

**INTERLOCAL AGREEMENT FOR A
GROUP SELF-INSURANCE POOL
FOR WORKERS' COMPENSATION RISK SHARING**

This Agreement, made and entered into in duplicate originals this _____ day of _____, 2_____, by and between all the parties who are now, or may hereafter become, members of the North Carolina Interlocal Risk Management Agency (hereinafter "Agency"):

WITNESSETH:

WHEREAS, certain municipalities and other units of local government of the State of North Carolina have agreed to create the Agency and have agreed to pool the risk of their workers' compensation liabilities and payment of claims for employers' liability coverage pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A); and

WHEREAS, the members of the Agency have agreed upon designation of a Board of Trustees to direct the affairs of the Agency, to adopt rules, regulations, policies, and bylaws for implementing and administering the Agency, and to pass upon the admissibility of future members of the Agency; and

WHEREAS, the members have designated the North Carolina League of Municipalities as Administrator of the Agency, subject to the provisions of this Agreement and the policies adopted by the Trustees, and;

WHEREAS, by this Agreement the Agency will undertake to discharge, solely from the assets of this Agency, by payment, any lawful workers' compensation and employers' liability claims against any member of the Agency, which awards shall have been sustained by final judgment where suit shall have been filed, or by the rules of the Agency if settlement is made before suit is filed; and

WHEREAS, the members of the Agency agree to pay premiums and/or contributions based upon appropriate classifications, rates, and experience modifications, and other criteria established by the Trustees, out of a portion of which the Agency will establish and maintain a fund for the payment of workers' compensation and employers' liability claims and awards and further, that the members covenant and agree that there will be no disbursements out of this fund by way of dividends or distribution of accumulated reserves to the respective members, except at the discretion of the Trustees; and

WHEREAS, the members of the Agency, through the action of their respective governing bodies have elected to comply with the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and obligations herein contained, which are given to and accepted by each member hereof to the other, the parties hereto agree as follows:

SECTION I. PURPOSE OF AGREEMENT; COMPOSITION OF BOARD OF TRUSTEES
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The purpose of the Agency established by the signatories hereto is to allow members to pool the risk of their workers' compensation liabilities and payment of claims for employers' liability coverage. To this end, the Agency shall be governed by a Board of Trustees made up of eleven (11) officials or employees of units of local government. Trustees shall be appointed for three (3) year overlapping terms by the Board of Directors of the North Carolina League of Municipalities and shall serve no more than two consecutive terms. No individual shall serve concurrently on the Board of Trustees and the League's Board of Directors. In addition, the Executive Director of the North Carolina League of Municipalities shall serve as an ex-officio, non-voting member of the Board of Trustees: the ex-officio position shall not have a committee assignment, nor shall the position serve as an officer of the Board of Trustees.

II. TRUSTEES' POWERS, DUTIES, LIABILITY, AND INDEMNITY

The Trustees shall have the following powers and duties, in addition to those set forth elsewhere in this Agreement:

1. To establish guidelines for membership in the Agency;
2. To establish the terms and conditions of coverage, including underwriting criteria and exclusions from coverage;
3. To ensure that all valid claims are promptly paid;
4. To establish, operate, and enforce rules, regulations, policies, and bylaws as between the individual members of the Agency and the Agency;
5. To enter into agreements with such persons, firms, or corporations as it deems appropriate to adjust claims; promote membership in the Agency; provide actuarial and underwriting services; defend against claims and lawsuits; provide accounting services; obtain excess insurance or reinsurance coverage, if available, designed to protect the Agency against excess losses; invest the assets of the Agency; provide loss control and other risk management services for the Agency and member units; maintain records and accounts; and provide any other service necessary or desirable for the sound operation of the Agency;
6. To lease or rent real and personal property it deems to be necessary;

7. To borrow or raise monies for the purpose of the Agency to the extent that the Trustees shall deem desirable upon such terms and conditions as the Trustees in their absolute discretion may deem desirable or proper, and for any sum so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging all or any part of the pool; and no person or entity lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any such borrowing;
8. To rate individually any member unit with rates different from the group rates when the loss experience of the unit warrants such individual rating, in the discretion of the Trustees;
9. To take measures to maintain claim reserves equal to known incurred losses and loss adjustment expenses and to maintain an estimate of incurred but not reported losses; and
10. To take all necessary precautions to safeguard the assets of the Agency.

The Trustees shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties hereunder. The members agree that the Trustees shall not be liable for any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor selected with ordinary care and reasonable diligence; nor for loss incurred through investment of Agency money or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. The Trustees shall not be required to give a bond or other security to guarantee the faithful performance of their duties hereunder.

The members of the Agency agree that, for the payment of any claim against the Agency or the performance of any obligation of the pool hereunder, resort shall be had solely to the assets of the Agency, and neither the Trustee nor the Administrator shall be liable therefor. Further, the Agency shall indemnify and hold harmless the Trustees against any and all claims, suits, actions, debts, damages, costs, charges, and expenses (including but not limited to court costs and attorneys' fees) and against all liability, losses, and damages of any nature whatever, that the Trustees shall or may at any time sustain, or be put to, by reason of the exercise of their power and in the performance of their duties hereunder, or by reason of any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor, or for loss incurred through investment of Agency money or failure to invest.

SECTION III. PAYMENT OF CLAIMS

The members of the Agency agree that, for the payment of any workers' compensation or employers' liability claim against the Agency or the performance of any obligation arising hereunder, resort shall be had solely to the assets of the Agency, and neither the Trustees nor the Administrator shall be liable therefor. Accordingly, lawful claims will be paid from the assets of the Agency pursuant to the types and levels of coverage established by the Board of Trustees.

The Board of Trustees shall establish a schedule of types and monetary levels of coverages for which the Agency shall be responsible on behalf of its members, including provisions for levels of coverage for which the members shall be individually responsible. Such types and levels of coverage may vary according to population classifications of members, mutual agreement of the Agency and a member, or such other criteria as may be established by the Board of Trustees. The types and level of coverage for each member shall be shown on a Coverage Document provided to each member. The Agency shall pay all claims (less the applicable deductible) for which each member incurs liability during each member's period of membership except where a member has individually retained the risk, where the risk is not covered, and except for amount of claims above the coverage provided by the Agency. The schedule so established may, from time to time, be amended by the Board of Trustees (but not during any coverage period) to sustain the financial integrity of the Agency or to reflect the desires of the members as determined by the Board of Trustees.

SECTION IV. MUTUAL COVENANT OF RISK SHARING

The members intend this Agreement as a mutual covenant of risk sharing and not as a partnership. No member by reason of being a member of the Agency and contributing to the pool shall be liable to the Agency, to any other member, or to any claimant, except for the payment of the premiums and/or contributions provided for in its application for membership and joinder in this Agency, and for any necessary additional assessments levied by the Trustees to offset a claims fund deficiency.

SECTION V. ADMINISTRATOR

The North Carolina League of Municipalities, an unincorporated association with offices at 215 North Dawson Street, Raleigh, North Carolina, 27603, is designated as the Administrator of the Agency. Subject to the services and sponsorship agreement between the Administrator and the Agency, the Administrator shall provide day-to-day management of the Agency and shall have the authority to contract with third parties for provision of services. The Administrator may establish offices where necessary within the State of North Carolina and employ staff to carry out the Agency's purpose. The Administrator shall deposit to the account of the Agency at any financial institution or financial institutions designated by the Trustees all premiums and/or contributions as collected and such monies shall be disbursed and/or invested only as provided by the rules, regulations, policies, and bylaws of the Trustees. The Administrator may enter into financial services agreements with financial institutions and issue checks in the name of the Agency. The Administrator shall receive such compensation as shall be determined from time to time by written agreement with the Trustees.

SECTION VI. ADMISSION TO MEMBERSHIP; SUSPENSION & EXPULSION

All members of the Agency hereby agree that the Trustees may admit as members of this Agency only the units of local government set forth in North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A). The Trustees shall be sole judge of whether or not an applicant shall be admitted to membership. Except as otherwise provided in Section

VII (i) of this Agreement, a member may be suspended or expelled by the Trustees from the Agency only after forty-five (45) days' notice has been delivered to the member in accordance with Section XV of this Agreement. No payment shall be required by the Agency as a result of any workers' compensation or employers' liability claim of the suspended or expelled member occurring after forty-five (45) days' notice has been delivered to the member in accordance with Section XV of this Agreement.

<p>SECTION VII. RULES, REGULATIONS, POLICIES, AND BYLAWS; MEMBERS' RESPONSIBILITIES</p>
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The rules, regulations, policies, and bylaws for the administering of the Agency and the admission and expulsion or suspension of members shall be promulgated by the Trustees. In addition, each member of the Agency agrees as follows:

- (a) To make prompt payment of all premiums and/or contributions as required by the Trustees;
- (b) To (and they do hereby) appoint the Trustees and Administrator as its agent and attorney-in-fact, to act on its behalf and to execute all contracts, reports, waivers, agreements, excess insurance or reinsurance contracts, and service contracts; and to make or arrange for payment of claims, medical expenses, and all other things required or necessary;
- (c) In the event of an accident or a claim reported by a member, to make immediate provision for remedial care for its employee, and to give immediate notification of the claim to the Administrator on the prescribed forms;
- (d) To permit the Agency to defend in the name of and on the behalf of the members any suits or other proceedings which may at any time be instituted against them on account of injuries or death within the purview of the North Carolina Workers' Compensation Act or employers' liability coverage, including suits or other proceedings alleging such injuries and demanding damages or compensation therefore (although such suits, other proceedings, allegations, or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments or costs taxed against members in any legal proceeding which is so defended at the direction of the Agency, all interest accruing after entry of judgment and all expenses which are incurred pursuant to the direction of the Agency for investigation, negotiation, or defense. It is agreed that the Agency shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to defense, settlement, and payment of claims. It is agreed that the independent settlement or payment of any claim by or on behalf of a member without approval of the Agency shall be at the sole cost of the settling member without any reimbursement or

other resources from the Agency and may be grounds for expulsion of the member from the Agency;

- (e) To cooperate in all respects with the Agency, the Trustees, the Administrator, and any contractors of the Agency in carrying out the purposes of this Agreement;
- (f) In the event of the payment of any loss by the Agency under this Agreement, the Agency shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for such loss, and in such event, the member agrees to render all reasonable assistance to affect recovery;
- (g) To follow the reasonable safety, loss prevention, loss control, and risk management recommendations of the Trustees, the Administrator, or contractors of the Agency in order to minimize claims against the Agency;
- (h) The Trustees, the Administrator, and any contractors of the Agency shall be permitted at all reasonable times to inspect the work places, plants, works, machinery, and appliances of each member covered by this Agreement, and shall be permitted at all reasonable times and within two years after the final termination of a member's membership to examine the member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the premiums and/or contributions that are payable under the terms hereof;
- (i) Risk sharing by the Agency under the terms of this Agreement shall begin upon payment of the premium and/or contribution by the member to the Agency. Risk sharing by this Agency under the terms of this Agreement shall expire and be cancelled automatically for nonpayment of premiums and/or contributions, and a member may be expelled from the Agency upon thirty (30) days' notice by the Trustees, the Administrator, or their designee delivered to the member in accordance with Section XV of this Agreement specifying the date that cancellation shall be effective. No payment shall be required of the Agency as a result of any workers' compensation or employers' liability claim of the expelled member occurring after 30 days' notice has been delivered to the expelled member in accordance with Section XV of this Agreement;
- (j) To pay any assessment duly levied by the Trustees under the terms of this Agreement. If a member cancels or withdraws from the Agency, the member shall pay its pro rata share of any assessment relating to the member's period of enrollment; and
- (k) In order that an adequate reserve may be maintained, the members further agree that the Trustees shall have the right to assess the members pro-rata

in such amounts as will be sufficient to maintain at all times a minimum reserve, equal to at least the annual premium and/or contributions for the coverage provided by the Agency. Should a member fail to pay any assessment as provided for in this Section within thirty (30) days of the assessment date, all interest and claim of such defaulting member in and to the Agency shall automatically cease.

SECTION VIII. ALLOCATION OF MONIES

The Trustees are authorized to set aside from the premiums and/or contributions collected from members a reasonable sum for the operating and administrative expenses of the Agency. All remaining monies coming into their hands during any fiscal year of the Agency shall be set aside and shall be used only for the following purposes:

- (a) Disbursement to establish a reserve for payments of required medical, surgical, hospital, rehabilitation, nursing expenses, payments of workers' compensation to employees of members covered by this Agreement, and employers' liability claims including settlements, awards, judgments, legal fees, and costs in all contested cases to the extent provided herein;
- (b) Payment of such compensation to the Administrator as shall be determined from time to time by written agreement between the Administrator and the Trustees;
- (c) Payment of all costs of all bonds and auditing expenses required of the Agency, the Administrator, or its agents or employees; and
- (d) Distribution to members in such manner as the Trustees shall deem to be equitable of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of an Agency Year. Undistributed excess funds from previous Agency Years may be distributed at any time if they are not required as reserves and if approved for distribution by the Trustees.

Monies in excess of those required to fulfill the purposes, costs, and other obligations of the Agency as set out hereinabove will be accumulated in the Agency or distributed to the member units at the discretion of and in the manner provided by the Trustees.

SECTION IX. FISCAL YEAR; CONTINUING CONTRACT; WITHDRAWAL OF MEMBERS SUBJECT TO PROVISION OF 30 DAYS' WRITTEN NOTICE TO ADMINISTRATOR; FEE IMPOSED FOR FAILURE TO PROVIDE 30 DAYS' WRITTEN NOTICE OF WITHDRAWAL

The Agency shall operate on a fiscal year from 12:01 a.m. July 1st to midnight on June 30 of the succeeding year (the "Agency Year"). Application for membership, when approved in writing by the Trustees or their designee, shall constitute a continuing contract for each succeeding Agency Year unless cancelled by the Trustees, or unless the member shall have resigned or withdrawn from the Agency by having written notice delivered to the Administrator on or before May 30 (i.e., the written notice must be delivered to the Administrator in accordance with Section XV of this Agreement thirty (30) days prior to the last day, June 30, of the Agency Year). Failure to provide thirty (30) days' written notice shall subject the member to an exiting fee constituting two percent (2%) of the premium for that Agency Year.

SECTION X. MEMBERS BOUND BY AGREEMENT; TERMINATION PERMITTED ONLY AT END OF FISCAL YEAR; FINAL ACCOUNTING

Any member who formally applies for membership in the Agency and is accepted by the Trustees shall thereupon become a party to this Agreement and be bound by all of the terms and conditions hereof, and such application shall constitute a counterpart of this Agreement. Cancellation of this Agreement or of any plan, coverage, product or service provided by the Agency on the part of any member, or withdrawal from membership, shall be permitted only at the end of a fiscal year. A terminating member is entitled to a final accounting when all incurred claims are concluded, settled, or paid.

SECTION XI. INTENTION OF INDEFINITE OPERATION; RESERVATION OF RIGHT TO TERMINATE AGENCY; REVERSION OF MONIES OR OTHER ASSETS UPON TERMINATION

This Agency has been established with the bona fide intention that it shall be continued in operation indefinitely and that the premiums and/or contributions to the Agency shall continue for an indefinite period. However, the Trustees reserve the right at any time to terminate the Agency by a written instrument to that effect executed by the Trustees. In the event of such termination, member premiums and/or contributions (other than duly authorized assessments) shall cease as of the date of termination and the assets then remaining in the Agency shall continue to be used and applied, to the extent available, for the

- (a) payment of claims arising prior to such termination and administrative and other expenses and obligations arising prior to such termination; and
- (b) payment of reasonable and necessary expenses incurred in such termination.

Any monies or other assets thereafter remaining in the Agency shall revert to the members of the Agency as of the date of termination pro-rata to the annual premiums and/or contributions of said members paid in the year of termination. In no event shall any such assets be returned or distributed to any individual. Upon such termination, the Trustees shall continue to serve for such period of time and to the extent necessary to effectuate termination of the Agency.

SECTION XII. AMENDMENT OF AGREEMENT

This Agreement may be amended by an agreement executed by those members constituting a majority in paid-in dollar volume of contributions to the Agency during the current Agency Year. In lieu of this amendment procedure, the members hereby appoint the Board of Directors of the North Carolina League of Municipalities as their agents to make any amendments to this Agreement which would not fundamentally alter the contemplated arrangement. For purposes of illustration, and not limitation, an amendment to increase or decrease the number of members of the Board of Trustees or their terms shall not be construed as a fundamental alteration of the arrangement, provided that the current term of a member may not be terminated by any such amendment. Written notice of any amendment proposed for adoption by the Board of Directors of the North Carolina League of Municipalities shall be delivered to each member in accordance with Section XV of this Agreement not less than 30 days in advance. Written notice of amendments finally adopted by the Board of Directors of the North Carolina League of Municipalities shall be delivered to each member in accordance with Section XV of this Agreement not more than 30 days after adoption.

SECTION XIII. HEADINGS

Headings of various sections and subsections of this Agreement have been inserted for the convenience of reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

SECTION XIV. INTERPRETATION

This Agreement shall be governed and interpreted under the laws of the State of North Carolina. This Agreement is intended to serve as an interlocal agreement, for purposes of executing the undertaking described in the preceding sections and paragraphs, under North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A). The terms of this Agreement do not constitute a coverage document or form applicable to any specific claim.

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

Failure of the Trustees, the Administrator, or their designees to insist in any one or more instances upon the performance of any of the covenants, agreements, and/or conditions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as a waiver of any such covenant or condition.

This Agreement contains the entire agreement between the parties, whom shall not be bound by any verbal statement or agreement made heretofore.

SECTION XV. MEMBER REPRESENTATIVES; NOTICES

There shall be a Member Representative for each member of the Agency who shall be the agent of the member for purposes of giving and receiving notices required or permitted pursuant to this Agreement. Each member shall designate a Member Representative and provide the member's postal mailing address and, if applicable, a facsimile number and electronic mail address to which the Administrator may provide notices hereunder. The Administrator shall provide forms, as needed, for use by the member in designating its Member Representative and providing its address information. Such information may be updated at any time there is a change in the information provided thereon. Until such time as different information is provided, the Member Representative shall be the member's chief administrative official as shown on the records of the Administrator and the member's postal mailing address, facsimile number and electronic mail address shall be that as provided by the member on its most recent application. For purposes of illustration and not limitation, a chief administrative official shall be considered to be a manager, administrator, clerk or executive director as may apply with respect to a particular member.

Any notices required or permitted by this Agreement shall be in writing and may be given: in person, by United States Postal Service, by facsimile, or by electronic mail. Notices shall be deemed delivered: (a) when received if delivered in person, (b) three business days after being deposited with the United States Postal Service, postage prepaid, properly addressed to the party to whom such notice is intended to be given at the address established under this section, (c) on the date sent if given by facsimile, provided that an electronic confirmation of delivery has been received by the sender and that a copy of such notice was also sent on such date by mailing, or (d) on the date sent if given by electronic mail, provided a copy of such notice was also sent on such date by mailing and receipt of the electronic mail is acknowledged by the receiving party by return electronic mail. Notices provided to the Administrator shall be delivered, addressed or directed as follows, or to such other address as designated by the Administrator in written notice to the member provided in accordance with this paragraph:

Executive Director
North Carolina League of Municipalities
434 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
Facsimile number: 919-301-1053
Electronic address: RMSnotifications@nclm.org

IN WITNESS WHEREOF, the participating entity listed below acknowledges its membership in the Agency and acceptance of obligations hereunder, by the due execution hereof, following appropriate governing body approval, by its duly authorized official. Further, the members of the North Carolina Interlocal Risk Management Agency have caused these presents to be signed by their duly authorized Chair of the Board of Trustees and have had this Agreement attested by its duly authorized Administrator.

WITNESS:

NORTH CAROLINA INTERLOCAL RISK
MANAGEMENT AGENCY

BY: _____
Chair
Board of Trustees

NORTH CAROLINA LEAGUE OF
MUNICIPALITIES

BY: _____
Executive Director
Administrator

(NAME OF PARTICIPATING ENTITY)

(Clerk, or Secretary to the Board)

BY: _____
(Mayor, or Board Chair)