



INTERLOCAL AGREEMENT

OF

CITIES INSURANCE ASSOCIATION

OF WASHINGTON

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FOR
INTERLOCAL AGREEMENT
CREATING THE
CITIES INSURANCE ASSOCIATION OF WASHINGTON

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INTERLOCAL AGREEMENT CREATING THE
CITIES INSURANCE ASSOCIATION OF WASHINGTON

1. *Introduction.*

THIS AGREEMENT is made and entered into in the State of Washington pursuant to the provisions of Chapter 39.34 Revised Code of Washington and Chapter 48.62 Revised Code of Washington by and among the Washington cities and towns or public entities listed in Exhibit A attached hereto (the "Members").

2. *Recitals.*

- 2.1 Chapter 48.62 Revised Code of Washington provides that two or more "local governmental entities" may, pursuant to Chapter 39.34 Revised Code of Washington, jointly purchase insurance (these activities are hereafter collectively referred to as a "Joint Insurance Purchasing Pool").
- 2.2 Revised Code of Washington Section 48.62.020 defines "local government entities" to include cities and towns organized and existing under Title 35 or 35A Revised Code of Washington along with certain districts and municipal corporations.
- 2.3 It is to the mutual benefit of the Members and in the best public interest of the Members to join together to establish this Joint Insurance Purchasing Pool to accomplish the purpose set forth herein.
- 2.4 The Members have determined it is in their best interest to participate in such a program.

3. *Agreement.*

In consideration of the foregoing and the mutual benefits to be derived herefrom, the Members agree as follows:

3.1 *Purpose of Agreement.*

This Agreement is entered into by the Members pursuant to Chapter 39.34 Revised Code of Washington and Chapter 48.62 Revised Code of Washington for the purpose of authorizing the creation of the Cities

Insurance Association of Washington (the "Association"), which shall be organized as a non-profit corporation under Chapter 24.03 Revised Code of Washington, to provide a Joint Insurance Purchasing Pool for the benefit of cities and towns in the State of Washington organized and existing pursuant to Title 35 or 35A Revised Code of Washington and districts and other municipal corporations as defined by RCW 48.62.021(1). The Association shall, in exchange for the payment of annual assessments and retroactive assessments by the Regular Members, administer a Joint Insurance Purchasing Pool wherein the Members will pool their losses and claims and jointly purchase insurance and administrative and other services through the Association including claims adjusting, risk management consulting, loss prevention and related services at levels established in each annual budget. It is also the purpose of this Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional cities and towns organized and existing under Title 35 or 35A Revised Code of Washington and districts and other municipal corporations as defined by RCW 48.62.021(1) as may desire to participate in the Joint Insurance Purchasing Pool. It is also the purpose of this Agreement to provide, to the extent permitted by law, that the Association may, at the discretion of its Board of Directors, contract with other local governmental entities in the State of Washington to provide, at a reasonable charge, administrative and other services, including claims adjusting, risk management consulting, loss prevention and training.

3.2 *Parties to Agreement.*

3.2.1 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 pursuant to Section 3.12. Each party to this Agreement also certifies that the withdrawal or cancellation of any party to this Agreement, pursuant to Sections 3.13 or 3.14, shall not affect this Agreement or such party's intent to contract pursuant to the terms of this Agreement with the then remaining parties to this Agreement.

3.2.2 *Types of Memberships.*

There shall be two separate memberships in the Association. Regular Members shall be made up of cities and towns. Regular Members shall be owners of the corporation with full voting rights. Associate Members are Public Entities approved for special membership as per the By-Laws of the Association. Associate Members shall have no ownership in the corporation and shall have no vote in corporate matters.

3.3 *Term of Agreement.*

This Agreement shall become effective on September 1, 1988, and shall remain in force until terminated pursuant to the provisions of Section 3.16.

3.4 *Creation of Association.*

3.4.1 Pursuant to Chapter 48.62 Revised Code of Washington and Chapter 39.34 Revised Code of Washington, the Members authorize the incorporation of the Association as a non-profit corporation pursuant to Chapter 24.03 Revised Code of Washington and articles of incorporation substantially in the form attached as Exhibit B. The initial Board of Directors shall serve until the first annual election of Board of Directors members, which shall be held no later than 180 days after the effective date of this Agreement. Each Regular Member shall become a Member of the corporation. Associate Members shall be an associate of the corporation. The regulation and management of the affairs of the Association shall be governed by this Agreement, and corporate By-Laws substantially in the form attached as Exhibit C, which shall be adopted by the initial Board of Directors immediately upon the incorporation of the Association. The Association's articles of incorporation and By-Laws may be amended from time to time as deemed necessary by the Members and Board of Directors pursuant to the procedures set forth in Chapter 24.03 Revised Code of Washington and Article 17 of the By-Laws.

3.4.2 Notwithstanding the foregoing, the Board of Directors shall have no power or authority to incur any obligations on the part of, or to be chargeable to, Members or Associates in excess of the

requirement of each Member or Associate to compensate the Association or the insurance carrier with whom the Association has affected a transaction as authorized by this Agreement, for the individual Member's or Associate's share or obligation for the purchase of insurance contemplated and authorized by this Agreement. The debts, obligations and liabilities of any Member or Associate shall not become the debts, obligations and liabilities of other Members or Associates except as provided by Section 3.11 of this Agreement.

3.4.3 The insurance afforded to each Member or Associate pursuant to this Agreement is limited to the insurance provided by any insurer of the Association and the coverages defined in the policies of insurance issued by any insurer of the Association. No coverage, benefit or insurance in excess or different from that afforded by any insurer of the Association is offered or afforded to any Member or Associate by execution of this Agreement.

3.5 *Powers of the Association.*

The Members and Associates hereby delegate to the Association the powers which are common to the Members or Associates and which are reasonably necessary and proper to carry out the purposes and terms of this Agreement. Such powers shall include, but not be limited to, the power to:

- 3.5.1 Establish, and require compliance with, all terms of the Joint Insurance Purchasing Pool to be provided by the Association including the types and limits of the insurance coverage, the methodology to be used to allocate the Association's costs among Regular and Associate Members, and the amount of retroactive assessments to be paid by each Regular Member;
- 3.5.2 Make and enter into contracts;
- 3.5.3 Incur debts, liabilities or obligations;
- 3.5.4 Acquire, receive, hold or dispose of property, funds, services, and other forms of assistance from persons, firms, corporations and governmental entities;

- 3.5.5 Sue and be sued, complain and defend, in its corporate name;
- 3.5.6 Hire employees and agents; and
- 3.5.7 Employ a third party administrator to act in accordance with Section 3.8.6.

The powers delegated to the Association shall be exercised pursuant to the terms of this Agreement and in the manner provided by law.

3.6 Responsibilities of the Association.

The Association shall have the following responsibilities:

- 3.6.1 Within 30 days after the effective date of this Agreement, the Board of Directors shall adopt a budget. A similar budget shall be adopted by the Board of Directors prior to the beginning of each fiscal year thereafter. Such budget shall specify the types and limits of the insurance coverage to be provided through the Association, the estimated annual assessment to be paid by each Member or Associate, and the methodology to be used to allocate the Association's costs, including deductible costs, administrative costs, and loss costs, to each Regular Member on a retroactive basis and to establish the amount, if any, of each Regular Member's retroactive assessment.
- 3.6.2 The Association will assist each Member's or Associate's risk manager, upon request, with the implementation of risk management programs.
- 3.6.3 The Association may provide loss prevention, safety, and consulting services to Members and Associates.
- 3.6.4 The Association will provide claims adjusting and subrogation services for claims covered by the Association's Joint Insurance Purchasing Pool.
- 3.6.5 The Association will provide loss analysis for the Members and Associates for the purpose of identifying high exposure operations and evaluating proper levels of self-retention and deductibles.

3.6.6 The Association may conduct risk management audits to assess each Member's and Associate's participation in the Joint Insurance Purchasing Pool.

3.7 *Responsibilities of Members.*

Members shall have the following responsibilities:

3.7.1 The governing body of each Member or Associate shall designate in writing a representative who shall be authorized to exercise the Member's or Associate's voting rights with respect to the Association and to act on behalf of the Member or Associate with respect to all matters pertaining to the Association.

3.7.2 Each Member or Associate shall maintain its own set of records, as a loss log, on all categories of loss to ensure accuracy of the Association's loss reporting system and shall provide to the Association a written report of all potential claims or losses within 14 days after they become known to the Member or Associate.

3.7.3 Each Member or Associate shall pay to the Association when due all assessments and retroactive assessments established by the Association pursuant to the terms of this Agreement. After the withdrawal, cancellation, or termination of a Regular Member, such Regular Member shall continue to pay to the Association when due its share of any retroactive assessment established by the Association until all claims, losses, costs, and other unpaid liabilities relating to the Regular Member's period of membership have been resolved fully.

3.7.4 Each Member or Associate shall provide the Association with such information or assistance as may be necessary for the Association to carry out the Joint Insurance Purchasing Pool.

3.7.5 Each Member or Associate shall comply with all By-Laws, resolutions, and policies by the Board of Directors and shall cooperate with the Association, and any insurer of the Association, in accomplishing the purposes of this Agreement.

3.7.6 Each Member or Associate shall participate as provided herein in the selection of members of the Board of Directors.

3.8 *Board of Directors' Authority.*

3.8.1 The Association shall be governed by a Board of Directors. The Board of Directors shall consist of ten members, to be selected from the Regular Membership. Beginning with the second election of members to the Board of Directors, the Regular Members of that Committee shall be selected as follows: the area served by the Association shall be divided into three geographic regions, with each region represented by a number of representatives assigned to the region based on the number of Regular Members from that region.

3.8.2 To ensure that consistent management is provided for the Association into the future, the initial Board of Directors members shall have terms of one, two or three years. After the initial election, all Board of Directors members will be elected for a three-year term. Those terms will provide that four of the ten committee members will be elected for full terms in two consecutive years and three of the regular committee members will be elected for full terms the third year.

3.8.3 The Board of Directors shall elect a Chair for each fiscal year. In addition, the Board of Directors shall elect a Vice-Chair who will in the absence of the Chair or, in the event of the Chair's inability or refusal to act, perform the duties of the Chair.

3.8.4 Each member of the Board of Directors shall have one vote.

3.8.5 A majority of the members of the Board of Directors shall be required to transact the business of the Board of Directors.

3.8.6 The Third Party Administrator shall have the general supervisory control over the day to day decisions and administrative activities of the Association. Activities shall include but not be limited to: (1) negotiations and placement for insurance coverage contracts, (2) disbursement of billings to individual Members and Associates for their proportionate charges, (3) payment and management of claims

sustained by Members or Associates of the Association and liaison with representatives acting on behalf of participating Members or Associates.

- 3.8.7 Administrative costs and charges to be paid to the Third Party Administrator shall be negotiated between the Board of Directors and the Administrator.
- 3.8.8 Pool funds shall be administered by the Association Administrator under the control and supervision of the Board of Directors. The Administrator will be authorized to disburse funds for the processing of covered claims and administrative costs. All parties having check writing authority on Association funds shall be bonded to the Association in an amount established by the Board of Directors.
- 3.8.9 The Board of Directors will provide for an audit of the accounts and records of the Association. When such an audit of the accounts and records is made by the Washington State Auditor's office, a report thereof shall be filed as a record with the office of the Administrator. Such reports shall be conducted and filed as required by law. Costs of this audit shall be borne by the Association and shall be considered as administrative costs.
- 3.8.10 Pursuant to the laws and regulations of the State of Washington, the Association elects to invest its assets in permissible investments in a manner which is permitted by law, such manner of investment to be selected from time to time by resolution of the Board of Directors.
- 3.8.11 The Board of Directors shall establish an annual budget for the Association. The Administrator shall submit a proposed budget for the following fiscal year 60 days prior to the end of each fiscal year to the Board of Directors. Fiscal years for the Association shall be from September 1 through August 31 of the next calendar year. The Board of Directors shall determine the estimated expenses and costs to be incurred by the Association for the next fiscal year and shall adopt a budget derived from the Administrator's proposed budget. The budget shall be in a form to provide the following information for the Association as a whole: (1) beginning

and ending unreserved fund balance, (2) anticipated revenues in detail, and (3) appropriations in detail. The Board of Directors shall apportion that budget cost among the Members and Associates. All payments due to the Association from Members or Associates upon the basis of each budgeted assessment shall be paid as invoiced for the fiscal year for which the assessment is made.

3.8.12 The first budget and premium assessments shall be proposed by the Administrator and approved by the Board of Directors not later than 30 days after the effective date of this Agreement.

3.8.13 Any vacancies on the Board of Directors that occur during a term of office shall be filled by an election of the Board of Directors by a simple majority vote. Any replacement shall fill out the unexpired term of the committee member replaced.

3.9 *Service Representative Relationship.*

3.9.1 Each participating Member or Associate of the Association shall designate a servicing representative to act on their behalf in liaison with the needs of the Association Administrator. Should a participating Member choose not to designate a local servicing representative, the Association shall supply such services in accordance with a fee schedule adopted annually by the Board of Directors. Service representatives' minimum duties and criteria will be established by resolution of the Board of Directors and reviewed annually. Duties will include, but are not limited to the providing of local claims assistance, the securing of underwriting information, completion of applications, updating of vehicle lists and information and such other functions as the Board of Directors may from time to time establish by resolution.

3.9.2 Any fees to be paid the servicing representative by each Member or Associate will be established and paid by the Member or Associate.

3.9.3 Each Member and Associate agrees to indemnify and hold the Association, its Administrator, employees and agents, harmless from and indemnify them against any claims, complaints, causes

of action or judgments arising from any allegation of a failure of the performance or negligence on the part of the Member's or Associate's servicing representative including a failure to communicate to or forward communications from the Association, the Association's Administrator or any Association insurer. The employment of a servicing representative and the scope of the services performed by that representative is completely within the domain of the Member or Associate. A Member or Associate acts upon the advice and actions or inactions of its servicing representative at its sole risk.

3.10 *Effective Date of Pooled Insurance Purchasing Program.*

The Joint Insurance Purchasing Pool shall become effective on September 1, 1988 or upon execution of this Agreement by two or more Members, whichever occurs first.

3.11 *Contingent Liability and Retroactive Assessments.*

3.11.1 Pursuant to the provisions of Revised Code of Washington Section 48.62.060, each Regular Member shall be contingently liable for the liabilities of the Association in the event the assets or insurance of the Association are not sufficient to cover its liabilities. Any actual or projected deficits of the Association shall be financed through retroactive assessments levied against each Regular Member in accordance with the following cost allocation methodology.

3.11.2 In the event the Association's assets should be insufficient to cover liabilities, the Board of Directors shall direct the Administrator to reassess Regular Members an amount according to the following formula:

$$\begin{array}{l} \text{Member} \\ \text{Reassessment} \\ \text{Amount} \end{array} = \begin{array}{l} \text{(Liability Due and Not} \\ \text{Serviced By Current} \\ \text{Pool Assets) + (Required} \\ \text{Reserve Account)} \end{array} \times \begin{array}{l} \text{Member Contribution or} \\ \text{Assessments Since Inception} \\ \text{TOTAL OF ALL Assessments} \\ \text{or Contributions Since Inception} \end{array}$$

The reassessment will be implemented only after a review of the circumstances surrounding the deficiency by the Board of Directors and approved by the Board of Directors. Should any Member leave

the Association and subsequently a deficiency exist in the period that the entity was a Regular Member of the Association, the city or town in question shall be assessed the amount that the Association is held liable for the period in question.

3.12 *New Members.*

Members admitted as Regular Members of the Association after one year from the effective date of the Joint Insurance Purchasing Pool may be required to pay a reasonable share of the unreserved fund balance of the Association and the costs necessary to analyze their loss data and determine their premiums. Any costs to be paid by the Regular or Associate new Members shall be determined by the Board of Directors.

3.13 *Withdrawal.*

Any Member or Associate may withdraw only at the end of the Association's fiscal year (August 31) and only after it has given the Association written notice prior to September 1 of the preceding calendar year of its decision to withdraw from this Agreement.

3.14 *Cancellation.*

The Association shall have the right to cancel any Member's or Associate's participation in the Joint Insurance Purchasing Pool upon the affirmative vote of at least three-fourths of the whole Board of Directors at any regular or special meeting. Any Member or Associate so canceled shall be given 180 days' notice prior to the effective date of the cancellation.

3.15 *Effect of Withdrawal or Cancellation.*

Neither the withdrawal nor the cancellation of any Member or Associate shall cause the termination of this Agreement. No Member or Associate by withdrawing or having its membership canceled shall be entitled to payment or return of any assessment paid by the Member or Associate to the Association or any Association insurer, or to any distribution of the Association's assets. The withdrawal or cancellation of any Regular Member after the effective date of the Joint Insurance Purchasing Pool shall not terminate its responsibility to contribute its share of any

assessments or retroactive assessments established by the Association until all claims, losses, costs, and other unpaid liabilities relating to the Regular Member's period of membership have been resolved fully and a determination of the final amount of payment owed by the Regular Member or credit due the Regular Member for the period of its membership has been made by the Board of Directors. In making this determination, the Board of Directors shall use the cost allocation methodology or methodologies established by the budgets adopted pursuant to the requirement of Section 3.6.1 hereof. It is the intent of this Agreement that no assets of the Association shall be owned by Associate Members nor shall Associate Members be responsible for debts incurred by the Association other than insurance premiums, assessments and claim deductibles attributed to the Associate Member's membership.

3.16 *Termination and Distribution.*

3.16.1 *Termination.*

This Agreement may be terminated at any time by the written consent of three-fourths of the Members. However, this Agreement and the Association shall continue to exist for the purpose of paying all debts and liabilities, disposing of all claims, distributing net assets, and otherwise winding up and liquidating the affairs of the Association. The Board of Directors is vested with all powers of the Association during such winding up and liquidation, including the power to require Regular Members, including those Regular Members who withdrew prior to the termination date, to pay any retroactive assessments deemed necessary by the Board of Directors to fully resolve and dispose of all claims, losses and liabilities covered by this Agreement. The retroactive assessment shall be determined on the basis of the cost allocation methodology or methodologies established by the resolutions adopted pursuant to the requirements of Sections 3.6.1 and 3.11.2 hereof.

3.16.2 *Distribution.*

Upon termination of this Agreement and full satisfaction of all outstanding claims, losses, and liabilities of the Association, all assets of the Association shall be distributed among the Regular

Members who were Members of the Joint Insurance Purchasing Pool, on the date action to terminate this Agreement was taken, in proportion to the cash payments made by each Regular Member during the term of this Agreement. The Board of Directors shall determine such distribution within six months after the last pending claim or loss covered by this Agreement has been resolved fully.

3.17 *Notices.*

Notice to Members or Associates hereunder shall be sufficient if mailed to the office of the last official address of the respective Member.

3.18 *Amendment.*

This Agreement may be amended at any time by the approval of three-fourths of the Members present or voting at any meeting of the Members. All amendments shall be in writing. Amendments may be proposed by the Board of Directors. Any proposed amendment to this agreement adopted by three-fourths of the whole Board of Directors shall be deemed adopted subject to review by the Members. If four-tenths of the Members present or voting at any meeting of the Members (called in accordance with Article 3 of the By-Laws) vote to repeal any amendment adopted by three-fourths of the whole Board of Directors, that amendment is deemed repealed.

3.19 *Enforcement.*

The Association is hereby granted the authority to enforce the terms of this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the By-Laws against any Member or Associate or previous Member or Associate, the Member or Associate or previous Member or Associate agrees to pay such sums as the court may fix as reasonable attorneys' fees and costs in said action including fees and costs on appeal.

3.20 *Default and Remedies.*

If any Member or Associate fails to perform any term or condition of this Agreement and such failure continues for a period of sixty days after the Association has given the Member or Associate written notice of such

failure, the Member or Associate shall be in default hereunder. Upon default, the Association may immediately cancel the Member's or Associate's membership effective immediately without further notice, or exercise any remedies herein provided or otherwise provided by law. The rights and remedies of the Association 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.

3.21 *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 waiver of the right to demand payment of all other sums owing or a waiver of any other default then or thereafter existing.

3.22 *Prohibition Against Assignment.*

No Member or Associate may assign any right, claim or interest it may have under this Agreement, except to a successor entity following a statutory reorganization. Should any Member or Associate reorganize in accordance with the statutes of the State of Washington, the successor in interest, or successors in interest, may be substituted as a Member or Associate or Members or Associates upon approval of the Board of Directors. No creditor, assignee or third party beneficiary of any Member or Associate shall have any right, claim or title to any part, share, interest, fund premium or asset of the Association.

3.23 *Entire Agreement.*

This Agreement contains the entire understanding of the parties, and they acknowledge that there is no other written or oral understanding or promise between them with respect to the matters addressed by this Agreement. This Agreement may not be altered, amended, or revoked except pursuant to the provision of Section 3.18.

3.24 *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.

3.25 *Time.*

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

3.26 *Section Headings.*

The 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 sections they introduce.

3.27 *Governing Law.*

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

3.28 *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.

4. Execution.

The parties have executed this Agreement by authorized officials thereof.

City of Prosser
Name of City or Town or Public Entity

601 7th Street
Mailing Address

Street Address (if different from above)

Prosser
City

99350
Zip

(509) 786-2332
Phone

By Randy Taylor
Signature of Authorized Official

Randy Taylor
(Print or Type Name)

Transportation Benefit District, Chair
Title

5/8/2012
Date