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**SUPREME COURT
OF THE STATE OF WASHINGTON**

CEDAR RIVER WATER AND SEWER DISTRICT;
and SOOS CREEK WATER AND SEWER DISTRICT,

Appellants,

vs.

KING COUNTY, *et al.*,

Respondent/Cross-Appellant.

**RESPONDENT AND CROSS-APPELLANT KING COUNTY'S
ANSWER TO *AMICUS* BRIEF OF THE
WASHINGTON STATE AUDITOR**

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I. INTRODUCTION

King County agrees with the State Auditor that the Agreements for Sewage Disposal (the “Contracts”) between the County and the Districts apply to all of the claims the Districts asserted in this lawsuit. In particular, the trial court properly held that the Contracts authorized the charges the Auditor addresses in its *amicus* – the credit enhancement and centralized cost allocation charges. Because the parties’ rights and obligations here are governed by express contracts and statutes, the *Okeson* cases, which were decided under principles of “implied” municipal government authority, are distinguishable and relevant only by analogy, if at all.¹

The Auditor, however, erroneously ignores the application of the “Local Government Accounting Act,” RCW 43.09.210 (“the Act”), to the County’s relationship to the Wastewater Treatment Division (“WTD”). That relationship is governed not by the Contracts but by application of the Act and other principles that require the County to receive value for

¹ See, e.g., *Okeson v. City of Seattle*, 150 Wn.2d 540, 78 P.3d 1279 (2003). The trial court recognized that the *Okeson* cases did not apply. For example, in analyzing the issue of Culver expenditures, the trial court explained:

The *Okeson* line of cases . . . does not apply to plaintiffs’ Culver Fund claims because King County has express statutory authority to include Culver Fund expenditures in the monetary requirements of the Metropolitan Sewerage System, and because the parties’ rights and obligations here are defined by the Contracts.

Findings of Fact & Conclusions of Law at 13-14, ¶ 51.

the services that it provides WTD. WTD is entitled under the Contracts, in turn, to include those expenses in the wastewater charges to the Districts.

The Auditor makes the surprising assertion that the Act does not require the County's general fund to charge a separate department (WTD) for services that the County renders to that department.² The Auditor's current position is contrary to the Act's express language, contradicts settled case law, and flies in the face of decades of Attorney General opinions. The Act states that

[a]ll service rendered by, or property transferred from, one department . . . to another, shall be paid for at its true and full value by the . . . public service industry receiving the same, and no . . . public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

RCW 43.09.210 (emphasis added). While government entities may exercise their discretion in determining what constitutes "true and full value," the statute nonetheless requires some fair consideration for services rendered or financial benefits received.

This is particularly true when, as here, the County's taxpayers, who contribute to the general fund, differ from WTD ratepayers, who

² See, e.g., Brief of Amicus Curiae Washington State Auditor Brian Sonntag ("Amicus Br.") at 12 ("[T]he State Auditor's interpretation of RCW 43.09.210 is that this statute *permits*, but does not *require*, the County to charge the Districts . . .").

received services and benefits from the County.³ The Attorney General has recognized that RCW 43.09.210 protects the interests of different constituencies: “When two governments negotiate, both represent the public interest in a broad sense, but they are responsible to different constituencies.” 1997 Wash. Att’y Gen. Op. No. 5 at 5 n.3. The trial court acknowledged that this same principle applies to the facts of this case. In analyzing the credit enhancement fee issue, the court explained:

The principles underlying [RCW 43.09.210] apply with particular force here, where the County’s taxpayers have conferred benefits and services on WTD and its ratepayers. Taxpayers are a different group from ratepayers, with different rights and obligations. When the County pledges its full faith and credit as security for LTGO bonds, it commits taxpayers to the costs and risks identified above. But it is WTD and the sewer ratepayers who benefit from the LTGO bonds, since bond proceeds are used to construct capital projects for the Metropolitan Sewerage System.⁴

Finally, the Auditor takes issue with the trial court’s factual findings relating to the County’s credit enhancement fee, arguing that higher interest rates resulting from the County’s guarantees of bonds issued on WTD’s behalf do not amount to a real “cost” to the County.⁵

³ WTD provides wastewater treatment services to ratepayers residing in Snohomish, Pierce, and King County. WTD does not provide wastewater treatment services to all taxpayers in King County, such as those on septic systems or served by treatment systems separate from WTD.

⁴ Findings of Fact & Conclusions of Law at 35-36, ¶ 155.

⁵ The purpose of the Auditor’s *amicus* is questionable because the Auditor is not a typical objective third-party *amicus*. The Auditor’s representative was a fact witness for the Districts at trial. See RP 21:1406-39. The trial court rejected the Auditor’s criticism of

The trial court made its Findings of Fact regarding costs to the County after hearing evidence during a six-week trial. The County presented substantial, un rebutted evidence of those costs,⁶ and the trial court's findings should not be disturbed. *McCleary v. State*, 173 Wn.2d 477, 514, 269 P.3d 227 (2012) (court will not “disturb findings of fact supported by substantial evidence even if there is conflicting evidence”).

II. ARGUMENT

A. The Contracts Authorize the County to Include Each of the Challenged Expenditures in the Sewage Disposal Rates.

As the trial court correctly found, the Contracts authorize the County to include the challenged expenditures in the sewage disposal rates the County charges to the Districts.⁷

The Contracts authorize the County to base the sewage disposal charge on WTD's “total monetary requirements,” including “the cost of administration, operation, maintenance, repair and replacement of the Metropolitan Sewerage System”⁸ The two claims on which the

the County at trial, which was the basis for the Districts' “Allocation Claims.” See Findings of Fact & Conclusions of Law at 27, ¶ 117.

⁶ Findings of Fact & Conclusions of Law at 34-35, ¶¶ 147-49, 151; RP 29:2614-2619, 2622-2623, 2679-2682.

⁷ See Findings of Fact & Conclusions of Law ¶¶ 41-42, 47, 49-50, 100-01, 133, 153, 158; RP 4:60-61, RP 5:48-49; see also RP 4:60-61, 5:48-49. The only expenditure that the trial court held improper under the Contracts was \$2 million for job retention mitigation required by Snohomish County in connection with relocating StockPot Soups. The County has cross-appealed that ruling.

⁸ Findings of Fact & Conclusions of Law at 4, ¶ 9; Tr. Ex. 3 at 7.

Auditor focuses – the allocation to WTD of a portion of the cost of centralized government services (“allocation claims”), and the County’s charge of a credit enhancement fee for guarantying limited tax general obligation (“LTGO”) bonds for WTD’s capital program (“credit enhancement fee claims”) – are costs of the Metropolitan Sewerage System.

Specifically, as the trial court held after a six-week trial at which 23 witnesses testified, the costs of “administration and operation” of the sewerage system include a share of centralized expenses allocated to WTD, for services which WTD would otherwise have had to procure itself.⁹ The trial court concluded:

The allocated costs at issue in this lawsuit are costs of “administration, operation [or] maintenance . . . of the Metropolitan Sewerage System” under Section 5 of the Contracts, properly included in the total monetary requirements of the Sewerage System and in the sewage disposal rates. The County did not violate Washington law or breach the Contracts in its allocations of centralized expenses to WTD.¹⁰

The trial court also held that the Contracts entitled the County to charge a credit enhancement fee for issuing LTGO bonds for WTD capital projects, including the Brightwater Treatment System.¹¹ The court found:

⁹ Findings of Fact & Conclusions of Law at 31, ¶ 133.

¹⁰ Findings of Fact & Conclusions of Law at 31, ¶ 133.

¹¹ Findings of Fact & Conclusions of Law at 32, 35-36, ¶¶ 137, 153, 158.

The Contracts authorize King County to recover the capital costs of the wastewater system (among other costs) in sewage disposal rates. The credit enhancement fee is a capital cost of the wastewater system included in “total monetary requirements for the disposal of sewage” under Section 5 of the Contracts.¹²

* * * *

The County did not violate Washington law or breach the Contracts in charging the credit enhancement fee.¹³

The Auditor’s view that the Contracts control this case’s outcome is consistent with the County’s position at the trial court and on appeal. Unlike the *Okeson* cases¹⁴ which analyzed *implied* municipal authority and the regulatory fee/tax dichotomy under *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995), the Contracts between the County and the Districts and the applicable statutes provide *express* authority for the challenged expenditures. The *Okeson* analytical framework is relevant by analogy only, if at all.

The Auditor cites *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 269 P.3d 1017 (2012), contending it establishes that where one government provides services to another that cannot be precisely valued, the Court should defer to the consideration the parties established in their contract. The County agrees with that general proposition as it

¹² Findings of Fact & Conclusions of Law at 35, ¶ 153.

¹³ Findings of Fact & Conclusions of Law at 36, ¶ 158.

¹⁴ See, e.g., *Okeson v. City of Seattle*, 150 Wn.2d 540, 551-54, 78 P.3d 1279 (2003); see also *Lane v. City of Lake Forest Park*, 164 Wn.2d 875, 882-84, 194 P.3d 977 (2008).

relates to the Districts.

The County's relationship with WTD, however, and its ability to charge WTD for certain central service expenses and credit enhancement services is governed by RCW 43.09.210 and generally accepted accounting principles, not the Contracts. Based on the Act and accounting principles, the County can charge WTD for those expenses and credit enhancement fees, which, in turn, are part of the "total monetary requirements" for purposes of calculating the wastewater fees under the Contracts with the Districts.

The Auditor, however, inaccurately describes *City of Tacoma* in asserting that it "rejected [the City's] argument that . . . RCW 43.09.210 required Tacoma to charge the municipalities for fire hydrants."¹⁵ This Court made no such holding. Rather, the Court recognized that the rights the City of Tacoma received under the franchise agreements were "enough to satisfy RCW 43.09.210." *Id.* at 592. While the Court concluded that the municipalities did not need to provide additional consideration to the City of Tacoma to comply with RCW 43.09.210, the Court did not hold – as the Auditor asserts – that RCW 43.09.210 is permissive rather than mandatory. Other cases and Attorney General opinions interpreting the Act also contradict the Auditor's current position. *See discussion infra.*

¹⁵ Amicus Br. at 9-10.

B. RCW 43.09.210 Requires WTD to Reimburse the General Fund for Services Rendered to WTD and Financial Benefits Received from the General Fund.

The Auditor incorrectly asserts that RCW 43.09.210 “permits but does not require” the County to charge WTD and its “water quality fund” for services rendered and expenses incurred by the County’s general fund on WTD’s behalf. The Act’s language is directly contrary. *See* RCW 43.09.210 (“shall be paid”).¹⁶

While it is correct that a local government has discretion to determine the amount of consideration due for services, that does not mean that the receiving department may pay nothing. *See* Amicus Br. at 1-2 (“local governments have some discretion regarding whether or how much to charge or pay for benefits and services that have an imprecise value”). There is no authority supporting the proposition that local governments may simply ignore the Act’s requirements. The fact that “true and full value” has a “flexible meaning” when applied, does not eliminate the requirement of “true and full value.”

The Act does not exempt a general fund from its requirements. Rather, the Legislature intended the statute to apply, as part of a “uniform system of public accounting,” to “every public account of the same class,”

¹⁶ Of course, even if RCW 43.09.210 were construed to make charges by the County to WTD discretionary and not mandatory, the Districts’ claims that the charges are prohibited would fail.

to all funds “expended for account of the public for any purpose whatever,” to “all sources of public income,” and “any and all details of the financial administration of public affairs.” *See, e.g.*, Laws of 1909, ch. 76, § 2 (emphasis added) (codified at RCW 43.09.200); *see also* 1959 Wash. Att’y Gen. Op. No. 22 at 3 (“This statute makes no distinction whatever between departments operating under separate funds, and departments operating under one municipal fund. It expressly prohibits the use for any department o[r] a fund or appropriation made for another.”)(emphasis added); 1976 Wash. Att’y Gen. Op. No. 16 at 3 n.1 (“[I]t is clear that the legislature intended that the various designated funds pay their own way such that expenditures which can be identified with a particular program should be charged to the fund created therefor.”). The mandate in RCW 43.09.210 applies with particular force in a case like the present where the utility’s ratepayers (represented by WTD) differ from the County’s taxpayers (represented by the general fund).¹⁷

The Auditor itself recognized the statutory requirement of “full value” when it sought an opinion from the Attorney General in 1997 on

¹⁷ The Auditor suggests that “some cities do not attempt to allocate the costs to their centralized services to city utility or special funds.” But the Auditor’s own accounting manual for local governments states to the contrary: “Typically, such [central] services are initially paid through the general fund or an internal service fund and charged back to the departments and programs that directly benefited from them.” *See* WASHINGTON STATE AUDITOR, BUDGETING, ACCOUNTING AND REPORTING SYSTEM (BARS): CITIES, COUNTIES AND SPECIAL PURPOSE DISTRICTS, ch. 12, at 39 (2012).

the following question (in the Auditor's wording):

Does the requirement in RCW 43.09.210 that a government entity receive full value for property transferred to another entity apply when surplus property is being disposed of pursuant to RCW 39.33.010?¹⁸

The Attorney General answered that question in the affirmative, foreclosing the Auditor's new position that RCW 43.09.210 "*permits*, but does not *require*, the County to charge the Districts [for services rendered]." The Attorney General reasoned that it would "frustrate" the "central purposes of RCW 43.09.210" if governments made "wholly gratuitous transfers of valuable property to one another . . ." ¹⁹ It explained:

RCW 43.09.210 provides a "background" or "default" rule that governments pay full value for transfers of property or services, except where the Legislature has otherwise provided. . . . Thus, a transfer of property for no consideration at all, and with no documentation that the parties addressed the issue of value in their negotiations, would not satisfy RCW 43.09.210.

1997 Wash. Att'y Gen. Op. No. 5 at 2-3 (emphasis added).²⁰

¹⁸ 1997 Wash. Att'y Gen. Op. No. 5 at 3 (emphasis added).

¹⁹ 1997 Wash. Att'y Gen. Op. No. 5 at 3 (emphasis added).

²⁰ The Auditor cites the 1997 opinion, but ignores the Attorney General's statement that governments may not make transfers "for no consideration at all . . ." Moreover, the Auditor's position cannot be reconciled with RCW 43.09.220, which requires local governments to maintain separate accounts for every public service industry which show "the true and entire cost of the ownership and operation thereof" and the "amount and character of the service rendered therefor." RCW 43.09.220; *see also* RCW 43.09.2851 (requiring amounts charged by one county fund to another fund within the same county to be repaid; no exception for general fund).

The Auditor relies on *Berglund v. Tacoma*, 70 Wn.2d 475, 478, 423 P.2d 922 (1967) and *State ex rel. Adams v. Irwin*, 74 Wash. 589, 593, 134 P. 484 (1913), in arguing that a general fund may make payments to city utilities or special funds without complying reimbursement.²¹ But neither case involved RCW 43.09.210 nor circumstances remotely similar to those presented here.

In *Berglund*, the City of Tacoma established a Local Improvement District (“LID”) as a means to extend a city-owned water system. 70 Wn.2d at 923. The City then created a guaranty fund to assure payment of LID warrants that was statutorily required to come from property taxes paid into the general fund. *Id.* at 477-78. Plaintiff landowners contested the LID’s constitutionality, claiming that the mandatory guaranty fund violated the “uniformity in taxation” provision of the state Constitution, as well as the constitutional prohibition on the loaning of money or credit in aid of private persons or associations. *Id.* at 478. The court rejected plaintiffs’ challenges:

[T]hese general tax moneys are not expended unconstitutionally for the benefit of persons and property

²¹ Amicus Br. at 13-14. Even if it is only discretionary with a government entity to determine what constitutes “full and fair value” for services, the County indisputably acted within its discretion in charging WTD for services that it rendered for WTD’s benefit. As the trial court correctly found, the County’s allocation of a portion of centralized government costs to WTD, and its credit enhancement fee, are consistent both with the Contracts and RCW 43.09.210. See Findings of Fact & Conclusions of Law at 31, 35, ¶¶ 133, 153, 158.

outside the corporate limits of the city because (1) the guaranty fund's liability is contingent and indirect, and (2) the city will own the extended water system. The city's general fund, via the guaranty fund, thus secures payment for the city's own water system.

Id. at 480 (emphasis added).

In contrast to *Berglund*, the County's taxpayers do not own the sewerage system, and WTD's ratepayers are not the same group as the County's taxpayers. Some King County taxpayers do not use WTD sewer services; they are on septic systems or separate systems. In contrast, some ratepayers reside in Pierce and Snohomish Counties, and do not pay King County taxes. And unlike *Berglund*, no statute authorizes the County to use general fund monies for a public utility.

While RCW 43.09.210 was not at issue in *Berglund*, here it requires payment to the County (*i.e.*, taxpayers) for services rendered to WTD (*i.e.*, ratepayers). If WTD did not reimburse the County's taxpayers for the services and benefits it receives from the general fund, ratepayers would receive an unconstitutional "gift" from taxpayers. Compare *Bellevue v. State*, 92 Wn.2d 717, 721, 600 P.2d 1268 (1979) (no unconstitutional gift when consideration provided in exchange) with *State ex rel. O'Connell v. Port of Seattle*, 65 Wn.2d 801, 805-06, 399 P.2d 623 (1965) (unconstitutional gift when no consideration provided in exchange).

The Auditor also relies on *State of Wash. v. Irwin*, 74 Wash. 589, but that case also is distinguishable. There, the Court held that the City of Vancouver could use general fund monies to purchase a cemetery, based on a statute that granted the city the power to use tax levies for that purpose. The Court concluded that “all lawful obligations of a municipality are payable from its general fund, unless the law specifically provides otherwise.” *Id.* at 593. Here, no statute authorizes the use of the general fund to benefit utility ratepayers (many of whom do not even live in King County), and RCW 43.09.210 is a law that “specifically provides otherwise.”

Washington courts on several occasions have held that RCW 43.09.210 requires a recipient of services or benefits to pay for the services rendered to it by a general fund.²² In *State of Wash. v. Grays Harbor County*, 98 Wn.2d 606, 609-10, 656 P.2d 1084 (1983), this Court held that RCW 43.09.210 requires the State to pay filing fees required by county auditors – an expense that the counties’ general funds otherwise would bear. In *Smith v. Spokane County*, 819 Wn. App. 340, 360, 948

²² Other decisions not referring to RCW 43.09.210 have acknowledged that a general fund is separate from and cannot be used to gratuitously support other enterprises. *See, e.g., Griffin v. City of Tacoma*, 49 Wash. 524, 529, 95 P. 1107 (1908) (the city “is under the legal obligation to see that the general fund is seasonably reimbursed from the source of supply to the special one”); *Uhler v. City of Olympia*, 87 Wash. 1, 12-14, 151 P. 117 (1915) (city did not have authority to use general funds in acquiring a waterworks enterprise; water plant “is a separate thing” and the city, “as a governmental entity, stands in the same relation to the system as a private citizen who is patronizing it . . .”).

P.2d 1301 (1997), the Court of Appeals, citing to RCW 43.09.210, concluded that “[t]he [Aquifer Protection Area] must pay for costs incurred by services performed by County departments in relation to the collection and administration of APA fees.” (emphasis added). More recently, this Court held in *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008), that the Act required the City of Lake Forest Park to reimburse the City of Seattle for the cost of fire hydrants, explaining:

[RCW 43.09.210] applies to services that one government body provides for another, including when one city provides another city with services. Since [Seattle Public Utilities] provided a service to Lake Forest Park, Lake Forest Park is liable for SPU’s cost. . . . Otherwise, resident taxpayers of the providing city would be paying for services to others.²³

These holdings are consistent with over 50 years of Attorney General opinions concluding that the statute’s requirement is mandatory and applicable to general funds.²⁴ For instance, in considering whether a county could donate money to a fire district to purchase an ambulance, the Attorney General explained:

RCW 43.09.210, expresses a legislative policy requiring separate accounts to be maintained of all appropriated funds, and expressly prohibits gratuitous transfers between

²³ *Id.* at 889 & n. 2 (emphasis added). In *Lane*, this Court held that the City of Seattle’s general fund should bear the expense of fire hydrants. Lake Forest Park’s reimbursement for the costs of fire hydrants inured to the benefit of the City of Seattle’s general fund.

²⁴ The Auditor summarily dismisses the Attorney General’s opinions and makes no effort to explain with any specificity why the Court should ignore these prior interpretations.

departments or funds of any taxing body. While that statute does not expressly prohibit transfers of funds between municipal corporations, its existence would render totally absurd any argument that general authority for such transfers could be found by implication.

1973 Wash. Att’y Gen. Op. No. 18 at 7 (emphasis added); 1961 Wash.

Att’y Gen. Op. No. 29 at 5 (“The appropriation of money . . . from the

general fund, which is not to be returned and is not a loan, is clearly

prohibited by the provisions of [RCW 43.09.210].”) (emphasis added).²⁵

C. This Court Should Defer to the Trial Court’s Factual Findings Regarding Costs to King County from the Guaranty of LTGO Bonds.

The Auditor, focusing on only one component of the County’s evidence regarding the “cost” of LTGO guarantees (higher interest rates), argues that the County’s credit enhancement fee was unwarranted.²⁶ The

²⁵ See also 1964 Wash. Att’y Gen. Op. No. 129 at 6 (“[O]nce the money is levied and collected into the county current expense fund under its budget, the money may not be diverted into the law library fund. RCW 43.09.210 *supra*.”) (emphasis added); 1974 Wash. Att’y Gen. Op. No. 21 at 10 (student body fund “required” to reimburse school district general fund monies; “[F]inanc[ing] interscholastic athletic activities from one fund, such as the general fund, while depositing the revenues generated by those activities under another fund . . . without reimbursing the former would be a violation of this statute . . .”) (emphasis added); 2006 Wash. Att’y Gen. Op. No. 11 at 3 (under RCW 43.09.210, town “must pay the true and full value” for services provided by county) (emphasis added); 1985 Wash. Att’y Gen. Op. No. 17 at 6 (town must pay county “true and full value” of police and sanitary services the county provides the town).

²⁶ The Auditor also misstates the record by describing the central services the County provided as having an “imprecise value” and implying that they are unquantifiable. The trial court found that the County had sufficient documentation to support the County’s central service allocations and that they accurately reflected the benefits of services received by WTD from the general fund. The County offered the documentation to the Auditor during County audits but the Auditor simply chose to ignore it. See Findings of Fact and Conclusions of Law at 27-28, ¶¶ 117, 122.

trial judge made factual findings to the contrary based on unrebutted evidence the County presented during trial.²⁷ These fact findings are supported by substantial evidence and should not be overturned. *McCleary* 173 Wn.2d at 514 (court will not “disturb findings of fact supported by substantial evidence even if there is conflicting evidence”).

The trial court also rejected – after the trial on the merits – the same contention the Auditor raises here about the credit enhancement fees being based merely on the “speculat[ion] about future events.” The trial court found that the County incurred actual costs from issuing LTGO bonds for WTD.²⁸ Based on the testimony of the County’s expert economist, Dr. Alan Hess, the trial court found that as the County’s total debt (leverage) increases, it pays a higher interest rate on subsequent issuances of LTGO bonds.²⁹ Dr. Hess identified other costs to the County in the form of reducing the County’s debt capacity and assuming the risk of a WTD default.³⁰ In fact, the unrebutted evidence was that the County’s costs exceed the fee the County charges WTD.³¹

²⁷ Findings of Fact & Conclusions of Law at 31-36, ¶¶ 135-59.

²⁸ Findings of Fact & Conclusions of Law at 34-35, ¶¶ 147-51.

²⁹ Findings of Fact & Conclusions of Law at 34, ¶ 147.

³⁰ Findings of Fact & Conclusions of Law at 34-35, ¶¶ 147-51, RP 29:2614-2619, 2622-2623.

³¹ RP 29:2624-25.

The Auditor's position that no "cost" can exist under RCW 43.09.210 unless it is "monetized," is inconsistent with this Court's recent opinion in *In re Bond Issuance of Greater Wenatchee Reg'l Events Ctr. Pub. Facilities Dist.*, 175 Wn.2d 788, 287 P.3d 567 (2012). The Auditor does not address that decision. There, this Court held that the City of Wenatchee incurred a "debt" by committing to loan money to a facilities district if the district could not meet its debt service payments in financing a regional events center. The Wenatchee commitment to loan City funds is directly analogous to the County's guaranty of LTGO bonds for WTD. This Court applied a "risk of loss approach" and rejected the assertion that the guarantor did not incur any "debt" simply because the guaranty had not yet been called upon. Similarly, the County incurs a "debt" by guarantying LTGO bonds issued on WTD's behalf. *See also* 2006 Wash. Att'y Gen. Op. No. 11 at 5 (County must consider "potential increase in [tort] liability" as a cost of services provided to town under RCW 43.09.210).

The Auditor's focus on actual monetary costs also is inappropriate in light of Act's language. The Act requires payment of true and full value for "services rendered" or whenever one department financially "benefits" another. The Act neither refers to nor is limited to actual monetized costs. Even if the County incurred no monetary costs in

guarantying LTGO bonds issued on WTD's behalf, the County undisputedly provides valuable services and financial benefits to WTD with a corresponding detriment to itself. As the trial court found, the County provides services and financial benefits identical to those WTD previously received through monoline insurance for which WTD paid.³²

D. Even Under the Auditor's Interpretation of RCW 43.09.210, the Trial Court Erred in Preventing the County From Applying its Offset and Recoupment Defenses.

Even if the Court adopts the Auditor's position that the Act does not require the County to receive "true and full value" for services it renders to WTD, the Auditor's argument supports reversal of the trial court's decision dismissing the County's offset and recoupment defenses.³³

The Auditor states that local governments have "discretion regarding whether or how much to charge or pay for benefits and services that have an imprecise value."³⁴ The County exercised that discretion by asserting offset and recoupment defenses under RCW 43.09.210. Those defenses sought to reduce the amount of any District recovery by the value

³² Findings of Fact & Conclusions of Law at 33, ¶ 145.

³³ The trial court's error in dismissing King County's defenses is discussed at pages 73 to 75 of the County's appellant brief and at pages 22 to 25 of the County's reply brief.

³⁴ Amicus Br. at 2.

of unreimbursed benefits and services that the County provides to WTD.³⁵ As the trial court's findings reflect, the County undercharges WTD for the services it provides to WTD by guarantying LTGO bonds.³⁶

Despite these facts, the trial court dismissed the County's offset and recoupment defenses before trial. The trial court reasoned that because the County could not maintain a direct claim under RCW 43.09.210, the County could not offset the value of services that the County provided.³⁷ The County was not pursuing an affirmative claim under the Act, but was relying on the statute as a basis for applying an offset. While the Auditor incorrectly argues that an offset is not mandatory, its position nonetheless entitles the County to exercise its discretion and apply an offset under RCW 43.09.210.

III. CONCLUSION

The Auditor may be concerned that some "local governments are tempted to find ways to fund their 'general government' functions with utility rates," but this concern does not legitimately apply to King County.³⁸ The Auditor consistently has provided the County "clean"

³⁵ See CP 16689-703, 17592-613.

³⁶ See, e.g., Findings of Fact & Conclusions of Law at 35, ¶ 152; RP 29:2624-25, 2635. The County offered evidence that the County does not allocate the entirety of the cost it incurs for the central services the County provides to WTD. RP 30:2791-94.

³⁷ Findings of Fact & Conclusions of Law at 34-35, ¶¶ 147-51.

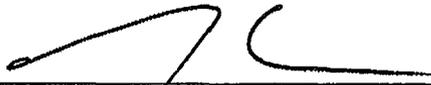
³⁸ See RP 21:1408-10.

financial audit opinions, found that the County complied in all material respects with Generally Accepted Accounting Principles (“GAAP”), and noted that the County’s financial statements contain no material misstatements.³⁹

In any event, the Auditor agrees here that (1) the parties’ rights and obligations should be decided under the Contracts; and (2) a local government’s exercise of discretion under RCW 43.09.210 should be respected. The County properly exercised its discretion, complying both with the Contracts and with RCW 43.09.210. This Court should affirm the trial court’s rulings in favor of King County.

DATED this 11th day of January, 2013.

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³⁹ See RP 21:1414-23.

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Subject: Cedar River v. King County, et al. - Supreme Court No. 86293-1

To the Court: We are attaching King County's Answer to Amicus Brief of Washington State Auditor, as well as our Certificate of Service. Thank you.

<<01.11.13 King County Answer to Amicus of State Auditor.pdf>> <<01.11.13 Cert Service Amicus Response Brief.pdf>>

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