

**TOWNSHIP OF WORCESTER  
MONTGOMERY COUNTY, PENNSYLVANIA**

**ORDINANCE 2017-264**

**AN ORDINANCE AUTHORIZING THE PARTICIPATION OF WORCESTER  
TOWNSHIP IN THE DELAWARE VALLEY WORKERS' COMPENSATION TRUST  
IN ACCORDANCE WITH THE PENNSYLVANIA WORKERS' COMPENSATION  
ACT AND THE PENNSYLVANIA INTER-GOVERNMENTAL COOPERATION LAW.**

The Board of Supervisors of Worcester Township, Montgomery County, Pennsylvania do hereby **ENACT and ORDAIN:**

Section 1. That the Township Manager of Worcester Township is hereby authorized to execute the Delaware Valley Workers' Compensation Trust Agreement for the participation of the Worcester Township ("Township") in the Delaware Valley Workers' Compensation Trust, which Agreement is attached hereto as Exhibit "A" and is on file for inspection and review at the Township offices, 1721 Valley Forge Road, Worcester. This Agreement may be amended after the enactment of this Ordinance to conform to any requirements imposed by the Commonwealth of Pennsylvania and any of its agencies, including the Department of Labor and Industry, Bureau of Workers' Compensation.

Section 2. That the participation of the Township in the Delaware Valley Workers' Compensation Trust is authorized for the purposes of enabling the Township to reduce the cost of workers' compensation claims through its participation in a group self-insurance fund.

Section 3. That the Township delegates to the Delaware Valley Workers' Compensation Trust the authority to pay workers' compensation benefits on its behalf in accordance with the Pennsylvania Workers' Compensation Act and the Pennsylvania Occupational Disease Act.

Section 4. That Commonwealth of Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation has approved the issuance of a permit to the Delaware Valley Workers' Compensation Trust to operate as a group self-insurance fund subject to certain conditions.

Section 5. As an approved self-insurance fund, the Delaware Valley Workers' Compensation Trust will be responsible for the payment of workers' compensation claims on behalf of all Trust participants.

Section 6. As set forth in the Delaware Valley Workers' Compensation Trust Agreement, the following conditions, among others, apply to the participation of the Township in the Delaware Valley Workers' Compensation Trust:

- a) That the Trust shall consist of at least five homogeneous municipal participants organized as local government agencies under Pennsylvania law;
- b) That each participant satisfies all eligibility and admission requirements for membership in the Trust.
- c) That each participant pledges and agrees to appropriate funds to pay all its annual contributions and assessments which are required for the creation of a Fund maintained at a

level sufficient to pay all workers' compensation claims and related expense incurred by the Trust participants;

- d) That each participant agrees to jointly and severally assume and discharge the workers' compensation liabilities of each and every other participant in accordance with the Delaware Valley Workers' Compensation Trust Agreement when required to do so by the Department of Labor and Industry Bureau of Workers' Compensation;
- e) That each participant will institute any and all safety regulations, loss prevention measures or risk management procedures as may be required for the purpose of minimizing or eliminating work place risks to its employees;
- f) That each participant cooperate fully with the Trust's service and fiscal agents, attorneys, claims adjusters and any agents or employees of the Trust with respect to the investigation, defense and settlement of claims;
- g) That each participant designate a person to be responsible for all contacts with the Trust;
- h) That each participant provide any information to the Administrator or Board of Trustees as may be required to effect the purposes and objectives of the Trust; and
- i) That each participant comply with all applicable statutes and regulations governing the payment of workers' compensation claims, including, but not limited to, the Pennsylvania Workers' Compensation Act and any regulations promulgated thereunder.

Section 7. That the Township agrees to participate in the Delaware Valley Workers' Compensation Trust for a minimum period of two (2) years, subject to the terms and conditions of the Delaware Valley Workers' Compensation Trust Agreement. After the expiration of that minimum two-year period, each participant may withdraw under the following conditions as provided in the Delaware Valley Workers' Compensation Trust Agreement:

- a) An opinion is rendered by the Trust certified actuary that withdrawal will not result in the number of participants falling below the minimum required to assure the fiscal and actuarial soundness of the Trust itself;
- b) That the withdrawing participant is not then in default of its obligation to pay premiums, contributions or assessments;
- c) That the withdrawing participant shall pay any additional assessments as determined by the Board of Trustees in accordance with the Trust Agreement and By-Laws;
- d) That the Board of Trustees shall have received a certification from the Trust actuary that the withdrawal of the participant will not impair the actuarial soundness of the Trust and, if any municipal debt has been incurred by the participants to finance any portion of the Trust reserves, an opinion is obtained from bond counsel that such withdrawal will not adversely affect the tax-exempt status of any interest paid and any debt incurred by the participants, or any legal entity created for the purpose of incurring such debt.  
As used herein, the term "debt" includes any municipal bonds, certificate, letters of credit or other instruments of municipal indebtedness.

Section 8. The organizational structure of the Trust shall consist of a Board of Trustees, an

Administrator, a claims administrator/loss control consultant and various service agents appointed by the Board of Trustees in accordance with the Delaware Valley Workers' Compensation Trust Agreement and any By-Laws adopted pursuant thereto.

Section 9. As set forth in the Delaware Valley Workers' Compensation Trust Agreement, the funds required for the creation and operation of the Trust shall be provided by the participating municipalities through annual appropriations.

Section 10. The Delaware Valley Workers' Compensation Trust is empowered to enter into contracts for policies of group insurance and employee benefits, including social security, for any of its employees.

Section 11. That the participation of the Township in the Delaware Valley Workers' Compensation Trust will be effective by February 17, 2017 or thereafter, as approved by the Board of Trustees.

Section 12. All contributions and assessments paid by the Township shall be made with funds appropriated by the Township for that purpose.

Section 13. As a condition of participating in the Delaware Valley Workers' Compensation Trust, the Township agrees to:

- a) Pay all annual contributions and assessments as may be required by the Board of Trustees;
- b) Appoint a representative to sit on the Board of Trustees and designate a contact person for the purpose of communicating with the Trust or its representatives;
- c) Not withdraw from the Trust for a period of two (2) years following its admission to the Trust, subject to the terms and conditions of the Delaware Valley Workers' Compensation Trust Agreement;
- d) Withdraw from the Trust only upon satisfaction of the conditions set forth in the Delaware Valley Workers' Compensation Trust Agreement;
- e) Perform all covenants contained in the Delaware Valley Workers' Compensation Trust Agreement and delegate to the Board of Trustees the powers and authorities enumerated in that Agreement;
- f) Comply with all the conditions set forth in the Delaware Valley Workers' Compensation Trust Agreement governing the handling and payment of claims, including the defense and settlement thereof;
- g) Appropriate the funds needed to pay all contributions and assessments as may be required by the Board of Trustees in accordance with the Delaware Valley Workers' Compensation Trust Agreement;
- h) Cooperate with the Trust, its agents or employees and provide the Trust with all information it needs for the operation of the Trust, including any underwriting or claims data which it may be requested by the Board of Trustees or their designee.

Section 14. This Ordinance is being enacted pursuant to Title \_\_\_ Pennsylvania Consolidated Statutes Annotated, \_\_\_\_\_ and the Pennsylvania Intergovernmental Cooperation Law.

Section 15. All ordinances or resolutions or any part thereof, insofar as they are inconsistent with this Ordinance, are hereby repealed.

**ENACTED AND ORDAINED** by the Supervisors of the Township of Worcester, Montgomery County, Pennsylvania on this 15<sup>th</sup> day of March, 2017.

**FOR WORCESTER TOWNSHIP**

By: \_\_\_\_\_  
Susan G. Caughlan, Chair  
Board of Supervisors

Attest: \_\_\_\_\_  
Tommy Ryan, Secretary

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# EXHIBIT A

## DELAWARE VALLEY WORKERS' COMPENSATION TRUST INTERGOVERNMENTAL AGREEMENT

This is the Delaware Valley Workers' Compensation Intergovernmental Agreement (the "Trust Agreement"), effective as of November 1, 1993, by and among various political subdivisions (as hereinafter defined) of the Commonwealth of Pennsylvania which are now and hereafter parties signatory to this Agreement and listed in Appendix "A" hereof, as may be amended from time to time. This Agreement is intended to amend and supersede the previous Trust Agreement which was effective as of January 1, 2008.

### PREAMBLE

WHEREAS, certain political subdivisions (hereinafter referred to as "Participants") in the Commonwealth of Pennsylvania desire to create a group self-insurance trust fund for the payment of workers' compensation claims under the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and the Pennsylvania Occupational Disease Act, 77 P.S. §1201 et seq.;

WHEREAS, the Trust created under this Agreement shall be known as the Delaware Valley Workers' Compensation Trust;

WHEREAS, the Delaware Valley Workers' Compensation Trust hereby agrees to fully comply with the Pennsylvania Workers' Compensation Act, 77 P.S. §1 et seq., as amended, and any regulations promulgated thereunder;

WHEREAS, this Agreement is being executed by the parties hereunder pursuant to the Pennsylvania Intergovernmental Cooperation Law, 53 Pa. C.S.A. §§2301 et seq. and the Workers' Compensation Act, 77 P.S. §1, et seq., as amended;

WHEREAS, this Agreement is also authorized by the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541 et seq., and the Municipality Authorities Act of 1945, 53 Pa. C.S.A. 5301 et seq.;

WHEREAS, the Participants hereby delegate to the Delaware Valley Workers' Compensation Trust the authority and obligation to pay workers' compensation benefits on their behalf and discharge all of their liabilities under the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and the Pennsylvania Occupational Disease Act, 77 P.S. §1201, et seq.,

WHEREAS, the group self insurance fund and Trust created by this Agreement shall not be deemed an insurer or insurance company and shall not be subject to the provisions of any insurance laws and regulations, except as specifically otherwise provided in the Pennsylvania Workers' Compensation Act, 77 P.S. §1 et seq., as amended and regulations promulgated thereunder;

WHEREAS, a Trust fund will be created through contributions by the Participants which fund shall be used for the payment of workers' compensation claims and related expenses incurred on behalf of each Participant. These funds shall be administered by a Board of Trustees in accordance with the terms and conditions of this Agreement;

WHEREAS, the Participants direct that the Trustees, pursuant to an independent fiduciary duty, 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;

WHEREAS, the Delaware Valley Workers' Compensation Trust is hereby designated as a "business trust" pursuant to 15 Pa. C.S.A. §9501, with the express understanding that such designation will not have any effect upon the tax exempt status of the Trust under federal or state law; and

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

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, the Participants do hereby give and assign in trust the contributions made by them and all income and profits therefrom, and such other sums, income and profits 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 hereby assume an independent fiduciary duty to administer, manage, collect, receive, dispose of, and distribute such trust property for the exclusive benefit of the Participants and their employees as hereinafter provided, all parties agreeing to abide by the terms and covenants contained in this Agreement, as follows:

### ARTICLE I - DEFINITIONS

#### 1.01 Definitions.

The terms defined in this Section 1.01 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 1.01 and said Preamble.

Actuary — The actuarial firm selected by the Trustees, 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 By-Laws.

Adjustments – A decrease or increase of a participating municipality's annual contribution as determined by the Board of Trustees in accordance with this Agreement and By-Laws.

Administrator – The individual responsible for the day to day operations of the Trust.

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

Assessments – Any additional payment(s) to the Trust which a participating municipality may be required to make as determined by the Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation or the Board of Trustees in accordance with this Agreement and By-Laws if the Surplus is exhausted by the payment of claims, the accumulation of reserves and IBNR, or the payment of other expenses.

Board of Trustees – The independent governing body of the Delaware Valley Workers' Compensation Trust whose members or Trustees are selected in accordance with this Agreement and By-Laws. The Board of Trustees shall also serve the function of a "plan committee" as defined in the Pennsylvania Workers' Compensation Act, 77 P.S. §1 et seq., as amended.

By-Laws – The By-Laws governing the operation of the Trust as adopted and amended by the Board of Trustees in accordance with this Agreement.

Claims – All claims for workers compensation benefits made by the Participants' employees under the Pennsylvania Workers' Compensation Act, 77 P.S. §1 et seq., as amended and the Pennsylvania Occupational Disease Act, 77 P.S. §1201 et seq.

Contact Person – An individual designated by each participating municipality as a liaison between that municipality and the Board of Trustees, and the Trust's officers, employees or agents.

Contributions or Premiums – The annual payments made thereafter by each Participant upon admission to the Trust, which shall include premiums for commercial excess or reinsurance.

Deficit – When expenses, claims payments, claims reserves and claims incurred but not reported (IBNR) for any year, exceed the premiums collected for that year.

Dividends – As determined by an independent actuary, any distributable amounts in excess of that necessary for the payment of all workers' compensation claims during any Trust Year.

Effective Date – The date determined by the Trustees on which a municipality shall be deemed a participant in the Trust.

Executive Committee – The Executive Committee appointed by the Board of Trustees in accordance with Section 2.07 hereof.

Expulsion – The involuntary removal or termination of a participant from the Trust by action of the Trustees as provided in Section 3.05 hereof and any applicable By-Laws.

Fiscal Agent – A financial institution selected by the Board of Trustees to handle and invest the monies held in the various accounts administered by the Trust.

Fund – As used in this Agreement, the "Fund" is the group self insurance fund used to pool the Participants' workers compensation liabilities as approved by the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.

Insurance – Various forms of commercial insurance coverage provided to participating municipalities or the Trust itself, including any excess, reinsurance or aggregate excess insurance coverage for the payment of workers compensation claims.

Participant – Any 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 cancelled in accordance with this Agreement and By-Laws.

Political Subdivision – Any county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority or any other entity created by a political subdivision pursuant to law, as defined in Section 801 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1036.1.

Permit – The document issued by the Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation which authorizes the Trust to operate as self insurer or a group self-insurance fund under the Pennsylvania Workers' Compensation Act, 77 P.S. §1 et seq., as amended.

Rate Stabilization Fund – A fund established by the Trust which can be used by Participants to defray the cost of their annual contributions or premiums.

Service Agents – One or more service companies or consultants employed by the Trustees 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 Trustees and a Service Agent.

Surplus – Net worth of the Trust since its inception.

Termination – The voluntary withdrawal of a Participant from the Trust in accordance with Section 3.03(b) hereof.

Termination Contribution – Payment required of all Participants who are expelled from the Trust, as determined by the Board of Trustees.

Trust – The Delaware Valley Workers' Compensation Trust.

Trust Coverage Document or Coverage Document – The document which describes the type of claims to be paid from the Trust funds, which claims shall include workers compensation benefits payable pursuant to the Pennsylvania Workers' Compensation Act and the Pennsylvania Occupational Disease Act.

Trust Year – The first fiscal year of the Trust shall be from January 1 to December 31 of each year or any other period determined by the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.

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".

Underwriting Consultant – Advisor or firm selected to assist the Trust with underwriting and rating requirements for current Participants and new applicants. The underwriting consultant shall consult with the Trust Actuary as needed and as required.

#### 1.02 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 this 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 II - TRUSTEES

### 2.01 Qualifications of a Trustee.

A Trustee shall be either (1) an elected or appointed official of a Participant, including any Township or Borough Managers, or (2) an employee of a Participant with expertise in finance or risk management. 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. A Trustee shall act in an independent fiduciary capacity in fulfilling his or her obligations under this Agreement.

### 2.02 Composition of Board of Trustees.

The Trust shall be governed by a Board of Trustees, which shall consist of a representative from each Participant. No Participant shall be represented by more than one Trustee on the Board of Trustees. However, a Participant may authorize its Trustee to appoint an Alternate for a scheduled meeting or event of the Board. An Alternate shall have the full voting rights and powers granted to the Trustee.

### 2.03 Election of Trustees.

The initial Board of Trustees shall provide in the By-Laws for the form and method of election of subsequent Trustees.

### 2.04 Resignation of a Trustee.

A Trustee may resign by giving at least thirty (30) days prior notice in writing sent by registered mail to the Chairperson of the Trustees. Such notice shall state the date said resignation shall take effect, and such resignation shall take effect on such date.

### 2.05 Removal of Trustees.

A Trustee may be removed from office in accordance with the By-laws if he fails, or subsequently ceases, to meet the qualifications of Section 2.01 hereof; and may be removed if he fails to attend three (3) consecutive meetings of the Board or is terminated for cause by a 2/3 vote of the Trustees. Upon removal of a Trustee, the position shall be filled pursuant to Section 2.06 hereof.

### 2.06 New Trustees.

- (a) In the event a Trustee resigns, is removed or is otherwise unable to serve, the municipality represented by that Trustee shall appoint a replacement to complete the original Trustee's term of office.
- (b) Any Trustee, upon leaving office, shall forthwith turn over and deliver to the principal office of the Trust, any and all records, books, documents or other property in his possession or under his control which belong to the Trust.

### 2.07 Board Chairperson and Executive Committee.

The Trustees shall elect a Chairperson of the Board by simple majority vote whose duties shall be set forth in the By-Laws. The Trustees shall also appoint an Executive Committee by majority vote consisting of not less than five (5) Trustees, two of whom will be the Chairperson and Vice Chairperson of the Board of Trustees. The Trustees may delegate in writing to the Executive Committee such powers and duties as the Trustees deem appropriate and desirable except the exercise of those powers for which a two thirds majority vote of the Trustees is required. The Executive Committee shall meet as determined by the Chairperson of the Board of Trustees.

## ARTICLE III - PARTICIPANTS

### 3.01 Eligibility Requirements.

- (a) Participation in the Trust shall be limited to "political subdivisions" of the Commonwealth of Pennsylvania as that term is defined in Section 1.01 and under Section 801 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1036.1.
- (b) Each Participant shall meet the underwriting standards established by the Board of Trustees, and any requirements established by the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.
- (c) Each Participant shall have a loss or claims history which does not present an undue risk to the actuarial soundness of the Trust.
- (d) Each Participant must receive a positive recommendation from the Underwriting Consultant or loss control manager 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.
- (e) Each applicant must be professionally managed, utilizing International City Management Association ("ICMA") Recognition Criteria or satisfy equivalent management criteria adopted by the Executive Committee.
- (f) Each successful applicant must comply with the guidelines established by the underwriting consultant employed by the Trust. Each applicant must agree to make a commitment to participate in the Trust for a minimum period of at least two (2) years, which period is necessary to assure the fiscal and actuarial soundness of the Trust.
- (g) The Board of Trustees may establish additional requirements for participation in the Trust by majority vote.

### 3.02 Approval of Participants.

- (a) All applicants must be approved by two thirds (2/3) majority vote of the Board of Trustees. The Administrator must certify in writing that the successful applicant has met all the criteria for admission to the Trust.
- (b) All applicants, including initial Participants, 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.
- (c) Each application must contain the following information: underwriting and claims data for a three (3) to five (5) year period prior to submission of the application; detailed information regarding the organization, personnel and administration of the applicant as requested by the underwriting consultant; names of all previous insurers and premium data for the three (3) year period prior to submission of the application; operating budgets and other financial information as may be required by the underwriting consultant for a period of one to five (5) years prior to submission of the application; and any other information required by the Board of Trustees or any of the Trust's officers, attorneys, service agents, consultants or employees.

- (d) Each Participant 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.
- (e) Upon approval of all subsequent Participants by the Board of Trustees, the Board shall establish the effective date for that Participant's participation in the Trust.

### 3.03 Contributions.

Annual contributions shall be established by the Trustees in consultation with the underwriting consultant in compliance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder. Annual contribution estimates shall be established at least thirty (30) days before commencement of the Trust Year for which that contribution applies, or as determined by the Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation. Contributions shall be due and payable as determined by the Trustees, in accordance with this Agreement, the Trust By-Laws, and the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

### 3.04 Obligations, Duties and Liabilities of Participants.

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

Each Participant agrees to jointly and severally assume and discharge liabilities arising under the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and the Pennsylvania Occupational Disease Act, 77 P.S. § 1201, et seq., of each and every other party to this Agreement.

Each Participant 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.

Each Participant will appropriate funds for the payment of any contributions and assessments required by the Trust.

Each Participant agrees to institute any and all reasonable safety regulations and loss prevention procedures that may be required by the Executive Committee or the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation for the purpose of minimizing or eliminating hazards or risks that could contribute to losses.

Each Participant agrees that it will cooperate fully with the Trust's service agent(s), attorneys, claims adjusters and any other agent or employee of the Trust in relation to the purpose and powers of the Trust, including, but not limited to, the investigation, defense and settlement of claims.

Each Participant 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 other individual except the Contact Person in dealing with the Participant. Any notice to or any agreements with the Contact Person shall be binding upon the Participant. Each Participant reserves the right to change the Contact Person from time to time by giving written notice to the Administrator.

The Participants agree that any claim or suit brought against them shall be defended in the name of the Participant by counsel selected by the Trustees. Full cooperation shall be extended by such Participant to supply any information needed or helpful in such defense.

The Participants will furnish to the Trustees 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 Board.

Participants hereby acknowledge and agree that this Agreement may be amended, altered or modified pursuant to Article VIII hereof. Any amendment adopted pursuant to the provisions of Article VIII hereof shall be considered by each Participant to be a reasonable and proper amendment to the Agreement.

(k) The Participants also agree to submit all coverage disputes to the appropriate subcommittee of the Board of Trustees, whose decisions shall be appealable to the entire Board.

(l) The Participants further agree that once an adverse decision is rendered by the Board in any coverage dispute, and the dispute cannot be resolved by the parties, then the decision of the Board of Trustees shall be final, with no further right to challenge that decision before any arbitration panel or court of competent jurisdiction. That notwithstanding, the Participants and the Trust reserve the right to file an action in such a court solely to enforce the decision by the Board. The same is true for all decisions by the Board of Trustees involving the expulsion or withdrawal of a Participant.

### 3.05 Expulsion and Withdrawal of Participants.

(a) Expulsion. The Trustees shall have the authority by an affirmative vote of two thirds (2/3) of all Trustees to expel any Participant from the Trust for cause, based upon any of the following:

Failure to pay any premiums, contributions or assessments when due;

Failure to implement a reasonable safety or loss prevention program or other failure to implement guidelines required by the loss control consultant or manager hired by the Trust;

Failure to cooperate with any loss control service and fiscal agents of the Trust or with any attorney representing that Participant in the defense of any covered claim;

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;

Knowing and willful failure to observe and perform any covenants, conditions in this Agreement and any other agreement between the Participant and the Trust;

The filing of a case in bankruptcy, or the subjection of any right or interest of a Participant under this Agreement to any execution, garnishment, attachment, adjudication of such Participant as a bankrupt, assignment by such Participant for the benefit of creditors, or the approval by a court of competent jurisdiction of a petition applicable to that Participant in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar state or federal statute which may thereafter be enacted;

The assignment by a Participant of any right or interest in this Trust Agreement without first obtaining the approval of two-thirds of the Board of Trustees;

Knowingly taking any action detrimental to the fiscal and/or actuarial soundness of the Trust; or

Failure to comply with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, or any regulations promulgated thereunder.



Expulsion shall become effective after sixty (60) days written notice to the Participant, or 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 3.05(c) hereof. A terminated Participant shall remain fully obligated for claims incurred during the period of its participation in the Trust, including the payment of any assessments and a Termination Contribution, in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

The Participant whose expulsion is sought shall have a full and fair opportunity to appear before the Board of Trustees and present any evidence on its behalf before the Board renders its decision. All decisions by the Board of Trustees regarding expulsion of a Participant shall be final, with no right for a further appeal or arbitration of that decision.

The Participant, upon notification of expulsion of coverage by the Trustees, understands that its participation in this Trust will terminate and the Participant will retain responsibility for the payment of all workers' compensation claims in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

Upon expulsion, a Participant shall forfeit any and all rights to any dividends and Rate Stabilization Fund monies to which it may otherwise be entitled during the last year of the Participant's membership in the Trust and all times thereafter.

Upon expulsion, a Participant will be required to pay a Termination Contribution and may be required to pay additional assessments after expulsion as determined by the Board of Trustees upon recommendation of the Executive Committee. A Participant 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 Participant was a member of the Trust. A claim is "incurred" when the employee injury occurs and not when a claim is made for that injury.

The Trust shall immediately notify the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation in the event that the expulsion of a Participant causes the Trust to fail to meet any requirements imposed upon it by the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

Withdrawal by a Participant. As provided herein, each participating municipality hereby agrees that it shall not withdraw from the Trust for a period of two (2) years from the date upon which it was first admitted as a Participant. In addition, it is also agreed that each Participant may withdraw from the Trust after giving at least one hundred twenty (120) days prior written notice to the Trust Administrator at any time after the expiration of the two year period, which withdrawal will be effective on the first day of the following year unless:

An opinion is rendered by the Trust's actuary that such withdrawal will result in the number of Participants falling below the minimum required to assure the fiscal and actuarial soundness of the Trust itself;

That the withdrawing municipality is then in default of its obligation to pay any contributions or assessments; and

The Board of Trustees shall have received a certification, from the Trust actuary that the withdrawal will reduce the actuarial soundness of the Trust, and if any municipal debt has been incurred by the Participants to finance any portion of the Trust reserves, an opinion is obtained from bond counsel that such withdrawal will adversely affect the tax exempt status of any interest paid on any debt incurred by the participating municipalities, or any legal entity 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.

Any Participant who withdraws from the Trust shall forfeit any and all of its rights to any dividends and Rate Stabilization Fund monies to which it may otherwise be entitled during the last year of the Participant's membership in the Trust and all times thereafter.

Upon the effective date of withdrawal, or at any time thereafter, a Participant may be required to pay additional assessments as required by the Board of Trustees in accordance with this Agreement and the By-Laws based upon any deficits which were caused by any claims paid while that Participant was provided coverage by the Trust. A claim is "incurred" when an employee injury occurs and not when a claim is made for that injury.

If there is a dispute over the withdrawal of a Participant, that Participant will have a full and fair opportunity to present any relevant evidence or information to the Board of Trustees who shall decide the dispute by majority vote. All decisions by the Board of Trustees regarding the withdrawal of a Participant shall be final, with no right for a further appeal or arbitration of that decision. A withdrawn Participant shall remain fully obligated for claims incurred during the period of its participation in the Trust, including the payment of any assessments and a Termination Contribution, in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

The Trust shall immediately notify the Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation in the event that the withdrawal of a Participant causes the Trust to fail to meet any requirements imposed upon it by the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

(c) Liability of Trust after Withdrawal or Expulsion of a Participant.

(1) The Trust shall continue to service, defend and otherwise be responsible for any claim which occurred prior to expulsion or withdrawal of a Participant which is covered under Section 13.08 hereof.

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 Participant's withdrawal or expulsion.

In addition to forfeiture as provided in subsections 3.05(a) and (b) above, no dividends or Rate Stabilization Fund monies shall be paid to a Participant who has been expelled from the Trust or to any Participant who has voluntarily withdrawn after the effective date of withdrawal or expulsion.

#### ARTICLE IV - TRUSTEES' OBLIGATIONS

##### 4.01 Acceptance.

Trustees hereby accept the trusts imposed upon them by this Agreement and agree to perform said trusts in accordance with the terms and conditions of this Agreement. Trustees shall hold legal title to all property of the Trust and shall have absolute and exclusive power and control over the management and conduct of the business of the Trust subject to their independent fiduciary obligations under this Agreement.

##### 4.02 Future Trustees.

Whenever any change shall occur in the Board of Trustees, the legal title to the property hereby created by this Trust shall pass to those duly appointed Trustees. Each future Trustee appointed in accordance with this Agreement shall accept the Office of Trustee and the terms and conditions of this Agreement in writing.

#### 4.03 Trustees' Duties and Obligations.

The Trustees shall discharge their independent fiduciary duties and obligations under this Agreement solely in the interests of the Participants with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Trustees shall adopt By-Laws for the management and control of the Trust, so long as such By-Laws are not inconsistent or in conflict with the terms and provisions of this Agreement. Said By-Laws may be amended by the Trustees as they shall provide.

#### 4.04 Liability of Trustees.

The Trustees shall not be liable for errors of judgment either in holding property originally conveyed to them, in acquiring and afterwards holding additional property, in the performance of their duties hereunder, nor for any act or omission to act, performed or omitted by them, in the execution of the trusts created hereunder.

Every act done, power exercised or obligation assumed by the Trustees, pursuant to the provisions of this Agreement, or in carrying out the trusts herein contained, shall be held to be done, exercised or assumed by them as Trustees and not as individuals, and any person or corporation contracting with the Trustees, shall look only to the Trust and property of the Trust available for payment under such contract, or for the payment of any debt, mortgage, judgment or decree or the payment of any money that may otherwise become due or payable on account of the trusts herein provided for, and any other obligation arising out of this Agreement in whole or in part, and neither the Trustees nor the Participants, present or future, shall be personally liable therefore.

Notwithstanding the provisions of (a) and (b) above, a Trustee shall be personally liable in connection with the performance of his duties hereunder for his own willful misconduct or gross negligence.

The Board of Trustees shall use their best efforts to purchase so called directors and officers liability insurance.

### ARTICLE V - OPERATION OF THE TRUSTEES

#### 5.01 Office.

The Trustees shall designate a principal office of the Trust. Such principal office shall be in the County of Montgomery in the Commonwealth of Pennsylvania. At such principal office there shall be maintained the books, reports and records pertaining to the Trust and its administration.

#### 5.02 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 elect a Chairperson and such other officers as provided in the By-Laws and transact such other business as may come before them. The Trustees shall hold such other meetings and shall establish such procedures for the conduct of those meetings as they shall provide in the By-Laws.

#### 5.03 Extraordinary Votes.

An affirmative vote of two thirds (2/3) of all Trustees shall be required to expel or admit a Participant, amend this Agreement (except as otherwise provided in Art. XI), or determine a prudent or necessary purpose for which money from the Surplus may be used.

#### 5.04 Indemnification.

The Trust shall indemnify and defend : (i) each member of the Board of Trustees and the estate, executor, administrator, personal representatives, heirs, legatees and devisees of any such person; and (ii) every officer and employee of the Trust and the estate, executor, administrator, personal representatives, heirs, legatees or devisees of such person; 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 proceeding, 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 any such claim, action, suit, or proceeding is compromised or settled, it must be done 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.

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.

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

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 a 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 Board of Trustees members 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.

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 operating funds. .

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.

(1) Notwithstanding any other provision of this Section to the contrary, a person may seek, and the Trust may pay, advance indemnification prior to the rendering of a final determination of entitlement to indemnification pursuant to the provisions of subparagraph (d) of this Section. Any award of such advance indemnification by the Trust shall be discretionary and subject to the provisions of this Section.

In each instance where a question of advance indemnification hereunder arises, determination of the right to indemnification and of any conditions or restrictions attached thereto shall be made by a 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 as a result of the same occurrence or the number of members of the Board of Trustees eligible to vote does not constitute a quorum, such determination shall be made by independent legal counsel retained by the Trust for the purpose of making the determination.

Any determination of advance indemnification shall be discretionary and may provide for the time, manner and amounts advanced hereunder and shall include such limitations as may be deemed appropriate in the particular circumstances on rate of payment, the total amount to be advanced and the security, if required, for repayment of such advances.

Any advance authorized hereunder shall be repaid to the Trust if the person on whose behalf the advance was made is not entitled to indemnification of his costs and expenses under the provisions and in accordance with the standards for indemnification provided in this Section.

#### ARTICLE VI - PURPOSE OF THE TRUST; POWERS OF TRUSTEES

##### 6.01 Purposes of Trust.

The purposes and objectives of the Trust are as follows:

To assure the payment of workers' compensation benefits by each Participant through the creation of a common fund established for that purpose in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder;

To minimize costs incurred by participating municipalities in the handling and payment of workers compensation claims;

To protect each participating municipality from the volatility and high premiums of the commercial insurance markets; and

To take whatever other action which may be necessary to preserve and protect the fiscal and actuarial integrity of the Trust, as required in the Trust Agreement and By-Laws.

It is the express intent of the Participants entering into this Agreement that they do not intend to waive, and are not waiving, any of the immunities which they or their commissioners, supervisors, council persons, officers or employees have now, and may have in the future, under the Pennsylvania Political Subdivision Tort Claims Act, any other applicable statutes or under the common law.

##### 6.02 Powers of Trustees.

The Trustees shall have the power to control and manage the Trust and to; perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer the Trust or to carry out the purposes of this Agreement. Any determination made by the Trustees in the exercise of these powers shall be binding upon all Participants. In addition to the powers set forth elsewhere in this Agreement, the powers and duties of the Trustees in connection with their managing and controlling the Trust shall include, but shall not be limited to, the following:

- a) To see that the Trust is safely and prudently administered to insure its financial stability in accordance with all applicable statutes and regulations and to be responsible for the investment of Trust monies at the best return possible in accordance with all applicable state and federal law.
- b) To receive, hold, manage, invest, reinvest, and control all monies at any time forming part of the Trust.
- c) To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustees may choose and to pay premiums on such policies.
- d) To borrow or raise money for the purpose of financing any self insurance reserves of the Trust to the extent authorized under state and federal law. However, no municipal debt shall be incurred by the Trust, its participating municipalities or any entity created for that purpose without the consent of all participating municipalities and compliance with all state and federal law.
- e) To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.
- f) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance, including, but not limited to, deeds, leases, mortgages, conveyances, contracts, waivers and releases, and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- g) To employ suitable agents, advisors and other persons as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and employees and to charge the expense thereof to the Trust. Trustees 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 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 By-Laws or the written minutes of the Trustees' meetings.
- h) To continue 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.
- i) To construe and interpret this Agreement and any related documents.
- j) To receive from Participants and other relevant sources, such information as shall be necessary for the proper administration of the Trust.
- k) To maintain bank accounts for the administration of the Trust and to authorize certain Trustees, the Trust Administrator, Service Agent or other appropriate persons to make payments from any such account for purposes of the Trust.
- l) To receive and review reports of the financial condition and of the receipts and disbursements of the Trust.

- m) To adopt By-Laws, 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.
- n) To have a judicial settlement of their accounts and judicial determination of any questions in connection with their duties and obligations hereunder, or in connection with the administration or distribution thereof. The costs and expenses, including accounting and legal fees, for such judicial settlement of accounts or other judicial determination shall be paid by the Trust as a general administrative expense to the extent permitted by applicable law.
- o) To purchase as a general administrative expense of the Trust so called directors' and officers liability insurance and any other types of insurance for the benefit of the Trust, the Trustees, Trust employees, or agents, including group insurance, employee benefits and social security.
- p) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on Participants and Participants' employees. All such contracts and agreements, or other legal documents herein authorized, shall be approved by the Trustees and shall be executed by individuals authorized by the Trustees. This paragraph does not apply to the issuance of municipal debt for the funding of any self insurance reserves.
- q) To write off as uncollectible any Participant's contribution or any other indebtedness or other obligation as the Trustees may deem appropriate. A decision to write off as uncollectible shall be deemed appropriate if the Trustees determine that the unlikelihood of collection or the anticipated expense of collecting justifies such action. This paragraph does not apply to the issuance of municipal debt for the funding of any self insurance reserves.
- r) To receive premiums, contributions or assessments from any source whatsoever but such premiums, contribution or payments may not be utilized for any purpose unrelated to the purposes herein provided.
- s) To pay or contest any claim or to settle a claim by or against the Trust or any of its Participants by negotiation, compromise, arbitration, or otherwise.
- t) To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.
- u) To review Applications for memberships in the Trust submitted to them and to approve or disapprove such Applications.
- v) To expel or cancel the coverage of any Participant in accordance with the terms of this Agreement.
- w) To amend the Agreement and By-Laws as provided herein.
- x) To make provision for proper accounting and reporting procedures for each of the Participants so that the Participants 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.
- y) To purchase an employee fidelity bond covering the Trustees, the Administrator and such others as the Trustees may determine.
- (z) To require assessments from each Participant in an amount equal to the ratio of that Participant's annual contribution to the total annual contributions paid by all Participants in the year in which a deficit occurred. Such amounts shall be certified by the Board as necessary for that purpose to the Participants.
- (aa) To hold all property received by the Trustees, which together with the income and gains therefrom and additions thereto, shall constitute the corpus of the Trust.
- (bb) To appoint for a fee or otherwise, a Trust Administrator who shall act at the direction of the Trustees to implement the decisions of the Trustees and to have direct responsibility for the operation and supervision of the Trust. The Trust Administrator shall not be an owner, officer or employee of the Service Agent or broker of the Trust.
- (cc) To employ and oversee one or more independent service companies and/or consultants to act as Service Agent(s). The services of a Service Agent shall be performed pursuant to a written agreement between the Service Agent and the Trust, and the Service Agent (s) shall be compensated from the Trust for such services. The Trustees may delegate to a Service Agent responsibility for underwriting matters, claims administration and disbursement, collection of Premiums, and other duties as are specified in the Service contract. The Trustees shall require any Service Agent who handles monies of the Trust to furnish an employee fidelity bond indemnifying the Trust. The proper limit of liability to be set for such bond shall be as determined by the Trustees, but not less than a fifty thousand (\$50, 000) dollar limit per loss should be established.
- (dd) To employ counsel to advise and represent the Trustees on legal matters relating to the operation and administration of the Trust, and represent Participants in the defense of claims or suits.
- (ee) To employ 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 Participants no more than six (6) months after the close of the Trust Year.
- (ff) To employ a Fiscal Agent and delegate 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 Surplus Fund in accordance with the requirements of this Agreement. Those monies shall be invested in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.
- (gg) To appoint any subcommittees of the Board as may be necessary for the operation of the Trust.
- (hh) To employ an actuarial firm to review, at least annually, the expected losses, IBNR calculations and recommend surplus requirements for the Trust.
- (ii) To resolve all coverage disputes between Participants and the Trust and any disputes regarding the withdrawal or expulsion of any Participants; and
- (jj) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary in the best interests of the Trust.

#### 6.03 Payment of Claims and Coverage Disputes.

The Executive Committee shall be responsible for adopting guidelines for the handling and payment of claims. The decision of whether to settle or pay a claim shall be made in the first instance by the manager responsible for claims handling, acting under the general supervision of the Trust Administrator. The decision to settle or defend a claim may then be reviewed by the Executive Committee, whose decision may be reviewed by the Board of Trustees at the request of the Participant. A decision by the entire Board to settle a particular claim made against a Participant shall be final. A refusal by a Participant to consent to such a settlement or execute the documentation 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 Participant.

Any disputes between a Participant 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 may be reviewed by the entire Board at the request of the Participant. A decision by a majority of the Board disclaiming or denying coverage for a claim made against a Participant shall be final and legally binding on the Trust and Participant, with no right to challenge the Board's decision before any arbitration panel or court of competent jurisdiction. That notwithstanding, the Trust and Participants reserve the right to file an action in such a court to enforce the Board's decision.

## ARTICLE VII - OPERATION OF THE TRUST FUNDS

### 7.01 Payment of Contributions and Assessments.

Each Participant 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 Participants upon their admission to the Trust.

(b) Annual Contributions – Annual contributions must be paid by each Participant. These contributions shall be established, and may be adjusted upward or downward on an annual basis, by the Executive Committee in accordance with this Agreement and the Trust By-Laws. Contributions shall be determined by the Executive Committee in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder and also comply with the guidelines adopted by the Executive Committee based upon the actual claims or loss histories of each Participant. Contributions shall include:

An amount to provide for losses and general operating expenses of the Trust; and

A contribution to Surplus, as required by the Executive Committee.

In accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, each Participant may pay its annual contribution in installments, except that the initial installment shall be not less than twenty five percent (25%) of the total annual contribution. The balance of the annual contribution may be paid to the Trust on monthly, quarterly or semi-annual basis as required by the Trust's By-Laws and as approved by the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.

In accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, all annual contributions shall be based upon the annual payroll of the Trust Participants multiplied by the rates as utilized by the State Workmen's Insurance Fund minus any premium discounts. The Trust may, however, establish its own rates with the approval of an independent actuary and the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.

Assessments – Any additional payments to the Trust which a Participant may be required to make to the Surplus upon a finding by the Board and the underwriting consultant that the funds available for the payment of claims have been exhausted by, among other things, the payment of claims, claims 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 equal to the ratio of the Participant's annual contribution to the total annual contribution paid by all Participants in the Trust year or years in which a deficit occurred. Any such assessments shall not be greater than that needed to eliminate the deficit or deficiency in the General Operating and Surplus Funds. Until the recently enacted amendments to the Pennsylvania Workers' Compensation Act (referred to as "Act 44") apply to the Trust on August 1, 1994 any assessments for each Participant shall be capped in any single Trust Year at no greater than the annual contribution paid by that Participant for the Trust Year for which the assessment is being made. After the withdrawal or expulsion of a Participant, that Participant shall remain liable for any assessments for any periods during which that Participant was provided coverage by the Trust.

Termination Contribution – Upon recommendation of the Executive Committee, the Board of Trustees shall determine the amount of the Termination Contribution due and owing on or after the effective date of a Participant's expulsion, as the Board of Trustees may determine. The Termination Contribution shall be sufficient to pay any outstanding contributions and any other expense and assessments due and owing on the effective date of the Participant's expulsion. An initial estimate of the Termination Contribution shall be determined by the Board of Trustees at least forty-five (45) days before the effective date of a Participant's expulsion, and a final Termination Contribution shall be determined no later than sixty (60) days after that effective date of the Participant's expulsion.

After the withdrawal or expulsion of a Participant, that Participant shall remain liable for any additional contributions, including any assessments, for any period during which that Participant was a member of the Trust.

All contribution estimates 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 Participants. This will permit the Participants to adequately budget and appropriate the sums needed for those payments.

### 7.02 Establishment of Bank 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, with the Fiscal Agent in the name of the Trust.

### 7.03 Dividends and Rate Stabilization Fund.

(a) Dividends - Subject to Section 3.05 of this Agreement, any funds in Surplus as the Trustees may deem necessary or prudent, may be returned to the Participants by the Board of Trustees in accordance with a formula to be adopted by the Trustees and in compliance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder. Dividends paid to each Participant will be based upon the loss experience of the Trust as a whole, the size of each Participant's contributions, and the loss experience of the individual Participant. No dividends shall be paid to any Participant unless the Underwriting Consultant certifies to the Executive Committee that said dividends shall not adversely affect the fiscal or actuarial soundness of the Trust and its ability to satisfy any indebtedness incurred by the Trust, any Participant or any other entity on behalf of the Trust in furtherance of its purposes and objectives. When municipal debt has been incurred by the Trust, its Participants, or any other entity created for that purpose, an additional certification will be required from Bond Counsel that such dividends will not adversely affect the tax exempt status of any outstanding municipal debt.

(b) Rate Stabilization Fund ("RSF") - A fund established by the Board of Trustees as a way of returning surplus funds to Participants to be used as credits toward the payment of their annual contributions or premiums upon renewal. The total amount appropriated for the RSF is determined by the Executive

Committee. Each Participant receives a share of that appropriation based on their proportion of the total annual contributions or premiums paid to the Trust and the losses incurred by the Trust.

#### 7.04 Deficits.

In the event of a deficit for any Trust Year, the deficit shall be made up from any of the following:

- (1) Any contributions paid by the Trust Participants;
- (2) Unencumbered funds, including monies from the Surplus; and
- (3) Any assessments paid by Participants as required by the Board of Trustees in the event the Surplus is also exhausted by, among other things, the payment of claims.

#### 7.05 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 VIII - HEALTH AND SAFETY

#### 8.01 Accident and Illness Prevention Program.

In accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder, the Trust shall establish an accident and illness prevention program. Such program shall include surveys, recommendations, training programs, consultants, analyses of accident causes and other related services for the prevention of workers' compensation claims and enhance the welfare of the Participants' employees.

### ARTICLE IX - EXCESS INSURANCE REQUIREMENTS

#### 9.01 Specific and Aggregate Excess Insurance.

In accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder, the Trust will purchase single accident (single occurrence) excess insurance and aggregate excess insurance unless this requirement is waived by the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.

### ARTICLE X - GUARANTY AGREEMENT AND ANNUAL REPORTS

#### 10.01 Guaranty Agreement.

As required by the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder, the Trust shall execute a Guaranty Agreement with the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation which Guaranty Agreement is hereby adopted and incorporated by reference as though fully set forth herein.

#### 10.02 Annual Reports.

The Trust shall submit an annual report to the Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder.

### ARTICLE XI - AMENDMENTS

11.01 Amendments Not Requiring Consent of Trustees. The terms and provisions of this Agreement may be amended at any time by a majority of the Executive Committee for one (1) or more of the following purposes:

To cure any ambiguity, defect or omission in this Agreement;

To change or modify any provision of this Agreement so as to comply with any applicable law, regulation or administrative ruling which may be in effect; or

#### 11.02 Amendments Requiring Consent of the Trustees.

The Board of Trustees by a two thirds (2/3) vote may consent to and approve any other amendments to this Agreement as shall be deemed necessary and desirable by the Board for the purpose of modifying, altering or amending, adding to or rescinding any of the terms or provisions contained in this Agreement, including, but not limited to, the inclusion of additional types of insurance coverages, subject to the limitations contained in Section 11.03 hereof. The Board shall prescribe rules and procedures for submission of proposed amendments to the Participants.

#### 11.03 Limitation on Amendments.

No amendment shall be adopted which alters the basic purpose of the Trust or alters the rights of Participants to receive dividends as provided in Section 7.03 hereof or alters the obligation of Participants to pay any assessments or contributions which may be established under Section 7.05 hereof, which amendments would jeopardize the actuarial and fiscal soundness of the Trust.

### ARTICLE XII - TERMINATION

#### 12.01 Term of Trust.

The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by two thirds (2/3) of the Participants, and duly approved by the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation.

#### 12.02 Termination of the Trust.

In the event of termination of the Trust, the Participants covenant and agree to make any provision for the payment of any outstanding municipal indebtedness and for the payment of claims against the Trust or its Participants as may be required by the Trustees,

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 Participant shall be entitled to receive distribution of its pro rata share of any remaining funds, the calculation of such distribution to be determined by the Trustees.

#### ARTICLE XIII - MISCELLANEOUS

##### 13.01 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 Participant or any official, employee or agent of any Participant nor any individual shall have any right, title or interest in the Trust nor any right to Premiums made or to be made thereto, nor any claim against any Participant on account thereof, except to the extent of the right of Participants to receive their pro rata share of any excess funds as provided hereunder. No Participant may assign any right, claim or interest it may have under this Agreement.

##### 13.02 Execution of Documents.

The Trustees may authorize any Trustee or the Administrator to execute any notice, certificate or other written instrument relating to the Trust (except an instrument of amendment or termination) 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.

##### 13.03 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, 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 each Participant shall be provided to the Administrator. The parties shall notify the Administrator as to any change in address.

##### 13.04 Construction.

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

##### 13.05 Counterparts.

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

##### 13.06 Subrogation.

Each Participant 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 Participant against any person or other entity legally responsible for damages for said loss, and in such event the Participant hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

##### 13.07 Defense by Trust.

The Trust shall have a duty to represent all Participants with respect to the payment of workers' compensation claims, as required by law.

##### 13.08 Limitation of Liability.

Liability of the Trust to any Participant is specifically limited to the payment of workers' compensation claims in accordance with the Pennsylvania Workers' Compensation Act, 77 P.S. §1, et seq., as amended, and any regulations promulgated thereunder. Participants' 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 an obligation to repay any municipal debt as may be incurred by the Trust, its Participants or any entity created for that purpose. No Participant agrees or contracts herein to be held responsible for any claims in tort, contract or otherwise made against any other Participant. Nothing contained in this Agreement or in the By-laws thereto or the Coverage Document shall be deemed to create any relationship of surety, indemnification or responsibility between Participants for the debts of or claims against any other Participant.

##### 13.09 Arbitration.

With the exception of any decisions by the Board disclaiming or denying coverage for any claim (s) made against any Participant, and decisions by the Board of Trustees regarding the expulsion or withdrawal of a Participant, all other disputes between a Participant and the Trust must be resolved by an arbitration panel or some other alternative dispute resolution entity selected by the parties in accordance with guidelines and procedures adopted by the Board of Trustees upon the recommendation of the Executive Committee. As to all disputes arising under this Agreement, neither the Trust nor the Participant may file suit in any court of law except to enforce a decision by the Board of Trustees, arbitration panel or other alternative dispute resolution entity.

##### 13.10 General Representations of Participants.

The Participant is a body corporate and politic, a political subdivision of the Commonwealth of Pennsylvania, as defined under Pennsylvania law. The Participant 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 Participant has full power and authority to execute same and any documents executed in connection herewith.

This Agreement has been duly and validly executed and is a valid and binding agreement on the Participant 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.

13.11 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, have executed this Trust Agreement, all as of the date above first mentioned.

DRAFT