## STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 9 | **Name:** | Leah Krekel-Zoppi |
| **Proposed No**.: | 2019-0052 | **Date:** | March 19, 2019 |

**SUBJECT**

An ordinance authorizing an Interlocal Cooperation Agreement for Implementation, Operation and Maintenance of the ORCA regional fare coordination system.

**SUMMARY**

Proposed Ordinance 2019-0052 would authorize the Executive to execute an Interlocal Cooperation Agreement (ICA) with six other regional transit agencies for implementing and operating the Next Generation ORCA system, which is expected to roll out by 2023. The ICA would replace two previous ORCA interlocal agreements executed in 2003 and 2009. Many key provisions of the proposed ICA remain the same as previous agreements, with the main change being the addition of an ORCA Director and Regional ORCA Operations Team (ROOT) to manage many of the regional functions related to operating the Next Generation ORCA System, some of which are currently performed by the legacy ORCA vendor.

The proposed ICA would still allow King County to set Metro’s fares and fare policies, and to fund specialized applications to implement potential fare innovations, if so desired. The ICA would obligate Metro to pay its share of regional and agency-specific capital costs related to the ORCA system, and to pay estimated ORCA operating costs of approximately $9.2 biennially beginning in 2023-2024. The King County Council has previously appropriated the capital budget related to these obligations.

The six other parties have already authorized the proposed ICA.

**BACKGROUND**

**Current ORCA Fare Card System**

King County is one of seven regional transit agencies that partnered on a smart card technology, called One Regional Card for All (ORCA) to establish a common, noncash fare system throughout the regional participants’ service areas.

An ORCA card allows users to purchase electronic daily or monthly passes for unlimited rides, or load value on an E-purse that works like a debit card to deduct the cost of individual trips. The card is valid on transit services within all the ORCA partner agencies and allows for free transfers between services (except Washington State Ferries) within a two-hour window. Qualified ORCA users can obtain reduced fares through the Regional Reduced Fare Permit (RRFP) for seniors and disabled riders, youth fare, and ORCA LIFT for low income riders using Metro Transit, Kitsap Transit, Sound Transit, the Seattle Streetcar, and King County Water Taxi.[[1]](#footnote-1)

The transit agencies that have partnered to form the ORCA system are King County, Sound Transit, Community Transit, Kitsap Transit, Pierce Transit, Everett Transit and Washington State Ferries. These agencies first entered into an interlocal agreement (ILA) to develop the ORCA smart card system in 2003[[2]](#footnote-2). That agreement established the initial terms for design and operations of the joint project and formed the ORCA Joint Board, comprised of the chief executive officers of the ORCA agencies, or their designees, to govern the ORCA system.

In 2009 as the ORCA system became operational and available to customers, the ORCA partners entered into an amended and restated interlocal cooperation agreement for design, implementation, operation and maintenance of the regional fare coordination system.[[3]](#footnote-3) The 2009 agreement addressed more aspects of operating and maintaining the system during implementation and beyond, and updated and clarified the responsibilities of individual member agencies, the various regional roles, and the Joint Board’s oversight related to the regional fare coordination system.

In 2018, more than 134 million transit trips across the region were made using ORCA cards[[4]](#footnote-4), and approximately 66 percent of trips on Metro Transit are made using ORCA[[5]](#footnote-5).

**Next Generation ORCA and Proposed Interlocal Cooperation Agreement**

The ORCA system was deployed in 2009 through a contract with a vendor, which ends in 2021, to operate and maintain the ORCA system software and hardware. Given the upcoming end of the contract period and the fact that the ORCA system technology is becoming outdated, planning for a replacement system, called Next Generation ORCA, began in 2014 and is currently in the design phase.

For customers, anticipated benefits of the new system include instantaneous availability of value they load onto their ORCA card and expanded ways and locations to purchase and load ORCA cards.

The Next Generation ORCA system is being designed as an open architecture technology, as opposed to the proprietary vendor-owned technology that delivers the current ORCA system. A Systems Integrator contractor is tasked with building and operating the “backend” of the system and integrating it with other aspects of the system. The System Integrator contract was approved in 2018; there is a four-year base period with up to 11 one-year extensions at Sound Transit’s sole discretion.

Oversight of the ORCA replacement project is provided by the ORCA Joint Board and an ORCA 2 Steering Committee,[[6]](#footnote-6) supported by a Regional Program Administrator who reports to the ORCA Joint Board and is housed at Sound Transit.

While the ORCA agencies will likely continue to contract with the Systems Integrator for some aspects of operating and maintaining the Next Generation ORCA system once it is operational, the open architect nature of the new system allows for more flexibility to directly manage other aspects of the system, such as fare collection, agency settlement, electronic funds collection, and card data management. Therefore, the ORCA agencies have developed a new Interlocal Cooperation Agreement (ICA) for implementing, operating, and maintaining the ORCA system that provides for a Regional ORCA Operations Team (ROOT) to operate the ORCA system.

The ORCA Joint Board unanimously recommended the new ICA for approval by their individual agency governing bodies on September 10, 2018. It has already been approved by the governing bodies of the six other ORCA agencies. Proposed Ordinance 2019-0052 would authorize the King County Executive to execute the ICA on behalf of King County.

**ANALYSIS**

**Summary of the Proposed ICA**

Should the proposed ordinance be adopted, it would authorize execution of the ICA, which includes the following summarized provisions.

Background and Purpose (Section 1, Page 4)

This section provides the purpose of the agreement which is for the “successful implementation and operation of the ORCA System to encourage the use of public transportation and increased conveniences to the public in the payment of public transportation fares.”

The agreement also “establishes the framework for the Regional ORCA Operations Team (ROOT) and Regional Service Providers, the respective roles and responsibilities of the Agencies, the Systems Integrator (SI) and other ORCA Vendor contractors, the allocation of revenue collected utilizing the ORCA System, and Agencies’ commitments to fund their own and regionally-shared costs to develop, operate, maintain and update the ORCA system.”

Transition Period (Section 2, page 5)

This section establishes a transition period during which activities related to the legacy ORCA System will continue as initial activities related to the Next Generation ORCA System begin. The agreement provides that during the transition period, conflicts between the 2009 ILA and the current ICA will be resolved by the ORCA Joint Board.

Definitions (Section 3, pages 6-8)

This section provides definitions of terms in the ICA. Key terms include an “ORCA Director” who reports to the ORCA Joint Board and oversees administration, operations, and planning of the ORCA System, and a Regional ORCA Operations Team (ROOT) which is the “centrally-managed dedicated team responsible for planning, administration, management, and operations of the ORCA System.”

Joint Board (Section 4, pages 9-12)

This section maintains the ORCA Joint Board created in the 2003 ORCA ILA and establishes the meeting and voting procedures and authority of the ORCA Joint Board. Most decisions of the Joint Board must be reached by unanimous consensus, but the agreement does lay out limited circumstances when decisions can be made by simple majority of a quorum.

Key authorities assigned to the ORCA Joint Board include:

* Changing or terminating contracts with ORCA vendors.
* Approving the ORCA Capital and Operating Budgets, the methodology for sharing capital and operating costs, the formula for allocating ORCA revenue, and business rules.
* Allowing an ORCA agency to enter into a contract with an ORCA vendor for a specialized application.
* Approving additions of new applications or integrations on ORCA cards.
* Approving the selection of and overseeing the ORCA director.
* Approving the addition of new parties to the ICA and removing an agency from the ICA for good cause.

Regional Operations and Administration (Section 5, pages 13-14)

This section provides the duties and protections of the ORCA Project Team, tasked with design and implementation of Next Generation ORCA; the ORCA Director, tasked with managing the ROOT; the ROOT, tasked with regional operations; and Regional Service Providers, agencies that contract with the Joint Board to perform regional functions for the ORCA system, such as King County Metro managing ORCA cardstock.

Contract Administration and Management (Section 6, pages 15-17)

This section provides the terms of the ROOT’s authority to execute and administer contracts with ORCA vendors. The ICA requires that, in order for the ORCA Project Team to serve as a conduit with ORCA vendors, agencies and members of the Joint Board must refrain from direct communication with ORCA vendors, except as necessary for agency-specific specialized applications and integrations.

Individual Agency Responsibilities (Section 7, pages 18-22)

Many of the provisions contained in this section relate to financial management and accounting; data security; maintenance of networks, equipment, and software; and providing capabilities for system operations. Other key agency responsibilities required in the ICA include:

* Complying with the terms of the ICA and policies, business rules, agreements, and guidelines adopted by the Joint Board, including the business rules for fare collection and customer services practices.
* Setting fares and fare policies for their agency that are consistent with the ICA and business rules established by the ORCA Joint Board.
* Issuing ORCA cards, loading ORCA products, and responding to customer inquiries and requests for ORCA customers on behalf of all agencies.

Financial Provisions (Section 8, pages 23-25)

This section states that by entering into the ICA, each agency agrees to pay the capital and operating costs of the ORCA system for the duration of the System Integrator contract and other ORCA vendor contracts and are committed to using the system for at least 11 years. The capital and operating costs of the ORCA system include both the regionally shared costs and agency-specific costs for items such as equipment on buses. Regionally shared costs are divided according to cost sharing method adopted by the Joint Board, which is subject to change only by the unanimous approval by the Joint Board. See the Fiscal Impact section of this staff report for further discussion.

This section also contains provisions related to bill payment, invoicing, and security documents.

Fare Revenue (Section 9, pages 26-28)

This section provides the rules for how revenue from ORCA products will be distributed to agencies, how funds will be settled, and how sales transactions will be processed. Generally, the ICA provides that fare revenue be distributed to agencies according to the services used by the person paying the fare, which are tracked by the smartcard technology. Most sales transactions, with the exception of transactions processed at Washington State Ferry terminals and at contracted retail locations, would be processed through a regional ORCA Central Payment Gateway.

Security (Section 10, page 29)

This section contains provisions related to the ORCA Security Committee and assignment of a Regional Security Engineer as a member of the ROOT.

Addition of New Parties (Section 11, page 30)

This section discusses the addition of new parties to the ORCA System, which under the ICA could be either full partner agencies or affiliate agencies sponsored by a current ORCA agency.

Intellectual Property (Section 12, pages 31-32)

This section contains terms related to the intellectual property rights and requirements of the System Integrator and other ORCA vendors.

Legal Representation (Section 13, pages 33-36)

This section contains terms related to legal representation, providing that legal services related to the ORCA System may be obtained from various sources including legal counsel retained by the ROOT, a designated Regional Service Provider, the Joint Board, and ORCA agencies.

Legal Relations (Section 14, pages 37-38)

This section contains terms related to how the ORCA agencies would relate in legal matters, including indemnifying other agencies from liabilities related to responsibilities and work in the ICA and forming a joint defense plan for claims by third parties.

Termination, Withdrawal and Removal (Section 15, pages 39-40)

This section contains the terms related to terminating, withdrawing from, or being removed from the ICA, including that the ORCA Joint Board can terminate the agreement by unanimous vote.

General Provisions and Severability (Sections 17 & 18, pages 41-43)

This section includes other miscellaneous provisions and legal protections. Key provisions within this section include:

* The effective date of the agreement is when all agencies have signed it, and it remains in effect unless terminated by the ORCA Joint Board.
* Agencies must comply with nondiscrimination laws and regulations applicable to the ORCA system.

**Comparison to the Current ILA**

The seven ORCA agencies came together in 2003 to create the ORCA System, including the ORCA Joint Board governance structure. Much of the structure and policies established in 2003 and updated in the 2009 ORCA ILA remain substantially unchanged in the proposed ICA. Some of the major components that are not proposed to change in the agreement, for example, are the make-up, procedures, and authorities of the ORCA Joint Board; the methodology for apportioning ORCA costs and distributing ORCA revenue; and the authority of agencies to set their own fares and fare policies, subject to the business rules established by the ORCA Joint Board.

The primary substantive changes between the 2009 agreement and the proposed ICA are related to the change from a vendor-managed system to a regionally-managed system with implementation of the Next Generation ORCA technology. Currently, the ORCA vendor manages some functions associated with the ORCA system, such as electronic funds collection, card data management, and fund settlement with the ORCA agencies. Other functions are performed by individual agencies under agreements to provide regional services. Currently King County Metro serves as the ORCA Operations agency and performs other regional services, and Sound Transit serves as the Regional Program Administration Agency.

Under the proposed ILA, centralized management of regional operations and administration would be the responsibility of the new ROOT group, which would be managed by a new position of ORCA Director, who would be hired by and report to the ORCA Joint Board. While the ROOT and ORCA Director would be regional staff funded through the ORCA budget, they would be housed at Sound Transit and subject to that agency’s terms of employment. The ROOT would take over the functions Metro and Sound Transit currently perform as ORCA Operations and Regional Program Administration agencies. The ROOT could continue to contract with agencies for regional services such as the Regional Mail Center that King County Metro currently provides. The ROOT would also centrally manage contracts with the Systems Integrator and other ORCA vendors.

In addition, rather than the vendor providing funds settlement services, as with the current system, the ROOT would manage settlement and distribution of ORCA revenue, provide an ORCA central payment gateway, and be the merchant of record all ORCA sales transactions except those processed at Washington State Ferry Terminals or through retail network partners.

Another change to the proposed ICA is that many of the exhibits attached to the current ILA are no longer attached but rather remain policies approved by and subject to amendment by the ORCA Joint Board.

**Relation to Fares and Fare Policies**

The current ILA provides for individual agencies to set their own fares and fare policies, as long as those policies conform to the business rules adopted by the ORCA Joint Board, and that would remain unchanged in the proposed ICA. The business rules adopted by the ORCA Joint Board include items such as transfer arrangements between agencies, the handling of paper vouchers, rules for institutional accounts, and ORCA card fees.

The current ILA also allows for the individual agencies to enter into agreements with the vendor for specialized applications “that benefit one or more Agencies but are not integral to the [ORCA] System, as determined by the Joint Board.” Such agreements must receive the approval of the ORCA Joint Board. These provisions also remain unchanged in the proposed ICA.

Since entering into the ORCA System, King County has made a number of changes to its fares and fare policies, including implementing the ORCA LIFT low-income fare. The limitations of the current ORCA technology and vendor resources have at times presented a barrier to considering innovations to King County’s fare structure and policies. Those barriers are more a factor of whether the vendor has the capacity to provide the innovation, rather than the framework of the ORCA agreement.

According to Metro staff, the new ROOT management structure contained in the proposed ICA, combined with the open-source technology of the Next Generation system, should give an agency greater flexibility to contract with the System Integrator, ROOT, and/or other contractors to achieve desired fare innovations, as long as that agency is willing to pay the costs associated with such changes.

**Fiscal Impact**

The “Financial Provisions” section of the proposed ICA would commit Metro to paying its share of the ORCA System capital and operations for the duration of the Next Generation ORCA vendor contracts, and for at least fifteen years. The proposed ICA would also obligate King County to fund Metro’s agency-specific costs related to ORCA, which include items like ORCA readers on buses and the labor to install them.

According to the fiscal note, the estimated ORCA capital cost that Metro would be obligated to fund by entering into the proposed ICA is $50,822,365 from 2019 through 2022. This includes both Metro’s regional and agency-specific costs. The Council already appropriated funding for these costs in the 2017-2018 and 2019-2020 Biennial Budgets[[7]](#footnote-7).

Operating costs for the Next Generation ORCA System are expected to begin in 2023 when the system goes live. According to the fiscal note, the estimated 2023-2024 operating cost Metro would be obligated to by the proposed ICA is $9,239,166. This represents a potential decrease in operating costs, compared to Metro’s share of current operating costs for ORCA[[8]](#footnote-8). This cost estimate is based on a planning level estimate of the Next Generation ORCA operating costs. Actual costs would be based on the ORCA Joint Board’s approved operating budget, with Metro’s share of the regional costs being determined by ridership from the year prior to the budget year. ORCA System operating costs would continue for the duration of the proposed ICA, or a minimum of eleven years.

The cost-sharing provisions of the current ORCA system are retained in the proposed ICA.

**Legal Review**

The Council’s legal review of the proposed ICA is ongoing.

**ATTACHMENTS**

1. Proposed Ordinance 2019-0052 (and its attachments)
2. Transmittal Letter
3. Fiscal Note

**INVITED**

1. John Resha, Assistant General Manager for Finance and Administration, Metro Transit Department
1. KCC 4A.700.010 [↑](#footnote-ref-1)
2. The initial regional fare coordination program interlocal agreement was authorized by the King County Council with Ordinance 14598. [↑](#footnote-ref-2)
3. The King County Council authorized entering into the 2009 interlocal agreement for ORCA with Ordinance 16415. [↑](#footnote-ref-3)
4. Joint Board Program Management Report 4th Quarter – 2018 [↑](#footnote-ref-4)
5. According to 2017 ridership data. [↑](#footnote-ref-5)
6. The ORCA 2 Steering Committee is made up of one representative per participating ORCA agency. These representatives are appointed by their Joint Board member and have expertise in fare collections, policy, technology, operations, and customer service. The ORCA 2 Steering Committee representative for King County is Matt Hansen, Manager of Customer Communications and Services for Metro Transit. [↑](#footnote-ref-6)
7. Ordinances 18409 and 18835, TDC ORCA Replacement, Project # 1124456 [↑](#footnote-ref-7)
8. Metro’s share of the 2019 ORCA operating budget is approximately $7.2 million in annual costs, compared to a projected biennial cost of approximately $9.2 million in 2023-2024. [↑](#footnote-ref-8)