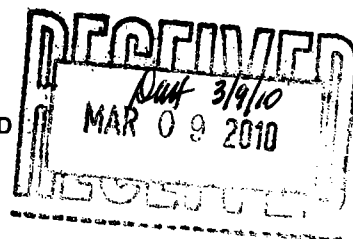


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MAR 25 2010

Puget Sound
Clean Air Agency

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



THIS AGREEMENT (hereinafter, "Agreement") is made and entered into by and among Puget Sound Clean Air Agency ("Business Account") and King County Metro Transit ("Lead Agency") on behalf of any of the following agencies that are identified in Attachment 1 as covered by this Agreement (collectively referred to as the "Participating Agencies").

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

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

1.0 PURPOSE

- 1.1 This Agreement establishes the terms under which the Business Account may purchase and distribute ORCA Business Cards and ORCA Business Passport and other ORCA Products to its Eligible Business Cardholders for their use on transportation services provided by the Participating Transportation Agencies designated in Attachment 1, *Products, Pricing and Terms*, which is incorporated in this Agreement by this reference.
- 1.2 This Agreement also establishes the terms under which an individual Participating Transportation Agency will provide the Business Account with specific optional products and services (e.g. use of ORCA Business Card on vanpool; a guaranteed ride home program).
- 1.3 The Business Account understands and agrees that this Agreement, and its purchase of ORCA Business Cards and ORCA Products, do not constitute a contract for transportation service and the ORCA Agencies have no obligation to the Business Account or any other party to provide any particular level, frequency or routing of transportation service.

2.0 TERM OF AGREEMENT AND CONTACT PERSONS

- 2.1 This Agreement shall take effect upon the effective date specified in Attachment 1, *Products, Pricing and Terms*, which is incorporated in this Agreement by this reference. Unless terminated in accordance with Section 12, this Agreement shall continue in effect for one (1) year or such other term as may be specified in said Attachment 1.
- 2.2 The Business Account shall designate a Primary Contact Person in Attachment 2, *Designated Representatives*. This Primary Contact Person shall be responsible for managing the Business Account's roles and responsibilities under this Agreement. A Secondary Contact Person shall also be designated in Attachment 2. The Lead Agency may communicate with and rely upon either the Primary or Secondary Contact Person on matters relating to this Agreement.

3.0 DEFINITIONS

- 3.1 *Business Account*. A Business Account can be an employer, educational or human services institution, government agency or other entity that purchases transportation products on behalf of a constituency to which they distribute cards and products. The Business Account purchases the ORCA Business Cards on which ORCA Products are loaded.

- 3.2 *Business Passport Program.* A Business Passport provides an ORCA unlimited right-to-ride product, usable on the regularly scheduled transportation service of the Participating Transportation Agencies, to all employees within an organization. The Business Passport program includes two options: per-trip pricing and flat-rate pricing. Per-trip pricing provides a regional pass that covers the full fare of all regularly scheduled transportation services. With flat-rate pricing, each Participating Transportation Agency sets its own price based on the previous year's ridership data.
- 3.3 *Business Choice Program.* Business Choice is a flexible program in which a Business Account can purchase a variety of ORCA Products to supplement the ORCA Business Passport Product. Additional products can be purchased for some or all employees.
- 3.4 *Lead Agency.* The ORCA Agency that entered into this Agreement on behalf of itself and the other designated Participating Agencies and that is responsible for contract management and support, including invoicing, contract modifications and renewals, and ORCA system support.
- 3.5 *ORCA.* The system that enables use of a common fare card (One Regional Card for All) on the public transportation services provided by any of the ORCA Agencies. The Participating Agencies will require additional payment if the ORCA Product on the presented ORCA Business Card is insufficient to cover the fare for the trip being provided.
- 3.6 *ORCA Agencies.* ORCA Agencies include the following public transportation agencies. Those agencies participating in this Agreement are listed on Attachment 1.
- a. The Snohomish County Public Transportation Benefit Area ("Community Transit")
 - b. The City of Everett ("Everett Transit")
 - c. King County Department of Transportation, Metro Transit Division ("King County")
 - d. The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
 - e. The Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")
 - f. The Central Puget Sound Regional Transit Authority ("Sound Transit")
 - g. The State of Washington acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")
- 3.7 *ORCA Business Card (or "Business Card").* An ORCA fare card that can be used to ride train, bus and ferry service provided by, and in accordance with the terms established by, the ORCA Agencies. The Participating Transportation Agencies will accept ORCA Business Cards presented to an ORCA system device, and accepted as valid, for all or a portion of a required fare on the regular transportation services of the Participating Agencies. The Participating Agencies will require additional payment if the ORCA Product on the presented ORCA Business Card is insufficient to cover the fare for the trip being provided. An ORCA Business Card may be accepted as full or partial fare payment on Participating Agencies' vanpool services if included in this Agreement.
- 3.8 *ORCA Business Cardholder.* An individual to whom the Business Account has distributed an ORCA Business Card. Eligible Business Cardholders are defined in Attachment 3 of this Agreement.
- 3.9 *ORCA Products.* Any transit fare payment mechanism or electronic voucher offered for sale within the ORCA system by any of the Transportation Agencies. Examples include, but are not limited to, monthly or period pass, e-purse, and electronic voucher.
- 3.10 *ORCA Services.* The equipment, systems, facilities, ORCA Business Cards, ORCA Products, ORCA Websites, data, information, and any services related to the regional fare coordination and payment program implemented by the Agencies using smart cards as the common media for fare payment on their public transportation services.

- 3.11 *Participating Agency(ies)*. The public transportation agencies participating in this Agreement as designated above.
- 3.12 *Parties*. The Business Account and the Participating Agencies (which include the Lead Agency) may be collectively referred to as "Parties."
- 4.0 ORCA BUSINESS CARDS AND ORCA PRODUCTS PAYMENT TERMS**
- 4.1 The ORCA Business Cards and ORCA Products that are purchased by the Business Account under this Agreement are specified in Attachment 1, *Products, Pricing and Terms*, which is incorporated in this Agreement by this reference.
- 4.2 Any optional products or services provided by an individual Participating Agency that are purchased by the Business Account shall be described, and the applicable terms specified, in Attachment 1, *Products, Pricing and Terms*, which is incorporated in this Agreement by this reference.
- 4.3 This Agreement is subject to the adopted fare structures by all Participating Agencies at the time of its execution. The prices and payment terms applicable to this Agreement are specified in Attachment 1, *Products, Pricing and Terms*, which is incorporated in this Agreement by this reference. Such terms shall include: (a) the amounts due for any products, services and fees; (b) the timing of payments, and (c) the acceptable method of payment. Each order for ORCA Business Cards and/or ORCA Products submitted by the Business Account will be subject to the provisions of this Agreement and the prices in effect at the time of the order. The Business Account is responsible for reviewing the prices in effect before submitting each order and shall be deemed to have agreed to the then-applicable prices by submitting the order.
- 4.4 In the event of a generally applicable fare increase by any of the Participating Agencies, the Agencies price for Business Passport and Business Choice will be increased, and the Business Account will be required to pay the additional amount owed for the remaining term of the agreement for which said increase is in effect. The Lead Agency will notify the Business Account of applicable fare increases and prices when they are adopted. A supplementary invoice will be provided by the Lead Agency prior to the expiration of this Agreement and shall be payable by the Business Account, unless the Parties agree to add the additional payment to payment due under a renewal agreement.
- 4.5 Payment in full is due as specified in Attachment 1. If for any reason payment in full is not received by the date due, the Lead Agency, without notice and until full payment is received, may: (a) refuse to process new orders for ORCA Business Cards; (b) block the loading of new ORCA Products on behalf of the Business Account; and (c) block the use of all ORCA Business Cards issued to the Business Account. The acceptable method of payment shall be determined by the Lead Agency and noted on Attachment 1.
- 4.6 If a payment is not honored due to non-sufficient funds (NSF) or if for any reason a payment is negated or reversed, the Lead Agency may:
- assess any late payment, NSF and collection fees to the maximum amount permitted by law;
 - block the Business Cards issued to the Business Account, rendering them ineffective for use by the cardholders, until such time as the Business Account pays the full amount due, including any late payment, NSF and collection fees, in a manner acceptable to the Lead Agency; and
 - suspend or terminate access rights to the Business Account's secured area of the website.
- 4.7 The Business Account will be permitted to order only those ORCA Products specified in Attachment 1. Any additional limitations will be defined on the Business Account's secure page of the ORCA website. The Business Account will follow directions provided on the

ORCA Business Accounts website for ordering ORCA Products and requesting they be loaded onto the Business Account's ORCA Business Cards.

- 4.8 In addition to any other obligations it may have under this Agreement and at law, the Business Account agrees to pay to the Lead Agency any court costs, reasonable attorney fees and/or collection fees incurred in collecting amounts due from the Business Account.

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

- 5.1 *Ordering ORCA Business Cards.* The Business Account shall order ORCA Business Cards via the ORCA Business Accounts website, in accordance with the directions provided on that website, and shall make payment as provided in Attachment 1. If additional cards are required, the Business Account shall be required to pay both the standard card fee and the transportation service fee, as detailed on Attachment 1, *Product, Pricing and Terms*.

- 5.2 *Receipt and Ownership of ORCA Business Cards.* Upon actual or constructive receipt of the ORCA Business Cards it has ordered, the Business Account shall become the owner of the ORCA Business Cards. The Business Account shall be deemed to have constructively received all ordered ORCA Business Cards unless it notifies the Lead Agency of any non-delivery or incorrect delivery within thirty (30) days after the order was placed. If the Business Account notifies the Lead Agency that it has not received the ordered cards, the Lead Agency will ship a replacement order. If the Business Account subsequently receives the cards reported as missing, the Business Account is responsible for returning them to the Lead Agency.

- 5.3 *Storage and Risk of Loss.* The Business Account is responsible for the storage, distribution and use of the ORCA Business Cards issued to it. The Business Account bears the sole risk of any loss, damage, theft or unauthorized use of one of its cards, whether such card was held in its inventory or had been distributed for use. The Business Account is responsible for the cost of any use of its Business Cards until the effective date of a "card block" that may be implemented by the Business Account as provided below.

- 5.4 *Distribution of ORCA Business Cards.* The Business Account is responsible for distributing its Business Cards for use by its eligible cardholders, as defined in Attachment 3, *Eligible Business Cardholders*, which is incorporated in this Agreement by this reference. The Business Account remains the owner of all Business Cards it distributes but recognizes that a cardholder may also purchase and load individual ORCA products on a Business Card. The Business Account shall require, as a condition of receiving a Business Card, that the Cardholder sign the written Cardholder Rules of Use, an example of which is attached herein as Attachment 4, and that must include:

- a. a prohibition on the sale or transfer of the Business Card;
- b. notice that the Cardholder is required to pay any difference between a required fare and the value of the fare product loaded onto the Business Card;
- c. notice that any ORCA Products purchased by the Cardholder with his/her own funds and loaded on the Business Card, including but not limited to the e-purse, will become the property of the Business Account and any subsequent refund to the Cardholder would be the responsibility of the Business Account in accordance with its own refund policy. Individuals are encouraged to purchase an individual card if they have concerns about refund policies.
- d. notice that the ORCA System will record data each time the cardholder presents a Business Card to an ORCA device to prove fare payment, to load a product on it, or to review the amount and type of product on it. Such data will include, but not be limited to, the date, time and route or other location related to the card being presented. Such data is owned by the ORCA Agencies but accessible to the ORCA System contractor(s) that operate it, the Business Account, and the ORCA Agencies. The Business Account understands and agrees that it is solely responsible for implementation and enforcement of the Cardholder Rules of Use.

- 5.5 *Business Account Access to Personal Data.* If an individual Cardholder opts to register one of the Business Cards issued to the Business Account, any personally identifying information provided to the ORCA System will not be accessible by the Business Account. If the Business Account collects any personally identifying information about individuals to whom it has distributed Business Cards, the Business Account is solely responsible for its collection, use, storage and disclosure of such information.
- 5.6 *Blocking Use of, and Replacing, ORCA Business Cards.* In the event a Business Card is determined to be lost or stolen or if a cardholder is determined by the Business Account to be no longer eligible to use the card, the Business Account may block the further use of the subject card by using the blocking function available on the Business Account website. The Business Account is responsible for ordering and paying for any new cards, as provided in Section 5.1, if needed to replace any cards that have been damaged, lost or stolen. An e-purse on a blocked card will be restored on the replacement card in approximately ten (10) days. The e-purse amount restored will be that which remained on the lost or stolen card at the time the block took effect. The ORCA Agencies are not responsible for any use of the e-purse prior to the card block taking effect.
- 5.7 *Agency Blocking or Confiscation of Business Cards.* The Lead Agency may block any of the Business Account's Business Cards or ORCA Products at the request of the Business Account or at the sole discretion of the Lead Agency if: (a) a payment is not honored due to non-sufficient funds (NSF) or if for any reason a payment is negated or reversed; or (b) it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder. The Lead Agency or any ORCA Agency may, but is not required, to confiscate a Business Card and/or block any of the Business Account's Business Cards or ORCA Products, at the request of the Business Account or at the discretion of the Lead Agency, if it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder, as defined in Attachment 3. The Business Account is responsible for ordering and paying for any new cards, as provided in Section 5.1, if needed to replace any cards that have been damaged, lost or stolen. An e-purse on a blocked card will be restored on the replacement card in approximately ten (10) days. The e-purse amount restored will be that which remained on the lost or stolen card at the time the block took effect. The Business Account, not the ORCA Agencies, is responsible for the cost of any use of its Business Cards, until the card block takes effect.
- 5.8 *Card Replacement.* The Business Account is responsible for ordering and paying for any new cards needed to replace Business Cards that for any reason cease to be available or suitable for use by the Cardholders under the program of the Business Account, including but not limited to, if the unavailability or unsuitability is caused by damage, abuse, loss, theft and end of useful life. Provided, however, if a Business Card malfunctions within twelve (12) months after it was delivered to the Business Account, it shall be replaced by the Lead Agency without additional charge to the Business Account if the malfunction was caused by a defect in design, material or workmanship and was not caused by misuse, an intentional act, negligence or damage, reasonable wear and tear excepted. The Business Account understands and agrees that to avoid the disruption and inconvenience caused by sporadic failures as its cards are used, it must plan for replacement of its Business Cards on a regular basis. As a condition of continuing under the Business Passport Program, the Business Account agrees that: (a) it will retire all of its ORCA Business Cards at some time within four years after they are issued by the Lead Agency to the Business Account; and (b) purchase replacement Business Cards at the then-applicable rate.

6.0 CARDHOLDER USE OF BUSINESS ACCOUNT ORCA CARDS

- 6.1 *Cardholder Privileges.* The Business Account understands and agrees that, although it remains the owner of ORCA Business Cards after distribution, the Cardholder has the following privileges in connection with the use of an ORCA Business Card.

- a. The Cardholder may present an ORCA Business Card, loaded with a valid, applicable Business Passport, Business Choice product, or other retail product, to an

ORCA fare transaction processor as proof of payment of all or a portion of a required fare on a regular transportation service operated by one or more of the ORCA Agencies. (Provided, however, a product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a cardholder will be required to make other payment to the extent a fare is not covered by an ORCA pass product.

- b. The Cardholder may individually purchase ORCA Products and load them on the Business Card in addition to the Business Passport product loaded by the Business Account. Individual ORCA Products may be used to pay all or a portion of a required fare on a transportation service not included in the Business Passport product. (Provided, however, a product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a cardholder will be required to make other payment to the extent a fare is not covered by the non-Passport ORCA Product.
- c. The Cardholder may register his/her name and other contact information with the ORCA System and link such personal information to the serial number of the Business Card provided to him/her. Such registration does not give the Cardholder any ownership rights in the card but does give the Cardholder the right to access the ORCA cardholder website to view the card's transaction history and current stored value, to modify travel zone preferences, and to add retail products.

7.0 NO RETURNS OR REFUNDS

The Business Account understands and agrees that its purchases of ORCA Business Cards, Business Passport Products and Business Choice Products loaded on such cards are final and it is not entitled to any refunds. Provided, however, the Business Account may request a refund of the e-purse value remaining on a Business Card if the card is surrendered by the Business Account to the Lead Agency. Upon surrender of the subject Business Card, the card shall be blocked and the refund processed approximately ten (10) days later to allow any pre-block transactions to clear. A processing fee of ten dollars (\$10) shall be payable by the Business Account to the Lead Agency for each such e-purse refund that is processed, regardless of e-purse value refunded. The Business Account, not the Lead Agency, is responsible for the refunding of such e-purse value, if any, to the individual Cardholder to whom the Business Card had been distributed.

8.0 BUSINESS ACCOUNT WEBSITE

- 8.1 The Business Account website is the primary means by which the Business Account shall purchase ORCA Business Cards, Business Passport and Business Choice Products, manage its Business Cards and obtain information about the use of said cards. As a condition of participation in the Business Passport Program, the Business Account agrees that it will use the Business Account website when it is available and that each access and use of said website shall be subject to the Terms of Use and Privacy Statement that are in effect and posted on the Business Account website at the time of such access and use.
- 8.2 The Business Account understands and agrees that uninterrupted access to and use of the Business Account website is not guaranteed and agrees that it will contact its representative at the Lead Agency by email or telephone if the website is not available.
- 8.3 The Business Account understands and agrees that it is responsible for complying with any security standards specified by the Lead Agency which include but are not limited to controls on issuing, managing and rescinding access rights and passwords to the secured website pages for the Business Account.

9.0 INFORMATION PROVIDED BY THE AGENCIES AND THE ORCA SYSTEM

- 9.1 The Business Account understands and agrees that the data, reports or any information provided to it by the Lead Agency or the other ORCA Agencies, via this website or otherwise, is and remains the sole property of the ORCA Agencies and nothing shall be construed as a

transfer or grant of any copyright or other property interest in such data, reports or information. The ORCA Agencies hereby grant to the Business Account a non-exclusive license to use any data, reports or information provided by the ORCA Agencies, via this website or otherwise, for any lawful purpose related to the administration of the transportation program of the Business Account.

- 9.2 The ORCA System will record data each time an ORCA Business Card is presented to an ORCA device for fare payment and to load a product. Such transaction data includes, but is not limited to, the date, time, and location (or route) of the transaction. The Business Account may routinely access such transaction data related to its Business Cards to the extent provided via the Business Account website. Said website and its reports do not provide the Business Account Business Card transaction data linked to card serial numbers. The Primary Contact Person of the Business Account may submit a written request to the Lead Agency for the card number linked to a specific transaction. The written request shall include the following:
- a. the date, time and other known details about the specific transaction for which a card serial number is being requested; and
 - b. the signature of the Primary Contact Person.

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

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

10.0 INDIVIDUAL USE OF BUSINESS CARD AFTER LEAVING A BUSINESS ACCOUNT

The Business Account may choose to allow employees to retain their Business Cards upon leaving the employ of the Business Account if individuals have loaded e-purse or other ORCA Products on the card at their own expense. If this option is selected, the Business Account is responsible for blocking the Business Passport Product and other ORCA Products for which the Business Account is fiscally responsible, using the product block function of the Business Account website.

11.0 OTHER ORCA PROGRAM ACTIVITIES

The Business Account and its participants may be asked and required to perform other activities associated with the ORCA program, such as but not limited to, participant surveys and evaluations. If the Lead Agency deems such activities are needed, then it will send notice at least thirty (30) days prior to the commencement of such activities to the Business Account's Primary Contact Person as identified in Attachment 2.

12.0 TERMINATION

- 12.1 The Lead Agency may at any time terminate the Agreement if the Business Account fails to make timely and effective payment of all amounts due, or otherwise breaches the Agreement, or acts in manner indicating that it intends to not comply, or is unable to comply,

with the Agreement. Such termination shall take effect immediately upon the Lead Agency sending email notice to the last known email address for the last known primary contact person of the Business Account. In the event of such a termination, the Lead Agency may immediately terminate the website access privileges of the Business Account, block the Business Cards issued to the Business Account and decline to accept and fulfill any pending or new orders from the Business Account.

12.2 Either the Business Account or the Lead Agency may terminate the Agreement without cause and for its own convenience by sending the other party written or email notice at least thirty (30) days in advance of the effective date of the termination. Upon receipt of a notice of termination for convenience from the Business Account, the Lead Agency may, in its sole discretion, waive the advance notice period and immediately terminate the website access privileges of the Business Account, block the Business Cards issued to the Business Account and decline to accept and fulfill any pending or new orders from the Business Account.

12.3 Notwithstanding any termination of the Agreement, the Business Account shall remain liable to satisfy and comply with all of its obligations under this Agreement and at law with regard to, or arising out of, any orders submitted or any of its acts or omissions occurring prior to the effective date of the termination, including but not limited to paying all amounts due or incurred prior to the effective date of the termination and any fees, charges, collection costs or other costs arising from a failure to make timely and effective payment.

13.0 NO WARRANTIES

The Business Account expressly understands and agrees as follows:

- a. The Lead Agency and each of the other ORCA Agencies make no warranties or other assurances of any nature regarding the ORCA Services, including the ORCA Business Cards, the Business Passport and Business Choice Products, the Business Account's access to and use of the ORCA websites, reports and other information or other things or service provided under the Agreement. All ORCA Services are provided on an "as is," "as available" and "with all faults" basis. Any use of ORCA Services, including but not limited to, any material downloaded or otherwise obtained through the use of the ORCA websites, is done at the Business Account's sole discretion and risk.
- b. To the extent permitted by law, the Lead Agency and each of the other ORCA Agencies disclaims all warranties and duties of every kind, express, implied or statutory, including but not limited to any implied warranties of merchantability or fitness for a particular purpose or created by trade usage, course of dealing or course of performance, any warranties of quiet enjoyment or non-infringement and any warranties of workmanlike effort or lack of negligence. By way of example and not limitation, the Lead Agency and each of the other ORCA Agencies disclaim any warranty and do not represent or warrant to the Business Account that:
 - (1) its use of any ORCA Services provided under this Agreement will meet its requirements;
 - (2) its use of the ORCA Services will be uninterrupted, timely, secure or free from error; and
 - (3) any information obtained by the Business Account as a result of the use of the ORCA Services will be accurate or reliable.

14.0 NOTICES

14.1 Any notice required to be given under the terms of this Agreement shall be directed either by email or regular mail to the Parties' Designated Representatives, as specified in Attachment 2.

14.2 The Business Account shall immediately notify the Lead Agency of any changes to its contact information and any other information provided in its application. An email sent by the Lead Agency shall be sufficient notice to the Named Business Account if sent to the last person and address provided by the Named Business Account.

15.0 FORCE MAJEURE

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

16.0 APPLICATION OF AGENCY FARES AND OTHER POLICIES

The purchase, distribution and use of Business Cards by the Business Account and its Cardholders, and access to and use of the ORCA websites, shall be subject to all applicable federal, state and local law, regulations, ordinances, codes and policies, including but not limited to the fares, transfer rules, code of conduct and other operating policies and procedures established by each of the ORCA Agencies for their transportation services.

17.0 PROHIBITED DISCRIMINATION

The Business Account shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the administration of its transportation program, the provision of ORCA Business Cards and ORCA Products or the performance of any acts under this Agreement. The Business Account shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

18.0 COMPLIANCE WITH APPLICABLE LAW

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

19.0 LEGAL RELATIONS

19.1 *No Partnership, Agency or Employment Relationship Formed.* The Business Account and the ORCA Agencies are independent parties and nothing in this Agreement shall be construed as creating any joint venture, partnership, agency or employment relationship between and among them or their respective employees. Without limiting the foregoing, the Business Account understands and agrees that none of its employees or agents shall be deemed employees or agent, for any purpose, of any of the ORCA Agencies and the Business Account is solely responsible for the acts of its agents and employees and their compensation, wages, withholdings and benefits.

19.2 *Limitation on Liability.*

- a. The Lead Agency and each ORCA Agency shall not be liable for, and the Business Account holds each harmless from, any loss or damage arising out of or resulting from:
 - (1) any reliance placed by the Business Account on the completeness, accuracy or existence of any information provided under this agreement;
 - (2) any changes which an ORCA Agency may make to the ORCA Services, or for any permanent or temporary cessation in the provision of the services (or any features within the services);

- (3) the deletion of, corruption of, or failure to store, any information transmitted to or generated by the Business Account's use of the ORCA Services or the use of said account's ORCA Business Cards;
 - (4) failure of the Business Account to provide the Lead Agency with accurate information; and
 - (5) failure by the Business Account to keep password or account details secure and confidential.
- b. The Lead Agency and each other ORCA Agency shall not be liable for, and the Business Account hereby holds each harmless from, any loss of use, loss of time, loss of profits, loss of privacy, loss of data, loss of goodwill, inconvenience, commercial loss, loss of anticipated savings, wasted management time or labor, or any special, consequential, general, indirect, incidental, or punitive damages or that are for failure to meet any duty (including without limitation any duty of lack of negligence or workmanlike effort), when such damages arise out of or are related to this Agreement or the ORCA Services, even if anyone in any of the ORCA Agencies has been advised of the possibility of such damages and even in the event of a tort (including negligence, strict or product liability) or violation of contract or policy.
 - c. If anyone in any of the ORCA Agencies breaches any duty or agreement relating to the ORCA Services, the exclusive, aggregate remedy against the Lead Agency and each other ORCA Agency will be, at the option of the ORCA Agencies: (a) correction, substitution or replacement of all or part of the ORCA Services giving rise to the breach, or (b) a refund of the amount paid by the Business Account for the ORCA Service causing the damage, which amount will not exceed the damages (other than those excluded above) actually incurred by the Business Account in reasonable reliance.
 - d. The damage exclusions and limitations on liability in the Agreement shall apply even if any remedy fails for its essential purpose.
- 19.3 *No Waiver.* The Business Account agrees that if the Lead Agency does not exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law, this will not be taken to be deemed to be a waiver or modification of the Lead Agency's rights and remedies and that those rights or remedies will still be available to Lead Agency.
- 19.4 *Governing Law and Forum.* This Agreement and all provisions hereof shall be interpreted and enforced in accordance with, and governed by, the applicable law of the State of Washington and of the United States of America without regard to its conflict of laws provisions. The exclusive jurisdiction and venue for conducting any legal actions arising under this Agreement shall reside in either the Federal District Court or the State of Washington Superior Court, as applicable, that is located in the county in which the Lead Agency's primary administrative office is located. The Business Account hereby consents to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions involving the ORCA Agencies in other forums.
- 19.5 *Attorneys' Fees and Costs.* In the event of litigation between the parties related to Sections 4, 13 and 19 of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and reasonable litigation expenses and costs.
- 19.6 *Survival.* Sections 4, 5, 9, 13 and 19 shall survive and remain effective notwithstanding any termination of this Agreement.
- 19.7 The Business Account understands and agrees that the "ORCA" name and logos are trademarked and that it will not copy or use them and any other trade names, trade marks, service marks, logos, domain names, and other distinctive features or intellectual property of the ORCA Agencies without written permission.

20.0 SUCCESSORS AND ASSIGNS

This Agreement and all terms, provisions, conditions and covenants hereof shall be binding upon the parties hereto and their respective successors and assigns; provided, however, the Business Account may not assign or delegate the duties performed under this Agreement without written agreement by the Lead Agency.

21.0 ENTIRE AGREEMENT AND WRITTEN AMENDMENTS

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

22.0 SEVERABILITY

In the event any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable or invalid then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of the Agreement which shall remain in full force and effect unless the provisions that are invalid and unenforceable substantially impair the value of the entire Agreement to any party.

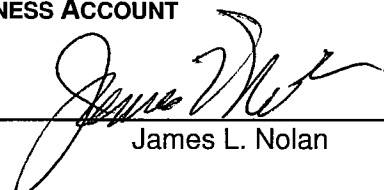
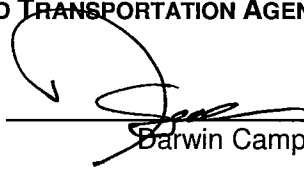
23.0 AUTHORITY TO EXECUTE

Each party to this Agreement represents and warrants that: (i) it has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein; and (ii) the person(s) executing this Agreement below on the party's behalf is/are duly authorized to do so and that the signatures of such person(s) is/are legally sufficient to bind the party hereunder.

24.0 COUNTERPARTS

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

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

BUSINESS ACCOUNT	LEAD TRANSPORTATION AGENCY
BY:  James L. Nolan	BY:  Darwin Campbell
Title: Interim Executive Director	Title: Manager, Customer Services
Business Name: Puget Sound Clean Air Agency	Agency: King County Metro Transit
Date: <u>3/9/10</u>	Date: <u>3-10-10</u>

Attachment 1
Business Passport Flat Rate - Products, Pricing and Terms

Customer Name: Puget Sound Clean Air Agency

Fed Tax ID#: 91-0823558

ORCA Business ID#:

Agreement Type: Passport-Transition

Program Term: May 1, 2010 - April 30, 2011

Business Passport Flat Rate Products and Pricing

• Access to regular bus services on Community Transit, Everett Transit, Kitsap Transit, Metro Transit, Pierce Transit, and Sound Transit. • Access to regular Sound Transit Link light rail service. • Access to regular Sound Transit Sounder commuter rail service. • 100% vanpool fare subsidy on Community Transit, Kitsap Transit, Metro Transit, and Pierce Transit vanpool vans. • 100% vanshare fare subsidy on Metro Transit vanshare vans. • Access to Seattle Streetcar. • Access to King County Water Taxi (Vashon and West Seattle Passenger-only ferry) • Emergency guaranteed ride home service. (Up to eight rides per employee.) • Initial supply of ORCA cards for all employees				
Passport Area	Employees	Annual Rate per Employee	Cost	Mo Rate for Add'l Eligible Employee
BELLTOWN - 1904 Third Avenue Seattle, WA 98101	68	\$486.02	\$33,049.36	\$39.16
Total	68		\$33,049.36	

Business Passport Flat Rate Payment Terms

• Net 60 days from start of program term • By invoice - do not send with contract
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Additional Information

Number of ORCA Cards initially delivered (Note: Up to 5 additional cards or up to 10% of the number of eligible employees with a maximum of 50 additional cards maybe provided at the current card fee.)	=	75
Amount of Eligible Employee contribution (Note: employees may contribute up to 50% of the Annual Rate per Employee)	=	\$0

Business Choice Products

Business Choice products are purchased at prevailing retail rates as specified on the Business Accounts website. Payment terms: Prepay
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**ATTACHMENT 2
DESIGNATED REPRESENTATIVES**

	BUSINESS ACCOUNT - Primary	LEAD AGENCY - Primary
Name	Maryann G. Renzi	Dave Hollar
Title	Director - Finance, Tech. and Development	Employer Transportation Representative
Address	1904 Third Avenue Suite 105	King County Metro Transit
	Seattle, WA 98101	YES-TR-0650, 400 Yesler Way
		Seattle, WA 98104
Telephone	206-689-4041	206-263-3492
Cell Phone		
Fax	206-689-4039	206-684-2058
E-Mail	maryannr@pscleanair.org	dave.hollar@kingcounty.gov
	BUSINESS ACCOUNT - Secondary	LEAD AGENCY - Secondary
Name	James L. Nolan	
Title	Interim Executive Director	King County Lead Agency Representative
Address	1904 Third Avenue Suite 105	201 S. Jackson St. KSC-TR-0412
	Seattle, WA 98101	Seattle, WA 98104
Telephone	206-489-4053	206-263-3444
Cell Phone		
Fax	206-689-4039	
E-Mail		business.leadagent@kingcounty.gov

**ATTACHMENT 3
ELIGIBLE BUSINESS CARDHOLDERS**

Definition and Number of Eligible Participants

Definition of Eligible Participants	All benefit-eligible employees
Number of Eligible Participants	68

ATTACHMENT 4
SAMPLE – ORCA BUSINESS CARDHOLDER RULES OF USE

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

1. I will use my ORCA Business Card for my own transportation only. I will not transfer my ORCA Business Card to any other person. I understand that my ORCA Business Card and any products will be blocked from further use if I misuse this benefit.
2. I will keep my ORCA Business Card secure and in good condition. I will immediately report a lost, stolen, or damaged ORCA Business Card to my company Transportation Coordinator. I understand a lost ORCA Business Card will be replaced only once per year at a charge of \$5.00. A defective ORCA Business Card will be replaced free of charge.
3. I will return my ORCA Business Card upon request or when I leave my employment with this company. If I do not return my ORCA Business Card, I understand that it may be blocked for further use on transportation services provided me by my employer.
4. I understand that the ORCA Business Card is valid for the following services provided by my employer:
 - A. 100% of transit fares on regularly scheduled transportation service on King County Metro Transit, Community Transit, Everett Transit, Kitsap Transit, Pierce Transit, and Sound Transit
 - B. Up to 100% subsidy for vanpool fares on participating transit agencies.
 - C. Up to 100% subsidy for vanshare/vanlink fares on participating transit agencies.
 - D. I understand that the ORCA Business Card products are not valid fare payment for services on any non-participating ORCA agencies and that I am responsible for gaining that information from my employer prior to card usage.
5. I understand that I am responsible to pay additional fares required for services not covered, or not fully covered, by my employer provided benefits.
6. I understand that any additional ORCA Products I load onto my ORCA Business Card become the property of my employer, and any refund of such products will be made by my employer according to its refund policy.
7. I understand the ORCA system will record data each time I use my ORCA Business Card. Data will include the date, time and location of the card when it is presented. I understand this data is owned by the ORCA Agencies and is accessible to my employer.

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

Employee's Signature

Date

Employee's Printed Name

ORCA Card Serial #

Transportation Coordinator Use Only – ORCA Card returned:

Employee's Signature

Date

ORCA Card Serial #

Attachment 5 - Exhibit - Home Free Guarantee Program

Home Free Guarantee (hereinafter, "HFG") is a King County program that guarantees payment for taxi fares incurred by Eligible Employees who meet the eligible criteria, as set forth below, and taken in accordance with the terms set forth below. HFG is the emergency guaranteed ride home service mentioned in Attachment 1 of the ORCA Business Passport Agreement.

1 DEFINITIONS

1.1 Approved Commute Modes

Eligible Employees must have commuted from their principal residence, transit center, or park & ride lot to the Business Account's worksite by one of the following modes: bus, train, carpool, vanpool, walk-on or bicycle-on ferry, bicycle, or walk.

1.2 Eligible Reasons For Using HFG

The following are the only eligible reasons for using HFG:

- a. Eligible Employee's or family member's unexpected illness or emergency.
- b. Unexpected schedule change such that the normal commute mode is not available for the return commute to the starting place of their commute. Unexpected means the employee learns of the schedule change that day.
- c. Missing the employee's normal return commute to the starting place of their commute for reasons, other than weather or acts of nature which are beyond the employee's control, and of which they had no prior knowledge. For example, the employee's carpool driver left work or worked late unexpectedly.

1.3 Non-Eligible Reasons For Using HFG

Reasons which are not eligible for HFG use include, but are not limited to, the following:

- a. Pre-scheduled medical or other appointments.
- b. To transport individuals who have incurred injury or illness related to their occupation. An HFG ride should NEVER be used where an ambulance is appropriate, nor should an HFG ride replace Business Account's legal responsibility under workers' compensation laws and regulations.
- c. Other situations where, in the opinion of the Business Account's Program Coordinator, alternate transportation could have been arranged ahead of time.

1.4 Eligible Destinations For An HFG Ride

- a. From the Business Account's worksite to the Eligible Employee's principal place of residence.
- b. From the Business Account's worksite to the Eligible Employee's personal vehicle, e.g. vehicle located at a transit center or park & ride lot.
- c. From the Business Account's worksite to the Eligible Employee's usual commute ferry terminal on the east side of Puget Sound.

1.5 Intermediate Stops

Intermediate stops are permitted only if they are of an emergency nature and are requested in advance by the Eligible Employee and are authorized in advance of the HFG ride by the Business Account's Program Coordinator (i.e. pick up a necessary prescription at a pharmacy; pick up a sick child at school).

2 BUSINESS ACCOUNT RESPONSIBILITIES

2.1 HFG Program Payment

Business Account's payment for HFG services is accounted for in the base price of the ORCA Business Passport Agreement, as indicated in Attachment 1.

2.2 Program Coordinator

Business Account shall designate as many Program Coordinators as necessary to administer and perform the necessary HFG program tasks as set forth in this Attachment.

2.3 Number Of HFG Rides Per Eligible Employee

Business Account shall ensure that each Eligible Employee does not exceed eight (8) HFG rides per twelve (12) month period.

Attachment 5 - Exhibit - Home Free Guarantee Program (continued)

3 HFG Program Tasks

3.1 Process

To access HFG rides, Eligible Employees shall contact the Program Coordinator. The Program Coordinator shall call directly an answering service provider, contracted for by King County. The phone number shall be supplied to Business Account by King County. Business Account agrees to make information about how to access HFG rides available to all Eligible Employees. Program Coordinator shall obtain the following information from the Eligible Employee, and provide the information to the answering service provider:

- a. Verify the Eligible Employee has commuted to the worksite by an eligible mode.
- b. Verify the Eligible Employee has an eligible reason and eligible destination for an HFG ride.
- c. Ensure the Eligible Employee has valid identification to show the taxi driver.
- d. Once an Eligible Employee takes the emergency taxi ride, obtain from the Eligible Employee a receipt of the taxi trip.
- e. Business Account's Program Coordinator shall forward copies of such receipts to King County at the end of each month for record keeping and accounting purposes.
- f. The answering service provider will arrange taxi rides for the Eligible Employee.

4 KING COUNTY RESPONSIBILITIES

4.1 Participating Taxi Business Account(s)

Business Account agrees that neither King County nor answering service provider is responsible for providing transportation services under the HFG program. Business Account further agrees that King County makes no guarantee or warranty as to the availability, quality or reliability of taxi service, and that King County's sole obligation under the program is to make payment of the taxi provider for trips actually taken in accordance with the terms of this Agreement. Business Account agrees it shall make no claims of any kind or bring any suits of any kind against King County for damages or injuries of any kind arising out of or in any way related to the HFG program. Without limiting the foregoing and by way of example only, the Business Account agrees that King County shall not be liable for any injuries or damages caused by negligence or intentional acts occurring before, during or after a taxi ride or for any injuries or damages caused by failure of a taxi to provide a ride due to negligence, intentional acts or causes beyond the taxi's control, including but not limited to incidence of fire, flood, snow, earthquake or other acts of nature, riots, insurrection, accident, order of any court or civil authority, and strikes or other labor actions.

4.2 Payment Of Authorized HFG Taxi Fares

King County shall pay the metered fare amount of a Business Account's Program Coordinator-authorized HFG ride, as defined in the DEFINITIONS section above, for a one-way distance of up to sixty (60) miles. Business Account or Eligible Employee taking the HFG ride shall pay any fare for a one-way distance in excess of sixty (60) miles. King County shall not pay any taxi driver gratuity. Taxi driver gratuity will be at the sole discretion of Business Account or the Eligible Employee taking the HFG ride.

4.3 Reporting

King County shall keep a complete record of all authorized HFG ride requests and provide a copy of this record to Business Account's designated Contact Person if requested.

4.4 Program Abuse

King County reserves the right to investigate and recover costs from the Business Account of intentional abuse of the HFG program by Eligible Employees. Program abuse is defined as, but not limited to, taking trips for inappropriate reasons, unauthorized destinations and intermediate stops, and pre-scheduled appointments not defined in the DEFINITIONS section above.



Puget Sound Clean Air Agency
1904 3rd Ave., Ste 105
Seattle, WA 98101

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐

I am unable to certify to the above statements. My explanation is attached