Texas Municipal League
Intergovernmental Risk Pool

1821 Rutherford Lane, First Floor • Austin, Texas 78754

LIABILITY/PROPERTY INTERLOCAL AGREEMENT

This Contract and Interlocal Agreement is entered into by and between political subdivisions of this state (hereinafter referred to as "Pool Members") to form a joint self-insurance pool to be named the Texas Municipal League Joint Self-Insurance Fund (hereinafter referred to as the "Fund") for the purpose of providing coverages against risks which are inherent in operating a political subdivision.

WITNESSETH:

The undersigned Pool Member, in accordance with the Interlocal Cooperation Act, Tex. Gov't Code § 791.001, et seq., and the interpretation thereof by the Attorney General of the State of Texas (Opinion #MW-347, May 29, 1981), and in consideration of other political subdivisions executing like agreements, does hereby agree to become one of the Pool Members of this self-insured pool. The conditions of membership agreed upon by and between the parties are as follows:

1. Definitions of terms used in this Interlocal Agreement.

   a. Board. Refers to the Board of Trustees of the Texas Municipal League Joint Self-Insurance Fund.

   b. Fund Year. 12:01 a.m. October 1 through 12:01 a.m. the following October 1.

   c. Manual Rates. The basic rates applicable to each liability classification promulgated by the Insurance Service Office or the Board of Trustees.

   d. TML Municipal Liability Self-Insurance Plan. The liability coverage document that sets forth in exact detail the coverages provided as part of the overall plan.

   e. Adjustments. Refers to any offsets to manual premium that may result from the Pool Member's election of deductibles, loss experience or Fund Modifier which reflecrs the savings to the Pool Member by entering into this Agreement.

   f. TML Municipal Property Self-Insurance Plan. The property coverage document that sets forth in exact detail the coverages provided as part of the overall plan.

   g. Premium and Contribution. Used interchangeably in some parts of this Interlocal Agreement. Any reference at any time in this Interlocal Agreement to an insurance term not ordinarily a part of self-insurance shall be deemed for convenience only and is not construed as being contrary to the self-insnrance concept except where the context clearly indicates no other possible interpretation such as but not limited to the reference to "reinsurance."

   h. Reimbursable Deductible. The amount that was chosen by this Pool Member to be applicable to the first monies paid by the Fund to effect judgment or settlement of any claim or suit. The Pool Member, upon notification of the action taken, shall promptly reimburse the Fund for all or such part of the deductible amount as has been paid by the Fund. Further, however, the Fund's obligation to pay damages shall be subject to the Limits of Liability stated in the Declarations of Coverage or Endorsements to this Interlocal Agreement less the stated deducrible amount.

   i. Fund Modifier. A percentage figure that is applied to the manual rates by the Fund to reflect the savings to the Pool Member by entering into the Interlocal Agreement.

   j. Agreement Period. The continuous period since the Pool Member first became a member of this Fund excluding, however, any period or periods of time therein that the member did not participate as a member of the Pool.

   k. Declarations of Coverage. The specific indication of the coverages, limits, deductibles, contributions and special provisions elected by each individual Pool Member. The Declarations of Coverages may be modified by Endorsement.

2. The Board of Trustees, acting through its agents and Fund staff, is responsible for the administration of all Fund business on behalf of the Pool Members.

3. In consideration of the execution of this Agreement by and between the Pool Member and the Fund and of the contributions of the Pool Member, the coverage elected by the Pool Member is afforded according to the terms of the TML Liability Self-Insurance Plan and the TML Property Self-Insurance Plan. The affirmative declaration of contributions and limits of liability in the Declarations of Coverage and Endorsements determines the applicability of the Self-Insurance Plans.

   Each Pool Member agrees to adopr and accept the coverages, provisions, terms, conditions, exclusions and limitations as further provided for in the TML Self-Insurance Plans or as specifically modified by the Pool Member's Declararions of Coverage. This Interlocal Agreement shall be construed to incorporate the TML Liability Self-Insurance Plan and/or the TML Property Self-Insurance Plan, Declarations of Coverage, and Endorsements and addenda whether or not physically attached hereto.

4. It is understood that by participating in this risk sharing mechanism to cover liability exposures, the Pool Member does not intend to waive any of the immunities that its officers or its employees now possess. The Pool Member recognizes the Texas Tort Claims Act and its limitations to certain governmental functions as well as its monetary limitations and that by executing this Agreement does not agree to expand those limitations.

   The Pool Member, upon the execution of this Agreement, shall supply the Fund with a current copy of its charter provisions or ordinance that sets out its requirement as to the number of days in which a third party liability claim must be made against it.

   If the Pool Member does not have such an ordinance provision that establishes a set number of days or if it has an ordinance provision which provides for less than sixty (60) days notice and for good cause shown up to six (6) months notice the Pool Member agrees to adopt an ordinance providing for such notice reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose. The notice requirement shall not be changed by the Pool Member without first giving the Fund thirty (30) days written notice. Violation of this provision may, at the Fund's discretion, void this Interlocal Agreement.

5. The term of this Agreement and the self-insurance provided to the Pool Member shall be continuous commencing 12:01 a.m. on the date designated in this Agreement until terminated as provided below. Although the self-insurance provided for in this Agreement shall be continuous until terminated, the limit of liability of the Fund under the coverages that the Pool Member elects shall be limited during any Fund Year to the amount stated in the Declarations of Coverage for that Fund Year.

   This Agreement may be terminated by either party giving to the other sixty (60) days prior written notice of intent to terminate except the Pool Member may terminate this Agreement and its coverages thereunder without giving the sixty (60) days notice if the reason is because of a change by the Fund in the Pool Member's contribution, coverage, or other change in the limits of liability, terms, conditions, exclusions and limitations provided for in the Texas Municipal League Self-Insurance Plans provided that no termination by the Member shall be effective prior to the date that written notice of termination is actually received in the offices of the Texas Municipal League Joint Self-Insurance Fund and provided that the Pool Member agrees to and shall pay the applicable premium and contribution for those coverages it is terminating until the date the notice of termination is actually received by the Fund.

   The Fund shall provide the Pool Member with Declarations of Coverage and any Endorsements that determine the applicability of the Texas Municipal League Self-Insurance Plans annually by December 1. Such Declarations of Coverage shall include, but not be limited to, the coverage period which shall be the applicable Fund Year, limits, deductibles, contributions, special provisions and limitations. Changes made during the Fund Year, whether requested by the Pool Member or required by the Fund, will be handled by Endorsement.

   It is the intention of the parties that the Pool Member's coverages under this Agreement shall remain in full force and effect from Fund Year to Fund Year, subject to rhe limits of liability that the Fund can provide each Fund Year and the terms, conditions, limitations that the Fund may require to protect its solvency and to comply with reinsurance requirements, until notice of termination is given as herein provided. Realizing that the Pool Member needs the earliest possible information concerning the Fund coverages, limits, and exclusions and the Pool Member's contribution that will be required for any new Fund Year, the Fund will endeavor to provide this information as soon as possible before the beginning of each Fund Year. The parties recognize, bowever, that conditions in the reinsurance industry are such that the Fund may not be able to provide this information to the Pool Member before the beginning of a Fund Year for various reasons including the failure of the Pool Member to timely submit the appropriate exposure summary or delays on tbe part of reinsurers in getting information to the Fund, and so, to protect the Pool Member from gaps in its coverage and to protect the solvency of the Fund, the parties agree as follows:

   If, for any reason other than the Pool Member's failure to provide the information requested in the exposure summary, the Fund has not been able to provide the Pool Member with information concerning available coverages for a new Fund Year or advise the Pool Member of the amount of its contribution for the new Fund Year by the beginning of the Fund Year, the Fund shall nevertheless continue the Pool Member's coverages at the same limits of liability (if still available and if not, then at the highest limit of liability available for the new Fund Year) so that the Pool Member shall at all times remain covered as herein provided and the Pool Member's initial contributions for the new Fund Year shall be determined by a "tentative contribution" as determined by

the Board with the Pool Member's actual annual contribution to be credited by the amount paid in accordance with the tentative contribution and adjusted during the Fund Year. In the event the Pool Member does not wish to have its coverages extended or renewed at the end of any Fund Year, the burden shall be upon the Pool Member to give written notice to the Fund as provided hereinabove and the Pool Member agrees to pay as hereinabove stated all contributions or pro rata contributions until the date such written notice is received in the offices of the Fund or the date of termination of this Agreement, whichever is later.

6. Commensurate with the execution of this Agreement and annually thereafter, the Pool Member shall complete the appropriate exposure summary and deliver it or cause it to be delivered to the Fund, or, if so instructed, to a designated contractor, no later than September 1 of each year and new annual contributions shall be calculated using manual rates times exposure, less any adjustments. Intentional or reckless misstatements on the exposure summary shall be grounds for cancellation. In the event that the Pool Member fails or refuses to submit the appropriate exposure summary, the Fund reserves the right to terminate such Pool Member by giving thirty (30) days written notice and to collect any and all contributions that are earned pro rata for the period preceding contract termination.

   The Pool Member agrees to pay the annual contribution to the Fund in four (4) equal quarterly installments, in advance, commencing at the beginning of this Agreement with subsequent installments due the first quarter thereafter. Pool Members who elect a deductible in excess of $25,000 shall comply with the monthly payment schedule outlined to them in advance of assuming such a large deductible. In the event this Agreement is terminated as herein provided, the Fund shall promptly repay to the Pool Member any such unearned annual contribution prorated as of the date of termination and the Pool Member agrees during the term of this Agreement to promptly pay all reimbursable deductibles upon receipt of statement.

   At the end of each and every Fund Year, the Fund may require the Pool Member to submit the actual data requested on the exposure summary as reflected by the books and records of the Pool Member. The Fund reserves the right to audit the records of any Pool Member and adjust contributions accordingly.

   In the event that the Pool Member fails or refuses to make the payments, including accrued interest, as herein provided, the Fund reserves the right to terminate such Pool Member by giving them ten (10) days written notice and to collect any and all amounts that are earned pro rata for the period preceding contract termination. If the amounts owed, including reimbursable deductibles, have to be collected by suit, the Pool Member agrees to pay attorneys' fees and costs incurred in such suit.

7. The Fund shall maintain adequate protection from catastrophic losses to protect its financial integrity. Aggregate protection shall also be maintained. The Member's contributions shall be limited to that amount as calculated under this Agreement.

8. Notwithstanding the provisions of the foregoing paragraph, it is agreed the Board shall have the right to adjust the financial protection outlined above and/or amend coverages as it finds available or deems necessary to maintain the fiscal soundness of the Fund at the beginning of or during any Fund Year.

9. The Fund will make available loss control services to the Pool Members to assist them in following a plan of loss control that may result in reduced losses. The Pool Member agrees that it will cooperate in instituting any and all reasonable loss control recommendations. In the event that the recommendations submitted seem unreasonable, the Pool Member has a right to appeal to the Board of Trustees. The Board shall hear the objections of the Pool Member at its next regularly scheduled meeting and its decisions will be final and binding on all parties. Any Pool Member who does not agree to follow the decision of the Board shall be withdrawn from the Fund immediately.

10. The Pool Member agrees that it will appoint a contact of department head rank, and the Fund shall not be required to contact any other individual except this one person. Any notice to or any agreements with the contact shall be binding upon the Pool Member. The Pool Member reserves the right to change the contact from time to time by giving written notice to the Fund.

11. The Fund agrees to handle all liability and property claims, and provide a defense for any and all liability claims covered under this Agreement after prompt notice has been given. The Pool Member hereby appoints the Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant and his attorney and negotiate within authority previously granted by the Fund. If a personal appearance by the Pool Member or an employee is necessary, the expense of this appearance will not be the responsibility of the Fund. With the advice and consent of the Fund, the Fund staff and the Contractors will retain and supervise legal counsel for the prosecution and defense of any litigation. All decisions on individual cases shall be made by the Fund through the Fund staff and the Contractors, which includes the decision to appeal or not to appeal. However, any Pool Member shall have the right in any case to consult with the Fund on any decision made by the Fund staff or Contractors. The Board shall hear the objections of the Pool Member at its next regularly scheduled meeting and its decision will be final and binding on all parties. Any suit brought or defended by the Fund shall be brought or defended only in the name of the Pool Member and/or its officers or employees. There shall be supplied

periodically to each Pool Member a computer printout involving a statement of claims. As respects the TML Municipal Liability Self-Insurance Plan, the Fund shall have priority in enforcing its subrogation claims against the claims of Pool Member except as to claims of the Texas Municipal League Workers' Compensation Joint Insurance Fund, which shall take preference.

12. The Pool Member acknowledges that it has received a copy of the Bylaws of the Fund and agrees to abide by the Bylaws and any amendments thereto.

13. The Fund agrees that all Fund transactions will be annually audited by a nationally recognized certified public accounting firm.

14. If legally required, the Fund shall cause to be filed the necessary tax forms with the Internal Revenue Service.

15. As the administrators of the Fund, the Board shall primarily and consistently keep foremost in their deliberations and decisions in operating the Fund that each of the participating Pool Members is a "self-insured." At least annually, the Board shall carefully review, study and consider the actual claims or loss experience (including reserves for future claims payments) of each of the Pool Members, the pro rata savings to the Fund resulting from overall loss experience attributed to each Pool Member, and the pro rata portion of the cost of all catastrophic loss protection and aggregate stop loss protection allocated to each Pool Member as well as the pro rata allocation, as determined by the Board of the other and necessary administrative expenses of the Pool, in order to reasonably determine the actual pro rata cost, expense and loss experience of each Pool Member in order to maintain as nearly as possible an equitable and reasonable self-insurance administration of the Fund as applied to each Pool Member.

    The Fund shall maintain case reserves and supplemental reserves computed in accordance with standard actuarial principles, taking into account historical and other data, designed to measure claims development and claims incurred but not yet reported, so that funds will be available to meet these claims as they become due. The Fund shall also establish and maintain a reserve for Return of Contributions to further ensure the fiscal integrity of the Fund in the event of a potential adverse loss development. Only current Pool Members may receive return of contribution.

16. The Pool Member may elect to participate in the Fund only to the extent of obtaining administrative services, and, if desired and available, reinsurance. In that event, the Pool Member shall not make contributions as provided in Paragraph 5 nor receive the coverages provided for in the TML Self-Insurance Plan, nor shall the TML Joint Self-Insurance Fund be liable for the payment of claims against the Pool Member. The Fund shall only handle and service claims for the Pool Member and pay same out of funds to be deposited by the Pool Member in a separate account administered by the Fund for the payment of claims and judgments only against that Pool Member as hereinafter provided.

    Notwithstanding the provisions of any other section of this Interlocal Agreement, a Pool Member who elects to receive Administrative Services Only as specified in the attached Declarations (hereinafter referred to as the "ASO Pool Member") shall be subject to the following requirements and conditions:

    A. Although the ASO Pool Member will receive coverage documents setting forth the coverages, provisions, terms, conditions, exclusions and limitations provided for in the TML Self-Insurance Plans, these documents are not intended to and shall not create an insured-insurer relationship between the Fund or any of its other Pool Members and the ASO Pool Member, but rather are provided solely for the purposes of: (1) defining the scope of claims the Fund will handle on behalf of the ASO Pool Member, and (2) defining the nature and scope of claims and conditions applicable thereto that will be covered by reinsurance, if available and obtained by the ASO Pool Member, beyond the ASO Pool Member's self-insured retention. The Fund shall not itself be liable for the payment of claims or judgments against the electing ASO Pool Member, nor to provide the electing ASO Pool Member with a defense of any such claims or suits at the expense of the Fund. The Fund will only make payments on behalf of the ASO Pool Member out of the ASO Pool Member's claims account. The ASO Pool Member shall comply with all requirements of any reinsurer including but not limited to furnishing timely claims reports, proposed settlements that would impact the reinsurer as well as progress reports involving litigation. The ASO Pool Member further agrees to hold the Fund harmless from any and all claims (including attorney fees) that may be asserted against the Fund for the non-payment of any claims due to the failure of the ASO Pool Member to maintain adequate reserves for the payment of claims as well as claims based upon breach of a duty of good faith and fair dealing because of the ASO Pool Member's or their agents' conduct toward the claimant.

    B. In connection with claims within the scope of the coverage documents, the Fund shall provide the following services or on behalf of the ASO Pool Member as confirmed specifically in the attached Declarations:

        1. Overall contract and claims administration;

        2. Loss control services to the ASO Pool Member to assist it in developing a plan of loss control to attempt to control or reduce the frequency and severity of claims against it;

3. Claims servicing including investigation and recommendation by the Fund's contractors; periodic meetings with the ASO Pool Member's claims official or claims committee attended by representatives of Contractors;

4. Claims administration including coordination and recommendation of defense; reserve recommendations; claims handling and defense recommendations by the Fund claims manager and assistants, as well as review of all files to monitor the ASO Pool Member's self-insurance exposure; participation by Fund staff member(s) in the periodic meetings to review claims with the ASO Pool Member's claims official or claims committee.

5. Storage and retention of claims records; periodic MIS reports detailing claims and loss information and history.

The Fund shall charge the ASO Pool Member its usual and customary charges for the aforesaid services based on actual services provided. Allocated claim expenses, including defense attorney's fees, discovery fees, expert and witness fees and court costs shall be paid by the Fund on behalf of the ASO Pool Member out of the ASO Pool Member's claims account as part of the administrative services provided by the Pool, but shall never be an expense or liability of the Fund but rather is solely that of the ASO Pool Member.

The Fund shall handle all liability and automobile physical damage claims and oversee, coordinate and make recommendations in connection with the defense of any and all liability lawsuits covered under this Agreement after prompt notice has been given. The ASO Pool Member hereby appoints Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant or his attorney, but no settlement shall be made without express prior approval of the ASO Pool Member. All claims will be discussed with the ASO Pool Member's claims official or claims committee on a periodic basis. As information on each claim develops, the Fund staff and Contractors shall make recommendations concerning claim reserves, settlement and whether or not a case should be tried or settled or a judgment should be appealed, but all decisions on individual cases shall be made by the ASO Pool Member. In the event of litigation, the Fund staff and Contractors will retain on behalf of the ASO Pool Member legal counsel approved by the ASO Pool Member to represent it and will supervise the defense of the litigation, including any appeals.

The ASO Pool Member shall establish in its name a "claims account" at a bank designated by the Fund, out of which the Fund, through its agents, shall pay on behalf of the ASO Pool Member qualified claims or losses and allocated claims expense including court costs, fees and expenses of attorneys, independent investigators, experts and witnesses and all other costs, charges or expense properly chargeable to a qualified claim or loss. Funds shall be provided at the inception of the ASO Member's self-insurance program and promptly from time to time under the following formula based on estimates furnished by the Fund of the anticipated or actual level and volume of qualified claims or losses and allocated expenses: The ASO Pool Member shall deposit into the account initially an amount equal to one-fourth (¼) of the estimated volume of qualified claims or losses and allocated claim expenses during the first twelve (12) months of its self-insurance program and each month thereafter, or sooner if necessary, shall deposit into the account an amount sufficient to restore, maintain or increase the account balance to an amount equal to one-fourth (¼) of the estimated volume of qualified claims or losses and allocated claim expenses during the next twelve (12) months.

The Fund shall account to the ASO Pool Member monthly for all expenditures from the claims account. If at any time the claims account balance drops to below fifty percent (50%) of the balance currently called for under the above formula, the ASO Pool Member shall promptly deposit additional funds to restore the full balance. During any period of time that the claims account balance is fifty percent (50%) or less of that currently called from under the formula, only allocated claim expenses shall be paid out and the ASO Pool Member shall directly pay qualified claims or losses out of other funds until it deposits into the claims account the amount necessary to restore the account to its full balance. In the event payment of a qualified claim or loss would reduce the claims account balance to less than fifty percent (50%) of that called for under the formula, the ASO Pool Member shall be promptly notified and shall either pay the qualified claim or loss directly out of other funds or deposit into the claims account sufficient funds for its payment.

It is expressly understood that the Fund shall not be required to advance its own funds or those of the Joint Self-Insurance Fund to pay claims or losses or allocated expenses hereunder, or continue to perform any services hereunder if the ASO Pool Member fails to provide necessary and adequate funds as herein set forth.

It shall be the sole responsibility of the ASO Pool Member to establish and maintain adequate reserves in addition to the limited funds in the claims account for payment of all claims, including catastrophic claims. The Fund will provide reserve recommendations and estimates of liability exposures, but both parties realize that judges and juries have wide discretion in assessing damage awards and the award in any particular case may be greatly in excess of or greatly less than a recommended reserve.

Either party to this agreement may at any time terminate it upon sixty (60) days written notice for any reason as to either all pending and future claims, or alternatively, only as to future claims. In the event cancellation is with respect to both pending and future claims, the Fund will no longer be obligated to perform the services outlined in this Agreement and shall promptly and in an orderly manner forward to the ASO Pool Member or its designee all pending claim files. In the event termination is only as to future claims, this Agreement shall continue in full force and effect with respect to all pending claims and claims occurring but not reported prior to cancellation until concluded. In either event, the ASO Pool Member shall be entitled, if it so requests and at its own expense, to have the closed claim filed retrieved from storage and delivered to it. In the event the ASO Pool Member does not request closed files in the notice of cancellation, however, they will be retained or destroyed at the Fund's option and the ASO Pool Member shall have no recourse against the Fund for failure to retain them.

Member Fax Number: _____

Fund Contact Information (if different from member)
Address _____
Telephone _____ Fax _____
E-mail _____

TO BE COMPLETED BY MEMBER:

EMPLOYER MEMBERS' FUND CONTACT (See Section 10):

Member Name _____

Name of Contact _____ Title _____

Mailing Address _____

Street Address (if different from above) _____

City _____ Zip _____ Phone _____

_____
SIGNATURE OF AUTHORIZED MEMBER OFFICIAL

_____ _____
Title Date

Member's Federal Tax I.D. Number ___ ___ - ___ ___ ___ ___ ___ ___ ___
This Information is MANDATORY

TO BE COMPLETED BY FUND: (OFFICE USE ONLY)

Effective Date of This Agreement _____

Member Name _____

Contract Number _____

_____
SIGNATURE OF AUTHORIZED FUND OFFICIAL

_____ _____
Title Date