

MEMORANDUM

TO: Satpal Sidhu, Whatcom County Executive
FROM: Karen Thomas, Chief Deputy Treasurer
RE: WTA Contract for Investment Services with WCIP
DATE: August 15, 2023

Attached, please find for your review and signature the agreement between the WTA and the County formalizing the WTA utilizing the County's investment services and investment pool (WCIP).

▪ **Background and Purpose**

The WTA has utilized the Whatcom County Investment Pool (WCIP) since the 1990's. This is an updated agreement effective for 2023-24.

▪ **Funding Amount and Source**

As a WCIP pool participant, the WTA will be charged fees for services per this agreement as well as the WCIP Operating Terms and Conditions and the WCIP Pool Participant Agreement.

▪ **Differences from Previous Contract**

No material changes. The WTA approved this agreement at its March 2, 2023 board meeting.

Please contact me at extension 5176, if you have any questions or concerns regarding the terms of this agreement.

Encl.

CONTRACT FOR INVESTMENT SERVICES IN THE WHATCOM COUNTY INVESTMENT POOL (WCIP)

THIS CONTRACT FOR INVESTMENT SERVICES IN THE WHATCOM COUNTY INVESTMENT POOL (“Agreement”) is made and entered into in Whatcom County, Washington, between Whatcom County (“County”), and Whatcom Transportation Authority (“WTA”), based upon the following:

WHEREAS, the County has authority to accept funds from other municipalities which are not required for immediate expenditure, and to invest such funds under the parameters set out under RCW 36.29.020;

WHEREAS, as part of this service, the County has accepted and combined funds from other municipalities and created the Whatcom County Investment Pool (“WCIP”) for the purposes of making investments as allowed under RCW 36.29.022;

WHEREAS, the County and W T A desire to enter into an agreement under which WTA will be able to designate those funds held by the County as not being required for immediate expenditure and for the County to perform certain investment services and/or tasks in relationship to such funds as set forth below, which require specialized skills and other supportive capabilities of the County; and

WHEREAS, the County represents and warrants that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

Scope of Services

The County agrees to accept for investment a specific amount of funds W T A has determined is not required for immediate expenditure. The County shall combine the funds in the WCIP. The County Investment Officer, or other individual duly authorized by the County Treasurer, shall have sole authority and responsibility for determining and executing the specific investments for the W C I P , consistent with state law, including, but not limited to RCW Chapter 36.29; reasonable and prudent investment management practices recognized in the industry; and the investment policies adopted by the W h a t c o m County Administrative Finance Committee.

The County shall be responsible for management of the WCIP, including establishing the policies for the WCIP, calculating interest earnings, allocating earnings and any realized losses among all participants in the WCIP, and determining and collecting WCIP fees.

The Whatcom County Administrative Finance committee shall adopt and, at a public meeting, may periodically amend the policies governing the WCIP. Copies of the current adopted policies are available on the Whatcom County Treasurer's website, and upon request. These policies, including the WCIP Investment Policy, WCIP Operating Terms and Conditions and the WCIP Pool Participant agreement, detail interest earnings distribution, fees and reporting.

Fees and Consideration for County

The County shall be entitled to collect fees for its services to WTA from earnings of the WCIP as allowed under RCW 36.29.020 and RCW 36.29.024, and pursuant to the procedures and protocol set out in the WCIP Operating Terms and Conditions and the WCIP Pool Participant agreement, which are incorporated herein by reference.

Term

Unless earlier terminated under the procedures set out in the WCIP Operating Terms and Conditions, services performed under this Agreement shall begin on January 1, 2023, and shall continue through December 31, 2024 (the "Term"). The Term may be extended by mutual agreement of both parties; provided, however, that such extension is confirmed in writing and signed by both parties.

Administration

This Agreement shall be administered for the County by Steven Oliver, Whatcom County Treasurer, and for WTA by Shonda Shipman, Director of Finance.

Indemnification

The County shall defend, indemnify and hold WTA, its officers, employees and agents harmless from any and all injury or damage to WTA or its real or personal property, and also from all claims, demands, causes of action, judgment, or suits of any kind, including suits in equity, that may arise directly or indirectly out of, are incident to, or are due to any: (1) actual or alleged negligence, or breach of duty by the County, its agents, employees, representatives or contractors in performing work and services under this Agreement; (2) breach of any term of this Agreement; and (3) violation of state or federal law, including, but not limited to RCW Chapter 36.29.

WTA shall defend, indemnify and hold the County, its officers, employees and agents harmless from any and all injury or damage to the County, or its real or personal property, and also from all claims, demands, causes of action, judgment, or suits of any kind, including suits in equity, that may arise directly or indirectly out of, are incident to, or are due to any: (1) actual or alleged negligence, or breach of duty by WTA, its agents, employees, representatives or contractors in performing work and services under this Agreement; (2) breach of any term of this Agreement; and (3) violation of state or federal law.

Maintenance and Inspection of Records

WTA and the County shall maintain books, records and documents, which sufficiently and properly reflect all work related to the performance of the Agreement. In addition, the County shall maintain all accounting records in a form necessary to assure proper accounting of all funds deposited by WTA for investment in the WCIP, including, but not limited to, interest earned on such funds and fees paid pursuant to this Agreement. All of the above shall be subject at all reasonable times to inspection, review, or audit by WTA, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

WTA and the County shall retain all books, records, documents and other material relevant to this Agreement for four (4) years after its expiration. WTA agrees that the County or its designee shall have full access and right to examine any of said materials at all reasonable times during said period; and that WTA shall have similar access to said materials maintained by the County pursuant to this Agreement.

Closing a WCIP Account/Termination of this Agreement

The *WCIP Operating Terms and Conditions* will govern the process to close the investment account and thereby terminate this Agreement, and the procedure for disbursing WTA's funds from the WCIP.

Mediation

The parties shall attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation. Each party will pay its own attorneys' fees and costs, and equally share the expense of any mutually agreed upon mediator.

Arbitration

Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation, shall be resolved by final and binding arbitration pursuant to RCW Chapter 7.04A. Demand for arbitration shall be made in writing to the other party. The arbitration shall be held in Whatcom County, Washington before a single arbitrator selected by the agreement of the parties. If the parties cannot agree upon an arbitrator within fifteen (15) days after the demand for arbitration is made, the arbitrator shall be selected by a judge in the Superior Court of Whatcom County, Washington in accordance with the procedures set out in RCW 7.04A.110.

The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.

Each party shall pay its own costs of arbitration including attorneys' fees. The

arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

This Agreement shall be governed by laws of the state of Washington, both as to interpretation and performance.

Waiver

The waiver by, or the failure to take action with respect to, breach of any term, covenant or condition of the Agreement shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach. All remedies afforded in this Agreement shall be taken as cumulative; that is, in addition to every other remedy provided herein or by law.

Severability

It is understood and agreed by the parties that if any term or provision of this Agreement is held by any court to be illegal or in conflict with any law of the state of Washington, the validity of the remaining portions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, part or provision held to be invalid.

Entire Agreement

This instrument contains the entire Agreement between the parties, and statements, promises, or inducements made by any party or agent of that party that are not contained or referenced in this Agreement shall not be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by all parties.

Notice

Notice provided for in this Agreement shall be sent by certified mail to the following addresses designated for the parties:

Shonda L. Shipman, Director of Finance
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226

Steven N. Oliver, Treasurer
Whatcom County
311 Grand Ave Suite #104
Bellingham, WA 98225

Each signatory below to this Agreement warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 8/24/2023 day of August, 2023.

On behalf of WTA:

DocuSigned by:
Les Reardanz, WTA General Manager 8/23/2023
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Les Reardanz, WTA General Manager

WHATCOM COUNTY:

Recommended for Approval:

DocuSigned by:
Steven N. Oliver 8/24/2023
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Steven N. Oliver, Treasurer Date

Approved as to form:

Royce Buckingham per email 2/21/23

Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

DocuSigned by:
By: Satpal Singh Sidhu 8/24/2023
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Satpal Singh Sidhu, Whatcom County Executive