

**PENN PRIME WORKERS' COMPENSATION TRUST
AMENDED AGREEMENT OF TRUST**

This Agreement (“Trust Agreement” or “Agreement”), dated as of January 1, 1993, and as subsequently amended, is made by and among member municipalities (as hereinafter defined) of the Commonwealth of Pennsylvania which are now and hereafter parties signatory to this Agreement (or a Member Participation Agreement) together with certain Trustees who have now or may hereafter execute this Trust Agreement;

RECITALS:

WHEREAS, certain municipalities in the Commonwealth of Pennsylvania desire to create a trust for the payment of workers’ compensation claims, occupational disease claims and employer’s liability claims, and to mutually guarantee the payment of those claims from a common fund established pursuant to this Agreement; and

WHEREAS, the Pennsylvania Municipal League, formerly known as the Pennsylvania League of Cities and Municipalities, together with the Board of Directors of the Penn PRIME Trust have recognized the need for a mechanism to provide a cost effective program for municipalities and local public agencies to meet their workers’ compensation obligations and have provided substantial expertise, guidance and resources to establish this Trust in response to that need; and

WHEREAS, this Agreement is authorized by Article VIII of the Act of June 2, 1915, (P.L. 736 No. 338), as reenacted and amended (The Pennsylvania Workmen’s Compensation Act) (the “Act”) and the Pennsylvania Intergovernmental Cooperation Law, 53 Pa. C.S.A. §481 et seq.; and

WHEREAS, the Trust has obtained a permit from the Pennsylvania Department of Labor and Industry to operate as a group self-insurance fund pursuant to Article VIII of the Act.

WHEREAS, the Members will provide coverage for themselves and other political subdivisions pursuant to this Trust Agreement to be entered into by all the Members by execution of this Trust Agreement (or a Member Participation Agreement) (hereinafter referred to as the “Participation Agreement”) which provides for a group workers’ compensation, occupational disease and employer’s liability coverage pool to be established for the benefit of the Members; and

WHEREAS, this Agreement shall not relieve the Members of their obligations to pay claims in accordance with The Pennsylvania Workmen's Compensation Act, The Pennsylvania Occupational Disease Act, and any regulations promulgated thereunder; and

WHEREAS, Trust funds will be created through contributions by Members, which funds shall be used for the benefit of Members in the payment of workers’ compensation, occupational

disease and employer's liability claims and related expenses, including administrative expenses, incurred on behalf of each Member. These funds shall be administered by a Board of Trustees in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Members desire the Trustees to collect, receive, hold, invest, reinvest, manage, dispose of, distribute, and otherwise to administer the Trust funds, and the Trustees have indicated their willingness to do so, all pursuant to terms of this Agreement; and

WHEREAS, the Trustees and the Members desire to establish the terms and conditions under which the Trust will be operated; and

WHEREAS, this Agreement of Trust was amended on November 30, 1994, to limit the number of Trustees to no more than thirteen.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged by each party, one to the other, and intending to be legally bound, the Members do hereby give and assign in trust the initial contributions made by them and all income and proceeds derived therefrom, and such other sums, income and assets as hereinafter may be made part of the Trust, to the Trustees, and the Trustees hereby accept the trusts herein contained and declare that they will administer, manage, collect, receive, dispose of, and distribute such trust property in accordance with the Act for the benefit of the Members as hereinafter provided, all parties agreeing to abide by the terms and covenants contained in this Agreement, as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. The terms defined in this Section 1.1 and in the preambles hereto (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement and of any amendment or supplement hereto shall have the respective meanings specified in this Section 1.1 and said Preamble.

Accident & Illness Prevention Program Coordinator - The position responsible for developing and implementing the Trust's Accident & Illness Prevention Program as specified in Section 5.7 of this Amended Agreement of Trust.

Act - The Pennsylvania Workmen's Compensation Act (77 P.S. §§ 1-1031).

Actuary - The actuarial firm selected by the Trustees and the Administrator, whose duties shall include, but not be limited to, the evaluation of loss data submitted by eligible municipalities and the rendering of opinions and certifications of loss reserves and IBNR as required by the Board of Trustees in accordance with this Agreement and Bylaws.

Adjustments - A decrease or increase of a Member municipality's annual contribution as determined by the Board of Trustees in accordance with this Agreement 1 and Bylaws.

Administrator - The Pennsylvania Municipal League ("PML"), which shall be responsible for the day to day operations of the Trust. The Executive Director shall be the Chief Administrator and have the authority to delegate administration and financial management responsibilities to appropriate staff of the PML.

Application - The document(s) which must be submitted by all eligible political subdivisions for admission to the Trust, including, but not limited to, any underwriting or loss data, and any other information which an eligible political subdivision may be required to provide for admission to the Trust.

Assessments- Any additional payment(s) to the Trust which a Member may be required to make as determined by the Board of Trustees in accordance with this Agreement and Bylaws if the General Operating and Restricted Surplus Funds are exhausted by the payment of claims, the accumulation of case reserves and inured but not reported (IBNR) reserves, or the payment of other expenses.

Board of Trustees - The governing body of the Penn Prime Workers' Compensation Trust whose members are appointed by the Plan Committee in accordance with this Agreement and Bylaws, sometimes hereafter referred to as the "Board." At least two-thirds of the trustees shall be members of the Plan Committee.

Bylaw - The Bylaws governing the operation of the Trust as adopted and amended by the Board of Trustees in accordance with this Agreement and the Act.

Claims - All claims for benefits made by the Members' employees under The Pennsylvania Workmen's Compensation Act, The Occupational Disease Act and any other claim covered by the Coverage Document.

Contact Person - An individual designated by each Member as a liaison between that political subdivision, the Board of Trustees, and the Trust's Administrator or agents.

Contribution(s) - The initial and annual payments made thereafter by each Member upon admission to the Trust.

Deficit - Expenses, claims payments, case reserves and claims incurred but not reported (IBNR) reserves in excess of the total combined balance available in the General Operating Fund and Restricted Surplus Fund.

Effective Date - A date determined by the Trustees on which a municipality shall be deemed a Member in the Trust.

Expulsion - The involuntary removal or termination of a Member from the Trust by action of the Trustees as provided in Section 4.5 hereof and any applicable Bylaws.

Fiscal Agent - A financial institution or such other entity selected by the Administrator to handle and invest the monies held in the various funds administered by the Trust, including the Restricted Surplus Fund, the General Operating Fund, or other funds created by the Trust in accordance with this Agreement and Bylaws.

Founding Members - Those municipalities who are initial signatories to this Agreement and become Members of the Trust on or before January 1, 1993.

General Operating Fund- An interest bearing account established in the name of the Trust in accordance with this Agreement and Bylaws for the purpose of paying claims and all administrative expenses of the Trust.

Local Public Agency - Any authority, agency, instrumentality or council of government founded and operated under the Laws of the Commonwealth of Pennsylvania.

Municipality- Any political subdivision of the Commonwealth of Pennsylvania.

Member Municipality or Member - Any municipality or political subdivision of the Commonwealth of Pennsylvania eligible to participate in this Trust which becomes a party to this Agreement and the participation of which has not been terminated or canceled in accordance with this Agreement and Bylaws.

Occupational Disease Act - The Pennsylvania Occupational Disease Act, (77 P.S. §§ 1201-1603).

Penn Prime Trust - A property and liability risk sharing pool for Pennsylvania municipalities and local public agencies having its principal office at the Pennsylvania Municipal League offices in Harrisburg, Pennsylvania.

Plan Committee - A committee comprised of representatives of each Member.

Political Subdivision - Any county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority, or other entity created by a political subdivision pursuant to the law.

Restricted Surplus Fund - An interest bearing account established in the name of the Trust which shall consist of that portion of each Member's initial contribution, and any additional payments, to be used only to pay deficits in the

General Operating Fund or refunds to Members as determined by the Board of Trustees in accordance with this Agreement and Bylaws.

Service Agents - One or more service companies or consultants employed by the Trust to be responsible for underwriting matters, claims administration, loss control, accounting and such other duties as determined by the Board of Trustees and specified by contract.

Service Contract - Any contract for service between the Trust and a Service Agent on behalf of the Trust.

Termination - The voluntary or involuntary withdrawal of a Member from the Trust.

Termination Contribution - Payment which may or may not be required of all Members who withdraw or are expelled from the Trust, as determined by the Board of Trustees.

Trust - The Penn Prime Workers' Compensation Trust

Trust Coverage Document or Coverage Document - The document which describes the type of claims to be paid from the Trust funds.

Trust Year - The first fiscal year of the Trust shall commence on January 1, 1993 and end on December 31, 1993. Thereafter the Trust fiscal year shall run from January 1st to December 31st of all subsequent years.

Trustee - Each person serving as a member of the Board of Trustees referred to from time to time, collectively as the "Trustees" or "Board of Trustees" or "Board".

1.2 Interpretation. The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Headings or titles to Articles, Sections, and other subdivisions of the Agreement are for convenience only and shall be given no effect, meaning, or construction whatsoever and shall not define or limit any provision of this Agreement.

ARTICLE 2

ESTABLISHMENT OF TRUST; ELECTION OF TRUSTEES

2.1 Establishment of Trust. There is hereby created a Trust under Pennsylvania law

to be known as the Penn Prime Workers' Compensation Trust (the "Trust") for the purpose of forming a group workers' compensation, occupational disease and employer's liability coverage pool for political subdivisions of the Commonwealth of Pennsylvania. When two or more municipalities or local agencies have executed this Agreement, they shall become Founding Members of this Trust and shall make or cause to be made the contributions required under this Agreement as grantors of the Trust. The Trustees and their successors, shall serve as a Board of Trustees as provided by the Bylaws of the Trust, as the same may be amended from time to time in accordance with the provisions thereof (hereinafter the "Bylaws"), and shall be ultimately responsible for administration of the Trust in accordance with the provisions hereof.

2.2 Purpose of the Trust. The Trust shall pay workers compensation, occupational disease and employer's liability claims and related expenses incurred on behalf of each Member in accordance with the provisions of the Coverage Document and The Pennsylvania Workmen's Compensation Act, Occupational Disease Act and any regulations promulgated thereunder.

2.3 Appointment of Trustees. The Trust shall be governed and administered by a Board of Trustees which shall consist of no more than thirteen members. The Trustees shall be appointed by the Plan Committee and at least two-thirds of the Trustees shall be members of the Plan Committee. One member of the Board shall be the Executive Director of the Pennsylvania Municipal League, who shall serve as the Secretary/Treasurer and voting Trustee. Trustees shall be natural persons of full age and need be either an elected or appointed official of the Member except for the position of the Executive Director of the Pennsylvania Municipal League. (Amended December 2, 2011)

Trustees shall serve two-year terms. Should a vacancy occur in a position other than the position of the Executive Director of the Pennsylvania Municipal League, a successor Trustee shall be appointed until the next succeeding election of the Board by the remaining Trustees on the Board. (Amended December 2, 2011)

A Trustee shall not be employed by or have any direct or indirect financial interest in any Service Agent or other organization providing services to the Trust.

2.4 Resignation of a Trustee. A Trustee may resign by giving at least sixty (60) days prior notice in writing sent by first class mail c/o the Chairman of the Board. Such notice shall state the date said resignation shall take effect, and such resignation shall take effect on such date. A Trustee who fails to attend at least a majority of the regular meetings of the Board annually beginning with the September annual meeting, either in person or by such other means as permitted pursuant to the Bylaws, without extenuating circumstances as determined by a majority of the Executive Committee, shall be considered to have resigned. The Board of Directors may, in its discretion, accept or reject the resignation. If the resignation is accepted, the vacancy resulting therefrom shall be filled in accordance with the procedures established in Section 2.3 and the Bylaws. (Amended December 2, 2011)

2.5 Removal of Trustee. A Trustee may be removed from office in accordance with the Bylaws if he fails, or subsequently ceases, to meet the qualifications of Section 2.3 hereof; or

is terminated for cause by a $\frac{2}{3}$ vote of the Trustees. Upon removal of a Trustee, the vacancy shall be filled pursuant to the provisions of Section 2.3. (Amended December 2, 2011)

2.6 Meetings. Regular meetings of the Board shall be held as prescribed in the Bylaws. Any item of business may be considered at a regular meeting. Special meetings of the Board may be called by a majority of the Board through notice to the Chairman and conducted in accordance with the Bylaws.

2.7 Indemnification of Trustees. Trustees are fiduciaries and shall act in good faith, using reasonable care and diligence in the exercise of their powers and in the performance of their duties. They shall not be liable for any mistakes of judgment or other action made, taken or omitted by them in good faith and in the exercise of ordinary care and reasonable diligence, nor for any action taken or omitted by any agent, employee or independent contractors selected with reasonable care, nor for loss incurred through investment of funds or through failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. No Trustee shall be required to give a bond or other surety to guarantee the faithful performance of his duties hereunder. To the extent permitted under applicable law, the Members shall defend and hold harmless any Trustee for acts or omissions of the Board or performed by the Board within the scope of its authority, provided that such acts or omissions were in good faith and not grossly negligent. To the extent permitted under applicable law, the Members may purchase insurance providing “directors and officers, including errors and omissions” coverage for such Trustees.

ARTICLE 3

BOARD POWERS AND DUTIES

3.1 Board Powers. The Board of Trustees, and the Administrator as authorized by the Board of Trustees, are authorized on behalf of the Trust or the Members thereof, as case may be, to do all the acts necessary to perform and accomplish the purposes set forth in this Agreement of Trust within the limits and procedures of the applicable law of Pennsylvania and as herein set forth, including but not limited to:

- (1) Making and entering into contracts;
- (2) Incurring debts, liabilities and obligations in the ordinary course of business;
- (3) Acquiring, holding or disposing of real and personal property;
- (4) Suing or being sued on behalf of the Trust or the Members, as the case may be, and taking all measures necessary or desirable in the prosecution or defense of claims;
- (5) Administering or overseeing administration of the Trust, collecting contributions

thereto and paying authorized losses on behalf of all Members;

- (6) Establishing loss control procedures consistent with the requirements of the Act and advising and educating Members in loss control and risk reduction;
- (7) Providing claims administration services including defense of and settlement of claims and engaging a service company, to that end, as necessary;
- (8) Purchasing reinsurance or excess insurance, or entering into a line of credit or other funding mechanism, as necessary to protect the interests of the Members and the Trust;
- (9) Employing an attorney or attorneys as desirable in the operation of the Trust;
- (10) Determining the general policy for operation of the Trust that shall be followed by all committees, officers, agents and independent contractors employed by the Trust, the Administrator or the Trustees on behalf of the Trust;
- (11) Adopting rules for the conduct of the affairs of the Trust;
- (12) Terminating coverage and Member participation in accordance with the Participation Agreement and this Agreement;
- (13) Formulating and implementing appropriate marketing strategies and programs for the Trust.
- (14) Employing and monitoring the services of suitable agents, advisors and other persons as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, and delegating duties and powers hereunder to such agents, advisors and employees and charging the expense thereof to the Trust. The Board of Trustees may delegate to the Administrator the power to employ suitable agents, advisers and other persons as the Administrator may deem necessary and advisable for efficient operation and administration, and the power to delegate duties and powers under the Trust Agreement to such agents, advisors and employees and to charge the expense thereof to the Trust. Trustees and/or the Administrator are entitled to rely upon and may act upon the opinion or advice of any attorney or Service Agent approved by the Trustees in the exercise of reasonable care. Trustees and/or the Administrator shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in the Bylaws or the written minutes of the Trustees' meetings;
- (15) Continuing to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretion, rights and duties conferred or imposed upon the Trustees hereunder, or by law;

- (16) Adopting an investment policy establishing guidelines for investing the monies held in the various funds administered by the Trust, in such manner as may be authorized by Pennsylvania law.
- (17) Receiving from Members and other relevant sources, such information as shall be necessary for the proper administration of the Trust;
- (18) Maintaining bank accounts for the administration of the Trust and authorizing certain Trustees, the Trust Administrator, Service Agent or other appropriate persons to make payments from any such account for purposes of the Trust;
- (19) Receiving and reviewing reports of the financial condition and of the receipts and disbursements of the Trust;
- (20) Adopting Bylaws, rules, regulations, formulas, rates, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including membership criteria, provided the same are consistent with the terms of this Agreement, the Act and any regulations promulgated thereunder;
- (21) Paying taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust;
- (22) Reviewing applications for membership in the Trust submitted to them and approving or disapproving such applications;
- (23) Amending the Agreement and Bylaws as provided herein;
- (24) Making provision for proper accounting and reporting procedures for each of the Members so that the Members shall be informed at all times of the nature of the claims arising within their jurisdiction, the manner in which these claims are being handled, and the impact of those claims upon the Trust;
- (25) Purchasing an employee fidelity bond covering the Trustees, the Administrator and such others as the Trustees may determine;
- (26) Requiring assessments from each Member to preserve the fiscal and actuarial soundness of the Trust. Assessment will be calculated on the ratio each Member's annual contribution bears to the total annual contributions paid by all Members, and by the ratio each Member's incurred losses bear to the total incurred losses for all Members in the year in which a deficit occurred. When calculating the amount of any assessment, the allocation of the weight to be assigned to each ratio shall be determined solely by the Board. Assessments shall be certified by the Board as necessary to preserve the fiscal or actuarial soundness of the Trust.

- (27) Employing an independent certified public accountant to conduct an annual audit of the financial statements of the Trust at the close of the Trust Year, such audit report to be submitted to the Members no more than six (6) months after the close of the Trust Year;
- (28) Employing a Fiscal Agent and delegating to it the duties to hold the monies of the Trust and to invest and reinvest all or part of the principal and interest of the General Operating Fund and the Restricted Surplus Fund in accordance with the requirements of this Agreement;
- (29) Appointing any subcommittees of the Board as may be necessary for the operation of the Trust;
- (30) Employing an actuarial firm to review, at least annually, the expected losses, IBNR reserves and case reserves for the Trust;
- (31) Resolving all coverage disputes between Members and the Trust.
- (32) Applying for authorization to be designated by the Pennsylvania Department of Labor and Industry as a group self-insurance fund pursuant to the Article III of The Pennsylvania Workmen's Compensation Act and doing all things necessary to qualify for and maintain the status of the Trust as an approved self-insurance fund for the payment of workers' compensation and occupational disease benefits.
- (33) Paying such fees and assessments as may be required by Pennsylvania law, including any contributions as may be required to the Pennsylvania Self-Insurance Guarantee Fund.
- (34) Taking any action necessary for the Trust to be deemed by the Bureau of Workers' Compensation or the Department of Labor and Industry to be in compliance with the rules governing group self-insurance funds established pursuant to The Pennsylvania Workmen's Compensation Act.

3.2 Payment of Claims and Coverage Disputes. The Trustees shall be responsible for adopting guidelines for the handling and payment of claims. The decision whether to settle or pay a claim shall be made in the first instance by the Service Agent responsible for claims handling, acting under the general supervision of the Trust Administrator, after consultation with the Member. At the request of a Member, the decision to settle or defend a claim shall be reviewed by the Board of Trustees, or designated subcommittee. The decision of any designated subcommittee shall be reviewed by the Board of Trustees at the further request of the Member. A decision by the entire Board to settle a particular claim made against a Member shall be final. A refusal by a Member to consent to such a settlement or execute the document required to effect a settlement, shall, upon payment by the Trust of the settlement amount, relieve the Trust from any further obligation to pay that claim or otherwise represent the interests of that Member.

Any disputes between a Member and the Trust as to whether a particular claim is covered

shall be decided in the first instance by the Board of Trustees or designated subcommittee. Decisions shall be reviewed by the entire Board at the request of the Member. A decision by the entire Board disclaiming or denying coverage for a claim made against a Member may, at the option of the Member, be submitted to the arbitration panel consisting of two arbitrators selected by the Trust and the Member respectively and a third arbitrator selected at random by those arbitrators from a list of persons who are experts in the field of workers' compensation matters. Such list shall be prepared by the Board of Trustees and updated and revised at the commencement of every Trust Year.

ARTICLE 4

PARTICIPANTS

4.1 Eligibility Requirements.

- a) Each Member shall meet the underwriting standards established by the Board of Trustees and any requirements imposed by the Pennsylvania Department of Labor and Industry.
- b) Each Member shall have a loss or claims history which does not present an undue risk to the actuarial soundness of the Trust, as determined by the Administrator, in accordance with Trust underwriting standards.
- c) Each Member must receive a positive recommendation from the insurance consultant or actuary prior to acceptance. This recommendation will be based upon a loss projection and a loss control survey which will include an evaluation of the applicant's risk management procedures.
- d) Each successful applicant must comply with the guidelines established by the Trust.

For the benefit of the Trust, the Board of Trustees may establish by majority vote additional requirements for participation in the Trust.

4.2 Approval of Members

- a) Founding Members who are signatories to this Agreement as of January 1, 1993, must have submitted an application to the Administrator. Upon approval of an applicant, the Administrator must certify in writing that the successful applicant has satisfied all the admission criteria. The effective date for admission of all Founding Members shall be January 1, 1993.
- b) All subsequent applicants must satisfy the criteria established by the Board of

Trustees. The Administrator must certify in writing that the successful applicant has met all the criteria for admission to the Trust.

- c) All applicants, including Founding Members, must pay an application fee which shall be based upon the actual cost of processing the application and completing the loss control survey for each applicant.
- d) Each application must contain the following information:
 - (1) Underwriting and claims data for a three (3) year period prior to submission of the application;
 - (2) Detailed information regarding the organization, personnel and administration of the applicant;
 - (3) Names of all previous insurers and premium data for the three year period prior to submission of the application;
 - (4) Payroll and experience modification worksheets as may be required by the Board for a period of three (3) years prior to submission of the application;
 - (5) Any other information required by the Board of Trustees, or Administrator or any of the Trust's officers, attorneys, Service Agents, consultants or employees.
- e) Each Member shall submit evidence satisfactory to the Trustees of approval for participation by its governing body, including any ordinances which may be required under state law.

4.3 Contributions.

- a) Annual contributions shall be established by the Administrator in consultation with the designated insurance consultant and Trust actuary. Annual contributions shall be established at least forty-five (45) days before commencement of the Trust Year for which that contribution applies. Trustees must approve such contributions.
- b) Contributions shall be due and payable as determined by the Trustees, in accordance with this Agreement and the Trust Bylaws.

4.4 Obligations, Duties and Liabilities of Members.

- a) Each Member agrees to fulfill all obligations and duties set forth in this Agreement. The withdrawal or expulsion of any Member shall not affect this Agreement nor the Trust created herein, except where otherwise expressly provided.

- b) Each Member is liable under this Agreement for the payment of contributions and assessments when due, and agrees to make an initial contribution upon admission to the Trust.
- c) Each Member agrees to be joint and severally responsible for the obligation of each and every other party to this Agreement to discharge the liabilities arising under The Pennsylvania Workmen's Compensation Act and The Pennsylvania Occupational Disease Act.
- d) Each Member agrees to institute any and all reasonable safety regulations and loss prevention procedures that may be required by the Trustees for the purpose of minimizing or eliminating hazards or risks that could contribute to losses. Members have the right to appeal such requirements to the Trustees, and the decision of the Trustees shall then be final.
- e) Each Member agrees that it will cooperate fully with the Trust's Administrator, Service Agent(s), attorneys, claims adjusters and any other authorized representatives of the Trust, including, but not limited to, in matters involving, the investigation, defense and settlement of claims.
- f) Each Member agrees to designate a Contact Person to be responsible for all contacts with the Trust. The Trustees, the Administrator and the Service Agent(s) shall not be required to contact any individual other than the Contact Person in dealing with the Member. Any notice to or any agreements with the Contact Person shall be binding upon the Member. Each Member reserves the right to change the Contact Person from time to time by giving written notice to the Administrator.
- g) The Members agree that any covered claim or suit brought against them shall be defended in the name of the Member by counsel selected by the Administrator. Full cooperation shall be extended by such Member to supply any information needed or helpful to such defense.
- h) The Members will furnish to the Administrator such underwriting information as may be required by the Trust prior to the end of the Trust Year, and any other information which may be requested by the Administrator.
- i) The Members also agree to submit all coverage disputes to the Administrator or the appropriate subcommittee of the Board of Trustees, if any, whose decisions shall be appealable as set forth in Section 3.2.

4.5 Expulsion and Withdrawal of Members.

- a) **Expulsion.** The Trustees shall have the authority by an affirmative vote of a majority of all Trustees to expel any Member from the Trust for cause, including

but not limited to, the following:

- 1) Failure to Pay any contributions or assessments when due;
- 2) Failure to implement a reasonable safety or loss prevention program or other failure to implement guidelines required by the Trust;
- 3) Failure to cooperate with any loss control service and fiscal agents of the Trust or with any attorney representing that Member in the defense of any covered claim.
- 4) Failure to provide any information requested by the Administrator, Board of Trustees or any agent or representative of the Trust as required for the handling, settlement or defense of any covered claims.
- 5) Knowing and willful failure to observe and perform any covenants, conditions or agreements on its part required to be observed or performed by this Agreement or any related document;
- 6) Knowingly taking any action detrimental to the fiscal and/or actuarial soundness of the Trust and failing to take action where necessary to avoid a detriment to the fiscal and actuarial soundness of the Trust.

Expulsion shall become effective after sixty (60) days' written notice to the Member, or after ten (10) days' written notice for non-payment of contributions or assessments, and no liability shall accrue to the Trust after the effective date of expulsion except as provided in Section 4.5(c) hereof.

The Member, upon notification of expulsion from coverage by the Trustees, understands that its participation in this Trust will terminate and the Member will retain responsibility for the payment of all claims in accordance with The Pennsylvania Workmen's Compensation Act, the Pennsylvania Occupational Disease Act and regulations promulgated thereunder.

Upon expulsion, a Member shall forfeit any and all rights to returns of surplus or dividends to which it may otherwise be entitled.

Upon expulsion, a Member may be required to pay a Termination Contribution and may be required to pay additional assessments after expulsion as determined by the Board of Trustees in accordance with this Agreement and the Bylaws. A Member may be required to make additional payments, including assessments, after the effective date of its expulsion caused by deficits which occurred because of claims which were incurred while that Member was a member of the Trust. A claim is "incurred" when an employee injury occurs and not when a claim is made for that injury.

- b) **Withdrawal by a Member.** As provided herein, each Member agrees that they may withdraw from the Trust after giving ninety (90) days prior written notice to

the Board of Trustees, which withdrawal will be effective on the first day of the following year and only if the following conditions are satisfied:

- 1) The withdrawing Member is not then in default of its obligation to pay any contributions or assessments;
- 2) The withdrawing Member shall pay the full amount of a Termination Contribution, as determined by the Board of Trustees in accordance with this Agreement and the Trust Bylaws; and
- 3) If any municipal debt has been incurred by the Members to finance any portion of the Trust General Operating Fund and/or the Restricted Surplus Fund an opinion is obtained from bond counsel that such withdrawal will not adversely affect the tax exempt status of any interest paid on any debt incurred by the participating municipalities, or any legal entities created for the purpose of incurring such debt. As used herein, the term “debt” includes any municipal bonds, certificates, letters of credit or other instruments of municipal indebtedness.

Upon withdrawal by a Member, that Member may be required to pay a Termination Contribution and additional assessments after withdrawal as required by the Board of Trustees in accordance with this Agreement and the Bylaws. Any additional assessments will be based only upon any deficits which were caused by any claims incurred while that Member was a member of the Trust. A claim is “incurred” when the employee injury incurs and not when a claim is made for that injury.

If there is a dispute over whether a Member may voluntarily withdraw from the Trust, that Member will have a full and fair opportunity to present any relevant evidence or information to the Board of Trustees who shall decide by majority vote whether the conditions listed above have been met.

c) Liability of Trust after Withdrawal or Expulsion of a Member.

- 1) The Trust shall continue to service, defend and otherwise be responsible for any claim which occurred prior to expulsion or withdrawal of a Member.
- 2) The Trust will not pay, defend, or otherwise be responsible for a claim which arises out of an injury which occurs after the effective date of the Member's withdrawal or expulsion.
- 3) (iii) No refunds shall be paid to a Member who has been expelled from the Trust. Any Member who has voluntarily withdrawn may receive refunds as determined by the Board of Trustees.

ARTICLE 5

ADMINISTRATION

5.1 Administrator. To provide for the general management of the Trust, the Pennsylvania Municipal League is hereby appointed as administrator of the Trust (the "Administrator"). The Administrator may contract with or appoint service companies, attorneys, accountants, consultants, actuaries and other agents and representatives to assist it with the administration of the Trust. The Administrator shall serve in a fiduciary capacity to the Trust and shall be subject to the direction and supervision of the Board.

5.2 Execution of Documents. In the performance of its duties as Administrator, the Trustees authorize the Administrator to execute any notice, certificate or other written instrument relating to the Trust and within its designated responsibilities and all persons, partnerships, corporations, or associations may rely upon such notice or instrument so executed as having been duly authorized and as binding on the Trust and the Trustees.

5.3 Expense Payments. The Trustees authorize such payments out of the General Operating Fund as the Administrator may from time to time require including payment of any expenses of the Fund.

To the extent monies are held in the account designated by the Administrator, the Administrator shall hold such monies in trust and in such a manner that the same shall be secure from the claims of all creditors of the Members or beneficiaries covered by the Trust.

5.4 Record Keeping. The Administrator shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder.

5.5 Fiduciaries. The Trustees are specifically authorized to appoint other fiduciaries as to part or all of the Fund and functions incident thereto where, in the sole discretion of the Trustees, such delegation is necessary in order to facilitate the operations of the Trust and such delegation is not inconsistent with the purposes of the Trust or in contravention of any law. In the delegation of such fiduciary duties, the Trustees may appoint as fiduciary any person or entity including, but not limited to, the Administrator. The authority to appoint fiduciaries other than the Administrator may be delegated to the Administrator. If a person or entity other than the Administrator is delegated fiduciary duties, the Administrator shall monitor the actions of such person or entity. Upon any delegation, the Trustees or the Administrator may require such reports, bonds or written agreements as they deem necessary to properly monitor the actions of the delegate.

5.6 Compensation of Administrator. The Administrator shall be compensated for

its efforts in the administration of the Trust in such manner or in such amount as the Board of Trustees and the Administrator may mutually agree.

5.7 Accident & Illness Prevention Program. The Trust shall maintain an Accident & Illness Prevention Program in accordance with regulations issued by the Pennsylvania Department of Labor and Industry. The Trust designates the person holding the title of Manager of Loss Control as the Trust's Accident & Illness Prevention Program Coordinator. It shall be the duty of the Trust's Accident & Illness Prevention Program Coordinator to ensure that the Trust's Accident & Illness Prevention Program complies with all applicable regulatory requirements and shall be responsible for:

- a. Developing and updating the Trust's Safety Policy Statement;
- b. Assigning responsibilities for developing, implementing, and evaluating the Trust's Accident & Illness Prevention Program;
- c. Developing and documenting Accident & Illness Prevention Program goals and objectives for the Trust;
- d. Monitoring and assisting Members with employee participation in the Accident & Illness Prevention Program;
- e. Monitoring and assisting Member's documentation of procedures for communication of safety information to employees;
- f. Monitoring and assisting Member's documentation of procedures for timely investigation of accidents, completion of required reports and recordkeeping;
- g. Monitoring and assisting Member's conduct of onsite surveys to identify Member's existing or potential accident and illness hazards or safety program deficiencies;
- h. Monitoring and assisting Member's efforts to analyze information gathered during accident investigations and site surveys;
- i. Monitoring and assisting Member's efforts to implement corrective action in the area of industrial hygiene and industrial health services;
- j. Consulting with Members regarding employee safety;
- k. Monitoring and assisting Member's conduct of preoperational process review for impact on employee safety;

- l. Monitoring and assisting Members with respect to standard operating procedures for the work environment, as provided in the Trust's Accident & Illness Prevention Program;
- m. Maintaining all Trust Accident & Illness Prevention Program records as required by law;
- n. Filing all reports of the Trust's Accident & Illness Prevention Program as required by law;
- o. Ensuring that all Accident & Illness Prevention Program service providers meet regulatory requirements; and,
- p. Performing such other duties as may be directed by the Trust Administrator with respect to the Trust's Accident & Illness Prevention Program.

The Trust's Accident & Illness Prevention Program shall be documented in the Trust's Loss Control Standards, as developed by the Trust Administrator and the Trust's Accident & Illness Prevention Program Coordinator.

ARTICLE 6

OPERATION OF THE TRUSTEES

6.1 Office. The principal office of the Trust shall be located in the Pennsylvania League of Cities and Municipalities offices' in Harrisburg, Pennsylvania. At such principal office there shall be maintained the books, reports and records pertaining to the Trust and its administration.

6.2 Meetings. There shall be an annual meeting of the Trustees on a day and at a place designated by the Trustees. At the annual meeting the Trustees shall transact any business required by the Trust or the Bylaws.

The Trustees shall hold such other meetings and shall establish such procedures for the conduct of those meetings as they shall provide in the Bylaws.

6.3 Extraordinary Votes. An affirmative vote of a majority of all Trustees shall be required to expel or admit a Member, amend this Agreement, or determine a prudent or necessary purpose for which money from the Restricted Surplus Fund may be used.

6.4 Indemnification.

(a) The Trust shall indemnify and defend:

(i) each member of the Board of Trustees and

(ii) every officer and Trustee of the Trust and the Administrator, against all claims, suits or judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses, including attorneys' fees and any other liability that may be incurred as a result of any claim, action, suit or proceedings, whether civil, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the Trust. Provided, however, that if such claim, action, suit, or proceeding is compromised or settled, such compromise or settlement must be made with the prior and express approval of the Board of Trustees or such other persons as may be authorized to make determinations with respect to indemnification pursuant to subparagraph (d) of this Section.

(b) Such indemnification and defense shall not depend upon whether or not such person is a member of the Board of Trustees at the time such claim, action, suit or proceeding is begun, prosecuted or threatened.

(c) The right of indemnification and defense hereunder shall not be exclusive of other rights such person or Board may have as a matter of law or otherwise.

(d) In each instance in which a question of defense and/or indemnification hereunder arises, determination to indemnification hereunder, and the time, manner and amount of payment thereof, shall be made by the majority vote of a quorum of the Board of Trustees provided, however, that no member of the Board of Trustees seeking indemnification hereunder as a result of the same occurrence shall participate in the determination. In the event that a majority of the members of the Board of Trustees are seeking indemnification hereunder as a result of the same occurrence or the number of Trustees eligible to vote does not constitute a quorum, such determination in the first instance shall be made by independent legal counsel retained by the Trust for the purpose of making the determination. Nothing in this paragraph is intended to make an adverse determination finally binding upon the person seeking indemnity under this Section, or to preclude any such person from appealing an adverse determination against him or it, or from instituting legal proceedings to enforce a right of indemnification under this Section.

(e) The indemnification and defense provided for in this Section shall be deemed to be an expense of the Trust which may be paid from the General Operating Fund.

(f) The indemnification and defense provided by this Section shall be secondary to any benefits which the person may be entitled to receive from any applicable insurance policy

providing Directors and Officers, Errors and Omissions or other applicable insurance coverages which have been procured by the Trust or for which the Trust paid the required premium. The indemnification provided by this Section shall be primary over any indemnification provided by a Trustee at his or her own expense.

6.5 Trustee Compensation. The Trustees shall not be entitled to compensation for services rendered by them, however, the Trustees shall be entitled to reimbursement from the Trust for all reasonable expenses actually incurred by the Trustees as a result of the execution of their duties hereunder.

6.6 Fiduciary Duties. The Trustees acknowledge that they assume the fiduciary duties established by this Agreement of Trust, accept their appointment as Trustees of the Trust created hereunder and agree to be bound by all of the terms of this Agreement of Trust.

ARTICLE 7

OPERATION OF THE TRUST FUNDS: REVENUES

7.1 Payment of Contributions and Assessments. Each Member hereby agrees to make payments into various funds established under the Trust as set forth below:

- a) **Initial Contribution** - The initial payment made by all Members upon their admission to the Trust.
- b) **Annual Contributions** - Annual contributions must be paid by each Member. Those contributions shall be established, and may be adjusted upward or downward on an annual basis, by the Board of Trustees in accordance with this Agreement and the Trust Bylaws. Contributions shall be determined by the Board of Trustees in accordance with the guidelines adopted by the Board based upon the actual claims or loss histories of the group and of each Member. Contributions shall include:
 - 1) An amount paid by each Member to the General Operating Fund each year for the payment of claims and administration expenses, as well as any premiums which must be paid for commercial insurance or reinsurance.
 - 2) Any additional amounts paid to the Restricted Surplus Fund as may be required by the Board of Trustees based upon a finding by

the Board that such payments are needed to maintain the Restricted Surplus Fund at a required level.

- c) **Assessments** - Any additional payments to the Trust which a Member may be required to make to the Restricted Surplus Fund upon a finding by the Board and the Trust Actuary that the General Operating and Restricted Surplus Fund have been exhausted by, among other things, the payment of claims, claim reserves, IBNR reserves and expenses; and that such assessments are required to preserve the fiscal and actuarial soundness of the Trust and its ability to pay claims and otherwise satisfy any outstanding indebtedness. All assessments shall be made in an amount as determined by the Board and shall be based on the ratio of the Member's annual contribution to the total annual contribution paid by all Members and by the ratio each Member's incurred losses bear to the total incurred losses for all Members in the Trust Year or years in which a deficit occurred.
- d) **Termination Contribution** - The Termination Contribution shall be sufficient to pay any outstanding contributions (including reserves established in the normal course of business) and any other expenses or assessments due and owing on the effective date of the Member's withdrawal or expulsion.
- e) After the withdrawal or expulsion of a Member, that Member shall remain liable for any additional payments, including any assessments for any periods during which that Member was a member of the Trust.
- f) All contributions and assessments shall be determined by the Board of Trustees at least forty-five (45) days before the commencement of the Trust Year during which those payments must be made by the Members.

7.2 Establishment of Separate Funds by Trustees. The Trustees shall direct the Administrator to establish separate funds in which to hold the Trust monies. The Trustees shall cause monies received from time to time to be deposited in such funds in a proportion to be determined by the Trustees, and such funds shall be segregated and held in the following funds:

- a) **The General Operating Fund.** The General Operating Fund shall be an interest bearing account in the name of the Trustees and shall consist of all income of the Trust which is not held in the Restricted Surplus Fund. The Trustees shall cause adequate reserves to be maintained in the General Operating Fund to provide for current claims payments, case reserves and incurred but not reported reserves.

All administrative costs, claims, service fees, self-insurance bond costs, commercial insurance premium costs, counsel fees, accountants' fees, taxes, Administrator compensation and expense reimbursements, as

determined by the Trustees, shall be paid by the Administrator from the General Operating Fund as authorized by the Trustees.

- b) **The Restricted Surplus Fund.** The Restricted Surplus Fund shall be an interest bearing account in the name of the Trustees and shall consist of a proportion of contributions made by each Member as determined by the Trustees. Trustees may also allocate to the Restricted Surplus Fund monies from the General Operating Fund. Monies in the Restricted Surplus Fund shall be used only for deficits in the General Operating Fund or for any other prudent or necessary use as determined by a majority vote of all Trustees, including refunds under Section 7.4.

7.3 Establishment of Checking Accounts under the General Operating Fund.

The Trust Administrator shall establish one or more checking accounts, which may be interest or non-interest bearing accounts, in the name of the Trust. Such accounts shall be funded from the General Operating Fund. The Administrator shall draw on such checking accounts for payment of Trust obligations. Checks shall be signed and co-signed by persons authorized by the Trust. Each check shall be signed by two persons authorized by the Trust.

7.4 Return or Refund of Surplus Monies. Any funds in the Restricted Surplus Fund in excess of amounts necessary to pay current claims, including a provision for claims reserves and for claims incurred but not reported, premiums, expenses, liabilities and such surplus reserves as the Trustees may deem necessary or prudent may be returned to the Members in accordance with a formula to be adopted by the Trustees. Refunds to each Member will be based upon the loss experience of the Trust as a whole, the size of each Member's contributions, and the loss experience of the individual Member. No refunds shall be paid to any Member unless the Trust Actuary certifies in writing to the Board of Trustees that said refunds shall not adversely affect the fiscal or actuarial soundness of the Trust and its ability to satisfy any indebtedness incurred by the Trust, any Member or any other entity on behalf of the Trust in the furtherance of its purposes and objectives. No dividend shall be paid prior to the thirteenth month following the expiration of the preceding annual reporting period as established by the Pennsylvania Department of Labor and Industry. Payment of dividends shall in all other respects comply with the limitations and procedures set forth in the Act. When municipal debt has been incurred by the Trust, its Members, or any other entity created for that purpose, an additional certification will be required from bond counsel that such refunds will not adversely affect the tax exempt status of any outstanding municipal debt.

7.5 Deficits. In the event of a deficit in the General Operating Fund for any Trust Year, the deficit shall be made up from any of the following:

- (1) Unencumbered funds, including monies from the Restricted Surplus Fund.
- (2) Any contributions paid by the Members participating in the Trust.

- (3) Any assessments paid by Members as required by the Board of Trustees in the event the Restricted Surplus Fund is also exhausted.

7.6 Bonds. The Trustees shall require that a fidelity bond be furnished as to all persons handling money for or on behalf of the Trustees, including but not limited to individual Trustees, the Administrator and the Service Agent.

ARTICLE 8

AMENDMENTS

8.1 Amendments to Trust. Subject to the limitations of Section 8.2 herein, the terms and provisions of this Agreement may be amended at any time by a majority vote of all of the Trustees. After an amendment has been adopted by the Trustees, notice of the amendment and a Member's right to object to the amendment shall be promptly given to all of the Members. The amendment shall be effective fifteen days after such notice to the Members unless, within fifteen days of such notice, a majority of the Members shall file a written objection to the amendment with the Administrator. If a majority of Members file a written objection within fifteen days of such notice, the amendment will be of no force and effect.

8.2 Limitation on Amendments. No amendment shall be adopted which alters the basic purpose of the Trust or alters the rights of Members to receive surplus monies as provided in Section 7.4 hereof or alters the obligation of Members to pay any assessments or contributions which may be established under Section 7.1 hereof.

8.3 Bylaws Adoption. The Trustees by a majority vote shall have the power and authority to adopt Bylaws supplementary to this Agreement of Trust not inconsistent or in contradiction herewith.

ARTICLE 9

TERMINATION

9.1 Term of Trust. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by two-thirds ($\frac{2}{3}$) of the Members.

9.2 Termination of the Trust. In the event of termination of the Trust, the Members covenant and agree to make provision for the payment of any outstanding municipal indebtedness and for the payment of claims against the Trust or its Members as may be required by the Trustees, or the law, including the deposit with the Trustees of funds, surety bonds, or such other guarantees of payment as deemed required and sufficient by the Trustees. Upon termination, the Trustees shall continue to serve as Trustees to wind up the affairs of the Trust,

including providing for all outstanding obligations, and each Member shall be entitled to receive distribution of its share of the remaining funds, the calculation of such distribution to be determined by the Trustees.

ARTICLE 10

MISCELLANEOUS

10.1 Title to the Trust. Title to the Trust shall be vested in and remain exclusively in the Trustees to carry out the purposes hereunder and no Member or any official, employee or agent of any Member nor any individual shall have any right, title or interest in the Trust nor any right to contributions made or to be made thereto, nor any claim against any Member on account thereof, except to the extent of the right of Members to receive their share of any excess funds as provided hereunder. No interest in the Trust or monies held in any fund administered by the Trust, including a Member's share of excess funds, shall be assignable by, or available to anyone having a claim against a Member before actual payment to the Member.

No Member may assign any right, claim or interest it may have under this Agreement.

10.2 Notice. All notices, requests, demands and other communications related to this Agreement, unless otherwise so provided herein, shall be in writing and shall be deemed to be duly given when sent by first-class, registered or certified mail postage paid, return receipt requested, when personally delivered by hand or when transmitted by cable, facsimile, telex or telegraph, at such addresses as have been last provided to the Trust. The initial address for such notices, requests, demands or other communications to the Trustees and to each Member shall be provided to the Administrator. The parties shall notify the Administrator as to any change in address.

10.3 Construction. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

10.4 Counterparts. This Agreement or a succeeding Participation Agreement may be executed in any number of counterparts, each of which shall be deemed an original, by the Trustees, or their designee, and the Chief Executive Officer of the local agency or municipality, on a counterpart signature page, which together with this Agreement and all other duly executed signature pages shall constitute the complete Agreement among all the parties thereto.

10.5 Subrogation. Each Member agrees that in the event of the payment of any loss by the Trust under this Agreement, the Trust 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 said loss, and in such event the Member hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

10.6 Limitation of Liability. Liability of the Trust to any Member is specifically limited to the payment of workers' compensation, occupational disease and employer's liability claims in accordance with the coverage document, The Pennsylvania Workmen's Compensation Act, The Pennsylvania Occupational Disease Act and any regulations promulgated thereunder. Member's liability shall be limited to the extent of the financial contributions to the Trust set forth herein, and any additional obligations as may come about through amendment hereto, including any obligation to repay any municipal debt as may be incurred by the Trust, its Members or any entity created for that purpose. No Member agrees or contracts herein to be held responsible for any claims in tort, contract or otherwise made against any other Member.

10.7 Incorporation by Reference. The Participation Agreement and the Bylaws, as amended from time to time, are hereby fully incorporated by reference herein as though they were a part hereof. Where any inconsistencies or ambiguities arise among this Agreement of Trust, the Participation Agreement and the Bylaws, the provisions of this Agreement of Trust shall prevail over all the other documents; and the provisions of the Participation Agreement shall prevail over the Bylaws.

10.8 General Representations of Participants.

- a) The Member is a body corporate and politic, a political subdivision of the Commonwealth of Pennsylvania, and a local public agency or municipality as defined under Pennsylvania law. The Member has the power to enter into this Agreement and any other documents in connection herewith and the transactions contemplated hereunder and thereunder. The party executing this Agreement on behalf of the Member has full power and authority to execute same and any documents executed in connection herewith.
- b) This Agreement has been duly and validly executed and is a valid and binding agreement on the Member under the laws of the Commonwealth of Pennsylvania, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and such principles of equity as the court, in its discretion, may impose with respect to remedies which may require enforcement by a court of equity.

10.9 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and the remaining parts of this Agreement shall be construed so as to give practical realization to the purposes intended to be achieved by the

parties as if such invalid or illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the Trustees and Founding Members, have executed this Trust Agreement, all as of the date above first mentioned.

Entered into January 1, 1993

Amended November 30, 1994

Amended December 2, 2011

Amended September 12, 2012 (name change only)

Amended September 17, 2013