

# Arkansas Municipal League



December 30, 2004

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*Via Facsimile and Electronic Mail*

Mayor Hubert Brodell  
City of Jonesboro  
515 West Washington Avenue  
Jonesboro, AR 72403

Dear Mr. Brodell and Members of the Jonesboro City Council:

At your request, I have prepared the attached comparative spread sheets regarding the Arkansas Municipal League's vehicle, property and liability programs and the APERMA programs.

I recognize that your APERMA coverage concludes tomorrow (12/31/04) and thus you are on a very tight time line to make a decision. In that regard, I have done everything humanly possible to prepare these items in a timely fashion but have been hamstrung by a lack of information (as of today's date I still do not have the underlying property policy for instance) and the onslaught of the holidays. Given these circumstances, I strongly suggest that the City contact your current carriers and make arrangements for 30 days of coverage, lasting until the end of January 2005, so that you can make a truly informed decision. The Municipal League's Executive Director, Don A. Zimmerman, has authorized me to extend vehicle, property and liability coverage, pursuant to the terms and conditions of each of those League programs, as of midnight December 31, 2004, should the City of Jonesboro desire to do so. Mr. Zimmerman has also authorized me to extend this offer recognizing that you may not be able to communicate that decision to our office until sometime next week.

I firmly believe that the League's programs not only are competitive in both coverages and price but in several significant instances, and most particularly in the liability arena, markedly better. I will gladly attend any future council meetings to better explain the spreadsheets should you be able to obtain a short term extension of your current policies. Hopefully by then I will have been given access to all of your policies and thus, would be prepared to more fully address your coverage needs.

Additionally, I have been provided a copy of the December 20th memorandum to Mayor Brodell from Jim Bergemann and Kathi Williams of the Arthur J. Gallagher Co.

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Mayor Robert Patrick  
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Camden

Executive Director  
Don A. Zimmerman

This letter will be responsive to their comments. The memorandum notes that APERMA will be doing a more substantive review and comparison and I would welcome the opportunity to address those comments as well. By the same token please feel free to share my comments with any of the APERMA staff.

### Automobile

Most of the items addressed in the memorandum regarding vehicle coverage are spelled out in the spread sheet. However several of APERMA's comments regarding the Municipal Property Program's (MPP) exclusions are incorrect. Specifically, vandalism and theft are covered by the MPP.

### Property

Again, many of the things raised in the memorandum are specifically addressed in the comparative spread sheet regarding property coverage and thus will not be repeated here. Having said that, a couple of items warrant commentary. Please note that flood loss and earthquake loss are covered under the Municipal Property Program (MPP) and its collective agreements with the NLC Mutual Insurance Company and RSUI Indemnity. In essence there is a \$100,000 per occurrence deductible for flood or earthquake loss under the MPP and then RSUI kicks in for the coverage amounts noted in the spreadsheet. While I don't have APERMA's underlying property policy the representations made by APERMA in their proposal indicate that the League's MPP/NLC/RUSI monetary coverage for flood and earthquake is substantially higher than what you currently have.

APERMA's assertion that the MPP/NLC charges a deductible of \$5,000.00 per loss is incorrect. The MPP deductible is \$5,000.00 but it is per occurrence, not per loss. Thus the spread sheet analysis attached to the APERMA memorandum is dramatically flawed in that regard, not to mention the incorrect reference to an MVP vehicle deductible that doesn't exist. Further, the example used in the memorandum concerning tornados and hail damage is inaccurate to say the very least. Lastly, APERMA's comments about vacant buildings are also incorrect.

### Liability

It appears that APERMA reviewed a Municipal League Municipal Legal Defense Program (MLDP) brochure that is out dated. Most of the concerns raised in the APERMA memorandum are addressed in the liability spreadsheet but a few items need to be clarified here. Because the MLDP is not insurance but rather a risk management pool, it is by its very nature a discretionary plan. I believe this to be the same for APERMA and would direct you to page 46 of the APERMA Memorandum of Intent. Section 9.16 Miscellaneous Exclusions subsection (g) of the APERMA Memorandum reads: "Other matters as may be determined by the Board of Directors in their discretion." Clearly, APERMA and the MLDP operate in similar fashions in that regard.

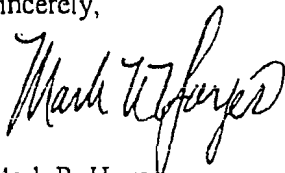
Under the MLDP the only "volunteers" that must be enumerated under the terms of the Program are police volunteers. APERMA's contentions that your volunteer boards must be reported or run the risk of not being covered is wrong. Interestingly enough it appears that the rider sold to you through APERMA/Gallagher excludes from coverage some of those voluntary servants. See pages Section V of Endorsement I to the National Union Policy.

Land Use takings matters are defended under the MLDP but not monetarily covered. I believe this to be the same under APERMA so I am confused about why they've raised it as an issue in their memorandum.

I am compelled to make further comments concerning your current liability coverage situation. As noted in the spreadsheet, I believe the policy purchased from National Union Fire and Insurance Company waives the City's statutorily imposed tort immunity and thus exposes the City of Jonesboro and its officials and employees to unnecessary legal liability and litigation. Further, the coverages provided in the APERMA program (\$250,000/\$350,000) are too low and expose your municipality, employees and officials to unnecessary financial risk. In addition, the million dollar coverage provided by National Union is dramatically confined by the exclusion of police related matters. In short, the rider has exposed you to legal harms that Arkansas law protects you from and fails to provide coverage in the areas that you truly need, i.e. police misconduct cases. Lastly, National Union's "million dollar" coverage is significantly reduced by its \$25,000 deductible and the deduction of legal defense costs including attorneys fees. On the other hand, the MLDP provides a million dollars worth of coverage to Arkansas' cities and towns without APERMA's onerous exclusions and expensive deductibles.

I hope this helps in your decision making process and we stand ready to provide any further information that you may need.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Hayes". The signature is written in a cursive, flowing style.

Mark R. Hayes  
General Counsel

### Vehicle Coverage Comparison

	Premium Rate	Deductible	Administration / Enumeration	Liability Limits	Major Exclusions
Arkansas Municipal League Municipal Vehicle Program (MVP)	Part I Liability- \$100.00 per vehicle (\$200 per ambulance) \$41,900 Based upon information in Jonesboro bidding packet.	\$0.00	All vehicles must be listed on a enumeration schedule for Part I and Part II coverage. Vehicles acquired during the year must be added to the enumeration schedule and a separate per vehicle premium paid. Vehicles removed from schedule cause a monetary credit to cities account. All calculations use ACV.	25/50/25 (Out of State 25/50/25 or the other States limits whichever is lower.)	Part II: Water and Hail
	Part II - Collision & Comprehensive: .005 x Value of Vehicle. (.005 x \$14,128,799.47= \$70,644.00 ) (*Note: Vehicle value information provided by city was not depreciated value. Had it been premium would be lower.) (Attached as Exhibit I are the MVP rates in the event of loss. Figures provided herein are premiums without loss )	\$1,000.00 (Including Glass Breakage)			
<b>Total Vehicle Premium - MVP</b>	<b>\$112,544.00</b>				
Gallagher Bassett APERMA	*APERMA proposal does not provide individual vehicle, property or liability premiums. Total APERMA Premium is \$264,995.00. Based upon information provided by the city it appears that the city has also purchased from Arthur J. Gallagher & Co. a general liability policy at a premium of \$38,950.00. Total premiums are \$303,945.00.	Automobile Comprehensive ACV \$0.00. Automobile Collision \$500.00 except police vehicles \$1,000.00. Automobile Liability \$0.00. *See First Page Bid Summary. (Note that the APERMA Memorandum of Intent states at Page 24: "Each and every loss or series of losses arising out of one event shall be adjusted separately." It is unclear from the Memorandum whether this is applicable to property, vehicle and/or liability claims individually or collectively.)	No ongoing inventory of vehicles required. No further premiums charged for adding or deleting vehicles.	25/50/25 (Out of State \$100,000 each occurrence for bodily injury and property damage. See Page 3 of APERMA Proposal)	
<b>Total Vehicle Premium - APERMA</b>	<b>* See Above</b>				

**Municipal Vehicle Program Rates**  
**Exhibit I to Vehicle Coverage Comparison**

**Vehicle Rates - Part I Liability**

*\$100.00 per vehicle. Upon claims being paid a loss ratio is computed using the following formula and rates are assessed using the chart below.*

$$\text{Loss Ratio} = \text{Paid Claims} \div \text{Premium Paid}$$

Loss Ratio	
100 - 120	\$120 per vehicle
120 - 140	\$140 per vehicle
140 - 160	\$160 per vehicle
160 - 180	\$180 per vehicle
180 - 200	\$200 per vehicle
200 - 220	\$220 per vehicle
220 - 240	\$240 per vehicle
240 - 260	\$260 per vehicle
260 - 280	\$280 per vehicle
280 - 300	\$300 per vehicle

**Vehicle Rates - Part II Comprehensive and Collision**

*Loss Ratio is computed using the following formula. Loss Ratios of 100% or more are capped at 1%*

$$\text{Loss Ratio} = \text{Claims} \div \text{Premium Paid}$$

Over 100 %	1%
90-100%	0.09%
80-90%	0.08%
70-80%	0.07%
60-70%	0.06%
Under 60%	0.05%

**Property Coverage Comparison**

	Premium Rate	Deductible	Administration / Enumeration	Liability Limits	Major Exclusions/ Explanation
Arkansas Municipal League Municipal Property Program (MPP)	Covered Property Value X Fire Class Rating = Premium \$21,730,501.03 x .0018 = \$39,114.90 (Based upon information in Jonesboro bidding packet.)	\$5,000.00 per occurrence	All property must be listed on a enumeration schedule. Property acquired during the year must be added to the enumeration schedule and a prorated premium must be paid. Property removed from schedule results in a monetary credit to cities account. All calculations use ACV.	First \$100,000 paid by MPP. Remainder of claim paid by NLC/RSUI subject to the coverage limitations noted below.	Flood, earthquake, loss of cash, valuable papers and boilers/machinery. (*Note: Earthquake and flood losses are covered pursuant to MPP/NLC/RSUI after \$100,000 deductible. Valuable papers are also covered under the NLC/RSUI policy.)
NLC Mutual and RSUI Indemnity Company (NLC)	Paid on behalf of cities and towns by AML/MPP	\$100,000.00 per occurrence. (*Note: All perils are covered by NLC and MPP over \$100,000 including flood and earthquake.)		City would be covered up to the self-assessed value of its property. (However, not to exceed \$5,000,000.00 per entity and annual aggregate as respects to flood or earthquake not to exceed \$25,000,000.00 annual aggregate all entities as respects flood or earthquake. Further, total aggregate limits are \$500,000,000.00.)	Loss of cash and boilers/machinery.
<b>Total Property Premium - MPP</b>	<b>\$39,114.90</b>				
Gallagher Bassett APERMA	APERMA proposal does not provide individual vehicle, property or liability premiums. Total APERMA Premium is \$264,995.00. Based upon information provided by the city it appears that the city has also purchased from Arthur J. Gallagher & Co. a general liability policy at a premium of \$36,950.00. Total premiums are \$303,945.00.	\$500.00 per occurrence (Note that the APERMA Memorandum of Intent states at Page 24: "Each and every loss or series of losses arising out of one event shall be adjusted separately." It is unclear from the Memorandum whether this is applicable to property, vehicle and/or liability claims individually or collectively.)	No ongoing inventory required.	\$100,000.00 It appears that APERMA also uses RSUI as its underwriter for coverage over \$100,000.00 but that policy has not been provided. Based upon representations in the APERMA proposal, See Pages 3 & 4 of proposal and Page 5 & 6 of Memorandum of Intent, the following appears to be the RSUI coverage. City likely would be covered for general losses at its self declared value just as with MPP/NLC however, this cannot be confirmed at this time. Also, apparently coverage is not to exceed \$100,000.00 per entity and annual aggregate as respects to flood or earthquake not to exceed \$500,000.00 annual aggregate all entities as respects flood or earthquake. Further, total aggregate limits are \$100,000,000.00.	(Boiler and Machinery are covered pursuant to RSUI and Hartford Steam Boiler Insurance Company. See Pages 12 & 13 of APERMA proposal, but cannot ascertain whether separate premium is collected.)
<b>Total Property Premium - APERMA</b>	<b>*See Above*</b>				

**Liability Coverage Comparison**

	Premium Rate	Deductible	Additional Benefits / Problems	Liability Limits	Major Exclusions
Arkansas Municipal League Municipal Legal Defense Program (MLDP)	\$1.50 per capita x current population of 55,515 = \$83,272.50 (See Exhibit I MLDP Rate Sheet)	\$3,000.00 (per lawsuit not per claim)	Benefits: Access to large and experienced legal staff by city officials and employees. Assistance includes but is not limited to proactive legal advice, sample ordinances, legal research etc. No threat to tort immunity.	\$1,000,000.00 (No aggregate limitation.)	No Coverage for punitive damages. Land use matters, FLSA and ADA facilities claims defended but not monetarily covered. (ADA employment claims defended and monetarily covered.) Termination and hostile work environment matters covered 50% by MLDP and 50% by City.
<b>Total Legal Premium Coverage</b>	<b>\$83,272.50</b>				
Gallagher Bassett APERMA	APERMA proposal does not provide individual vehicle, property or liability premiums. Total APERMA Premium is \$264,995.00. Based upon information provided by the city it appears that the city has also purchased from Authur J. Gallagher & Co. a general liability policy at a premium of \$38,950.00. Total annual premiums are \$303,945.00. (General liability policy is from national union fire and insurance company and is more presented below.)	Unclear from documents but appears to be \$500.00 per claim. (Note that the APERMA Memorandum of Intent states at Page 24: "Each and every loss or series of losses arising out of one event shall be adjusted separately." It is unclear from the Memorandum whether this is applicable to property, vehicle and/or liability claims individually or collectively.)		\$250,000.00 per occurrence \$350,000.00 annual aggregate \$100,000.00 per occurrence regarding drug task force claims. \$150,000.00 annual aggregate regarding drug task force claims.	FLSAL; ADA; FMLA; Workers Compensation; Unemployment Compensation; Any disability benefits law; Eminent domain; Condemnation - however defined, land use regulation, zoning authority, whether made constitutionally or statutorily, medical malpractice; sexual abuse, physical abuse, or molestation; wrongful terminations - back pay; election / voters rights cases; injunctive relief; tax cases; and "OTHER MATTERS AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS IN THEIR DISCRETION." See Pages 42 - 46 of memorandum.
APERMA / National Union Fire & Insurance Company	See Above	\$25,000.00 each loss plus all costs incurred for defense including attorneys fees.	Problem: City has potentially waived its tort immunity. (See Wrongful Act definition in Endorsement I and the policy in general.)	\$1,000,000.00 (Reduced by \$25,000.00 deductible and all legal defense costs. Unclear as to whether this is further reduced by the APERMA limits.)	All police matters; All land use matters; All matters arising at City airport; All matters arising out of Fire Department; and FLSA. See Section V - Endorsement I.
<b>Total Liability Premium-APERMA</b>	<b>*See Above</b>				

## Municipal Legal Defense Program Rating Formula

### *Exhibit I to Liability Coverage Comparison*

**2005**

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\$1.50 per capita	Under 50% cumulative loss experience
\$2.00 per capita	50% - 100% cumulative loss experience
\$2.50 per capita	100% - 150% cumulative loss experience
\$3.00 per capita	150% - 200% cumulative loss experience
\$4.00 per capita	Over 200% cumulative loss experience

Optional Non-CDL Drug Testing \$.20 per capita

Reserve Policy: Higher of \$25,000.00 or 10% of prayer for pending cases.



### Comparison of Rates for Municipal Programs

#### APERMA

Vehicle, Property, Liability	\$303,945.00
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<b>Totals</b>	<b>\$303,945.00</b>
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#### AML

MVP	\$112,544.00
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MPP	\$39,114.90
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MLDP	\$83,272.50
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<b>Totals</b>	<b>\$234,931.40</b>
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Total Savings By Joining AML  
Programs

**\$69,013.60**