

CLARK COUNTY
STAFF REPORT

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AUG 28 2002
CLARK COUNTY
RISK MANAGEMENT

DEPARTMENT: RISK MANAGEMENT

DATE: August 20, 2002

REQUEST: EXECUTE AN INTERLOCAL AGREEMENT WITH
Washington Counties Risk Pool

CHECK ONE: Consent Routine

BACKGROUND: Clark County has been self-insured for liability exposures since 1986. Since that time, lawsuits and court decisions have recently become increasingly more costly. In 2000, we purchased an excess liability policy to cover \$10,000,000 in exposures (\$2,000,000 to \$12,000,000). The premium cost was \$70,000. At this year's renewal the cost was quoted at \$174,000 for the same coverage amount. The Risk Management Committee has been evaluating other options.

In the last few years there have been multi million dollar judgements against several Washington county and state agencies. A significant judgement would cause a hardship to Clark County and thus it is incumbent to be prepared for such a contingency.

The Washington Counties Risk Pool offers a Risk Management program tailored specifically to county needs. This program will replace our existing liability as well as Elected Officials errors and omission policies. We have had a \$2,000,000 self insured retention on each claim. The Pool offers a \$20,000,000 coverage amount with several retention's available as outlined below.

1.	\$250,000 SIR	\$15,000,000 coverage	\$370,000 premium
2.	\$250,000 SIR	\$20,000,000 coverage	\$381,000 premium
3.	\$500,000 SIR	\$20,000,000 coverage	\$261,000 premium

The Pool's Board is composed of one Director from each member county. It must be an employee of the county. We need to select a Director and an alternate. The Pool additionally offers detailed training on all Risk Management issues as well as assistance on lawsuits at no extra charge. There is a minimum 5-year commitment to join the pool. The Risk Management Committee has met and evaluated the options of continuing the original excess policy, joining the pool or discontinuing excess

insurance. We recommend that it is in the county's best financial interest to join the Washington Counties Risk Pool

COMMUNITY OUTREACH: Non-Applicable

ACTION REQUESTED: It is requested that the Board of County Commissioners execute the attached Interlocal Agreement with Washington Counties Risk Pool. We recommend option 3. It is also requested that the Board sign the attached resolution and appoint Edward M. Pavone as Director, and Bronson Potter, alternate, to be the county representative at the Pool meetings, and Edward M. Pavone, Risk Manager.

BUDGET IMPLICATIONS: Funding will be from the General Liability Self Insured Fund

DISTRIBUTION: Risk Management, Prosecutor, Budget, Auditor, General Services



Edward M. Pavone, ARM
Risk Manager

Approved August 20, 2002
Board Of County Commissioners

RESOLUTION NO. 2002-08-12

A RESOLUTION of the Board of County Commissioners of Clark County, Washington approving the terms of the Interlocal Agreement joining the Washington Counties Risk Pool; authorizing and directing the Members of the Board to execute the Agreement on behalf of the County; approving payments of the county's premium; establishing and funding a cumulative reserve fund for claims payment; appointing the county's representatives in matters relating to the Pool; approving a procedure for determining scope of employment in actions for monetary damages; and rejecting underinsured motorist coverage.

1 **WHEREAS**, an interlocal agreement ("Agreement") providing for joining the
2 Washington Counties Risk Pool ("Pool") has been submitted to the Board for its review
3 and approval; and

4 **WHEREAS**, the Board has determined that it is in the best interest of the County
5 to become a member of the Pool and to participate in the joint self-insurance and other
6 programs provided by the Pool; and

7 **WHEREAS**, RCW 4.96.041 authorizes the legislative authority of a local
8 governmental entity to create a procedure by resolution to determine whether acts or
9 omissions of an officer, employee, or volunteer in an action or proceeding for damages
10 were, or in good faith purported to be, within the scope of his or her official duties; and

11 **WHEREAS**, RCW 48.22.030(4) allows a named insured to reject underinsured
12 motorist coverage for bodily injury or death, or property damage; now, therefore,

13 **BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY**
14 **COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:**

15 1. The Board hereby approves the terms of the Agreement and authorizes and
16 directs the members of the Board to execute the Agreement on behalf of the County and
17 deliver the Agreement to the offices of the Pool.

18 2. The Board hereby approves the payment to the Pool by August 10, 2002 of
19 the sum of \$66,054, representing the County's partial year's premium for the period July
20 10, 2002 12:00 a.m. through September 30, 2002 11:59 p.m. with coverage up to \$10
21 Million and a deductible amount of \$250,000. Effective October 1, 2002 the coverage
22 amount shall be \$20 Million with a deductible amount of \$500,000.

23 3. As required by the Bylaws of the Pool, the Board hereby appoints Edward
24 M. Pavone as the County's representative and Bronson Potter as the County's alternate
25 representative to the Board of Directors of the Pool, and appoints Edward M. Pavone as
26 the County Risk Manager/Safety officer. The County's representatives are hereby
27 authorized to exercise the County's voting rights in the Pool pursuant to the terms of the
28 Agreement and Bylaws and to act on behalf of the County with respect to all matters
29 pertaining to the Pool.

30 4. Pursuant to RCW 48.22.030(4), the County as named insured may reject
31 Pool underinsured motorist (UIM) coverage for bodily injury or death, or property damage.
32 The Board hereby elects to reject underinsured motorist coverage.

ADOPTED this 20 day of August, 2002.

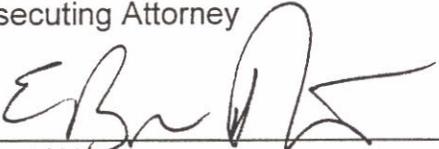
Attest:


Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By 
Judie Stanton, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By 
Curt Wyrick
Chief Deputy Prosecuting Attorney

By _____
Craig Pridemore, Commissioner

By _____
Betty Sue Morris, Commissioner

**WASHINGTON COUNTIES RISK POOL
INTERLOCAL AGREEMENT**

THIS AGREEMENT is made and entered into by and among the several counties organized and existing under the Constitution and laws as political subdivisions of the State of Washington which are parties signatory to this Agreement (Collectively "Member Counties", and individually "Member County"):

RECITALS

WHEREAS, counties in the State of Washington have experienced a trend of vastly increased insurance premiums for the renewal of identical insurance policies, fewer insurance carriers are willing to provide counties with insurance coverage, and some counties are unable to obtain desired insurance coverage; and

WHEREAS, Chapter 48.62 RCW grants local governmental entities, including counties, maximum flexibility to enter into agreements with each other to provide joint programs, which include programs of joint purchasing of insurance, joint self-insuring, and joint contracting for or hiring of personnel to provide risk management, claims handling, and administrative services; and

WHEREAS, Chapter 39.34 RCW permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, each of the member counties desires to join together with the other member counties for the purpose of pooling self-insured losses and jointly purchasing excess insurance and administrative services; and

WHEREAS, it appears economically feasible and practical for the member counties to do so;

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants and agreements contained herein, the member counties agree as follows:

**Article 1
Definitions**

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

- (a) "Pool" shall mean the Washington Counties Risk Pool created by this Agreement by the member counties.
- (b) "Executive Committee" shall mean the Executive Committee of the Board of Directors of the Pool.
- (c) "Insurance" shall mean both liability and property self-insurance through a funded program and/or a commercial insurance contract. Liability insurance shall include

without limitation coverage for claims arising from the negligent or other tortious conduct of the member counties, their officers, employees, or agents, or any error or omission on the part of the member counties, their officers, employees or agents, as a result of which a claim may be made against a member county.

- (d) "Umbrella Insurance" shall mean that insurance purchased on behalf of the Pool over and above the amount of claims to be satisfied directly from the Pool's resources.
- (e) "Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Pool.
- (f) "Board of County Commissioners" shall mean the governmental authority empowered to act under the provisions of Chapter 36.32 RCW or a charter adopted by any county of the State of Washington.

Article 2 Purpose

This Agreement is entered into for the purpose of authorizing the creation of the Washington Counties Risk Pool, which shall be organized under Chapters 48.62 and 39.34 RCW to provide to member counties programs of joint self-insurance, joint purchasing of insurance and joint contracting for or hiring of personnel to provide risk management, claims handling, and administrative services.

Article 3 Parties to Agreement

Each party to this Agreement certifies that it intends to contract with all parties who are signatories of this Agreement on its effective date and with such other parties as may later be added to and become signatories to this Agreement. Each party also certifies that the cancellation or withdrawal of any party shall not affect this Agreement nor such party's intent to contract pursuant to the terms of this Agreement with the then remaining parties.

Article 4 Duration of Agreement

This Agreement shall become effective when signed by ten member counties and filed with the Secretary of State. This Agreement shall have perpetual duration unless terminated as hereinafter provided.

Article 5 Membership Composition

Pool membership shall be limited to the several counties of the State of Washington and shall not include other local governmental entities. The Board of Directors of the Pool shall provide for the reasonable admission of new member counties. New members shall pay a reasonable share of the organizational expenses of the Pool and the costs necessary to analyze their loss data and determine their premiums, as determined by the Executive Committee.

**Article 6
Nature of Pool**

The Pool shall be an association of member counties independent of all other associations of which the counties are members. All income and assets of the Pool, including surplus funds, shall be at all times dedicated to the exclusive benefit of its members and used solely for Pool purposes. The Pool may contract with the Washington State Association of Counties for services.

**Article 7
Powers of Pool**

The Pool shall have the powers and functions to do the following:

- (a) Contract or otherwise provide for risk management and loss control services;
- (b) Contract or otherwise provide legal counsel for the defense of claims and/or other legal services;
- (c) Consult with the Washington State Insurance Commissioner and State Risk Manager;
- (d) Jointly purchase insurance coverage in such form and amount as the Board of Directors may determine; and
- (e) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of Chapter 48.62 RCW.

**Article 8
Organization**

- (a) Board of Directors. The Pool shall be governed by a Board of Directors ("Board") which shall be composed of one Director from each member county. Directors and Alternate Directors shall be officers or employees of member counties, and shall be appointed by and serve at the pleasure of the Boards of County Commissioners of member counties. Alternate Directors shall have the same authority to attend, participate in, and vote at any meeting of the Board or a Committee as that member county's Director when such Director is absent from the meeting. Each Director or Alternate Director shall have one vote. Proxy votes from Directors and Alternates not in attendance at a meeting shall not be permitted.
- (b) Officers. The Board shall elect officers to govern the Pool.
- (c) Meetings. The Board shall provide for regular meetings and shall be subject to the Open Public Meetings Act, Chapter 42.30 RCW. Pursuant to RCW 48.62.110, the Board shall provide for private meetings to consider litigation and settlement of claims.

**Article 9
Administrator**

The Board shall employ an Executive Director, who shall be given general administrative responsibility for Pool activities including risk management, claims handling and administrative services.

Article 10
Pool Responsibilities

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

- (a) Provide for the management and operation of the Pool;
- (b) Provide for umbrella coverage for the member counties;
- (c) Provide reinsurance coverage for those claims which the Pool plans to self-insure, such coverage to be effective only in the event of the exhaustion of the Pool's resources for a given fiscal period;
- (d) Establish deductibles and/or limits to any coverage that is provided;
- (e) Provide an annual report of the operation of the Pool to the member counties, the State Risk Manager, and the State Insurance Commissioner; and
- (f) Provide for other services as deemed necessary by the Board in order to carry out the purposes of this Agreement.

Article 11
Member County Responsibilities

Member Counties shall have the following responsibilities:

- (a) The Board of County Commissioners shall appoint a Director and at least one Alternate Director to the Board;
- (b) Each County shall appoint an employee of the County to be responsible for the risk management function within that County ("County Risk Manager"), and to serve as a liaison between the County and the Pool as to risk management;
- (c) Each County shall maintain an active safety officer ("County Safety Officer") and committee, and shall consider all recommendations of the Pool concerning the development and implementation of a loss control policy to prevent unsafe practices;
- (d) Each County shall maintain its own set of records, as a loss log, in all categories of loss to insure accuracy of the Pool's loss reporting system;
- (e) Each County shall pay its premium and any readjusted amount promptly to the Pool when due. After withdrawal or termination, each County shall pay promptly to the Pool its share of any additional premium and accrued interest;
- (f) Each County promptly shall provide the Pool with such other information or assistance as may be necessary for the Pool to carry out its responsibilities under this Agreement; and
- (g) Each County shall in any and all ways cooperate with and assist the Pool, and any insurer of the Pool, in all matters relating to this Agreement and covered losses, and shall comply with all Bylaws, rules and regulations adopted by the Board.

Article 12 Financing

- (a) Initial Premiums. After the effective date of this Agreement, but prior to the effective date of joint self-insurance, the Board shall adopt fair and reasonable coverages, initial premiums, precise cost allocation plans and formulae, the pro forma financial statement of the Pool and the amounts and types of excess insurance to be procured. The effective date of joint self-insurance shall be determined by the Board, and shall be no later than January 1, 1989.
- (b) Subsequent Premiums. Premiums shall be fairly and reasonably adjusted as determined by the Board after considering actuary studies at the end of the first year of operation and annually thereafter.
- (c) Premium Payments. Member counties shall pay their premiums promptly when due, and reasonable interest on overdue payments.

Article 13 Budget and Records

- (a) Budget. The Board shall establish and maintain annual budgets for the operation of the Pool.
- (b) Audit Report. The Board shall establish and maintain such funds and accounts as may be required by good accounting practices and the State Budget Accounting Reporting System ("BARS"). Financial records of the Pool shall be open to inspection at all reasonable times by Directors. The Pool shall be subject to audit by the Washington State Auditor. A complete written report of the financial activities of the Pool, including an annual audit of the accounts and records of the Pool, shall be provided to each Director.

Article 14 Joint Self-Insurance

- (a) Self-Insurance. The Pool shall provide joint self-insurance coverage for liability claims arising from the negligent or other tortious conduct of the Pool and member counties, and their officers, employees or agents, or any error or omission on the part of the Pool and member counties, and their officers, employees or agents. The Pool may also provide joint self-insurance coverage for property of the Pool and member counties. The Pool may obtain umbrella insurance or reinsurance or join in other risk sharing pools. Joint self-insurance coverage shall be subject to exclusions and limitations determined by the Board.
- (b) Contingent Liabilities and Retroactive Assessments. Pursuant to RCW 48.62.060, each member county shall have contingent liability for the liabilities of the Pool in the event the assets of the Pool are not sufficient to cover its liabilities. Deficits of the pool shall be financed through fair and reasonable retroactive assessments levied against each member county as determined by the Board. Retroactive assessments shall be added to the annual premiums.

Article 15 Subrogation

In the event the Pool pays any claim on behalf of a member county, the Pool shall be subrogated to the extent of such payment to all the rights of the member county against any person or other entity legally responsible for damages arising under the claim. Member counties shall render all reasonable assistance, other than pecuniary assistance, to effect recovery on the subrogated claim.

Article 16
Cancellation and Withdrawal

- (a) Cancellation. A member county's participation in this Agreement and the Pool may be canceled at any time by an affirmative vote of three-quarters of the entire Board for (1) failure to make full and timely premium payments; (2) failure to adequately fulfill the requirements of the risk management program; (3) failure to notify the Pool of incidents, claims, and lawsuits as may be required; or (4) failure to fulfill the cooperation and other requirements of the insurance agreement. The effective date of cancellation shall be six months after the date of Board action. Until the effective date, the canceled member county shall still benefit from the Pool's services.
- (b) Withdrawal. No member county may withdraw for sixty months after joining the Pool. After the initial sixty-month period, a member county may withdraw at the end of any Pool fiscal year, provided it has given the Pool a twelve-month written notice of its intent to withdraw.
- (c) Effect of Cancellation and Withdrawal. The cancellation or withdrawal of one or more member counties shall not terminate this Agreement. No withdrawing or canceled member county shall be entitled to payment or return of any premium, property contributed to the Pool or to any distribution of assets.
- (d) Unpaid Liabilities. The cancellation or withdrawal of a member county shall not terminate its responsibility to contribute its share of premiums or assessments until all claims and other unpaid liabilities covering the period of its membership have been finally resolved and the Board has determined the final amount of payments due from the withdrawing or canceled member county for the period of its membership.

Article 17
Termination

- (a) Initial Period. This Agreement may be terminated any time during its first sixty months by the written consent of the Boards of County Commissioners of all member counties. After the first sixty months, this Agreement may be terminated by the written consent of the Boards of County Commissioners of three-fourths of the member counties. Upon termination, this Agreement and the Pool shall continue for the purpose of disposing of all claims, distribution of assets and all other functions necessary to wind up the affairs of the Pool.
- (b) Distribution of Assets. Upon termination, assets of the Pool shall be distributed to terminating member counties proportionate to their premium payments and property contributions made during the last thirty-six (36) months of the Pool. The Board shall distribute the assets to terminating member counties within six (6) months after the disposition of the last pending claim or loss covered by the Pool.
- (c) Contingent Liabilities. Upon termination, the Board shall wind up and dissolve the business affairs of the Pool. The Board shall determine, and member counties shall pay, each county's fair share of any additional premium amounts necessary for final disposition of all claims and losses covered by the Pool. A member county's share of such additional premiums shall be determined in the same manner as that provided hereinabove for annual premiums, and shall be treated as if it were the next year's annual premium for that county.

**Article 18
Property of Pool**

The Pool shall acquire, hold and dispose of real and personal property subject to the same restrictions as any of its member counties.

**Article 19
Notices**

Notices to member counties shall be sufficient if mailed postage prepaid to the Board of County Commissioners of the respective member counties at such addresses as may be given in writing to the Pool.

**Article 20
Amendments**

This Agreement may be amended at any time by the written approval of the Boards of County Commissioners of all member counties.

**Article 21
Prohibition Against Assignment**

No county may assign any right, claim or interest it may have under this Agreement. No creditor, assignee or third-party beneficiary of any county shall have any right, claim or title to any part, share, interest, fund, premium or asset of the Pool.

**Article 22
Enforcement**

The Pool may enforce the terms of this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any present or previous member county, the prevailing party shall receive such sums as the court may fix as reasonable attorneys' fees and costs in the action.

**Article 23
Default**

If any member county fails to perform any term or condition of this Agreement and such failure continues for a period of sixty (60) days after the Pool has given the member county written notice of such failure, the member county shall be in default hereunder. Upon default, the Pool may immediately cancel the member county's membership effectively immediately without further notice, or exercise any remedies herein provided or otherwise provided by law. The rights and remedies of the Pool are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by law.

**Article 24
No Waivers**

No waiver or forbearance of a breach of any covenant, term, or condition of this Agreement shall be construed to be a waiver or forbearance of any other or subsequent breach of the same or of any other covenant, term or condition, and the acceptance of any performance hereunder, or the payment of any sum of money after the same has become due or at a time when any other default

exists hereunder, shall not constitute a waiver of the right to demand payment of all other sums owing or a waiver of any other default then or thereafter existing.

**Article 25
Severability**

If any term or provision of this Agreement shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision in this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**Article 26
Time**

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

**Article 27
Headings**

The Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the Articles and Sections they introduce.

**Article 28
Governing Law**

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

**Article 29
Counterpart Copies**

This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

**Article 30
Agreement Complete**

The foregoing constitutes the full and complete agreement of the parties. All oral understandings and agreements are set forth in writing herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by authorized officials thereof on the dates indicated.

WASHINGTON COUNTIES RISK POOL
INTERLOCAL AGREEMENT

Washington Counties Risk Pool Interlocal Agreement approved this 20 day of AUGUST, 2002.

CLARK COUNTY, WASHINGTON

Judie Stanton Chair

Commissioner

Commissioner

Constituting the Board of
County Commissioners of
Clark County, Washington.

Attest:
Louie Richards
Clerk of the Board

Approved as to Form:
E B n o k
(Deputy) Prosecuting Attorney

ACCEPTED BY THE POOL this
____ day of _____, 2002.

By: _____
Executive Director