

MONTANA ASSOCIATION OF COUNTIES
WORKERS COMPENSATION TRUST

JOINT POWERS AGREEMENT

(ORIGINALLY ADOPTED JUNE 1992)

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JOINT POWERS AGREEMENT

TO

ESTABLISH, OPERATE AND MAINTAIN A SELF-INSURANCE PROGRAM FOR WORKERS COMPENSATION

This agreement is entered into pursuant to the provisions of Title 39, Chapter 71 of the Montana Code Annotated relating to the joint exercise of power between the Counties as public corporations of the State of Montana hereto, and also those which hereafter may become signatory hereto for the purpose of operating a trust to be known and designated as the Montana Association of Counties Workers Compensation Trust.

WITNESSETH

WHEREAS, it is to the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this Joint Powers Agreement to accomplish the purposes set forth; and

WHEREAS, the development, organization and implementation of such a trust is of a magnitude that is desirable for aforesaid parties to join together in this Joint Powers Agreement in order to accomplish the purposes herein set forth; and

WHEREAS, it has been determined by such signatories that self-insurance for workers compensation is of value on an individual and mutual basis; and

WHEREAS, a self-insurance system for workers compensation can adequately serve the needs of all such signatories; and

WHEREAS, Section 39-71-403 MCA authorizes joint exercise by two or more public corporations of any power common to them; and

WHEREAS, it is the desire of the signatories hereto to jointly provide for a self-insurance program for workers compensation for their mutual advantage and concern;

NOW, THEREFORE, for and in consideration of the mutual advantages to be derived therefrom and in consideration of the execution of this agreement by other counties as public corporations, each of the parties hereto does agree as follows:

1. CREATION OF A JOINT POWERS ENTITY

A joint powers entity separate and apart from the public corporations/counties signatory hereto shall be and is hereby created and shall hereafter be designated as the Montana Association of Counties Workers Compensation Trust (hereinafter referred to as the "Trust").

2. FUNCTIONS OF THE TRUST

A. The Trust is established for the purposes of administering this Agreement pursuant to the laws of the State of Montana, and providing the services and other items necessary and appropriate for the establishment, operation and maintenance of a self-insurance program for workers compensation claims against the public corporations who are members thereof.

B. The functions of the Trust are:

1. To provide a self-insurance plan and system for workers compensation claims against the members of the Pool and as such to perform a contract for the performance of the financial administration, policy formulation, claim service, legal representation, safety engineering and other development as necessary for the payment and handling of all workers compensation claims against members as required by state law. Said payment and handling for any member shall be for all workers compensation claims filed under the laws of the State of Montana arising out of facts occurring during the period of

membership in the Trust. The Trust shall not pay or handle for a member any workers compensation claims which arise out of facts occurring before membership or after termination of membership in this Trust.

2. To provide industrially injured employees of the members all benefits required under the workers compensation laws of the State of Montana.
3. To pursue any member's rights of subrogation to the rights of an injured employee against a third party wherein the discretion of the Board of Trustees the same is appropriate. Any and all proceeds resulting from the assertion of such subjugation rights shall accrue to the benefit of the Pool.

3. POWERS OF THE TRUST

- A. Trust shall have the power and authority to exercise any power common to the public corporations which are parties to this agreement provided that the same are in furtherance of the functions and objectives of this agreement as herein set forth. The exercise of the aforesaid powers of the Trust shall be subject to the restrictions upon the manner of exercising such powers by a public corporation in the State of Montana except as otherwise provided in this agreement.
- B. Pursuant to Section 39-71-403 MCA, the Board of Trustees shall designate a depository for all monies of the Trust and further in accordance with By-Laws duly adopted by the Montana Association of Counties Workers Compensation Trust shall establish a claims account and a service agent who shall draw warrants to pay demands against the Trust, when such demands have been duly authorized and approved pursuant to the services agreement entered into between the Board of Trustees and a service agent.

4. TERMS OF THE AGREEMENT

This agreement shall become effective at 12:01 a.m. on September 1, 1985. This agreement shall continue in effect until lawfully terminated as provided herein and in the By-Laws. In the event of a reorganization of one or more of the public corporations participating in this agreement, the successor or successors in interest to the obligations of any such reorganized public corporation may be substituted as a party or parties to this agreement.

5. BOARD OF TRUSTEES POWERS AND DUTIES

- A. The Trust shall be under the direction and control and shall be governed by the Board of Trustees as set forth in the By-Laws for the Montana Association of Counties Workers Compensation Trust duly adopted by the Association members at an annual convention.

- B. Powers and Duties of the Board of Trustees

The Board of Trustees shall have the authority and duties to exercise the powers of the Trust as set forth herein and consistent with the By-Laws duly adopted and herein referred to as the Montana Association of Counties Workers Compensation Trust. In addition, the Board is specifically empowered to:

1. Provide for the management and administration of the Trust in a manner that is in the best interest of the Trust. This power shall include the power to employ and terminate a management firm for such purpose or to employ staff for such purpose.
2. Determine annual contribution rates and the method by which such contributions will be paid to the Trust created pursuant to this agreement.

3. Provide for additional assessments during the year, if necessary, to allow for increased cost due to the changes in law or excessive claims costs.
4. Provide whether and by what method new members shall be allowed into the program consistent with the terms of this Agreement and the By-Laws duly adopted by the Trust.
5. Appoint and dissolve working committees from its active membership or by contracting for such services consistent with the terms of this Agreement and the By-Laws duly adopted by the Trust.
6. Insure that a complete and accurate system of accounting of the fund is maintained at all times as set forth in this document and the By-Laws duly adopted by the Trust.
7. Determine the manner in which workers compensation claims shall be processed, and such processing shall be in conformity with all provisions of Montana State Law presently in effect or to be hereafter enacted.
8. Maintain or cause to be maintained accurate case records for all risks insured against and accurate records of all claims paid. Loss reports shall be forwarded to each member county on at least a quarterly basis. The Board of Trustees shall also provide for loss control services.
9. Enter into contracts consistent with the terms of this agreement and the By-Laws duly adopted by the Trust.
10. Receive, accept, expend and disburse funds for purposes consistent with the terms of this Agreement and the duly adopted By-Laws of the Trust.
11. To make appropriate periodic reports to the membership on the status of its Trust and its program.
12. Determine a reasonable and prudent amount of excess workers compensation insurance to insure against catastrophic losses and to purchase said insurance on the most favorable terms available to the Trust, subject to the authority of the Montana Workers Compensation Bureau to require satisfactory proof of solvency and financial ability to pay all liability.

C. Meetings of the Board of Trustees

1. The Board of Trustees shall meet not less than once each four months as set forth in the By-Laws of the Trust. The date, time and place at which any meeting shall be held shall be fixed by the Board of Trustees and the place of the regular meeting shall be such public building or other place as may be designated by the Board of Trustees. Notification of all meetings of the Board of Trustees shall be mailed to all members of the Trust at least ten (10) days prior to the time fixed for the meeting. All notices shall state the purpose therefore. The Board of Trustees shall cause minutes of regular and special meetings to be kept and shall as soon as possible after each meeting cause a copy of the minutes to be forwarded to each member of the Board of Trustees and to each member county.
2. All meetings of the Board of Trustees shall be called, noticed, held and conducted in accordance with the open meeting laws of the State of Montana.

6. BY-LAWS

- A. The Board of Trustees shall establish such by-laws, rules and regulations not inconsistent with applicable law or with this Agreement as may be necessary for its operation, the conduct of its business and the operation of the Trust.
- B. Procedures for amending the by-laws shall be as provided in the By-Laws duly adopted by the Trust so long as they are not inconsistent with this Agreement. The effective date of any amendment shall be on October 1st following adoption unless otherwise stated.

7. MEMBERSHIP IN THE TRUST

- A. Each party to this Agreement must be a member of the Montana Association of Counties, an incorporated association organized under the laws of the State of Montana and meet other qualifications as may from time to time be set by the Board and appropriate governmental authorities. Each party which becomes a member of the Trust shall be entitled to the rights and privileges of and shall be subject to the obligations of membership as provided in this Agreement and in the By-Laws duly adopted.
- B. Nothing in this Agreement shall be construed to prohibit or limit the imposition by the parties of additional obligations, duties or modified assessment formula as a condition of approval of any such application for membership.

8. WITHDRAWAL OR REMOVAL FROM MEMBERSHIP

- A. Any party to this agreement which has completed three consecutive years as a member of the Trust may voluntarily terminate its membership in the Trust. Such termination of membership of the Agreement shall become effective subject to the conditions and in the manners and means set forth in the By-Laws and be consistent with the requirements of state law.
- B. Any party to the Agreement may at any time be removed from membership in the Trust, as set forth in the By-Laws duly adopted by the members of the Trust. Such removal from membership shall operate to terminate the agreement as to such party upon thirty days written notice as to the termination of their membership.
- C. Any liability incurred during the period of membership in the Trust, by a member county which withdraws or has been removed from the Trust, will continue as a liability of the Trust and of the member county.

9. TERMINATION OF AGREEMENT

Should parties to this Agreement terminate their membership or be removed from membership in the Trust, as set forth in the By-Laws duly adopted by the members of the Trust such that the total annual premium for all parties during the next fiscal year will be \$600,000 or less, this Agreement shall terminate effective the next October 1 at 12:01 a.m. provided, however, that the Pool and this Agreement shall continue to exist for the purposes of disposing of all claims, distribution of assets and all other functions necessary to conclude the affairs of the Trust.

10. DISPOSITION OF PROPERTY AND FUNDS

- A. In the event of the dissolution of the Trust or other final termination of the Agreement by all public corporations then parties thereto, any property interest remaining in the Trust following the discharge of all obligations shall be disposed of as provided for by the By-Laws and according to state law.

- B. In the event that a member withdraws from this Agreement any property interest of that member remaining in the Trust following discharge of all obligations attributable to that member and its officers and employees shall be disposed of as provided by the By-Laws.
- C. Obligations as referred to herein shall include but not be limited to all payments required pursuant to the workers compensation laws of the State of Montana together with all reserves which had been established for the purposes of paying workers compensation claims together with any other legal obligations incurred by the Trust pursuant to this Agreement.
- D. After the completion of the purpose of this Agreement, any surplus money on hand shall be returned in proportion to the contributions made, pursuant to Montana state law to each of the participating member public corporations.

11. AMENDMENTS

This Agreement may be amended by written agreement signed by all parties to this Agreement provided that if two-thirds of the members of the Trust agree in writing to an amendment, the other parties must also agree to said amendment or they may be involuntarily terminated as parties to this agreement as provided by the By-Laws.

12. SEVERABILITY

Should any portion, term, provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Montana or to be otherwise rendered unenforceable or ineffectual the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

13. LIABILITY

- A. The Trust is liable for the payment of benefits under the Workers Compensation Act and Occupational Disease Act to employees of member counties who suffer injuries or occupational diseases arising out of and in the course of their employment, or, in the case of death, to beneficiaries. Such benefits are to be paid in accordance with the provisions of the Workers Compensation Act and Occupational Disease Act.

This agreement represents a direct financial guarantee to the employees of the members of the Trust and dependents of the deceased employees of all members of the Trust for the full amount of any and all liabilities or obligations due not limited to the members' premiums or special assessments. The member counties understand and agree that they shall be jointly and severally liable with the other members for the full amount of any and all known and unknown claims of the Trust arising during the membership of each member of the Trust.

- B. Pursuant to the provisions of the Montana Code Annotated, members are jointly and severally liable upon any liability which is otherwise imposed by law upon one of the members or upon the Trust for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement except as provided in paragraph 14 and 16E, Section 7 (below). If a member of the Trust is held liable upon any judgment for damages caused by such an act omission in excess of his pro rata share, such member of the Trust is entitled to contribution from each of the other members that are parties to the Agreement. A member's pro rata share shall be determined in the same manner as for the disposition of property and funds as provided in the Agreement and By-Laws. To achieve this purpose each member hereby agrees to indemnify and hold harmless the other members for any loss, cost or expense that may be imposed upon each member in excess of such pro rata liability. The rules for interpreting indemnity agreements as set forth in the Montana Code Annotated are hereby incorporated.

14. ENFORCEMENT

This Agreement is enforceable by the Trust, its members, and/or the Workers Compensation Bureau of the State of Montana. The Trust and its members are liable for the payment of all legal fees and costs incurred by the State of Montana as fixed by the court in any actions taken to enforce this Agreement. In the event suit is brought upon this agreement by the Trust and judgment is recovered against a member, the member shall pay all legal fees and costs incurred by the Trust as fixed by the court. Should the State determine that the Trust is insolvent and is not paying benefits to injured employees as provided for under the Workers Compensation Act and Occupational Disease Act, the State may proceed to enforce this agreement, upon notice given to the Board of Trustees. Individual members of the Trust waive notice of such plan to proceed with enforcement and are not entitled to any prior demand or notice before the State can so proceed.

15. DEFINITIONS

Unless the context requires otherwise, the terms herein shall have the following meanings:

- A. *Board of Trustees* - The committee elected pursuant to the By-Laws of the Montana Association of Counties Workers Compensation Trust to perform various duties delegated by the membership
- B. *Claims Adjuster* - Engaged by the Board of Trustees for the purposes of determining losses and payments with respect to the claim fund
- C. *Contributions* - Money included but not limited to deposits, premiums and special assessments paid by a member to the Trust in return for the handling of workers compensation claims
- D. *Employees* - The same meaning as provided for in Montana Codes Annotated and an employee of a member county or public corporation
- E. *Loss Reports* - A member's workers compensation claims in detail including current status
- F. *Member* - An individual public corporation which belongs to the Montana Association of Counties
- G. *Pool* - Self-insurance group created by this Agreement and the By-Laws adopted by the Montana Association of Counties
- H. *Public Corporation* - A county as a subdivision of the State of Montana
- I. *Reserves* - Part of the members' contributions held by the Trust to make future workers compensation payments for claims that have been incurred but are unpaid

16. ACCOUNTS AND RECORDS, FINANCE, INVESTMENT OF SURPLUS FUNDS

- A. The Trust is strictly accountable for all funds received and disbursed by it and to that end, the Trust shall establish and maintain such funds and accounts as may be required by good accounting practices or by any provision of the By-Laws duly adopted by the Trust. Books and records of the Trust in the hands of the treasurer shall be open to inspection at all reasonable times by representatives of the parties to this Agreement. The Board of Trustees as set forth in the By-Laws shall give a complete annual report of all financial activities for such fiscal year to each of the parties.
- B. The Board of Trustees may establish a trust account into which may be deposited a sum not greater than that necessary for the settlement of claims for a thirty-day period. A service company or management firm or bank contracted to administer the self-funded program covered by this agreement may execute and issue checks drawn upon such account in payment of such claims. A

monthly accounting of all checks drawn on such account shall be obtained by the treasurer from such company.

- C. The treasurer of the Trust and all of the persons having access to property or funds of the Trust or its members shall be bonded in the amount determined by the Board of Trustees. The treasurer shall assume the duties as described in the By-Laws of the Trust as well as other duties assigned by the Board of Trustees. Such duties shall include but shall not necessarily be limited to the following:
1. Receive and receipt for all monies of the Trust and place it in the appropriate accounts and depositories to the credit of the pool or in a trust account or accounts created by the Pool separate from that created in pursuant to paragraph 16, subsection B (above).
 2. Be responsible for an official bond for the safe keeping and disbursement of all Trust money so held by the treasurer.
 3. Pay, when due, out of money of the Trust, all accounts payable by the Trust with checks drawn from the trust accounts created pursuant to this paragraph.
 4. Verify and report in writing to the Board of Trustees pursuant to the By-Laws duly adopted and to the parties to this Agreement the amount of money being held for the Trust in the amount of the receipts since the treasurer's last report and the amount paid out since the last report.
- D. The Board of Trustees shall contract with a Certified Public Accountant or Public Accountant to make an annual audit of the accounts and records of the Trust. In such case, the minimum requirements of the audit shall be the same as those prescribed by state law for public corporations in the State of Montana and shall conform to generally accepted auditing standards for governmental entities. When such an audit of accounts and records is made by a CPA, a report thereof shall be filed as public record with each of the parties hereto. Such report shall be filed within 12 months of the end of the fiscal year under examination. Any costs of the audit including contracts with or employment of Certified Public Accountants or Public Accountants in making the audits provided for above shall be borne by the Pool and shall be a charge against any unencumbered funds of the Pool available for that purpose.
- E. Finance
1. Each member of the Trust shall pay each fiscal year the annual premium calculated pursuant to subparagraph 2 and 3 of this section. Partial payments may be made in advance based upon an estimated annual premium calculated by the Board of Trustees. Said partial payments shall be made as provided in the By-Laws.
 2. Member contributions for the initial year of operation shall be based on the most recent rates adopted by the Trustees, and shall be paid in quarterly installments due at the end of each quarter.
 3. The Trust shall operate under the fiscal year from October 1 to September 30.
 4. The Trust shall have the power, authority and duty to handle all aspects of workers compensation claims against members arising out of acts occurring during membership.
 5. Without in any way limiting the powers otherwise provided for in this Agreement or by statute, the Trust shall have the power and the authority to:
 - a. Receive, accept and utilize the services of personnel offered by any members or their representatives or agents;

- b. Receive, accept and utilize property, real or personal, from any member or its agents or representatives;
 - c. Receive, hold, dispose of, construct, operate and maintain buildings and other improvements; and
 - d. Receive, accept, expend and disburse funds by contract or otherwise for purposes consistent with the provisions of the Trust, which funds may be provided by any members or their agents or representatives consistent with the By-Laws of the Trust and under direction of the Board of Trustees.
6. The Trust shall accept and deposit in the Trust's fund monies from any of the following sources:
- a. Interest and other investment income
 - b. Refunds of excess workers compensation insurance premiums
 - c. Workers compensation subrogation and recoveries
 - d. Grants from any agency or private company.
7. Should workers compensation claims including reserves against all members exceed the total yearly premium, each member shall be assessed by the Board of Trustees an additional amount based upon a percentage of yearly premiums paid by each member relative to the total premiums paid by all members. The Board of Trustees may enforce such assessment pursuant to paragraph 14 thereof.
8. For all years of operation, the contribution from each member shall be as determined by the Board of Trustees based upon actuarial analysis and recommendations made.

17. SERVICE OF PROCESS

The principal office of the Pool is located at 2715 Skyway Drive, Helena, Montana, and the agent for Service of Process is Executive Director, C. Gordon Morris, or successor, designated as Secretary of the Board of Trustees of the Montana Association of Counties Workers Compensation Trust as set forth in the By-Laws.

JOINT POWERS AGREEMENT

MONTANA ASSOCIATION OF COUNTIES
WORKERS COMPENSATION TRUST

In witness thereof the parties herein have caused this agreement to be duly executed by their officers duly authorized as set forth below.

We hereby sign and attest to the entire document herein entitled "Montana Association of Counties Workers Compensation Trust Joint Powers Agreement".

_____ County, this _____ day of _____, 1999.

BY: _____

TITLE: _____

BY: _____

TITLE: _____

BY: _____

TITLE: _____