

RESOLUTION NO. 820

**A RESOLUTION OF THE CITY OF GIGHARBOR APPROVING
THE INTERLOCAL AGREEMENT WITH THE ASSOCIATION
OF WASHINGTON CITIES (AWC) RISK MANAGEMENT
SERVICES AGENCY (RMSA) AND ITS MEMBERS.**

WHEREAS, the RMSA is a municipal self-insurance pool formed January 1, 1989, under RCW 48.62 to provide property and liability insurance coverage to participating members of the AWC; and

WHEREAS, the AWC RMSA offers coverage for its members to provide cost stability and the potential for long-term savings for the following property and liability coverage; and

WHEREAS, the RMSA is sponsored by the Association of Washington Cities as a service to Washington cities and towns; and

WHEREAS, the City of Gig Harbor has reviewed the AWC RMSA Interlocal agreement with legal counsel for compliance with City Ordinances; and

WHEREAS, the City of Gig Harbor has determined that the Interlocal Agreement would be beneficial in managing the municipal risks involved in providing services to its citizens;

NOW, THEREFORE, the City of Gig Harbor does hereby agree to enter into and abide by the Interlocal Agreement, which constitutes a contract between the city and the AWC RMSA. The Interlocal Agreement will become effective in 2010.

PASSED by the City Council this 25th day of January, 2010.

APPROVED:


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:



CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 

ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 1/18/10
PASSED BY THE CITY COUNCIL: 1/25/10
RESOLUTION NO. 820

**INTERLOCAL AGREEMENT
OF THE ASSOCIATION OF WASHINGTON CITIES
RISK MANAGEMENT SERVICE AGENCY**

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**INTERLOCAL AGREEMENT:
OF THE ASSOCIATION OF WASHINGTON CITIES
RISK MANAGEMENT SERVICE AGENCY**

PREAMBLE

THIS AGREEMENT is made and entered into in the State of Washington by and among the members organized and existing under the Constitution or laws of the State of Washington, hereinafter collectively referred to as "Members", and individually as "Member", which are parties signatory to this Agreement. Said Members are sometimes referred to herein as "Parties".

RECITALS

WHEREAS, Ch. 48.62 RCW provides that two or more local governmental agencies may, by Interlocal Agreement, provide insurance for any purpose by one or more of certain specified methods;

WHEREAS, the Association of Washington Cities, the sponsoring entity, of the Risk Management Service Agency ("Agency"), would like to maintain the long-standing relationship that has been achieved over the years because of the mutual goals of both entities, which is to support all cities and towns in Washington State;

WHEREAS, the Association of Washington Cities as sponsor of the Agency desires to provide its Members, as well as other Local Governmental Entities, the opportunity to jointly self-insure or pool their primary risks to enhance their ability to control their insurance programs and coverages;

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling their self-insured losses and jointly purchasing excess insurance and administrative services in connection with a joint protection program for said parties; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement to do so;

NOW, THEREFORE, in consideration of all of the mutual benefits, covenants and agreements contained herein the parties hereto agree as follows:

**ARTICLE 1
Definitions**

The following definitions shall apply to the provisions of this Agreement:

- 1.1 **"Administrative Agent,"** shall mean the Association of Washington Cities that provides third party administration (TPA) services to the Agency.
- 1.2 **"Agency"** shall mean the Association of Washington Cities Risk Management Service Agency (RMSA).
- 1.3 **"Assessment"** shall mean the moneys paid by the members to the Agency.
- 1.4 **"Association"** shall mean the Association of Washington Cities.
- 1.5 **"Board of Directors"** or "Board" shall mean the governing body of the Risk Management Service Agency (RMSA) as duly elected by the members of the Agency.

- 1.6 **"Claims"** shall mean demands made against the Agency arising out of occurrences which are within the Agency's Joint Protection Program as developed by the Board of Directors.
- 1.7 **"Excess insurance"** shall mean that insurance purchased or other financing arrangements made on behalf of the Agency to protect the funds of the Agency against catastrophes or against an unusual frequency of losses during a single year.
- 1.8 **"Fiscal Year"** shall mean that period of 12 months, from January 1 to December 31, which is established as the fiscal year of the Agency.
- 1.9 **"Insurance"** shall mean and include self-insurance through a funded program and/or commercial insurance contract.
- 1.10 **"Joint Protection Program"** shall mean the program established by the Board of Directors and intended to address the general operation of the Agency.
- 1.11 **"Local Governmental Entity"** shall mean every unit of local government, both general purpose and special purpose, and shall include, but not be limited to, counties, cities, towns, port districts, public utility districts, water districts, sewer districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi municipal corporations.
- 1.12 **"Operating Committee"** shall mean the standing committee of the Agency.
- 1.13 **"Signatory"** or **"Signatories"** shall mean those parties who sign this Agreement, including execution by Counterpart, thereby becoming a Member of the Agency bound by the terms of this Agreement.

ARTICLE 2
Purposes

- 2.1 This Agreement is entered into by the Members to provide for self-insurance pooling and/or the economical purchase of primary Insurance and/or Excess Insurance coverage for all forms of Insurance available or required by law for Local Governmental Entities and for which state law authorizes the formation of pooling organizations to provide such Insurance, to reduce the amount and frequency of the Members' losses, and to decrease the cost incurred by the Members in the handling and litigation of claims. This purpose shall be accomplished through the exercise of the powers of the Members jointly in the creation of a separate public Agency, the Association of Washington Cities Risk Management Services Agency, to direct and administer a Joint Protection Program wherein the Members will engage in certain activities, including but not limited to the following:
 - 2.1.1 Pool their losses and Claims;
 - 2.1.2 Jointly purchase Excess Insurance; and
 - 2.1.3 Jointly purchase administrative and other services including:
 - 2.1.1.1 Claims adjusting;
 - 2.1.1.2 Data processing;
 - 2.1.1.3 Risk management consulting;
 - 2.1.1.4 Loss prevention;

2.1.1.5 Legal; and

2.1.1.6 Miscellaneous related services.

2.2 It is also the purpose of the Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional Local Government Entities organized and existing under the Constitution or laws of the State of Washington as may desire to become parties to this Agreement and members of the Agency, subject to approval by the Board of Directors.

2.3 It is also the purpose of this Agreement to provide, to the extent permitted by law, that the Agency may, at the discretion of its Directors, contract with non-member Local Government Entities in the State of Washington.

Article 3 Agency Offices

3.1 Principal Executive Office

The principal executive office for the transaction of business of the Agency shall be located at 1076 South Franklin, Olympia, WA 98501. The Administrative Agent in cooperation with the Board of Directors of the Agency shall have the authority to change the location of the principal executive office from time to time.

3.2 Other Offices

Other business offices may be at any time be established by the Administrative Agent in cooperation with the Board of Directors of the Agency at any place or places where the Agency is qualified to do business.

ARTICLE 4 Parties to Agreement

Each party to this Agreement certifies that it intends to and does contract with all other parties who are Signatories of this Agreement and, in addition, with such other parties as may later be added to and Signatories of this Agreement pursuant to Article 14. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Articles 16 and 17, shall not affect this Agreement nor such party's intent to contract as described above with the other parties to the Agreement then remaining.

ARTICLE 5 Term of Agreement

This Agreement shall become effective on January 1, 2010, and shall be of unlimited duration, but not less than one year, and will continue unless terminated as hereinafter provided in Article 19.

ARTICLE 6 Financial Obligations of Agency

Pursuant to Ch. 48.62 RCW, of the State of Washington, the debts, liabilities, and obligations of the Agency shall not constitute debts, liabilities, or obligations of any party to this Agreement.

ARTICLE 7 Powers of the Agency

7.1 Agency shall have the powers provided for by law and is hereby authorized to do all acts necessary for the exercise of said powers, including, but not limited to, any or all of the following:

7.1.1 Contract or otherwise provide for risk management and loss control services;

- 7.1.2 Contract or otherwise provide legal counsel for the defense of Claims and/or other legal services;
 - 7.1.3 Consult with the Washington State Risk Manager and State Auditor;
 - 7.1.4 Jointly purchase Insurance coverage in such form and amount as the organization's participants may by contract agree;
 - 7.1.5 Incur debts, liabilities, or obligations;
 - 7.1.6 Acquire, receive, hold, or dispose of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities;
 - 7.1.7 Sue and be sued in its own name;
 - 7.1.8 Hire employees and agents; and
 - 7.1.9 Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law.
- 7.2 Said powers shall be exercised to the terms hereof and in the manner provided by law.

ARTICLE 8

The Board of Directors and their Powers and Responsibilities

- 8.1 The Agency, its funds and service programs shall be administered by a Board of Directors.
- 8.2 **Number of Directors**
There shall be seven (7) Directors of the Agency, who shall be elected officials representing members of the Agency.
- 8.3 **Acceptance of Appointment by Directors**
Each Director shall sign a document accepting their appointment as Director and agreeing to abide by the terms and provisions of this Interlocal Agreement and the Bylaws.
- 8.4 **Powers and Responsibilities of the Board of Directors**
The Board of Directors of the Agency shall have the following powers and functions:
 - 8.4.1 The Board shall have the power to review, amend, modify, adopt, override, or reject the Operating Committee's recommendations.
 - 8.4.2 The Board shall review, modify if necessary, and approve the annual operating budget of the Agency.

The Board shall receive and review periodic accountings of all funds of the Agency.
 - 8.4.3 Annually the Board shall review, amend, adopt, or reject the Operating Committee's recommendation of the assessment rate to be charged to the members of the Agency.
 - 8.4.4 The Board shall review, modify if necessary, and approve the Joint Protection Program (JPP), which identifies Agency and Member coverages, the Agency's Bylaws, and manuals.

- 8.4.5 The Board shall have the power to conduct all business on behalf of the Agency, which the Agency may conduct under the provisions hereof and pursuant to law.
- 8.4.6 The Board shall determine and select all necessary Insurance, including Excess Insurance, necessary to carry out the Joint Protection Program of the Agency.
- 8.4.7 The Board shall have authority to contract for or develop various services for the Agency, including, but not limited to, an administrative agent, claims adjusting, loss control, risk management consulting services, independent actuary services, independent claims auditing services, and general counsel.
- 8.4.8 The Board shall have such other powers and functions as are provided for in this Agreement or those which are necessary to implement the purposes of this Agreement, including, but not limited to, the power to authorize contracts.

ARTICLE 9
Operating Committee

The Operating Committee shall consist of nine (9) representatives from Member entities participating in the Agency. All members of the Operating Committee shall be appointed officials not elected officials. It is the Board's intent that the committee assists the Board and/or the Administrative Agent, with the operations of the Agency and to keep the Board advised on all aspects of Agency operations including professional standards.

ARTICLE 10
Coverage

- 10.1 The type and limits of the Insurance coverage provided for Members by the Agency shall be established by the Board of Directors.
- 10.2 The Board may arrange purchase of a group policy for Members interested in obtaining additional types or limits of coverage at additional cost to those participating Members. Such additional cost may include an administrative fee for the Agency's services.
- 10.3 The Board may arrange for the purchase of any other Insurance or services deemed necessary to protect the Agency or funds held by the Agency against catastrophe.

ARTICLE 11
Bond Requirements

The Board may require that the Administrative Agent authorized to disburse funds of the Agency, provide a fidelity bond in the amount as set by the Board, and provide that such bond be paid by the Agency.

ARTICLE 12
Responsibility of the Agency

The Agency shall perform the following functions in discharging its responsibilities under this Agreement:

- 12.1 Provide Insurance coverage as deemed necessary, including but not limited to a self-insurance fund and commercial insurance, as well as excess coverage and other insurance, such insurance, to be arranged by negotiation or bid, and/or purchase, as necessary;
- 12.2 Assist each Member's designated risk manager with the implementation of the risk management functions within the Member entity;

- 12.3 Provide loss prevention, safety, and consulting services to Members as required;
- 12.4 Provide Claims adjusting and subrogation services for Claims covered by the Agency's Joint Protection Program;
- 12.5 Provide loss analysis by the use of statistical studies, data processing, and record and file-keeping services, to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- 12.6 Assist Members, as requested, with review of their contracts to determine sufficiency of indemnity and Insurance provisions;
- 12.7 Conduct risk management audits to review the participation of each Member in the program. The audit shall be performed by appointed Agency staff or, at the discretion of the administrative agency, and/or an independent auditor may be retained by contract to conduct the audits;
- 12.8 Provide for the defense of any civil action or proceeding brought against any officer, employee, Board member, or other agent of the Agency, in their official or individual capacity or both, on account of an act or omission within the scope of their agency as an agent of the Agency;
- 12.9 Abide by the rules and regulations as stated or hereinafter amended of RCW 48.62 and WAC 82-60; and
- 12.10 The Agency shall have such other responsibilities as deemed necessary by the Board of Directors in order to carry out the purposes of the Agreement.

ARTICLE 13
Responsibilities of Members

Members shall have the following responsibilities:

- 13.1 All Agency members must maintain membership in the Association of Washington Cities.
- 13.2 Each member shall appoint an employee of the member entity to be responsible for the risk management function within that member entity and to serve as a liaison between the Member and the Agency as to risk management.
- 13.3 Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Agency concerning the development and implementation of a loss control policy to prevent unsafe practice(s).
- 13.4 Each Member shall maintain its own set of records, as a loss log, in all categories of loss to insure accuracy of the Agency's loss reporting system.
- 13.5 Each Member shall promptly pay its assessment and any readjusted amount promptly to the Agency when due. After withdrawal or termination, each Member shall pay promptly to the Agency its share of any additional assessment and accrued interest at a rate determined by the Board, when and if required of it by the Board.
- 13.6 Each Member shall provide the Agency with such other information or assistance as may be necessary for the Agency to carry out the Joint Protection Program under this Agreement.

- 13.7 Each Member shall in any and all ways cooperate with and assist the Agency, and any insurer of the Agency, in all matters relating to this Agreement and covered losses, and will comply with all Bylaws, rules, and regulations adopted by the Board of Directors.
- 13.8 All members shall cooperate with the Agency and assist with investigations, making settlements, and defense or prosecution of suits; cooperate and assist the Agency in enforcing any right of contribution, indemnity or subrogation in which the Agency may have an interest by virtue of a payment made pursuant to the Bylaws, interlocal agreement or the Joint Protection Program (JPP); attend hearings and trials and assist in the securing and giving evidence and obtaining the attendance of witnesses; use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss of or damage to the property herein insured.

ARTICLE 14 New Members

- 14.1 Additional Members shall be permitted to become Signatories to this Agreement, and to the Joint Protection Program. All potential members to the Agency must be members of the Association of Washington Cities or become members prior to acceptance into the Agency. The Directors shall allow entry into the program of new members approved by the Board of Directors at such time during the year as the Board deems appropriate.
- 14.2 Members entering under this Article may be required to pay their share of expenses as determined by the Board, including those necessary to analyze their loss data and determine their assessment.

ARTICLE 15 Defense of Agents

For purposes of this article, "agent" means any person who is or was: a Director, an Operating Committee member, an officer, or an agent acting on behalf of the Agency or Administrative Agent.

- 15.1 The Agency shall provide for the defense of any agents and paying of any valid judgments and claims brought against any such agent arising from their actions or conduct in their official or individual capacity or both, on account of an act or omission within the scope of their responsibility; provided, however, this section shall not apply to those occurrences covered by an Agency policy of liability insurance or if the claim or judgment results from the intentional misconduct of said agent.

ARTICLE 16 Withdrawal

- 16.1 A Member signing this Agreement may not withdraw as a party to this Agreement and as a Member of the Agency for a one-year period commencing on the date said Member signs the Agreement.
- 16.1.1 After the initial one-year non-cancellable commitment provided pursuant to this Agreement, a Member may withdraw only at the end of any Fiscal Year, provided it has given the Agency a 12-month written notice of its intent to withdraw from this Agency.
- 16.2 A Member shall be entitled to withdraw from the Agency where it presents to the Board of Directors evidence demonstrating a material breach of contract by the Agency as regards its obligations to the Member. The Member shall be allowed to withdraw from the agency within ninety (90) days of any finding by the Board of Directors that a material breach of contract by the

Agency has occurred. The withdrawal of any Member under the conditions identified here shall not however free it from any and all requirements made of any withdrawing Member.

ARTICLE 17

Termination by Agency

- 17.1 The Agency shall have the right to terminate any Member's participation in the Joint Protection Program upon a motion approved by three-quarters (75%) vote of the entire Board of Directors. The Board of Directors may, prior to taking action on such a motion, request that the Operating Committee review and make recommendations to the Board on any allegation giving rise to the request to terminate, including failure to: comply with a written condition, disregard of safety or risk management standards, noncompliance with any provision of this Interlocal and/or the Bylaws of the Agency.
- 17.2 Any Member so cancelled shall be given one hundred eighty (180) days notice prior to the effective date of the cancellation. Any Member so cancelled shall have a period of up to six (6) months coverage under the terms of this or may affect alternate insurance or self-insurance arrangements if it so desires. Any Member so cancelled shall be treated as if it had voluntarily withdrawn.

ARTICLE 18

Effect of Withdrawal or Termination

- 18.1 The withdrawal of any Member from this Agreement shall not terminate the same.
- 18.2 No Member by withdrawing shall be entitled to payment or return of any assessment, consideration of property paid, or donated by the Member to the Agency, or to any distribution of assets.
- 18.3 The withdrawal of any Member shall not terminate its responsibility to contribute its share or assessment or funds to any fund or Insurance program created by the Agency until all Claims, or other unpaid liabilities, covering the period the Member was Signatory hereto have been finally resolved and a determination of the final amount of payments due by the Member or credits to the Member for the period of its membership has been made by the Board of Directors. In connection with this determination, the Board may exercise similar powers to those provided for in Article 17, *Termination by Agency*, of this Agreement.
- 18.4 Any withdrawing or terminated Member shall not be permitted to rejoin the Agency for a period of three (3) years.

ARTICLE 19

Termination and Distribution

- 19.1 This Agreement may be terminated at any time by the written consent of three-fourths (75%) of the Members, provided, however, that this Agreement and Agency shall continue to exist for the purpose of paying all debts and liabilities, disposing of all Claims, distributing net assets, and otherwise winding up and liquidating the affairs of the Agency. The Board of Directors is vested with all powers of the Agency during such winding up and liquidation, including the power to require Members, including those which are Members at the time the claim arose or at the time the loss was incurred, to pay their share of any additional amount of assessment deemed necessary by the Board for final disposition of all Claims, losses, and liabilities covered by this Agreement. Such additional assessment shall be determined and thereafter adjusted, if necessary.

- 19.2 Upon termination of this Agreement, all assets of the Agreement shall be distributed only among the parties that are Members of the Joint Protection Program, in accordance with and proportionate to their cash payments and property contributions made during the term of this Agreement. The Board shall determine such distribution within six (6) months after the last pending claim or loss covered by this Agreement has been finally disposed of.
- 19.3 The Board is vested with all powers of the Agency for the purpose of winding up and dissolving the business affairs of the Agency. These powers shall include the power to require Members, including those which were Members at the time the claim arose or at the time the loss was incurred, to pay their share of any additional amount of assessment deemed necessary by the Board for final disposition of all Claims and losses covered by this Agreement. A Member's share of such additional assessment shall be determined on the same basis as that provided for annual assessments, and shall be treated as if it were the next year's annual assessment for that Member.

ARTICLE 20

Bylaws and Manual

The Board has developed Agency Bylaws and a policy and procedure manual that governs the day-to-day operations of the Agency. Each Member shall receive a copy of any Bylaws, policy statement, or manual developed under this Article.

ARTICLE 21

Notices

Notices to Members hereunder shall be sufficient if mailed to the last address, or electronic mail, provided to the Agency by the respective Member postal mail will be deemed received three (3) days after mailing.

ARTICLE 22

Amendment

This Agreement may be amended at any time by the written approval of three-quarters (75%) of all Members of the Agency.

ARTICLE 23

Enforcement

The Agency is hereby granted the authority to enforce this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any City Member which signed this Agreement, the substantially prevailing party in such dispute shall be entitled to its costs and reasonable attorney's fees.

ARTICLE 24

Prohibition Against Assignment

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

ARTICLE 25

Severability

In the event that any article, provision, clause, or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not

affect the validity or enforceability with respect to other articles, clauses applications, or occurrences, and this Agreement is expressly declared to be severable.

**ARTICLE 26
Agreement Complete**

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

**ARTICLE 27
Signature in Counterparts**

This Agreement may be executed in any number of Counterparts and each of such Counterparts shall for all purposes constitute one Agreement, binding on all Members, notwithstanding that all Members are not Signatories to the same Counterpart. All references herein to this Agreement are deemed to refer to all such Counterparts.

**ARTICLE 28
Authorization of Signature**

Each Member signing this Agreement has passed the required Ordinance or Resolution authorizing and approving this Agreement, a certified copy of which Ordinance or Resolution is attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials thereof.

Association of Washington Cities (AWC)
Risk Management Service Agency (RMSA)

By 

City of Gig Harbor
(Member Name)

By 

Charles L. Hunter, Mayor
(Printed name)

Date 12/16/2009

Date 01-26-10