

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “Agreement”) is made and entered into by and between: i) Indian Harbor Insurance Company (“Indian Harbor”); ii) the Association of Washington Cities Risk Management Service Agency (“AWC RMSA”); and iii) the City of Tenino (the “City”). Indian Harbor, AWC RMSA, and the City, are referred to collectively as “Parties” and each, separately, as a “Party.”

RECITALS

WHEREAS, Indian Harbor Insurance Company issued CyberRiskConnect Privacy, Security & Technology Insurance Policy No. MTP903605702 (the “Policy”) to AWC RMSA for the policy period of January 1, 2020 to January 1, 2021;

WHEREAS, the City is listed as an “Insured” under the Policy;

WHEREAS, AWC RMSA members, including the City, participated in and jointly self-funded a Government Crime Coverage Program for the 2020 calendar year (the “Crime Coverage Program”), with AWC RMSA responsible for investigating potential coverage under the Crime Coverage Program;

WHEREAS, beginning in or around March 2020, the City was defrauded by an unknown third party posing as a representative of the Washington Municipal Clerk’s Association (the “Incident”);

WHEREAS, the City suffered a loss of \$280,309 of City funds as a direct result of the fraud (hereinafter the “Loss”);

WHEREAS, the City notified AWC RMSA and Indian Harbor of the Incident and sought coverage for the Loss under the Crime Coverage Program and the Policy, respectively;

WHEREAS, AWC RMSA denied coverage for the Loss under the Crime Coverage Program, and the City has disputed AWC RMSA’s position;

WHEREAS, Indian Harbor denied coverage for the Loss under the Policy, and the City has likewise disputed Indian Harbor’s position;

WHEREAS, AWC RMSA, Indian Harbor and the City attended a mediation with Hon. Paris J. Kallas on March 3, 2021;

WHEREAS, on March 31, 2021, the Parties agreed in principle to a settlement agreement and mutual release;

WHEREAS, the Parties desire to resolve any and all disputes and potential disputes between them with regard to the Loss or the Incident, including amounts incurred or sustained to date or amounts that may otherwise be incurred or sustained in the future (collectively the

“Released Matters”), for a total settlement payment from AWC RMSA and Indian Harbor to the City for \$330,309; and

WHEREAS, AWC RMSA will contribute \$100,000 to the settlement and Indian Harbor will contribute \$230,309 to arrive at a total settlement value of \$330,309;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other undertakings set forth in this Agreement, and for other good and valuable consideration, the Parties mutually agree as follows:

1. Incorporation of Recitals and Mediation Settlement Agreement

The Recitals set forth above are incorporated into and made part of this Agreement.

2. Settlement Payment

(a) Indian Harbor will cause the sum of two hundred thirty thousand three hundred nine dollars and zero cents (\$230,309) (the “Indian Harbor Settlement Payment”) to be paid by wire at the account designated below within thirty (30) calendar days after receipt of a fully executed copy of this Agreement, tax identification information, and verbal verification of payment instructions:

Ruiz & Smart PLLC in Trust for the City of Tenino

(b) The Indian Harbor Settlement Payment will reduce the aggregate limit of liability under the Policy and will erode the sublimit for Social Engineering Financial Fraud.

(c) AWC RMSA will cause the sum of one hundred thousand dollars and zero cents (\$100,000) (the “AWC RMSA Settlement Payment”) to be paid to the City as detailed above within thirty (30) calendar days after receipt of a fully executed copy of this Agreement.

3. Releases

(a) Except for the promises and obligations set forth in this Agreement, the City, on behalf of itself and any predecessors, successors, parents, subsidiaries, affiliates, assigns, representatives, directors, officers, employees, shareholders, members, partners, principals, and attorneys (the “City Related Parties”), hereby release and forever discharge AWC RMSA and its predecessors, successors, parents, subsidiaries, affiliates, assigns, representatives, directors, officers, employees, shareholders, members, partners, principals, attorneys, insurers and reinsurers (the “AWC RMSA Related Parties”) and Indian Harbor and its predecessors, successors, parents, subsidiaries, affiliates, assigns, representatives, directors, officers, employees, shareholders, members, partners, principals, attorneys, insurers and reinsurers (the “Indian Harbor Related Parties”) of and from any and all claims, causes of action, suits, counterclaims, defenses, liabilities, costs, damages and demands whatsoever, in law or equity, which the City and the City Related Parties may have had, have now, or may have in the future, from the beginning of time up to the Effective Date of this Agreement, against AWC RMSA or

the AWC RMSA Related Parties and/or Indian Harbor or the Indian Harbor Related Parties based upon, arising out of, or in any way related to or involving:

1. any of the Released Matters, or any facts, circumstances, transactions, events, acts, errors, or omissions involved in any of the Released Matters;
2. any claim for legal fees and expenses incurred in connection with any of the Released Matters;
3. any notice of claim or notice of potential claim based on any of the Released Matters or any facts, circumstances, transactions, events, acts, errors, or omissions involved in any of the Released Matters; or
4. any claim for misrepresentations, fraud, indemnity, contribution, breach of contract, breach of duty, negligence, "bad faith," violation of statute or regulation, unfair claims handling, or damages of any kind whatsoever arising out of or relating to any of the Released Matters.

(b) Except for the promises and obligations set forth in this Agreement, AWC RMSA, on behalf of itself and the AWC RMSA Related Parties, hereby release and forever discharge the City and the City Related Parties and Indian Harbor and the Indian Harbor Related Parties of and from any and all claims, causes of action, suits, counterclaims, defenses, liabilities, costs, damages and demands whatsoever, in law or equity, which AWC RMSA and the AWC RMSA Related Parties may have had, have now, or may have in the future, from the beginning of time up to the Effective Date of this Agreement, against City or the City Related Parties and Indian Harbor and the Indian Harbor Related Parties based upon, arising out of, or in any way related to or involving:

1. any of the Released Matters, or any facts, circumstances, transactions, events, acts, errors, or omissions involved in any of the Released Matters;
2. any claim for legal fees and expenses incurred in connection with any of the Released Matters;
3. any notice of claim or notice of potential claim based on any of the Released Matters or any facts, circumstances, transactions, events, acts, errors, or omissions involved in any of the Released Matters; or
4. the pursuit of coverage under the Policy in connection with any of the Released Matters.

(c) Except for the promises and obligations set forth in this Agreement, Indian Harbor, on behalf of itself and the Indian Harbor Related Parties, hereby releases and forever discharges the City and the City Related Parties and AWC RMSA and the AWC RMSA Related Parties of and from any and all claims, causes of action, suits, counterclaims, defenses, liabilities, costs, damages and demands whatsoever, in law or equity, which Indian Harbor and the Indian Harbor Related Parties may have had, have now, or may have in the future, from the beginning of time up to the Effective Date of this Agreement, against City or the City Related Parties and

AWC RMSA and the AWC RMSA Related Parties based upon, arising out of, or in any way related to or involving:

1. any of the Released Matters, or any facts, circumstances, transactions, events, acts, errors, or omissions involved in any of the Released Matters;
2. any claim for legal fees and expenses incurred in connection with any of the Released Matters;
3. any notice of claim or notice of potential claim based on any of the Released Matters or any facts, circumstances, transactions, events, acts, errors, or omissions involved in any of the Released Matters; or
4. the pursuit of coverage under the Policy in connection with any of the Released Matters.

(d) The Parties and their respective Related Parties acknowledge: (i) that they may have sustained damages, expenses and losses in connection with the subject matter of the foregoing releases that presently are unknown or unsuspected, and that such damages, expenses and losses, if any, may give rise to additional damages, expenses and losses in the future that are not now anticipated by them; and (ii) that this Agreement and the foregoing releases have been negotiated and agreed to despite the existence of any such unknown or unsuspected damages, expenses and losses. The Parties and their respective Related Parties, being fully advised, therefore, expressly and intentionally waive any and all rights they may have under any statute or common law limiting releases of unknown claims. This waiver is an essential and material term of this Agreement and without such waiver the Agreement would not have been entered into.

(e) Each of the Parties agrees that it will not bring or commence any action against any other Party for any claim, action, cause of action, right or obligation released in this Agreement.

4. Confidentiality

The Parties understand and agree that the negotiations leading to, and the terms of, this Agreement (collectively, the "Protected Information") are confidential, and further agree not to disclose the Protected Information to anyone, directly or indirectly, without a written waiver from all other Parties, except as provided in this Agreement. Each Party may provide Protected Information to (i) those individuals within or affiliated with the Party who have a reasonable need to know the Protected Information either so that this Settlement Agreement can be implemented or so they can be informed that the matter has been resolved, (ii) the Party's counsel, auditors, financial advisors, tax advisors, insurers, reinsurers, and insurance producers, brokers, or agents, (iii) government authorities where disclosure is required by applicable law, statute, rule, or regulation, (iv) as necessitated by the Washington State Public Records Act, RCW Ch. 42.56 or the Washington Open Public Meetings Act, RCW Ch 42.30, or (v) as necessary to enforce this Agreement.

5. Representations and Warranties

(a) Each of the Parties represents and warrants that it has not sold, assigned, pledged, transferred or otherwise conveyed any interest in the matters that are the subject of the releases in Clause 3.

(b) Each of the Parties represents and warrants: that it is authorized to enter into this Agreement on behalf of itself and any other released parties; that the execution and delivery of this Agreement and the consummation of this transaction will not conflict with or result in any violation or default under any provision of its articles of incorporation, charter, by-laws or partnership agreement or of any decree, statute, law, ordinance, rule or regulation applicable to it; and that no further consent, approval, order, authorization or filing with any governmental authority is required in connection with the execution and delivery of this Agreement or the consummation of the transactions described in this Agreement.

(c) Each of the Parties represents that it has agreed to the terms of this Agreement. Each signatory of this Agreement represents and warrants that he or she has the general and specific authority to enter into and execute this Agreement.

(d) Indian Harbor represents and warrants that it has paid or will pay invoices from Kroll and Mullen Coughlin LLC in excess of the self-insured retention amount that constitute Data Breach Response and Crisis Management Costs under the Indian Harbor Policy.

6. General Terms and Conditions

(a) Neither this Agreement, nor any settlement offer, counteroffer, acceptance, or any other circumstance regarding this Agreement shall be considered an acknowledgment or admission of coverage by either Party. Following arms-length negotiations, the Parties, for good and valuable consideration, have reached this Agreement in good faith.

(b) This Agreement may not be construed as an admission as to fault or liability by any Party.

(c) This Agreement shall be binding upon and shall inure to the benefit of the Parties and to their respective executors, administrators, heirs, successors, and assigns.

(d) Each Party acknowledges that, in entering into this Agreement, it has relied upon the legal advice of counsel of its choice, it fully understands and voluntarily accepts the terms of this Agreement, and each Party agrees that it is executing this Agreement after independent investigation and without fraud, duress, or undue influence.

(e) Each Party has reviewed and been afforded an opportunity to revise this Agreement. Accordingly, that rule of construction that construes and resolves any ambiguities against the drafting party shall not be employed in the interpretation of this Agreement.

(f) Each party agrees to bear its own attorneys' fees and costs incurred in addressing the insurance coverage issues that led to and are the subject of this Agreement, with the

understanding that the City may allocate a portion of the Indian Harbor Settlement Payment or the AWC RMSA Settlement Payment to its own attorneys' fees;

(g) The Parties agree that this Agreement may be signed in counterparts, each of which shall be deemed to be an original and all together shall be deemed to be a single instrument. Such counterparts may be exchanged among the Parties (or their representatives) by facsimile, e-mail or otherwise. The Agreement will become effective when all counterparts have been executed by each Party and delivered to the other Parties (the "Effective Date").

(h) The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable. This Agreement shall survive the termination of any arrangements contained herein.

(i) Mutual no press statements, non-disparagement. The Parties agree that they will not, directly or indirectly, disparage or criticize each other or issue any communication, written or otherwise, or take any other action or engage in any other conduct, nor cause or permit their attorneys, employees, elected representatives, or other representatives to do so on their behalf, that is intended to be or could reasonably be expected to be inconsistent with or injurious to the interests of the other Parties. In the event such a communication is made to anyone, including but not limited to the press, media, public interest groups, publishing companies, and/or through internet social media or blog posting, it will be considered a material breach of the terms of this agreement. Neither party shall issue any statements to the press regarding this agreement, except that the City may issue a single press release and may respond to any media inquiries by referring to that press release. The press release shall state substantially as follows:

The Mayor and City Council are pleased to announce that the City has reached an agreement with its insurers to resolve the City's claim for coverage for the City funds that were lost last year as the result of a criminal scheme to defraud the City in the early days of the Coronavirus pandemic. Under the agreement, the City will receive full compensation for the lost funds. The City, including the Mayor and the Councilmembers, will have no further comment on this agreed resolution.

(j) This Agreement contains all representations and warranties, expressed and implied, oral and written, between and among the Parties, and the entire understanding and agreement between and among the Parties with respect to the subject matter hereof. No other agreements, covenants, representations, or warranties, expressed or implied, oral or written, have been made by the Parties with respect to any subject matters of this Agreement. All prior and contemporaneous conversations, negotiations, proposed agreements, representations, disclosures, absence of disclosures, covenants, and warranties with respect to any subject matters hereof are merged herein, waived, superseded, and replaced in total by this Agreement. This is an integrated contract and it may not be altered or modified except by a writing signed by all parties in interest at the time of the authorization or modification. Notwithstanding the provisions of this Paragraph, the Policy, the Crime Coverage Program, and the rights and duties of the Parties thereunder shall remain in full force and effect except to the extent that any of the terms of this Agreement are inconsistent with the terms of the Policy or the Crime Coverage Program.

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IN WITNESS WHEREOF, each of the undersigned Parties has caused this Agreement to be duly executed on his or its behalf.

Date: April __, 2021

INDIAN HARBOR INSURANCE COMPANY

By: _____

Title: _____

Date: April __, 2021

CITY OF TENINO

By: _____

Title: _____

Date: April __, 2021

**ASSOCIATION OF WASHINGTON CITIES
RISK MANAGEMENT SERVICE AGENCY**

By: _____

Title: _____