STUDY SESSION DES MOINES CITY COUNCIL - February 5, 2004 - 7:30 p.m.

CALL TO ORDER — all present

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

DISCUSSION ITEMS:	DISCUSSION LEADER:	GOAL:	EST. TIME:
1. Draft Ordinance No. 03-199 Gates on Private Streets 1st Reading	Public Works Director	Discussion/Direction	30 Minutes
2. Indemnification & Legal Representation for City Officials & Employees	Councilmember Steenrod & City Attorney	Discussion/Direction	30 Minutes
3. Draft Resolution No. 03-309 6 Year CIP Review	Finance Director	Discussion/Direction	90 Minutes

26(b) - suspended

removed from agenda to future date

NEXT MEETING DATE: Regular Meeting February 12, 2004

ADJOURNMENT

passed 7-0

DISCUSSION ITEM
#1

AGENDA ITEM

SUBJECT: Gates on Private Streets

ATTACHMENTS:

1. Draft Ordinance No. 03-199 Regarding Gate Requirements on Private Streets.
2. Excerpts from the December 22, 2003, City Council Meeting

AGENDA OF: February 5, 2004

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: January 29, 2004

CLEARANCES:
[ ] Finance
[X] Public Works
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this item is to seek City Council approval regarding proposed requirements for installing gates on private streets.

Suggested Motions:

"I move to pass Draft Ordinance No. 03-199 to a second reading for enactment at a future Council meeting."

Moved to suspend 26(b)
passed 7-0

Background:

When the present City of Des Moines Street Development Standards were considered by the City Council in 1996, there wasn't any interest in gating off private streets. Because of this, there was nothing specifically stated regarding this question, except for the statement that "the street shall be accessible at all times for emergency and public service vehicle usage". As a result, the Public Works Director has not approved any new gates in the last eight years on private streets. There are, however, some gates that were installed prior to annexation from King County and some on private drives serving a single dwelling unit.

Now that there are several locations around Des Moines that are requesting gates, it is a good time for the City Council to give staff some direction on this important issue. The two locations that have made written requests are S. 278th Place and Huntington Park. The Public Works Director has also received calls from property owners on Redondo Shores Drive S. indicating that they are seriously considering a request for adding gates to their private street.

At the December 22nd City Council meeting, after hearing testimony from a private property owner wishing to place a gate on his private street, and after discussing the issue, Council directed staff to bring a draft ordinance back to Council for consideration. As a result of the

Council direction and suggestions from the private property owner, staff has made a number of changes to the gate requirements. The major changes are as follows:

1. The turnaround requirements in #5 were changed so that it includes the ability to back as long as it is not onto public right of way.

2. Item #9 was rewritten to include a broad range of options for a power outage default mode in addition to an auxiliary power supply.

3. Item #11 includes both the old Item #11 and #12. The Community Development Director recommended that the height be up to 10 feet, but that even higher gates would be considered.

4. Item #12 (old Item #13) now says "sufficient" activation devices for public utilities.

5. The permits are now called "gate permits" and the fees are to be set by the City Manager (Item #16). The estimated fee is expected to be in the $750 to $1000 range.

6. The gate removal clause in Item #17 now refers to in cases of "public safety". It also includes an appeal process to the Hearing Examiner.

Almost all the requirements can be used for gates for other uses such as condominiums and apartments if the Council so wishes.

Discussion:

The overriding decision regarding the question of gates on private streets is, should they be allowed at all, and if so, under what conditions? Streets within the City, including private streets, serve a number of purposes, which are as follows:

1. Provide for vehicular access to occupants of property.

2. Provide emergency vehicle access (fire, police, and medical) to property.

3. Where sidewalks don't exist, serve as pedestrian access.

4. Streets provide utility corridors to serve the properties, and in some cases, the region (water, sewer, storm water, electricity, gas, phone and cable). All these utilities require repair and maintenance, which in some cases may be emergencies (such as water main breaks or sewer spills).

5. They provide for US Postal service and garbage pickup.

6. Streets provide for various other delivery services, everything from UPS to pizza to department store deliveries.

7. They provide for access for home and property maintenance and repair (lawn service, plumbers, electricians, painters, appliance repairs, etc.)

8. Streets provide access and parking for visitors to the homes of occupants.

If gates are to be allowed, they need to be designed and constructed in such a manner that they do not cause safety problems, nor should they adversely affect public streets or the surrounding neighborhood. As a result, the Draft Ordinance includes a list of requirements to be followed. The requirements need to be adaptable to the many different situations and conditions which may come up due to the size of the development, traffic conditions, and terrain.

There are also legal questions involved in the installation of gates. Gates can cause disputes between neighbors regarding whether they should be installed at all, how maintenance costs are assessed, and how they are used. The Draft Ordinance includes items speaking to this legal concern as well by requiring that all property owners agree to the gate before it is installed and that a maintenance agreement must be worked out in advance. The City of Des Moines legal staff does not want to become a third party in a dispute between property owners regarding gates, a situation that has happened in other cities.

As a first reading of Draft Ordinance No. 03-199, any additional comments or concerns that Council has regarding this document can be included in the Draft Ordinance before the final reading.

Alternatives:

The Council has a range of alternatives regarding gates on private streets, from not allowing gates at all to allowing them under certain conditions as approved by Council.

Financial Impact:

Allowing gates on private streets will result in additional staff time in Public Works, Community Development, King County Fire District 26, and the City Attorney's office. Since there is limited City staff in each of these departments, spending time on reviewing and approving gate requests will come at the expense of other City duties. It would be suggested that fees be required that cover the cost of staff time involved.

Recommendation/Conclusion:

None at this time.

Concurrence:

City Council, City Administration, Public Works, Community Development, City Attorney, and King County Fire District No. 26.

CITY ATTORNEY'S FIRST DRAFT 01/26/04

DRAFT ORDINANCE NO. 03-199

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to street development standards, adopting minimum requirements for gates on private streets, amending DMMC 12.28.010 and 12.28.020, and adding Appendix "I" to "City of Des Moines Street Development Standards, 1996 Edition."

WHEREAS, the City Council adopted the "City of Des Moines Street Development Standards, 1996 Edition," by enactment of Ordinance No. 1153, and

WHEREAS, the City Council amended the "City of Des Moines Street Development Standards, 1996 Edition," by enactment of Ordinance No. 1219, and

WHEREAS, the City Council further amended the "City of Des Moines Street Development Standards, 1996 Edition," by enactment of Ordinance No. 1284, and

WHEREAS, the existing Street Development Standards do not prescribe standards for gates on private streets, and

WHEREAS, the City Council finds that minimum requirements for gates on private streets are needed to ensure that such gates are located, designed, and constructed so that they do not adversely affect vehicle and pedestrian travel and safety in public streets, do not interfere with other uses of public and private rights-of-way, and do not adversely affect property use and safety in surrounding neighborhoods, and

WHEREAS, the City Council finds that minimum requirements for gates on private streets must address a wide variety of physical situations created by differences in the size of the development accessed through the gate, the volume of traffic on connecting public and private streets, and variations in terrain; and must also address legal situations such as property owner consent, and gate ownership, usage, and maintenance obligations, in order to avoid involving the City in any future disputes, and

WHEREAS, the City Council finds that that adoption of minimum requirements for gates on private streets is therefore in the interest of public health, safety, and welfare, and

ATTACHMENT 1

WHEREAS, to accomplish these public purposes, the City Council adopts a new Appendix "I" to the City of Des Moines Street Development Standards, 1996 Edition, to establish minimum requirements for gates on private streets as set forth in Exhibit "A" attached to this ordinance and incorporated herein by reference; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 12.28.010 and section 1 (part) of Ordinance No. 846 as amended by section 1 of Ordinance No. 1153 as amended by section 1 of Ordinance No. 1284 are each amended to read as follows:

> **Street development standards.** Streets and sidewalks in the city shall be constructed in accordance with the provisions of a document entitled "City of Des Moines Street Development Standards, 1996 Edition," consisting of textual material and Appendices "A" through "I," each page of which shall be annotated with the number of the ordinances codified in this chapter and the dates of enactment.

Sec. 2. DMMC 12.28.020 and section 1 (part) of Ordinance No. 846 as amended by section 1 of Ordinance No. 1153 are each amended to read as follows:

> **Street Development Standards, 1996 Edition, filed and maintained in the office of the City Clerk.** The City Clerk shall file, maintain and make available for public inspection the City of Des Moines Street Development Standards, 1996, <u>including Appendices "A" through "I,"</u> adopted by the ordinance codified in this chapter.

<u>**NEW SECTION.**</u> **Sec. 3. Adoption of Appendix "I" to City of Des Moines Street Development Standards, 1996 Edition.** The City Council of the City of Des Moines hereby adopts a new Appendix "I" to the City of Des Moines Street Development Standards, 1996 Edition, to establish minimum requirements for gates on private streets. The new Appendix "I" minimum requirements for gates on private streets are set forth in Exhibit "A" attached to this ordinance and incorporated herein by reference.

NEW SECTION. **Sec. 4. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

NEW SECTION. **Sec. 4. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of __________, 2004 and signed in authentication thereof this ____ day of ________, 2004.

____
M A Y O R

APPROVED AS TO FORM:

____
City Attorney

ATTEST:

____
City Clerk

Published: ____________________

Effective Date: ______________

DRAFTORD:03-199

Exhibit "A" to Draft Ordinance 03-199 which is Appendix "I" to "City of Des Moines Street Development Standards, 1996 Edition."

Recommended Private Gate Requirements – City of Des Moines

1. Private gates or other traffic barriers should be permitted only in cases where adequate provisions are made for access by fire, police, medical emergency, visitors and other public services (such as mail service, garbage collection, public utility emergency repairs, UPS/FedEx deliveries, home repair and maintenance vehicles, parking, etc.).

2. Private gates are allowed only on private streets and private driveways.

3. If, at any time, a private street is converted to, and accepted by the City, as a public street; any private gate(s) shall be removed.

4. In cases where the proposed gate or other barrier will affect 10 or more dwelling units, an engineering study will be required which addresses queuing patterns and associated questions related to items listed in No. 1 above. Recommended mitigation measures shall be submitted to the City along with the application. The traffic study shall be performed by a licensed and registered professional engineer within Washington State.

5. The entrance to the proposed gate shall be designed and stamped by a licensed and registered professional engineer within Washington State, and shall allow for a safe turnaround without backing on public right-of-way for vehicles in front of the gate in cases where the vehicle is denied entry. The design for the gated entrance shall consider the abutting public right of way and roadway alignments and grades, sight distance, posted speeds and other traffic engineering criteria relevant to designing the particular gated entrance. The gate design shall also consider current and future projects contained in the City's adopted Transportation Comprehensive Plan.

6. A sign shall be located on the private street at a point visible from the public roadway indicating "locked gate ahead".

7. All gates shall be equipped with a lockbox with momentary pushbutton switch and Opticom.

8. All gates shall include an activation system for use by private property owners. This system shall operate independently of the emergency access system, and may utilize keypads, magnetic cards, radio transmitters, or other mechanisms approved by the City of Des Moines and King County Fire District 26.

9. All gates shall include a default to unlocked, open position in the event of a power outage.

10. There shall be pedestrian access around all gates.

11. Gate construction, height and aesthetics shall be determined through the design review process, which is conducted by the Community Development Department. The gate and related equipment shall be coated in a manner to prevent corrosion. The gate shall be constructed in a manner so as to allow viewing of obstructions located within the swing path of the gate. In no event shall gate ~~height~~ exceed 10 feet ~~except with approval of the Community Development Director in consultation with the Public Works Director.~~ e

in height   the moving portion of the

12. If the gate obstructs access to public utilities or appurtenances, the utility purveyors shall be provided with sufficient activation devices, keys, or the access code to the gate as required.

13. All gates shall be erected a minimum of thirty feet from the edge of any public right of way. A property survey may be required to determine where the property line is located.

14. All gates shall include adequate provisions for illumination and/or reflectorization in order to be properly seen during periods of darkness and inclement weather conditions.

15. Any person desiring to install a gate shall apply for a gate permit from the Public Works Department. The application shall contain the following information:

    a. A vicinity and site map of the proposed location for the gate;
    b. A plan view and elevation of the gate installation illustrating gate dimensions and the direction of the swing path for the gate;
    c. A plan view of the gate turnaround maneuvering plan;
    d. The location of the access-control panel;
    e. Control system information;
    f. The names and addresses of all property owners affected by the restricted access;
    g. The written consent of ALL property owners affected by the restricted access. A gate cannot be installed without 100% approval.
    h. Both the City of Des Moines and King County Fire District 26 shall review all gate applications. Prior to any permit issuance, approvals from both entities shall be obtained.
    i. Building permits and inspections shall be required for all gate installations;
    j. Such other information as may be required by the Public Works Department, or other associated City departments such as Community Development, or King County Fire District 26;

k. The application shall be signed and dated by all co-owners of the private street.

16. Any person submitting an application for a gate shall pay a non-refundable fee to be set by administrative order of the City Manager at the time the application is submitted to cover staff review costs. This fee shall be in addition to any other development or construction fees for the subject property.

17. Upon receipt of a properly completed application for a gate installation request conforming to City standards together with the private gate application fee, the Public Works Department shall begin the review process. Upon completion of a thorough review of the application, the Public Works Director, or his designee may issue a permit authorizing the installation and construction of the gate. The City retains the right to have such gates removed and/or relocated at the applicant's sole expense should the City deem such action necessary for public safety. The applicant may appeal any removal/relocation decision to the Hearing Examiner.

18. The City shall have no liability for any damage to the gate resulting from City vehicles or City personnel accessing the property, whether responding to actual or false emergencies. Any damage sustained by City vehicles due to the gate installation shall be the responsibility of the party responsible for maintenance and repair of the gate.

19. The City shall have the right to access the property to inspect the gate on a periodic basis without being liable for trespass.

20. Maintenance and repair of the gate and related equipment shall be the responsibility of the applicant. A maintenance agreement between ALL affected property owners shall be submitted to, reviewed, and approved of, by the City prior to being recorded with King County against ALL properties involved. The applicant may, with the consent of the City, assign the obligation for maintenance and repair of the gate and related equipment to another person or entity, including a homeowner's association.

21. Upon notification by the City of any defects in the gate installation, the party responsible for maintenance and repair shall effect necessary repairs within fourteen days. Failure to make repairs within the specified period shall constitute a violation of the terms of the gate permit, and in such event, the City may require removal of the gate and related equipment. An extension of the time to make necessary repairs may be granted for just cause if requested in writing by the party responsible for maintenance and repair of the gate.

EXCERPT
DES MOINES CITY COUNCIL MINUTES
December 22, 2003

Gates on Private Streets

Public Works Director Heydon said that there was no interest expressed by Council to gate off private streets when the present City of Des Moines Street Standards were adopted in 1996. As a number of locations were now requesting gates, he asked Council to provide direction concerning this matter. He reviewed the following purposes for streets:

- Provide for vehicular access to occupants of property.
- Provide emergency vehicle access to property.
- Where sidewalks do not exist, serve as pedestrian access.
- Provide utility corridors to serve the property and region.
- Provide for US Postal service and garbage pickup.
- Provide for various other delivery services.
- Provide for access and parking for visitors to the property.
- Provide for access for home and property maintenance and repair.

Public Works Director Heydon advised that, if gates were allowed on private streets, they should not affect the public streets or the surrounding neighborhood.

Mayor Steenrod invited Dr. Rick Edwards to address Council.

Dr. Edwards said that the proposed provisions were more detailed than required by other jurisdictions. He recommended that the following conditions be eliminated or changed:

- The fee for the gate should not be a deterrent to installation but should reflect staff's true costs.
- Item No. 5 – Eliminate the provision or allow a vehicle turnaround, turnout or similar mechanism.
- Item No. 12 – The sixty-inch provision should refer to the fence only.

Councilmember Sherman recommended that a turn-around pad be allowed in Item No. 5.

Councilmember Thomasson said that he was comfortable with allowing a backing maneuver as long as the vehicle was not backing on to a street. He suggested that Council allow the Public Works Director to waive the provision if the conditions were determined to be safe.

Public Works Director Heydon explained that private streets often involve cul-de-sacs serving multiple dwellings. He said that the fee would depend upon the requirements level of detail. If the provisions were specific, the project would be more straightforward for both parties.

Councilmember Thomasson recommended that the fee be established by the City Manager.

Mayor Steenrod expressed concern that the proposed provisions did not allow much flexibility. She suggested that Item No. 13 refer to "an adequate number of activation devices" rather than identifying a specific number.

ATTACHMENT 2

Public Works Director Heydon said that specific provisions were easier for the applicant, staff, and legal department to comply with.

Councilmember Thomasson asked Dr. Edwards to submit any additional comments to Council in writing. He recommended that the required permit be a private gate permit rather than a right-of-way permit. Councilmember Thomasson asked staff to respond to the following questions regarding Item No. 18:

- What actions or items that might make Item No. 18 necessary?
- Would existing gates be affected by this provision? If so, how?
- Would this provision apply to condominiums? To short-plat streets?

Councilmember Thomasson asked if the provisions would be part of the City's Street Standards or DMMC.

MOTION was made by Councilmember Sheckler and seconded by Councilmember Sherman to direct staff to draft an ordinance regarding gates on private streets.

Mayor Steenrod asked staff to provide information regarding the proposed fee and application process.

VOTE ON MOTION: Motion passed unanimously.

DISCUSSION ITEM
#2

Removed from agenda to future date 2/5/04

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
Indemnification and Legal Representation For City Officials and Employees

ATTACHMENTS:
1. **RCW 4.96.041**
2. **Ordinance No. 701**
3. **Ordinance No. 1135**
4. **DMMC Chapter 2.24**
5. **RCW 35.21.205**
6. **RCW 36.16.138**
7. **WCIA Memo 11/12/03**
8. **WCIA Coverage Document #CT-2003**

FOR AGENDA OF: February 5, 2004

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: December 2, 2003

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL:

RECOMMENDED ACTION

This item is on the agenda at the request of the Mayor, for Council consideration of the City's responsibility for indemnification and legal defense of City officials and employees. Background information is provided, showing the Revised Code of Washington provisions governing this subject; the City's current ordinance and its history; and Washington Cities Insurance Authority (WCIA) coverage presently provided for City officials and employees. It is recommended that the Council discuss this information. If the Council determines that changes to the present process are needed, staff can prepare an ordinance for consideration at a future meeting.

MOTION: "I move to direct staff to prepare amendments to DMMC Chapter 2.24 as follows:

1. ______________________
2. ______________________
3. ______________________

and to schedule the amendments for consideration at the City Council meeting of ______,2004."

SUMMARY STATEMENT

State law provides two ways in which City officials and employees may be protected from liability for acts within the scope of their duties on behalf of the City: a legal defense and indemnification process; and insurance coverage. The City of Des Moines provides both types of coverage for acts with the scope of official duties, as explained below.

Legal Defense and Indemnification: Revised Code Of Washington (RCW) 4.96.041 permits a local government to provide legal defense at the expense of the city when an action or proceeding for damages is brought against a city official or employee for acts that were, in good faith, within the scope of official duties. The statute also permits the local government to pay any monetary judgment (indemnification) based on such acts. The decision as to whether the local government will provide defense and indemnification may be made in one of two ways: by approval from the legislative body of the local government, that is, the City Council; or by a "procedure created by ordinance or resolution." RCW 4.96.041(2).

In 1987, the City of Des Moines created a procedure by ordinance, by passing Ordinance No. 701. That ordinance has been changed only once since that time: in 1995, Ordinance No. 1135 changed its code numbers so that it is now found at DMMC Chapter 2.24. The procedure that the Council created requires that an official or employee who is sued to immediately notify the City Attorney of the lawsuit, and cooperate with the City Attorney. The City Attorney is required to determine whether defense will be provided, considering a list of criteria in DMMC 2.24.030. There is no appeal from that decision by the City Attorney except by filing an action for declaratory judgment in Superior Court. If the City Attorney decides that the official or employee is entitled to defense, the City Attorney will conduct the defense or appoint outside counsel; the official or employee may obtain a personal attorney only at their own expense. If all of the conditions in the ordinance are followed, the City will pay any judgment against the employee or official.

There is no information in the 1987 Council minutes as to why the Council created this particular procedure, but the process is designed to permit these highly controversial decisions to be made without being subject to political influence, by delegating the decisions to the city attorney as an official who can not be hired or fired by the City Council, and to the courts.

Insurance Coverage: RCW 35.21.205 and RCW 36.16.138 permit cities to provide liability insurance for officials and employees to protect them from liability for acts within the scope of their duties on behalf of the City. The City of Des Moines provides such coverage through Washington Cities insurance Authority (WCIA). WCIA provides pre-defense review, legal defense, and payment of any judgments for covered acts, as described in the attached memoranda and coverage document.

RCW 4.96.041
Action or proceeding against officer, employee, or volunteer of local governmental entity -- Payment of damages and expenses of defense.

(1) Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity.

(2) If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

(3) The necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in *RCW 29.82.023 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

(4) When an officer, employee, or volunteer of the local governmental entity has been represented at the expense of the local governmental entity under subsection (1) of this section and the court hearing the action has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction for nonpunitive damages only from the local governmental entity, and judgment for nonpunitive damages shall not become a lien upon any property of such officer, employee, or volunteer. The legislative authority of a local governmental entity may, pursuant to a procedure created by ordinance or resolution, agree to pay an award for punitive damages.

[1993 c 449 § 4; 1989 c 250 § 1; 1979 ex.s. c 72 § 1. Formerly RCW 36.16.134.]

NOTES:

***Reviser's note:** RCW 29.82.023 was recodified as RCW 29A.56.140 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose -- Severability--1993 c 449: See notes following RCW 4.96.010.

ORDINANCE NO. 701

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to legal actions brought against city officials and employees, providing for legal representation for conduct, acts, and omissions on behalf of the City within the scope of their service or employment; setting conditions for such representation; and specifying the circumstances under which claims against city officials and employees will be paid by the City of Des Moines.

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Section 1. Definitions. Unless the context indicates otherwise, the words and phrases used in this ordinance shall have the following meanings:

(1) "Official." Any person who is serving or has served as an elected, elective, or appointed city official, and any person who is serving or has served as an appointed member of any city board, commission, or committee.

(2) "Employee." Any person who is or has been employed by the City.

Section 2. Legal Representation.

(1) As a condition of service or employment with the City of Des Moines, the City shall provide to an official or employee, subject to the conditions and requirements of this ordinance, and notwithstanding the fact that such official or employee may have concluded service or employment with the City, such legal representation as may be reasonably necessary to defend a claim or law suit filed against such official or employee resulting from any conduct, act, or omission of such official or employee performed or omitted on behalf of the City in his or her capacity as a city official or employee, which act or omission is within the scope of his or her service or employment with the City.

(2) Except as may be provided in any applicable policy of municipal insurance, such legal representation shall be provided by the City Attorney or by an attorney designated by the City Attorney.

Section 3. Exclusions.

(1) The obligations assumed under this ordinance by the City and the City Attorney shall not apply to:

(a) any dishonest, fraudulent, criminal, or malicious act of any official or employee;

(b) any act of an official or employee which is not performed on behalf of the City;

(c) any act which is outside the scope of an official's or employee's service or employment with the City; or

(d) any lawsuit brought by or on behalf of the City.

(2) The provisions of this ordinance shall have no force or effect with respect to any accident, occurrence, or circumstance for which the City or the official or employee is insured against loss or damages under the terms of any valid insurance policy.

Section 4. Determination of Exclusion. The determination of whether an official or employee is entitled to a defense by the City under the terms of this ordinance shall be made by the City Attorney. There shall be no appeal from such determination, except to the superior court by means of an action for declaratory judgment.

Section 5. Representation and Payment of Claims - Conditions. The provisions of this ordinance shall be subject to the following conditions:

(1) In the event of any incident or course of conduct potentially giving rise to a claim for damage, or the commencement of a suit, the official or employee involved shall, as soon as practicable, give the City Attorney written notice thereof, identifying the official or employee involved, all information known to the official or employee involved, all information known to official or employee with respect to the date, time, place, and circumstances surrounding the incident or conduct giving rise to the claim or law suit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

(2) Upon receipt thereof, the official or employee shall forthwith deliver any claim, demand, notice, or summons or other process relating to any such incident or conduct to the City Attorney, and shall cooperate with the City Attorney or an attorney designated by the City Attorney, and, upon request, assist in making settlements of any suits and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the City because of any damage or claim of loss arising from such incident or course of conduct.

(3) Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining attendance of witnesses; and

(4) Such official or employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense; other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss, or damage.

Section 6. Effect of Compliance with Conditions. If legal representation of an official or employee is undertaken by the City Attorney, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement made, the City shall pay such judgment or settlement; provided, that the City may, at its discretion, appeal as necessary such judgment.

Section 7. Failure to Comply with Conditions. In the event that any official or employee fails or refuses to comply with any of the conditions of Section 5 of this ordinance, or elects to provide his or her own representation with respect to any such claim or litigation, then all of the provisions of this ordinance shall be inapplicable, and have no force or effect with respect to any such claim or litigation; provided, however, nothing contained in this section shall prevent an official or employee from obtaining personal legal representation at his or her own expense to act in cooperation with the attorney designated by the City of Des Moines.

Section 8. Reimbursement of Incurred Expenses.

(1) If the City Attorney determines that an official or employee does not come within the provisions of this ordinance, and a court of competent jurisdiction later determines that such claim does come within the provisions of this ordinance, then the City shall pay any judgment rendered against the official or employee and reasonable attorney's fees incurred in defending against the claim. The City shall pay any reasonable attorney's fees incurred in obtaining the determination that such claim is covered by the provisions of this ordinance.

(2) If the City Attorney determines that a claim against a city official or employee does come within the provisions of this ordinance, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this ordinance, then the City shall be reimbursed for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this ordinance.

Section 9. Conflict with Provision of Insurance Policies. Nothing contained in this ordinance shall be construed to modify or amend any provision of any policy of insurance where any city official or employee thereof is a named insured. In the event of any conflict between this ordinance and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this section shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this ordinance, it being the intent of this ordinance and section to provide complete coverage outside and beyond insurance policies which may be in effect, while not compromising the terms and conditions of such policies by any conflicting provision contained in this chapter.

Section 10. Pending Claims. The provisions of this ordinance shall apply to any pending claim or lawsuit against an official or employee, or any such claim or law suit hereafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or law suit.

Section 11. This ordinance shall take effect and be in full force five (5) days after its passage, approval and publication according to law.

PASSED BY the City Council of the City of Des Moines this 14th day of May, 1987, and signed in authentication thereof this 14th day of May, 1987.

Pat DeBlasio
MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

Denis Staab
City Clerk

Published: May 24, 1987

LEGAL NOTICE

CITY OF DES MOINES

ORDINANCE NO. 701 SUMMARY, Adopted May 14, 1987.

TITLE: AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to legal actions brought against city officials and employees, providing for legal representation for conduct, acts, and omissions on behalf of the City within the scope of their service or employment; setting conditions for such representation; and specifying the circumstances under which claims against city officials and employees will be paid by the City of Des Moines.

Section 1. Defines words and phrases used in the ordinance.

Section 2. Provides for legal representation to defend any claim or lawsuit filed against a city official or employee.

Section 3. Defines exclusions and describes the circumstances under which the ordinance will not apply.

Section 4. Describes the process of determination of exclusion.

Section 5. Specifies the conditions under which the ordinance will be effective and representation provided.

Section 6. Provides for payment of judgment.

Section 7. Describes the circumstances of failure to comply with the conditions of representation.

Section 8. Describes the circumstances under which reimbursement of incurred expenses will occur.

Section 9. Describes the relationship of the provisions of this ordinance with policies of insurance.

Section 10. Applies the ordinance to all claims, notwithstanding the date of the events or circumstances.

Section 11. Sets effective date of ordinance.

A full text will be mailed without cost upon request.

Denis Staab

Denis Staab
City Clerk

Published: May 24, 1987

Sec 2(a) ([illegible]) amended by O 1110

ORDINANCE NO. 1135

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON recodifying Chapter 2.05 DMMC, et seq.

WHEREAS, Title 2 DMMC, Administration and Personnel, contains outdated provisions and is need of reorganization, and

WHEREAS, the city council desires to continue its process of updating the DMMC by repealing obsolete portions and reorganizing its contents, and

WHEREAS, the city council finds that the amendments contained in this ordinance are appropriate and necessary for the preservation of the public health and welfare; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1. Repealer. Chapter 2.58 DMMC and Ordinance No. 686 are each repealed.

Sec. 2. Codification.

(1) Chapter 2.05 DMMC, et seq, is decodified.

(2) Ordinance No. 982 is recodified as a new chapter in Title 2 DMMC entitled "Statutory Offices, Departments, Divisions, and Employments". O.S.

(3) Ordinance No. ~~610~~ 790 as amended by Ordinance No. 822 as amended by Ordinance No. 921 as amended by Ordinance No. 949 is recodified as a new chapter in Title 2 DMMC entitled "Employee Policies".

(4) Ordinance No. 413 is recodified as a new chapter in Title 2 DMMC entitled "Reimbursements for Expenditures".

(5) Ordinance No. 242 as amended by Ordinance No. 786 is recodified as a new chapter in Title 2 DMMC entitled "Retirement and Pension System".

(6) Ordinance No. 701 is recodified as a new chapter in Title 2 DMMC entitled "Legal Representation for City Employees". O.S.

(7) Ordinance No. ~~790~~ 610 as amended by Ordinance No. ~~493 as amended by Ordinance No. 581 as amended by Ordinance No. 770 as amended by Ordinance No. 993 as amended by Ordinance No. 1009~~ 1036 is recodified as a new chapter in Title 2 DMMC entitled "Municipal Court".

(8) Ordinance No. 474 as amended by section 103 of Ordinance No. 1036 is recodified as a new chapter in Title 2 DMMC entitled "Design Review".

(9) Ordinance No. 955 is recodified as a new chapter in Title 2 DMMC entitled "Emergency Management".

Sec. 3. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 4. Effective date.

This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication accordance with law.

PASSED BY the city council of the city of Des Moines this 8th day of June, 1995 and signed in authentication thereof this 8th day of June, 1995.

Richard J. Kennedy
MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

Denis Staab
City Clerk

Published: June 14, 1995

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1135, Adopted June 8, 1995.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance recodifies Chapter 2.05 DMMC, et seq.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: June 14, 1995

Chapter 2.24
LEGAL REPRESENTATION FOR CITY EMPLOYEES

Sections

2.24.010 Definitions.

Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meanings:

(1) "Employee" means any person who is or has been employed by the city.

(2) "Official" means any person who is serving or has served as an elected, elective, or appointed city official, and any person who is serving or has served as an appointed member of any city board, commission, or committee. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 1, 1987. Formerly 2.92.010.]

2.24.020 Legal representation.

(1) As a condition of service or employment with the city, the city shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the city, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act, or omission of such official or employee performed or omitted on behalf of the city iu his or her capacity as a city official or employee, which act or omission is within the scope of his or her service or employment with the city.

(2) Except as may be provided in any applicable policy of municipal insurance, such legal representation shall be provided by the city attorney or by an attorney designated by the city attorney. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 2, 1987. Formerly 2.92.020.]

2.24.030 Exclusions.

(1) The obligations assumed under this chapter by the city and the city attorney shall not apply to:

(a) Any dishonest, fraudulent, criminal, or malicious act of any official or employee;

(b) Any act of an official or employee which is not performed on behalf of the city;

(c) Any act which is outside the scope of an official's or employee's service or employment with the city; or

(d) Any lawsuit brought by or on behalf of the city.

(2) The provisions of this chapter shall have no force or effect with respect to any accident, occurrence, or circumstance for which the city or the official or employee is insured against loss or damages under the terms of any valid insurance policy. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 3, 1987. Formerly 2.92.030.]

2.24.040 Determination of exclusion.

The determination of whether an official or employee is entitled to a defense by the city under the terms of this chapter shall be made by the city attorney. There shall be no appeal from such determination, except to the superior court by means of an action for declaratory judgment. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 4, 1987. Formerly 2.92.040.]

2.24.050 Representation and payment of claims – Conditions.

The provisions of this chapter shall be subject to the following conditions:

(1) In the event of any incident or course of conduct potentially giving rise to a claim for damage, or the commencement of a suit, the official or employee involved shall, as soon as practicable, give the city attorney written notice thereof, identifying the official or employee involved, all information known to the official or employee involved, all information known to official or employee with respect to the date, time, place, and circumstances surrounding the incident or conduct giving rise to the claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses;

(2) Upon receipt thereof, the official or employee shall forthwith deliver any claim, demand, notice, or summons or other process relating to any such incident or conduct to the city attorney, and shall cooperate with the city attorney or an attorney designated by the city attorney, and, upon request, assist in making settlements of any suits and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the city because of any damage or claim of loss arising from such incident or course of conduct;

(3) Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining attendance of witnesses; and

(4) Such official or employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense, other than for first-aid to others at the time of any incident or course of conduct giving rise to any such claim, loss, or damage. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 5, 1987. Formerly 2.92.050.]

2.24.060 Effect of compliance with conditions.

If legal representation of an official or employee is undertaken by the city attorney, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement made, the city shall pay such judgment or settlement; provided, that the city may, at its discretion, appeal as necessary such judgment. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 6, 1987. Formerly 2.92.060.]

2.24.070 Failure to comply with conditions.

In the event that any official or employee fails or refuses to comply with any of the conditions of DMMC 2.24.050, or elects to provide his or her own representation with respect to any such claim or litigation, then all of the provisions of this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation; provided, however, nothing contained in this section shall prevent an official or employee from obtaining personal legal representation at his or her own expense to act in cooperation with the attorney designated by the city. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 7, 1987. Formerly 2.92.070.]

2.24.080 Reimbursement of incurred expenses.

(1) If the city attorney determines that an official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the city shall pay any judgment rendered against the official or employee and reasonable attorney's fees incurred in defending against the claim. The city shall pay any reasonable attorney's fees incurred in obtaining the determination that such claim is covered by the provisions of this chapter.

(2) If the city attorney determines that a claim against a city official or employee does come within the provisions of this chapter, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the city shall be reimbursed for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 8, 1987. Formerly 2.92.080.]

2.24.090 Conflict with provision of insurance policies.

Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance where any city official or employee thereof is a named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this section shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this chapter, it being the intent of this chapter and section to provide complete coverage outside and beyond insurance policies which may be in effect, while not compromising the terms and conditions of such policies by any conflicting provision contained in this chapter. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 9, 1987. Formerly 2.92.090.]

2.24.100 Pending claims.

The provisions of this chapter shall apply to any pending claim or lawsuit against an official or employee, or any such claim or lawsuit hereafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit. [Ord. 1135 § 2(6)(part), 1995; Ord. 701 § 10, 1987. Formerly 2.92.100.]

RCW 35.21.205
Liability insurance for officials and employees.

Each city or town may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties.

[1973 c 125 § 2.]

NOTES:

Dog handler using dog in line of duty -- Immunity: RCW 4.24.410.

RCW 36.16.138
Liability insurance for officers and employees of municipal corporations and political subdivisions authorized.

Any board of commissioners, council, or board of directors or other governing board of any county, city, town, school district, port district, public utility district, water-sewer district, irrigation district, or other municipal corporation or political subdivision is authorized to purchase insurance to protect and hold personally harmless any of its commissioners, council members, directors, or other governing board members, and any of its other officers, employees, and agents from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, purported performance, or failure of performance, in good faith of duties for, or employment with, such institutions and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance for any of the foregoing individuals and the policy limits shall be discretionary with the municipal corporation or political subdivision, and such insurance shall not be considered to be compensation for these individuals.

The provisions of this section are cumulative and in addition to any other provision of law authorizing any municipal corporation or political subdivision to purchase liability insurance.

[1999 c 153 § 43; 1975 c 16 § 1.]

NOTES:

Part headings not law -- 1999 c 153: See note following RCW 57.04.050.

Liability insurance for officers and employees authorized: RCW 28A.400.360, 28B.10.660, 35.21.205, 52.12.071, 53.08.205, 54.16.095, 57.08.105, and 87.03.162.

Memorandum

To: Angie Chaufty

CC:

From: Leighton Smiley, WCIA Risk Management Representative

Date: 11/12/2003

Re: Liability Insurance for Officials

Angie,

This message is in response to the email that you had sent to Margaret Langworthy on November 5, 2003. Margaret forwarded the message to me as I am the assigned Risk Management Representative for Des Moines.

The city has inquired about insurance requirements for Councilmembers pursuant to RCW 35.21.205. WCIA provides its members with liability and errors and omissions coverage subject to the terms and conditions of the self-insured coverage document or CT-2004. This means that there is coverage for councilmembers while performing their official duties.

In this communication I have included an article written by Executive Director Lew Leigh that appeared in the September/October newsletter. I feel this article is pertinent and encourage you to read it if you have not already done so.

Should you have any questions or if I can be of further assistance do not hesitate to contact me.

Leighton Smiley

The Authority

Financial Protection of Public Officials: A "Hard Market" Success

by Lew Leigh

September/October 2003

At the onset of an expected "hard market insurance cycle," a previous newsletter article critiqued an Authority program's capability to weather the expected insurance industry deterioration. Now approaching the apex of that cycle, further examination can compare the Authority's performance against the insurance industry's recent unwillingness to fully protect Public Officials, and the unexpected financial vulnerabilities to large non-member cities and smaller pools.

Recent insurance industry renewals now perceive Public Officials as a major exposure. They are showing surprising reductions in Public Officials coverage, reducing limits by two-thirds, to only $5 million. Exhaustion of those low limits has become more probable from such incidents as recent DSHS verdicts, Tacoma hiring scenarios and class-action litigation. A city's financial resources are easily becoming the last resort.

In addition, an insurance company exclusively relied upon by one city pool, will only offer public officials coverage on a "claims-made" basis, an inferior coverage to an "occurrence" policy. With a claims-made policy form, termination of coverage by the insured or cancellation by the insurer, reduces run-off coverage to only the following twelve months, after which all past coverage is eliminated.

These program reductions come at a time when city revenues and claims eserve accounts are vulnerable. The combination of coverage reductions by the industry, city assumption of reduced limits in an attempt to avoid exorbitant premium increases, have poorly positioned some larger cities and small pools. A potentially punitive financial exposure now exists.

n comparison, Authority Error and Omission coverage terms and limits ave not been eroded in any sense. Limits are still at their pre-hard-narket levels. Coverage is still on an occurrence basis, which preserves inancial protection for all past years. Our aggressive litigation defense olicy has been completely successful in six of seven class action lawsuits, vith Authority reserves used to successfully protect a member in a seventh ase. Through our Pre-Defense Review Program, pre-loss protection of fficials is at an all-time effectiveness, and the Executive Committee is onsidering further expansion of public official training topics to further nhance levels of professionalism.

In This Issue

WA cities
Insurance Authority
P.O. Box 1165
Renton, WA 98057

425-277-7237

Self-Insured Coverage Document

#CT-2003

WA cities
Insurance Authority

WASHINGTON CITIES INSURANCE AUTHORITY

Self-Insured Coverage Document #CT-2003
January 1, 2003, to January 1, 2004
12:01 am Pacific Standard Time

LIMITS/ULTIMATE NET LOSS:

PRIMARY LAYER LIMIT	$1,000,000 PER OCCURRENCE
1st EXCESS LAYER LIMIT	$ 2,000,000 PER OCCURRENCE / $12,000,000 ANNUAL AGGREGATE
2nd EXCESS LAYER LIMIT	$11,000,000 PER OCCURRENCE / NO ANNUAL AGGREGATE EXCEPT FOR PUBLIC OFFICIALS E&0 - $10,000,000 PER MEMBER
TOTAL LIMIT	$14,000,000 PER OCCURRENCE, subject to above aggregates and see Section ID, (Coverage Limits) in the WCIA Joint Protection Program.

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

MEMBERS COVERED BY THIS AGREEMENT:

Aberdeen
Anacortes
A Regional Coalition for Housing
Arlington
Auburn
Bainbridge Island
Battle Ground
Benton County Emergency Services
Bonney Lake
Bothell
Burien
Camas
Centralia
Chehalis
Chelan
Clark Regional Emerg. Serv. Ag. (CRESA)
Clarkston
Clyde Hill
Coupeville
Covington
Cowlitz Sewer Operating Board
Des Moines
Eastside Public Safety Communications
Edgewood
Edmonds
Elma
Emergency Services Coordinating Agency
Enumclaw
Fife
Goldendale
Grandview
Grays Harbor 911 Communications
Hoquiam
Issaquah
Kelso
Kenmore
Kent
Kirkland
Lacey
La Conner
Lake Forest Park
Lake Stevens
Leavenworth
Long Beach
Longview
LOTT Alliance
Mabton
Maple Valley
Marysville
Marysville Fire District
McCleary
Medical Lake
Medina
Mercer Island
Mill Creek
Milton
Monroe
Monroe Fire District
Montesano
Mountlake Terrace
Mount Vernon
Mukilteo
Newcastle
Normandy Park
North Bonneville
Ocean Shores
Olympia
Pasco
PENCOM
Port Angeles
Port Townsend
Pullman
Pullman-Moscow Regional Airport
Puyallup
Renton
Richland
Sammamish
Shelton
Shoreline
Skagit 911
Snohomish
Snohomish Co. Dept. Emerg. Mgt.
Snohomish Co. Emergency Radio Sys.
SNOCOM/Medic 7
SNOPAC
Snoqualmie
Stanwood
Steilacoom
Sumner
Thurston Regional Planning Council
Toppenish
Tukwila
Tumwater
Union Gap
University Place
Valley Communications
Walla Walla
WA Cities Insurance Authority
Washougal
Water Operating Board
Westport
Woodinville
Woodway
Yakima Valley Conference of Govern.
Zillah

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

I. COVERAGE AGREEMENTS

A. COMPREHENSIVE GENERAL & AUTOMOBILE LIABILITY COVERAGE

1. Coverage

In consideration of the assessment herein provided, the Authority hereby agrees, subject to the limitations, terms 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:

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, occurring anywhere in the United States of America, its territories and possessions and/or Canada.

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

2. Limits of Liability.

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

The 1st Excess Layer Annual Aggregate Limit is the most the Authority will pay as a combined total of all excess claims between $1 million and $3 million for all members, occurring during the term of this Coverage Document. The 1st Excess Layer Annual Aggregate Limit shall apply separately to each coverage term.

The 2nd Excess Layer Annual Aggregate Limit only applies to public officials errors or omissions and is a $10,000,000 aggregate per member.

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 Worker's 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 Officer's and Fire Fighter's 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 medical malpractice injury:

i. against any member engaged in the business or occupation of providing medical, surgical, dental, X-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith. This exclusion shall not apply to paramedics.

ii. due to injury caused by any member if such member is engaged in the business or occupation of providing the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances. This exclusion shall not apply to paramedics.

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;

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.

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.

h. For liability imposed upon a member or which is imputed to a member under the Federal "Employee Retirement Income Security Act of 1974" and any law amendatory thereafter;

i. For property damage to any property of others in the care and custody of the member for repair, or for sale;

j. For property damage to premises alienated by the member arising out of such premises or any part thereof;

k. 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.

l. For property damage to the member's products arising out of such products or any part of such products;

m. 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;

n. 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;

o. 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;

p. For any liability arising out of the operations, ownership, maintenance or use of any airport, hospital, alcoholic center;

"jail facilities", including detoxification units (commonly known as "drunk tanks") are not to be considered as "alcoholic centers".

q. For any liability arising out of ownership, operation, maintenance or use of any transit district buses or other transit district automobiles, including loading and unloading thereof; however, this exclusion does not apply to liability arising out of transit district buses chartered by a member in respect to special events.

r. For any liability assumed by the member under any contract or agreement or resulting from 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 Comprehensive General and Automobile Liability coverage.

s. For any liability for fines, penalties, punitive or exemplary damages awarded against a member for any reason.

t. For any liability arising out of the failure to adequately supply, interruption or impairment of electrical, gas, water, or sewer service.

u. 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 therefrom;

(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 of 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.

v. For liability, defense costs, fines or damages arising out of the willful or wanton violation of any civil statute, ordinance or regulation committed by or with the knowledge or consent of any member, except that any fact pertaining to any one insured shall not be imputed to any other member for the purpose of determining the application of this exclusion.

w. 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.

x. 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 purposed of determining the application of this exclusion.

y. For any property damage 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 arising out of subsidence proximately caused by a negligent act or omission of any member.

z. 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:

1. 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
2. Has water impounding capacity of 50 acre feet or more.

aa. For any liability for refund of taxes or assessments.

ab. Arising out of or resulting from:

1. Inhaling, ingesting, or prolonged physical exposure to asbestos or goods or products containing asbestos;

2. The use of asbestos in constructing any good, product or structure; or

3. The removal of asbestos from any good, product or structure; or

4. The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos.

ac. 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.

ad. For any liability, indemnity, or defense arising out of the operations of:

1. 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

2. 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), Intercounty Rural Library Districts (RCW Chapter 27.14), Irrigation Districts (RCW 87.03), Lake 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 1. and 2. above.

ae. Any liability, indemnity, consequential damages, or defense arising out of or occurring, in whole or in part, due to the failure of or improper operation of any member-owned or used computer, computer software, or equipment with an embedded computer chip due to said items' failure to recognize correctly the year 2000 and beyond; or, due to said items' failure to operate or operate correctly on or after January 1, 2000.

af. 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.

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 Worker's 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 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;

b. any claim recoverable under the insurance provisions of any Worker's Compensation or Occupations Disease Act or Law or under the U.S. Longshoremen's 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 Worker's 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 Worker's Compensation Law or Laws of the State above named.

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 because of any occurrence which results in a claim for damages and expenses, all as more fully defined by the term "ultimate net loss", because of any claim for breach of any duty made against the member by reason of any negligent act, error or omission committed by the member during the policy period.

2. Exclusions

The exclusions applicable to Comprehensive General Liability section also apply to this section. 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.

3. 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 prior public officials or errors & omissions insurance policy 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 3(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 3(b), 3(d), 3(e), 3(f), and 3(g).

4. 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 3, Prior Wrongful Acts, also apply to this section with the exception of 3(a) and 3(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.

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", because 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.

b. This coverage applies only to claims brought against the member within the United States of America, its Territories or Possessions or Canada, resulting from negligent acts, errors or omissions in the administration of employee benefits.

2. Definitions

a. EMPLOYEE BENEFIT PROGRAM. The term "employee benefit program" shall mean Group Life Insurance, Group Accident or Health Insurance, Pension plans, Worker's 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

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 Worker's Compensation, Unemployment Insurance, Social Security or Disability Benefits.

II. COVERAGE DEFINITIONS

This Agreement 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 ~~of the~~ governing body, any persons serving on the members ~~of~~ 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;

   except with respect to the ownership, maintenance or use, including loading or unloading, of automobiles while away from premises owned by, rented to or controlled by the member or the ways immediately adjoining;

   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 (other than property owned or leased by the member), 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 conditions which unexpectedly and unintentionally result in personal injury, property damage, advertising liability, errors or omissions 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.

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. 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. 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.

I. ANNUAL PERIOD

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

J. AIRCRAFT

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

K. 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.

L. 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.

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 EXCESS INSURANCE AND NON-CUMULATION OF LIABILITY

It is agreed that if any loss is covered in whole or in part under any other excess policy issued to the member prior to the effective date hereof the limit of liability hereunder shall be reduced by any amounts due to the member on account of such loss under such prior excess 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,
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 year or where it appears reasonably likely that there will be disability of more than one year,
6. any burn 25% or more of the body,
7. heart or vascular disorders, or
8. accidents where multiple injuries are involved.

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 of insolvency.

I. OTHER INSURANCE

If other valid and collectible insurance, which is written by another insurer 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 other insurance.

J. SUBROGATION

The Authority shall be subrogated to the extent of any payment hereunder to all the member's rights of recovery thereof, 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.

DISCUSSION ITEM
#3

Agenda of 2/5/04

Draft Resolution 03-309 6 Year CIP

Please remember to bring the color coded CIP documents that were distributed earlier.