



Date January 27, 2025

APPROVAL OF AMENDMENT TO EXCESS INSURANCE AGREEMENT BETWEEN THE CITY OF DES MOINES AND WESTPORT INSURANCE CORPORATION

WHEREAS, as the result of a workers compensation award dated 2006, the City’s excess insurance coverage policy with Westport Insurance Corporation (the “Carrier”) will be required to make payments to the City; and,

WHEREAS, for administrative reasons, the Carrier prefers to have these payments made by reimbursing the cost of an annuity purchased by the City rather than weekly reimbursements and that process is acceptable to the City; and,

WHEREAS, the technical requirements of proceeding forward require an amendment of the policy purchased at the time of the notice of injury; and,

WHEREAS, the City and the Carrier have negotiated an amendment to resolve these requirements.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa:

1. That the attached amendment to Insurance Policy Agreement Between the City Of Des Moines and Westport Insurance Corporation is hereby approved.
2. The City Manager is authorized to execute the Agreement on behalf of the City.
3. The City Manager is directed to purchase an annuity sufficient to compensate the claimant and to administer reimbursement from Westport Insurance Corporation pursuant to the amendment.

Moved by _____ to adopt. Second by _____

FORM APPROVED:

/s/ Thomas G. Fisher Jr.

Thomas G. Fisher Jr., Deputy

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED	APPROVED			

CERTIFICATE

I, LAURA BAUMGARTNER, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement (the "Agreement") is entered into by the following,

- i. City of Des Moines, a municipality in the state of Iowa (the "City"); and
- ii. Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation, an insurer licensed in the state of Iowa (the "Insurer.")

The City and the Insurer are each a "Party" and together are the "Parties."

The Agreement is effective as of _____ .

RECITALS:

- a. Insurer issued the City a Specific Excess Workers Compensation and Employers Liability Indemnity Policy, identified as policy number XWC 0647200, in which the City was the insured (the "Policy");
- b. At the time the Policy was issued, the City self-insured the risk of workers compensation and employers liability coverage for its liability to its employees;
- c. The City acquired the Policy in order to have excess coverage for the City's liability arising out of its self-insurance for claims of its employees for workers compensation or employers liability;
- d. John Lumley (the "Claimant") made a workers compensation claim against the City (the "Claim") and the City continues to pay workers compensation benefits to the Claimant;
- e. The City, in turn, has made and continues to make claims against the Insurer that arise from the benefits owed by the City to the Claimant;
- f. The City intends to purchase a structured annuity insurance policy (the "Annuity") that will take over the City's economic liability for the Claim; and
- g. The City and Insurer seek to have an understanding regarding the Annuity, including the Insurer's rights to any refunded monies received by the City from the issuer of the Annuity.

AGREEMENT:

The Parties agree as follows:

1. To resolve any uncertainty, the Insurer consents to the proposed Annuity to cover the City's liability for the Claim, subject to the other provisions of this Agreement. The Insurer further agrees that the cost of the Annuity premium shall be treated as a cost that is properly attributable to the City's required retention under the Policy.
2. To the extent this Agreement conflicts with the Policy, the Policy is deemed to be amended to allow this Agreement to have full effect. No other amendment of the Policy is intended or created by this Agreement.

3. If the terms of the Annuity agreed upon by the City and the issuer of the Annuity and the circumstances that follow after the Annuity's issuance cause the Annuity to refund monies to the City (a "Refund"), the rights of the Insurer relative to a Refund received by the City shall be governed by the Policy as supplemented by this Agreement. Any payments to the Claimant or on the Claimant's behalf by the issuer of the Annuity shall not be considered a Refund.
4. The dollar amount of any Refund received by the City shall reduce the amount incurred by the City with respect to the City's required retention under the Policy necessary for the Policy's coverage to apply. Reduction of the amount incurred following a Refund shall have a corresponding effect regarding the amount of benefit owed to the City by the Insurer under the Policy. Following a Refund, the Parties shall re-calculate the amount owed by the Insurer under the Policy (a "Re-calculation").
5. If a Recalculation results in the Insurer owing the City less than the Insurer has already paid the City under the terms of the Policy, the City shall promptly, but in no less than sixty (60) calendar days pay to the Insurer the amount of monies identified by the Re-calculation as being overpaid to the City by the Insurer.
6. By entering into this Agreement a Party does not waive any rights it has against the other Party, including the rights provided by the doctrine of unjust enrichment or other equitable grounds.
7. Other provisions:
 - a. Any disputes arising out of the interpretation of this Agreement shall be handled in the same manner in which a dispute under the Policy would be handled.
 - b. This Agreement represents the entire amendment to the Policy of the Parties and supersedes all prior oral agreements or understandings between the Parties to this matter.
 - c. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Iowa without giving effect to any choice or conflict of law provision or rule.

~Remainder of this page is intentionally blank; signatures are on the following page~

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CITY OF DES MOINES

Signature of authorized representative

Name and title of the authorized representative:

Date signed:

WESTPORT INSURANCE CORPORATION

Signature of authorized representative

Name and title of the authorized representative:

Date signed:

Signature of authorized representative

Name and title of the authorized representative:

Date signed: