

# Self-Insured Coverage Document

# #CT-2017



## WASHINGTON CITIES INSURANCE AUTHORITY

**Self-Insured Coverage Document CT-2017  
January 1, 2017 to January 1, 2018  
12:01 am Pacific Standard Time**

### LIMITS/ULTIMATE NET LOSS:

SELF-INSURED LAYER LIMIT:	\$4,000,000 PER OCCURRENCE
REINSURED LAYER GEM:	\$3,000,000 PER OCCURRENCE
REINSURED LAYER Argonaut Insurance Company:	\$8,000,000 PER OCCURRENCE AND \$8,000,000 AGGREGATE PER MEMBER
REINSURED LAYER Allied World Assurance Company, Inc.:	\$5,000,000 PER OCCURRENCE AND \$5,000,000 AGGREGATE PER MEMBER
REINSURED LAYER Certain Underwriters at Lloyd's (Brit Syndicate 2987 – 100%):	\$5,000,000 PER OCCURRENCE AND \$5,000,000 AGGREGATE PER MEMBER
TOTAL LIMIT:	\$25,000,000 PER OCCURRENCE, subject to aggregates and sub-limits below and in Section I.D, and Section I.E in the WCIA Joint Protection Program.

### SPECIFIC AGGREGATE LIMITS/SUB-LIMITS:

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

\$5,000,000 per occurrence limit and \$5,000,000 annual aggregate limit per member for Errors or Omissions Coverage arising out of the operations, ownership, maintenance or use of any airport.

\$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 land use and permitting process.

**DESCRIPTION OF COVERAGE:** General Liability, Automobile Liability, Stop-Gap Coverage, Errors or Omissions Liability, Employee Benefits Liability and Employment Practices Liability Coverage.

### LIMITS OF LIABILITY FOR ALL COVERAGE:

The Limits/Ultimate Net Loss stated herein and the rules below set the maximum the Authority will pay regardless of the number of:

- a. members,
- b. claims made or lawsuits brought, or
- c. persons or organizations making claims or bringing lawsuits.

**TERRITORY:** This coverage applies to General Liability, Automobile Liability, Stop-Gap Coverage, Errors or Omissions Liability, Employee Benefit Liability and Employment Practices Liability occurring anywhere in the United States of America, its territories and possessions or Canada.

Members covered by this agreement include the following and new members approved by the Executive Committee during the Coverage Year; members of the Large Deductible Program have their deductible levels listed by their names:

A Regional Coalition for Housing (ARCH)  
Aberdeen  
Anacortes  
Arlington  
Arlington Transportation Benefit District  
Auburn  
Bainbridge Island  
Battle Ground  
Benton City  
Benton County Emergency Services (BCES)  
Bonney Lake  
Bothell  
Brewster  
Brier  
Burien  
Burlington  
Camas  
Cashmere  
Centralia  
Chehalis  
Chelan  
Cheney  
Chewelah  
Clark Regional Emergency Services Agency (CRESA)  
Clarkston  
Cle Elum  
Clyde Hill  
Coupeville  
Covington  
Cowlitz-Wahkiakum Council of Governments  
Des Moines  
Des Moines Pool Metropolitan Park District  
Duvall  
Eastside Public Safety Communications Agency  
(EPSCA)  
eCity Gov Alliance  
Edgewood  
Edmonds  
Ellensburg  
Elma  
Enumclaw  
Enumclaw Transportation Benefit District  
Everson  
Ferndale  
Fife  
Fife Transportation Benefit District  
George  
Goldendale  
Grandview  
Grays Harbor Communications Center, E9-1-1  
Hoquiam  
Issaquah  
Jefferson County 911  
Kelso  
Kenmore  
Kennewick  
Kirkland  
Kitsap 911 Public Authority  
Kitsap Regional Coordinating Council (KRCC)  
La Conner  
Lacey  
Lake Forest Park  
Lake Stevens  
Lakewood

Leavenworth  
Leavenworth Transportation Benefit District  
Long Beach  
Longview  
LOTT Clean Water Alliance  
Mabton  
Mason County Emergency Communications  
(MACECOM)  
Maple Valley  
Marysville  
Marysville Fire District  
McCleary  
Medical Lake  
Medina  
Mercer Island  
Metropolitan Park District of Tacoma (\$25,000)  
Mill Creek  
Millwood  
Milton  
Monroe  
Monroe Transportation Benefit District  
Moses Lake (\$25,000)  
Mount Vernon  
Mountlake Terrace  
Mukilteo  
Multi Agency Communications Center (MACC 911)  
Newcastle  
Normandy Park  
Normandy Park Metropolitan Park District  
North Bonneville  
Northshore Utility District  
NW Incident Management Team  
Oak Harbor  
Ocean Shores  
Olympia  
Olympia Metropolitan Park District  
Olympia Transportation Benefit District  
Othello  
Othello Transportation Benefit District  
Pasco (\$100,000)  
PENCOM  
Port Angeles (\$50,000)  
Port Townsend  
Poulsbo  
Pullman  
Pullman Metropolitan Park District  
Pullman-Moscow Regional Airport Board  
Puyallup (\$100,000)  
Richland  
Ridgefield  
Sammamish  
Seattle Southside Regional Tourism Authority  
Shelton  
Shelton Metropolitan Park District  
Shoreline  
Silver Lake Water & Sewer District  
Skagit 911  
Skagit Council of Governments  
Snohomish  
Snohomish Co. Emergency Radio System (SERS)  
Snohomish Co. Police Aux. Services Center  
(SNOPAC)  
Snoqualmie  
Soap Lake

South Correctional Entity (SCORE)	Valley Regional Fire Authority
South Sound 911	Walla Walla
Spokane Valley	Walla Walla Transportation Benefit District
Stanwood	Walla Walla Valley Metropolitan Planning Organization
Steilacoom	Warden
Sumner	Washougal
Sunnyside	Washington Cities Insurance Authority
SW Snohomish Co. Communications Agency (SNOCOM)	Washington Multi-City Business License and Tax Portal Agency
Three Rivers Regional Wastewater Authority	Water Operating Board
Thurston 9-1-1 Communications	West Richland
Thurston Public Utility District	Westport
Thurston Regional Planning Council (TRPC)	WHITCOM 911
Toppenish	William Shore Memorial Pool District
Tukwila (\$25,000)	Woodinville
Tukwila Pool Metropolitan Park District	Woodway
Tumwater	Yakima Valley Conference of Governments
Union Gap	Yarrow Point
University Place	Zillah
Valley Communications Center	

This document is not an insurance policy. The Washington Cities Insurance Authority (Authority) is not an insurance company. This document is an agreement by and between the Authority and its members to pay all covered losses subject to the limits and other terms, exclusions and conditions of this Agreement and any addenda attached. This document is to be construed and enforced under the law of the State of Washington. In consideration of the assessments paid by the members, this Agreement provides the following coverages:

## I. COVERAGE AGREEMENTS

### A. GENERAL & AUTOMOBILE LIABILITY COVERAGE

#### 1. Coverage

In consideration of the assessment herein provided, the Authority hereby agrees, subject to the limitations, terms, exclusions and conditions hereinafter mentioned, to pay on behalf of the member all sums which the member shall be obligated to pay by reason of liability:

- a. imposed upon the member by law; or
- b. assumed under contract or agreement by the member and/or any officer, director, official, or employee of the member, while acting in his or her capacity as such;
- c. for damages, direct or consequential and expenses, all as more fully defined by the term "ultimate net loss" on account of:
  - i. personal injury,
  - ii. property damage,
  - iii. advertising liability,

caused by or arising out of an occurrence during the coverage period. The coverage for the liability assumed under contract in I.A.1.b. above shall be limited to the terms, conditions, limitations and exclusions in the Coverage Document and the Liability Joint Protection Program document.

"Damages" as used in this section and this Agreement, do not include punitive or exemplary damages or fines or penalties or any similar relief awarded against the member.

#### 2. Defense and Settlement of Covered Claims

Subject to the limits and other terms, exclusions and conditions of this Agreement, for any claim covered by this Agreement and properly tendered to the Authority, the Authority shall have the absolute and unrestricted right and duty to select legal counsel to defend the member against the claim and pay

the costs of the selected defense counsel and; further, shall have the absolute and unrestricted right to settle any covered claim within the limits of the provided coverage. The Authority shall have no obligation or duty to pay for the defense costs of a member for any uncovered or excluded claim.

### 3. Exclusions

This Agreement is subject to the following exclusions:

This Agreement shall not apply to any claims against any member:

- a. Regarding any obligation for which the member or any carrier as insurer may be held liable under any Workers' Compensation, unemployment compensation or disability benefits law, or under any similar law;
  - i. with respect to liability arising out of bodily injury to Law Enforcement Officers and Fire Fighters employed by the member it is agreed that exclusion (a) above is deleted and the following substituted therefore:

this Agreement does not apply to personal injury of any employee arising out of and in the course of their employment by the member to the extent that benefits for such personal injury are either payable or required to be provided under the "Washington Law Enforcement Officers and Fire Fighters' Retirement System Act."
- b. For personal injury to or sickness, disease or death of any employee of the member arising out of and in the course of their employment by the member.
- c. For any liability arising from providing or failing to provide health care or otherwise subject to RCW 7.70. However, this exclusion shall not apply to paramedics or physical therapists and does not apply to first responders administering opioid antagonists pursuant to RCW 69.41. The term "physical therapists" shall include any member who is providing physical therapy service to another member and who is subject to RCW 18.74. "First responder" is defined as any career or volunteer firefighter, law enforcement officer, or paramedic as defined in RCW 18.71.200, or emergency medical technician as defined in RCW 18.73.030. Furthermore, this exclusion shall not apply to the legal drawing of blood samples from criminal suspects for evidence in criminal investigations by police personnel currently certified by the Washington State Department of Health as Phlebotomists under RCW 18.360.
- d. For advertising activities, including claims made against any member for:
  - i. failure of performance of contract, but this shall not relate to claims for unauthorized appropriation of ideas based upon alleged breach of an implied contract;
  - ii. infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans;
  - iii. incorrect description of any article or commodity; or
  - iv. mistake in advertised price.
- e. For:
  - i. contamination of any environment by pollutants that are introduced at any time, anywhere, in any way;
  - ii. any bodily injury, personal injury, property damage, costs or other loss or damage arising out of such contamination, including but not limited to, cleaning upon, remedying or detoxifying such contamination; or
  - iii. the payment of sums related to (1) the investigation or defense of any loss, injury or damage or (2) payment of any cost, fine or penalty or (3) payment of any expense involving a claim or suit related to i or ii above. As used in this Exclusion, the following terms will have the following meanings:

- (1) "Contamination" means any unclean or unsafe or damaging or injurious or unhealthful condition arising out of the presence of pollutants, whether permanent or transient in any environment.
- (2) "Environment" includes any person, any man-made object or feature, animals, crops and vegetation, land, bodies of water, underground water or water table supplies, air and any other feature of the earth or its atmosphere, whether or not altered, developed or cultivated, including but not limited to any of the above, currently or formerly owned, controlled, leased, used or occupied by the member.
- (3) "Pollutants" means smoke, vapors, soot, fumes, acids, sound, alkalis, chemicals, liquids, solids, gases, thermal pollutants, waste materials and all other irritants, poisons or contaminants.

However, the pollution exclusion as stated above in section 3e(i),(ii),(iii) does not apply to liability from an "Occurrence" causing "Personal Injury" or "Property Damage" when the cause is :

- (1) 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". or
  - (2) the release of fuels, lubricants, fluids or similar materials required for the normal mechanical, electrical or hydraulic functioning of an "Automobile" and the materials are accidentally released directly from an "automobile" part designed by its manufacturer that has failed or been damaged..
- f. For personal injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to liability assumed by the member under contract.
- g. For personal injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
- i. any aircraft owned or operated by any member;
  - ii. any other aircraft operated by any person in the course of his/her employment by any member;
  - iii. any aircraft in the care, custody or control of the member for storage, servicing or fueling; or
  - iv. any watercraft over 30 feet.
- Exclusion 3(g) (i.) does not apply to authorized use of unmanned aircraft under remote control or unmanned helicopters under remote control - while used in the scope of the members business and if the aircraft weighs less than 55 pounds.
- h. For any liability or claim alleging, arising out of, based upon or attributable to the refusal, failure, or inability of any member to pay wages, provide benefits, make pension or retirement payments, pay overtime wages, minimum wages, back pay and interest thereon or any other form of compensation legally owed an employee per a contract, collective bargaining agreement, resolution, law, statute or regulation of the State of Washington and/or of the United States of America.

This exclusion applies to but, is not limited to:

- i. any wage or compensation order or award resulting from a labor grievance arbitration, civil service commission hearing or appeal from either;
- ii. any claim alleging violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retaining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act and any rules or regulation of the foregoing acts

promulgated thereunder or amendments thereto and/or any similar provisions of any federal state or local statute, common law, regulation or ordinance.

This exclusion shall not apply to any court entered judgment against a member on a claim for damages when the court determines that back pay and interest thereon to be a part of a prevailing party's compensatory damages for which they are entitled to a judgment.

- i. For property damage to premises alienated by the member arising out of such premises or any part thereof.
- j. For loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - i. a delay in or lack of performance by or on behalf of the member of any contract or agreement; or,
  - ii. the failure of the member's products or work performed by or on behalf of the member to meet the level of performance, quality, fitness or durability warranted or represented by the member;but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the member's products or work performed by or on behalf of the member after such products or work have been put to use by any person or organization other than a member.
- k. For property damage to the member's products arising out of such products or any part of such products.
- l. For property damage to work performed by or on behalf of the member arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.
- m. For damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the member's products or work completed by or for the member or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- n. For any liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, or inverse condemnation, by whatever name called, whether such liability accrues directly against the member or by virtue of any agreement entered into by or on behalf of the member.
- o. For any liability arising out of the operations, ownership, maintenance or use of any airport.
- p. For any liability arising out of ownership, operation, maintenance or use of any transit district, or transit department buses, or other transit district or transit department automobiles, including loading and unloading thereof; however, this exclusion does not apply to liability arising out of transit district or transit department buses chartered by a member in respect to special events.
- q. For any liability assumed by the member under any contract or agreement or arising out of the member's failure to perform, failure to pay or default on any contract or agreement. This exclusion would not apply to contracts or agreements to hold harmless or indemnify another person or entity as contemplated by Section A.1.b. of the General & Automobile Liability Coverage.
- r. For any liability for fines, penalties, punitive or exemplary damages awarded against a member for any reason.
- s. For any liability arising out of the failure to adequately supply, interruption or impairment of electrical, gas, water, or sewer service.
- t. For nuclear energy liability as further described below:
  - i. This Agreement does not apply:
    - (1) Under any Liability Coverage, to personal injury or property damage:

- (a) with respect to which a member is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or,
  - (b) resulting from the hazardous properties of nuclear material and with respect to which:
    - (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or,
    - (ii) the member is, or had this Agreement not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (2) Under any medical payments coverage, or under any supplementary payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- (3) Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if,
- (a) the nuclear material:
    - (i) is at any nuclear facility owned by, or operated by or on behalf of, a member; or
    - (ii) has been discharged or dispersed there from;
  - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a member; or,
  - (c) the bodily injury or property damage arises out of the furnishing by a member of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions of Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property there at.
- ii. As used in this exclusion:
- (1) "hazardous properties" include radioactive toxic or explosive properties.
  - (2) "nuclear material" means source material, special nuclear material or by-product material.
  - (3) "source material," "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
  - (4) "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.
  - (5) "waste" means any waste material:
    - (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and,
    - (b) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of nuclear facility.



(6) "nuclear facility" means:

- (a) any nuclear reactor.
- (b) any equipment or device designed or used for:
  - (i) separating the isotopes of uranium or plutonium,
  - (ii) processing or utilizing spent fuel, or,
  - (iii) handling, processing or packaging waste.
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in custody of the member at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

- u. For liability, defense costs, judgments, fines or damages arising out of any Intentional Act and/or any willful or wanton violation of any constitutional right provided in the Washington State Constitution or the United States Constitution, statute, ordinance or regulation of Washington State or the United States of America committed by or with the knowledge or consent of any member, except that any fact pertaining to any one member shall not be imputed to any other member for the purpose of determining the application of this exclusion.
- v. For any liability, defense costs, fines or damages which arise out of, brought about or contributed to by fraud, dishonesty or bad faith by a member or arising out of the willful violation of a penal code or ordinance committed by or with the knowledge or consent of any member or claims of injury arising out of the acts of fraud committed by or at the direction of the member with affirmative dishonesty or actual intent to deceive or defraud, except that any fact pertaining to any one member shall not be imputed to any other member for the purpose of determining the application of this exclusion.
- w. For any liability of a member arising in whole or in part, out of any member obtaining remuneration or financial gain to which the member was not legally entitled, except that any fact pertaining to any one member shall not be imputed to any other member for the purpose of determining the application of this exclusion.
- x. For any property damage or personal injury arising out of subsidence. "Subsidence" means any earth movement, including but not limited to settling, expansion, earth sinking, earth rising or shifting, slipping, falling away, tilting, caving in, eroding, mud flow and any other movement of land or earth. This exclusion does not apply to property damage or personal injury arising out of subsidence proximately caused by a negligent act or omission of any member.
- y. For any liability arising out of the rupture, bursting, overtopping, accidental discharge or partial or complete structural failure to any owned dams.

"Dams" means any artificial barrier, together with appurtenant works, which:

- i. Is 25 feet or more in height from the foot of a natural bed of stream or watercourse at the down stream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or water course to maximum possible water storage elevation; or,
- ii. Has water impounding capacity of 50 acre feet or more.

- z. For any liability or claim arising out of, based upon, resulting from or attributable to the improper administration or collection of any taxes, fees or assessments or any loss that reflects any tax or, tax fee or assessment refund obligation of a member.
- aa. Arising out of or resulting from:
  - i. Inhaling, ingesting, or prolonged physical exposure to asbestos or goods or products containing asbestos;
  - ii. The use of asbestos in constructing any good, product or structure; or,
  - iii. The removal of asbestos from any good, product or structure; or,
  - iv. The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos.
- ab. To any liability, indemnity, defense or responsibility of any kind arising out of or imposed by Chapter 98 (R48) known as the Private Property Regulatory Fairness Act.
- ac. For any liability, indemnity, or defense arising out of the operations of:
  - i. Any separate non-member legal or administrative entity created in accordance with Chapter 39.34 of the Revised Code of Washington entitled, "Interlocal Cooperation Act", excluding the Authority its employees, officers and members; or,
  - ii. Any local improvement districts and/or taxing districts including but not limited to Fire Protection Districts (RCW Chapter 52), Port Districts (RCW Chapter 53), Public Utility Districts (RCW Chapter 54), Sewer Districts (RCW Chapter 56), Water Districts (RCW Chapter 57), Intercountry Rural Library Districts (RCW Chapter 27.14), Irrigation Districts (RCW 87.03), Lake and Beach Management Districts (RCW 36.61), County Roads & Bridges Service Districts (RCW 36.83) and County Park and Recreation Districts (RCW 36.69) excluding any authority members. This exclusion is not applicable to any appointed or elected official of a member while acting in the scope of their lawful duties for or on behalf of a member as a board or commission representative to organizations described in (i) and (ii) above.
- ad. Any liability, indemnity, consequential damages or defense arising out of or occurring in whole or in part due to a member's criminal actions or conduct that violates any criminal statute, code, ordinance or law.
- ae. For any liability arising out of the operations, ownership, maintenance or use of any hospital or alcoholic center.

"Jail Facilities," including detoxification units (commonly known as "drunk tanks") are not to be considered as "alcoholic centers".
- af. For property damage to property owned, leased or rented to the Member.
- ag. For any liability, defense cost or indemnity for any monetary award, consequential damages, penalty, fine, costs, attorney fees or defense costs arising out or occurring, in whole or in part, due to a members violation of the Open Public Meetings Act (RCW 42.30), and/or the Public Records Act (RCW 42.56), or for any claim alleging any of the above.
- ah. For any liability for or indemnity for the imposition of any monetary fine, penalty or other monetary award for anything other than compensatory damages to an injured party or person and/or any award of attorney fees and costs to a prevailing party seeking a fine, penalty or non-compensatory damages award against a member in any court proceeding, administrative law proceeding or any other lawful tribunal with authority to grant such awards under the laws of the State of Washington and/or the United States of America.
- ai. For any monetary costs, fees or awards voluntarily incurred by a member or imposed upon member by any lawful order to bring the members property, conduct, practices, laws and/or policies

into compliance with any legal requirements mandated by the laws of the State of Washington and/or of the United States of America. This exclusion applies to but, is not limited to, any claim seeking to have a members buildings and facilities made more accessible or accommodating to any disabled person as mandated by the Americans With Disabilities Act of 1992, and as amended, or any similar federal, state or local law, regulation or ordinance.

- aj. For any claim alleging, arising out of, based upon or attributable to any member's activities or omissions as a trustee or fiduciary as respects any type of employee benefit plan, including any pension, savings or profit sharing plan, medical benefits plan, or to any amounts or benefits due under any fringe benefit program, retirement program, incentive program, medical benefits or insurance program, life and/or disability benefits or insurance program, perquisite program, entitlement program or other benefits owed or allegedly owed to any employee.
- ak. For any claim alleging, arising out of, based upon or attributable to: the gaining in fact of any profit, remuneration, benefit or advantage to which the member is not legally entitled; the return of any taxes, assessments; penalties, fines or fees; any award of salary, wages, benefits, back pay or earnings except for those awarded as compensatory damages resulting from a covered claim and occurrence.
- al. For any defense or defense cost for or liability and/or indemnity for any award, order or relief granted in any labor arbitration proceedings, civil service hearings or unfair labor practices proceedings or any other similar employer/employee labor dispute administrative hearing or proceeding initiated against a member under the laws of the State of Washington and/or the United States of America or as provided for in any collective bargaining agreement between a member and any employee bargaining unit or union for any form of grievance resolution.
- am. For the defense or defense costs for any proceeding before or liability and/or indemnity for any award, judgment, fines, penalties or decision of the Growth Management Hearings Board in and for the State of Washington.
- an. For any claim by or personal injury and/or property damage to a member arising out of a collision or vehicle accident caused by a non-member who is uninsured or underinsured in amounts insufficient to fully compensate the members loss. This exclusion shall not apply to property damage claims by members for property damage or destruction of member owned vehicles scheduled under separate property insurance provided the member by the Authority.
- ao. For any claim against a member or a member's officers, officials, employees or volunteers for personal injuries or property damage arising out of, based upon or attributable to their maintenance, use or operation of a privately owned motor vehicle not owned by their employing or appointing public entity member unless the public entity member has given prior express consent for the use of the privately owned motor vehicle by the member's officers, officials, employees or volunteers in the course and scope of their conduct of the public entity members business and then only when such use, maintenance or operation of the privately owned motor vehicle is being done in the course and scope of their employment and the conduct of the member's official business. Member employees, officials, officers and volunteers traveling in a privately owned motor vehicle to and from their location of employment or location where they conduct their business on behalf of the public entity member either before or after their hours of work will not be regarded as acting in the course and scope of their public employment or appointment.

## B. STOP-GAP COVERAGE

### 1. Coverage

In consideration of the assessment herein provided, it is agreed that if, under any circumstances, it is determined that any employee of the member who is reported and declared under the Workers' Compensation Law or Laws of the State of Washington is injured in the course of their employment but is not entitled to receive (or elects not to accept) the benefits provided by the aforementioned Law, then this policy shall cover the legal liability of the member for such personal injury, disease, or death and pay on behalf of the member all sums which the member shall become legally obligated to pay as damages and expenses, all as defined by the terms "ultimate net loss" and "occurrence."

## 2. Exclusions

The exclusions applicable to General and Automobile Liability (section I. A. 3.) of this agreement also apply to this section except exclusion "o" and exclusion "b."

The coverage granted hereunder shall not apply to:

- a. Personal injury, disease or death suffered or caused by any person knowingly employed by the member in violation of any law as to age or under the age of 14 years regardless of any such law except for persons volunteering for the member;
- b. any claim recoverable under the insurance provisions of any Workers' Compensation or Occupational Disease Act or Law or under the U.S. Longshore and Harbor Workers' Compensation Act or any other insurance available for the protection of the member;
- c. Personal injury, disease or death caused by or arising from the use, maintenance, or operation of aircraft;
- d. any premium assessment, penalty, fine or other obligation imposed by any Workers' Compensation Law;
- e. any claim for personal injury, disease, or death with respect to which the member is deprived of any defense or defenses or is otherwise subject to penalty because of default in premium payment under, or any other failure to comply with the provisions of the Workers' Compensation Law or Laws of the State above named;
- f. bodily injury by accident or disease to the master or members of the crew of any vessel.

## C. ERRORS OR OMISSIONS LIABILITY COVERAGE

### 1. Coverage

In consideration of the assessment herein provided, the Authority shall pay on behalf of its member all sums which the member shall become legally obligated to pay arising out of any occurrence which results in a claim for damages and expenses, all as more fully defined by the term "ultimate net loss", arising out of any claim for breach of any duty made against the member by reason of any negligent act, wrongful act, error or omission committed by the member during the policy period.

### 2. Exclusions

The exclusions applicable to General and Automobile Liability section I. A. 3. also apply to this section except exclusion "o." Additionally, the Errors and Omissions section does not apply:

- a. to physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom;
- b. liability or responsibility arising out of or imposed by any constitutional provision, statute, county, municipal or local ordinance or law administrative order, or rule of law dealing with the power of eminent domain, condemnation or inverse condemnation, or any acts arising out of or caused by the member(s) thereunder;
- c. to any dishonest, fraudulent, criminal or malicious act;
- d. to claims, occurrences or accidents which are covered under any other section of this Agreement;
- e. to any claims or for any liability arising out of the member's failure to secure a proper bond or secure payment for any contractor, subcontractor or third person who has performed work or provided materials to the member as part of the performance of any contract for the benefit of the member.

## D. EMPLOYEE BENEFITS LIABILITY COVERAGE

### 1. Coverage

In consideration of the assessment herein provided, the Authority agrees with the member named in this Agreement as follows:

- a. The Authority will pay on behalf of the member all sums which the member shall become legally obligated to pay as damages and expenses, all as more fully defined by the term "ultimate net loss", arising out of any claim made against the member by any employee or the beneficiaries or legal representatives thereof for injury arising out of any negligent act, error or omission, during the coverage period, of the member or any other person for whose acts the member is legally liable, in the administration of employee benefits as defined.

## 2. Definitions

- a. **EMPLOYEE BENEFIT PROGRAM.** The term "employee benefit program" shall mean Group Life Insurance, Group Accident or Health Insurance, Pension plans, Workers' Compensation, Unemployment Insurance, Social Security and Disability Benefits, and any other similar benefit program.
- b. **ADMINISTRATION.** As respects the coverage afforded hereby, the unqualified word "administration" whenever used shall mean:
  - i. giving counsel to employees with respect to the employee benefits;
  - ii. interpreting employee benefits;
  - iii. handling of records in connection with employee benefits;
  - iv. affecting enrollment, termination or cancellation of employees under employee benefit programs;
  - v. performed by a person authorized by the member to do such acts.

## 3. Exclusions

The exclusions applicable to General and Automobile Liability section I. A. 3. of this agreement also apply to this section.

This Agreement does not apply:

- a. to any dishonest, fraudulent, criminal or malicious act;
- b. to libel, slander, discrimination, or humiliation;
- c. to bodily injury, or sickness, disease, or death of any person;
- d. to injury to or destruction of any tangible property, including the loss of use thereof;
- e. to any claim based upon the member's failure to comply with the federal "Employee Retirement Income Security Act of 1974";
- f. to any claim for failure or performance of contract by any insurer;
- g. to any claim based upon the member's failure to comply with any law concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits.

## E. EMPLOYMENT PRACTICES LIABILITY COVERAGE

### 1. Coverage

In consideration of the assessment herein provided, the Authority shall pay on behalf of its member all sums which the member shall become legally obligated to pay arising out of any occurrence which results in a claim for damages and expenses, all as more fully defined by the term "ultimate net loss", arising out of any claim for breach of any duty made against the member by reason of any Wrongful Act(s) and/or Employment Practice Violation(s) committed by the member in the performance of its duties as a public employer during the policy period.

2. "Employment Practice Violation(s)" shall mean any of the actual or alleged:
  - a. Wrongful dismissal, discharge or termination (either actual or constructive) of employment including breach of an implied contract;
  - b. Harassment (including sexual harassment whether "quid pro quo," hostile work environment or otherwise);
  - c. Discrimination, (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
  - d. Retaliation;
  - e. Employment-related misrepresentation(s) to an employee or applicant for employment with the Public Entity;
  - f. Wrongful failure to employ or promote;
  - g. Wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
  - h. Wrongful discipline;
  - i. Failure to provide or enforce adequate or consistent policies and procedure relating to any Employment Practices Violation;
  - j. Violation of an individual's civil rights relating to any of the above but only if the Employment Practices Violation relates to an employee or applicant for employment with the Public Entity whether direct, indirect, intentional or unintentional;
  - k. Employment related libel, slander, defamation, or invasion of privacy.
3. "Wrongful Act" for purposes of employment practices liability coverage shall mean any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or Employment Practice Violation by a member solely in the performance of its duties as a public governmental entity.
4. Exclusions

The exclusions applicable to General and Automobile Liability section I. A. 3. of this agreement also apply to this section except for general exclusion "o."

#### F. PRIOR WRONGFUL ACTS

Claims based on wrongful acts that occurred before the effective date of WCIA membership will also be covered, provided that all of the following conditions are met:

- a. The wrongful act must have occurred within the prior thirty-six (36) month period prior to a member joining WCIA and be reported to WCIA within the next 12 month period;
- b. The member must not have had prior knowledge of the wrongful act or claim on the effective date of WCIA membership, nor have had any reasonable way to foresee that a claim might be brought;
- c. The claim must be for a wrongful act that would have been covered by the WCIA Coverage Document in force at the time the claim is presented to WCIA;
- d. The claim will only be indemnified up to the applicable prior public officials, errors & omissions or employment practices liability insurance or pool coverage, or WCIA liability limits, whichever is less;
- e. Use of any other available insurance covering the claim excludes the use of WCIA coverage.
- f. The prior wrongful act was within the course and scope of employment for employees or duties as a public official; and,

- g. Prior to the expiration of their current insurance coverage and prior to joining WCIA, all potential losses that the member knew about must have been reported to their insurance carrier;
  - h. The thirty-six (36) month prior coverage referenced in paragraph F(a) shall only apply to members who have joined WCIA on or after June 1, 2002. For members who have joined prior to June 1, 2002, the prior coverage shall be twelve (12) months instead of thirty-six (36) months and be subject to all other conditions in F(b), F(d), F(e), F(f), and F(g).
2. Optional Extended Reporting Period
- A member may, at its option, subject to WCIA approval, purchase an additional extended reporting period of twenty-four (24) months, provided that all the following conditions are met:
- a. The member requests the additional extended reporting period prior to the member joining WCIA;
  - b. The member shall purchase this coverage at a cost determined by an actuary hired by WCIA;
  - c. The conditions applicable in Paragraph F, Prior Wrongful Acts, also apply to this section with the exception of F(a) and F(d);
  - d. The wrongful act must have occurred within the prior thirty-six (36) month period prior to a member joining WCIA and be reported to WCIA within the next thirty-six month period;
  - e. If the optional extended reporting period is granted, the limit of liability for all prior wrongful acts coverage is \$5,000,000 per occurrence and \$5,000,000 in the aggregate;
  - f. The member shall have joined WCIA on or after June 1, 2002.
3. "Wrongful Act"
- For purposes of errors and omissions liability coverage shall mean any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission by a member solely in the performance of its duties as a public governmental entity.

## II. COVERAGE DEFINITIONS

This Agreement, in all of its sub-parts is subject to the following definitions:

### A. MEMBER

"Member" includes the Washington Cities Insurance Authority and any member municipal corporation, city, town or municipal entity in the State of Washington.

The unqualified word "member" includes:

1. all officials, officers, employees, and volunteers working for or on behalf of the member and any person, organization, trustee or estate to whom or to which the member is obligated by virtue of a written contract to provide insurance to the same extent as is afforded by this Agreement, but only with respect to actions within the scope of their employment by or on behalf of the member;
2. any person serving on the members governing body, any persons serving on the members boards or commissions, any elected or appointed official of the member, any other employee, or any volunteer serving the member; if the person is acting in the scope of their employment, appointment, duties, or service to the member;

the term "member" does not include any private for profit businesses or corporations, volunteer organizations or non-profit corporations and/or their officers, officials, or members when acting in or for the interests of and/or at the direction of said business, organization or corporation;

3. any person while using an automobile owned by, leased, rented, or loaned to the member or hired for use on behalf of the member or any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the member or with the member's permission, and any executive officer, other employee, director or volunteer of the member with respect to the use of an

automobile not owned by the member in the business of the member. The coverage with respect to any person or organization other than the member does not apply under this section:

- a. to any person or organization, or to any agent or employee thereof; operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any occurrence arising out of the operation thereof;
- b. with respect to any automobile hired by or loaned to the member, to the owner or a lessee thereof other than the member, or to any agent or employee of such owner or lessee.

#### B. PERSONAL INJURY

The term "personal injury" means:

1. bodily injury, sickness, disease, disability or shock, including death arising therefrom, medical malpractice injury, including emergency medical treatment and all acts of paramedics, or if arising out of the foregoing, mental anguish and mental injury;
2. false arrest, false imprisonment, wrongful eviction, wrongful detention, or malicious prosecution; or,
3. libel, slander, defamation of character, humiliation or invasion of the rights of privacy, unless arising out of advertising activities;
4. unlawful discrimination not committed by or at the direction of any executive officer of the member, but only with respect to the liability other than fines and penalties imposed by law;
5. false or improper services of process; and,
6. assault or battery committed for the purpose of protecting persons or property or incident to an arrest.

#### C. PROPERTY DAMAGE

The term "property damage" means loss of or direct damage to or destruction of tangible property which occurs during the policy period, including loss of use thereof at any time resulting therefrom and loss of use of tangible property which has not been physically injured or destroyed.

#### D. ADVERTISING LIABILITY

The term "advertising liability" means:

1. libel, slander or defamation;
2. any infringement of copyright or of title or of slogan;
3. piracy or unfair competition or idea misappropriation under an implied contract;
4. any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the member's advertising activities.

#### E. OCCURRENCE

The term "occurrence" means an accident or a happening or event or a continuous or repeated exposure to substantially the same general harmful conditions which unexpectedly and unintentionally result in personal injury, property damage, advertising liability, errors or omissions liability including wrongful acts, employment acts liability including wrongful acts or stop-gap liability during the policy period. All such exposure to substantially the same general conditions existing at or emanating from one location shall be deemed one occurrence.

With respect to "Personal Injury" and "Property Damage" all "Damages" arising out of substantially the same "Personal Injury" or "Property Damage" regardless of the frequency, timing, repetition, the number or kind of events or offenses, or the number of "Claimants," will be considered as arising out of one "Occurrence" and



shall be deemed to have occurred on the date of the first "Occurrence" causing "Personal Injury" or "Property Damage" during the policy period.

Only one Self-Insured Coverage Document issued by WCIA and one limit of coverage is applicable to any one "Occurrence."

Further, the definition of occurrence includes any intended act by or at the direction of the member, which results in personal injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property or making a lawful arrest.

F. ULTIMATE NET LOSS

The term "ultimate net loss" means the total sum which the member becomes obligated to pay by reason of liability claims, covered hereunder, either through adjudication or compromise and shall also include hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and law costs, premiums on attachment or appeal bonds, interest expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits covered hereunder. Ultimate net loss shall include all sums paid as salaries, expense, or costs to lawyers, or a lawyer's representative, other than paid employees of the member, and investigators, retained experts or other persons rendering services in handling specific litigation and coverage determination costs over \$1,000 per occurrence. Other salaries paid to employees of the member or the company; fees paid to the member's service company for handling claims are excluded from the ultimate net loss.

G. SELF-INSURED RETENTION

The term "self-insured retention" means the amount of "ultimate net loss" payable by the member in respect of each occurrence.

H. WRONGFUL ACT(S)

The term "Wrongful Act(s)" means any actual or alleged breach of duty, neglect, misstatement, misleading statement, error or omission or employment practices violation by a member solely in the performance of its duties as a Public Entity. A wrongful act may be a deliberate act that unexpectedly and unintentionally results in personal injury and/or property damage to another not intended by the member.

I. INTENTIONAL ACT(S)

The term "Intentional Act(s)" means any deliberate knowing action and/or deliberate knowing refusal to act by a member in violation of a clearly established legal duty and where the foreseeable and/or intended consequence of such deliberate action or deliberate refusal to act causes personal injury and/or property damage to another person or entity and there is no lawful justification for the members deliberate act or refusal to act.

J. CLAIM(S)

The term "claim(s)" means a summons and complaint for damages or other similar legal pleading filed with a Court of Law and served upon a member alleging that the member is liable for claimant's personal injuries and/or property damage and seeks a court judgment to recover money against a member for such liability.

K. PRODUCTS AND COMPLETED OPERATIONS LIABILITY

The term "products liability" means:

1. liability arising out of goods or products manufactured, sold, handled or distributed by the member or by others trading under their name if the occurrence occurs after possession of such goods or products has been relinquished to others by the member or by others trading under their name and if such occurrence occurs away from premises owned, rented or controlled by the member; provided such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold;
2. The term "completed operations" means liability arising out of operations, if the occurrence occurs after such operations have been completed or abandoned and occurs away from premises owned, rented or controlled by the member, provided operations shall not be deemed incomplete because improperly or

defectively performed or because further operations may be required pursuant to an agreement, provided further the following shall not be deemed to be "operations" within the meaning of this paragraph:

- a. pick-up or delivery, except from or onto a railroad car,
- b. the maintenance of vehicles owned or used by or in behalf of the member,
- c. the existence of tools, uninstalled equipment and abandoned or unused materials.

L. ANNUAL PERIOD

The term "annual period" means each consecutive period of one year commencing from the effective date of this Agreement.

M. AIRCRAFT

The term "aircraft" means any heavier than air or lighter than air aircraft designed to transport persons or property.

N. AUTOMOBILE

The term "automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

O. PARAMEDIC

The term "paramedic" shall include all personnel who may engage in rendering emergency medical assistance, including but not limited to the categories defined in RCW 18.73 and RCW 18.71.200: "Emergency medical technicians," "Physicians trained mobile intravenous therapy technicians," "Physicians trained mobile airway management technicians," and "Physicians trained mobile intensive care paramedics," provided that all amendments of RCW 18.73 and RCW 18.71.200 shall here and hereafter be included in the definition of the above categories.

P. TERRORISM

The term "Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following preparation for the following:
  - a. Use or threat of force or violence; or,
  - b. Commission or threat of a dangerous act; or,
  - c. Commission or threat of an act that interferes with or disrupts an electronic communication, information or mechanical system; and,
2. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or,
  - b. It appears that the intent is to intimidate or coerce a government, or to further political ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

Q. COMPENSATORY DAMAGES

The term "Compensatory Damages" means either personal injury and/or property damage as defined herein resulting from a covered occurrence and represented in the monetary amount of a judgment on a liability claim or lawsuit for personal injury and/or property damage deemed necessary by the court to make the injured party whole from such injuries and damage.

### III. COVERAGE CONDITIONS

This Agreement is subject to the following conditions:

#### A. ASSESSMENT

The assessment for this coverage varies from member to member and is set by the Board of Directors of the Authority in accordance with its By-laws and the Joint Protection Program.

Coverage under this Agreement is conditioned on and offered in consideration of the assessment being paid by a member in the time, manner, amount and method specified by the Board of Directors, Bylaws and Joint Protection Program of WCIA.

#### B. PRIOR INSURANCE AND NON-CUMULATION OF LIABILITY

It is agreed that if any loss is covered in whole or in part under any primary or excess insurance policy issued to the member prior to the effective date hereof (but not coverage provided by the Authority), the limit of liability hereunder shall be reduced by any amounts due to the member on account of such loss under such prior insurance. Subject to the foregoing and to all the other terms and conditions of this Agreement in the event that personal injury or property damage arising out of an occurrence covered hereunder is continuing at the time of termination of this Agreement, the Authority will continue to protect the member for liability in respect of such personal injury or property damage without payment of additional assessment.

#### C. INSPECTION AND AUDIT

The Authority shall be permitted to examine and audit the member's books and records at any time during the coverage period and any extension thereof and within three (3) years after the final termination of this Agreement, as far as they relate to the assessment bases or the subject matter of this coverage.

#### D. CROSS LIABILITY

This Agreement shall protect each member in the same manner as though a separate Agreement had been issued to each, except that nothing herein shall operate to increase the Authority's liability beyond the amount or amounts for which the Authority would have been liable had only one member been named.

#### E. NOTICE OF OCCURRENCE

Whenever the authorized representatives of the member have information from which the member may reasonably conclude that an occurrence covered hereunder involves injuries or damages which, in the event that the member should be held liable, is likely to involve this coverage, notice shall be sent to the Authority as soon as practicable. However, immediate written notice shall be given to the Authority when any injury of the following type occurs:

1. a fatality or death of a person in police custody,
2. amputation of a major extremity,
3. any serious head injury (including skull fracture or loss of sight of either or both eyes),
4. any injury to the spinal cord,
5. any disability of more than one (1) year or where it appears reasonably likely that there will be disability of more than one (1) year,
6. any burn 25% or more of the body,
7. heart or vascular disorders,
8. accidents where multiple injuries are involved or,
9. acts of employment discrimination and/or harassment involving race, age, gender, religion, disability or prohibited retaliation.

Such notice shall contain particulars sufficient to identify the member and also reasonably obtainable information respecting the time, place and circumstances of the injury, the names and addresses of the injured and of available witnesses. If suit or other proceeding is brought against the member, the member shall immediately forward to the Authority every demand, notice, summons, or other process or true copies thereof received by the member or the member's representatives, together with copies of reports of investigations made by the member with respect to such claim, suit or proceeding.

F. ASSISTANCE AND COOPERATION

The member and the Authority shall cooperate in all things in the defense of such claim, suit or proceeding.

G. APPEALS

In the event the member elects not to appeal a judgment, the Authority may elect to make such appeal at its cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Authority for ultimate net loss exceed the amount set forth in this Agreement for any one occurrence and in addition the cost and expense of such appeal.

H. BANKRUPTCY AND INSOLVENCY

In the event of the bankruptcy or insolvency of the member or any entity comprising the member, the Authority shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

I. OTHER INSURANCE

If valid and collectible insurance, which is written by an insurer (but not coverage provided by the Authority) is available to the member covering a loss also covered by this Agreement, other than insurance that is in excess of this coverage, the coverage afforded by this Agreement shall be in excess of and shall not contribute with such insurance. Valid and collectible insurance includes, but is not limited to, any other primary liability insurance available to the Member covering liability for damages arising out of premises or operations, or the products and completed operations, for which the member has been added to as an additional insured by attachment of an endorsement.

J. SUBROGATION

The Authority shall be subrogated to the extent of any payment hereunder to all the member's rights of recovery thereof (but not to the member's rights against the Authority), and the member shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right.

K. CHANGES

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this Agreement or stop the Authority from asserting any right under the terms of this Agreement; nor shall the terms of this Agreement be waived or changed, except by addenda issued to form a part hereof, signed by the Authority.

L. ASSIGNMENT

Assignment of interest under this Agreement shall not bind the Authority unless and until its consent is endorsed hereon.

M. CANCELLATION

Refer to the language of the Joint Protection Program, Article 8.