are approved by the Joint Board for cost-sharing among the Agencies in the annual ORCA Budget, including: (a) the actual labor, material, overhead and other costs of the regional services provided by the Regional Service Providers; (b) the shared costs payable to the RFC Contractor and any Joint Consultants; and (c) such other operating costs designated and approved for cost-sharing by the Joint Board in the ORCA Budget. ORCA Program Operating Costs are a component of the ORCA Program Regionally-shared Costs that are shared by the Agencies according to the cost allocations in this Agreement. Provided, however, ORCA Program Operating Costs do not include the costs of goods or services that may be contributed by an Agency to the ORCA Program.

3.34 "ORCA Program Capital Costs" means the actual capital costs during the Operating Phase that are approved by the Joint Board for cost-sharing among the Agencies in the annual ORCA Budget, including but not limited to the costs of ORCA system and equipment enhancements, expansions, and replacements. ORCA Program Capital Costs are a component of the ORCA Program Regionally-shared Costs that are shared by the Agencies according to the cost allocations in this Agreement. Provided, however, ORCA Program Operating Costs do not include the costs of goods or services that may be contributed by an Agency to the ORCA Program.

3.35 "ORCA Regional Program Administration Agency" means the Agency designated by the Joint Board that is responsible for performing the functions specified in Exhibit B-3 during the Operating Phase.

3.36 "ORCA Regional Program Administrator" or "Regional Program Administrator" means the employee of the ORCA Regional Program Administration Agency who is approved by, and reports to, the Joint Board during the Operating Phase. ORCA Regional Program Administrator is responsible for managing the functions of the ORCA Regional Program Administration Group and such other duties as are more specifically described in Exhibit B-3.

3.37 "ORCA Regional Program Administration Group" means the persons assigned by the ORCA Regional Program Administration Agency to perform the functions of the ORCA Regional Program Administration Agency during the Operating Phase. This term does not include employees of the ORCA Regional Program Administration Agency acting as that Agency's Site Manager or performing the functions of another Regional Service Provider.

- 3.38 "ORCA System" is the term that may be used for "RFC System" in the context of the Operating Phase.
- 3.39 "Participating Agency" means an Agency on whose behalf a Business Account Lead Agency enters into an agreement with a Business Account for the sale of ORCA Cards and ORCA Products.
- 3.40 "PCI" means Payment Card Industry.
- 3.41 "Project Administration" means the activities of the Project Team to administer the RFC Contract, Joint Consultant contracts, and the combined Agency activities during the Development Phase of the RFC System.
- 3.42 "Project Team" means the Contract Administrator and other positions provided in this Agreement or established by the Joint Board during the Development Phase of the RFC System.
- 3.43 "Regional Fare Coordination System" means the common, non-cash fare system developed and operated by the RFC Contractor to enable customers of public transportation to use the same fare payment media throughout the Agencies' service areas.
- 3.44 "Regional Service Fee" means the fee paid to an Agency to cover its actual labor, material, overhead and other costs incurred in performing the functions of a Regional Service Provider under the 2003 Agreement and this Agreement.
- 3.45 "Regional Service Provider" means King County (for RFC Project Administration) and Sound Transit (for Fiscal Agent) during the Development Phase; and, during the Operating Phase, the Agency(ies) designated by the Joint Board to perform the functions of the ORCA Operations Agency, ORCA Regional Program Administration Agency, Fiscal Agent, Regional Mail Center and Regional Inventory and Distribution Center.
- 3.46 "Regional Retail Revalue Entity" means an entity that is selected by the Joint Board to enter into an agreement with a Retail Revalue Lead Agency, the terms of which are approved by the Joint Board, for the purpose of providing revalue services for customers with ORCA Cards. The entity may have one or multiple locations.
- 3.47 "Retail Revalue Lead Agency" means an Agency authorized by the Joint Board to enter into agreements with Retail Revalue Entities on behalf of all the Agencies.
- 3.48 "RFC Contract" means the contract between the RFC Contractor and the Agencies under which the Contractor shall design, implement, operate and maintain the RFC System.
- 3.49 "RFC Contractor" means ERG Transit Systems (USA) Inc., or its successors or assigns, that are under contract with the Agencies to design, implement, operate and maintain the RFC System.
- 3.50 "RFC Project" means the RFC Contract, Joint Consultant contracts, and the combined Agency activities related to the design, implementation, operation and maintenance of the RFC System. The RFC Project shall be known as "ORCA" during the Operating Phase.

3.51 "RFC Project Budget" during the Development Phase of the RFC System means the amount to pay: for products and services by the RFC Contractor and Joint Consultants; for Project Administration activities; for Administrative/Project Management Fees; for any Regional Service fees charged by Agencies for the provision of services to other Agencies; and for contingency and other shared costs of the Agencies on the RFC Project.

3.52 "RFC System" or "RFCS" means the Regional Fare Coordination System, which may also be referred to as ORCA System.

3.53 "RFCS Card" or "ORCA Card" means a smart card issued to a customer or a Business Account by an Agency on behalf of the Agencies for use in the ORCA Program.

3.54 "Security Document" means a generic term for either an irrevocable letter of credit or a performance bond depending on the context.

3.55 "Transition Period" means the period in 2009 during which both Development Phase efforts and Operating Phase efforts are undertaken concurrently.

4.0 INDIVIDUAL AGENCY RESPONSIBILITIES

4.1 Agency Duties. In addition to, and not in limitation of, other Agency performance requirements contained in this Agreement, each Agency shall take the following actions consistent with the provisions of this Agreement

4.1.1 General

For purposes of the Development Phase, designate an Agency Site Manager to continue activities associated with design and implementation of the RFCS System.

4.1.1.2 For purposes of the Operating Phase, designate an Agency Site Manager to act as a single point of contact for the Agency unless the Agency also designates a representative for financial matters. The Site Manager will be responsible for coordinating all internal Agency responses and ensure full and timely performance of all Agency responsibilities under this Agreement.

4.1.1.3 Review RFC Contractor and Joint Consultant deliverables and provide accurate and complete comments, as required, in the time frames prescribed in Exhibit B-1 for the Development Phase or such other time frames as the Agencies may agree upon. During the Operating Phase, review all documents requested by the ORCA Operations Manager or ORCA Regional Program Administrator, including change orders, business rule or process updates, status or evaluation reports and other deliverables and documents in the time frames prescribed in Exhibit B-2 and B-3, or such other time frames as the Joint Board may establish.

4.1.1.4 Monitor performance of the RFC Contractor for Agency-related activities, and immediately report performance issues to the ORCA Operations Manager and, to the extent the issue is related to movement of funds, to the Fiscal Agent. If an Agency is not satisfied with the action of the ORCA Operations Manager or the Fiscal Agent with regard to the movement of funds, the Agency may submit the issues to the Joint Board for resolution.

4.1.1.5 Continue to set its own fares and fare policies provided they are consistent with the provisions and practices set forth in this Agreement or business rules established by the

Joint Board. An Agency shall give notice to the Joint Board and the Fiscal Agent no less than thirty (30) days prior to the implementation date of any changes in fares and fare policies. Said notice shall be in writing and shall be accompanied by a written report of the possible effects of such changes on the ORCA Program. Changes in fares and fare policies that require changes to the ORCA System will be submitted through the change management process established by the Joint Board and may require longer to implement. RFC Contract Change Orders will be executed as needed.

4.1.1.6 Participate in ORCA marketing efforts coordinated by the Regional Program Administrator and provide information to the public on the benefits and uses of the ORCA System to promote use of the ORCA System. Each Agency will provide such informational materials as are consistent with those developed by the Regional Program Administrator for all Agencies.

4.1.1.7 Respond to public disclosure requests as required by the Public Disclosure Act (RCW 42.56 *et seq.*), and coordinate Agency responses with other Agencies and the Regional Program Administrator pursuant to the guidelines adopted by the Joint Board.

4.1.1.8 Comply with the terms of this Agreement, its Exhibits, and any policies, business rules and guidelines adopted by the Joint Board including, but not limited to, those regarding security, data retention, privacy, and public disclosure.

4.1.2 Financial

4.1.2.1 Maintain individual Agency bank accounts as outlined in the system design and as may be required by the Joint Board, including "Zero Balance Accounts", to facilitate timely transfer of revenue allocations based on sales and use of ORCA Products.

4.1.2.2 Designate an Agency representative to coordinate communications with the Fiscal Agent regarding matters related to the functions of the Fiscal Agent and to ensure full and timely performance of all Agency responsibilities related to the Fiscal Agent functions. The Agency representative should be authorized to make decisions with regard to the Agency bank accounts.

4.1.2.3 Provide authorization to the Fiscal Agent and the RFC Contractor to direct the movement of funds among the ORCA Accounts and the Agency's bank account(s) for the purposes of fare revenue settlement, and provide at least sixty (60) days advance notice in writing to the Fiscal Agent and ORCA Operations Manager of changes in the Agency's bank or bank accounts to enable the Fiscal Agent and the RFC Contractor to implement such changes.

4.1.2.4 Provide authorization to Internet gateway processors and other service providers as necessary for the authorization and processing of internet sales transactions.

4.1.2.5 Make timely payment of the Agency's entire ORCA Program Agency-specific Costs and the Agency's share of: the Administrative/Project Management Fees, RFC Contractor and Joint Consultant costs that are shared during the Development Phase, in accordance with Exhibit C; and the ORCA Program Regionally-shared Costs during the Operating Phase, in accordance with the applicable cost-sharing methodologies as provided in Exhibit D-1.

- 4.1.2.6 Establish merchant agreements with banks and system-designated gateway processors for acceptance and processing of credit and debit card transactions.
- 4.1.2.7 Pay the Agency's share of any commissions and expenses paid to Regional Retail Revalue Entities, as designated by the Joint Board, resulting from the sale of ORCA Products. Commissions will be calculated by the Fiscal Agent and will be remitted to the retailers after receiving payment from Agencies. Commissions paid to Local Retail Revalue Entities are at the sole discretion and cost of the contracting Agency.
- 4.1.2.8 Monitor the Agency's accounts and promptly inform the Fiscal Agent and the ORCA Operations Manager of abnormal bank activity in the Agency's accounts related to the ORCA System.
- 4.1.2.9 Except as otherwise specified in this Agreement, act as merchant of record and accept the risk of loss regarding cash, check, and credit/debit card transactions: (a) processed at the Agency's customer service office; (b) processed at the Agency's call center; and (c) with a Business Account that is under an agreement with the Agency when acting as the Business Account Lead Agency.
- 4.1.2.10 Pay the Agency's share of the commissions and costs related to agreements with Regional Retail Revalue Entities during the Operating Phase.
- 4.1.2.11 To ensure consistent financial reporting, comply with generally accepted accounting principles (GAAP), methods prescribed by the Washington State Auditor and business rules established by the Joint Board in accounting for assets, liabilities, resources and expenditures related to the ORCA System.
- 4.1.2.12 Allow access to facilities and records and/or conduct annual audits in accordance with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS); report audit concerns related to fare collection to the Joint Board, Fiscal Agent, ORCA Operations Manager and ORCA Regional Program Administrator and propose changes to the RFC System through the change management process established by the Joint Board.
- 4.1.2.13 Collect, report and pay any taxes applicable to transactions that are processed by the Agency. Each Agency shall indemnify, defend and hold harmless other Agencies from claims, judgments and penalties of any kind and for all cost incurred (including attorney fees) as a result of the Agency's non-compliance with this subsection.
- 4.1.2.14 Agree to address all "user control considerations" identified in the Pre-SAS 70 diagnostic review performed by an external auditor and implement such control activities or risk mitigation recommendations made in future external auditor engagements, including the RFC Contractor's SAS 70 audits.
- 4.1.3 Security
- 4.1.3.1 Comply with the provisions of the Agency Security Plan set forth in Exhibit H.
- 4.1.4 Networks, Equipment and Software

4.1.4.1 Comply with RFC Contractor's preventative maintenance programs as outlined in RFC Contract and Operations and Maintenance manuals provided by the RFC Contractor.

4.1.4.2 Monitor the Agency's networks, equipment, and software related to the ORCA System and take such reporting and corrective measures as are required under the business rules adopted by the Joint Board and the Agency Security Plan. Without limiting the foregoing, monitor the device connections report daily to ensure that all transaction processors communicate with the DACs and/or BOC and, to allow "gap" transactions to be captured and processed, cause that communication to occur as soon as possible but not more than fourteen (14) days after the discovery of the failure.

4.1.4.3 Provide to the ORCA Operations Manager all information relating to, and take all actions required for, the administration and enforcement of warranties on all ORCA-related equipment, hardware and software.

4.1.4.4 Maintain equipment and equipment inventory, warranty and repair records and provide reports as requested by the RFC Contractor or the ORCA Operations Manager to monitor overall system and component reliability, identify regional trends in equipment failures and otherwise serve ORCA Program purposes.

4.1.4.5 Comply with the processes set out by the RFC Contractor and ORCA Operations Manager to submit requests for Return Materials Authorizations (RMA) and return defective equipment according to the requirements of the RFC Contract.

4.1.4.6 Comply with the process set out by the ORCA Operations Manager for the submission of documentation to receive RFC Contractor reimbursement, if applicable, for the cost of removing, replacing and returning defective equipment.

4.1.4.7 Maintain an inventory of spare on-board and fare transaction processing equipment adequate to have sufficient quantities available for the Agency's ORCA operations at all times.

4.1.5 System Operations

4.1.5.1 As applicable, provide and maintain communication lines, wireless communications infrastructure, routers and switches connecting ORCA System locations, including, but not limited to Agency facilities as necessary for data transmittal.

4.1.5.2 Within thirty-six (36) hours, repair and reinstate communications networks to maintain an adequate level of network availability as needed to support operation of the ORCA system.

4.1.5.3 If applicable, provide SNMP traps to the RFC Contractor.

4.1.5.4 Train, or provide for training, of Agency personnel on operation and maintenance of the ORCA System. Each Agency will establish training programs that are consistent in content with those of other Agencies and are based on training materials developed by the RFC Contractor.

4.1.5.5 Allow the RFC Contractor to access Agency equipment and facilities for the performance of development, installation, operation and maintenance functions under the RFC

Contract; provided that the RFC Contractor shall comply with the Agency's security policies, procedures and requirements.

4.1.5.6 Notify the ORCA Operations Manager when equipment orders will be submitted to the RFC Contractor. Agency orders will be coordinated by the ORCA Operations Manager (with coordination between the Contract Administrator and ORCA Operations Manager, if during the Transition Period).

4.1.5.7 As requested by the ORCA Operations Manager, provide information on anticipated equipment purchases to support forecasts.

4.1.5.8 Submit any requested revisions to the ORCA System in writing to such committees and boards as are provided in the change management process established by the Joint Board and the RFC Contractor. The request should identify the revision, the anticipated outcomes from the revision, the estimated cost (if known), the impacts of the revision on other Agencies, and all other information related to the requested revision. No revision shall be implemented except through the established change process and, if applicable, the change order or amendment process provided in the RFC Contract.

4.1.5.9 Coordinate fare table and service data updates with other Agencies in accordance with rules established by the Joint Board, and provide such updates in advance per prescribed time lines as may be required by the Joint Board and the RFC Contractor to support regional testing prior to deployment into the ORCA System.

4.1.5.10 Coordinate updates of information technology networks and infrastructure provided by the Agencies as needed to support ORCA operations

4.1.5.11 Do not implement patches, upgrades or service packs to any ORCA System device used for ORCA operation without certification from the RFC Contractor and approval from the ORCA Operations Manager. (Agency-supplied routers, switches or access points do not require certification by RFC Contractor.)

4.1.5.12 Participate in Agency-specific and regional testing and test script development as may be required, using regional or other test beds or test configurations of RFC equipment.

4.1.5.13 Periodically monitor operating staff use of the RFC components in accordance with published training and operating procedures, reporting inconsistencies, and taking remedial action or providing supplemental training as required to bring operation into compliance with published training and operating procedures.

4.1.5.14 Contribute to the updating of the regional knowledge bases.

4.1.5.15 Establish and maintain procedures and responsibilities for handling incidents and emergencies related to the ORCA System, and provide a designated contact available within two (2) hours notice to respond to such incidents and emergencies.

4.1.5.16 In coordination with the ORCA Operations Manager and the ORCA Regional Program Administrator, develop, maintain and periodically exercise an Agency business continuity plan to be activated in the event of substantial or complete failure of the RFC System. Support the ORCA Operations Manager in coordination with the RFC Contractor in the event of the need to recover from such failures.

4.1.5.17 Maintain records of any disciplinary action taken against an employee resulting from willful or negligent misuse or mishandling of RFC equipment or data and as appropriate notify the ORCA Operations Manager of any RFC system impacts that may result.

4.1.5.18 Make no changes or modifications to any RFC component, software or RFC Contractor-provided documentation (other than Agency-customized training materials) without approval from such committees and boards as are provided in the change management process established by the Joint Board.

4.1.5.19 Integrate no other components or software with the RFC system without approval from such committees and boards as are provided in the change management process established by the Joint Board.

4.1.5.20 Maintain insurance, or if self insured, adequate reserves to respond to potential issues that arise through the course of the operation of the RFC system.

4.1.5.21 Manage card inventory and provide regular forecasts to the Regional Inventory Distribution Center.

4.1.6 Agency Representatives

4.1.6.1 Designate and direct Agency representatives to participate in such regional committees as may be established by the Joint Board.

4.1.6.2 Designate and direct Agency representatives to participate in meetings with the RFC Contractor, the ORCA Operations Manager, the Regional Program Administrator, the Fiscal Agent, representatives of other Agencies, and any combination of such parties.

4.1.7 Customer Services

4.1.7.1 If applicable, issue ORCA Cards and/or load ORCA Products for ORCA customers on behalf of all of the Agencies in accordance with the business rules adopted by the Joint Board.

4.1.7.2 Assist in the development of the RFC System Project rollout plan, as described in Exhibit A-1.

4.1.7.3 Assist in the development and implementation of uniform agreements to be used in the ORCA Program, including but not limited to agreements used by Business Account Lead Agencies and Retail Revalue Lead Agencies.

4.1.7.4 Respond to all customer inquiries and transaction requests related to ORCA functionality regardless of the services actually used by the customer, directing the customer to other Agencies for assistance with only those Agency-specific issues which must be so referred.

4.1.7.5 As applicable, participate in regional call center routing of calls providing required customer assistance.

4.2 Agency Duties under the RFC Contract. The Agencies have additional responsibilities that are set forth in the RFC Contract. The Agencies shall apprise themselves of the terms and

conditions of the RFC Contract and take all necessary and appropriate actions to fulfill all responsibilities, whether described in this Agreement or in the RFC Contract. In the event that the Agency believes that there is a conflict between its responsibilities described in this Agreement and those in the RFC Contract, the Agency shall bring said conflict to the attention of the Contract Administrator or ORCA Operations Manager and the Regional Program Administrator. In the event the matter is not resolved, it shall be referred to the Joint Board for resolution. The Agency shall abide by the decision of the Joint Board.

4.3 Agencies Serving as Lead Agencies.

4.3.1 Agreements with Business Accounts. An Agency may act as a Business Account Lead Agency or a Participating Agency in Business Account Agreements that are subject to the participation requirements, pricing methodologies and revenue distribution provisions specified in Exhibit E-3. The standard terms of Business Account agreements shall be subject to approval by the Joint Board. The responsibilities of the Business Account Lead Agency and Participating Agencies, and the designation of an Agency as a Business Account Lead Agency, shall be established by agreement of the Agencies and subject to business rules adopted by the Joint Board.

4.3.2 Agreements with Retail Revalue Entities. An Agency may act as a Retail Revalue Entity Lead Agency in agreements with Retail Revalue Entities, the terms of which shall be subject to approval by the Joint Board. The responsibilities of Retail Revalue Entity Lead Agency, and the designation of an Agency as a Retail Revalue Entity Lead Agency, shall be established by agreement of the Agencies and subject to business rules adopted by the Joint Board.

5.0 JOINT BOARD

5.1 Creation of Joint Board. By executing this Agreement, the Agencies hereby create a Joint Board, which shall function as a joint board pursuant to chapter 39.34 RCW. The Joint Board shall serve as the governing, policy-setting body to oversee the activities of the Agencies, RFC Contractor and Joint Consultants related to the design, implementation, operation, and maintenance of the RFC Project, as provided in this Agreement. The Joint Board shall act on behalf of all Agencies and as may be in the best interests of the RFC Project.

5.2 Joint Board Members; Quorum. Membership on the Joint Board shall consist of the following Agency officials, which representative shall be authorized to take actions within the scope of this Agreement: King County's Transit General Manager; Community Transit's Chief Executive Officer; Sound Transit's Chief Executive Officer; Kitsap Transit's Executive Director; Pierce Transit's Chief Executive Officer; Everett's Director of Transportation Services; and Washington State Department of Transportation's Assistant Secretary for Ferries' Division. In addition, an Agency may select an alternate representative to participate on the Joint Board during the absence or inability of the designated official to participate. A quorum for a meeting of the Joint Board shall be a majority of the representatives of the Agencies.

5.3 Meeting Procedures. The Joint Board shall establish procedures for the operations and meetings of the Joint Board, including the election of a chair, vice chair, and other positions deemed necessary by the Joint Board and the frequency of meetings. The terms of office of the chair and other positions shall be determined by the Joint Board. The vice chair shall serve as acting chair if the chair is absent or otherwise unavailable. Each Joint Board representative shall be entitled to one vote. Voting by proxy may be permitted according to procedures

adopted by the Joint Board. The Joint Board shall comply with applicable requirements of the Washington State Open Public Meetings Act.

5.4 Authority of Joint Board. The Joint Board is authorized to make decisions and take actions on all matters related to the RFC Project and ORCA Program except those matters that require action by the governing boards of the Agencies. At a minimum, such decisions and actions that do not require further action by Agency governing boards include, but are not limited, to the following:

5.4.1. Make such decisions and take such actions as are expressly delegated to the Joint Board under this Agreement.

5.4.2. Issue a Notice of Apparent Completion (NAC) of the following RFC Contract Deliverables and/or Milestones (in each case as defined or described in the RFC Contract):

- i. Project Schedule
- ii. Final Design
- iii. Factory Acceptance Testing
- iv. System Integration Testing
- v. BETA Test Readiness
- vi. BETA Test Acceptance
- vii. Complete System Commissioning
- viii. Complete Operator Training
- ix. Full System Acceptance.

5.4.3. Approve changes to, and termination of, the RFC Contract and approve the award of, changes to, and termination of, Joint Consultant contracts; Provided, however, the Joint Board may delegate to the Contract Administrator or the ORCA Operations Manager the authority to make changes to the RFC Contract and Joint Consultant contracts, within limits established by the Joint Board and subject to the adopted Budget.

5.4.4. Determine, pursuant to Subsection 9.3 of this Agreement, the allocation among the Agencies of proceeds from any draw by the ORCA Operations Agency on a Security Document or withheld payments under the RFC Contract.

5.4.5. During the Development Phase, approve the RFC Project Budget, and all amendments to the RFC Project Budget, subject to the capital amounts committed by each Agency as set forth in Exhibit C, RFC Project Budget Estimated Expense and Grant Revenues. During the Operating Phase, approve the ORCA Budget, and all amendments to the ORCA Budget.

5.4.6. Authorize Regional Service Providers to enter into contracts and make changes to same. Provided, however, the Joint Board may delegate to the Regional Service Providers the

authority to enter into contracts and make changes to same, within limits established by the Joint Board and subject to the adopted Budget.

5.4.7. Approve the RFC Project rollout plan developed by the Project Team.

5.4.8. Consent to an Agency entering into a contract with the RFC Contractor for a specialized application.

5.4.9. Approve the use of additional applications on ORCA Cards issued by the Agencies and/or the use of the RFCS application on cards issued by the RFC Contractor or by a third party. It is expressly agreed that no Agency is authorized to perform either of the activities set forth in this paragraph without prior approval of the Joint Board.

5.4.10 Establish any Regional Service Providers and their activities for the Operating Phase; and appoint and replace Agencies to said roles.

5.4.11 Approve the selection of the ORCA Operations Manager and conduct annual performance reviews of the ORCA Operations Manager.

5.4.12 Approve the selection of the ORCA Regional Program Administrator and conduct annual performance reviews of the ORCA Regional Program Administrator.

5.4.13 Adopt and amend a policy on ORCA Program funds management, such policy to include guidelines designed to maximize return on ORCA funds while ensuring liquidity, under which the Fiscal Agent is to manage funds held by it in its role as Fiscal Agent under this Agreement.

5.4.14 Adopt and amend policies, business rules, procedures, and guidelines related to the ORCA Program including, but not limited to, those regarding fare collection, customer services, maintenance, security, data retention, privacy, and public disclosure.

5.4.15 Amend the exhibits to this Agreement.

5.4.16 Approve the terms and conditions of uniform Lead Agency Agreements with Business Accounts and Retail Revalue Entities, the manner of designating Agencies to assume the responsibilities of a Lead Agency, and the Agency-specific provisions, if any, that may be included in such agreements.

5.4.17 Approve the addition of new parties to this Agreement and the terms and conditions for such addition pursuant to Section 16.

5.4.18 Approve the terms and conditions for an Agency's withdrawal from this Agreement.

5.4.19 Remove an Agency from this Agreement for good cause and establish the payments to be made by the Agency on account of such removal.

5.4.20 Conduct or cause to be conducted an annual review of the ORCA Program and the RFC Contractor's performance under the RFC Contract.

5.4.21 Approve capital improvement policies.

5.4.22 Establish committees and advisory groups to perform activities related to the ORCA Program or to provide reports or recommendations to the Joint Board related to the ORCA Program.

5.4.23 Approve, by unanimous vote, the addition of other decisions and actions to those specified below in Subsection 5.6 that require only a simple majority vote of the Agency representatives present and voting on the matter at a meeting in which a quorum is present.

5.4.24 Delegate the Joint Board's authority under this Agreement subject to such limitations and conditions as the Joint Board may establish.

5.5 Decision-Making/Voting Process. The Joint Board shall attempt to reach consensus agreement on the decision before it. The Joint Board shall make decisions and take action by voting with each Agency having one vote. Except as provided below, decisions and actions by the Joint Board shall require a unanimous vote of the Agency representatives present and voting on the matter at a meeting in which a quorum is present. The following decisions shall require only a simple majority vote of the Agency representatives present and voting on the matter at a meeting in which a quorum is present:

- a. termination/replacement of the Contract Administrator, the ORCA Operations Manager or the Regional Program Administrator, in accordance with Section 6;
- b. termination/replacement of one of the Regional Service Providers;
- c. approval of change orders, provided the amount approved does not exceed the adopted Budget;
- d. determination of the amount of damages and additional costs to be paid by a withdrawing Agency or an Agency removed from this Agreement; and
- e. approval of Agency-specific purchases of goods and services in accordance with this Agreement.

Except as provided in this Agreement, all decisions made by the Joint Board under this Agreement shall be final and binding on the Agencies. Decisions and actions by the Joint Board shall be memorialized in writing and signed by the chair or acting chair of the Joint Board. A copy of each decision and action shall be distributed to each Joint Board representative and alternate representative within five (5) days of the decision or action.

5.6 Emergency Procedures. Consistent with applicable Washington State law, the Joint Board may adopt procedures for providing direction and decision-making in the event of emergencies that have or may have direct, significant and material negative effects on the operation and maintenance of ORCA and consideration of such emergencies by the Joint Board could not occur in a timely manner, all as determined by the Chair or Vice-Chair of the Joint Board. Such procedures may allow expedited procurement procedures to address the emergency, as may be permitted by Washington State law. Each decision made pursuant to such procedures shall be subject to ratification by the Joint Board in a regular or special meeting within two (2) weeks after the finding of an emergency by the Chair or Vice-Chair of the Joint Board.

6.0 ADMINISTRATRATION

6.1 Development Phase.

6.1.1 Project Team Composition and Duties. The Project Team for the Development Phase of the RFC System shall consist of the Contract Administrator, IS/Technical Manager, Budget and Contract Control Manager, Agency Site Managers, and a Project Assistant. The duties and responsibilities of the members of the Project Team are set forth in the Project Team Plan in Exhibit A-1 to this Agreement, which exhibit is incorporated by this reference as though fully set forth herein. The positions on the Project Team, other than Contract Administrator, may be revised by the Joint Board as deemed appropriate for the Development Phase.

6.1.2 Contract Administrator. The Contract Administrator, who shall be nominated by King County and approved by the Joint Board, shall report to the Joint Board and have day-to-day responsibility for managing the IS/Technical Manager, Budget and Contract Control Manager and Project Assistant on behalf of and at the direction of the Joint Board. The Contract Administrator shall neither be King County's representative on the Joint Board nor its Agency Site Manager. The Contract Administrator shall be the agent of the Agencies for purposes of managing the RFC Contract and contracts with Joint Consultants during the Development Phase.

6.1.3 Contract Administrator Duties. For the Development Phase, the Contract Administrator is empowered to make decisions for the Agencies required during the management of the Project Team or the administration of the RFC Contract and Joint Consultant contracts, except those decisions identified in this Agreement that shall be made by the Joint Board or decisions that require action by the governing boards of the Agencies.

6.1.4 Change of Contract Administrator. During the Development Phase, if the Joint Board determines, for whatever reason, that the RFC Project requires a different Contract Administrator, the Joint Board shall notify King County of such request for removal which shall be subject to the limits and requirements of any applicable collective bargaining agreement and King County Code provisions. Subject to such limits and requirements, King County shall then nominate a new Contract Administrator who shall be subject to approval of the Joint Board.

6.1.5 Project Team Members. The Contract Administrator shall select the other members of the Project Team, except the Agency Site Managers who shall be selected by each Agency. Except for the Agency Site Managers, the members of the Project Team shall act on behalf of and at the direction of the Joint Board through the Contract Administrator. The Joint Board shall not be the employer of the Contract Administrator and other members of the Project Team. The Contract Administrator and each member of the Project Team, other than the Agency Site Managers, shall serve under the employment terms and conditions established by King County.

6.1.6 Dissolution of Project Team. The Project Team will be dissolved as determined by the Joint Board.

6.2 Operating Phase.

6.2.1 ORCA Operations Agency. The Joint Board shall designate an ORCA Operations Agency to perform the functions for ORCA as provided in Exhibit B-2 during the Operating Phase. The ORCA Operations Agency shall nominate and recommend to the Joint Board a person to serve as ORCA Operations Manager. The Joint Board, in its sole discretion, may

accept or not accept the person recommended by the ORCA Operations Agency. The ORCA Operations Agency shall not offer the position of ORCA Operations Manager until the Joint Board has accepted the recommendation of that person.

6.2.2 ORCA Operations Manager Duties. The ORCA Operations Manager shall report to the Joint Board and have day-to-day responsibility for the performance of the functions described in Exhibit B-2. The ORCA Operations Manager shall work with the Joint Board, the ORCA Regional Program Administrator and committees established by the Joint Board.

6.2.3 Designation of ORCA Operations Group. For the Operating Phase, consistent with ORCA Budget approved by the Joint Board and the employment policies and procedures of the ORCA Operations Agency, the ORCA Operations Agency shall assign persons to such ORCA Operations Group positions as are approved by the Joint Board.

6.2.4 Change of ORCA Operations Manager. During the Operating Phase, if the Joint Board determines, for whatever reason, that the RFC System requires a different ORCA Operations Manager, the Joint Board shall notify the ORCA Operations Agency of such request for removal which shall be subject to the limits and requirements of any applicable collective bargaining agreement and personnel or human resources policies and provisions of the ORCA Operations Agency. Subject to such limits and requirements, the ORCA Operations Agency shall then nominate a new ORCA Operations Manager who shall be subject to approval of the Joint Board.

6.2.5 ORCA Regional Program Administration Agency. The Joint Board shall designate an Agency to perform the ORCA Regional Program Administration functions for ORCA as further described in Exhibit B-3 during the Operating Phase. The Agency selected to perform the ORCA Regional Program Administration functions shall nominate and recommend to the Joint Board a person to serve as the ORCA Regional Program Administrator. The Joint Board, in its sole discretion, may accept or not accept the person recommended by the ORCA Regional Program Administration Agency. The Agency shall not offer the position of ORCA Regional Program Administrator until the Joint Board has accepted the recommendation of that person.

6.2.6 ORCA Regional Program Administrator Duties. The ORCA Regional Program Administrator shall report to the Joint Board and have day-to-day responsibility for the performance of the functions described in Exhibit B-3. The Regional Program Administrator shall work with the Joint Board, the ORCA Operations Manager and committees established by the Joint Board.

6.2.7 Designation of ORCA Regional Program Administration Group. For the Operating Phase, consistent with the ORCA Budget approved by the Joint Board and the employment policies and procedures of the ORCA Regional Program Administration Agency, the ORCA Regional Program Administration Agency shall assign persons to such ORCA Regional Program Administration Group positions as are approved by the Joint Board.

6.2.8 Change of ORCA Regional Program Administrator. During the Operating Phase, if the Joint Board determines, for whatever reason, that the RFC System requires a different ORCA Regional Program Administrator, the Joint Board shall notify the Agency employing the ORCA Regional Program Administrator of such request for removal which shall be subject to the limits and requirements of any applicable collective bargaining agreement and personnel or human resources policies and provisions of the ORCA Regional Program Administration Agency. Subject to such limits and requirements, the Agency shall then nominate a new ORCA Regional Program Administrator who shall be subject to approval of the Joint Board.

7.0 FISCAL AGENT

7.1 Reporting Relationship; Limitation of Fiscal Agent Duties. The Joint Board shall appoint an Agency to act as the Fiscal Agent. The Fiscal Agent shall report to the Joint Board and have such duties (and the obligation to perform only such duties) as are specified in this Agreement, including Exhibit F-1. The Joint Board may from time to time, by majority vote, change the Fiscal Agent by appointing a different Agency to act as Fiscal Agent.

7.2 When Not Acting as Fiscal Agent. When used in this Agreement, the term "Fiscal Agent" shall refer only to the appointed Agency when acting in its capacity as Fiscal Agent. When not acting in its capacity as Fiscal Agent, the appointed Agency is also an "Agency" for other purposes under this Agreement and shall have the same rights and obligations as the other Agencies. Notwithstanding such Agency's duties as Fiscal Agent, said Agency may engage in any kind of business with any other Agency, the RFC Contractor and/or any customer to the same extent as an Agency that is not acting as Fiscal Agent under this Agreement. The terms "Agency" and "Agencies" shall include the Agency appointed as Fiscal Agent when it is not acting in its capacity as Fiscal Agent.

7.3 Fiscal Agent Staffing. Consistent with the employment policies and procedures of the Fiscal Agent, the Fiscal Agent shall assign such employees as may be necessary to perform the Fiscal Agent's functions in this Agreement, including Exhibit F-1.

7.4 Fiscal Agent Authority to Enter Into Contracts. The Fiscal Agent shall contract with an accounting firm or firms for the purpose of performing an annual audit of the ORCA Accounts and for such other purposes as the Joint Board may authorize from time to time.

7.5 Costs Included In Budget. The Fiscal Agent Fee shall be included in the annual ORCA Budget and shared by the Agencies in accordance with their cost shares as determined under Exhibit C or D-1. The Fiscal Agent's Fee will assume that only costs that are directly related to the Fiscal Agent functions are shared among the Agencies; any overhead costs and resources that are not fully dedicated to ORCA would be borne by the Agency serving as the Fiscal Agent.

7.6 Banking Fees and Interest Income. Since ORCA Accounts are for the benefit of all Agencies, the fees and incomes associated with these accounts are to be shown as a separate line item within the annual ORCA Budget (with bank fees netted against interest income earned by all ORCA Accounts as a whole). Bank fees in excess of interest income will be billed separately from the Fiscal Agent Fee and allocated to Agencies according to the Agency cost shares as determined under Exhibit C or D-1. If the interest income exceeds bank fees, the surplus will be allocated to the Agencies according to the Agency cost shares as determined under Exhibit C or D-1.

7.7 Direct Communication with RFC Contractor. In order to facilitate the work of the Fiscal Agent, the Agencies authorize the Fiscal Agent, for the duration of its appointment, to communicate directly with the RFC Contractor on the following matters: (i) changes in Agency bank accounts and/or ORCA Accounts, (ii) obtaining information from the RFC Contractor for the purpose of legal and financial reporting, (iii) implementing changes in the Fiscal Agent's financial accounting system resulting from changes in the law and/or changes in design or functionality of the ORCA System, (iv) consulting with and receiving information from the RFC Contractor for purposes of creating an audit trail for all material events occurring as part of

transactions involving transportation customers, Business Accounts and Retail Revalue Entities; and (v) otherwise performing the Fiscal Agent's specific duties as described in this Agreement and Exhibit F-1. For auditing purposes, the Fiscal Agent, in coordination with the ORCA Operations Manager, shall have the ability to inspect all facilities where the RFC Contractor is providing customer or transaction or other clearinghouse or settlement services. The Fiscal Agent is not authorized to issue Change Orders to the RFC Contractor, modify the RFC Contract or otherwise bind the Agencies to new obligations or costs. The Agencies, through the ORCA Operations Manager, shall notify the RFC Contractor of this authorization for the Fiscal Agent to engage in direct communications. The Fiscal Agent shall keep the ORCA Operations Manager informed of the Fiscal Agent's communications with the RFC Contractor.

7.8 Protection of Fiscal Agent. In consideration of and as an inducement for the work of the Fiscal Agent, the Agencies agree that:

- a. The Fiscal Agent may rely upon any written report (including net settlement reports prepared by the RFC Contractor), notice, request, direction, consent, order, resolution, certificate, statement, instrument, or other paper or document submitted to the Fiscal Agent by an Agency, the ORCA Operations Manager, the ORCA Regional Program Administrator, the RFC Contractor, the Joint Board or its designee, or any bank holding the ORCA Accounts or any Agency account(s), provided the Fiscal Agent has a reasonable belief that the document is: (1) genuine; (2) within the submitting entity's authority under this Agreement, the RFC Contract or other applicable agreement; and (3) signed or presented by the authorized representative of the submitting entity. Any action taken, suffered or omitted by the Fiscal Agent based on such reliance shall be deemed to have been done in good faith for purposes of Section 7.9 below. For purposes of this Section an "authorized representative" of an Agency is the person identified by the Agency Site Manager as the person authorized by the Agency to communicate with the Fiscal Agent. For purposes of this Section a "written" report, notice, request, direction, consent, order, resolution, certificate, statement, instrument, or other document may be delivered to the Fiscal Agent online or by email.
- b. The Fiscal Agent may consult with counsel engaged by it (whether in-house or external) and independent certified public accountants from time to time, and reliance on the written advice of such counsel or accountants with respect to any action taken, suffered or omitted by the Fiscal Agent shall be deemed to be in good faith and subject to the provisions of subpart a. above.
- c. The Fiscal Agent shall be under no obligation to perform any functions or activities not provided for under this Agreement unless (a) the Joint Board has authorized such function or activity; and (b) the Agencies provide to the Fiscal Agent such security or indemnity as is reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in the performance of such function or activity.

7.9 Indemnity of Fiscal Agent by Agencies. The Agencies, including the Agency appointed as Fiscal Agent acting in its capacity as an "Agency", hereby agree to defend, indemnify and hold harmless the Fiscal Agent and its officers, directors and employees ("Fiscal Agent") for and against, any lawsuits, claims, actions, loss, liability or expense arising out of or in connection with the Fiscal Agent's acts or omissions in the performance of the duties of the Fiscal Agent under this Agreement, except to the extent such lawsuits, claims, actions, loss, liability or

expense arises from the Fiscal Agent's gross negligence, bad faith, or willful misconduct. This defense and indemnity shall be the joint obligation of all the Agencies and all costs incurred by them to perform the obligations of this Section 7.9 shall be shared by all the Agencies, including the Agency appointed as the Fiscal Agent, in accordance with the cost-sharing percentages under Exhibit C or D-1 that were in effect at the time of the Fiscal Agent's acts that are entitled to the Agencies' indemnity hereunder.

The provisions of this Subsection 7.9 shall survive the termination of this Agreement or the earlier resignation or removal of the Fiscal Agent.

8.0 CONTRACT EXECUTION AND ADMINISTRATION

8.1 Authority to Execute and Administer Contracts

- a. A duly authorized representative of each Agency signed the RFC Contract with the RFC Contractor and contracts with each Joint Consultant. Said contracts provide that no Agency shall be liable to the contractors for more than its applicable percentage share, calculated as provided in this Agreement, of the total amounts due the contractors. For the RFC Contract and Joint Consultant contracts during the Development Phase, King County followed its established procurement processes in selecting such contractors. Each Agency agrees to defend, indemnify and hold King County harmless, in its capacity as an individual Agency, for any costs that may be subsequently disallowed for grant reimbursement due to any differences between King County's procurement process and such Agency's process or the requirements of any federal or state agency making a grant that is utilized in the RFC Project.
- b. For the Operating Phase, the ORCA Operations Agency and the ORCA Regional Program Administration Agency shall procure proposals and bids and award and administer Joint Consultant and other contracts related to the RFC System as such are deemed necessary by the Joint Board and are within the adopted Budget. Each Agency shall follow its established procurement and contracting policies and procedures, and unless otherwise approved by the Joint Board, the contracting Agency shall be responsible for administration of such contracts. For conducting procurements and administering contracts, the ORCA Operations Agency or the ORCA Regional Program Administration Agency shall be entitled to reimbursement of its actual costs according to Section 9, Financial Provisions, and Section 12, Regional Service Providers, of this Agreement.
- c. If, during the Operating Phase, the ORCA Operations Agency or the ORCA Regional Program Administration Agency declines for whatever reason to procure proposals or bids and award and administer one or more contracts deemed necessary by the Joint Board and within the adopted Budget, the Joint Board shall select another Agency that is willing to undertake such procurement and contracting activities. Such activities shall be considered Regional Support Services. Such Agency shall be entitled to reimbursement of its actual costs according to Section 9, Financial Provisions, and Section 12, Regional Service Providers, of this Agreement. The Agency designated by the Joint Board shall be responsible for administration of such contracts.

- d. Notwithstanding paragraphs (b) and (c) in this Subsection 8.1, the Fiscal Agent shall undertake procurement and contracting activities as authorized in Section 7.0, Fiscal Agent.

8.2 Contract Administration. The Agencies agree it is essential to have efficient processes and procedures for administering contracts with the RFC Contractor, the Joint Consultants and all other contracts necessary for the RFC System. To that end, the Agencies agree to the contract administration functions set forth in this Agreement and as established by the Joint Board.

8.3 Specialized Applications; Indemnity. "Specialized applications" related to the RFC System and developed by an Agency through the RFC Contractor are applications that benefit one or more Agencies but are not integral to the RFC System, as determined by the Joint Board.

An Agency seeking to develop specialized applications shall enter into individual contracts with the RFC Contractor and be solely responsible for paying the costs of such contracts. At least thirty (30) days prior to entering into such contracts, the Agency shall provide a copy of each proposed contract to the Joint Board and demonstrate to the satisfaction of the Joint Board that entering into each contract will not add cost to the other Agencies and will not delay or interfere with the RFC Project. Any revenue received from a specialized application shall be allocated solely to the Agency that paid for the specialized application.

Each Agency shall defend, indemnify and hold harmless the other Agencies from all claims of any kind and for all costs incurred (including attorneys' fees) as a result of the Agency entering into such individual contracts for specialized applications with the RFC Contractor.

8.4 New or Amended Joint Consultant Contracts. The Agencies agree that any Joint Consultant contracts they executed for work during the Development Phase of the RFC Project may be extended and new tasks added during the Operating Phase, subject to limits set forth in the approved Budget and applicable procurement policies and requirements. If, during the Operating Phase, the Joint Board desires to procure new or additional Joint Consultant contracts related to the RFC System as provided in Section 8.1 above, each Agency may designate one representative to participate in the deliberations led by the ORCA Operations Manager or the ORCA Regional Program Administrator for selection of such consultants, which selection process shall be conducted by the ORCA Operations Agency, ORCA Regional Program Administration Agency or another Agency selected by the Joint Board.

8.5 Administration of Joint Consultant Contracts. For the Development Phase, the roles of the Contract Administrator and each Agency Site Manager in administering a Joint Consultant contract are specified in the Contract Administration Plan included as Exhibit B-1 to this Agreement. For the Operating Phase, the roles of the ORCA Operations Manager, ORCA Regional Program Administrator and each Agency Site Manager in administering a Joint Consultant contract are specified in Exhibit B-2 and Exhibit B-3 to this Agreement or as directed by the Joint Board.

8.6 Administration of Contracts Related to Regional Support Services. Each Agency providing Regional Support Services shall procure and administer contracts, other than the RFC Contract, that are entered into for the purpose of providing such services, and the costs of such contracts shall be part of the Regional Service Fee for such services. The RFC Contract shall be administered by the Contract Administrator during the Development Phase or the ORCA

Operations Manager during the Operating Phase, provided that the Fiscal Agent may communicate directly with the RFC Contractor as set out in Section 7.7 of this Agreement.

8.7 Other Agency Consultant Contracts. Each Agency may sign and administer individual consultant contracts for the performance of RFC System tasks unique to such Agency that are not covered by contracts specified in Subsections 8.4 through 8.6 above. An Agency entering into such individual consultant contracts shall be solely responsible for paying the costs of such contracts. At least thirty (30) days prior to entering into such consultant contracts, the Agency shall provide a copy of each proposed contract to the Joint Board and demonstrate to the satisfaction of the Joint Board that entering into each contract will not add cost to the other Agencies and will not delay or interfere with the Development and Operating Phases of the RFC System.

8.8 Individual Consultant Contract Procurement; Indemnity. To the extent an Agency (the "contracting Agency") enters into such an individual consultant contract by using the procurement process conducted for Joint Consultant contracts by another Agency (the "procuring Agency"), the contracting Agency thereby accepts the procuring Agency's competitive selection process for the purpose of entering into the contracting Agency's contract and hereby agrees to defend, indemnify and hold the procuring Agency harmless against any and all claims, liabilities or costs of any kind or nature which arise out of or are related to the consultant selection process or any individual contracts with the consultants. As to such individual consultant contracts, no Agency shall be required to use the procurement process conducted for Joint Consultant contracts.

Each Agency shall defend, indemnify and hold harmless the other Agencies from all claims of any kind and for all costs incurred (including attorneys' fees) as a result of the Agency entering into such individual consultant contracts.

8.9 No Authority Except As Expressly Granted. Each Agency agrees that it shall not exert or purport to possess authority with regard to the RFC System not expressly provided under this Agreement.

9.0 FINANCIAL PROVISIONS

9.1 Development Phase Project Budget and Cost Sharing.

9.1.1 General Provisions: By entering into this Agreement, each Agency agrees to pay the RFC Project costs during the Development Phase, as allocated and described in the RFC Finance Plan which is attached hereto as Exhibit C.

9.1.2 Budgets and Financial Plan. The Contract Administrator shall prepare for approval a RFC Project Budget that includes the amount to pay for: products and services by the Contractor and Joint Consultants; Project Administration activities; Administrative/Project Management Fees; Regional Service fees charged by Agencies for the provision of services to other Agencies; and for contingency and other shared costs of the Agencies on the RFC Project. The Joint Board shall determine the form, duration and level of detail for the RFC Project Budget. The RFC Project Budget, and all amendments to the RFC Project Budget, shall be subject to approval by Joint Board and subject to the amounts committed by each Agency as set forth in Exhibit C. Following adoption by the Joint Board Agencies will be notified of the approved RFC Project Budget and each proposed amendment to the RFC Project Budget.

9.1.3 Methodology for RFC Project Cost Sharing. The percentage shares to be paid by each Agency for the regionally-shared costs are outlined in Exhibit C. These percentages shall not be subject to revision, except as necessary to accommodate the addition of a new agency, or the withdrawal or removal of an Agency from this Agreement in accordance with Section 16.

9.1.4 Bill payment and invoicing.

9.1.4.1 Pursuant to RCW 39.34.030 (4)(b), the Joint Board shall establish a special fund(s) account(s) with an Agency serving as Fiscal Agent on behalf of all the Agencies. On behalf of the Joint Board, the Fiscal Agent shall establish a Central Payments Account and process payments on behalf of the participating Agencies from the Central Payment Account for the Development Phase of the RFC Project. One or more of the Agencies may, at their own expense, audit the performance of the Fiscal Agent under this Agreement. Upon reasonable notice, during normal working hours, the Fiscal Agent shall provide such Agency auditors access to its facilities for copying the records of its actions and decisions while performing as Fiscal Agent. The Joint Board shall establish policies and procedures for receiving payments into and authorizing disbursements from the Central Payments Account.

9.1.4.2 Each Agency will pay into the Central Payment Account its share of regional invoices and the Fiscal Agent will issue a single check payment on behalf of the region. The RFC Contract provides for 30-day invoice payment terms. The payment process is described below:

1. An invoice is submitted to the Regional Project Team Office.
2. The Budget and Contract Control Manager (BCCM) verifies the invoice accuracy and assigns Agency shares, or full costs, if attributable to a single Agency.
3. The BCCM forwards the draft invoice to the individual Agency Site Manager to request invoice confirmation and/or corrections.
4. Per the Agency-verified invoice, the BCCM forwards to the Fiscal Agent the invoice detail per each Agency share.
5. The Fiscal Agent issues each Agency a payment notice.
6. Each Agency remits its payment share to the Fiscal Agent. The payment amount is deposited into the Central Payments Account.
7. The Fiscal Agent remits single check payment to the RFC Contractor or other invoicing party.

9.1.4.3 Each Agency agrees to make payments promptly, and consistent with the deadlines set forth in the Invoice Payment Process outlined in Exhibit C, Section VI. Notification may be given by electronic or other means as authorized by the Joint Board and as required by each Agency to comport with individual accounts payable policies and procedures. Each Agency shall make payment by electronic funds transfer.

9.1.4.4 The Fiscal Agent shall not be obliged to disburse funds from the Central Payments Account unless balances in the account are sufficient to cover the disbursement. In the event that one or more agencies do not remit within the prescribed timeframes the Fiscal Agent may disburse to the vendor up to the amounts received in respect of that vendor's invoice (also referred to as short payment of vendor invoice). The Invoice Payment Process for Development Phase is set forth in Section 9.1.4.

9.1.4.5 Each Agency shall be responsible and liable to the other Agencies for interest and other costs, claims or liabilities of any kind that result from late payment by the Agency, and

the late-paying Agency shall defend, indemnify and hold harmless the other Agencies from such costs, claims or liabilities resulting from the late payment. The late-paying Agency will be responsible for any late payment charges. In the event an individual Agency fails to pay its individual costs or its share of regionally-shared costs, the other Agencies may also seek a judgment against said Agency. The costs of seeking a judgment will be considered costs of the Agencies and shall become part of the RFC Project Budget. Any costs incurred to seek the judgment and recover costs will be charged in full against the responsible Agency.

9.1.5 Development Phase Funding. The Contract Administrator shall assist each Agency to make best efforts to secure state and federal grant funds to assist in paying its portion of the RFC Project. If such funds are offered, the Agency shall comply with all terms and conditions applicable to receipt and use of the funds. If such grants include requirements that are not included in this Agreement or the RFC or Joint Consultant contract, the Agency shall propose amendments to the affected agreement or contract to accommodate the grant requirements. Each Agency acknowledges that while such funds would assist in paying its portion of the RFC Project, the Agency's acceptance and compliance with such terms and conditions constitute an integral part of the overall funding plan for the RFC Project. Each Agency agrees that if one Agency is awarded a grant for which all Agencies are eligible, the receiving Agency shall distribute the grant funds with the other Agencies prior to obligation according to the regionally shared cost percentages in place at the time said grant is distributed. Each Agency further agrees to obligate their appropriate share of grant funds through the state or federal agency awarding the funds and apply them to the RFC Project. The grant funds distribution strategy is included in Exhibit C to this Agreement.

9.2 Operating Phase ORCA Program Cost Sharing.

9.2.1 General Provisions. Having invested in the development and implementation of the ORCA System, the Agencies are committed to utilizing the ORCA system for at least ten (10) years. By entering into this Agreement, each Agency agrees to fund its own ORCA Program Agency-specific Costs and to pay its percentage share of the ORCA Program Regionally-shared Costs, which shared costs are estimated in the Operation and Maintenance Ten-year Plan attached hereto as Exhibit D-3. The Agencies understand that the actual ORCA Program Agency-specific Costs and ORCA Program Regionally-shared Costs may exceed the estimated amounts in Exhibit D-3 for a given year and any given ten-year period.

9.2.2 ORCA Program Costs. ORCA Program Costs will include ORCA Program Agency-specific Costs and ORCA Program Regionally-shared Costs, as those terms are defined in Section 3. The cost of goods and services which benefit all Agencies, when provided by an Agency and designated as uncompensated contributions in the Ten-year Plan, will not be considered ORCA Program Regionally-shared Costs. Provided, however, an Agency may terminate any contribution designated as such in the Ten-year Plan (Exhibit D-3) after providing written notice to the other Agencies at least eighteen (18) months in advance of the budget year in which the termination will take effect. Agency-specific costs shall be budgeted and managed by the individual Agencies incurring those costs. The Agency will coordinate the payment of invoices for ORCA Program Agency-specific Costs owed to the RFC Contractor, with the ORCA Operations Manager or Regional Program Administrator as necessary.

9.2.3 Budgets and Financial Plan.

9.2.3.1 Operation and Maintenance Ten-year Plan. An initial Ten-year Plan reflecting estimated costs associated with the Operations Phase is approved as part of this Agreement and attached as Exhibit D-3. This plan shall be amended annually by the Joint Board, as part of the annual Budget process, to update and refine the estimates in the Plan for the remaining years under the RFC Contract. The purpose of this plan is to inform the Agencies as to the estimated costs of completing the 10-year contract for the system.

9.2.3.2 Annual ORCA Budget. The ORCA Regional Program Administrator will prepare the annual Budget for the ORCA Program Regionally-shared Costs, as defined in Section 3 for the following year. The ORCA Budget for the following year will be approved by the Joint Board by June 1 or such other date as may be established by the Joint Board. Examples of the ORCA Program Regionally-shared Cost categories for budgeting purposes are provided in Exhibit D-2. Revisions to the adopted annual ORCA Budget will be submitted by the ORCA Regional Program Administrator for approval by the Joint Board. The ORCA Regional Program Administrator, ORCA Operations Manager and Regional Service Providers are responsible for monitoring expenses to ensure that any changes required to the adopted Budget are approved by the Joint Board prior to the commitment of funds in excess of the adopted annual ORCA Budget.

9.2.4 Methodology for ORCA Program Regional Cost Sharing. The Joint Board shall approve a methodology for determining the Agencies' percentage shares of the ORCA Program Regionally-shared Costs for the year 2009 and subsequent years. The methodology for a given year will be recommended by the ORCA Regional Program Administrator in consultation with representatives of the Agencies. The methodology is intended to represent, as closely as possible, each Agency's activity transacted within the system.

9.2.4.1 First calendar year of operations.

9.2.4.1.1 The first calendar year of operations shall be the period January 1, 2009 through December 31, 2009.

9.2.4.1.2 Percentage shares of ORCA Program Regionally-shared Costs during the first calendar year of operation shall be established in proportion to Agency ridership numbers, as adjusted to account for ridership that could not use the ORCA fare payment system. The estimated percentage shares shown in Exhibit D-1 reflect the estimated ridership of the Agencies for calendar year 2009, as adjusted. These estimated shares will be used to allocate ORCA Program Regionally-shared Costs during the first calendar year of operations. Following the first calendar year of operations, the Agency shares will be recalculated based on actual ridership figures as reported by the Agencies to the National Transit Database, adjusted in the same manner as were the estimated ridership numbers. A net adjustment will be made to the amounts due from each Agency for the 2009 ORCA Program Regionally-shared Costs to align with the calculations using the actual ridership figures. Such net adjustment will be calculated during the calendar year 2010, with any cost or revenue adjustments occurring at that time.

9.2.4.2 Subsequent Years of Operations.

9.2.4.2.1 Subsequent operating years will be calendar years commencing January 1, 2010.

9.2.4.2.2 For subsequent operating years, the Joint Board shall adopt the methodology for calculating Agency percentage shares of the ORCA Program Regionally-shared Costs,

considering such factors as ridership, transaction volume, and revenue volume. By June 1 of each year, or such other date as may be established by the Joint Board, the Joint Board shall adopt the percentage shares that will apply to the following year's Budget.

9.2.4.3 System Investments During Operating Phase. For future system capital investments approved by the Joint Board as regionally-shared costs, which include software revisions, enhanced functionality, expansion, enhancements, replacement and repair, the percentage shares effective during the Development Phase shall apply.

9.2.4.4 Bill Payment and Invoicing – Operating Phase.

9.2.4.4.1 During the Operating Phase, the ORCA Regional Program Administration Agency shall establish an ORCA Central Payments Account in accordance with RCW 39.34.030. In accordance with the process specified in Exhibit D-4, the ORCA Regional Program Administrator and the Agencies will process payments owed to the RFC Contractor, Joint Consultants, and Regional Service Providers on behalf of the participating Agencies from the ORCA Central Payments Account.

9.2.4.4.2 One or more of the Agencies may, at their own expense, audit the performance of the ORCA Regional Program Administrator and ORCA Regional Program Administration Agency under this Agreement. Upon reasonable notice, during normal working hours, the ORCA Regional Program Administration Agency shall provide such Agency auditors access to its facilities for copying the records of its actions and decisions while performing its invoicing and bill paying functions.

9.2.4.4.3 The Joint Board shall establish policies and procedures for receiving payments into and authorizing disbursements from the ORCA Central Payments Account. No payments will be made out of the ORCA Central Payments Account except as authorized by the policies and procedures established by the Joint Board.

9.2.4.4.4 The cost of Agency-specific goods and services as provided in Section 8.0 and any other ORCA Program Agency-specific Costs shall not be included in the ORCA Budget, and shall be fully paid by the requesting Agency in addition to its cost sharing commitment under Section 9.2.

9.2.4.5 The ORCA Regional Program Administrator shall not be obliged to disburse funds from the ORCA Central Payments Account unless balances in the account are sufficient to cover the disbursement and is authorized to make payments up to the amounts collected in respect of the disbursement (short-payment of invoice). The Invoice Payment Process is set forth in Exhibit D-4.

9.2.4.6 Each Agency shall be responsible and liable to the other Agencies for interest and other costs, claims or liabilities of any kind that result from late payment by that Agency, and the late-paying Agency shall defend, indemnify and hold harmless the other Agencies from such costs, claims or liabilities resulting from the late payment. The late-paying Agency will be responsible for any late payment charges. In the event an individual Agency fails to pay its individual costs or its share of regional costs, the other Agencies may also seek a judgment against said Agency. The costs of seeking a judgment will be considered costs of the Agencies and shall become part of the ORCA Budget. Any costs incurred to seek the judgment and recover costs will be charged against the responsible Agency. The billing and invoicing procedures for the Operating Phase are attached as Exhibit D-4.

9.3 Security Documents. The Agencies agree that King County shall be named as the sole beneficiary on any Security Documents as defined in and provided by the Contractor under the RFC Contract. In the event King County makes a draw on a Security Document in accordance with the RFC Contract, it shall hold the proceeds for allocation among the Agencies in accordance with the Joint Board's direction. The proceeds shall be allocated among the Agencies according to each Agency's proportionate share of the total damages or costs for which the Security Document draw is made.

9.4 Retainage. If a retainage account is created during the Development Phase in place of a Security Document, the Agencies authorize the Fiscal Agent to manage the retainage account in the manner provided by Section 80.6 of the RFC Contract. In the event the Joint Board authorizes a withdrawal of funds from the retainage account, the Fiscal Agent shall transfer the funds to the Central Payment Account for allocation among the Agencies in accordance with the Joint Board's direction. The proceeds shall be allocated among the Agencies according to each Agency's proportionate share of the total damages or costs for which the withdrawal is made.

9.5 Business Account Lead Agencies. Except for purchases of ORCA Cards and ORCA Products using an on-line credit card transaction, a Business Account is required to make payment to the Lead Agency with which it has entered into a Business Account agreement and the Business Account Lead Agency is responsible for collecting such payments in compliance with established settlement rules.

9.6 Retail Revalue Lead Agencies. A Retail Revalue Lead Agency is required to place funds in an account that are sufficient for daily ACH transfers by the ORCA System. If there is a failure to obtain sufficient funds from a Retail Revalue Entity's account, the Fiscal Agent shall notify that entity's Lead Agency and initiate an Automated Clearinghouse (ACH) transaction, via manual adjustment, to pull funds from the Lead Agency's settlement account in order to make the applicable ORCA Account whole. The Retail Revalue Lead Agency shall be responsible for collecting from the Retail Revalue Entity. In the event a Regional Retail Revalue Entity defaults on its obligation to pay the Retail Revalue Lead Agency, the cost of this default will be shared by all Agencies. The amount owed by each Agency will be determined by the current (at the time the account is declared to be in default) regional operating cost-sharing percentage, as calculated under Exhibit D-1; and the Fiscal Agent will follow the procedures in Exhibit F-1 in allocating the amount of the deficiency among all the Agencies.

9.7 Transition Phase.

9.7.1 The Transition Phase shall commence on January 1, 2009 and end at Full System Acceptance.

9.7.2 Both the RFC Budget and the ORCA Budget will be in effect during the Transition Phase. In the event that there is a question as to which budget applies to a given cost, the Joint Board will make the determination.

10.0 FARE REVENUE

10.1 Revenue Apportionment. All revenue received from the sale of ORCA Products will be distributed from ORCA Accounts held by the Fiscal Agent in accordance with the following:

10.1.1 Revenue received from the sale of products usable only on a single Agency's transportation service shall be remitted to that Agency.

10.1.2 Revenue received from the sale of E-Purse value will be deposited to the E-Purse Float Account held by the Fiscal Agent on behalf of the Agencies and shall be distributed to each Agency according to the use made of said E-Purse value for payment of fare for travel on each Agency's transportation services, as described in Exhibit E-1.

10.1.3 Revenue received from the sale of regional pass products valid on multiple Agencies shall be distributed among those participating Agencies in proportion to the total value of the transportation services used on each Agency during the pass validity period, as described in Exhibit E-2.

10.1.4 Revenue received from the sale of Business Right-to-Ride (also referred to as "Business Passport") products which are valid on multiple Agencies shall be distributed among those Agencies based on the pricing methodology selected by the business entity contracting for transit services. Methodologies available for Business Account pricing are described in Exhibit E-3.

10.1.5 An Agency may submit a claim for fare revenue not distributed to it through the revenue apportionment process. A claim shall state the reason the Agency believes it is entitled to the revenue claimed and shall be supported by documentation. All claims will be reviewed by a fares or other committee established by the Joint Board, which shall make a recommendation to the Joint Board. If a claim is approved by the Joint Board, it is forwarded to the Fiscal Agent for action as outlined in Exhibit F. While funds will generally come from unsettled gap transactions posted to the Participant Claims Account, a claim may result in a reallocation of fare revenue among the Agencies.

10.2 Funds Settlement.

10.2.1 Each Agency shall establish a Zero Balance Settlement Account pursuant to Section 4.0. Each Agency shall establish an automated clearinghouse (ACH) authorization with its own bank to allow the transfer of funds to and from each Agency's Settlement Account and the ORCA Accounts held by the Fiscal Agent, and authorize the Contractor to initiate daily net settlements between the various Agency accounts and the ORCA Accounts pursuant to Section 4.0. Agencies shall designate the bank accounts that will be used in the net settlement process, and establish the ACH authorization as outlined in Section 7 of this Agreement.

10.2.2 The Agencies acknowledge that the Contractor will use a net daily settlement process to simplify and reduce the number of transfers necessary to accomplish reconciliation.

10.2.2.1 Revenue received from the sale of ORCA Products at Agency locations, using website transactions, and using Agency devices will be removed from the Agency Settlement Account approximately three (3) days after sales are made.

10.2.2.2 Revenues received from sales of pass products will be distributed to the Agencies' bank accounts approximately thirty (30) days after the end of the month in which the pass was valid.

10.2.2.3 Revenues received from sales of E-Purse will be distributed to the Agencies' bank accounts approximately three (3) days after the value was used for fare payment.

Transactions involving transfers between Agencies will be subject to a reapportionment process thirty (30) days following the transaction.

10.3 Transactions Not Related to Public Transportation. The provisions of this Agreement assume that all load and use transactions related to the RFC System are related to public transportation. Prior to performing any Agency-specific non-transportation related load or use transactions or payment transactions that take place outside of the RFC System, an Agency must submit a proposal to the Joint Board for approval which includes, but is not limited to, the treatment of handling and administrative costs and risks associated with such transactions, potential RFC Contract change orders to accomplish the completion of such transactions, and any other associated costs.

10.4 Sales Transactions Processing.

10.4.1 Except as otherwise specified below, an individual Agency shall be the merchant of record for all sales of ORCA Cards and ORCA Products. An Agency shall determine what forms of payment it will accept for such sales transactions, but in addition to cash it shall accept credit and debit cards for sales at the Agency's customer assistance counters. In order to conduct credit/debit card sales transactions, the Agencies shall enter into individual contracts with necessary merchant banks, gateway providers and/or third party processors as dictated by the ORCA System design. Except as outlined below, each Agency remains solely responsible for its own internal costs of conducting sales transactions. The Agencies' responsibilities regarding specific types of transactions are as follows:

10.4.1.1 **Over-the-counter Transactions:** Credit or debit card fees charged to an Agency for over-the-counter transactions are the responsibility of each Agency individually. In addition, the transacting Agency shall bear the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including chargebacks, unless the Agency transfers the risk to its merchant bank. If an Agency receives payment for ORCA Cards or ORCA Products in the form of cash, check, or money order, the Agency shall deposit such payments into the Agency's settlement account for allocation under this Agreement.

10.4.1.2 **Ticket Vending Machine (TVM) Transactions:** Each Agency agrees to be merchant of record for sales of ORCA Cards and ORCA Products occurring at ticket vending machines placed into service and operated for use by customers at that Agency's facilities. Said Agency shall be responsible for credit/debit card fees charged for such sales transactions and shall bear the risk of fraud and other payment reversals and failures, including chargebacks, unless the Agency transfers the risk to its merchant bank.

10.4.1.3 **Call Center Transactions:** Each Agency agrees to be the merchant of record for telephone transactions originating from its Agency Call Centers or Call Center website. In addition, the transacting Agency shall be responsible for credit/debit card fees charged for such sales transactions and shall bear the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including chargebacks, unless the Agency transfers the risk to its merchant bank.

10.4.1.4 **Mail Transactions:** The Regional Service Provider operating the Regional Mail Center agrees to be the merchant of record for mail transactions. For mail transactions, the Agencies shall share, according to the Operating Phase cost-sharing percentages determined as set forth in Exhibit D-1, the cost of credit/debit card and any other fees and the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including

chargebacks. The Agencies shall pay a Regional Service Fee to the Regional Service Provider operating the Regional Mail Center for its performance of the functions herein on behalf of all of the Agencies. Such fee will include all costs of credit/debit card transactions.

10.4.1.5 Website transactions: The ORCA System will operate multiple websites used for processing customer transactions, including the following:

- **Call Center Website**: is managed by each Agency. Transactions generated on the Call Center Website are the responsibility of the Agency that generated the transactions. Each Agency is the merchant of record for transactions that are generated from its Call Center Website. In addition, the transacting Agency shall be responsible for credit/debit card fees charged for such sales transactions and shall bear the risk of fraud and payment reversals and failures, including chargebacks, unless the Agency transfers the risk to its merchant bank.
- **Business Account Website**: used by Business Accounts to perform a number of activities associated with their accounts. The Business Account Lead Agency associated with the Business Account originating the activity is the merchant of record for transactions from that Business Account. In addition, the transacting Agency shall be responsible for credit/debit card fees charged for such sales transactions and shall bear the risk of fraud and payment reversals and failures, including chargebacks, unless the Agency transfers the risk to its merchant bank.
- **Cardholder Website**: The Regional Service Provider operating the Regional Mail Center will be the merchant of record for the ORCA cardholder website transactions as part of the services provided from the Mail Center. For Cardholder Website transactions, the Agencies shall share, according to the Operating Phase cost-sharing percentages determined as set forth in Exhibit D-1, the cost of credit card and any other fees and the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including chargebacks. The Agencies shall pay a Regional Service Fee to the Regional Service Provider operating the Regional Mail Center for its performance of the functions herein on behalf of all of the Agencies. Such fee will include all costs of credit/debit card transactions.

10.4.1.6 Autoload transactions: The Regional Service Provider operating the Regional Mail Center will be the merchant of record for autoload transactions. The Agencies shall pay a Regional Service Fee to the Regional Service Provider operating the Regional Mail Center for its performance of the functions herein on behalf of all of the Agencies. For Autoload transactions, the Agencies shall share, according to the Operating Phase cost-sharing percentages determined as set forth in Exhibit D-1, the cost of credit/debit card and any other fees and the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including chargebacks. Such fee will include all costs of credit/debit card transactions.

10.4.1.7 Retail Revalue transactions: The Regional and Local (if any) Retail Revalue Entities shall be the merchant of record, including bearing responsibility for credit/debit card fees and any other fees and the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including chargebacks, for transactions occurring on its premises. An Agency may not agree to assume credit card fees or the risk of fraud on behalf of a Retail Revalue Entity without the prior approval of the Joint Board.

11.0 BUSINESS RULES FOR FARE COLLECTION AND CUSTOMER SERVICE PRACTICES

The Joint Board shall adopt and amend business rules that, among other things, will replace the Fare Collection and Customer Service Practices previously attached as Exhibit D to the 2003 Agreement. Each Agency agrees it shall comply with Section 4.1.1.5 of this Agreement in making any changes in its individual Agency fare collection and customer service practices, and further agrees that it shall not implement any fare collection or customer service practices that are inconsistent or conflict with the business rules for fare collection and customer services practices, as may from time to time be adopted and amended by the Joint Board. The Joint Board shall ensure that (1) the Fiscal Agent is promptly notified of each such change and (2) the ORCA Operations Manager notifies all other Agencies of each such change.

12.0 OPERATING PHASE REGIONAL SERVICE PROVIDERS

12.1 Regional Services. The following regional services (as more fully described in this Agreement and the indicated Exhibits) will be performed by one or more individual Agencies, acting as Regional Service Providers, as may be appointed and replaced from time to time by the Joint Board:

Operations Management	Exhibit B-2
Regional Program Administration	Exhibit B-3
Fiscal Agent	Exhibit F-1
Regional Mail Center	Exhibit G-2
Regional Inventory and Distribution Center	Exhibit G-1

The Joint Board is authorized to reduce, increase or modify these five regional services and the functions assigned to each. An Agency may also terminate its provision of any regional services at its sole discretion and convenience upon providing eighteen (18) months advance written notice to the Joint Board.

12.2 Reporting Relationship; Limitation of Regional Service Provider Duties. The Joint Board shall appoint an Agency to act as a Regional Service Provider. The Regional Service Provider shall be accountable to the Joint Board and have such duties (and the obligation to perform only such duties) as are specified in this Agreement, including reductions, increases or modifications authorized by the Joint Board. The Joint Board may from time to time, by majority vote, change a Regional Service Provider by appointing a different Agency to act as Regional Service Provider.

12.3 When Not Acting as Regional Service Provider. When used in this Agreement, the terms "ORCA Operations Agency," "ORCA Regional Program Administration Agency," "Fiscal Agent," "Regional Mail Center" and "Regional Inventory and Distribution Center" shall refer only to the appointed Agency when acting in its capacity as one of these Regional Service Providers. When not acting in its capacity as one of the Regional Service Providers, the appointed Agency is also an "Agency" for other purposes under this Agreement and shall have the same rights and obligations as the other Agencies. Notwithstanding such Agency's duties as one of the Regional Service Providers, said Agency may engage in any kind of business with any other Agency, the RFC Contractor and/or any customer to the same extent as an Agency that is not acting as one of the Regional Service Providers under this Agreement. The terms "Agency" and "Agencies" shall include the Agency appointed as one of the Regional Service Providers when it is not acting in its capacity as a Regional Service Provider.

12.4 Regional Service Provider Staffing. Consistent with the employment policies and procedures of the Agency acting as one of the Regional Service Providers, each Regional Service Provider shall assign such employees as may be necessary to perform the Regional Service Provider's functions in this Agreement, including Exhibit F-1.

12.5 Authority to Enter into Contracts. A Regional Service Provider may contract with third parties for such purposes and in such amounts as the Joint Board may authorize from time to time.

12.6 Costs Included in Budget. The actual labor, material, overhead and other costs of the Regional Service Providers shall be included in the ORCA Program Operating Costs and, unless designated as uncompensated contributions in the Ten-year Plan (Exhibit D-3), shall be subject to cost sharing by all Agencies as provided in Section 9.2. Provided, however, an Agency may terminate any contribution designated as such in the Ten-year Plan after providing written notice to the other Agencies at least eighteen (18) months in advance of the budget year in which the termination will take effect. As part of the annual Budget adoption process, the Joint Board shall review all Regional Service Fees to ensure each Agency acting as a Regional Service Provider is accounting for its costs according to cost allocation principles established by the Joint Board or as set forth in this Agreement, subject to modifications by the Joint Board.

12.7 Protection of Regional Service Providers. In consideration of and as an inducement for the work of the Regional Service Providers, the Agencies agree that:

- a. Regional Service Provider may rely upon any written report (including net settlement reports prepared by the RFC Contractor), notice, request, direction, consent, order, resolution, certificate, statement, instrument, or other paper or document submitted to the Regional Service Provider by an Agency, the ORCA Operations Manager, the ORCA Regional Program Administrator, the RFC Contractor, the Joint Board or its designee, or any bank holding the ORCA Accounts or any Agency account(s), provided the Regional Service Provider has a reasonable belief that the document is: (1) genuine; (2) within the submitting entity's authority under this Agreement, the RFC Contract or other applicable agreement; and (3) signed or presented by the authorized representative of the submitting entity. Any action taken, suffered or omitted by the Regional Service Provider based on such reliance shall be deemed to have been done in good faith for purposes of Section 12.8 below. For purposes of this Section an "authorized representative" of an Agency is the person identified by the Agency Site Manager as the person authorized by the Agency to communicate with the Regional Service Provider. For purposes of this Section a "written" report, notice, request, direction, consent, order, resolution, certificate, statement, instrument, or other document may be delivered to the Regional Service Provider online or by email.
- b. A Regional Service Provider may consult with counsel engaged by it (whether in-house or external) and independent certified public accountants from time to time, and reliance on the written advice of such counsel or accountants with respect to any action taken, suffered or omitted by the Regional Service Provider shall be deemed to be in good faith and subject to the provisions of subpart a. above.

- c. A Regional Service Provider shall be under no obligation to perform any functions or activities not provided for under this Agreement unless (a) the Joint Board has authorized such function or activity; and (b) the Agencies provide to the Regional Service Provider such security or indemnity as is reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in the performance of such function or activity.

12.8 Indemnity of Regional Service Providers by Agencies. The Agencies, including an Agency appointed as a Regional Service Provider acting in its capacity as an "Agency", hereby agree to defend, indemnify and hold harmless a Regional Service Provider and its officers, directors and employees ("Regional Service Provider") for and against, any lawsuits, claims, actions, loss, liability or expense arising out of or in connection with the Regional Service Provider's acts or omissions in the performance of the duties of the Regional Service Provider under this Agreement, except to the extent such lawsuits, claims, actions, loss, liability or expense arises from the Regional Service Provider's gross negligence, bad faith, or willful misconduct. This defense and indemnity shall be the joint obligation of all the Agencies and all costs incurred by them to perform the obligations of this Section 12.8 shall be shared by all the Agencies, including the Agency appointed as the Regional Service Provider, in accordance with the cost-sharing percentages under Exhibit C or D-1 that were in effect at the time of the Regional Service Provider's acts that are entitled to the Agencies' indemnity hereunder.

The provisions of this Section 12.8 shall survive the termination of this Agreement or the earlier resignation or removal of the Regional Service Provider.

13.0 INTELLECTUAL PROPERTY

13.1 Use of Terms from RFC Contract. The capitalized terms used in this Section shall have the same meanings as have been given those terms in the RFC Contract. In addition, for purposes of this Agreement, the terms "intellectual property" and "IP" shall include the ORCA-related trademarks that have been or will be registered by any Agency.

13.2 Exercise of Agency License Rights. Each Agency agrees that it will exercise its license rights in accordance with the license provisions of the RFC Contract as regards any intellectual property provided under said RFC Contract ("IP"), including Contract Deliverables, Contractor IP, DDU IP, RFCS IP, Third Party IP and IP Materials related to all such intellectual property.

13.3 Installation of Additional Applications. Each Agency that desires to install additional applications onto its DDUs shall, in conjunction with the Contract Administrator or ORCA Operations Manager, obtain the RFC Contractor's certification in accordance with the process outlined in the RFC Contract prior to installing such additional applications.

13.4 Agency Protection of Intellectual Property. Each Agency shall take reasonable measures, to the extent required by the RFC Contract, Section K of Exhibit B-1 (which shall be applicable during both the Development and Operating Phases), and other provisions this Agreement, to protect any IP and IP Materials related to same from being disclosed to third parties, other than those to whom sublicenses and transfers are permitted by the license rights granted under the RFC Contract. Such measures shall include (a) restricting access to such IP and IP Materials to those of its employees with a reasonable need to know; (b) requiring such employees to sign a nondisclosure agreement; (c) requiring any permitted third parties to sign nondisclosure agreements requiring that they also undertake reasonable protection measures; (d) promptly enforcing any violations of such agreements; (e) copying, using and licensing

others to use ORCA-related trademarks only in accordance with policies and rules established by the Joint Board; and (f) reporting any violations to the Contract Administrator or ORCA Operations Manager as soon as is practicable.

13.5 Agency Protection of Use Data. Each Agency shall comply with such policies and procedures as are established by the Joint Board regarding retention and disclosure of Use Data and Use Data Reports, including but not limited to Exhibit H.

13.6 Escrow Fees. Each Agency shall pay its share of the fees related to the Escrow Agreement, which will be in effect during the term of the RFC Contract. The Agencies' shares of the cost for the first year of escrow and verification services shall be their percentages in effect for the Development Phase. For subsequent years, an Agencies' share of the annual escrow fees shall be determined by the percentage share in effect for that year of the Operating Phase; and an Agency's share of any verification services shall be its percentage in effect for the Development Phase.

13.7 No Assignment of IP. Notwithstanding any provision in the RFC Contract or this Agreement, each Agency agrees that it shall not grant or transfer any rights in IP related to the RFC System without the written approval of the Joint Board.

13.8 IP Indemnity. Each Agency shall defend, indemnify and hold harmless the other Agencies against any and all infringement actions, claims for license fees or royalties, suits, actions, and liabilities of any kind whatsoever, including attorneys' fees and costs, which arise out of or are in any way related to the negligent or intentional act of an Agency, its employees, agents or contractors in using, transferring, sublicensing or otherwise releasing any IP, IP Materials related to same, or information in violation of any of the provisions of this Section 13.0 or the RFC Contract.

13.9 Termination of IP License; Termination of Agreement. In the event of an Agency's withdrawal or removal from this Agreement, the Agency shall deliver to the Contract Administrator or ORCA Operations Manager, and relinquish its license rights in, all IP created or provided for the RFC Project except to the extent such IP (a) was created or provided solely for the use or benefit of the withdrawing Agency; or (b) constitutes Third Party IP individually licensed to the withdrawing Agency. In the event this Agreement is terminated, each Agency shall retain any license rights for which it has paid its share of the costs.

13.10 Survival of Provisions. The provisions of this Section 13.0 shall survive and remain applicable to the Agencies notwithstanding any termination or expiration of this Agreement and notwithstanding an Agency's withdrawal or removal from this Agreement. However, an Agency shall obtain no rights to any IP created after an Agency withdraws or is removed from this Agreement.

14.0 LEGAL REPRESENTATION

14.1 General.

- a. Legal services related to the ORCA Program may be obtained from various sources, including without limitation:

1. staff of a Regional Service Provider may be advised and represented by lawyer(s) of the Regional Service Provider in accordance with Subsection 14.2;
 2. the Joint Board may retain a lawyer in accordance with Subsection 14.3;
 3. the Agencies may jointly retain a lawyer in accordance with Subsection 14.4; or
 4. each Agency's lawyer may provide advice to all the Agencies on a particular matter.
- b. Notwithstanding the possible provision of legal services in connection with the Agencies' common interests as provided by one or more of the lawyers identified in Subsection 14.1(a), nothing in this Agreement shall preclude an Agency from employing or retaining its own lawyer to advise and represent it in relation to its individual interests.
- c. The Agencies expect they will share common interests on matters related to the ORCA Program. In order to avoid duplication of effort and costs for legal services needed in support of their common interests, the Agencies desire to be able to share the legal services provided by their various lawyers, without any waiver of confidentiality doctrines and privileges with respect to persons or entities other than the Agencies. Absent a conflict of interest between any of the Agencies on a specific matter, the Agencies may request that lawyer(s) representing one or more of the Agencies also represent the common interests of all Agencies. In such instances, the Agencies agree that communications related to their common interests, whether to, from or between lawyers representing one or more of the Agencies, may be shared on a confidential and privileged basis among each Agency's Joint Board representatives, lawyers, and employees (whether employees of the Agency acting in its individual capacity or in its capacity as a Regional service provider), to the same extent as privileged or other confidential communications with the Agency's own lawyer. Failure to mark a communication as "confidential" shall not constitute a waiver of any confidentiality doctrines and privileges.
- d. Each Agency and any of its Joint Board representatives, lawyers, and employees that are privy to communications to and from any lawyer employed or retained by one or more Agencies, as described in Subsection 14.1.a, and related to the ORCA Program shall treat such communication, if marked as "confidential," as privileged and confidential unless the privilege is waived by action of the Joint Board or disclosure is otherwise required under law. This obligation to maintain communications with a lawyer as privileged and confidential shall survive: (a) any termination of this Agreement; (b) any withdrawal from this Agreement by an Agency; (c) any involuntary removal of an Agency under this Agreement; (d) any removal and/or replacement of the Contract Administrator, ORCA Operations Manager or ORCA Regional Program Administrator and his/her staff; and (d) any withdrawal or termination of such lawyer, including but not limited to withdrawals or terminations due to conflicts of interest.
- e. Any lawyer providing legal services to the Joint Board, a Regional Service Provider or all the Agencies is subject to the Rules of Professional Conduct (RPC) including

but not limited to Rule 1.7, which provides that a lawyer must decline or withdraw from representation that involves a conflict of interest unless the affected clients provide informed, written consents for the lawyer to undertake or continue the representation. In the event a conflict of interest or potential conflict of interest is perceived to exist between any of the Agencies, the lawyer shall not continue to provide legal services on such matter to the Joint Board, a Regional Service Provider or all the Agencies unless and until the perceived conflict or potential conflict has been resolved. The Agencies shall endeavor to expeditiously resolve any real or potential conflicts of interest to enable such lawyer to resume provision of legal services to the Joint Board, a Regional Service Provider or all the Agencies. The resolution of a conflict may require the Agencies to sign informed consents in accordance with the RPC. In the event not all of the Agencies are willing to sign informed consents in accordance with the RPC, the Agencies understand and agree that representation by the a lawyer on the matter in conflict shall cease.

14.2 Lawyer for Staff Assigned to Regional Service Providers.

- a. Unless legal services are obtained from other sources pursuant to Subsection 14.1, the staff assigned to perform the functions of a Regional Service Provider may obtain legal services from the Provider-Agency's lawyer(s) as part of the support provided by that Agency. Such services shall include but are not limited to advising on contract administration, change orders and claims; drafting and reviewing documents; research and advice on applicable statutes and regulations; and advising on responses to requests for disclosure of public records. In the event a person assigned to perform the functions of a Regional Service Provider perceives that the Agencies are not in accord on how to proceed on matter and he/she is not able to reach consensus among all the Agency representatives, he/she shall submit the question or proposed action to the Joint Board for resolution prior to acting.
- b. Because the staff assigned to perform the functions of Regional Service Provider are responsible for supporting the common interests of the Agencies as expressed in this Agreement and as determined by the Joint Board, the Agencies expect that their interests will be unified on matters for which the such persons seek legal services. Accordingly, each Agency agrees that the provision of legal services by a lawyer to the staff assigned to perform the functions of a Regional Service Provider shall be considered a matter involving the Agencies' common interests. Subject to the provisions of Subsection 14.2(c) below, the Agencies waive any actual or potential conflicts as against the Regional Service Provider and its lawyer with regard to the representation of the common interests of all the Agencies by said Regional Service Provider's lawyer. Notwithstanding the foregoing, an Agency that is also a Regional Service Provider may employ its lawyer to advise and represent the Agency, individually and not jointly, on matters related to the ORCA Program unless a conflict arises that is not waived by the Agencies and the lawyer cannot represent the Regional Service Provider without violating his/her duties under the professional rules.
- c. All attorney-client communications between such lawyer and the staff assigned to perform the functions of Regional Service Provider shall be available to the Joint Board members and each Agency on a privileged and confidential basis and may be shared among the Agencies as if they were a single entity vis-a-vis any other person

or entity. Such communications may be shared, subject to the restrictions in Subsection 14.1 c, d and e.

14.3 Lawyer for the Joint Board.

- a. The Joint Board may from time to time retain a lawyer to provide it, as a board, with legal services related to the ORCA Program, including but not limited to matters related to the duties and obligations of the Joint Board and the Regional Service Providers. Any agreement for such Joint Board legal services shall be entered into by all of the Agencies. The ORCA Regional Administration Agency shall administer the payment process for such services in accordance with Section 9 and in accordance with the Budget established by the Joint Board. The Agencies shall share the costs of such legal services in accordance with the allocation percentages for the Development Phase until Full System Acceptance and thereafter in accordance with the percentages in effect at the time the services are performed, as determined in accordance with the Operating Phase methodology provided in Exhibit D-1.
- b. Each Agency expressly acknowledges and agrees that such lawyer shall have the obligation to represent the joint interests of the Agencies as expressed in this Agreement and as determined by the Joint Board in accordance with this Agreement. Each individual Agency, and its Joint Board representative(s), shall be considered to have a client relationship with said lawyer but the Agencies acknowledge and agree that they share a joint client relationship with the other Agencies and are not entitled to, and shall not seek, individual advice or representation from such lawyer.
- c. Specific requests for legal services shall be made to such lawyer by the Joint Board's chair, vice-chair or other Board member designated to be the Joint Board's point of contact. All attorney-client communications between such lawyer and one or more Joint Board members shall be available to the other Joint Board members and each Agency on a privileged and confidential basis and may be shared among the Agencies as if they were a single entity vis-à-vis any other person or entity. Such communications may be shared, subject to the restrictions in Subsection 14.1. c, d and e.
- d. Any lawyer retained, or proposed to be retained, for the provision of legal services to the Joint Board is subject to the Rules of Professional Conduct (RPC) including but not limited to Rule 1.7, which provides that a lawyer must decline or withdraw from representation that involves a conflict of interest unless the affected clients provide informed, written consents for the lawyer to undertake or continue the representation. In the event a conflict of interest or potential conflict of interest is perceived to exist between any of the Agencies with regard to a matter covered by this Agreement, and not all of the Agencies are willing to sign informed consents in accordance with the RPC, the Agencies understand and agree that representation by the Joint Board's lawyer on the matter in conflict shall cease. Each Agency, individually or in combination with one or more other Agencies not in conflict, may obtain legal advice and representation from another lawyer on such matter at their own expense and outside of this Agreement.

14.4 Representation of Agencies in Contested Matters. In the event one or more of the Agencies is the subject of a lawsuit, complaint or other contested matter, the Joint Board will

determine whether the matter affects the common interests of all the Agencies. The Joint Board may determine in its sole discretion whether joint or separate representation is desirable and approve a budget for joint representation on such matters. Where joint representation is authorized, the Joint Board may designate a Joint Board member or an Agency representative to supervise the lawyer retained to represent the Agencies. Communications between the lawyer, the Joint Board and the Agencies on the matter will be conducted in a manner consistent with Subsection 14.1 and 14.3.

14.5 No Liability. Notwithstanding any provision of this Agreement to the contrary, the Agencies agree to hold each other harmless from and against any and all claims, demands, lawsuits or liability of any kind arising out of the acts or omissions of a lawyer employed or retained to provide joint representation of all Agencies including without limitation a Regional Service Provider's lawyer, on a matter related to the ORCA Program.

15.0 LEGAL RELATIONS

15.1 No Third-Party Beneficiaries, Joint Venture or Partnership. It is understood and agreed that this Agreement is solely for the benefit of the Agencies and gives no right to any other person or entity. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of an Agency or any of an Agency's contractors or consultants shall be deemed, or represent themselves to be, employees of any other Agency.

15.2 Legal Compliance. The Agencies shall comply, and shall ensure their respective contractors comply, with all federal, state and local laws, regulations and ordinances applicable to their respective obligations under this Agreement.

15.3 Grant Agreement Compliance; Indemnification. The Agencies shall each comply with the terms of all grant agreements between an Agency and the FTA which terms are incorporated herein by this reference. Any Agency which receives federal grant funds for reimbursement of payments made or expenses incurred in performance of work under this Agreement shall defend, indemnify and hold harmless each of the other Agencies against any claims, lawsuits, actions, grievances, costs, losses, damages or liabilities or obligations of any kind whatsoever which are directly or indirectly related to the terms of such Agency's grant agreement with the federal government.

15.4 General Indemnity to Other Agencies. Except as otherwise provided in Section 7.9 for an agency acting as the Fiscal Agent and except as provided in Section 12.8 for an Agency acting in the capacity of another Regional Service Provider, each Agency, to the maximum extent permitted by law, shall defend, indemnify and hold harmless the other Agencies and all of their officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property, which arise out of, are connected with, or are due to any intentional or negligent acts or omissions of the indemnifying Agency, its contractors (other than the RFC Contractor), and/or employees, agents, and representatives related to the Agency's responsibilities and other work referred to in this Agreement; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to any work under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of Agencies, their contractors or employees, agents, or representatives, the indemnification applies only to the extent of the negligence of each Agency, its contractor or employees, agents, or representatives. Each Agency specifically assumes potential liability for actions brought by its own employees against any other Agency and for that purpose the indemnifying Agency specifically waives, as respects the other Agency

only, any immunity under the Worker's Compensation Act, RCW Title 51; and each Agency recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provision of RCW 4.24.115, if applicable. Each Agency shall reasonably notify the other Agencies of any and all claims, actions, losses or damages that arise or are brought against that Agency relating to or pertaining to this Agreement. In the event an Agency incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against any other Agency, all such fees, costs and expenses shall be recoverable by the prevailing Agency.

15.5 Claims by Third Parties. In the event a person or entity not party to this Agreement, other than the FTA, submits a claim to the Agencies or any individual Agency for costs, damages or liabilities of any kind pursuant to such third party's contract with the Agencies or an Agency, or in tort or any other legal theory, or based on the actions of a Regional Service Provider, the Agencies agree to meet for the purpose of developing a joint defense plan. The Agencies agree to cooperate with each other as necessary in responding to and defending against all such actions. In the event that resolution of the claim, whether by negotiation, dispute review board recommendation, mediated settlement or judicial order, results in additional costs to the Agencies, said additional costs will be shared by the Agencies, except to the extent that the additional costs are directly attributable to an individual Agency. Such additional costs to the Agencies may include, but are not limited to, the fully allocated labor cost of the staff and attorneys involved in the response or defense of all such actions and any outside counsel or consultant resources deemed necessary by the Agencies. In the event that the additional costs are attributable to an individual Agency, said Agency is responsible for such costs and shall pay same within thirty (30) days of the claim's resolution.

15.6 Waiver of Consequential and Certain Other Damages. Notwithstanding any provision of this Agreement, the Agencies waive all claims against each other (and against each other's officer's, directors, employees, managers, members, shareholders, parent company, affiliates, contractors, subcontractors, consultants, agents, suppliers and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages (including, but not limited to, loss of actual or anticipated profits, revenues or product, loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use; or increased cost of capital), and regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory. Any consequential, incidental, indirect, special, exemplary or punitive damages incurred by any Agency in relation to a third party shall, for all purposes of this Agreement, be deemed consequential, incidental, indirect, special, exemplary or punitive damages in relation to any claim brought by an Agency against any other Agency under this Agreement. Further, this waiver of consequential, incidental, indirect, special, exemplary or punitive damages shall extend to claims against any Agency arising from its role as a Regional Service Provider.

15.7 Specific Performance. In the event an Agency fails to perform an obligation under this Agreement, the other Agencies or any one of them shall have the right to bring an action for specific performance, damages and any other remedies available under this Agreement, at law or in equity.

15.8 No Obligation for Other Agency Employees except as Stated. Except for the reimbursement and other express obligations under this Agreement, no Agency by reason of this Agreement assumes any responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of any other Agency, including its employees, representatives, agents, contractors or suppliers.

15.9 Preservation of Rights and Remedies. The Agencies' rights and remedies under this Agreement are in addition to any other rights and remedies provided by law.

15.10 Survival of Provisions. The provisions of this Section 15.0 shall survive and remain applicable to each of the Agencies notwithstanding any termination or expiration of this Agreement and notwithstanding an Agency's withdrawal or removal from this Agreement.

16.0 TERMINATION, ADDITION OF NEW PARTIES, WITHDRAWAL AND REMOVAL

16.1 Termination by Joint Board. The Joint Board may terminate this Agreement in its entirety by the unanimous affirmative vote of all Agency representatives.

16.2 Addition of New Parties. The Joint Board may approve the addition of new parties to this Agreement and the terms and conditions for such addition. Notwithstanding the foregoing, no new party shall be admitted under this provision unless the following conditions are met: The new party shall (1) pay for its equipment and for all additional costs to accommodate its requirements, and (2) be assessed a charge to recover a share of the planning, design and implementation costs incurred by the originating Agencies. Said charge shall be determined by the Joint Board upon consideration of relevant factors that may affect any of the originating Agencies including, but not limited to, the number of transactions expected to be generated by the new party, and the Development Phase costs incurred by the originating Agencies. Any charge assessed to a new party shall be allocated among the original Agencies according to the percentage shares applicable during the Development Phase as specified in Exhibit C.

16.3 Notice of Agency Withdrawal. In the event that an Agency believes it has cause to withdraw from this Agreement and terminate its participation in the RFC Contract, it shall give written notice to the Joint Board, which shall include the following information, as a minimum:

- a. An explanation of the circumstances causing the Agency to believe withdrawal is necessary;
- b. A description of the probable impacts on the other Agencies from the withdrawal (to be developed in collaboration with the Regional Service Providers);
- c. A description of the probable impacts to the scope, schedule and budget of the RFC Contract (to be developed in collaboration with the Regional Service Providers);
- d. A description of the alternatives to withdrawal that have been evaluated by the Agency; and
- e. A proposed withdrawal work plan that will identify all necessary actions which need to be undertaken to effect the withdrawal (to be developed in collaboration with the Regional Service Providers).

16.4 Joint Board Action on Proposed Withdrawal. Upon receipt of the above-described notice and information, the Joint Board will convene a special meeting to review and consider the request for withdrawal. The Joint Board will develop a report of its Findings and Recommendations within thirty (30) days of its special meeting, which shall be presented to the withdrawing Agency's governing board. This report shall include as a minimum:

- a. A description of the estimated impacts on the Agencies, separately and as a whole, from the withdrawal;

- b. A description of the estimated impacts to the scope, schedule and budget of the RFC Contract, including the costs to modify the RFC System to effect such withdrawal as well as costs that will need to be re-apportioned to the remaining Agencies;
- c. A description of the alternatives to withdrawal that have been evaluated by the Agency and the Joint Board;
- d. A recommendation regarding either:
 - i. a proposed withdrawal work plan that will identify all necessary actions which need to be undertaken to effect the withdrawal; or
 - ii. proposed alternatives to the withdrawal.

16.5 Agency Decision on Withdrawal. Upon receipt of the Joint Board's Findings and Recommendations, the withdrawing Agency's governing board shall review the information contained therein and decide whether to withdraw subject to the terms and conditions set forth by the Joint Board, including an assessment of any reasonable costs (to include assessment rationale, assumptions and documentation) that shall be re-apportioned to the Agencies and/or paid by the withdrawing Agency.

16.6 Assignment of Withdrawing Agency Grants: Liabilities Retained. An Agency shall assign any RFC Project grants to the remaining Agencies upon its withdrawal from this Agreement. In addition, the withdrawing Agency shall be responsible, as required, for repayment to the FTA of any grant funds previously spent in relation to the RFC Project. The withdrawing Agency also agrees to defend and indemnify the remaining Agencies should the FTA require repayment of grant funds at a later date.

16.7 Retention of Cost Obligations and Damages. In addition to being liable for its share of RFC Project costs to and including the effective date of withdrawal, the withdrawing Agency shall be solely liable for actual damages and additional costs to the other Agencies arising out of or resulting from such withdrawal. The Joint Board shall determine the amount of such damages and additional costs and notify the withdrawing Agency of the amount owing to each of the Agencies. The determination of the Joint Board shall be final subject to the dispute resolution procedures set forth elsewhere in this Agreement. The withdrawing Agency shall pay the amount within ninety (90) days after the effective date of withdrawal.

16.8 Dealings with RFC Contractor upon Withdrawal. No Agency shall communicate a notice of termination to the RFC Contractor prior to the Joint Board's and Agency governing boards' completion of the processes set forth in this Section 16.0. Following approval from the Joint Board, the Contract Administrator or ORCA Operations Manager shall communicate to the RFC Contractor such Agency's notice of termination.

16.9 Involuntary Removal of Agency. Notwithstanding the voluntary withdrawal and termination provisions in Subsections 16.3 through 16.8, the Joint Board may, for cause, remove an Agency and terminate the Agency's rights to participate in the RFC System. Cause may include, but is not limited to, failure to act in good faith in participating in the Joint Board and willful, arbitrary failure to approve and appropriate funds necessary to pay the Agency's share of the costs under this Agreement. If an Agency brings a charge against another Agency under this Subsection 16.9, neither the Agency bringing the charge nor the Agency against which the charge is brought shall have any voting rights on the issues raised before the Joint Board. To remove an Agency under this Subsection 16.9, there shall be a unanimous vote in support of removal by all Agency representatives to the Joint Board, except for the representatives of the charging and charged Agencies. An Agency that is removed from the RFC System under this Subsection 16.9 shall pay such costs as may be assessed by the Joint

Board taking into account all costs to the other Agencies caused by, arising out of or resulting from such removal.

17.0 GENERAL PROVISIONS

17.1 Effective Date. This Amended and Restated Interlocal Cooperation Agreement shall take effect on the date when all Agencies have signed the Agreement and shall remain in effect unless terminated in accordance with the provisions of Section 16.0.

17.2 Filing of Agreement. Pursuant to RCW 39.34.040, prior to its entry into force, this Agreement shall be filed with the auditors of the counties of Snohomish, Pierce, Kitsap and King or, alternatively, listed by subject on an Agency's web site or other electronically retrievable public source.

17.3 Time of The Essence. The Agencies recognize that time is of the essence in the performance of the provisions of this Agreement.

17.4 Agencies Not Relieved of Statutory Obligation. Pursuant to RCW 39.34.030(5), this Agreement shall not relieve any Agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by the Joint Board, the performance may be offered in satisfaction of the obligation or responsibility.

17.5 Liability Insurance Required of Agencies. Without limiting any Agency's defense and indemnification obligations under this Agreement, each Agency shall maintain in force, at all times during the term of this Agreement, a policy or policies of Commercial General Liability insurance with limits not less than \$1 million with insurance carriers authorized to do business in the state of Washington, which have a Best's rating of no less than A: VIII. If an Agency is self-insured, or is a member of a self-insurance pool, a certification of self-insurance covering the activities of the Agency in the RFC Project/ORCA shall constitute compliance with this insurance requirement. Upon request of the Joint Board, each Agency shall submit documentation demonstrating its compliance with this insurance requirement.

17.6 Purchase of Insurance by Joint Board. The Joint Board is authorized to purchase liability insurance with an appropriate deductible to protect the Agencies during the Operating Phase, provided that the funds to purchase such insurance are available in the Budget. The insurance carrier or carriers providing such insurance shall be authorized to do business in the state of Washington and each have a Best's rating of no less than A: VIII.

17.7 Nondiscrimination. The Agencies shall comply with the nondiscrimination requirements under federal and state laws, regulations and grants applicable to the RFC Project. Nondiscrimination requirements shall include, but not be limited to, contractors, consultants and other third party vendors engaged on the RFC Project.

17.8 Reservation of Rights under Previous Agreements. The Agencies reserve any rights, powers, privileges, authority, liabilities, obligations and duties set forth in or provided by any previous agreement executed by an Agency related to activities, actions and decisions precedent to the RFC Project. This Agreement shall not be construed in derogation of any such rights, powers, privileges, authority, liabilities, obligations and duties.

17.9 No Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Agency or

Agencies claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all Agencies.

17.10 No Assignment. No Agency shall transfer or assign a portion or all of its responsibilities or rights under this Agreement, except with the prior authorization of the Joint Board.

17.11 Maintenance of Records; Right of Access To Records. Each Agency, when acting in its individual capacity and when acting as a Regional Service Provider, shall establish and maintain accounts, and keep records and documents, as required by state law and grant provisions and in accordance with such policies, procedures and retention schedules as are established by the Joint Board. The ORCA Regional Program Administrator will advise the Joint Board of what records need to be retained by individual Agencies and Regional Service Providers. Any accounts, records and documents related to matters under this Agreement shall be subject to inspection, review or audit by the Joint Board or any Agency.

17.12 Public Disclosure. Each Agency shall be responsible for responding to public disclosure requests addressed to the specific Agency in accordance with the Public Disclosure Act (RCW 42.56) and such procedures as may be established by the Joint Board.

17.13 Ownership of Tangible Property. Tangible property paid for by an Agency under this Agreement shall be owned and in the care and custody of the Agency. Each Agency shall take all reasonable and necessary actions to protect such property. Each Agency shall comply with requirements of grant agencies for the proper management of such property. The Joint Board shall not be deemed to own any property. In the event an Agency withdraws or is terminated from participation in this Agreement or if this Agreement is terminated, the Agency shall retain all property purchased by it or interests in property to the extent it has paid its share of the costs. Disputes about ownership of property shall be presented to the Joint Board.

17.14 Dispute Resolution. If one or more Agencies believes another Agency has failed to comply with the terms of this Agreement, the affected Agencies shall attempt to resolve the matter informally. If the Agencies are unable to resolve the matter informally, it shall be forwarded for discussions by the highest executive of each Agency. If this process fails to resolve the matter within thirty (30) days after such referral, except as expressly set out elsewhere in this Agreement where referral to the Joint Board is required for final resolution, an Agency may then pursue any legal remedy available to it or the Agencies may agree to submit the matter to mediation. If the Agencies submit the matter to mediation and the matter is not resolved, then the aggrieved Agency shall be entitled to pursue any legal remedy available.

17.16 Amendment Only In Writing. Except for exhibits which may be amended by the Joint Board, this Agreement may only be amended by a written amendment that is approved by each Agency's governing board.

17.17 Notices. Notices, demands or other written communications required under this Agreement to be given to other Agencies, the Joint Board or both the Joint Board and other Agencies shall be provided as set forth in Exhibit I.

17.18 Choice of Law; Venue. This Agreement shall be interpreted and constructed according to and enforced under the laws of the state of Washington. The Agencies agree that the

Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

17.19 Integration. The Agencies agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

17.20 Counterparts. This Agreement shall be executed in counterparts, any one of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

INTENTIONALLY LEFT BLANK

18.0 SEVERABILITY

If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

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

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

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

Chief Executive Officer

Chief Executive Officer

Date: _____

Date: _____

King County

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

Transit General Manager

Executive Officer

Date: _____

Date: _____

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

City of Everett ("Everett Transit")

Chief Executive Officer

Mayor, or by his designee

Date: _____

Date: _____

State of Washington, acting through the Washington State Department of Transportation, Ferries Division ("Washington State Ferries")

Assistant Secretary for Washington State Ferries

Date: _____

EXHIBITS TO RESTATED AND AMENDED ILA

- Exhibit A-1 Project Team Plan - Development Phase
- Attachment 1 to Exhibit A-1 Agency Site Manager Job Description – Development Phase
- Exhibit A-2 Agency Site Manager Job Description –Operating Phase
- Exhibit B-1 Contract Administration Plan - Development Phase
- Attachment to Exhibit B-1 Non-Disclosure Agreement
- Exhibit B-2 ORCA Operations Agency - Duties and Responsibilities
- Exhibit B-3 ORCA Regional Program Administration Agency - Duties And Responsibilities
- Exhibit C Finance Plan – Development Phase
- Exhibit D-1 Regional Cost Sharing Formula - Operating Phase
- Exhibit D-2 ORCA Program Cost Categories for Annual Budget – Operating Phase
- Exhibit D-3 Ten Year Budget Plan – Operating Phase
- Exhibit D-4 Invoicing and Bill Paying Procedures – Operating Phase
- Exhibit E-1 E-Purse Allocation
- Exhibit E-2 Retail Pass Allocation
- Exhibit E-3 Business Account Agreements, Participation Requirements, Pricing and Revenue Distribution
- Exhibit F-1 Fiscal Agent Duties
- Exhibit F-2 List of ORCA Accounts
- Exhibit G-1 Regional Inventory and Distribution Center- Description of Duties
- Exhibit G-2 Regional Mail Center – Description of Duties
- Exhibit H System Security Plan
- Exhibit I Notices By An Agency To Other Agencies And Joint Board

Exhibit A-1 Project Team Plan - Development Phase

Contract Administrator

Primary responsibility, as directed by the Joint Board, for overall program management of the collaborative regional elements of the RFC Project, to include supervision of the Project Team and support services, the Contractor, and Joint Consultant contract administration. **Note:** The individual Agency Site Managers are considered to be key participants of the Project Team, however they report solely and directly to the organization they represent.

Provide planning and administrative coordination with the Agency Site Managers.

Report to and provide administrative coordination with the Joint Board. This coordination shall include, but not be limited to, monthly project scope, schedule, budget and outstanding issue/resolution updates.

Provide support to the individual agency project-related needs and requirements. In the event these individual agency requirements are in conflict, the Contract Administrator shall present to the Joint Board for its action, an issues summary and recommended resolution.

Develop, monitor, and recommend to the Joint Board, as required, revisions to RFC Project scope, schedule, budget, and finance plans.

As directed by the Joint Board or within delegated authorities as set forth in this Agreement, provide primary direction (i.e. "single point of contact") to consultants and the Contractor.

As directed by the Joint Board, identify and develop resolution strategies for policy issues such as labor, fares, customer services, budget, resource deployment, service contracts, marketing, etc.

As directed by the Joint Board, implement, monitor and recommend revisions, as required, to the Agency Business Rules adopted to provide technical guidance to the contractor and policy guidance to the Agencies.

As directed by the Joint Board, facilitate the development of a RFC Project rollout plan which includes, but is not limited to, the following elements:

- Approach for conversion of current pass holders to smart cards;
- Approach for conversion of current cash riders to smart cards;
- Approach for transitioning current institutional accounts to smart cards; and
- Approach for transitioning to this Agreement from current Regional Fare Revenue Reconciliation Agreement (dealing with Puget Passes) which is not participated in by all of the parties to this Agreement.

As directed by the Joint Board, facilitate the development of uniform agreements to be used by the Agencies during the RFC Contract including, but not limited to, the following:

- Business Accounts: This agreement will set forth the contractual relationship between the employer/organization and the Agency and include provisions

regarding billing arrangements, card issuance, account management tools available to the employer/organization, etc.

- o Retail Revalue Entities: This agreement will set forth the contractual relationship between the retailer and the Agency and include provisions regarding the duties required of the retailer, billing arrangements, merchant of record responsibilities, etc.

IS/Technical Manager

The Regional Technical Manager shall perform duties as delegated by the Contract Administrator, who may include, but not be limited to those noted below.

Primary responsibility for contractor/Agency technical coordination to ensure implementation of the RFC System in accordance with the RFC Contract requirements, implementation plan and schedule, and all other deliverables. All contract requirements will be tracked using the Requisite Program.

Coordinate Contractor and Agency Site Manager technical activities related to design, development, implementation, test, delivery, and operation of the RFC System.

Monitor the Contractor and Agency performance and compliance regarding technical elements; report on status and recommend revisions as required.

Monitor RFC Project schedule, report on status, and initiate action, as necessary, to maintain schedule related to technical elements.

Conduct regular status meetings with the Contractor and Agencies to identify and track technical issues and problems and provide a complete report to the Contract Administrator.

Maintain database of RFC Contract technical requirements, and revise existing requirements and/or develop new requirements as needed.

Identify and document the need for revised and/or new Agency Business Rules.

As directed by the Contract Administrator, coordinate review and approval of technical contract deliverables.

As directed by the Contract Administrator, coordinate change orders for appropriate approvals.

As directed by the Contract Administrator, coordinate Contractor Requests for Information (RFI).

Budget & Contract Control Manager

The Budget and Contract Control Manager will perform duties as delegated by the Contract Administrator, who may include, but not be limited to, those noted below.

Primary responsibility for regional project budget, regional grant applications and all regional project financial reporting, invoice reconciliation and payments.

Coordinate with the Fiscal Agent for tasks related to the joint administration of the regional invoice payment process and to ensure proper accounting treatment for the RFC Project.

Coordinate with Agency Site Managers and their budget staff to ensure, as appropriate, regionally consistent cost accounting.

Provide the Agency Site Manager's with regional project budget information as required to meet each agency's internal project reporting requirements.

Develop and monitor one or multiple database(s) to track the RFC Vendor Contract specification and deliverable compliance and progression of work schedule adherence.

Develop, monitor and manage a system to generate all Change Orders, monthly budget reports, budget revisions, contractor payments, and Agency invoices for contractor and all other shared or individual Agency payments.

Project Assistant

Provide administrative support to the Project Team staff, Agency site managers and Joint Board.

Maintain RFC Project records, files and other documentation.

Agency Site Manager(s)

Note: The individual Agency Site Managers are considered to be key participants of the Project Team, however they report solely and directly to the organization they represent.

The Agency Site Manager job description is set forth in Attachment 1. The position's key responsibilities are noted below:

Primary responsibility to coordinate all internal Agency resources to meet all RFC Contract scope and schedule requirements or negotiate revisions as required.

Primary Agency point of contact/authorized official to give direction to the Contract Administrator, joint consultants and/or the Contractor, as required.

Attachment 1 to Exhibit A-1 Agency Site Manager Job Description – Development Phase

Each Agency shall appoint a Site Manager or contract with another Agency to provide a Site Manager with the responsibility and authority to make decisions for that Agency that will allow the overall project to maintain scope, schedule, and budget. The Site Manager, as each Agency's Contract Administrator, will be a key participant on the Project Team and will meet regularly with the Project Team, joint consultants, and the Contractor. The Agency Site Manager reports solely and directly to the organization they represent.

1. Primary Responsibilities

- a. Serve as primary Agency point of contact/authorized official for the Contract Administrator, Fiscal Agent, joint consultants, and/or the Contractor as required;
- b. Advise the Project Team on project status, technical options, and implications for individual Agency activity;
- c. Coordinate all internal Agency resources to meet all contract scope and schedule requirements or negotiate revisions as required;
- d. Coordinate the Agency review and approval of all technical design and functionality of the system;
- e. Attend regular (e.g., weekly) regional meetings to discuss project issues.

2. Secondary Responsibilities

- a. Brief all internal Agency staff about the RFC Project;
- b. Ensure that all internal Agency staff cooperate with the Contractor and its subcontractors in the execution of the RFC Project;
- c. Provide necessary interface specifications for all existing Agency systems required for the RFC System;
- d. Facilitate communication with contractors and suppliers of existing systems or equipment as required;
- e. Provide plans and drawings of Agency facilities and vehicles as required;
- f. Coordinate appropriate the Contractor access to required locations for the purpose of system equipment installation;
- g. Arrange for installation space and adequate facilities for installation crews;
- h. Arrange for installation space within or near the bus depot bases to house the DACS and WDOLS equipment;
- i. Assist in the coordination and scheduling of vehicles for installation and testing purposes;
- j. Facilitate interaction and information exchange in support of testing;
- k. Participate in the testing of interfaces to all legacy systems;
- l. Witness and approve tests during various phases of the project including, as applicable, factory acceptance testing, system integration testing, system commissioning testing, beta testing, and acceptance testing procedures;
- m. Provide access to vehicles, bases, parking lots, ferries (as applicable), and back office locations for installation and testing of the RFC System;
- n. Review training documentation and coordinate Agency staff attendance at training classes;
- o. Provide equipment and system support as indicated by the "Maintenance Services Chart" in Division II, section 6.II-10.1 of the RFP;

- p. Provide classroom facilities for training Agency personnel in Contractor-provided classes.

3. Qualifications and Experience

The Site Manager shall act as each Agency's Contract Administrator and possess the following:

- a. Experience developing and monitoring project budgets, work schedules, and status reports;
- b. Experience planning, organizing, and directing the work of project consultants, contractors, and staff;
- c. Experience negotiating with vendors and monitoring vendor performance;
- d. Experience establishing work plan details, reporting progress, and anticipating and resolving project difficulties; and
- e. Experience installing and testing new hardware, software, and data communication networks, as related to a project.

4. Time Commitment

As Needed

Exhibit A-2 Agency Site Manager Job Description –Operating Phase

Each Agency shall appoint a Site Manager who will function as the single point of contact for the ORCA Operations Manager, the ORCA Regional Program Administrator and the other ORCA Regional Service Providers. In this role the Site Manager is responsible for coordinating with internal Agency staff in order to respond appropriately in a timely manner. The Site Manager shall be endowed with reasonable authority to make most decisions required for efficient and timely administration of the ORCA System. Where the Site Manager is not authorized to make decisions for the Agency (e.g., the Agency bank accounts or fare policy), the Site Manager is responsible for identifying the Agency representative who will communicate with the ORCA Regional Service Providers. The individual Agency Site Managers are considered to be key participants in the regional aspects of the ORCA Program, however they report solely and directly to the Agency they represent.

1. Primary Responsibilities

- a. Serve as primary Agency point of contact/authorized official for the ORCA Operations Manager, the ORCA Regional Program Administrator, the other ORCA Regional Service Providers, Joint Consultants, and/or the RFC Contractor as required;
- b. Coordinate all internal Agency resources to meet all Agency requirements in this Agreement and the RFC Contract;
- c. Identify the appropriate authorized Agency representatives to communicate with the Regional Service Providers in areas where the Site Manager is not authorized to give direction on behalf of the Agency;
- d. Promptly advise the ORCA Operations Manager or the ORCA Regional Program Administrator, as applicable of any performance issues by the RFC Contractor or Joint Consultants;
- e. Coordinate the Agency review and approval of all changes, updates or upgrades to the technical design and functionality of the ORCA System;
- f. Attend regular (e.g. weekly) regional meetings to discuss system operating and/or administration issues and participate in the summary of regional system performance and issue identification.

2. Secondary Responsibilities

- a. Inform, as appropriate, internal Agency staff on system matters to enable an efficient and accurate communication process
- b. Ensure the cooperation of all internal Agency staff with the RFC Contractor and Joint Consultants as required for the operations and administration of the ORCA System.
- c. Provide, as required for system updates, upgrades or changes, the necessary interface specifications for all existing Agency systems;
- d. Facilitate, as required for system updates, upgrades or changes, communication with the contractors and suppliers of existing systems or equipment as required;
- e. Provide plans and drawings of Agency facilities and vehicles as required;
- f. Coordinate appropriate approvals for the RFC Contractor to access required locations for the purpose of site surveys or system equipment repairs or installation;

- g. Assist in the coordination and scheduling of vehicles for installation and testing purposes;
- h. Coordinate all necessary staff and resources to support testing activities;
- i. Participate in the testing of all new releases or other types of testing, as required;
- j. Review new or updated training documentation and coordinate Agency staff attendance at training classes;
- k. Provide equipment and system support as indicated by the "Maintenance Services Chart" in Division II, section 6.II-10.1 of the RFC Contract;

3. Qualifications And Experience

The Site Manager shall either possess the following experience, or assume primary responsibility for the performance multiple Agency staff that will perform work requiring this experience:

- a. Experience developing and monitoring operating budgets, work schedules, and status reports;
- b. Experience planning, organizing, and directing the work of staff, consultants, and contractors;
- c. Experience monitoring vendor performance;
- d. Experience establishing work plan details, reporting progress, and anticipating and resolving issues; and
- e. Experience installing and testing new hardware, software, and data communication networks, as related to a project.

4. Time Commitment

As Needed

Exhibit B-1 Contract Administration Plan - Development Phase

A. Purpose

1. This Contract Administration Plan is included to set forth the general contract administration activities and actions that are to be managed or taken by the Contract Administrator, Joint Board or Agencies. The Agencies intend that the authorities of the Contract Administrator and Joint Board are to be generally consistent with the usual grants of authorities for administration of contracts awarded by a public agency, notwithstanding the fact that each Agency may have specific policies and practices related to contract administration that are different from those described herein.

2. This Plan is intended to be consistent with grant requirements established by the Federal Transit Administration (FTA). If FTA grant requirements differ from provisions in this Plan, the FTA grant requirements shall prevail.

3. In general, the Joint Board has responsibility for overseeing the performance of the Project Team, Joint Consultants and the Contractor. The Contract Administrator has responsibility for the day-to-day management of the Project Team. The Contract Administrator shall be responsible for managing the administration of the RFC Contract and contracts with Joint Consultants, and shall make all decisions except those decisions identified in this Agreement that shall be made by the Joint Board or governing bodies of the Agencies consistent with the level of monetary expenditure authorized by the Joint Board. The Contract Administrator, and members of the Project Team designated by the Contract Administrator, will monitor the performance of Joint Consultants and the Contractor and maintain a contract administration system that ensures that the consultants and the Contractor perform in accordance with the terms, conditions and specifications of the contracts.

4. The Agencies acknowledge that it is essential the Contract Administrator serve as the sole communication conduit with Joint Consultants and the Contractor. Except for the limited roles of the Agency Site Managers, the Agencies and members of the Joint Board shall refrain from communicating directly with the Joint Consultants and the Contractor, unless specifically designated by the Contract Administrator. However, each Agency may communicate directly with the Contractor as necessary for specialized applications (which are the sole responsibility of the Agency).

5. The Agencies acknowledge that the RFC Project has been designated an ITS test site. The Agencies shall cooperate in meeting the ITS test site requirements and, to the extent possible, provide evaluation data including before and after effectiveness data. All costs related to meeting the ITS test site requirements shall be shared by the Agencies.

B. Definitions

1. Contract Administration is the post-award administration of the contract to ensure compliance with the terms of the contract by both the Contractor or a consultant, as applicable, and the Agencies.

2. Contract Administrator's Documentation is the documentation contained in the contract file maintained by or on behalf of the Contract Administrator. The documentation

describes the actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made in the administration of the contracts. This file shall contain a Contract Folder, which shall contain the official documentation relating to the procurement, award, execution, administration and closeout of the contract. The file shall, as a minimum, include the following materials:

- a. Executed contract and notice of award;
- b. Letter of credit, performance and payment bonds, or approved alternative security, bond-related documentation, and correspondence with any sureties or banks;
- c. Contract-required insurance documentation;
- d. Post-award (pre-performance) correspondence from or to the consultant or contractor or other governmental agencies;
- e. Notice to proceed;
- f. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- g. Modifications/changes to the contracts, including the rationale for the change, change orders issued, and documentation, including price/cost analysis documentation, reflecting any time and increases to or decreases from the contract price as a result of the modifications;
- h. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- i. Documentation regarding any stop work and suspension of work orders and termination actions (convenience as well as default); and
- j. Documentation relating to contract close out.

Any Agency may request copies of the Contract Folder or the Contract Administrator's File, particularly if required to satisfy grant requirements. If an Agency receives a public disclosure request for any of the materials in the Contract Folder, the Agency may forward the request to the Contract Administrator, who shall administer it in accordance with the policies and practices of the Agency with whom the Contract Administrator is employed.

3. Change Order includes any written change to the contract terms, conditions, specifications, scope, schedule or price, and may be either bilateral or unilateral.

C. RFC Contract

1. The Agencies agree that the Contract Administrator shall act as the sole conduit for communications to and from the Contractor relating to the administration of the RFC Contract, unless the Contract Administrator specifically authorizes otherwise. However, each Agency may communicate directly with the Contractor as necessary for specialized applications (which are the sole responsibility of the Agency).

2. For the RFC Contract, the Contract Administrator is responsible for the following functions. The Contract Administrator may delegate specific activities required to perform these functions to various members of the Project Team:

- a. Monitor compliance with contract terms & conditions;
- b. Coordinate communications and information with decision-making board;

- c. Coordinate with the Agency Site Managers to review contractor milestone deliverables, per the prescribed 45-day agency review time frame. The task and time decomposition of the 45-day review period is generally understood to be as follows – described in business days: **1) Contract Administrator receives electronic copies of contractor documents and distributes one set to each Agency Site Manager [1 – 2 days]; 2) Agency Site Manager duplicates material, as required, and distributes internally to reviewers [3 – 4 days]; 3) Individual staff review period [10 days]; 4) Agency Site Manager performs internal coordination necessary to clarify comments and/or reconcile differences of opinion and prepares one consolidated agency response which is submitted to the Contract Administrator [5 days]; 5) Contract Administrator prepares one consolidated draft regional response and identifies issues and/or differences of opinion, which is provided to the Agency Site Managers [5 days]; 6) Contract Administrator and Agency Site Managers meet to resolve conflicts/issues; Contract Administrator prepares one final regional response which is submitted to the Contractor [5 days].**
- d. Monitor the Contractor's compliance with federal, state and local law and regulations;
- e. Monitor regional project compliance by the Contractor and Agencies with banking and financial laws, regulations & rules;
- f. Recommend to the Joint Board approval of additional card applications and revenue by Agencies;
- g. Recommend to the Joint Board approval of the Contractor's publicity materials and work-related copy by Agencies;
- h. Coordinate regional communications with Site Managers and facilities;
- i. Monitor compliance with the submission of contract documentation requirements;
- j. Coordinate audits by the Agencies or state/federal officials;
- k. Monitor compliance with federal Section 504, ADA and other federal and state civil rights requirements;
- l. Individual Agencies may acquire grant funds, which mandate compliance with specific requirements. To the extent that the grantee Agency gives the Contract Administrator written notification of any such grant requirements, the Contract Administrator will use good faith efforts to comply with such grant requirements;
- m. Review and approve training program and instructors;
- n. Conduct post-award orientation with Project Team, Agencies and the Contractor;
- o. Serve as communication conduit between Agencies and the Contractor;

- p. Respond to information and public disclosure requests from the public and mass media;
- q. Monitor progress and performance by the Contractor;
- r. Oversee compliance with inspections and testing requirements;
- s. Monitor compliance with quality assurance and control plan;
- t. Monitor compliance with program management, progress and performance monitoring plan;
- u. Identify and resolve performance deficiencies;
- v. Confirm quality and quantity of work performed;
- w. Manage Change Order/amendment process;
- x. Perform cost/price analysis of Change Orders and amendments as necessary;
- y. Manage the invoice review, approval and payment processes;
- z. Monitor expenditures and report to Joint Board;
- aa. Administer the claims and disputes processes;
- bb. Administer the defective work, materials or services processes;
- cc. Administer warranties and guarantees;
- dd. Manage the contract closeout process;
- ee. Prepare and maintain the Contract Folder;

Comply with records retention requirements for Contract Folder.

3. The Contract Administrator shall develop or cause to be developed appropriate procedures and practices for the items listed above. The Contract Administrator may amend such procedures and practices as necessary to meet grant conditions, legal requirements, and RFC Project needs.

D. RFCS Contract Change Orders and Amendments

Any Agency may request a Change Order to the RFCS Contract by submitting a written request to the Contract Administrator. The request shall describe the additional work requested, the estimated cost of such additional work, and the expected benefit of such additional work. If the Contract Administrator approves the request, he or she will proceed with the negotiation and approval of the Change Order according to the procedures outlined in this subsection. If the Contract Administrator denies an Agency's Change Order request, the Agency may submit the issue to the Joint Board for resolution.

All costs associated with Change Orders requested by an Agency that are determined by the Joint Board to be for the sole benefit of that Agency shall be borne entirely by the Agency rather than as a shared regional cost.

The Contract Administrator shall notify each Agency of each Change Order and amendment the Contract Administrator approves. Each Agency delegates to the Contract Administrator its authority to negotiate and approve Change Orders and amendments, if each Change Order and amendment:

- a. does not exceed \$50,000 in added contract cost;
- b. does not, when combined with all other Change Orders, add more than thirty (30) days to the performance schedule of each phase of the contract; and
- c. does not, when added to all Change Orders approved through this delegated authority, exceed a total of \$250,000 in added contract costs; and
- d. does not create a change to the RFC system architecture; and
- e. does not exceed the RFC Project Budget.

4. The Contract Administrator may request that the Joint Board authorize from available contingency funds an additional amount for Change Orders if the cumulative total in paragraph 3.c above is reached. The Joint Board may authorize additional amounts at levels it deems appropriate provided the RFC Project Budget is not exceeded.

5. Prior to signing a Change Order or amendment that exceeds the above limitations, the Contract Administrator shall obtain the approval from the Joint Board.

E. RFCS Contract Claims

During the RFCS Contract, the Contractor may file a Contract Claim to request additional time and/or money. The Contract Administrator shall notify each Agency of each Change Order and/or amendment the Contract Administrator approves or rejects as a result of a Contract Claim filed by the Contractor. Each Agency delegates to the Contract Administrator its authority to negotiate and approve Contract Claims subject to the same limitations as regarding Change Orders set forth in paragraph D above.

F. Joint Consultant Contracts

1. The Agencies agree that the Contract Administrator shall act as the single conduit for communications to and from consultants relating to the administration of Joint Consultant contracts, except as specifically authorized otherwise by the Contract Administrator. However, each Agency may communicate directly with Joint Consultants as necessary to enable the consultants to perform work tasks.

2. Each Agency's Site Manager shall be responsible for coordinating communications with the Joint Consultants. An Agency's Site Manager shall:

- a. Coordinate with the Contract Administrator on a regular basis to avoid conflicts and interface disconnects;
- b. Provide information to consultants as requested for each task deliverable;
- c. Identify Agency staff for consultants to interview and provide existing documents to consultants;
- d. Collect information and provide it to consultants based on templates as provided by consultants; and
- e. Create a record and provide a copy to the Contract Administrator of the review and comments submitted by an Agency to consultants

G. Joint Consultants Contract Change Orders and Amendments

1. The Contract Administrator shall notify each Agency of any Change Orders and amendments the Contract Administrator approves. Each Agency delegates to the Contract Administrator its authority to negotiate and approve Change Orders and amendments, if each Change Order and amendment:

- a. does not exceed \$10,000 in added contract cost;
- b. does not, when combined with all other Change Orders and amendments, add more than thirty (30) days to the performance schedule of each phase of the contract; and
- c. does not, when added to all Change Orders and amendments approved through this delegated authority, exceed a total of \$100,000 in added contract costs.

2. The Contract Administrator may request that the Joint Board authorize from available contingency funds an additional amount for Change Orders if the cumulative total in paragraph 1.c above is reached. The Joint Board may authorize additional amounts at levels it deems appropriate provided the RFC Project Budget is not exceeded.

3. Prior to signing a Change Order or amendment that exceeds the above limitations, the Contract Administrator shall obtain the approval from the Joint Board.

H. Deliverables Under Joint Consultant Contracts

Each Agency shall review proposed contract deliverables under Joint Consultant contracts and provide the Contract Administrator with a written approval or objection. Approval of deliverables shall not be unreasonably withheld by an Agency. If the Contract Administrator has not received an Agency's signed, written objection to a deliverable within five (5) days after the Agency has received a copy of the deliverable, the Agency shall be deemed to have accepted the deliverable as submitted. If one or more Agencies raises an objection in writing that a deliverable is not satisfactory, the Contract Administrator shall forward the objection to the consultant for resolution. If an objection is not resolved and the Agencies are in disagreement as to whether a deliverable is satisfactory, the Joint Board shall meet within seven (7) days after the consultant indicates it is unable to resolve the objection. The Joint Board shall make a unanimous final determination about whether to

accept the deliverable. Upon acceptance of a deliverable, the Contract Administrator shall notify the consultant in writing of the acceptance. The consultant may then submit an invoice pursuant to the payment provisions of the consultant contract.

I. Claims Against Joint Consultants

In the event one or more of the Agencies intends to file a claim against a Joint Consultant during the term of the contract or at any point after the contract has expired or otherwise terminated, such Agency shall notify the other Agencies at least thirty (30) days in advance of filing the claim and comply with the provisions in Section V.I-K of the Agreement to which this exhibit is attached.

J. Use of Contingency Amounts

The RFC Project Budget shall include a Contingency Amount that can be used to pay the costs of Joint Board-approved expenditures related to the RFC Project, including but not limited to Change Orders and amendments to the RFC Contract and Joint Consultant contracts. This Contingency Amount shall be allocated among the Agencies as project costs. Upon authorization by the Joint Board, the Contract Administrator shall calculate contingency amounts due from each Agency and direct the Fiscal Agent to bill the Agencies accordingly. The Contract Administrator shall track the contingency activity and make periodic reports to the Joint Board. The Joint Board may not approve expenditures from the Contingency Amount that will or may exceed the contingency amounts provided by the Agencies. If additional contingency amounts are needed, the Joint Board shall make an appropriate request therefor to the Agencies.

K. Protection of Contractor IP

1.0 Purpose

The RFC Contractor is required to provide the Agencies with certain information and documents that are considered "Contractor IP" or "IP Materials for Contractor IP" under the RFC Contract. Under RFC Contract Section 35.5.1, the following CDRLs are considered Contractor IP except to the extent they constitute DDUIP.

- #1 Conceptual Design Review
- #2 Preliminary Design Review
- #3 Final Design Review
- #16 System Integration Test Plan
- #31 System Security Plan

Certain elements of Software Documentation (CDRL #37) and other information provided to the Agencies may also constitute Contractor IP or IP Materials for Contractor IP.

The Agencies are required by RFC Contract Section 35.4.3(e) to undertake "reasonable protective measures" to prevent disclosure of Contractor IP and IP Materials for Contractor IP to other than Agency employees, contractors, consultants or new RFCS members. To provide for a consistent implementation of such measures, each Agency agrees to comply with the measures that are set forth herein.

As the term Contractor IP is used hereafter in this Section K, it shall be deemed to include both "Contractor IP" and "IP Materials for Contractor IP" as those terms are defined in the RFC Contract.

2.0 Contractor IP

2.1 Information and documents provided by ERG to the Agencies prior to Full System Acceptance may or may not contain Contractor IP as that term is defined in the Contract but, for purposes of this Section K, will be presumed to contain Contractor IP unless all the Agencies otherwise agree in writing.

2.2 The Agencies agree that they will jointly determine which information and documents provided by ERG after Full System Acceptance are properly considered Contractor IP and therefore subject to this Agreement.

3.0 Contract Administrator Responsibilities

3.1 The Agencies, through the Joint Board, shall direct the Contract Administrator to limit her distribution of Contractor IP to the following:

- a. the Project Team as defined in the Interlocal, Section I (Q)
- b. any Joint Consultant as defined in the Interlocal, Section I (O)
- c. each Agency's Site Manager

3.2 The Agencies, through the Joint Board, shall also direct the Contract Administrator to:

- a. sign a Nondisclosure Agreement (attached hereto as Attachment to Exhibit B-1)
- b. obtain such Nondisclosure Agreements signed by the persons to whom she has distributed Contractor IP and any persons to whom the Site Manager has distributed Contractor IP as allowed under Section 4.0 below.
- c. maintain a file of all executed Nondisclosure Agreements
- d. apply password protection to any electronic depository of Contractor IP in order to limit access to those persons listed above who have signed the Nondisclosure Agreement.
- e. require that all members of the Project Team and all Joint Consultants shall: (1) keep any paper copies in areas not generally accessible to the public and (2) keep any electronic files in password-protected directories.
- f. require that, following the issuance of Full System Acceptance, all members of the Project Team and all Joint Consultants shall delete all electronic copies of the CDRLs listed in Section 1.0 and return all hard copies of same to be destroyed. The ORCA Operations Manager shall retain two paper copies and two CD copies of said CDRLs. Thereafter, the ORCA Operations Manager may check out copies to

members of the ORCA Operations Group, the ORCA Regional Program Administration Group or Joint Consultants who (1) have a need to review the Contractor IP in order to perform their assignments for the Agencies; and (2) have signed the Nondisclosure Agreement.

4.0 Agency Responsibilities

Each Agency shall establish a process for receiving, reviewing, distributing, retaining and destroying Contractor IP. At a minimum, said process shall comply with the following provisions.

- a) The Site Manager (or designee in case of absence) shall be the only Agency contact authorized to receive a copy of Contractor IP from the Contract Administrator.
- b) The Site Manager shall determine assignments for review of the Contractor IP and prepare/maintain a roster of the Agency employees and contractors who need to review the Contractor IP in order to perform their assignments for the Agency.
- c) The Site Manager shall make copies (paper or electronic) of the Contractor IP and distribute same only to those Agency employees or contractors who (1) are on the Site Manager's roster and have a need to review the Contractor IP in order to perform their assignments for the Agency; and (2) have signed the Nondisclosure Agreement.
- d) The Site Manager shall apply password protection to any electronic depository of Contractor IP in order to limit access to those persons on the roster who have signed the Nondisclosure Agreement.
- e) Contractor IP will not be included in any general distribution to Agency staff or third parties
- f) All Agency employees and contractors who obtain access to Contractor IP shall (1) keep any paper copies in areas not generally accessible to the public; and (2) keep any electronic files in password-protected directories.
- g) Following the issuance of Full System Acceptance, all electronic copies of the CDRLs listed in Section 1.0 will be deleted and all hard copies of same will be returned to the Site Manager and destroyed. The Site Manager shall retain one paper copy and one CD of said CDRLs. Thereafter, the Site Manager may check out copies to Agency employees or contractors who (1) have a need to review the Contractor IP in order to perform their assignments for the Agency; and (2) have signed the Nondisclosure Agreement.

5.0 Requests for Disclosure of Contractor IP

In the event any Agency receives a request for public records that include Contractor IP, the Agency shall comply with applicable processes and procedures established by the Joint Board, including the process for notifying the Contractor. The Agencies agree to refuse¹ to disclose the requested Contractor IP unless the disclosure is authorized by the Contractor or ordered by a court.

¹ RCW 42.17.310(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.
RCW 42.17.311 Nothing in RCW 42.17.310(1) (t) through (v) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

Attachment to Exhibit B-1 Non-Disclosure Agreement

This Agreement is entered into by and between _____, ("Recipient") and _____ ("Agency").

Recitals

A. In April of 2003, the Agency joined other transit providers ("Agencies") in executing an RFCS Contract with ERG Transit Systems (USA) Inc. ("ERG") and an Interlocal Cooperation Agreement for Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System ("Interlocal Agreement").

B. Pursuant to the Interlocal Agreement, as amended, the Agency has agreed to undertake certain measures to protect against unauthorized disclosure of Confidential Information.

C. These measures include the Agency entering into nondisclosure agreements with Agency employees, consultants and contractors whose duties on behalf of the Agency require that they have access to certain Contractor IP.

D. The purpose of this agreement is to impose restrictions on the Recipient's use of Contractor IP in accordance with the RFCS Contract and the Interlocal Agreement, as amended.

Terms

In consideration of the compensation received by the Recipient from the Agency, and the mutual covenants contained herein, the parties hereto agree as follows:

1.0 Confidential Information

1.1 As the term Confidential Information is used herein, it shall be deemed to include:

a. "Contractor IP" and "IP Materials for Contractor IP" as those terms are defined in the RFC Contract; and

b. any information or documents created by any person or firm that contains summaries, descriptions, excerpts or other details about "Contractor IP" and "IP Materials for Contractor IP."

1.2 Under RFCS Contract Section 35.5.1, the following CDRLs are considered Contractor IP except to the extent they constitute D DU IP.

- #1 Conceptual Design Review
- #2 Preliminary Design Review
- #3 Final Design Review
- #16 System Integration Test Plan
- #31 System Security Plan

Certain elements of Software Documentation (CDRL #37) and other information provided to the Agencies may also constitute Contractor IP or IP Materials for Contractor IP.

1.3 Recipient agrees to treat as Confidential Information any information and documents provided by ERG prior to Full System Acceptance, unless the Recipient is expressly informed otherwise in writing by the Agency.

2.0 Recipient Responsibilities

2.1 Confidential Information is made available to Recipient solely for the purpose of enabling Recipient to perform its employment or contractual duties for the Agency relating to the design, implementation, operation and maintenance of the RFCS ("RFCS Purpose"). Recipient will not use, copy, disclose, disseminate or distribute any Confidential Information for any other purpose without the prior written consent of the Agency.

2.2 Recipient will protect any Confidential Information from any unauthorized use, disclosure, copying, dissemination or distribution. Recipient specifically shall:

- a. ensure that proper and secure storage is provided for the Confidential Information and take all reasonable and necessary precautions to maintain the secrecy and prevent the accidental disclosure of any Confidential Information
- b. not make notes or allow notes to be made except as necessary in connection with the RFCS Purpose;
- c. make the Confidential Information available only to those persons who have a need to know for the RFCS Purpose and have also signed a copy of this Agreement;
- d. make copies of the Confidential Information only as reasonably required for the RFCS Purpose;
- e. not deliver, distribute, display, demonstrate or otherwise make available the Confidential Information to any person(s) except as provided in Section 2.2(a) above;
- f. not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature; and
- g. take all reasonable steps to prevent unauthorized use or disclosure of Confidential Information and to regain possession of Confidential Information if unauthorized use or disclosure is discovered.
- h. immediately notify the Agency if the Recipient becomes aware of any loss or unauthorized use, access, copying or disclosure of any of the Confidential Information.

2.3 If a public disclosure request under the Washington Public Disclosure Act, RCW 42.17 et seq., is made for Confidential Information or the Recipient is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose Confidential Information, the Recipient must immediately notify the Agency of the public disclosure request or legal requirement and use its best endeavors (without

breach of applicable law) to delay and withhold disclosure until the ERG has had a reasonable opportunity to oppose disclosure by lawful means.

2.4 Upon demand made at any time by the Agency and upon any termination of the Recipient's employment or contract under with the Agency, Recipient shall immediately return to the Agency all Confidential Information and any copies thereof.

3.0 Recipient's Employees and Contractors

If Recipient is a contractor, Recipient agrees to require that this Non-Disclosure Agreement be signed by all of its employees and subcontractors who require access to Confidential Information.

4.0 Applicable Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

5.0 Successors and Assigns

This Agreement shall be binding upon the parties, their successors and assigns. Neither party shall assign this Agreement without the other party's written consent.

6.0 Survival

The terms of this Agreement shall survive any termination of my employment or the contract with the Agency under which I am performing.

7.0 Amendments

Any modification or amendment of this Agreement shall be in writing and executed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have signed this Non-disclosure Agreement on the dates indicated below.

Recipient

Printed Name: _____

Signature: _____

Date: _____

Agency

By: _____

Title: _____

Date: _____

Exhibit B-2 ORCA Operations Agency - Duties and Responsibilities

The ORCA Operations Agency shall have responsibility for oversight of the day-to-day operations of the ORCA System as described below. These functions shall be performed by an ORCA Operations Group that will be managed by an ORCA Operations Manager.

The ORCA Operations Manager shall report to the Joint Board, develop staffing and operating plans as the Joint Board may require, and provide data and information to the Joint Board as the Joint Board in its discretion may determine. The ORCA Operations Manager or designee shall serve on such Agency committees and Agency-Contractor teams, boards or committees as may be assigned by the Joint Board. The ORCA Operations Manager shall take only those actions or make only those decisions that are assigned either by this Agreement or the Joint Board.

Functions of the ORCA Operations Agency are described below.

- 1) Coordination of Regional System Operating Activities: Directs the ORCA System operating activities of the Agencies requiring central management and coordination. Activities include, but are not limited to, Configuration Data management, Emergency response coordination, Convene and direct the Change Control Committee and Failure Review Committees and other centralized system operating activities not performed by the RFC Contractor, Joint Consultants or Regional Service Providers that are required to ensure consistent and reliable system operations.
- 2) Contract Administration: Administers contracts with the RFC Contractor and Joint Consultants. Activities include contractor performance monitoring, coordinating individual Agency warranty communications, dispute resolution, contract change administration, contractor auditing, and intellectual property escrow administration.
- 3) Monitoring of Regional Services: Monitors functions performed by the Fiscal Agent, Regional Mail Center and the Regional Inventory Distribution Center under this Agreement to ensure that services are delivered as needed. Provide support to said Regional Service Providers to assist them in providing operations that are consistent and reliable including, but not limited to, coordinating RFC Contractor involvement and resolution of contract issues.
- 4) Coordination of Committees and Advisory Groups: Convenes and receives recommendations from various committees or advisory groups composed of Agency representatives and established by the Joint Board for various purposes, including but not limited to:
 - (a) Reviewing, evaluating, prioritizing and recommending changes, upgrades and updates to the ORCA System, and developing the Agencies' position on matters arising in the change management process.
 - (b) Reviewing system problems and failures and developing the Agencies' position
 - (c) on matters arising in the failure review process.

- (d) Providing advice on the implementation of proposed changes and the deployment of configuration updates or new releases.
 - (e) Resolving issues with the RFC Contractor including but not limited to reliability issues, corrective actions, problem resolution, disputes regarding failure origins, and escalating unresolved issues.
 - (f) Overseeing system security activities.
- 5) Coordination with Regional Program Administrator and Other Regional Service Providers: The ORCA Operations Manager shall regularly communicate with and coordinate his/her activities with the activities of the ORCA Regional Program Administrator and the other Regional Service Providers.

Exhibit B-3 ORCA Regional Program Administration Agency- Duties And Responsibilities

The ORCA Regional Program Administrative Agency shall have responsibility for administering a regionally coordinated fare collection program and ensuring that materials and information regarding the ORCA Program are consistent and complete. These functions shall be performed by an ORCA Regional Program Administration Group that will be managed by an ORCA Regional Program Administrator.

The ORCA Regional Program Administrator shall report to the Joint Board, develop staffing and operating plans as the Joint Board may require, and provide data and information to the Joint Board as the Joint Board in its discretion may determine. The ORCA Regional Program Administrator or designee shall serve on such Agency committees and Agency-Contractor teams, boards or committees as may be assigned by the Joint Board. The ORCA Regional Program Administrator shall take only those actions or make only those decisions that are assigned either by this Agreement or the Joint Board.

Functions of the ORCA Regional Program Administration Agency are described below.

- 1) Program Administration: Provide logistical and record keeping support for the Joint Board and the ORCA Program, develop, recommend and maintain a regional program budget, manage regional billing and payment processing, provide ongoing reporting to the Joint Board and Agencies and administer this Agreement.
- 2) Policy Development: Coordinate Agency efforts to develop regional policies and procedures for fare collection and related activities, including development and maintaining a record of ORCA business rules and regional policy/procedure development through committees established by the Joint Board.
- 3) Public Information: Develop, through regionally coordinated working groups and approval processes, marketing and customer-related public information related to ORCA and the regional fare program. Develop website and printed content for public use and distribution, including program terms and conditions, product/program information, and Knowledge base administration. Develop regionally coordinated public disclosure processes. Establish data retention, privacy and records archival policies and processes. Coordinate regional response, as needed, to public requests for information.
- 4) Agency System Security: Coordinate Agencies' responsibilities defined in Exhibit H of this Agreement, the System Security Plan (CDRL 31) developed under the RFC Contract, and as may be assigned by the Joint Board.
- 5) Coordination of Committees and Advisory Groups: Convenes and receives recommendations from various committees or advisory groups composed of Agency representatives and established by the Joint Board for various purposes, including but not limited to:

- (a) Managing the Agencies' security functions, planning and coordinating security audits, reviewing security incidents, and preparing the Agencies' position on issues arising in the security incident review process.
 - (b) Developing and recommending changes to fare policies, revenue allocation processes, billing and invoicing processes, and other functions involving distribution or movement of funds among the Agencies, including approval of manual adjustments of funds allocation.
- 6) Coordination with ORCA Operations Manager and Other Regional Service Providers: The ORCA Regional Program Administrator shall regularly communicate with and coordinate his/her activities with the ORCA Operations Manager and, as necessary, with the other Regional Service Providers.

Exhibit C Finance Plan – Development Phase

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I. Executive Summary

Finance Plan Purpose: The primary purpose of the Finance Plan, Exhibit C to the Interlocal Agreement, is to summarize the expenses, revenues, cost-sharing assumptions and administrative processes relative to Phase IV "System Design and Implementation" for the Regional Fare Coordination (RFC) Project. In order to implement this project, there will be both regionally shared and individual agency costs.

The Phase V "System Operations" estimated cost assumptions are provided in Exhibit D-1. Phase V of the vendor contract is a 10-year term, currently anticipated to run from 2006 through 2015.

Finance Plan Duration: The Finance Plan is intended to provide detail for the development Phase.

Types of Costs: The Finance Plan provides detailed information on the components of the RFC Project Budget. Agencies will also incur additional internal costs necessary to support site-specific system design and installation. For purposes of providing a comprehensive budget picture, these additional internal estimated costs are identified and summarized in this Exhibit. The types of costs described in the Finance Plan are:

a. **The RFC Project Budget:** The RFC Project Budget includes two cost categories, 1) the Vendor Contract, and 2) all items identified as "Other Project Administrative Costs". These costs are subject to the regional cost sharing formula. The Joint Board must approve changes to the RFC Project Budget, subject to the capital amounts appropriated as set forth in this Exhibit and future appropriations for operations and maintenance.

b. **Individual Agency Internal Implementation Costs:** These costs vary among the agencies, contingent upon their internal business needs and approach to the system implementation process. The costs are largely for agency staff labor and may be covered by standard operating budgets, or, providing such costs meet the applicable criteria, they may be charged to the agency's share of regional grant funds or other grant funds it has dedicated to the RFC Project. The funding and administration of these internal project implementation budgets are entirely at the discretion of the individual agency.

RFC Project Budget Summary of Expense and Grant Revenues Per Agency: The following table provides a summary of each agency's share of the RFC Project Budget expense and its share of regional grants. Each agency signing the Interlocal Agreement commits to pay an amount up to that specified for it under the "Total RFC Project Budget Estimated Expense" column of the "RFC Project Budget Estimated Expense and Grant Revenues" table directly below. An Agency's actual payment under the RFC Project Budget may be less than the amount committed, but an agency cannot be required to pay more absent an amendment to this Agreement. Provided, however, an agency may choose to make agency-specific payments in excess of its commitment below, without amending this Agreement, as provided in Section VI of this Exhibit C, The RFC Project Budget obligation will be covered by a combination of grant and local revenues. Details on these costs and grant revenues are found in Sections II, III, and V.

RFC Project Budget, Estimated Expense and Grant Revenues			
Agency	Capital Share Regional Cost	Total RFC Project Budget Vendor & Other Agency Estimated Expense	Total Estimated Grant Revenues
King County Metro	55.15%	\$23,107,184	\$10,487,242
Community Transit	11.56%	\$4,966,611	\$2,616,690
Sound Transit	10.65%	\$4,437,639	\$1,545,262
Kitsap Transit	5.88%	\$2,511,715	\$853,079
Washington State Ferries	5.27%	\$2,250,778	\$1,764,582
Pierce Transit	8.61%	\$3,619,843	\$2,399,247
Everett Transit	2.88%	\$1,231,241	\$517,799
Total *		\$42,125,011	\$20,183,901

* Slight variations due to rounding

Total Project Implementation Estimated Costs: The following table provides a summary of each agency's total estimated project costs which includes its share of RFC Project Budget and its individual internal implementation estimates.

Total Estimated RFC Project Budget & Internal Agency Implementation Expense			
Agency	Total RFC Project Budget Vendor & Other Agency Estimated Expense	Individual Agency Estimated Internal Expense to Implement	Total Estimated Implementation Expense
King County Metro	\$23,107,184	\$2,446,384	\$25,553,568
Community Transit	\$4,966,611	\$932,640	\$5,899,251
Sound Transit	\$4,437,639	\$593,543	\$5,031,182
Kitsap Transit	\$2,511,715	\$732,375	\$3,244,090
Washington State Ferries	\$2,250,778	\$727,682	\$2,978,460
Pierce Transit	\$3,619,843	\$824,000	\$4,443,843
Everett Transit	\$1,231,241	\$173,040	\$1,404,281
Total	\$42,125,011	\$6,429,664	\$48,554,675

Finance Plan Attachments: The document portion of the Finance Plan provides information on a regional summary level. Please see the "Attachments", as noted in each section, for individual agency worksheets. The Attachments are found in the PDF file "Exhibit C Attachments".

II. Regionally Shared Costs: Capital (Phase IV) Cost-sharing Formula

The Capital Phase cost-sharing formula is also applied to regional grant distribution. The formula for distributing RFC Project Budget shared costs and regional grant revenues is determined by the total value of each agency's vendor contract equipment purchases and the vendor equipment installation costs. These costs, and therefore the

cost distribution formula, represent each agency's relative system investment. See Sections III and V for detail on the costs to which this formula is applied and the grants subject to this distribution formula.

Attachment 1: The individual agency Vendor Contract costs, which provides the detail on equipment and installation purchases, is found in Attachment 1.

Per the formula described above, the Capital cost-sharing and regional grant distribution is as follows:

Agency	Share of Regional Costs / Grant Revenues
King County Metro	55.15%
Community Transit	11.56%
Sound Transit	10.65%
Kitsap Transit	5.88%
Washington State Ferries	5.27%
Pierce Transit	8.61%
Everett Transit	2.88%

III. RFC Project Budget (Phase IV) – Estimated Cost Detail

The RFC Project Budget is comprised of two cost categories. These are the Vendor Contract and the "Other Project Administration Costs". This section details the individual cost items of those two categories and provides the regional total costs, identifies if the cost item is subject to the regional cost-sharing formula and, where appropriate for the administrative costs, provides the cost estimation assumption. The individual agency costs shown in the table below are solely the responsibility of that agency.

a. Vendor Contract: The following table details the Vendor Contract. The Vendor Contract payment terms are "fixed price".

Attachment 1: The individual agency Vendor Contract costs are found in Attachment 1.

Vendor Contract - Cost Components and Total Value			
Regional Quantity (from RFP)	Regional Total Cost (including 2000 hrs)	Regional States to be Submitted	Notes
Equipment :			
Fare Transaction Processors (2379)	\$1,967,584		X
Driver Display Units (2207)	\$2,789,648		X
Wireless Data Base System (19)	\$74,461		X
Wireless Data Bus System (2207)	\$1,326,407		X
Data Acquisition Computer (23)	\$303,508		X
Back Office Computer (7)	\$411,285		X
Sound Transit TVM upgrade kits (34)	\$80,750	X	
Customer Service Terminals (33)	\$280,071		X
Photo Identification Units (11)	\$190,949		X
Equipment Installation	\$326,728		X
Fare Cards	\$761,006	X	
Integration:			
KCM POS w/ CST	\$19,573		X
KCM Laptop CST application	TBD		X
KCM Radio Control Unit Integration	\$86,500		X
CT DDU w/multiple on-board functions	\$86,783		X
CARM inventory software	\$72,319	X	
Back Office Integration	\$246,668	X	
Reports	\$563,812	X	
Implementation -Phase 1 <i>Thru Revenue Service Beta Test</i>	\$11,197,971	X	
Implementation - Phase 2 <i>Thru Full System Acceptance</i>	\$1,496,969	X	
Project Management	\$8,016,013	X	
Training	\$716,375	X	
Total Vendor Contract Cost	\$31,015,380		

b. Other Project Administration Costs: The following table details the "Other Project Administration Costs". The payment terms for these costs are handled as follows: 1) consultant contracts are fixed price per task with all costs verified, and 2) all other costs are on an expense reimbursement term. Cost estimate assumptions have been reviewed and approved by the Joint Board. All of these costs are shared per the regional cost-sharing formula.

Attachment 2: The individual agency estimated shares of "Other Regional Project Administration Costs" are found in Attachment 2.

Other RFC Project Administration Costs		
Cost Item	Key Assumptions	
Project Management Team	<ul style="list-style-type: none"> 4 FTE employed by King County Positions: Contract Administrator, Technical Manager, Budget & Contract Control Manager, and Project Assistant 	\$1,029,000
Regional Payment Funds Management	<ul style="list-style-type: none"> The Fiscal Agent is to perform this function. The task is to provide a central account into which individual agency payments can be made and a single payment check issued on behalf of the region. 	TBD
Regional Technical Consultant	<ul style="list-style-type: none"> Scope of Work is to provide expert support to agency staff and the Joint Board in the design review process and deliverable acceptance 	\$525,000
Sales Tax	<ul style="list-style-type: none"> 100% of the vendor contract is taxable, however there may be exemption for the custom software developed 8.8% tax rate. In actual practice, each agency will pay the applicable tax rate for items delivered to their sites 	\$2,729,353
Contingency Budget	<ul style="list-style-type: none"> 20% of the vendor contract value Joint Board approval is required for all expenditures allocated to the Contingency Budget 	\$6,203,076
Dispute Resolution Board	<ul style="list-style-type: none"> Three experts selected jointly by the agencies and vendor Costs shared 50/50 with the vendor DRB to have scheduled briefings and be "on call" to mediate vendor/agency deliverable acceptance/payment disputes 	\$122,100
Intellectual Property Software Escrow Account Fees	<ul style="list-style-type: none"> All system source code will be escrowed A contract will be secured with a firm specializing in system software escrow management The most rigorous level of verification and updates will be utilized 	\$99,000
Project Evaluation	<ul style="list-style-type: none"> Consultant contract Scope of Work TBD in collaboration with FTA to support its ITS Evaluation work program 	\$75,000
Project Marketing	<ul style="list-style-type: none"> Cost of collateral (brochures, radio ads, bus ads, etc.) for the Beta Test and Full System Rollout Plan to be developed by the agency marketing staff 	\$300,000
Sound Transit Consultant Fee to Oversee TVM Upgrade	<ul style="list-style-type: none"> TBD 	\$27,100
Total		\$11,109,629

IV. Payment Schedules

This section describes the assumptions for the RFC Project Budget payment schedules for the Vendor Contract and Other Administration Costs.

Attachment 3: A detailed 39-month schedule with individual agency cash flow assumptions for both the Vendor Contract and Other Project Administration Costs is found in Attachment 3.

a. Vendor Contract: Key payment assumptions for the Vendor Contract are as follows:

- The Vendor Contract is fixed price.
- Relative to payment points, the Contract provides for:
 - **Project Management:** Monthly Project management payments, providing the total value of payments made does not exceed the predetermined payment caps. In the event payment exceeds a cap; the payment will be withheld until such time as it can be released per Contract terms.
 - **Payment Caps:** Two payment caps are in place, i.e. the total payments made cannot exceed: 1) 50% of the total contract value at the Beta Test Acceptance Milestone, and 2) 60% of the total contract value prior to Full System Acceptance at the point where all King County Metro equipment is installed and satisfactorily tested.
 - **Milestone Payments:** Six milestone payments are defined which provide for the successful completion of numerous deliverables. These milestones are:
 1. Schedule Acceptance
 2. Design Acceptance
 3. Beta Test Readiness
 4. Beta Test Acceptance
 5. Equipment Installation Completed & Tested for King County
 6. Full System Acceptance

b. Other RFC Project Administrative Costs: The following table describes the anticipated payment assumptions for these costs.

Attachment 3: A detailed 39-month schedule with individual agency cash flow assumptions can be found in Attachment 3.

Cost Item	Key Payment Assumptions
Project Management Team	<ul style="list-style-type: none"> • Paid quarterly to King County per actual costs incurred. Payments will be made by the Fiscal Agent using the smart card central payments account.
Regional Payment Funds Management	<ul style="list-style-type: none"> • TBD by Sound Transit (a.k.a. "the Fiscal Agent")
Regional Technical Consultant	<ul style="list-style-type: none"> • Paid monthly or as invoiced by the consultant. Consultant may not invoice more frequently than one time per month. Payments will be made by the Fiscal Agent using the smart card central payments account. • Contract terms are fixed price, not to exceed limits per task
Sales Tax	<ul style="list-style-type: none"> • Each agency will pay, as applicable costs are incurred, per Vendor Contract payment milestone invoices.
Contingency Budget	<ul style="list-style-type: none"> • Each agency commits to fund its share of the overall project Contingency Budget and to make those funds available when expenditures are authorized by the Joint Board. • Every effort will be made to negotiate change order payment terms that are consistent with the established six Contract Payment Milestones.
Dispute Resolution Board (DRB)	<ul style="list-style-type: none"> • The DRB is convened, at a regular schedule determined by the Joint Board, for Project updates. These costs will be billed to include an hourly fee and travel expense. • The DRB will also be convened on an as needed basis to mediate disputes. These costs will be billed as incurred.
Intellectual Property Software Escrow Account Fees	<ul style="list-style-type: none"> • The most rigorous level of software verification and updates will be utilized • Payment terms will be per the account provider contract (not yet awarded). It is anticipated this will be a quarterly fee, based on the services provided, to commence with the Design Acceptance Milestone. • Payments will be made by the Fiscal Agent using the smart card central payments account.
Project Evaluation Consultant	<ul style="list-style-type: none"> • Payment terms will be per the consultant contract (not yet awarded). Most likely to be fixed price, not exceed limits per task, paid monthly, or as invoiced by the consultant. • Payments will be made by the Fiscal Agent using the smart card central payments account.
Project Marketing	<ul style="list-style-type: none"> • The Marketing Plan, which will detail the services and/or materials to be subject to regional billing, is yet to be developed by the agency marketing staff • Marketing activity is anticipated Pre-Beta Test and at revenue service roll-out • Payment terms will be per the provider contract
Sound Transit Consultant Fee to Oversee TVM Upgrade	<ul style="list-style-type: none"> • Payment term TBD by Sound Transit

V. Project Revenue: Regional Grants, Donation and Appropriation

This section summarizes the grant and other regional revenues awarded to the project, the revenue distribution formula and a sample Federal grant match strategy. The Project has received 12 Federal Grants, a donation from The Boeing Company (via the City of Everett Traffic Mitigation Fund) and an appropriation from the Sound Transit Technology Fund. A summary of these grants and their match requirement is shown in the table below.

Attachment 4: A detailed description of the grant revenue shown below and the individual agency shares can be found in Attachment 4.

Regional Project Revenue Summary			
Grant/Source	Match % Requirement	Total Award	Total Match Requirement
Federal Section 5307 <i>7 Individual Grants</i>	20%	\$9,575,958	\$2,393,990
CMAQ <i>3 Individual Grants</i>	13.5%	\$2,686,000	\$419,202
ITS Earmarks 5288 <i>2 Individual Grants</i>	50%	\$4,421,941	\$4,421,941
Boeing Donation	N/A	\$500,000	0
ST Technology Fund	N/A	\$3,000,000	0
Total		\$20,183,899	\$7,235,133

Regional Grant Distribution Formula: Regional grant revenues are distributed to the agencies per the same formula used to determine the regionally shared cost distribution. The table below shows the distribution percentages.

Agency	Share of Regional Costs & Grant Revenues
King County Metro	55.15%
Community Transit	11.56%
Sound Transit	10.65%
Kitsap Transit	5.88%
Washington State Ferries	5.27%
Pierce Transit	8.61%
Everett Transit	2.88%

Individual Agency Grants: Agencies may supplement their share of regional grant revenues with grants that they have secured individually for purposes of implementing this project.

Grant Distribution Strategy: The following describes the anticipated strategy for accessing regional revenues.

- **Federal Grants:** All federal grants will be distributed to the individual agencies at the time of contract award. It is the individual agency responsibility to complete the appropriate Federal processes to encumber these funds. At the point of contract award, each agency assumes the full grant management responsibility for its funds.
- **Boeing Donation:** The Regional Fare Coordination Project will certify to the Boeing Mitigation Fund, through the City of Everett, that the Beta Test Acceptance Milestone and Full System Acceptance Milestone have been achieved by the Contractor and approved by the Agencies. Funds available from the Boeing Mitigation Fund are \$300,000 after Beta Test and \$200,000 after Full System Acceptance. Each of the Agencies will have funded the contract milestone costs and will individually seek reimbursement from the Boeing Mitigation Fund for an amount in accordance with their approved share formula as set forth in Section II of this Exhibit. An Agency will invoice the City of Everett when it elects to draw funds from the Boeing Mitigation Fund. Agency requests for draw may be made by electronic mail or fax of an invoice. The City of Everett will remit the requested payment amount to the Agency within 14 calendar days of the approval of the draw request by the City of Everett State Environmental Policy Act (SEPA) Responsible Official. Note: This draw request process is separate from the Agency regional invoice payment process. It is the individual Agency responsibility to meet all regional invoice payment deadlines irrespective of individual Agency draw of these funds.
- **Sound Transit Technology Fund Appropriation:** Sound Transit will provide its appropriation to Agencies upon Agency request. Request will be granted and payment made to an Agency for amount up to the Agency share of the current regional invoice(s) due at time of Agency request. Agency request for draw may be made by faxing or e-mailing an invoice to Sound Transit within 5 calendar days of Agency receipt of draft invoice from Regional Team. Sound Transit will remit payment to Agency within 14 calendar days of receipt of Agency draw request. Note: This draw request process is separate from the Agency regional invoice payment process. It is the individual Agency responsibility to meet regional invoice payment deadlines irrespective of individual Agency draw of these funds.

Federal Grant Match Strategy: For budget planning purposes, the agencies have adopted a grant match strategy which utilizes maximum allowable "grant to grant" match potential, i.e. the use of federal grants to match other grants, prior to utilizing other regional revenues or local funds. However, in actual practice, each agency may use whatever match funding strategy it desires to meet its Federal match and Regional Project payment obligations.

VI. Regional Invoice Payment Procedures

The administrative process for the payment of most regionally shared invoices will be jointly administered by the Project Team and the Fiscal Agent. The primary staff involved is the Budget and Contract Control Manager and the Fiscal Agent personnel. This joint

administration is necessary because of the complexities of paying a single invoice, when the revenue to make that payment is generated from contributions of multiple agencies.

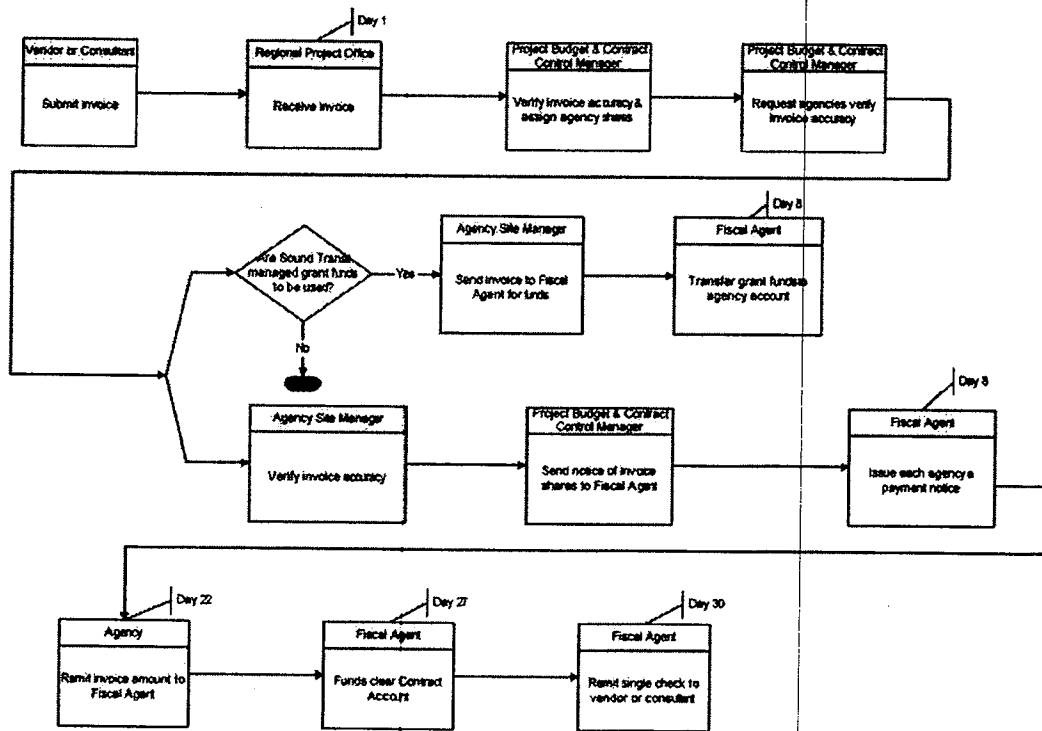
The Fiscal Agent Central Payments Account: Central to this process, is a single regional account that will be established and managed by the Fiscal Agent. Agencies will pay into this account their share of regional invoices and the Fiscal Agent will issue a single check payment on behalf of the region. The Vendor Contract provides for 30-day invoice payment terms. The payment process is described in the bullets and graphic below:

- An invoice is submitted to the Project Team Office
- The Budget and Contract Control Manager (BCCM) verifies the invoice accuracy and assigns agency shares, or full costs, if attributable to a single agency.
- The BCCM forwards the draft invoice to the individual Agency Site Manager to request invoice confirmation and/or corrections.
- Per the agency-verified invoice, the BCCM forwards to the Fiscal Agent the invoice detail per each agency share.
- The Fiscal Agent issues each agency a payment notice.
- Each agency remits its payment share to the Fiscal Agent. The payment amount is deposited into the central payments account.
- The Fiscal Agent remits single check payment to the vendor or other invoicing party

Goods or Services Not Included in RFC Project Budget

Subject to the Joint Board's approval, by simple majority, the vendor contract with all agencies or a joint consultant contract may be used to provide individual agencies with goods or services that are related to, but not necessary for, the regional implementation of the RFCS. If an agency chooses to purchase such agency-specific goods and services from the vendor or consultant, the cost shall not be included in the RFC Project Budget but shall be fully paid by the requesting agency in addition to its commitment under Section I of this Exhibit C. The requesting agency shall pay any such additional amount into the Fiscal Agent account in accordance with the time and process provisions specified above for payments covered by the RFC Project budget.

Payment Administrative Procedures



VII. Individual Agency Internal Costs to Implement the System

Each agency will incur costs, in addition to the shared costs addressed in the RFC Project Budget, which are necessary to ensure internal agency coordination with the regional process and efficient system implementation. These internal costs will vary among the agencies and are contingent upon the complexity of its system implementation, business needs and integration strategies. The primary source of these costs is agency staff labor to support the system design review, contract deliverable acceptance, marketing and customer information and equipment installation process. In order to provide a comprehensive estimate of the project implementation costs, the agencies have adopted consistent cost generation categories and completed a cost estimation exercise.

Attachment 5: Individual agency detail on these internal agency costs can be found in Attachment 5.

A summary list of the regionally consistent categories established for planning purposes is shown below.

- Site Manager, i.e. the individual agency Project Manager and central point of contact
- Technical staff labor to review business processes and contract deliverables
- Technical staff labor to develop system interfaces – this category is necessary only for those agencies with custom interface requirements
- Finance staff labor to review business processes and contract deliverables

- Customer Service staff labor to review business processes and contract deliverables
- Legal Counsel, as needed
- Staff training to operate all aspects of the system
- Labor and materials for site preparation for facilities requiring new equipment installation
- Labor for equipment installation
- Marketing staff labor to develop public information and customer "card conversion" plans
- Purchase of a Driver Display Unit "tool kit" – this category is necessary only for those agencies who may wish to develop new custom applications for the Driver Display Unit
- Travel expense for staff to provide oversight during equipment testing and/or to inspect the system operations center
- Communication network fees

VIII. Attachment Summary

The following Attachments can be found in the PDF File "Exhibit C Attachments". Please note that all Attachment pages are legal size. From the Acrobat Reader menu bar, you can check the paper size by selecting 1) file, and then 2) page setup.

<u>Attachment No.</u>	<u>Description</u>
1	Vendor Contract Costs
2	Regional Project Budget Cost Summary
3	Estimated Payment Cash Flow Assumptions for Vendor Contract and Other RFC Project Administration Costs
4	Grant Revenue Summary and Individual Agency Shares
5	Individual Agency Internal Implementation Cost Estimates

Exhibit D-1 Regional Cost Sharing Formula - Operating Phase

This Exhibit sets out the cost-sharing assumptions and methodology to be used to determine the share paid by each Agency for the ORCA Program Regionally-shared Costs during the Operating Phase.

1. Methodology - Regional Cost Sharing Formula before January 1, 2010.

The regional cost-sharing formula for the Operating Phase of the Project has been determined, for planning purposes, by each Agency's share of regional ridership projected for the initial period of system operations, from system roll out through December 31, 2009. The percentage is calculated as each Agency's total number of revenue boardings (involving a fare payment transaction) divided by the total of all revenue boardings by all agencies, regardless of total revenue or number of ORCA transactions associated with those boardings. The estimated shares are as follows:

Agency	Share of Regional Costs
King County Metro	66.73%
Sound Transit	11.08%
Community Transit	7.00%
Washington State Ferries	1.96%
Kitsap Transit	2.82%
Pierce Transit	8.81%
Everett Transit	1.60%

These estimated percentages will be adjusted after January 2010 to figures consistent with actual ridership numbers reported by the Agencies for purposes of National Transit Database or other official reporting. The revised percentages based on actual ridership numbers will be applied to regionally-shared operating expenses incurred prior to January 1 2010.

2. Methodology - Regional Cost Sharing Formula starting January 1, 2010.

By October 1, 2009, the Joint Board will adopt a cost-sharing formula to take effect January 1, 2010. This formula shall be based on actual cost drivers such as numbers of transactions, numbers of boardings, numbers of customers, dollar volume of use or sales transactions, etc. as measured and reported by the ORCA system. By June 1 of each subsequent year or such other date as Joint Board establishes, the Joint Board will adjust and adopt the cost sharing formula to take effect January 1 of the following year.

Exhibit D-2 ORCA Program Cost Categories for Annual Budget – Operating Phase

1. Annual Budget. By June 1 of each year or on such other date determined by the Joint Board, the Joint Board will approve an annual ORCA Budget. The annual ORCA Budget will be based on information provided by the ORCA Regional Program Administrator, the ORCA Operations Manager, and the other Regional Service Providers.
2. ORCA Program Cost Categories. ORCA Program Regionally-shared Costs are shared by the Agencies according to the allocation formula developed in accordance with Exhibit D-1. The ORCA Program Regionally-shared Costs as defined in Section 3 of the Agreement include ORCA Program Operating Costs, ORCA Program Capital Costs, and other regionally shared costs approved by the Joint Board.

By way of illustration, the annual ORCA Budget may include the following categories of ORCA Program Operating Costs that are regionally shared.

- A. Costs Incurred by ORCA Regional Program Administration Agency. The following categories of costs incurred by the Regional Program Administration Agency are expected to be included in the annual ORCA Budget except to the extent contributed as provided in Section 5 below.

Regional Services Provided by ORCA Regional Program Administration Agency	
1	Regional Program Coordination
2	Regional Program policy development
3	Financial Management: Audit, reporting and budgeting
4	Security and PCI Audits
5	Regional Marketing and Customer Service Materials
6	Customer Call and e-mail Routing
7	Records maintenance and public disclosure
8	Program insurance as required
9	Legal services as contracted by Joint Board
10	Supplies

- B. Costs incurred by Fiscal Agent. The following categories of costs incurred by the Fiscal Agent are expected to be included in the annual ORCA Budget.

Regional Services Provided by Fiscal Agent	
1	Fiscal Agent Fees
2	Banking Fees (netted against investment income)
3	Supplies

- C. Costs Incurred by ORCA Operations Agency. The following categories of costs incurred by the ORCA Operations Agency are expected to be included in the annual ORCA Budget except to the extent contributed as provided in Section 5 below.

Regional Services Provided by ORCA Operations Agency	
1	Contract Administration
2	Dispute Review Board administration
3	Technical consulting services contract management
4	Emergency preparedness and response
5	Software escrow
6	Legal Services
7	Monitoring of Regional Services
8	Coordination of Committees and Advisory Groups
9	Coordination with Regional Program Administrator
10	Configuration Data Administration

- D. Costs Incurred by Other Regional Service Providers. Applicable costs for the following services are expected to be included in the annual ORCA Budget.

Regional Services	
1	Mail Center
2	Regional Distribution and Inventory Center (RDIC)

- E. Payments Owed to RFC Contractor. The following categories of regional services are expected to be included in an annual ORCA Budget.

RFC Contract Regional System Operating Services	
1	Software Maintenance and Technical Support
2	Customer Service
3	Institutional Program Support
4	Fare Card Management
5	Card Procurement (from Manufacturer) and Distribution (to King County)
6	Clearinghouse Services
7	Financial Management
8	Network Management
9	Retail Revalue Network

Note: Equipment Maintenance payments to RFC Contractor are not regionally-shared.

F. Payments Owed to Joint Consultants. The estimated amounts owed to Joint Consultants are expected to be included in an annual ORCA Budget.

G. Retailer Commissions. The commissions paid to Regional Retail Revalue Entities based on sales of ORCA Products will be shared by the Agencies and will be included in the annual ORCA Budget. The commissions are established by the Joint Board. (Presently the commissions are 2% of sales).

H. ORCA Card Cost. The cost of obtaining ORCA cards from a supplier is considered an ORCA Program Regionally-shared Cost and will be included in the annual ORCA Budget.

I. Other Board Approved Operating Costs. The Joint Board may approve other ORCA Program operating costs to be shared by the Agencies.

J. ORCA Capital Budget Categories. In addition to the ORCA Program Operating Costs, the Joint Board may from time authorize capital costs including costs of system enhancements, expansions and replacements that will be shared by the Agencies. These capital cost categories will be included in the annual ORCA Budget when approved by the Joint Board.

K. Agency Specific Internal Costs. Agencies will incur internal costs necessary to support the ORCA Program and their individual responsibilities under this Agreement and the RFC Contract, including but not limited to: the costs of employing a Site Manager and other personnel; operating and maintaining communications networks; paying the RFC Contractor for maintenance, replacement and purchasing additional ORCA equipment; and site-specific system design and installation activities. These internal costs are not shared among the Agencies, but for purposes of providing a comprehensive budget picture, these additional internal estimated costs may be identified in the annual ORCA Budget as Agency specific internal costs which will be the responsibility of the Agency.

L. Voluntary Contributions by an Agency. When an Agency voluntarily contributes goods or services to the ORCA Program, the cost of such goods or services will not be shared among the Agencies; but for purposes of providing a comprehensive budget picture, the cost of these voluntary contributions may be identified in the annual ORCA Budget as the Agency's specific voluntary contributions to the ORCA Program.

ORCA PROGRAM OPERATING BUDGET* - CY 2009 to 2018

2 REGIONAL SERVICES PROVIDED BY KING COUNTY METRO

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.1 ORCA Operations										
Wages and Benefits 3	162,931	335,649	352,432	370,053	388,556	407,984	428,383	449,802	472,292	495,907
Configuration Data Administrator #	-	-	-	-	-	-	-	-	-	-
Emergency Response	-	-	-	-	-	-	-	-	-	-
Technical Consulting	-	50,000	52,500	55,125	57,881	60,775	63,814	67,005	70,355	73,873
Supplies	-	-	-	-	-	-	-	-	-	-
Subtotal - ORCA operations	162,931	385,649	404,932	425,178	446,437	468,759	492,197	516,807	542,647	569,779

2.2 Mail Center										
Wages and Benefits 4										
Customer Assistance Representative										
Sr. Customer Assistance Representative										
Administrative Assistant										
Subtotal	452,115	99,003	103,953	109,151	114,608	120,338	126,355	132,873	139,307	146,272
Supplies 5	113,000	22,128	14,676	12,757	119,111	32,768	26,107	24,574	120,515	43,058
Postage 5	81,000	15,862	10,520	9,144	85,380	23,489	18,714	17,815	86,387	30,864
Card Fees (Revenue) 6	-	(432,458)	(286,815)	(249,307)	(2,327,786)	(640,394)	(510,216)	(480,249)	(2,355,226)	(841,479)
Banking Card Fees 7	285,000	347,532	392,283	432,475	473,048	517,641	584,577	614,586	667,963	725,031
Subtotal - Mail Center	931,115	52,068	234,617	314,220	(1,535,639)	53,842	225,538	309,199	(1,341,055)	103,746

2.3 Regional Distribution and Inventory Center (RDIC)										
Wages and Benefits 8										
Revenue Processor										
Marketing and Sales Specialist										
Subtotal	13,228	7,151	7,509	7,884	8,278	8,692	9,127	9,583	10,062	10,565
Orca Card Costs										
Operating share of the initial card order	709,082	-	-	-	-	-	-	-	-	-
Ongoing card order 9	163,090	334,582	221,902	192,883	1,800,952	495,458	394,741	371,557	1,822,182	651,032
Subtotal - RDIC	885,399	341,733	229,410	200,767	1,809,230	504,150	403,868	381,140	1,832,244	681,597
Total Costs - KCM provided regional services	1,979,445	1,211,908	1,155,773	1,189,472	3,047,814	1,667,145	1,631,819	1,687,395	3,389,063	2,176,601
Total Revenues - KCM provided regional services	-	432,458	286,815	249,307	2,327,786	640,394	510,216	480,249	2,355,226	841,479

ORCA PROGRAM OPERATING BUDGET* - CY 2009 to 2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
3	ERG COSTS									
3.1	Maintenance 10									
	-	14,571	58,282	58,282	58,282	58,282	58,282	58,282	58,282	58,282
	-	15,176	60,703	60,703	60,703	60,703	60,703	60,703	60,703	60,703
	-	24,148	96,592	96,592	96,592	96,592	96,592	96,592	96,592	96,592
	-	95,235	380,940	380,940	380,940	380,940	380,940	380,940	380,940	380,940
	-	149,129	596,517	596,517	596,517	596,517	596,517	596,517	596,517	596,517
	Subtotal - Maintenance									
3.2	Services 12									
	97,195	239,100	245,076	257,330	270,196	283,706	297,891	312,786	328,425	344,847
	68,890	169,464	173,700	182,385	191,504	201,079	211,133	221,690	232,775	244,413
	55,916	137,828	141,272	148,312	155,703	163,463	171,612	180,168	189,152	198,586
	31,625	77,796	79,740	83,727	87,913	92,309	96,924	101,771	106,859	112,202
	403,895	1,158,308	1,200,841	1,264,330	1,291,831	1,319,212	1,381,578	1,426,248	1,471,306	1,537,532
	57,780	142,128	145,692	152,977	160,625	168,657	177,090	185,944	195,241	205,003
	67,935	167,124	171,300	179,865	188,858	198,301	208,216	218,627	229,558	241,036
	53,068	131,007	134,288	140,942	147,929	155,265	162,968	171,056	179,548	188,465
	836,303	2,222,755	2,291,910	2,409,868	2,494,561	2,581,994	2,707,414	2,818,291	2,932,865	3,072,085
	Subtotal - Services									
3.3	Performance Security Obligation - LC 17									
	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
	836,303	2,371,884	2,888,428	3,006,385	3,091,078	3,178,511	3,303,931	3,414,808	3,529,382	3,668,602
	Total ERG Costs									
4	REGIONAL SERVICES MANAGED BY AGENCIES									
4.1	Retailer Lead Agencies 18									
	76,680	102,240	102,240	107,352	112,720	118,356	124,273	130,487	137,011	143,862
	14,200	-	-	-	-	-	-	-	-	-
	14,365	23,626	26,615	29,072	31,317	33,554	35,695	37,782	39,828	41,849
	372,751	422,078	459,601	492,214	524,298	560,456	598,782	639,733	683,487	730,238
	477,996	547,944	588,456	628,638	668,335	712,366	758,751	808,001	860,327	915,949
	Subtotal - Retailer Lead Agencies									
4.2	Business Account Lead Agencies									
	-	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
	477,996	547,944	588,456	628,638	668,335	712,366	758,751	808,001	860,327	915,949
	Total Regional Services Managed By Agencies									
	4,127,736	4,981,792	5,515,216	5,741,182	7,759,749	6,548,170	6,724,156	6,981,343	8,893,487	7,921,582
	TOTAL ORCA OPERATING COSTS									
	138,837	633,279	1,129,113	1,114,008	3,210,649	1,544,365	1,434,517	1,424,982	3,320,534	1,827,553
	TOTAL ORCA NON-FARE OPERATING REVENUES									

ORCA PROGRAM OPERATING BUDGET* - CY 2009 to 2018

2009 2010 2011 2012 2013 2014 2015 2016 2017 2018

Footnotes:

- * Unless specified otherwise, all costs beyond 2010 are inflated by 5% per year.
- # These FTEs are currently provided by ST and KCM to perform ORCA related functions at no charge to participating agencies.
- ‡ Currently being renegotiated with ERG
- 1 ST proposes to engage a full time Sr. Financial Analyst starting in 2010 to perform ORCA financial reporting and analysis functions, these duties will be performed by the RAM in 2009.
- 2 Interest rate is assumed to be .5% for 2009 and 2010, 2% for 2011-2018. Banking fees and interest earnings will be reconciled and presented separately from Fiscal Agent fees.
- 3 Assumes 6 months of staffing in 2009.
- 4 6.75 FTEs are budgeted for 2009, 1.43 FTEs are budgeted for 2010 and beyond
- 5 Supplies and postages are assumed as a fixed percentage of the total card orders for 2010 and beyond.
- 6 Card revenue assumptions: 5% replacement cards at no charge, \$3 on 15% of cards, \$5 on 80% of cards.
- 7 Bank card fees are adjusted with non-3rd party revalue transaction YOY growth assumption, 5% of all cards in circulation will be replaced each year, 90% cards will be replaced every 5th year.
- 8 0.17 FTE is budgeted for 2009, 0.08 FTE is budgeted for 2010 and beyond
- 9 Initial card order was placed in May 2008 to meet the need for the first year. An additional 10% of the initial card order is budgeted for 2009. For 2010 and beyond, the budget assumes 5% replacement of the existing cards, additional cards to meet demand of the growing ridership and 90% cards are replaced every 5th year.
- 10 Maintenance costs are under warranty for 12 months after Full System Acceptance, but no longer than 24 months after commencement of Beneficial Use Status, Not inflation adjusted.
- 11 Assumes 5% equipment failure rate after warranty period.
- 12 Fixed fees commence at Beneficial Use Status which is currently assumed to 4 months following Go Live. Variable fees commence at Full System Acceptance which is currently assumed to be 6 months following Go Live. Service costs are inflation adjusted from 2012, the rates for the first three years are defined in the contract.
- 13 Customer Service assumes ERG only receives calls from Agency staff and uses only the flat monthly fee.
- 14 2 shipments of cards per year are assumed for the first year. 1 shipment of cards per month is assumed for the next 9 years.
- 15 Assumes 25% cash user conversation in 2009. For 2010 and beyond, 25% of new riders and 10% of non-converted riders will convert. 2 transactions per trip for Link and Sounder riders, 1 transaction per trip for bus riders. 15% of revalue transactions take place at retail sites.
- 16 Revalue Network Support assumes 142 Retail Sites (Active TRUs).
- 17 Bank fees and collateral costs for Letter of Credit to be established after Full System Acceptance.
- 18 All retail costs will be subject to the regional operating cost-shares for the first 12 months of operation. The assumption will be evaluated around month 11 to potentially identify accounts and account costs that should be the sole financial responsibility of a single agency.

Exhibit D-4

Invoicing and Bill Paying Procedures – Operating Phase

The invoice processing and payment process described below will be used during the Operating Phase for payment of invoices for ORCA Program Costs that are included in the ORCA Budget as regionally shared costs and individual Agency costs due under the RFC Contract (e.g. equipment purchases and maintenance).

1. Non Regional Invoices. Each Agency is responsible for processing and paying any invoices for the cost of goods and services that are procured under an individual Agency contract and which are not considered regionally shared ORCA Program Costs in the approved ORCA Budget.

2. Regionally Shared Invoices.

A. Each Agency will pay into the Central Payment Account its share of regional invoices, and the ORCA Regional Program Administration Agency will issue a single payment on behalf of all the Agencies.

B. The invoice processing and payment process is described below:

1. For an invoice submitted by the RFC Contractor:

a. A preliminary invoice is submitted by the RFC Contractor to the ORCA Operations Manager.

b. The ORCA Operations Manager will distribute the preliminary invoice to all Agencies and Regional Service Providers.

c. The Agencies and the Regional Service Providers shall review the preliminary invoice and inform the ORCA Operations Manager of any questions or objections. Failure to raise an objection within a time established by the Joint Board shall be deemed approval.

d. The ORCA Operations Manager will work with the Agencies, Regional Service Providers and the RFC Contractor to resolve any issues raised about the preliminary invoice.

e. Upon the RFC Contractor submitting an approved invoice, the ORCA Operations Manager will review to confirm that all issues have been resolved and will provide a copy to the ORCA Regional Program Administrator within **five (5) business days** of the Operations Manager's receipt of the invoice.

f. The Regional Program Administrator shall follow steps 4-9 below to pay the invoice.

2. For an invoice from a Joint Consultant or other invoicing third party supplying regional shared goods or services, the Agency contracting with the third party will verify the invoice against contract terms and dollar limits approved by the Joint Board and provide the Agency's approval or disapproval on a copy of the invoice. A copy of the invoice with the Agency's approval or disapproval will be sent to all the Agencies and ORCA Regional Program Administration Agency within **five (5) business**

days of the Agency's receipt of the invoice. Failure to raise an objection within a time established by the Joint Board shall be deemed approval.

3. A Regional Service Provider shall submit its invoice to all the Agencies and the ORCA Regional Program Administration Agency. Failure to raise an objection within a time established by the Joint Board shall be deemed approval.

4. The ORCA Regional Program Administrator will verify approved invoices against the ORCA Operating Budget adopted by the Joint Board and assign Agency shares. The ORCA Regional Program Administration Agency will forward to each Agency the invoice detail showing each Agency's share for its approval.

5. An Agency shall provide its approval or disapproval of the designated share of the invoice within **three (3) business days** of the receipt of the invoice detail from the ORCA Regional Program Administration Agency.

6. Upon approval by the Agencies, the Regional Program Administration Agency will issue each Agency an invoice for their share of the contracted service or good, with a payment due date which shall be seven (7) business days from the invoice date.

7. Each Agency remits its payment share to the ORCA Regional Program Administration Agency by initiating an electronic funds transfer to transfer funds to the ORCA Central Payments Account or by such other means approved by the Joint Board.

8. The ORCA Regional Program Administration Agency remits single payment from the Central Payments Account to the RFC Contractor, Joint Consultant or Regional Service Provider, or other invoicing party within **thirty (30) calendar days** from the approved invoice date.

9. Each Agency agrees to make payments promptly, and consistent with the applicable deadlines.

C. Notification may be given by electronic or other means as authorized by the Joint Board and as required by each Agency to comport with individual accounts payable policies and procedures.

D. The Regional Program Administration Agency will remit a single payment from the Central Payments account to the invoicing party within thirty (30) calendar days of the date of an invoice that has been regionally approved. If all Agencies have not made the payment on the invoice by the invoice due date, Regional Program Administration Agency will remit the portion of the payment due to the invoicing party representing the ratio of payments for Agency invoices received to the total regionally approved invoice amount, as described immediately above. Any late fees and/or penalties due to the partial payment shall be the responsibility of the Agency(s) not making timely payment to the Central Payment Account (in proportion to their respective Agency invoice amounts).

Exhibit E-1 E-Purse Allocation

1. The detailed method of revenue allocation from e-purse use is defined in the Fare Calculation Overview document approved by the Joint Board.
2. The Washington State Ferry System does not provide or accept e-purse transfer credits.
3. Funds received from cardholders for loading e-purse value will be deposited to the E-Purse Float Account held by the Fiscal Agent on behalf of the Agencies and shall be distributed to an Agency as the cardholder uses the card for payment of fare for travel on that Agency's services as follows:
 - 3.1. E-purse funds used for payment of fare on a single Agency which does not involve use of e-purse transfer credit to or from another Agency's service shall be distributed from the ORCA E-Purse Float Account to that Agency on which the fare was earned.
 - 3.2. For trips involving multiple transit Agencies ("Linked Trips") which involve use of e-purse transfer credit(s) earned through payment of fare on one Agency's service and used as credit toward payment of fare on another Agency's service:
 - a. the total fare deducted from e-purse for a Linked Trip shall be the maximum fare amount charged to the e-purse from among the individual Agencies whose services are used in that Linked Trip
 - b. the distribution of the total fare deducted from e-purse among the Agencies whose services are used in that Linked Trip shall be in proportion to the value of the fare each Agency would have charged for the service used in the absence of use of the other Agencies' services in the Linked Trip.

Exhibit E-2 Retail Pass Allocation

1. Regional transit pass products made available for sale to customers shall be approved by the Joint Board.
2. Monthly regional transit pass products shall be in fare-value denominations between \$0.50 and \$10.00 with 25-cent increments, and shall be priced at 36 times the pass fare value.
3. The detailed method of revenue allocation for these products is defined in the Fare Calculation Overview document approved by the Joint Board.
4. The Washington State Ferry System does not participate in the system of regional transit passes. Washington State Ferry System passes are not valid for travel on transit, and transit passes are not valid for travel on the Washington State Ferry System.
5. Funds received for purchase of regional transit pass products valid on multiple Agencies shall be distributed among those Agencies in proportion to the total value of the services used on each Agency during the pass validity period.
 - 5.1. Funds used for purchase of transit passes that are used on just one Agency during the pass validity period shall be distributed entirely to that Agency.
 - 5.2. Funds used for purchase of transit passes that are used on more than one Agency during the pass validity period shall be distributed among those Agencies in proportion to the total value of the services used on each Agency during the pass validity period:
 - a. The value assigned to a trip taken on just one Agency is the minimum of either the fare value of the pass or the fare for the trip. For intra-system, linked trips taken within the transfer window, the value is the minimum of either the fare value of the pass or the maximum fare of any leg in the linked trip.
 - b. The total value assigned to an inter-system, linked trip is the minimum of either the fare value of the pass or the maximum fare of any leg in the linked trip. The total value of the trip is allocated among the Agencies in proportion to the value of services used during the trip. The value of each leg of the trip is the minimum of either the fare value of the pass or the fare of the leg.
 - c. At the end of the pass validity period, the funds used for purchase of the pass are allocated among the Agencies in proportion to the total value of the trips taken on each Agency

Exhibit E-3 Business Account Agreements, Participation Requirements, Pricing and Revenue Distribution

Business Account detailed methodology describing products, pricing and revenue allocation for Business Accounts is defined in Common Institutional Program Requirements (DR 2) and as agreed by the Joint Board.

1.0 Types of Business Account Agreements

1.1. Business Account "Choice" Agreements. A Business Account may elect to purchase retail ORCA Products available to any customer. The Business Account would have the opportunity to revise the type and quantity of products purchased each month and to purchase non-ORCA products through a Lead Agency. Business Choice Agreements are entered into and managed by a Lead Agency acting on behalf of all Agencies.

1.2 Business Account "Passport" Agreements. A Business Account may elect, subject to approval or qualification under the established program requirements, to purchase transportation benefits for its employees or other participants in the form of an unlimited travel pass, and non-ORCA products under an agreement with a Lead Agency. Passport Agreements are entered into and managed by a Lead Agency acting on behalf of Participating Agencies named in the agreement. The program requirements for such Passport Agreements are set forth below.

1.2.1 Passport Agreement Requirements

Policy	Passport Flat Rate	Passport Per Trip
Business Account Size Eligibility	Business Account must have more than 20 participants, with the exception of state designated Growth and Transportation Efficiency Centers, where the Business Account must have at least 5 participants.	Business Account must have a minimum of 20 participants, with the exception of state designated Growth and Transportation Efficiency Centers, where the Business Account must have at least 5 participants.
Eligible Employee Population	Business Accounts who have employees as participants must purchase for all benefits-eligible employees. (Third shift is an acceptable exception.)	Business Accounts who have employees as participants must purchase for all benefits-eligible employees.
Non-ORCA Products	Business Accounts may be provided a package of supporting products as determined by the Lead Agency which may include vanpool, guaranteed ride home, etc.	Business Accounts may be provided a package of supporting products as determined by the Lead Agency which may include vanpool, guaranteed ride home, etc.

Administration Fee	Each Lead Agency can charge an administration fee at its discretion to cover administrative costs associated with the program.	Each Lead Agency can charge an administration fee at its discretion to cover administrative costs associated with the program.
Pricing Data – Year 1 (ORCA Transition Period and New Customers)	Commute Trip Reduction Survey (CTRS) data for specific site. If CTRS data are unavailable for a specific site, then use CTRS data grouped by geographic area or closely located work site for pricing.	ORCA System data.
Pricing Data – Post-Transition	ORCA System data, once sufficient data are available (minimum of 6 months).	ORCA System data.
Pricing Adjustments	Reviewed and adjusted as necessary twice per year in March and September.	As fare changes are implemented by the Agencies, revised pricing will be triggered for Business Accounts.

1.2.2 Regular Fixed-Route Transit Service

The transit prices specified in Passport Agreements reflect only products that are valid on each Participating Agency's regular fixed route transportation system. Special event services are not covered by these Agreements.

1.2.3 Washington State Ferries

The Washington State Ferries will not be a Participating Agency for Passport Flat Rate products. WSF will only be a Participating Agency in Passport Per Trip Agreements which use actual ridership and actual fares to determine the amount paid by the Business Account. No discounts will be included for trips taken on the Washington State Ferry service.

1.2.4 Sale of Non-ORCA Products

Non-ORCA products may be included in a Business Account Agreement, subject to concurrence by the Participating Agencies covered in that Business Account Agreement.

2.0 ORCA Product Pricing

2.1. Business Account "Choice" Agreements. The pricing for these agreements will be the sum of the prices of the retail products purchased by the Business Account.

2.2 Business Account "Passport" Agreements.

2.2.1 Passport Flat Rate

A regional pricing methodology for the Passport Flat Rate product, as agreed to by the Joint Board, includes the following key elements:

Year 1: ORCA Transition Period and New Customers

- a. The total number of annual transit trips for a Passport Flat Rate customer shall be estimated using the transit mode share from the most recent Commute Trip Reduction survey (CTRS) for that site, (If CTRS data are unavailable for a specific site, then CTRS data grouped by geographic area or closely located work site will be used for pricing.)
- b. The total number of annual transit trips shall be apportioned by Participating Agency based on the share of total transit trips for each transit agency from the CTRS. If appropriate, a Participating Agency may propose applying a growth rate to adjust its estimated annual transit trips. All such adjustments must be approved by all Participating Agencies.
- c. The total annual transit fare value for each Participating Agency shall be estimated by multiplying the number of total number of annual transit trips for each Participating Agency by the average weighted trip value specified by each Participating Agency.
- d. The total annual transit cost for a Passport Flat Rate customer shall be the sum of total annual transit fare values for all Participating Agencies.

Post Transition for Existing Customers

- a. The total and per Agency number and fare value of annual transit trips for a Passport Flat Rate customer shall be estimated using the most recent ORCA data available for that customer.
- b. If appropriate, a Participating Agency may propose applying a growth rate to adjust its estimated annual transit trips. All such adjustments must be approved by all Participating Agencies.
- c. The total annual transit cost for a Passport Flat Rate customer shall be the sum of total annual transit fare values for all Participating Agencies.

2.2.2 Passport Per Trip

The cost of trips for a Passport Per Trip customer each month will be the total value of trips taken on Participating Agencies based on actual ORCA trip data for that month. The total value of trips for each Participating Agency will be the sum of the fare values for each trip taken on that Agency, less any interagency transfer discounts as described for E-Purse allocation in Exhibit E-1.

2.2.3 Non-ORCA Products

The cost of Non-ORCA products shall be as established in the Business Account Agreement for each customer, subject to concurrence by the Participating Agencies covered in that Business Account Agreement

3.0 Revenue Allocation

3.1 Business Choice and Passport Products:

The distribution of revenue to each Participating Agency from ORCA Products sold within a Business Account Agreement will occur through the appropriate ORCA Accounts based on Joint Board-approved business rules and payment due dates established for each Business Account Agreement.

3.1.1 Business Choice Accounts

Revenue allocation for E-Purse and ORCA pass products shall be as outlined in Exhibits E-1 and E-2.

3.1.2 Passport Products

3.1.2.1 Passport Flat Rate

Each Participating Agency shall receive its total annual transit fare value for each Passport Flat Rate customer as described in 2.2.1 above.

3.1.2.2 Passport Per Trip

Each Participating Agency shall receive the total value of trips for each Passport Per Trip customer as described in 2.2.2 above.

3.2 Non-ORCA Products

The distribution of revenue to each Participating Agency from non-ORCA Products sold within a Business Account Agreement will be as established in the Business Account Agreement for each customer, subject to concurrence by the Participating Agencies covered in that Business Account Agreement.

Exhibit F-1 Fiscal Agent Duties

The Fiscal Agent's duties include the following:

1. Establish the necessary ORCA Accounts in a bank that meets the public depository requirements of RCW 39.58 and open and close such accounts as it deems necessary for the operation of ORCA. The list of ORCA Accounts is contained in Exhibit F-2.
2. Hold ORCA funds as "Fiscal Agent for the Regional Fare Coordination System," and authorize the RFC Contractor to transfer funds among the ORCA Accounts and the Agencies' individual Settlement Accounts, in accordance with the settlement rules established by the Agencies.
3. Invest funds in accordance with the investment policy established by the Joint Board from time to time; provided, however, that the Agencies hereby agree that the Fiscal Agent is authorized to net the Fiscal Agent Fee and banking fees related to the ORCA Accounts against the interest income received in the ORCA Accounts. From time to time the Fiscal Agent may make recommendations to the Joint Board regarding the investment policy.
4. Disburse funds from a central payment account as directed by the Regional Program Administrator to pay invoices of the RFC Contractor, other regional contractors and the providers of Regional Support Services.
5. Create a general ledger for ORCA that is segregated from the general ledger that is maintained by the Agency serving as Fiscal Agent.
6. Provide to the Joint Board a monthly statement of net assets and statement of changes in net assets for ORCA, prepared on a basis consistent with U.S. generally accepted accounting principles (GAAP).
7. Engage a third party accounting firm to perform and provide an annual audit of the ORCA financial statements which shall include the required reporting and auditor communications to the Joint Board under U.S. generally accepted auditing standards (GAAS).
8. Prepare and provide other information or reports at the request of the Joint Board, the Operations Manager, the Regional Program Administrator, or an Agency in the manner mutually agreed to between the Fiscal Agent and the requestor and other reports as the Fiscal Agent may reasonably provide at its discretion.
9. Review daily settlement reports from the RFC Contractor before and after the settlement occurs and monitor the ORCA Accounts to verify that funds were directed in accordance with such RFC Contractor settlement reports. The Fiscal Agent shall review the information contained in the settlement reports for apparent errors and identify questions, aberrations from the norm and other issues, such as (1) a settlement out of balance; (2) an attempted settlement to a "suspense" or "exception" account; (3) an apparent error in the allocation of funds among the Agencies (such as allocations going to one or two agencies); or (4) a failure to obtain sufficient funds from a Retailer's account, and shall communicate

questions, aberrations from the norm, and other issues discovered in its review as follows:

- (a) If the Fiscal Agent identifies an issue prior to a daily transfer of funds, it shall contact the RFC Contractor to discuss the issue and seek any necessary adjustment before funds are transferred.
 - (b) If the Fiscal Agent identifies an issue after funds have been transferred, it shall promptly contact the RFC Contractor, the Operations Manager or the Regional Program Administrator (for Central Payments Account transfers), and the Agencies, as needed, to discuss the issue and effect any necessary adjustment.
 - (c) If there is a failure to obtain sufficient funds from a Retailer's account, the Fiscal Agent shall notify the Lead Agency and initiate an ACH transaction, via manual adjustment, to pull funds from the Lead Agency's settlement account in order to make the ORCA Account whole.
 - (d) If, in spite of active collection efforts, the Lead Agency is unable to collect from the Retailer within 120 days or in the event that a Retailer files for bankruptcy or goes out of business, the Retailer shall be considered in default. In the event of a Regional retailer default the cost of this default will be shared by all agencies. The amount owed by each agency will be determined by the current (at the time the account is declared to be in default) regional operating cost-sharing percentage per Section 9 and D-1. The Fiscal Agent will invoice each agency in the same manner as other regional operating expenses.
 - (e) Upon receipt of each agency's invoiced amount, the Fiscal Agent will transfer such funds to the Lead Agency's settlement account from which the NSF amount had been previously drawn.
 - (f) If the Lead Agency is subsequently able to recover any portion of the NSF, such recovered funds shall be turned over to Fiscal Agent who will distribute to each agency in the same ratio as was previously used for invoicing the NSF.
10. As provided more fully in Section 7.7, communicate directly with the RFC Contractor on the following matters: (i) changes in Agency bank accounts and/or ORCA Accounts, (ii) obtaining information from the RFC Contractor for the purpose of legal and financial reporting, (iii) implementing changes in the Fiscal Agent's financial accounting system resulting from changes in the law and/or changes in design or functionality of the ORCA Card, (iv) consulting with and receiving information from the RFC Contractor for purposes of creating an audit trail for all material events occurring as part of transactions involving transportation customers and (v) otherwise performing the Fiscal Agent's specific duties as described in this Exhibit F.
11. Reconcile on a monthly basis the ORCA general ledger accounts and complete monthly bank statement reconciliations for the ORCA accounts.
12. Review and process manual adjustments pursuant to the written notice of the RFC Contractor or the Agency Claims Committee (tbd) for any account including the unclaimed property account or the claims accounts.

13. Participate in the claim process established by the Joint Board and implement the decisions of the Joint Board regarding payment of claims.
14. Make recommendations to the Joint Board with regard to the RFC Contract and/or operation ORCA as a whole as the Fiscal Agent deems necessary to enable the Fiscal Agent to perform its duties under this Agreement.
15. Monitor the activity in the Retailer distributor accounts to determine if sufficient funds are available and bill each Agency its proportionate share of any determined insufficiency.
16. Submit annual budget to Joint Board for approval under time-frame directed by Joint Board.
17. Periodically provide to the Agencies a statement of assets, liabilities, resources, and expenditures under the ORCA System as required by the business rules adopted by the Joint Board.

Exhibit F-2 List of ORCA Accounts

Fare Processing Accounts

1. **Regional Clearing Account.** This account is the central clearing account in the ORCA system and is used to settle all fare media transactions.
2. **Float Account.** This account is the depository for unspent funds for purse use. These funds reside in this account until the cardholder uses the ORCA card or other until other transactions occur which affect these funds (i.e. claims or escheatment).
3. **Regional Pass Account.** This account is the depository for funds from the purchase of regional passes. These funds reside until the ORCA system apportions the revenues earned by Agencies for ridership once a month.
4. **Institutional Account.** This account is used to collect and distribute funds for all Institutional products and holds balances from prepaid Institutional products. The majority of the activity is a one day in-and-out clearing of Institutional revenues collection and distribution. The funds related to prepaid Institutional products reside in this account until the ORCA system apportions the revenues earned by Agencies for ridership once a month
5. **Distributor Account.** This account collects funds from sales of fare media products sold by retailers and distributes those funds to the Fiscal Agent accounts. The account is swept daily by ACH transferring funds to the Fiscal Agent accounts, but collects funds from Retailers on a weekly basis. The account will be pre-funded for one week of anticipated activity during go-live.
6. **Distributor 2 Account.** This account collects funds from sales of fare media products sold by retailers and distributes those funds to the Fiscal Agent accounts. The account is swept daily by ACH transferring funds to the Fiscal Agent accounts, and collects funds from Retailers on a daily basis (a one day in-and-out clearing of funds). This account will be used as a clearing account for retailer sales and will be pre-funded by the Agencies to ensure funds are available for clearinghouse process even in the event of failed ACH's from Retailers
7. **Cardholder Claim Account.** This account holds funds from purchase of fare media in a card not present environment, for which the card was not presented to a fare collection device prior to the expiration of the prescribed period, awaiting distribution back to the purchaser.
8. **Unclaimed Property Account.** This account holds funds which are attributable to inactive cards.
9. **Participant Claim Fund Account.** This account holds funds from missing ("gap") transactions awaiting distribution back to the Agencies.

Exhibit G-1 Regional Inventory and Distribution Center- Description of Duties

The Regional Inventory and Distribution Center (RIDC) duties include the following:

- A. Submit an aggregated card stock forecast for card needs by type and time period for the region no more than twice per year.
- B. Maintain card stock inventory sufficient to meet regional card distribution and fulfillment needs.
- C. Gather card stock estimates from Agencies to support card stock forecasts submitted to the ERG Service Bureau (ESB).
- D. Place regional card stock orders using the Agency website for the ESB to fulfill as needed to probably not more than two per year.
- E. Send a hard copy of the order form to the ESB at time orders are placed on the Agency website no less than 60 days prior to needing cardstock on hand.
- F. Receive and store cards in secure location.
- G. Ensure that security seal is maintained on unopened boxes of card stock.
- H. Inspect card deliveries to ensure that the correct quantity and type of card stock is received. This includes reconciling shipping paperwork and box labels with order information.
- I. Fulfill and ship or deliver agency-specific card stock orders twice a week from card stock on hand as needed.
- J. Receive invoice from ESB for card stock ordered and forward approved invoice to the Regional Program Administrator with order verification. In the event that invoices are distributed directly to Regional Program Administrator, staff from the RIDC will provide information so that invoices can be verified.
- K. Return defective cards or those cards that do not correspond with the order details.
- L. Submit annual budget to Joint Board for approval within time-frame directed by Joint Board.
- M. Provide quarterly invoices to Regional Program Administrator in order to receive reimbursement for costs incurred.
- N. Notify the ORCA Operations Manager in the event that RFC Contractor is not fulfilling its contractual obligations as to the RIDC.

Exhibit G-2 Regional Mail Center – Description of Duties

The Regional Mail Center duties include the following:

Provide centralized new card order fulfillment for all types of sales (excluding sales at Customer Service offices) to Agencies.

- A. Receive card orders from the Cardholder website, Call Center website, central Agency website or Business Account website (for employers to distribute to employees or retailers to resell).
- B. Create orders for mailed-in card orders from individuals.
- C. Issue cards per card order instructions (card is unblocked, registered to a customer name (if requested), associated with a Business Account (if ordered from Business Account website) loaded with product (if ordered) and with secondary printing (if specified).
- D. Mail cards to customers or arrange for pick-up/delivery.
- E. Process mail-in orders for remote revalue and autoloading setup for existing ORCA cards.
- F. Process credit card payments through approved internet gateway providers.
- G. Provide settlement of funds for transactions processed through the cardholder website.
- H. Provide settlement of payment for customer authorized autoloading transactions.
- I. Maintain PCI compliance for all customer credit card transactions handled by the Regional Mail Center as set out in this agreement.
- J. Utilize the appropriate and cost-effective method for fulfilling the card orders:
- K. CIPP for individual orders that can be batched in groups of 250.
- L. Bulk card printer to issue and print the cards.
- M. Customer Service Terminal to create orders from phone or mail-in requests and to process revalue orders with non-credit card payments.
- N. Call Center website for mail-in revalue orders.
- O. Obtain authorization for credit card transactions prior to processing orders.
- P. Maintain sufficient levels of card stock to meet daily orders.
- Q. Following the transition period, process orders within 72 hours.
- R. Maintain sufficient supplies of customer information materials to be distributed with card orders.
- S. Deliver order envelopes and packages to authorized locations for the United States Post Office or Federal Express.
- T. Annually prepare Regional Mail Center budget that will include the following elements:
- U. Staffing required to process the estimated order volumes within 72 hours.
- V. Bank card fees associated with credit card processing through the internet gateway and merchant acquirer.
- W. Postage and shipping charges associated with sending materials to customers;
- X. Materials and supplies to support card fulfillment.
- Y. Submit annual budget to Joint Board for approval within the time-frame directed by Joint Board.
- Z. Provide quarterly invoices to Regional Program Administrator in order to receive reimbursement for costs incurred.
- AA. Notify the ORCA Operations Manager in the event that RFC Contractor is not fulfilling its contractual obligations.

Exhibit H ORCA Agency Security Plan

1.0 DEFINITIONS

Capitalized terms used in this Exhibit are defined in Section 3 of the Interlocal Agreement to which this attached and as specified below.

- 1.1 Agency Security Committee means the committee established by the Joint Board under this Agency Security Plan.
- 1.2 Agency Security Administrator means the individual designated by an Agency to 1) act as the single point of contact for an Agency related to system security matters; and 2) act as the staff responsible for assessing Agency staff system access levels, authorizing this level of access and submitting a request to the Contractor to issue appropriate system access passwords.
- 1.3 Contractor means ERG Transit Systems (USA) and its employees, subcontractors, successors and assigns.
- 1.4 CDRL 31 Security Plan means the Contract Deliverable per Contract No. 229944 which describes the Contractor's plan for assuring system security as required under said Contract.
- 1.5 FTP means Fare Transaction Processor. The device with which the customer most commonly interacts to conduct a fare transaction.
- 1.6 Interlocal Agreement means *The Interlocal Cooperation Agreement for Design, Implementation, Operation, and Maintenance of the Regional Fare Coordination System, as amended and restated.*
- 1.7 Lead Agency means an Agency authorized to enter into agreements with Retail Revalue Entities or Business Accounts.
- 1.8 User means any individual or entity authorized by an Agency to access data and equipment that is part of the ORCA System.
- 1.9 PCI Data Security Standard or PCI-DSS refers to Payment Card Industry Data Security Standard developed by Visa® and MasterCard to create common industry security requirements.
- 1.10 Personally Identifying Information" (PII) means the following information when collected by the Agencies under the ORCA Program: a natural person's name; and, if combined with said name, the address, telephone number, e-mail address, date of birth, Regional Reduced Fare Permit-related information, photo, and check/debit card/credit card information.
- 1.11 Regional Fare Coordination System (RFCS) means the common, non-cash fare system developed and operated by the RFC Contractor to enable customers of public transportation to use the same fare payment media throughout the Agencies' service areas.

- 1.12 Regional Program Administrator means the employee of the Regional Program Administration Agency who is approved by, and reports to, the Joint Board during the Operating Phase.
- 1.13 Regional Security Administrator means the employee of the Regional Program Administration Agency who provides regional coordination and staff support to the Agency Security Committee.
- 1.14 Security Incident means a violation of the Agency Security Plan, the CDRL 31 Security Plan, individual Agency security policies and procedures, unauthorized or attempted unauthorized access to non-public elements of the RFCS, unwanted disruption of systems, introduction of malware, or changes to hardware and software not authorized by the Agencies.
- 1.15 Security Review Board or SRB means the group of Contractor staff and Agency representatives responsible for security-related activities as provided in the CDRL 31 Security Plan.
- 2.0 AGENCY SECURITY COMMITTEE AND REGIONAL SECURITY ADMINISTRATOR**
- 2.1 The Agencies shall form an Agency Security Committee consisting of at least one representative from each Agency. Each Agency shall have one vote on the Agency Security Committee even if it has more than one representative.
- 2.2 Each Agency shall assign up to two representatives to the Agency Security Committee, which shall provide representation in (1) risk and business management and (2) technology and information technology.
- 2.3 The Agency Security Committee shall have the following general responsibilities, as well as other responsibilities as may be specifically set forth in this Agency Security Plan or as directed by the Joint Board:
- 2.3.1 Annual risk assessment at the Agency level.
 - 2.3.2 Coordination of an annual review of each Agency's compliance with the Security Plan requirements.
 - 2.3.3 Security Incident coordination between the Agencies and authorization of responses within policies approved by the Joint Board.
 - 2.3.4 Annual review of CDRL 31 Security Plan and coordination of proposed changes.
 - 2.3.5 Annual review and comment of the external security audit of Contractor's Concord, California facility.
 - 2.3.6 Development of security awareness guidelines.
- 2.4 The Agency Security Committee shall prepare and submit to the Joint Board such proposed work plans, policies, procedures and other materials as may be directed by the Joint Board or as may be recommended by the Agency Security Committee. The Agency Security Committee shall not have final decision-making authority on any Agency Security matters except as may be specifically authorized by the Joint Board.
- 2.5 The Agency Security Committee shall select one Agency representative to serve as its chair and another Agency representative to serve as its vice-chair. The Committee shall

determine when, where and the frequency of its meetings, and take other necessary and appropriate actions to fulfill its responsibilities under this Agency Security Plan.

- 2.6 The Agency Security Committee shall not in itself be part of the Security Review Board. However, Agency representatives to the Agency Security Committee may also serve as Agency representatives to the Security Review Board.
- 2.7 Each member of the Agency Security Committee shall represent and coordinate with others within that member's own Agency on security matters.
- 2.8 The Regional Program Administration Agency shall designate an employee to serve as Regional Security Administrator, which employee shall not have other RFCS duties and responsibilities except as may be specifically authorized by the Joint Board. The Regional Security Administrator will provide staff support to the Agency Security Committee.

3.0 AGENCY SECURITY PRACTICES

3.1 Agency Risk Assessment

- 3.1.1 The Agency Security Committee shall conduct an annual risk assessment. This process will include evaluation of the risks and threats identified in CDRL 31 Security Plan as they pertain to Agencies, and recommend revisions to the document due to identified new risks, changes in the RFCS or environment. The Agency Security Committee will also review the Agency controls defined in this Agency Security Plan and review the controls for adequacy in mitigating the risks when appropriate.
- 3.1.2 Each Agency shall fully cooperate and participate in the annual security review approved by the Joint Board, including self-assessments and any PCI-DSS or other security reviews conducted by outside consultants, insurance providers or other parties. Such cooperation includes but is not limited to allowing access to an Agency's facilities and records.

3.2 Security Plans

- 3.2.1 Agencies may request an exception to the requirements in this Agency Security Plan by submitting a written request to the Chair of the Agency Security Committee describing the request and describing the potential risks. The Committee will evaluate requested exceptions on the basis of overall risk to the RFCS and submit its recommendations to grant or deny the requested exceptions to the Joint Board for its consideration and action. The Committee shall document in writing all granted or denied exception requests.
- 3.2.2 The Agency Security Committee's annual review of the security controls in the Agency Security Plan will identify and recommend any potential changes to the Agency Security Plan that need to be made in order to adequately mitigate identified risks that are managed by the Agencies.

3.2.3 The Agency Security Committee shall work with the ORCA Operations Manager in monitoring the Contractor's annual external security audit and shall conduct an annual review of the CDRL 31 Security Plan. This process will identify and recommend any potential changes to the CDRL 31 Security Plan that need to be made in order to adequately mitigate identified risks that are managed by the Contractor.

3.3 Organization of Agency Security and Governance

3.3.1 Agencies shall be responsible for complying with laws, regulations, and contractual obligations that apply to them directly. In cases where implementing controls and demonstrating compliance involves elements of the RFCS that are operated and maintained by the Contractor, the SRB will be the body responsible for identifying a compliance strategy that includes all necessary stakeholders and may include updates to CDRL 31 Security Plan, the Agency Security Plan or both.

3.3.2 Agencies shall coordinate all external audits and reviews of the RFCS with the SRB in order to identify possible duplication of efforts and ensure security policies and controls are relied upon. The SRB representative(s) coordinating audits shall refer auditors to existing documentation when possible.

3.3.3 Each Agency shall specify a point of contact for media and public information requests involving the RFCS. Requests that involve security controls documentation and PII shall be coordinated among members of the SRB or Agency Security Committee and staff responsible for Public Records Requests.

3.3.4 Agencies shall participate in the ongoing governance processes of the RFCS, including those processes for ongoing development of CDRL 31 Security Plan and enforcement of policy.

3.3.5 Agencies shall conduct day-to-day operations of their business processes for the ongoing RFCS operations in accordance with the security standards and practices adopted by the Joint Board. Agencies shall consider Agency security risks before making major business process changes, and coordinating major changes with other Agencies and the Contractor.

3.3.6 Agencies shall maintain adequate separation of duties among Agency staff operating the RFCS in order to mitigate potential for fraud.

3.4 Asset Management

3.4.1 The Agency Security Committee shall recommend for adoption by the Joint Board a plan for assigning RFCS-related data and records to categories and establishing security and protective measures that are applicable to each category.

3.4.2 The Agency Security Committee shall recommend data export management requirements for adoption by the Joint Board.

3.5 Human Resources and Organizational Security

- 3.5.1 Each Agency Security Administrator shall assign all User accounts in the RFCS, including computer accounts and accounts on FTP devices, to unique individuals. No accounts will be "shared" among multiple staff.
- 3.5.2 Each Agency Security Administrator shall notify the Contractor of new User authorizations or removal of existing authorizations with existing employee orientation or termination processes to ensure that they are adopted as standard business practice. Each Agency must specify one primary and one backup Agency Security Administrator who is responsible for sending authorizations and removal notices to the Contractor. Agencies may optionally have additional approval steps prior to this final approval. All access granted will be made on the basis of least privilege. When employment terminates or job responsibilities change, the Agency Security Administrator must promptly notify the Contractor of the account removal or modification.
- 3.5.3 Each Agency Security Administrator will review User accounts from the RFCS system every quarter. The Agency Security Administrator or another designated individual at each Agency will review a report of accounts and their permissions to verify that all Users remain authorized appropriate to their duties. Any changes must be sent promptly to the Contractor. A positive affirmation that the review has been completed must be provided to the Chair of the Agency Security Committee and to the Security Review Board to document the review.
- 3.5.4 The Agency Security Administrator for a Lead Agency shall be responsible for requesting from the Contractor unique IDs and passwords for Retail Revalue Entities and Business Accounts with which the Lead Agency is contracting.
- 3.5.5 The Agency Security Committee will monitor the processes for resetting passwords and managing changes to User accounts and recommend improvements in such processes to the Joint Board.
- 3.6 Physical and Environmental Security
 - 3.6.1 Each Agency shall restrict physical access to areas that house the Back Office Computer (BOC), Data Acquisition Computer(s) (DAC), and inventory of hardware to only those individuals whose job responsibilities require access and who are documented as being permitted to access those spaces. This access must be restricted using keys or equivalent access systems that limit access to authorized individuals. Documentation must be maintained by each Agency indicating individuals having access to such areas. Each Agency Security Administrator shall review such access lists on not less than a quarterly basis.
 - 3.6.2 Agencies shall ensure that network cabling connected to RFCS network segments is restricted to secure spaces that are not readily accessible from public areas.
 - 3.6.3 Agencies shall ensure that rooms used to house the Back Office Computer and the DACs at each Agency must have an uninterruptible power supply, adequate environmental control such as heating, ventilation and air conditioning capability, and fire suppression.

- 3.6.4 Agencies must perform an annual inventory of all RFCS equipment that contain Secure Access Modules, including those that are not in production such as training equipment and spare equipment, in order to ensure the equipment is not lost or stolen. The production equipment may be inventoried electronically using communications records; however, non-production equipment must be physically reviewed by an Agency representative. Agencies are responsible for identifying and reporting the theft or loss of a device with a Secure Access Module (SAM) which they control. Agencies must review the Device Connection Report daily on business days, promptly investigate non-reporting devices and report a Security Incident to the Contractor and the SRB within two (2) hours after determining that a device is missing or appears to have been tampered with.
- 3.6.5 Each Agency must inventory physical device assets when they become Agency property, and apply asset tags or unique identifiers such as a serial number for RFCS equipment.
- 3.7 Communications and Operations Management
 - 3.7.1 Agencies and the Contractor share firewall configuration responsibilities. Prior to an Agency making changes to firewall configurations that affect Virtual Private Network services or network segregation of the RFCS equipment, the Agency shall first obtain approval by the Agency Security Committee, and then by the Contractor. The Agency shall maintain documentation of the changes. Network traffic traversing the firewall shall be restricted to authorized connections from trusted networks.
 - 3.7.2 Agencies shall provide a network that enables communication from its Back Office Computer to all of its RFCS devices. The RFCS data must be protected from public networks through network segmentation and/or additional data encryption.
 - 3.7.3 Wireless networks which provide RFCS connectivity shall rely on strong levels of encryption.
 - 3.7.4 Agencies are responsible for monitoring and maintaining their network(s). The technologies and processes for monitoring may vary by Agency. Agencies which do not segregate RFCS traffic from other business traffic shall have automated alerts or perform at least weekly reviews of failed log-on attempts to network infrastructure equipment.
- 3.8 Agency Security Administrator and Access Control
 - 3.8.1 Each Agency shall identify two individuals (a primary and a back-up) to serve as the Agency Security Administrator who shall be responsible for authorizing access to RFCS-related equipment, systems, networks and data. Access to RFCS systems, equipment, networks and data shall be restricted on the concept of least privilege, assigning access only to individuals who have job responsibilities that require such access.
 - 3.8.2 Each Agency will segregate the security access permissions for the individuals having different RFCS roles. The Agency Security Administrator must not have major fiscal or contract administration responsibilities for the RFCS. These

access controls are designed to limit an individual's role to only that which is required to perform their function and an individual acting alone must not have access that could compromise a major aspect of the RFCS. Only the Agency Security Administrator or a designated backup will be authorized to submit changes to user permissions to the Contractor.

3.9 Information Systems Acquisition Development and Maintenance

3.9.1 Agencies shall not perform systems acquisition or development projects that build onto the RFCS without first developing a project plan that addresses feasibility, risks and mitigation strategies, system architecture and security controls, quality assurance and acceptance testing, and implementation to production following review. These project plans must be submitted to the Joint Board or a designated sub-committee for review and coordination, with the purpose of identifying any security controls which are necessary or potential security risks which could result from systems acquisition or development.

3.9.2 When making non-emergency changes to the RFCS that are not initiated by the Contractor, Agencies shall notify the SRB in advance of the Agencies' intention to make such a change, using a designated communication process (such as an e-mail distribution list). The communication should indicate what the scope of the change will be, expected downtime, any test procedures which are planned, and a back-out process. If the change may affect the RFCS components of other Agencies, the change must be coordinated with those Agencies in order to identify risks and mitigate them. Changes which must be coordinated with the Contractor may follow the change management process of the Contractor.

3.10 Agency Security Incident Management

3.10.1 Agencies shall report Security Incidents involving elements of the RFCS which are managed by the Contractor to the SRB, who is responsible for investigation of the incident, coordination of evidence collection, and risk mitigation, according to the ORCA RFCS Data Breach Plan adopted by the Joint Board.

3.10.2 Agencies shall report Security Incidents promptly to the Agency Security Committee.

3.10.3 The SRB must evaluate Security Incidents to determine if an intervention into RFCS configuration is necessary in order to mitigate risk. The SRB will coordinate the activities of the Contractor and Agencies such effort in order to mitigate risk.

3.10.4 If a Security Incident is investigated by an Agency, the Agency must attempt to collect evidence regarding what caused the Security Incident, and if applicable, who was responsible for the Security Incident.

3.10.5 Following the semi-annual report of Security Incidents from the Contractor, or at the discretion of the SRB following a major Security Incident, Agencies shall participate in a post-incident review. The post-incident review must include an open work session to identify the positive and negative elements of a particular incident and identify changes in policy, procedures, or technology controls that could reduce risk in the future.

3.10.6 Subject to public disclosure laws and regulations, public disclosure and communications regarding Security Incidents shall be coordinated among Agencies by the Regional Program Administrator before distributing the information publicly. Issues requiring public communications should be escalated to the Joint Board representative or a designated individual responsible for public information.

3.11 Business Continuity Management

3.11.1 Agencies shall rotate removable back-up media in the Back Office Computer on a schedule defined in coordination with the Contractor.

3.11.2 Agencies shall arrange for the transport of removable back-up media off-site to a secure storage facility at least weekly. Removable back-up media must not be stored in employee homes, automobiles, or unsecured work areas. The off-site facility must restrict physical access to only authorized individuals, and be protected from fire and moisture.

3.11.3 Agencies shall monitor back-up jobs each business day to verify that Back Office Computer back-up jobs are completed successfully. Unsuccessful back-ups must be escalated to the Contractor for problem resolution.

3.12 Compliance and Audit

3.12.1 Through the Regional Program Administrator, Agencies shall be responsible for providing oversight to an annual audit of the Contractor. This audit will verify that the Contractor is performing the principal responsibilities of the CDRL 31 Security Plan and has implemented best practices in the operation of information systems.

3.12.2 The Agency Security Committee shall perform an annual assessment of risk and specify, subject to concurrence by the Joint Board, whether each Agency will perform a self-assessment, have a peer assessment audit, or have an independent audit of compliance with the Agency Security Plan. An independent audit will be performed at least every five years.

3.12.3 To the extent possible, independent audits should be combined with the PCI-DSS audits.

3.12.4 Agencies will be held to the same standard of PCI-DSS compliance as the Agency with the highest volume of transactions and most stringent PCI-DSS compliance requirements. The Agency Security Committee will be responsible for Agency-related PCI-DSS compliance.

3.12.5 An Agency found through an audit not to be in compliance with applicable security requirements will be required to prepare and submit to the Agency Security Committee a remediation plan, including a schedule for achieving compliance. The Agency Security Committee will review such remediation plan and make applicable recommendations to the Joint Board.

4.0 ALLOCATION OF COSTS

- 4.1 Subject to Joint Board approval, the cost of retaining an outside consultant to conduct an periodic review of the Agencies' compliance with this Plan, including any review of PCI compliance, may be shared among the Agencies. Each Agency shall pay its then-applicable percentage share as provided in the Interlocal Agreement.
- 4.2 Costs associated with or incurred by an Agency to address deficiencies or compliance issues within that Agency shall be paid entirely by that Agency.
- 4.3 Costs related to providing staff support to the Agency Security Committee shall be considered Regional Program Administration costs to be funded entirely by the Agency performing Regional Program Administration responsibilities under the Interlocal Agreement.
- 4.4 Costs related to participating on the Agency Security Committee and providing an Agency Security Administrator shall not be considered to be regional costs and shall be borne exclusively by the Agency incurring such costs.

5.0 AMENDMENTS

- 5.1 The Agency Security Committee shall monitor the implementation of, and compliance by Agencies, of this Agency Security Plan. If the Agency Security Committee determines that changes to the Agency Security Plan would be in the best interests of the RFCS, it shall submit such changes to the Joint Board for its consideration and action.
- 5.2 At least annually, the Joint Board shall review the implementation of the Agency Security Plan and consider recommended changes submitted by the Agency Security Committee and proposed changes from other sources. The Joint Board may approve amendments to the Agency Security Plan if such changes would improve efficiency, effectiveness and enhance security of RFCS data and information.

6.0 GENERAL PROVISIONS

- 6.1 This Agency Security Plan shall be effective on the same date as the Amended and Restated Interlocal Cooperation Agreement of which it is a part.
- 6.2 The Agencies recognize that time is of the essence in the performance of the provisions of this Agency Security Plan.
- 6.3 Each Agency shall maintain documentation of its compliance with the provisions of this Agency Security Plan.
- 6.4 This Agency Security Plan shall be interpreted to be consistent with said Amended and Restated Interlocal Cooperation Agreement. In the event of ambiguities in this Agency Security Plan or inconsistencies between the Agency Security Plan and said Amended and Restated Interlocal Cooperation Agreement, the provisions of said Amended and Restated Interlocal Cooperation Agreement shall prevail.

Exhibit I Notices by an Agency to Other Agencies and Joint Board

Notices, demands or other written communications required under this Agreement to be given to other Agencies, the Joint Board or both other Agencies and the Joint Board, including, but not limited to, an Agency's notice of its intent to withdraw from this Agreement, shall be in writing and addressed to the Joint Board, Agency or Agencies for whom it is intended. Notices, demands or other written communications shall be deemed to be delivered on the date received by personal delivery or delivery services, on the date sent by facsimile (with confirmation of transmission) or telegram, or two (2) business days from the postmark if deposited in any United State Postal Service mail box.

The Agency names, title of persons to whom the written communication should be directed, and addresses are shown in the following paragraphs. The Chair of the Joint Board and the Chief Executive Officer, County Executive or other similar position within an Agency may change the title and address specific to the Joint Board or that Agency by sending written notice to the Joint Board and all other Agencies as provided in the first paragraph of this Exhibit J.

Central Puget Sound Transit Regional Transit Authority:

Title: ORCA Regional Program Administrator
Address: 401 South Jackson Street
Seattle, WA 98104-2826

City of Everett:

Title: Deputy Chief Executive Officer
Address: 3220 Cedar St.
Everett, WA 98201

ORCA Joint Board:

Title: Chair, Joint Board
Address: _____, WA 98____

King County:

Title: Manager, Management Information & Transit Technology
Address: 201 South Jackson Street (MS-KSC-TR-0333)
Seattle, WA 98104-3856

Kitsap County Public Transportation Benefit Area:

Title: Service Development Director
Address: 60 Washington Avenue #200
Bremerton, WA 98337

Pierce County Public Transportation Benefit Area:

Title: Chief Executive Officer
Address: P.O. Box 99070

Tacoma, WA 98496

Snohomish County Public Transportation Benefit Area:

Title: Deputy Chief Executive Officer

**Address: 7100 Hardeson Road
Everett, WA 98203**

Washington State Ferries:

Title: Chief Financial Officer

**Address: 2901 Third Avenue
Seattle, WA 98121**