
CITY OF KELOWNA

MEMORANDUM

Date: October 22, 2008
File No.: 1895-01
To: City Manager
From: Risk Manager
Subject: Liability Insurance
Subscribing to the Municipal Insurance Association of British Columbia

RECOMMENDATION:

THAT Council approve the City of Kelowna join the Municipal Insurance Association of British Columbia for the purpose of obtaining insurance coverage for municipal general liability and errors and omissions liability protection;

AND THAT Council authorize the Mayor and City Clerk to execute the documents (attached) required to subscribe to the Municipal Insurance Association of British Columbia, that include:

- Reciprocal Insurance Exchange Agreement of the Municipal Insurance Association of British Columbia;
- Power of Attorney;
- Modification Agreement;

AND THAT Council authorize staff to increase the City's deductible for liability exposures covered by insurance from \$50,000 to \$100,000.

BACKGROUND:

The Municipal Insurance Association of British Columbia (MIA) provides insurance coverage for municipal liability and errors and omissions exposures of its members. Based on firm quotes and pricing indications received by the City to date the MIA has emerged as the most cost effective option for the coming year for lines of insurance it provides. However, it should be noted that at the time of writing this report the City is continuing negotiations, through our insurance broker, with both the City's incumbent insurer and another firm.

The MIA is a reciprocal insurance exchange licensed to provide insurance coverage to municipalities in BC. The MIA has operated in BC for 21 years and has a strong balance sheet. The reciprocal exchange operates by pooling the annual premiums of subscribing members and using equity built up in the pool to effectively manage and finance the losses of its members that are covered by its insuring agreement. In this fashion it operates much like an insurance company that is wholly owned by its members. The MIA's founding principals are broad coverage, stable rates and risk management.



In 2006 the MIA removed barriers to joining that make the City of Kelowna becoming a member today more cost effective and appealing. The MIA removed the "Reserve Assessment" required to "buy-in" to the substantial MIA existing equity at the rate of \$1 per capita for 5 years, or \$583,395 over 5 years for Kelowna today. An administration enrolment charge that would have cost the City \$60,000 to \$70,000 in additional cost to join was also removed. In addition, the MIA reduced the minimum commitment for new subscribers from five years to three years and now allows members to join at any time during the year, as opposed to only on January 1st.

Highlights & Considerations of MIA membership include:

- Broad coverage, the MIA is owned and controlled by BC municipalities and the coverage offered is designed to meet the needs of local government. Coverage is broader than the City's current coverage and most others available to municipalities in BC;
- Coverage limits offered by the MIA for general liability and errors and omissions coverage are higher than current limits carried by the City for general liability at \$35 million as opposed to \$25 million;
- The MIA coverage applies to errors and omissions claims, such as many types of inspection liability claims, resulting from actions done up to 10 years ago;
- The MIA has largely been successful in keeping rate increases to less than 10%;
- The MIA has risk management resources and a staff person available to members for consultation;
- The MIA premium charge includes two facility loss control reports conducted by independent loss control consultants to assist the City in reducing liability exposures;
- Dividends may be paid back to members if the MIA's loss experience is good in any given year, the MIA has paid dividends regularly in recent years;
- Good loss years for the pool may also lead to reinvestment in MIA equity reducing future premium costs of members;
- There is a potential downside risk associated with the MIA, if the MIA experiences a catastrophic loss year a mandatory retroactive premium assessment can be made against members to address the shortfall, this has never occurred in the history of the MIA and is unlikely in the near future considering the MIA's current financial position.
- Moisture penetration inspection claims (i.e. leaky condo claims) are not covered by the MIA

FINANCIAL/BUDGETARY CONSIDERATIONS:

The City's current insurance policy term for liability coverage is November 1st through October 31st.

The MIA pricing presented to the City for 2009, for \$35 million limit on general liability and errors and omissions coverage, is \$700,657 with a \$100,000 deductible and \$567,648 with a \$250,000 deductible. If approved the City will join November 1st, 2008 and the pricing above will be applied to November and December of 2008 on a pro rata basis.

Further saving may result from favorable circumstances by joining at this time. Coincidentally the City of Victoria joined the MIA this October. By both Kelowna and Victoria joining at this time it is likely to

result economies of scale for the MIA that will yield up to 10% savings due to reduced reinsurance (insurance for insurance companies) costs achieved by the addition of both cities. So the amounts indicated above may be reduced once the City confirms subscription in the MIA.

If the City joins the MIA on November 1st 2008 it will be committed to remain a member for three years and will not be able to leave the MIA until November 1st, 2011. Annual pricing may change from year to year depending on the losses suffered by the MIA pool and the City's own loss experience.

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS

The MIA requires that Council authorize becoming a subscribing member and that the documents commented on below are duly executed

The *Reciprocal Insurance Exchange Agreement of the Municipal Insurance Association of British Columbia* is the membership agreement of the MIA and outlines the terms and conditions of membership, including such matters as dispute resolution. It is required for all subscribing members. It is mainly a membership agreement and also contains provisions that are similar in nature to those found in insurance contracts.

The required *Power of Attorney* outlines that the MIA has power to act on behalf of the City with respect to matters arising from the coverage provide through the MIA, such as settle claims and seek recoveries against others where warranted. This is similar to powers granted to insurance companies when one enters into an insurance contract.

The *Modification Agreement* modifies the wording of the MIA coverage to the effect that new members only get the benefit of the errors and omission coverage with respect to inspections, land use and planning matters for a period ten years prior to the date of joining. This is an acceptable condition considering overall the terms and conditions for the coverage are superior to those available in the commercial insurance market place.

INTERNAL CIRCULATION TO:

- Director of Finance
- Financial Planning Manager

ALTERNATE RECOMMENDATION

AND THAT Council authorize staff to increase the City's deductible for liability exposures covered by insurance from \$100,000 to \$250,000.

Considerations that were not applicable to this report:

LEGAL/STATUTORY AUTHORITY
EXISTING POLICY
PERSONNEL IMPLICATIONS
TECHNICAL REQUIREMENTS
EXTERNAL AGENCY/PUBLIC COMMENTS

Submitted by:


L. Kayfish

Approved for Inclusion:



cc:

Director of Finance, Paul Macklem
Financial Planning Manager, Keith Grayston
Special Projects Manager, Rob Mayne

RECIPROCAL INSURANCE EXCHANGE AGREEMENT OF THE MUNICIPAL INSURANCE ASSOCIATION OF BRITISH COLUMBIA, December 1, 1987

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RECIPROCAL INSURANCE EXCHANGE AGREEMENT OF THE MUNICIPAL INSURANCE ASSOCIATION OF BRITISH COLUMBIA

THIS AGREEMENT dated for reference the 1st day of December 1987.

AMONG:

THE SUBSCRIBERS HERETO AS HEREINAFTER SPECIFIED

WHEREAS Section 186 of the Financial Institutions Act, SBC 1989, chapter 47 provides that the Superintendent of Financial Institutions may grant a permit to a reciprocal insurance exchange, and, after the issuance of such permit, the reciprocal exchange may solicit and make contracts of reciprocal insurance between and amongst its members and may adjust or appraise a loss under such contract of reciprocal insurance.

AND WHEREAS the Local Government Act, R.S.B.C. 2000, section 300 permits municipalities, cities, towns, villages, district municipalities and regional districts to form a reciprocal insurance exchange and to exchange contracts of insurance and indemnity.

AND WHEREAS the subscribers wish to form a reciprocal insurance exchange for their mutual benefit and wish to enter into this agreement for that purpose.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

ARTICLE 1.00 - INTERPRETATION

1.01 Definitions

In this agreement the following words shall have the following meanings unless the context shall otherwise require:

- (a) "Act" means the Financial Institutions Act of the Province of British Columbia, being chapter 47 of the Revised Statutes of British Columbia, 1989 and amendments thereto.
- (b) "Attorney" means the attorney-in-fact of the Exchange as specified in Article 4.00 of this Agreement.
- (c) "Board" means the executive board of the Exchange established in Article 3.00 of this Agreement.
- (d) "Exchange" shall mean the reciprocal insurance exchange created by the Subscribers upon the execution of this Agreement.
- [e] "Liability Protection Agreement" shall mean any liability protection agreement, reciprocal insurance agreement, contract of insurance or indemnity, policy of

insurance, or other contract, agreement or arrangement providing for insurance or indemnity coverage and protection issued from time to time by the Exchange, or exchanged between or amongst the Subscribers, and including the Liability Protection Agreement attached as Schedule "B" hereto.

(f) "Ordinary Resolution" means:

(i) a resolution of the Subscribers passed by a majority of the votes cast by those Subscribers who, being entitled to do so, vote at any duly convened annual or special meeting of the Subscribers, or

(ii) a resolution consented to in writing by at least 75% of the Subscribers.

(g) "Special Resolution" means:

(i) a Resolution of the Subscribers passed by a majority of not less than three-quarters of the votes cast by those subscribers who, being entitled to do so, vote at any duly convened annual or special meeting of the Subscribers, or

(ii) a resolution consented to in writing by at least 75% of the Subscribers.

(h) "Superintendent" means the Superintendent of Financial Institutions as such person is designated in the Act.

(i) "Subscriber" means a person who is a signatory to this Agreement, or to any counterpart hereof, and includes any person who hereafter becomes a signatory to this Agreement, or to any counterpart hereof; but excludes any such person who has ceased to be a Subscriber in accordance with Article 7.00 of this Agreement.

(j) "Subscribers" means the collective body of persons each of whom is a Subscriber.

1.02 Currency

All payments contemplated herein shall be made in Canadian funds.

1.03 Gender and Number

Words importing the singular number only shall include the plural, and vice-versa, and words importing the masculine gender shall include the feminine gender and neuter gender, and words importing persons shall include a natural person, firm, trust, partnership, association, corporation, government or governmental board, municipality, city, town, village, regional district, district municipality, regional hospital district, or other instrumentality of local government.

1.04 Headings

The division of this Agreement into articles and sections and the article and section headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

1.05 Calculations of Time Periods

Unless otherwise specified herein or in any Liability Protection Agreement issued pursuant hereto, when calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is a non-business day, the period in question shall end on the next business day.

1.06 Applicable Law

This Agreement shall be construed and enforced in accordance with the rights of the parties hereto and shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein and the parties hereto do hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

1.07 Severable

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

1.08 Entire Agreement

This Agreement constitutes the entire Agreement among the Subscribers relating to the establishment and operation of a reciprocal insurance exchange and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, among the Subscribers with respect thereto.

1.09 Waiver

No waiver by any Subscriber or by the Exchange of any breach of any provision of this Agreement by a Subscriber shall take effect or be binding upon another Subscriber or upon the Exchange unless in writing and signed by the Exchange. Unless otherwise provided therein, such waiver shall not limit or effect the rights of the Exchange with respect to any other breach.

1.10 Time of Essence

Time shall be of the essence of this Agreement.

1.11 Notice

Any notice required to be given hereunder may be given by prepaid ordinary mail and shall be effective five clear days after the date of mailing.

1.12 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Subscribers and each of them and their respective heirs, executors, administrators, successors and assigns.

1.13 Counterparts

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

1.14 Further Acts

The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

1.15 Conflict with Liability Protection Agreement

In the event of any conflict between any provision of this Agreement and any provision of any Liability Protection Agreement issued by the Exchange, the provisions of the Liability Protection Agreement shall prevail.

ARTICLE 2.00 - THE RECIPROCAL INSURANCE EXCHANGE

2.01 Creation of Reciprocal Insurance Exchange

The Subscribers hereby form and create a reciprocal insurance exchange (the "Exchange") as provided for in Section 186 of the Act.

2.02 Purpose of the Exchange

The Exchange is created for the purpose of permitting the Subscribers:

- (a) To issue and exchange Liability Protection Agreements;
- (b) To purchase from commercial insurers any additional and excess insurance coverage as may be necessary or desirable for the benefit of the Subscribers.
- (c) To pool their risks of liability so as to lessen the impact upon any Subscriber of a loss occurring to such Subscriber;
- (d) To institute and promote programs, practices, conferences, meetings and other activities intended to educate and inform the Subscribers of prudent methods and practices of risk management so as to reduce the risk of liability of each Subscriber.
- (e) To solicit new Subscribers to the Exchange.
- (f) To do such further and other things as the Subscribers may authorize from time to time and which are not prohibited by law.

2.03 Powers of Exchange

The Exchange is hereby vested by the Subscribers with all powers necessary, proper or convenient to enable it to carry out its purposes according to the scope and tenor of this Agreement, and all powers necessarily incidental thereto.

2.04 Name of the Exchange

The name of the Exchange shall be "The Municipal Insurance Association of British Columbia". The words

"The Municipal Insurance Association of British Columbia" shall not be used by any of the Subscribers other than in connection with the affairs of the Exchange.

2.05 Registration of Name

The Subscribers shall effect such registrations with respect to the name "The Municipal Insurance Association of British Columbia" as may be necessary or desirable to preserve their ownership right in the same and to ensure use of the name solely in connection with the Exchange.

2.06 Term

This Agreement is effective from and after the date first specified above and shall continue in full force and effect until terminated in accordance with Article 12.00 hereof. Neither the withdrawal or termination of membership in the Exchange by any Subscriber, nor the addition of any new Subscriber in the Exchange shall affect the force and effect of this Agreement between the then remaining Subscribers.

2.07 Not a Partnership

Nothing in this Agreement shall be construed to constitute any of the Subscribers as a partner, agent or representative of the others or to create any trust or any commercial or other partnership among the Subscribers.

2.08 No Authority to Bind

Except as otherwise expressly provided in this Agreement, a Subscriber shall not have any authority to bind in law any other Subscribers.

2.09 Indemnification for Unauthorized Acts

Each Subscriber hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless the other Subscribers and each of them from and against any and all liability, loss, harm, cost or expense, including legal fees, which the other Subscribers or any of them may suffer, incur or sustain as a result of any act of such Subscriber outside the scope of or in breach of this Agreement.

2.10 Several Liability

The obligations of each Subscriber with respect to the Exchange and/or contracts and obligations entered into by the Exchange on behalf of the Subscribers in connection with the Exchange shall in every case be several, and not joint and several.

2.11 Consent of Superintendent

This Agreement and the creation and operation of the Exchange is subject to the Subscribers obtaining a permit from the Superintendent pursuant to Section 186 of the Act permitting the creation and operation of the reciprocal insurance exchange herein established, and to the lawful demands and requirements from time to time of the Superintendent with respect thereto.

2.12 Permitted Classes of Insurance

The Exchange may issue Liability Protection Agreements with respect to those classes of insurance set out in the Liability Protection Agreement attached as Schedule "B" hereto and with respect to any additional or further class or classes of insurance which the Subscribers may authorize and which are not prohibited by law.

2.13 Commercial Insurance, Other Reciprocal Exchanges and Self-Insurance

The Exchange may purchase from commercial insurers such additional and excess insurance coverage as may be necessary or desirable from time to time for the benefit of the Subscribers and for the protection of the Exchange. Subject to the provisions of any Liability Protection Agreement issued by the Exchange, nothing herein shall prevent any Subscriber from purchasing its own commercial insurance, from belonging to any other reciprocal insurance exchange, or from self-insuring any risk of harm or liability it may incur.

ARTICLE 3.00 - EXECUTIVE BOARD

3.01 Establishment

The Subscribers hereby establish an executive board (the "Board") for the purpose of implementing this Agreement and operating the Exchange.

3.02 Power and Authority of the Board

The Subscribers hereby vest in the Board the power and authority to manage and administer the Exchange on behalf of and for the benefit of the Subscribers and, without limiting the generality of the foregoing, the Board is authorized on behalf of and without further authority from the Subscribers:

- (a) To make application to the Superintendent of Financial Institutions for the issuance of a permit to create and operate the Exchange pursuant to Section 186 of the Act.
- (b) To appoint, and remove, an attorney-in-fact for the Subscribers and for the Exchange, upon such terms and conditions, including remuneration, as the Board may determine from time to time, and to delegate to such attorney such duties and responsibilities as the Board may from time to time consider necessary or desirable.
- (c) To issue and exchange Liability Protection Agreements amongst the Subscribers as hereinafter provided for.
- (d) To receive and consider applications for membership in the Exchange, and to accept or reject the same, and to attach conditions or restrictions thereto.
- (e) To demand, collect, receive, and, where necessary, commence and prosecute any suit or action for any moneys which may be payable hereunder to the Exchange by any Subscriber.
- (f) To give and to receive all notices necessary or proper under any Liability Protection Agreement, and to adjust, defend, deny, compromise, settle and pay all claims and losses thereunder.

(g) To retain such advisers as the Board considers necessary or desirable in order to perform its duties hereunder.

(h) To open and operate in the name of the Exchange a separate bank account or accounts in order to deposit and to distribute funds with respect to the operation of the Exchange.

(i) To borrow from such persons and on such terms as the Board may determine any moneys required by the Exchange in addition to moneys provided by the Subscribers.

(j) To execute by its attorney and deliver all agreements which require execution by or on behalf of the Subscribers.

(k) To invest funds not immediately required for the operation of the Exchange in accordance with the Act.

(l) To pay all taxes, fees and other expenses relating to the orderly maintenance and management of the Exchange.

(m) To take such steps as are necessary to comply with all applicable provisions of the Act or any other applicable governmental statutes, regulations and rules.

(n) To set and determine the annual and additional assessments required of Subscribers pursuant to the provisions of this Agreement, which assessments shall include a Subscriber's prescribed share of the expenses of the Exchange.

(o) To commence, prosecute, defend, settle and pay all suits, claims, debts or actions made by or brought against the Exchange.

(p) To employ a manager and such other staff as are necessary to manage and operate the affairs of the Exchange on behalf of the Board on such terms and conditions, including remuneration, as the Board may determine from time to time and to delegate to such manager and staff such duties and responsibilities as the Board may see fit. The manager and the attorney may be the same person.

(q) To demand from any Subscriber such information, documents, and other assurances as the Board deems necessary or desirable in the best interests of the Exchange, and including satisfactory proof of financial capability.

(r) To inspect and review the risk management practices of a Subscriber and to issue and enforce directives and guidelines with respect thereto.

(s) To appoint such committees of the Board as may be required by the Superintendent or as may be deemed by the Board to be necessary or desirable for the operation of the Exchange; and to delegate to such committees such duties and responsibilities as the Board may see fit.

(t) Subject to Article 15, to determine and settle all questions or issues arising as to the construction, scope or intent of any Liability Protection Agreement issued by the Exchange, and to determine the liability thereunder, if any, of the Exchange or of any Subscriber or Subscribers with respect to or by reason of any claim made by or against any Subscriber pursuant to such Liability Protection Agreement, and with respect to or by reason of any occurrence or event by reason of which any Subscriber claims to suffer any loss or damage.

(u) To make such other decisions and determinations, and give such approvals and do such further acts as may be expressly or implicitly required of the Board by any other provision of this Agreement.

(v) To do and perform such other acts and things as are necessary or proper for the proper and efficient management and administration of the Exchange.

(w) To exercise such further and other powers and authorities as the Subscribers may from time to time vest in the Board.

3.03 Limitation

Any power or authority not expressly or implicitly vested in the Board by a provision of this Agreement shall be exercised by the Subscribers, and the Board shall have no authority or power with respect thereto.

3.04 Qualifications of Members of the Board

Any individual may be a member of the Board provided that, and for so long as, he:

- (a) is a person who is nineteen (19) years of age or more;
 - (b) is not a person who is of unsound mind, having been so found by a Court of Canada, or elsewhere;
 - (c) is not a person who has the status of a bankrupt;
 - (d) is a councillor, mayor, alderman, director, officer, or employee of a Subscriber; and
- provided that no other councillor, mayor, alderman, director, officer or employee of the Subscriber is also a member of the Board.

No election or appointment of a person as a member of the Board shall be effective unless he consents to act as a member of the Board before or after his election or appointment.

3.05 Constitution of the Board

The Board shall be composed of 16 members. The members of the Board shall be elected or appointed on the following basis:

- (a) 1 member shall be appointed by each of the five Regional Area Associations of the Union of B.C. Municipalities;
- (b) 1 member shall be elected by the Subscribers to represent each of any Deductible Group within the Exchange;
- (c) 1 member shall be elected by the Subscribers to represent any regional districts who are Subscribers to the Exchange and;
- (d) 1 member shall be appointed by the Minister of Community, Aboriginal and Women's Services, Province of British Columbia;
- (e) The balance of the members shall be nominated from and elected by the Subscribers at large.

3.06 Election and Term

The election of the members of the Board shall take place at the first meeting of the Subscribers and at each succeeding

annual general meeting of the Subscribers. A member shall hold office for a term of three years expiring at the close of the third annual general meeting of the Subscribers next following his election or appointment or until his successor is elected or appointed. Incumbent members, if qualified, shall be eligible for re-election. If an election of members is not held at the proper time, the incumbent members shall continue in office until their successors are elected. Election of members of the Board shall be staggered in such manner that the term of office of one-third of the members comprising the Board shall expire in each year.

3.07 Resignation

A member may resign from office upon giving a written resignation to the Board and such resignation becomes effective when received by the Board or at the time specified in the resignation, whichever is later.

3.08 Interim Provisions

The first Board shall be elected at the first meeting of the Subscribers, which shall take place within the first year of the date of commencement of the Exchange. One-third of the first Board shall be elected for a term of one year, and one-third for a term of two years, and the remaining one-third for a term of three years. The members of the Executive Board of the Union of B.C. Municipalities shall be the members of the Board until the first meeting of the Subscribers.

3.09 Removal

The Subscribers may by Ordinary Resolution at an annual or special meeting remove any member from the Board and may, by Ordinary Resolution at the meeting at which any member is removed or at any time thereafter, elect any eligible person in his place for the unexpired term of his predecessor. Any member of the Board who absents himself from three consecutive meetings of the Board without the prior consent of the chairman of the Board may be removed from the Board by Special Resolution of the Board.

3.10 Quorum

A quorum for a meeting of the Board shall be eight members of the Board present in person. A member of the Board may, with the permission of the chairman of the Board, participate in any meeting of the Board by conference telephone call or other electronic communication, but such member shall not be counted in any quorum and shall not be entitled to vote on any resolution of the Board unless present in person.

3.11 Vacancies

A quorum of members of the Board may fill a vacancy on the Board, provided that such vacancy may not be filled by a person who is an officer, director or employee of a Subscriber who is already represented on the Board. A vacancy shall be filled in such a manner as to maintain the

representative character of the Board as set out in subparagraphs (a) to (d) of Article 3.05 hereof.

3.12 Absence of Quorum

If there is not a quorum of members of the Board, or if there has been a failure to elect the number of members required, the members then in office shall forthwith call a special meeting of the Subscribers to fill the vacancy, and, if they fail to call a meeting or if there are no members then in office, the meeting may be called by any Subscriber.

3.13 Decisions of the Board

All decisions and determinations of the Board shall, unless otherwise herein specified, be made by resolution of the members of the Board. A resolution of the members of the Board shall be effective if passed by a majority of the members of the Board voting thereon.

3.14 Chairman

The Board shall choose from amongst their members a chairman. The chairman shall not have a second or casting vote in respect of any matter voted on by the Board.

3.15 Secretary

The Board shall appoint a secretary (who need not be a member of the Board) who shall keep complete and accurate minutes of all meetings of the Board.

3.16 Other Officers

The Board may appoint such other officers and may designate such responsibilities to such officers as the Board shall determine.

3.17 Minutes of Meetings

The minutes of each meeting of the Board shall be sent by the secretary of the Board to each member of the Board as soon as reasonably practicable after the meeting. Any failure by the secretary to send the minutes of a meeting to each member shall not affect the validity of any decisions made at the meeting. The minutes of any meeting of the Board shall, if purported to be signed by the secretary, be prima facie evidence of the facts therein stated.

3.18 Meetings General

The chairman of the Board shall convene a meeting of the Board within sixty days of the annual general meeting of the Subscribers, and at such additional times as the Board may determine. The chairman may call additional meetings of the Board if he considers it advisable to do so and shall do so if requested in writing by not less than 5 members of the Board.

3.19 Notice

The chairman or secretary of the Board shall give each member of the Board written notice of the time and place of each meeting of the Board at least 48 hours (excluding any part of a Sunday and a holiday as defined in the Interpretation Act of Canada for the time being in force)

before the time when the meeting is to be held, save that no notice of a meeting shall be necessary if all members are present or if those absent have waived notice in writing of the holding of such meeting. Such waiver, whether given before or after the meeting of which notice is required to be given, shall cure any default in giving such notice.

3.20 Agendas

The notice of each meeting of the Board shall be accompanied by an agenda and any relevant supporting materials sufficiently detailed to inform each member of the Board of the matters to be considered at the meeting. A member of the Board may require the addition of one of more matters to the agenda of the meeting by written notice thereof to the chairman. Such notice shall be accompanied by any relevant supporting materials sufficiently detailed to inform each member of the Board of the matter or matters to be added to the agenda of the meeting. Such notice and materials shall be delivered in sufficient time to enable the chairman to comply with his obligations under Section 3.19 of this Agreement.

3.21 No Vote on Matters Not on Agenda

Matters which are not referred to in the agenda of the meeting of the Board shall not be voted on at that meeting unless all members present at the meeting of the Board consent thereto.

3.22 Location of Meetings

Meetings of the Board shall be held at such place as may be agreed upon by the Board from time to time.

3.23 Agreement Without Voting

Any matter within the competence of the Board that is agreed or consented to in writing by every member thereof shall have the same force and effect as if approved by a duly passed resolution thereof.

3.24 Duty of Care

Every member of the Board, in exercising his powers and discharging his duties shall:

- (a) act honestly and in good faith, with a view to the best interests of the Subscribers; and
- (b) exercise the care, diligence and skill of a reasonably prudent person.

3.25 Limitation of Liability

No member of the Board shall be liable for the acts, deceits, neglects or defaults of any other member in any respect, or for any loss, damage or expense happening to the Exchange, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Exchange shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the moneys, securities, or effects of the Exchange, or any member thereof, be deposited, or for any loss occasioned by any error of judgment or oversight on his

part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto, unless the same are occasioned by his own willful neglect or default; provided that nothing herein shall relieve any member of the Board from his duty to act in accordance with this Agreement or from liability for any breach thereof.

3.26 Indemnity of Members

Every member of the Board and every former member of the Board and his heirs and legal representatives shall be indemnified and saved harmless by the Subscribers from and against all costs, charges and expenses, including any amounts reasonably paid by the Exchange to settle an action, or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a member of the Board if:

- (a) he acted honestly and in good faith, with a view to the best interests of the Exchange; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

3.27 Liability Insurance

The Exchange may purchase and maintain insurance for the benefit of any member or former member of the Board and of any employees and officers thereof.

3.28 Payment for Services

Except as determined by the Subscribers from time to time, no payment shall be made to any member of the Board for his services in acting as a member of the Board, provided that any member shall be entitled to reimbursement of any expenses reasonably incurred in the performance of his duties as a member of the Board.

ARTICLE 4.00 - APPOINTMENT OF ATTORNEY

4.01 Appointment of Attorney

The Board shall appoint a person or persons as attorney-in-fact for the Subscribers and for the Exchange and shall execute a Power of Attorney witnessing such appointment, which Power of Attorney shall, subject to the terms of this Agreement and upon the direction of the Board, authorize and permit the attorney to execute and deliver such documents and assurances on behalf of the Subscribers and on behalf of the Exchange as are from time to time necessary or desirable. Any document, contract or other assurance executed and delivered by the attorney of the Exchange shall be binding upon the Subscribers and each of them as if executed and delivered by each Subscriber. The Board may revoke the appointment of the attorney at any time for any reason and may appoint substitutes and alternates therefore.

ARTICLE 5.00 - OTHER FINANCIAL AND ACCOUNTING MATTERS

5.01 Accounting Period

Accounts for the Exchange shall be prepared and settled as of December 31st. in each year or annually on any other date the Board may agree upon.

5.02 Books and Records

Proper and complete books, records, reports and accounts of the Exchange shall be kept at the principal office of the Exchange and shall be open and available for inspection and copying by any of the Subscribers or their authorized representative at any reasonable time during normal business hours. The said books and records shall fully and accurately reflect all transactions of the Exchange and shall be maintained in conformity with generally accepted accounting principles.

5.03 Subscriber's Accounts

Individual accounts shall be kept showing each Subscriber's participation in the operations and the operating results of the Exchange. The Board shall provide each Subscriber with a regular statement of the details of his account.

5.04 Annual Reports

Within ninety (90) days after the end of each accounting year of the Exchange, the Board shall furnish to each Subscriber an annual report consisting of

- (a) a summary of assessments received during the year;
- (b) a summary of claims made during the year;
- (c) a summary of claims paid during the year;
- (d) a summary of all reserves established by the Exchange;
- (e) the most recent financial statements of the Exchange; and
- (f) any additional information that the Superintendent lawfully may require.

5.05 Financial Statements Audited

The financial statements of the Exchange shall be audited annually.

5.06 Other Information

The Board may provide the Subscribers with such other information as it deems necessary or as may be required by law, or that any Subscriber may reasonably request.

5.07 Bank Accounts

The Board shall establish by policy: the maintenance of bank accounts, the nomination of signing officers, signing authority and investment policy.

ARTICLE 6.00 - MEETINGS OF SUBSCRIBERS

6.01 Decisions of the Subscribers

Each Subscriber shall be entitled to one vote at all meetings of Subscribers. All decisions and determinations of the Subscribers shall be effective if approved by Ordinary Resolution passed at a duly convened meeting of the Subscribers unless otherwise specified in this Agreement.

6.02 Chairman

The chairman of the Board shall serve as chairman of any meeting of Subscribers. In the absence of the chairman of the Board, the Subscribers in attendance at the meeting shall choose a chairman.

6.03 Secretary

The Board shall appoint a secretary who shall keep complete and accurate minutes of all meetings of the Subscribers.

6.04 Minutes of Meeting

The minutes of each meeting of the Subscribers shall be sent by the secretary to each Subscriber as soon as reasonably practicable after each meeting. Any failure by the secretary to send the minutes of any meeting to any Subscriber shall not affect the validity of any decision made at such meeting. The minutes of any meeting of the Subscribers shall, if purported to be signed by the secretary, be prime facie evidence of the facts therein stated.

6.05 Annual General Meeting

In each calendar year there shall be a meeting of Subscribers designated as the annual general meeting of the Subscribers, at which meeting, amongst other matters:

- (a) One-third of the members of the Board shall be elected for the ensuing year;
- (b) An auditor shall be appointed, at such remuneration as the Board may determine from time to time; and
- (c) the financial statements of the Exchange for the preceding calendar year shall be presented to the Subscribers for approval.

6.06 Additional Meeting

The Chairman may call additional meetings of the Subscribers if he considers it advisable to do so and shall do so if requested by not less than 10 Subscribers.

6.07 Notice

The chairman shall give each Subscriber notice in writing of the time and place of each meeting of Subscribers not less than ten (10) days before the day on which the meeting is held. A meeting of Subscribers may be held at any time without notice if all the Subscribers are present or those not so present have waived notice of such meeting. Such waiver, whether given before or after the meeting of which notice is required to be given, shall cure any default in the giving of such notice.

6.08 Agendas

The notice of each meeting of Subscribers shall be accompanied by an agenda and any relevant supporting materials sufficiently detailed to inform each Subscriber of the matters to be considered at the meeting. A Subscriber may require the addition of one or more matters to the agenda of the meeting by written notice thereof to the chairman. Such notice shall be accompanied by any relevant supporting materials sufficiently detailed to inform each Subscriber of the matter or matters to be added to the agenda of the meeting. Such notice and materials shall be delivered in sufficient time to enable the chairman to comply with his obligations under Section 6.07 of this Agreement.

6.09 No Vote on Matters Not in Agenda

Matters which are not referred to in the agenda of the meeting of the Subscribers shall not be voted on at that meeting unless all of the Subscribers present at the meeting consent thereto.

6.10 Location of Meeting

Meetings of the Subscribers shall be held at such place as the Subscribers may agree upon from time to time, or, in default of such agreement, at such place as the Board may determine.

6.11 Quorum

The quorum for a meeting of the Subscribers shall be a majority of the Subscribers present in person through their duly authorized representative.

6.12 Agreement without Voting

Any matter within the competence of the Subscribers that is agreed or consented to in writing by at least 75% of the Subscribers shall be binding on the Subscribers as if a duly passed resolution thereof.

6.13 Representatives

Each Subscriber shall appoint by resolution of its council, trustees, directors, or other elected officials, a representative and two alternates to represent and vote the interests of the Subscriber at any meeting of the Subscribers, and shall deliver a certified copy of such resolution to the Board.

ARTICLE 7.00 - MEMBERSHIP IN EXCHANGE

7.01 Eligibility for Membership

Membership in the Exchange shall be restricted to municipal corporations, cities, towns, villages, district municipalities, regional districts, regional hospital districts; and such other public bodies and instruments of local or regional government as the Subscribers may from time to time authorize by Special Resolution.

7.02 Application for Membership

(a) Any person wishing to become a Subscriber shall make application to the Board, which application shall contain such information as the Board shall determine from time to time.

(b) The Board, upon receiving an application for membership, shall consider such application, may request such additional information as it considers necessary, and shall thereafter notify the applicant whether its application has been accepted or rejected.

(c) Membership of an applicant shall commence upon the Board notifying it in writing and upon the applicant executing a counterpart of this agreement and paying any assessments and fees payable upon acceptance for membership.

(d) The Board shall not be bound to accept an application for membership in the Exchange and may reject any application on such grounds and for such reasons as it considers prudent, or may accept an application for membership on such terms as the Board considers necessary or desirable.

7.03 Termination of Membership of any Subscriber

The Board is empowered to remove a Subscriber by providing such Subscriber with a notice in writing to that effect, in the event that:

(a) the Subscriber fails to remedy any breach of this Agreement, or of any Liability Protection Agreement issued to it by the Exchange, after having been given thirty (30) days' written notice by the Board of the details of its breach; or

(b) the Subscriber ceases to be eligible for membership in accordance with the provisions of Section 7.01; and in any event, without cause if approved by a Special Resolution of the Subscribers.

7.04 Withdrawal of Subscriber

A Subscriber may withdraw from membership in the Exchange after the third anniversary of its becoming a Subscriber, such withdrawal to be effective as and from the next renewal date of the Liability Protection Agreement issued to such Subscriber by the Exchange, by giving to the Board not less than 6 months' notice thereof, and not more than 12 months' notice thereof. A Subscriber may not withdraw from membership in the Exchange prior to the third anniversary date of its becoming a Subscriber and thereafter only in accordance with the preceding provisions of this paragraph, except with the prior consent in writing of the Board, which consent may be withheld for any reason.

7.05 No Amendments

Upon the receipt by the Board of a notice to withdraw from the Exchange from any Subscriber, neither this Agreement nor the obligations herein of such Subscriber may be altered or amended to the prejudice of such Subscriber without the consent of such Subscriber.

7.06 Continuing Liability

In the event that a Subscriber withdraws or is removed by the Board as a Subscriber of the Exchange, such Subscriber shall continue to be responsible for payment of annual and additional assessments made against it by the Board for any year arising within the period of membership, unless arrangements satisfactory to the Board are made to buy out or otherwise settle such liability at the time of such withdrawal or removal.

ARTICLE 8.00 - LIABILITY PROTECTION AGREEMENT

8.01 Issuance of Liability Protection Agreement

Subject to the provisions of this agreement, the Exchange, shall issue Liability Protection Agreements to each Subscriber. A Liability Protection Agreement, and a Certificate of Insurance as hereinafter provided for, issued to a Subscriber by the Exchange and executed on behalf of the Exchange by its attorney shall constitute a binding contract between the Subscriber named therein on the one part and all of the several Subscribers, as represented by the Exchange, on the other part, and shall be enforceable by and against the Subscriber named therein and by and against the Exchange in accordance with its terms.

8.02 Form of Liability Protection Agreement

The form of, and the terms and conditions contained in, the initial Liability Protection Agreement issued by the Exchange shall be substantially in the form attached as Schedule "B" to this agreement. Thereafter, the Liability Protection Agreement issued by the Exchange to each Subscriber shall be in the form and on the terms and conditions as the Subscribers may from time to time determine by amendment of the Liability Protection Agreement as hereinafter provided for. The deductible limits payable by any Subscriber and the insured persons named in any Liability Protection Agreement may vary between Subscribers and the Board may create groups and pools of Subscribers within the Exchange for such purposes. In all other respects, the Liability Protection offered by the Exchange shall be similar for all Subscribers.

8.03 Increase of Coverage Limits by Board

The Board may, without the prior consent of the Subscribers, increase the limits of coverage offered by the Exchange in a Liability Protection Agreement from 1 million dollars to a maximum of 5 million dollars, and for such purposes may establish additional pools and groups of Subscribers within the Exchange.

8.04 Certificate of Insurance

The Board shall, upon the issuance or renewal of a Liability Protection Agreement by the Exchange, deliver a Certificate of Insurance to each Subscriber specifying:

(a) The name of the Subscriber.

(b) Any additional named insureds protected by the Liability Protection Agreement.

(c) The period of coverage.

(d) The risks insured against.

(e) The policy deductibles payable by the Subscriber.

(f) The risk sharing pool or pools within the Exchange of which the Subscriber is a member.

(g) The annual assessment payable by the Subscriber for the Liability Protection offered by the Exchange.

8.05 Amendment of Liability Protection Agreement

Except as hereinbefore provided for, the form of Liability Protection Agreement issued by the Exchange, and the limits of coverage and risks insured against therein, may be amended with the consent of the Superintendent:

(a) During the initial 3-year term of the Exchange with the consent of 90% of the Subscribers, such amendments to take effect from and after a date specified by the Subscribers so affected; and

(b) Thereafter at any time by Special Resolution of the Subscribers, such amendments to take effect from and after a date specified by the Subscribers.

(c) Any amendment to the form of Liability Protection Agreement issued by the Exchange which has as its effect the increasing of the aggregate exposure to liability of the Subscribers shall be deemed to be an amendment affecting all Subscribers.

8.06 Amendments in By-Laws

Amendments to the form of Liability Protection Agreement issued by the Exchange may be contained in the by-laws of the Exchange and subsequent amendments thereto may be made by amendment of the by-laws. Amendments shall be evidenced by endorsement to, or amendment of, the Liability Protection Agreement and/or Certificate of Insurance issued to each Subscriber.

8.07 Minor Amendments

Minor Amendments to the form of Liability Protection Agreement issued by the Exchange may be made at any time by the Board without the prior consent of the Subscribers, provided that such amendments shall not alter or amend the substance of such Liability Protection Agreements and such amendments shall not take effect until the next renewal date of such Liability Protection Agreements.

8.08 Term of Liability Protection Agreement

The first Liability Protection Agreement issued by the Exchange to a Subscriber who becomes a member of the Exchange prior to December 31st., 1990 shall expire on December 31st., 1990. Each succeeding Liability Protection Agreement issued by the Exchange to such Subscriber shall expire on December 31st. of the year following its date of issue. The first Liability Protection Agreement issued to a Subscriber who becomes a member of the Exchange after December 31st., 1990, shall expire on the next December

31st. after its date of issue and each succeeding Liability Protection Agreement issued to such Subscriber shall expire December 31st. of the year following its date of issue. The Subscribers may by Ordinary Resolution amend the date of expiry of Liability Protection Agreements issued by the Exchange, provided that all such agreements shall expire on the same date.

8.09 Termination of Liability Protection Agreement Upon Removal of Subscriber

In the event the Board or the Subscribers shall remove a Subscriber from membership in the Exchange as hereinbefore provided, the coverage period of any Liability Protection Agreement issued to such Subscriber shall cease upon the date of such removal, provided that such removal shall not relieve the Subscriber of any liability he may have to the Exchange for annual or additional assessments made against him by the Board as hereinafter provided for.

8.10 Renewal of Liability Protection Agreements

All Liability Protection Agreements issued by the Exchange shall, at the expiration of their initial term, automatically renew thereafter from year to year on the same terms and conditions, or on such terms and conditions as the Subscribers may have determined by Special Resolution, unless the Subscriber specified in such Liability Protection Agreement shall have given notice as hereinbefore provided of its intention to withdraw from the Exchange. The withdrawal from membership in the Exchange by a member shall not relieve such Subscriber of any liability it may have to the Exchange for annual or additional assessments made against him by the Board as hereinafter provided for.

ARTICLE 9.00 - ASSESSMENTS

9.01 Assessments Payable

The obligations of the Exchange pursuant to all Liability Protection Agreements issued by it, and all operating costs and expenses of the Exchange, and including the establishment of necessary reserves and contingency funds, shall be funded by assessments made against the Subscribers, by income earned upon such assessments, by borrowings made against such assessments, and, where available and considered necessary or desirable, by purchase of commercial insurance.

9.02 Annual and Additional Assessments

Assessments made against the Subscribers shall be divided into two categories;

(a) Firstly, an annual assessment payable in advance by a Subscriber upon the issuance or renewal of a Liability Protection Agreement to such Subscriber. This assessment is intended to represent the Subscriber's proportionate share of the anticipated aggregate liability and expenses of the Exchange during the ensuing year, including the establishment of necessary reserves and contingencies; and

(b) Secondly, additional assessments by way of adjustment to the annual assessment and based on the actual loss experience of the Exchange and of individual Subscribers during the year for which the annual assessment was collected. Additional assessments if necessary shall be made at the time of the next annual assessment or in extraordinary circumstances at any time. In the event that an additional assessment is required, the Board shall so notify each Subscriber so assessed, setting forth the additional assessment for which each such Subscriber is responsible and setting out in reasonable detail the reasons for the requirement of such additional assessment.

All assessments shall be made by the Board and shall specify the amount of such assessment, the Subscriber liable for payment thereof, and the year of operation of the Exchange for which such assessment is made.

9.03 Calculation of Assessments

The calculation and determination of annual assessments and additional assessments, and the determination of all matters incidental thereto, shall, except as hereinafter provided, be within the exclusive jurisdiction of the Board and the Subscribers agree to be bound thereby and acknowledge their only remedy or recourse in the event of any dispute with respect thereto shall be to pay such assessment and to thereafter withdraw from the Exchange as hereinbefore provided. In calculating and determining the annual and additional assessment payable by any Subscriber, the Board shall apply the principles and formulae set out in the Cost Allocation Schedule attached as Schedule "C" hereto, provided that the application of such Cost Allocation Schedule to any particular Subscriber shall be within the sole and exclusive jurisdiction of the Board.

9.04 Assessment Prorated

A Subscriber who is issued a Liability Protection Agreement by the Exchange for a portion only of a year of operation of the Exchange shall be assessed a prorated portion of the assessments issued by the Board for such year.

9.05 Amendment of Cost Allocation Schedule

The Cost Allocation Schedule attached as Schedule "C" hereto may be amended or varied at any time with the consent of the Superintendent:

(a) During the initial 3-year term of the Exchange with the consent of 90% of the Subscribers affected by such amendments, such amendments to take effect from and after a date specified by the Subscribers so affected; and

(b) Thereafter at any time by Special Resolution of the Subscribers affected by such amendments, such amendments to take effect from and after a date specified by the Subscribers so affected.

(c) Any amendment to the form of Cost Allocation Schedule issued by the Exchange which has as its effect the increasing of the aggregate exposure to liability of the

Subscribers shall be deemed to be an amendment affecting all Subscribers.

9.06 Amendments May Be Contained in By-Laws

Amendments to the Cost Allocation Schedule may be contained in the by-laws of the Exchange and subsequent amendments thereto may be made by amendment of the by-laws.

9.07 Assessment Upon Removal or Withdrawal of Subscriber

A Subscriber who has withdrawn or has been removed from the Exchange shall remain liable for payment of any annual assessment and for any additional assessments thereto with respect to any year of operation of the Exchange during which such subscriber was a member of the Exchange, and notwithstanding that such annual or additional assessment shall not be made against such Subscriber until after such Subscriber shall have ceased to be a member of the Exchange.

ARTICLE 10.00 - OBLIGATION OF SUBSCRIBERS

10.01 Comply with any Request of Board

A Subscriber shall promptly and fully comply with any request or demand made of it by the Board for any information, documents, or other assurances which the Board, in its sole opinion, considers necessary or desirable for the proper management and operation of the Exchange, and shall permit the Board or its authorized agents or servants to inspect and review the risk management practices and procedures of the Subscriber, and shall promptly comply with any direction or guidelines issued by the Board with respect thereto or to provide written reasons for the failure to comply.

10.02 Obligation to Pay Assessments

Each Subscriber covenants and agrees to pay within 30 days of notice thereof any deductible amounts and any annual assessment or additional assessment assessed against such Subscriber by the Board. No right of set off or counter-claim shall exist with respect thereto.

ARTICLE 11.00 - GENERAL POWERS AND AMENDMENT OF AGREEMENT

11.01 Consent or Approval by Ordinary Resolution

Any matter which by this Agreement requires the consent, approval or determination of the Subscribers shall be effective if approved by Ordinary Resolution of the Subscribers unless otherwise specified. A duly passed Ordinary Resolution of the Subscribers on a matter within the competence of the Subscribers in annual or special meeting shall be binding on all Subscribers as if consented to in writing by each Subscriber.

11.02 Matters not Dealt With

Any matter or thing which may require to be determined, approved, agreed to, or otherwise dealt with hereafter for the proper management and operation of the Exchange and for which no provision is made for in this Agreement, shall be within the jurisdiction of the Subscribers in General Meeting and it may be dealt with by Special Resolution thereof.

11.03 Amendment of the Agreement

Any provision of this Agreement for which no amendment has previously been provided for may be amended by Special Resolution of the Subscribers.

ARTICLE 12.00 - TERMINATION

12.01 Termination

(a) The Subscribers may terminate the Exchange by Special Resolution.

(b) The Exchange shall terminate in the event that it fails to receive a license pursuant to Section 186 of the Act, or in the event that any such license is revoked or is not renewed.

(c) Upon termination, the assets of the Exchange after payment of all obligations, and after setting aside an adequate reserve for future claims, shall be returned to the Subscribers in the proportions in which the Subscribers paid annual assessments in the last year of operating the Exchange.

(d) Notwithstanding the termination of the Exchange, each Subscriber shall remain liable for payment of any additional assessment made against it at any time thereafter with respect to any year of operation of the Exchange during which it was a Subscriber.

(e) Subject to any conditions imposed by the Superintendent of Financial Institutions, the Exchange shall be empowered to continue in operation for the limited purpose of winding up the affairs of the Exchange and, for such purpose, this Agreement shall remain in full force and effect until all obligations of the Exchange have been fulfilled. Notwithstanding the foregoing, once an event of termination has occurred, the Exchange shall not issue or exchange any further Liability Protection Agreements.

ARTICLE 13.00 - BY-LAWS

13.01 By-Laws

The Subscribers may adopt by-laws not inconsistent with this Agreement for the better management and operation of the Exchange and any matter or thing not expressly dealt with herein may be provided for in such by-laws. Amendments or alterations to this Agreement and to the Schedules hereto made in accordance with the provisions of

this Agreement may be evidenced by provision thereof in the by-laws.

13.02 Adoption and Amendment of Bylaws

The by-laws of the Exchange shall be adopted by a Special Resolution of the Subscribers at any meeting thereof and may be varied, altered, or amended from time to time by Special Resolution of the Subscribers.

13.03 Copies Filed with the Superintendent

A copy of the by-laws of the Exchange shall be filed with the Superintendent of Financial Institutions and shall if required by law, be subject to his approval thereof.

ARTICLE 14.00 - EXECUTION

14.01 Execution of this Agreement

A Subscriber shall execute this Agreement by resolution of its council, board or other governing body, a certified copy of which shall be delivered to the Board, and shall be witnessed herein by the seal of such Subscriber attached hereto in the presence of its duly authorized signatories.

IN WITNESS WHEREOF each Subscriber has attached its seal to Schedule "A" hereof, or to Schedule "A" of a counterpart hereof, in the presence of its authorized signatories.

ARTICLE 15.0 - DISPUTE RESOLUTION

15.01 General

The Subscribers and the Exchange agree to use their best efforts to resolve all disputes under this Agreement and the Liability Protection Agreement without acrimony and as efficiently and cost effectively as possible.

15.02 Amicable Negotiations

The Subscribers and the Exchange agree that, at any stage of proceedings under this Article, each of them shall

- (a) make all reasonable efforts in good faith to resolve any disputes arising between or among them by amicable negotiations, with or without the assistance of a Mediator, and
- (b) provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.

15.03 Apportionment of Liability

If there is a dispute between Subscribers respecting apportionment of liability for a claim made against one or all of them which is covered under the Liability Protection Agreement, a Subscriber may, by notice to the affected

Subscriber, refer the dispute to an Executive Settlement Conference in accordance with Schedule 1.

If the Executive Settlement Conference is terminated without the dispute being settled, the dispute shall be referred to and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre ("BCICAC") at a location determined by agreement of the Subscribers.

15.04 Denial of Coverage

If there is a dispute between a Subscriber and the Exchange respecting the liability of the Exchange to a Subscriber by reason of a claim made by or against the Subscriber which is alleged to be covered under the Liability Protection Agreement, the Subscriber or the Exchange may, by notice to the other, refer the dispute to a Neutral Coverage Evaluator in accordance with Schedule 2.

If the dispute is not settled within 30 days after the Neutral Coverage Evaluator's opinion is given under Schedule 2 or such further time agreed by the Subscriber and Exchange, the dispute shall be referred to and finally resolved by arbitration under the rules of the BCICAC.

Unless the Subscriber and the Exchange agree otherwise, the arbitration shall take place at a location in the Subscriber's municipality.

15.05 Other Disputes

If there is a dispute, other than a dispute referred to in Article 15.04, between a Subscriber and the Exchange, the Subscriber or the Exchange may, by notice to the other, refer the dispute to a Structured Negotiation with the assistance of a Mediator in accordance with Schedule 3.

Unless the Subscriber and the Exchange agree otherwise, the Structured Negotiation shall take place at a location in Greater Vancouver.

If the dispute is not settled within 30 days of the appointment of a Mediator or within such further period agreed by the Subscriber and the Exchange, the Subscriber may, by notice, request reconsideration of the decision of the Exchange by the Board of Directors in accordance with Schedule 4.

If a dispute under this Article is an urgent matter requiring immediate attention, the Board of Directors may permit the Subscriber to bring the dispute before the Board of Directors in accordance with Schedule 4 without first referring it to Structured Negotiation.

15.06 Transition

Article 15 applies to all disputes arising before or after Article 15 comes into force unless judicial or arbitral proceedings have already been commenced in respect of a particular dispute before Article 15 comes into force.

The Liability Protection Agreement is amended by deleting section 11 of the General Conditions and substituting the following:

"11) Proceedings Against the Association

An Insured Party may not commence arbitral proceedings to recover the amount of any claim under this Agreement unless the requirements of the conditions of this Agreement and of Article 15 of the Reciprocal Insurance Exchange Agreement, as applicable, are complied with."

The amendments to the Reciprocal Insurance Exchange Agreement and the Liability Protection Agreement set out in this resolution come into force on January 1, 1992.

SCHEDULE 1

"Executive Settlement Conference"

An Overview:

The Executive Settlement Conference is an informal, speedy and inexpensive procedure designed to give elected officials of disputing Subscribers the opportunity

- (a) to hear the positions and arguments advanced by their respective appointed officials, with or without legal counsel, respecting apportionment of liability, and
- (b) to reach agreement on such apportionment, with or without the assistance of a Neutral Adviser.

The procedure allows elected officials to hear the arguments of the other Subscriber's appointed official - often for the first time - and permits creative settlements not possible if an arbitrator must rule on the matter. The role of the Neutral Adviser is to manage the process and to assist the elected officials to negotiate a settlement on their request. If the elected officials do not reach a settlement, the Neutral Adviser may give a non-binding opinion on the likely disposition of the dispute applying legal principles as an arbitrator would be required to do.

[Reference Guide: CPR Mini-Trial Workbook and video demonstration available on loan from MIA]

PROCEDURE

- 1. Designations** - Within 14 days of giving notice to refer a dispute to an Executive Settlement Conference, the affected Subscribers shall
 - (a) mutually agree on the appointment of the Neutral Adviser,
 - (b) each designate an elected official to act as its Executive representative on the Settlement Panel,

- (c) advise the other Subscriber whether or not it shall be represented by legal counsel,
- (d) mutually agree on the time, date and location of the Executive Settlement Conference.

2. Neutral Adviser - Unless the Subscribers agree otherwise, the Neutral Adviser should

- (a) have a legal background,
- (b) be an individual held in high regard by the community,
- (c) have no interest or perceived interest in the Subscribers or the subject matter of the dispute,
- (d) have experience or training as a mediator or facilitator.

If the Subscribers are unable to agree on a Neutral Adviser within the required time, the British Columbia International Commercial Arbitration Centre shall, on request, appoint a Neutral Adviser with the required qualifications in accordance with its appointment procedures.

3. Executive Representative - In order to make the procedure as effective as possible, each designated Executive representative should have the necessary authority of the Subscriber to negotiate a settlement of the dispute. It is preferable if the Executive representative has not been directly involved in the events underlying the dispute.

4. Costs - The costs of the Executive Settlement Conference shall be borne equally by the affected Subscribers and each Subscriber shall bear its own costs.

5. Confidentiality - The Executive Settlement Conference is a compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the Executive Settlement Conference by the Subscribers, the Neutral Adviser, the Executive representatives, legal counsel or agents and the appointed officials are confidential. These offers, promises, conduct and statements are inadmissible and not discoverable for any purpose in arbitral or judicial proceedings; however, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its presentation or use at the Executive Settlement Conference.

6. Pre-conference Exchange - At least three days before the scheduled Executive Settlement Conference, the Subscribers shall exchange and submit to the Neutral Adviser a joint statement of agreed facts, if any, and brief narrative statements of their respective positions including references to any documents, affidavits and exhibits they wish to rely on at the Executive Settlement Conference.

7. Executive Settlement Conference - The Neutral Adviser shall moderate the Executive Settlement Conference. Each Subscriber, through its appointed official or legal counsel, shall present its best case in a narrative

form in a time period not to exceed one hour. Each Subscriber shall have not more than 30 minutes to present its rebuttal. Each Subscriber should demonstrate the merits of its position focusing not only on legal and factual issues, but also on factors that may affect the outcome of the case, eg. the availability and persuasiveness of potential witnesses. The scope or substance of a Subscriber's presentation may not be limited by any person.

Unless the Subscribers agree otherwise, oral presentations by witnesses shall not be made. No rules of evidence will apply to the presentations at the Executive Settlement Conference.

No recording shall be made of an Executive Settlement Conference; however, the persons present may take notes.

Presentations may not be interrupted, except that during each Subscriber's presentation, and following such presentation, the Executive representatives and the Neutral Adviser may ask clarifying questions of any persons appearing on behalf of a Subscriber.

8. Negotiations - Immediately after the conclusion of the presentations and any question period, the Executive representatives shall meet, by themselves, and shall attempt to agree on a resolution of the dispute.

Either of the Executive representatives may request the Neutral Adviser to attend their negotiations to offer assistance as a mediator or to express an oral opinion on the subject matter of the dispute.

Any settlement reached shall be recorded in writing.

9. Non-binding Opinion - If negotiations have not been successful, the Neutral Adviser may, on the request of the Executive representatives, give the representatives a non-binding written opinion on the subject matter of the dispute within seven days of receipt of the request. Within seven days of receipt of the opinion, the Executive representatives shall meet again to attempt to resolve the dispute.

10. Termination - The Executive Settlement Conference proceedings shall be deemed to be terminated if

- (a) a settlement is not reached within 30 days after completion of the presentations under clause 7 or such longer period agreed by the Subscribers, or
- (b) a Subscriber gives notice to the affected Subscribers and the Neutral Adviser that it is withdrawing from the proceedings.

SCHEDULE 2

"Neutral Coverage Evaluation"

An Overview:

The Neutral Coverage Evaluation is an informal procedure which provides an opportunity to the Subscriber and the

Exchange to submit a dispute respecting coverage to an independent senior insurance lawyer for a non-binding opinion on the probable disposition of the dispute should it be submitted to arbitration.

The Neutral Coverage Evaluation will be conducted on the basis of written submissions and documents only unless the Subscriber and the Exchange both agree or the Neutral Coverage Evaluator requests an oral hearing to consider evidence respecting a disputed issue of fact.

It is hoped that access to an independent opinion rendered by a credible and experienced counsel will assist the Exchange and the Subscriber to reach agreement on the dispute without the necessity of going to arbitration.

PROCEDURE

1. Neutral Coverage Evaluator - Within 14 days of giving notice to refer a dispute to a Neutral Coverage Evaluation, the Subscriber and the Exchange shall appoint a Neutral Coverage Evaluator.

Unless the Subscriber and the Exchange agree otherwise, the Neutral Coverage Evaluator shall

- (a) be a lawyer licensed to practice in the Province of British Columbia with at least ten years call to the bar,
- (b) have extensive experience in the insurance field, and
- (c) have no interest or perceived interest in the parties or in the subject matter of the dispute.

If the Subscriber and the Exchange are unable to agree on a Neutral Coverage Evaluator within the required time, the British Columbia International Commercial Arbitration Centre shall, on request, appoint a Neutral Coverage Evaluator with the required qualifications in accordance with its appointment procedures.

2. Costs - The costs of the Neutral Coverage Evaluation shall be paid out of a special fund established by the Board of Directors for these purposes, but each party shall bear its own costs.

3. Confidentiality - The Neutral Coverage Evaluation is a procedure to facilitate the settlement of a dispute. All conduct, opinions and statements, whether oral or written, made in the course of the Neutral Coverage Evaluation by the Subscriber, the Exchange, the Neutral Coverage Evaluator, legal counsel or any of their agents or officials are confidential. These opinions, statements and conduct are inadmissible and not discoverable for any purpose in arbitral or judicial proceedings; however, evidence that is otherwise admissible or non-discoverable shall not be rendered inadmissible or non-discoverable as a result of its presentation or use at the Neutral Coverage Evaluation.

4. Neutral Coverage Evaluation - The Neutral Coverage Evaluation shall be conducted on the basis of documents only unless the Subscriber and the Exchange agree or the Neutral Coverage Evaluator requests an oral hearing to hear evidence respecting a disputed issue of fact.

If an oral hearing is held, the hearing shall be conducted as efficiently as possible and in the manner the Neutral Coverage Evaluator specifies. No recording shall be made of an oral hearing held; however, persons present may make notes.

No rules of evidence will apply to the submissions or to any oral hearing held in the Neutral Coverage Evaluation.

5. Submissions - Within seven days of the appointment of the Neutral Coverage Evaluator, the Exchange shall submit to the Subscriber and to the Neutral Coverage Evaluator a written submission including copies of any documents, affidavits and exhibits on which it relies respecting the issue in dispute.

Within seven days of receipt of the Exchange's submission, the Subscriber shall submit to the Exchange and the Neutral Coverage Evaluator a written submission including copies of any document, affidavits and exhibits on which it relies respecting the issue in dispute.

Not later than five days after receipt of the Subscriber's submission, the Exchange may submit a written reply to the Subscriber and the Neutral Coverage Evaluator.

6. Non-binding Opinion - Within 15 days of
(a) receipt of the last submission permitted under this procedure, or
(b) completion of any oral hearing, whichever is the later, the Neutral Coverage Evaluator shall give to the Subscriber and the Exchange a written opinion with reasons on the probable disposition of the dispute should be it submitted to arbitration.

SCHEDULE 3 **"Structured Negotiation"**

An Overview:

The Structured Negotiation is simply a negotiation facilitated by an experienced mediator. The Structured Negotiation will take place in an informal, preferably neutral, setting. Officials of the Exchange and the Subscriber may attend with or without legal counsel.

The function of the Mediator is to assist the Exchange and the Subscriber to negotiate as effectively as possible. The Mediator may help the parties

- (a) establish the order of discussions,
- (b) identify common ground,
- (c) get rid of irrelevancies or unproductive discussions,
- (d) defuse anger or hostility,

- (e) keep focused on the issues,
- (f) move from fixed positions,
- (g) develop creative solutions,
- (h) do "reality testing", and
- (i) encourage compromise.

The Mediator will not give an opinion or make a recommendation respecting the issue in dispute.

PROCEDURE

1. Mediator - On request of the Exchange or a Subscriber, the British Columbia International Commercial Arbitration Centre shall appoint a Mediator with appropriate qualifications, in accordance with its appointment procedures, who has no interest or perceived interest in the parties or the subject matter of the dispute.

2. Representatives - In order to make the procedure as effective as possible, the representative of the Exchange and of the Subscriber should have the necessary authority to negotiate a settlement of the dispute.

A party may be represented at a Structured Negotiation by legal counsel and, in that event, shall notify the other party at least seven days before the scheduled Structured Negotiation.

3. Costs - The costs of the Structured Negotiation shall be paid out of a special fund established by the Board of Directors for these purposes, but each party shall bear its own costs.

4. Confidentiality - The Structured Negotiation is a procedure to facilitate the settlement of a dispute. All offers, promises, conduct and statements, whether oral or written, made in the course of the Structured Negotiation by the Subscriber, the Exchange, the Mediator, legal counsel or any of their agents or officials are confidential. These offers, promises, opinions, statements and conduct are inadmissible and not discoverable for any purpose in arbitral or judicial proceedings; however, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its presentation or use at the Structured Negotiation.

5. Summary - At least two days before the scheduled Structured Negotiation, the Exchange and the Subscriber shall each submit a brief, one to two page summary of the issues in dispute and its position in respect of them to the Mediator and to the other party.

6. Structured Negotiation - At the Structured Negotiation the Subscriber and the Exchange should be prepared to make a brief oral statement and then to participate in the negotiations with the active assistance of the Mediator.

The parties should bring any documents needed in order to effectively represent their positions. These documents will also be helpful to the Mediator to understand the dispute but can be kept confidential on request, and in that event will not be revealed to the other party.

The Mediator may caucus privately with either party during the Structured Negotiation if the Mediator considers that it will assist the process. Either party may request a private caucus with the Mediator at any time.

No recording shall be made of a Structured Negotiation; however, persons present may make notes. Any settlement reached shall be recorded in writing.

7. Termination - The Structured Negotiation shall be deemed to be terminated if

- (a) a settlement is not reached within 30 days after the Mediator has been appointed or such longer period agreed by the Exchange and the Subscriber, or
- (b) the Exchange or the Subscriber gives notice to the Mediator and the other party that it is withdrawing from the proceedings.

SCHEDULE 4

“Reconsideration by the Board of Directors”

PROCEDURE

1. Submissions - Within 14 days of giving notice to request reconsideration by the Board of Directors, the Subscriber shall send a written submission to the Board of Directors and to the Exchange outlining

- (a) specifics of the issue in dispute,
- (b) the decision taken by the Exchange, and
- (c) the reasons proposed by the Subscriber for changing this decision.

Within seven days of receipt of the Subscriber’s submission, the Exchange shall send to the Subscriber and to the Board of Directors a written response to the Subscriber’s submission outlining

- (a) the decision taken by the Exchange, and
- (b) the basis, including facts and business policy, upon which this decision was taken.

2. Attendance - Representatives of the Subscriber and the Exchange may be present at the meeting of the Board of Directors when the decision is being reconsidered in order to

- (a) make oral representations,
- (b) ask and answer questions, and
- (c) listen to the discussions of the Board of Directors.

The Subscriber shall be given at least seven days notice of the meeting of the Board of Directors when the decision is to be reconsidered.

3. In-camera - After hearing any oral representations of the representative of the Subscriber, the Board of Directors may hold its discussions about the decision in-camera and, in that event, the Board of Directors shall exclude from the meeting the representatives of the Subscriber, the officials of the Exchange and any member of the Board of Directors who participated in the decision.

4. Final Decision - The decision of the Board of Directors in the subject matter of the proceedings is not subject to further review or appeal.

SCHEDULE A

ATTESTATION OF SUBSCRIBER

The common seal of the _____
was hereunto attached in the presence of its authorized signatories this _____ day of
_____, _____.

_____)
Authorized Signatory)
Title _____)
_____)
_____)
_____)
Authorized Signatory)
Title _____)
_____)
_____)

SEAL

POWER OF ATTORNEY

MUNICIPAL INSURANCE ASSOCIATION OF BRITISH COLUMBIA

WHEREAS:

- a) The undersigned (the "Undersigned") is or will become a subscribing member of the Municipal Insurance Association of British Columbia.
- b) The Municipal Insurance Association of British Columbia is an unincorporated association of B.C. municipalities, regional districts and other instruments of local or regional government created by an agreement entitled "Reciprocal Insurance Exchange Agreement of the Municipal Insurance Association of British Columbia" and dated for reference the 1st day of December, 1987 (hereinafter called the "Exchange Agreement").
- c) The Municipal Insurance Association of British Columbia was created for the purpose of establishing and administering a reciprocal insurance exchange within the meaning of chapter 47 of the Financial Institutions Act of British Columbia, all in accordance with the terms and conditions of the Exchange Agreement.
- d) It is necessary and expedient for the proper organization and management of the Municipal Insurance Association of British Columbia that the subscribing members thereof grant a Power of Attorney to such person or persons as the Executive Board of the said association may from time to time choose, all in accordance with Article 4.00 of the Exchange Agreement.

NOW THEREFORE THIS INSTRUMENT WITNESSES that the Undersigned hereby appoints the Attorney, as such person is hereinafter specified, as its true and lawful attorney, on the following terms, conditions and restrictions:

1. All capitalized words and phrases used in this Power of Attorney shall have the meaning attributed to them in Article 1.00 of the Exchange Agreement unless the context shall otherwise require, or unless otherwise expressly defined in this instrument.
2. The Attorney hereinbefore referred to is the person or persons from time to time appointed by the Board, pursuant to Article 4.00 of the Exchange Agreement, as the attorney-in-fact of the Subscribers and of the Exchange.
3. The Board may determine the form of instrument appointing the Attorney and any instrument in writing in a form acceptable to the Board and executed in accordance with a resolution of the Board and purporting to be an appointment of an attorney-in-fact for the Subscribers and for the Exchange as provided for in Article 4.00 of the Exchange Agreement shall be sufficient evidence of the appointment by the Board of the Attorney.
4. The Board may appoint as the Attorney such person or persons, including an incorporated company, as the Board may determine in its sole discretion, and may appoint an alternate or alternates therefore.

**POWER OF ATTORNEY
MUNICIPAL INSURANCE ASSOCIATION OF BRITISH COLUMBIA**

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5. The Board may revoke any appointment made by it and may substitute and replace any appointment made by it.
6. The Board may, in addition to the terms and conditions and restrictions contained herein, impose any additional terms, conditions and restrictions on the Attorney as it considers reasonably necessary or desirable.
7. The Attorney shall, subject to the terms, conditions and restrictions contained herein, and subject to any additional terms, conditions or restrictions imposed upon him/her by the Board, have full power and authority on behalf of the Undersigned to do all things and to execute and deliver all instruments, documents, agreements and assurances as may lawfully be done by a true and lawful attorney, and including the commencement or defence of any claim, suit or action brought by or against the Undersigned, provided only that the Attorney shall not exercise any power or authority granted to him/her by this instrument other than under the control and direction of the Board duly exercising the powers and authorities granted it by the provisions of the Exchange Agreement.
8. This Power of Attorney may not be revoked by the Undersigned so long as the Undersigned is a Subscriber to the Exchange. Upon the Undersigned ceasing to be a Subscriber to the Exchange in accordance with the terms and conditions of the Exchange Agreement, this Power of Attorney shall continue in full force and effect with respect to any matter or thing arising or occurring during the time the Undersigned was a Subscriber to the Exchange, and with respect to any matter or thing by which the Undersigned may remain liable for assessment by the Exchange, but shall otherwise be void and of no further force or effect.
9. The Undersigned waives any requirement for notice of the appointment by the Board of the Attorney and of any other matter in relation thereto, including any terms, conditions or restrictions imposed upon the Attorney by the Board, the revocation of any appointment by the Boards, and the appointment of a substitute or alternate attorney by the Board.

IN WITNESS WHEREOF the Undersigned has hereunto attached its seal in the presence of its authorized signatories this _____ day of _____, 2008.

Authorized Signatory)
Title _____)

Authorized Signatory)
Title _____)

SEAL

MODIFICATION AGREEMENT

This Modification Agreement modifies the Liability Protection Agreement (“the LPA”) issued by the Municipal Insurance Association of British Columbia (“the Association”) to the extent set out in this Modification Agreement.

WHEREAS:

1. The Association issues the LPA to its members affording comprehensive general liability and errors and omissions coverage as set out in the LPA;
2. The City of Kelowna is a member of the Association.

IT IS AGREED:

1. The LPA is modified to the extent provided in this Modification Agreement.
2. It is understood and agreed that claims arising out of an alleged or actual error, omission, negligent act or breach of duty in the exercise or the provision of or failure to exercise or provide land use or building regulatory powers or services, including planning, zoning, subdivision, plan checking, permit and inspection powers or services, shall be covered if and only if the actual or alleged exercise and provision of or failure to exercise or provide the said powers or services occurred no more than ten years prior to November 1, 2008.
3. In all of the respects, the terms and conditions of the LPA shall remain in full force and effect.

**MUNICIPAL INSURANCE ASSOCIATION OF
BRITISH COLUMBIA**

Per:

Attorney-in-fact

Dated:

CITY OF KELOWNA

Per:

Authorized Signatory

Per:

Authorized Signatory

Dated: