

CONTRACT No. 270

INTERLOCAL AGREEMENT CREATING THE
WASHINGTON STATE TRANSIT INSURANCE POOL

RECITALS

WHEREAS, Chapter 48.62 RCW grants local governmental entities, including Transit Systems, maximum flexibility to enter into agreements with each other to provide joint programs, which include programs of joint purchasing of insurance, joint self-insuring, and joint contracting for or hiring of personnel to provide risk management, claims handling, and administrative services; and

WHEREAS, Chapter 39.34 RCW permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local transit systems; and

WHEREAS, each of the member Transit Systems desires to join together with the other member Transit Systems for the purpose of pooling self-insured losses and jointly purchasing excess insurance and administrative services; and

WHEREAS, it appears economically feasible and practical for the member Transit Systems to do so;

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants and agreements contained herein, the member Transit Systems agree as follows:

Article 1

Definitions

The following definitions shall apply to the provisions of this Agreement:

(a) "Pool" shall mean the Washington State Transit Insurance Pool, a Washington Joint purchasing group created by the member Transit Systems.

(b) "Executive Committee" shall mean the Executive Committee of the Board of Directors of the Pool.

(c) "Board of Directors" shall mean the appointed members from each transit system.

(d) "Insurance" shall mean group liability self-insurance through a funded program and a commercial insurance contract. Liability insurance shall include coverage for claims arising from the negligent or other tortious conduct of the member Transit Systems, their officers, employees, or agents, or any error or omission on the part of the member Transit Systems, their officers, employees

(d) "Insurance" shall mean group liability self-insurance through a funded program and a commercial insurance contract. Liability insurance shall include coverage for claims arising from the negligent or other tortious conduct of the member Transit Systems, their officers, employees, or agents, or any error or omission on the part of the member Transit Systems, their officers, employees or agents, as a result of which a claim may be made against a member Transit System.

(e) "Excess Insurance" shall mean that insurance purchased on behalf of the Pool over and above the amount of claims to be satisfied directly from the Pool's resources.

(f) "Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Pool.

(g) "Governing Board" shall mean the governmental authority or legislative body empowered to act under the provisions of Title 35, Title 35A, Chapter 36.57, Chapter 36.57A R.C.W. or a charter adopted by any Transit System of the State of Washington.

(h) "Transit System" shall mean a transit system owned and operated by a public agency such as a City, a County, a County Transportation authority or a Public Transportation Benefit Area. Where a transit system is owned and operated by a city and is not governed by an entity other than a city council, then as used in this agreement the term "governing board" of that city owned and operated transit system shall mean the "city council" of that city, and the term "transit system" shall mean the "city".

Article 2

Purpose

This Agreement is entered into for the purpose of authorizing the creation of the Washington State Transit Insurance Pool, which shall be organized as a joint purchasing group under Chapter 48.62.RCW, to provide to member Transit Systems programs of joint self-insurance, joint purchasing of insurance and joint contracting for or hiring of personnel to provide risk management, claims handling, and administrative services.

Article 3

Parties to Agreement

Each party to this Agreement certifies that it intends to contract with all parties who are signatories of this Agreement on its effective date and with such other parties as may later be added to and become signatories to this Agreement. Each party also certifies that the cancellation or withdrawal of any party shall not affect this Agreement nor such party's intent to contract pursuant to the terms of this Agreement with the then remaining parties.

Article 4

Duration of Agreement

This Agreement shall become effective when signed by eight member Transit Systems. This Agreement shall have perpetual duration unless terminated as hereinafter provided.

Article 5

Membership Composition

Pool membership shall be limited to the several Transit Systems of the State of Washington and shall not include other local governmental entities. The Board of Directors of the Pool shall provide for the reasonable admission of new member Transit Systems. New members shall pay a reasonable share of the organizational expenses of the Pool and the costs necessary to analyze their loss data and determine their premiums, as determined by the Board of Directors.

Article 6

Nature of Pool

(a) Nature. The Pool shall be a joint purchasing group made up of member Transit Systems. All income and assets of the Pool, including surplus funds, shall be at all times dedicated to the exclusive benefit of its members.

Article 7

Powers of Pool

The Pool shall have the powers and functions to do the following:

- a. All the powers common to Member Transit Systems to implement the terms of this Agreement and to do all acts necessary for the exercise of such common powers, including but not limited to, any and all of the following:
 1. To make and enter contracts;
 2. To incur debts, liabilities or obligations;
 3. To sue and be sued in its own names; and
 4. To exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by the By-Law.
- b. Power to contract or otherwise provide for risk management and loss control services.
- c. Power to contract or otherwise provide legal counsel for the defense of claims and/or other legal services;
- d. Power to consult with the Washington State Insurance Commissioner and State Office of Risk Management.
- e. Power to jointly purchase insurance coverage in such form and amount as the Board of Directors may determine;
- f. Power to establish a non-profit corporation if such organization is determined to be in the best interest of the Pool by the Board; and

- g. Power to exercise any other powers and perform all other functions reasonably necessary to carry out the purposes of Chapter 48.62 RCW.

Article 8

Organization

(a) Board of Directors. The Pool shall be governed by a Board of Directors ("Board") which shall be composed of one Director from each member Transit System. Directors and Alternate Directors shall be officers or employees of member Transit Systems, and shall be appointed by and serve at the pleasure of the Governing Boards of member Transit Systems. Alternate Directors shall have the same authority to attend, participate in, and vote at any meeting of the Board or a Committee as that member Transit System's Director when such Director is absent from the meeting. Each Director or Alternate Director shall have one vote. Proxy votes from Directors and Alternates not in attendance at a meeting shall not be permitted.

(b) Officers. The Board shall elect officers of the Pool.

(c) Meetings. The Board shall provide for regular meetings and shall be subject to the Open Public Meetings Act, Chapter 42.30 RCW. Pursuant to RCW 48.62.110, the Board shall provide for private meetings to consider litigation and settlement of claims.

Article 9

Administrator

The Board shall engage an Executive Director, who shall be given general administrative responsibility for Pool activities including risk management, claims handling and administrative services.

Article 10

Pool Responsibilities

The Pool shall perform the following functions in discharging its responsibilities under this Agreement:

- (a) Provide for the management and operation of the Pool;
- (b) Provide for excess liability coverage for the member Transit Systems;
- (c) Establish deductibles and/or limits to any coverage that is provided;
- (d) Provide an annual report and audit of the operation of the Pool to the member Transit Systems, the State Risk Manager, and the State Insurance Commissioner;

(e) The Board shall establish and maintain such funds and accounts as may be required by generally accepted accounting practices, including but not limited to, a fund designated as the 'Operating Fund of Washington Transit Insurance Pool Joint Board'. Such funds may be established with any Member Transit System or a County Treasurer servicing such agency.

(f) The Board shall establish and maintain annual budgets for the operation of the Pool.

(g) The Board shall be authorized to make investments of the Pool funds as may be authorized by the applicable statutes and amendments thereof.

(h) Provide for other services as deemed necessary by the Board in order to carry out the purposes of this Agreement.

Article 11

Member Transit System Responsibilities

Member Transit Systems shall have the following responsibilities:

(a) The Governing Board of each member system shall appoint a Director and at least one Alternate Director to the Board;

(b) Each Transit System shall appoint an employee of the Transit System to be responsible for the risk management function within that Transit System, and to serve as a liaison between the Transit System and the Pool as to risk management;

(c) Each Transit System shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Pool concerning the development and implementation of a loss control policy to prevent unsafe practices;

(d) Each Transit System shall report all losses to the Pool to insure accuracy of the Pool's loss data base;

(e) Each Transit System shall pay its premium and any readjusted amount promptly to the Pool when due. After withdrawal or termination, each Transit System shall pay promptly to the Pool its share of any additional premium and accrued interest;

(f) Each Transit System promptly shall provide the Pool with such other information or assistance as may be necessary for the Pool to carry out its responsibilities under this Agreement; and

Article 12

Financing

(a) Initial Premiums. After the effective date of this Agreement, but prior to the effective date of joint self-insurance, the Board shall adopt fair and reasonable coverages, initial premiums, precise cost allocation plans and formulae, the pro forma financial statement of the Pool and the amounts and types of excess insurance to be procured. The effective date of joint self-insurance shall be determined by the Board.

(b) Subsequent Premiums. Premiums shall be fairly and reasonably adjusted as determined by the Board after considering actuary studies at the end of the first year of operation and annually thereafter.

(c) Premium Payments. Member Transit Systems shall pay their premiums promptly when due, and reasonable interest on overdue payments.

(d) Initial Premium The initial premium for each member transit system shall be determined by the Board in its discretion based upon a fair formula which may consider annual vehicle miles operated by the member transit system and annual passengers carried by the member transit system.

Article 13

Joint Self-Insurance

(a) Self-Insurance. The Pool shall provide joint self-insurance coverage for liability claims arising from the negligent or other tortious conduct of member Transit Systems, their officers, employees or agents, or any error or omission on the part of member Transit Systems, their officers, employees or agents. The Pool may obtain excess insurance or reinsurance or join in other risk sharing pools. Joint self-insurance coverage shall be subject to exclusions and limitations determined by the Board.

(b) Contingent Liabilities and Retroactive Assessments. Pursuant to RCW 48.62.060, each member Transit System shall have contingent liability for the liabilities of the Pool in the event the assets of the Pool are not sufficient to cover its liabilities. Deficits of the Pool shall be financed through fair and reasonable retroactive assessments levied against each member Transit System as determined by the Board. Retroactive assessments shall be added to the annual premiums.

(c) Liability Limitation

It is understood and agreed that in the event a liability obligation exceeds the limit of insurance coverage provided by the pool, such remaining obligation shall be the responsibility of the applicable member transit system and shall not be the responsibility of the pool nor any other pool transit system.

Article 14

Subrogation

In the event the Pool pays any claim on behalf of a member Transit System, the Pool shall be subrogated to the extent of such payment to all the rights of the member Transit System against any person or other entity legally responsible for damages arising under the claim. Member Transit Systems shall render all reasonable assistance, to effect recovery on the subrogated claim.

Article 15

Cancellation and Withdrawal

(a) Cancellation. A member Transit System's participation in this Agreement and the Pool may be canceled at any time by an affirmative vote of three-quarters of the entire Board. The effective date of cancellation shall be six months after the date of Board action. Until the effective date, the canceled member Transit System shall still benefit from the Pool's services.

(b) Withdrawal. No member Transit System may withdraw for thirty-six months after joining the Pool. After the initial thirty-six month period, a member Transit System may withdraw at the end of any Pool fiscal year. However, no member transit system may give notice to withdraw during the first 36 months of the pool. A member must give the Pool 12 months written notice of its intent to withdraw from the Pool. Any member who withdraws will not be allowed to rejoin the pool for a period of 36 months.

(c) Effect of Cancellation and Withdrawal. The cancellation or withdrawal of one or more member Transit Systems shall not terminate this Agreement. No withdrawing or canceled member Transit System shall be entitled to payment or return of any premium contributed to the Pool or to any distribution of assets. Any distribution of equity accounts will be established by the Board

of Directors provided such policies do not jeopardize the financial integrity of the pool.

(d) Unpaid Liabilities. The cancellation or withdrawal of a member Transit System shall not terminate its responsibility to contribute its share of premiums or assessments until all claims and other unpaid liabilities covering the period of its membership have been finally resolved and the Board has determined the final amount of payments due from the withdrawing or canceled member Transit System for the period of its membership.

Article 16

Termination

(a) Initial Period. This Agreement may be terminated any time during its first thirty-six months by the written consent of the Governing Boards of all member Transit Systems. After the first thirty-six months, this Agreement may be terminated by the written consent of the Governing Boards of three-fourths of the member Transit Systems. Upon termination, this Agreement and the Pool shall continue for the purpose of disposing of all claims, distribution of assets and all other functions necessary to wind up the affairs of the Pool.

(b) Distribution of Assets. Upon termination, assets of the Pool shall be distributed to terminating member Transit Systems proportionate to their equity account and premium payments made during the last thirty-six (36) months of the Pool. The Board shall distribute the assets to terminating member Transit Systems within six (6) months after the disposition of the last pending claim or loss covered by the Pool.

(c) Contingent Liabilities. Upon termination, the Board shall wind up and dissolve the business affairs of the Pool. The Board shall determine, and member Transit Systems shall pay, each Transit System's fair share of any additional premium amounts necessary for final disposition of all claims and losses covered by the Pool. A member Transit System's share of such additional premiums shall be determined in the same manner as that provided hereinabove for annual premiums, and shall be treated as if it were the next year's annual premium for that Transit System.

Article 17

Property of Pool

The Pool shall acquire, hold and dispose of real and personal property subject to the policies as established by the Board of Directors.

Article 18

Notices.

Notices to member Transit Systems shall be sufficient if mailed postage prepaid to the Governing Board of the respective member Transit Systems at such addresses as may be given in writing to the Pool.

Article 19

Amendments

This Agreement may be amended at any time by the written approval of the Governing Boards of all member Transit Systems.

Article 20

Prohibition Against Assignment

No Transit System may assign any right, claim or interest it may have under this Agreement. No creditor, assignee or third-party beneficiary of any Transit System shall have any right, claim or title to any part, share, interest, fund, premium or asset of the Pool.

Article 21

Enforcement

The Pool may enforce the terms of this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any present or previous member Transit System, the prevailing party shall receive such sums as the court may fix as reasonable attorneys' fees and costs in the action.

Article 22

Default

If any member Transit System fails to perform any term or condition of this Agreement and such failure continues for a period of sixty (60) days after the Pool has given the member Transit System written notice of such failure, the member Transit System shall be in default hereunder. Upon default, the Pool may immediately cancel the member Transit System's membership effective immediately without further notice, or exercise any remedies herein provided or otherwise provided by law. The rights and remedies of the Pool are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by law.

Article 23**No Waivers**

No waiver or forbearance of a breach of any covenant, term, or condition of this Agreement shall be construed to be a waiver or forbearance of any other or subsequent breach of the same or of any other covenant, term or condition, and the acceptance of any performance hereunder, or the payment of any sum of money after the same has become due or at a time when any other default exists hereunder, shall not constitute a waiver of the right to demand payment of all other sums owing or a waiver of any other default than or thereafter existing.

Article 24**Severability**

If any term or provision of this Agreement shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision in this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

Article 25**Time**

Time is of the essence in this Agreement and each and every provision hereof.

Article 26**Headings**

The Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the Articles and Sections they introduce.

Article 27**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

Article 28

Counterpart Copies

This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

Article 29

Agreement Complete

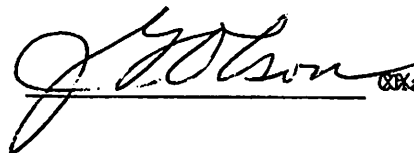
The foregoing constitutes the full and complete agreement of the parties. All oral understandings and agreements are set forth in writing herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by authorized officials thereof on the dates indicated.

INTERLOCAL AGREEMENT CREATING THE
WASHINGTON STATE TRANSIT INSURANCE POOL

Interlocal Agreement creating the Washington State Transit Insurance Pool approved this 8th day of December, 1988.

Ben Franklin TRANSIT SYSTEM


J. Johnson ~~Chairman~~ General Manager

By Approval of the Governing Board of

Ben Franklin Transit System

ACCEPTED BY THE POOL this
 day of , 1988.

By:
Executive Director