

# Liability Joint Protection Program

# 2014



**WASHINGTON CITIES INSURANCE AUTHORITY**

**Liability Joint Protection Program for the  
Coverage Year January 1, 2014 to January 1, 2015  
12:01 A.M. Pacific Standard Time**

**I. AUTHORITY LIABILITY COVERAGE**

**A. COVERAGE AGREEMENT**

The Washington Cities Insurance Authority, (Authority) has been formed to provide its members financial protection from loss, in part, through self-insured and standard insurance coverages as detailed in the Authority's Coverage Document.

Coverage consists of two layers; a self-insured layer, and one or more reinsured layers. The Board of Directors determines the coverage limits in each layer and the relative attachment points among the layers, at the beginning of each coverage year.

The Board of Directors determines the terms and conditions of coverage for the self-insured layer of coverage. Coverage Document #CT-2014, which further defines the aforementioned coverage, is hereby incorporated by reference and adopted herein to this document.

The Board may choose to purchase reinsurance as a layer of coverage, or self-insure that layer. Purchased insurance policies may differ from each other and the self-insured layer in language, exclusions, conditions and underwriters intent. Coverage among the various policies may not be continuous. Annual aggregates may further limit coverage in any of the layers.

Elements of what the Authority intends to pay are defined in the Ultimate Net Loss definition within the Coverage Document. For example, the legal defense expense becomes part of the loss cost and contributes towards (erodes) the self insured and reinsurance limits.

**B. EXCLUSIONS**

Exclusions of coverage may differ in each of the coverage layers, and are specifically identified by each reinsurance policy or Coverage Document. Policies may differ from each other in the number, language and underwriters intent. For example, previous Board action determined underinsured / uninsured motorist coverage is not provided to members or employees.

**C. MEMBERS**

Current, risk-sharing, members are identified in the WCIA Coverage Document #CT-2014. Any non-risk sharing membership does not qualify for the Coverage Document protections.

**D. COVERAGE LIMITS**

The Authority uses the configuration below of insurance layers to resolve claims and litigation per the terms, conditions and limits of each policy.

Self-Insured Layer:.....	\$4 million per occurrence
Reinsured Layer-GEM.....	\$1 million per occurrence
Reinsured Layer- Ironshore Indemnity, Inc.:.....	\$10 million per occurrence
Reinsured Layer - Allied World Assurance Company, Inc.:.....	\$5 million per occurrence.
Total Limit:.....	\$ 20 million per occurrence, subject to the annual aggregates.

**E. AGGREGATES**

WCIA and the insurance industry use annual aggregates to create limited coverage for volatile exposures, such as resulting acts of terrorism and broadened pollution coverage, or reduced coverage for an entire line of coverage, such as the employment practice exposure. Aggregates can be used to limit coverage by time periods, insuring limits and can be applied to individual members or an entire pool. Some aggregates apply in addition to the self insured layer, creating higher limits. A partial list of aggregate limits used in this document are:

\$4,000,000 per occurrence limit and annual aggregate per Member applying to Terrorism

\$5,000,000 per occurrence limit and annual aggregate per Member applying to Airport Errors and Omissions arising out of the operation, ownership, maintenance or use of any airport.

\$4,000,000 per occurrence limit and annual aggregate limit per Member applying for the release, discharge or backup of liquids and/or effluents from waste water and/or sanitary sewer lines owned, leased, maintained or operated by a "Member" not arising directly or indirectly out of a "Flood."

\$4,000,000 per occurrence limit and \$12,000,000 annual aggregate limit for any and all liability including defense of any and all Members arising directly or indirectly out of a "Flood" including any liability arising directly or indirectly out of the ownership, maintenance, operation or use of levies or any other boundary of lakes, ponds, reservoirs, rivers, streams, harbors and similar bodies of water.

The "Flood" per occurrence and annual aggregate limit is the most the Authority will pay as a combined total of all "Flood" claims, for all Members, occurring during the term of this Coverage Document.

Flood," as used herein, shall mean "surface water", waves, tide, or tidal water, and the rising (including overflowing or breaching of boundaries) of lakes, ponds, reservoirs, rivers, streams, harbors and similar bodies of water. "Surface water" includes all water which backs up through sewers or drains.

\$5,000,000 per occurrence limit and \$5,000,000 annual aggregate limit per member for any liability arising out of Land-Use Planning and Land-Use Regulation, zoning, and any other development review process.

Above \$5,000,000 per occurrence \$15,000,000 annual aggregate Product Liability coverage per Member, \$15,000,000 Public Official Liability annual aggregate per Member, \$15,000,000 Employment Practice Liability annual aggregate per Member, \$15,000,000 annual aggregate per Member Employee Benefits Liability and a \$30,000,000 annual aggregate per Member for Law Enforcement Liability arising out of Member owned jails or holding facilities with overnight or greater length of stay for the confinement of inmates.

Other aggregates may apply within the Coverage Document language.

#### F. FURTHER CONDITIONS AND LIMITATIONS OF COVERAGE

Under no circumstances shall the Authority's obligation to any member exceed \$20 million per occurrence, inclusive of coverage or settlement determination costs, defense costs, and costs incurred by the Authority in obtaining indemnification from reinsurers for the occurrence.

Any member seeking coverage from any insurance company or reinsurer for any occurrence under the Authority's Coverage Document agrees to pay all costs and expenses incurred in obtaining indemnification and/or defense costs from any insurance company or reinsurers. If requested by a member, the Authority may, in its sole discretion, elect to participate with a member in any legal effort by a member to seek or enforce indemnification and/or defense cost coverage from any insurance company or reinsurer and, if it does so, the Authority will be responsible for payment of 50% of any legal costs and expenses incurred in such effort and the member will be responsible for the remainder of all costs. Subject to the preceding sentence, any costs incurred by the Authority or individuals acting on its behalf and at its direction in obtaining indemnification for any occurrence, including but not limited to legal expenses, costs associated with hearings, arbitrations, mediations, negotiations or other proceedings, and any other expenses, shall be part of the total aggregate limits as stated above, and shall reduce any recovery by the member accordingly. Coverage determination costs less than \$1,000 per occurrence shall be an administrative cost.

In the event that an occurrence exceeds the combined self insured, and all reinsured layer coverage limits, or if any self insured or reinsured aggregate limit has been exhausted within the coverage term, any remaining obligation will be the sole responsibility of the applicable member and shall not be the responsibility of the Authority nor any other member.

Further coverage limits in the self insured and reinsured layers are limited to budgeted funds. Possible scenarios resulting from frequency of losses or a severity of loss may result in the exhaustion of all Authority funds. Replenishment of the self insured and reinsured layers may be made by special assessment as approved by the Board.

Any occurrence not within the coverage definitions of the self insured or reinsured layer Coverage Document for the coverage years shall be the sole responsibility of the applicable member or employee against whom the claim is made and not the responsibility of the Authority nor any other member.

In the event that the Authority is unable for any reason to recover from reinsurers any portion of a liability claim otherwise payable to a member under the terms of the Authority's Coverage Document, the Authority's obligation to the member shall be reduced by the amount of such non-recovery. The Authority shall make a reasonable

effort to obtain reinsurance recovery, but nothing in this Agreement shall obligate it to instigate judicial or other proceedings, nor to take any particular action to obtain indemnification from reinsurers.

In the event of a reinsurer's financial failure, or the exhaustion of the self insured layer aggregate, the total liability of the Authority for the policy years shall remain at \$4 million per occurrence. Any remaining obligation over the \$4 million coverage limit is also the responsibility of the applicable member. The Board may authorize the purchase of new reinsurance or self insure coverage layer.

Liability coverage is subject to the terms, conditions and exclusions stated in the WCIA Coverage Document CT-2014 for the self insured coverage layer and to any reinsurance agreements, as well as all conditions and exclusions for liability coverage in the reinsured layer.

## G CLAIMS DEDUCTIBLES

This program assumes no liability deductibles apply to any coverage. Claims deductible levels of \$25,000, \$50,000, \$100,000, \$250,000, \$500,000 and \$1,000,000 are potential coverage options for members that may, at the sole discretion of WCIA, be extended to members with the following characteristics:

1. The actuary must categorize the member in the highest total worker hour group for the projected period.
2. The member must be in compliance with applicable state and/or federal governmental accounting standards, including the establishment of a claims payment internal fund.
3. The member must have staff with authority to implement and administer the risk management function within the entity.
4. The member must have a demonstrated ability, practice and willingness to comply with WCIA Claims handling procedures and reporting requirements.

Members that are given the option to exercise this coverage option, and who do so, must report all claims and incidents, including those within their deductible layer, to the Authority for investigation. The Authority will periodically analyze and review the claims history of the member and distribute claims status reports. No member in good standing with WCIA is required to take an optional deductible level, if offered by WCIA.

The Authority retains control of claims, assignment of defense counsel and settlement authority. The member will be included in the claims decision-making process. For claims decisions that are referred to the Executive Committee, the member involved will be invited to participate in claims settlement discussions in Executive Session.

If the Authority deems that settlement is appropriate, the Authority will issue an authorization for payment to the member. The member is required to promptly pay the claimant upon receipt of the authorization. Any resulting action arising from the member's failure to pay is the sole responsibility of the member.

This claims deductible program is designed to provide the member who assumes significant individual risk with a reduced annual assessment and cash flow benefits. There are no changes to the Interlocal Agreement, By-Laws or Claims Manual concerning claim and litigation control or requirements for members that participate in a claims deductible program.

## II. DESCRIPTION OF SERVICES AND COST ALLOCATION

### A. AUTHORITY ADMINISTRATION

Administration of the liability claims program is conducted in-house by Authority staff and is an administrative expense. Some field losses are assigned by staff to an outside claims service company for resolution under limited dollar authority. The claims service fees are an administrative expense. The Director, Claims Manager and Adjusters are delegated settlement authority by the Executive Committee.

Defense of litigation is a major coverage element and program expense. It is a loss cost and applies against a member's loss history and erodes the coverage limit. Selection and assignment of defense counsel is the responsibility of the Executive Director.

## B. GENERAL COUNSEL LEGAL SERVICES

The Authority General Counsel is appointed by the Board to provide legal assistance concerning Authority operations to the Board, Executive Committee and Executive Director. The Authority Counsel cost is an administrative, not loss-cost, expense.

## C. CLAIMS COMMITTEE

The Executive Committee serves as the Claims Committee, approving loss settlements and litigation decisions. It resolves a member's coverage appeal.

## D. CLAIMS COSTS

Administration of the liability claims program is conducted in-house by Authority staff and is an administrative expense. Some losses are assigned by staff to an outside claims service company for resolution. The service company's fees are administrative costs.

Defense of lawsuits are also a part of the program, are considered loss costs, and apply against a member's loss experience and also against coverage limits. Selection and assignment of defense counsel is the sole responsibility of the Executive Director.

## III. MEMBER ASSESSMENTS

Each member's assessment with the Authority is due within thirty (30) days of billing. Mid-year (new) membership will be prorated against the remaining coverage year assessment, payable within thirty (30) days.

## IV. CLAIMS PROCESS

The Authority retains control of claims, assignment of defense counsel and settlement authority. The claims process is supervised by the Authority and includes development and implementation of claims procedures. Claims reports will be distributed annually to the membership.

Members shall cooperate by promptly reporting all incidents, occurrences, claims and lawsuits which may result in potential liability, by participating fully in any investigation conducted by the Authority or its claims administrator, and by adhering to the claims procedures as set forth in the Authority Claims Manual. The Executive Director may settle any claim up to \$100,000. Dollar authority above that level must be brought before the Executive Committee for approval.

## V. DEFAULT PENALTY

A member which fails to file a timely Notice of Appearance which results in a Default in favor of Plaintiff shall be subject to any financial penalty or judgment rendered by the courts on behalf of plaintiff, and shall not be payable with Authority funds. Appeals on the enforcement of this Section may be made as outlined in Article VI, Section 2 of the Authority Bylaws (Bylaws).

## VI. COVERAGE DETERMINATION

The Executive Director shall be responsible for making coverage determinations within the self-insured layer and reinsured layers regarding claims or litigation filed against the member in which a question of coverage and/or defense obligations exists.

An appeal process has been adopted in the Bylaws, Article VII, Section 2, to allow members to bring before the Executive Committee any coverage decisions which they may contest. Respective requirements of each participating party are detailed in the By-Laws. Failure to follow the stated requirements may result in a waiver of coverage rights.

A Member's financial participation in the cost of coverage determination is discussed in paragraph F above.

## VII. OTHER-INSURANCE

If any member has other valid and collectible insurance or self-insurance, while is available to the member to cover a loss also covered by this Joint Protection Program, the coverage provided by this Joint Protection Program shall be in excess of and shall not contribute with such other insurance.

## **VIII CANCELLATION OR TERMINATION OF MEMBER LIABILITY COVERAGE**

Liability coverage provided under the Joint Protection Program may be canceled by an individual member by written notification of its intent to withdraw from participation in the Interlocal Agreement pursuant to Article 20 thereto. Coverage will cease either at the next coverage expiration date after notice, or upon the effective date of the member's withdrawal from the Authority, whichever comes first.

Coverage under this program may be terminated by the Authority by a majority vote of the Board present at the meeting whereby such termination is proposed. Notice of termination shall be provided to the member, in writing, not less than sixty (60) days prior to the effective date of the termination, except that, if the member fails to pay any assessment when due, this coverage may be terminated by providing, in writing, ten (10) days notice.

It is understood that cancellation or termination of coverage under this program shall constitute cancellation of coverage in both the primary and excess layer. Limits, terms and conditions of coverage is restricted to those in force at time of cancellation or termination. Should any premium credit of an individual member be returned to the Authority as a result of the cancellation in any excess insurance policy, it may be retained by the Authority and applied toward any outstanding or anticipated debts of the member to the Authority. Should all the financial obligations of the member be met, 90% of any premium return from the excess insurance carrier for the individual member shall be forwarded to the member.

## **IX MEMBERSHIP**

The Interlocal allows for a broad membership category to include municipal corporations. Current membership types include.

### **A. CITIES, TOWNS and SPECIAL DISTRICTS**

Membership is open to cities, towns and special districts in Washington State, to be reviewed on a case by case basis, subject to current Authority underwriting guidelines.

### **B. INTERLOCAL ENTITIES**

Membership is open to interlocal entities to be reviewed on a case by case basis, and subject to current Authority underwriting guidelines and the following requirements:

1. The Interlocal Entities or Municipal Corporations must provide traditional municipal services with its own staff and Board.
2. A member city must sponsor the Interlocal Entities or Municipal Corporations for WCIA membership.
3. The member city must maintain active participation in the Interlocal Entities or Municipal Corporations and be represented on the Interlocal Entities or Municipal Corporations governing board.
4. The Interlocal Entities or Municipal Corporations must support and attend risk management training sessions.
5. The overall effect of this type of Organization impact on the pool may be reviewed and periodically re-evaluated.
6. The Interlocal Entities or Municipal Corporations must perform to current underwriting standards and COMPACT requirements.