

MONTANA ASSOCIATION OF COUNTIES
WORKERS' COMPENSATION TRUST

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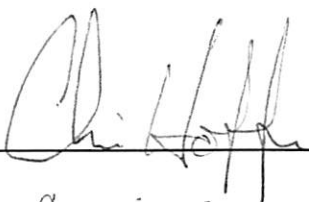
In witness thereof the parties herein have caused this agreement to be duly executed by their officers duly authorized as set forth below.

We hereby sign and attest to the entire document herein entitled "Montana Association of Counties Workers' Compensation Trust"


RAVALLI County, this 26TH day of MARCH, 2019.

BY: 

TITLE: CHAIRMAN

BY: 

TITLE: Commissioner

BY: 

TITLE: COMMISSIONER



Montana Association of Counties
Property & Casualty/Workers' Compensation Trusts

2715 SKYWAY DRIVE, SUITE A, HELENA, MT 59602
(406) 449-4370 Fax (406) 442-5238
www.mtcounties.org

March 18, 2019

Dear Commissioners:

Enclosed is a copy of the revised MACo WCT By-Laws and Joint Powers Agreement that were amended by the approval of the membership at the membership meeting held Wednesday, February 13, 2019 at the MACo Midwinter Conference in Helena, MT.

The approved changes are in red font and highlighted in the attached:

- **Amendment #1 – Article III (1) (3) (5)**
- **Amendment #2 – Article IV (2)**
- **Amendment #3 – JPA Section 16 (E.3)**
- **Amendment #4 – JPA Section 17**

Please sign the signature page as instructed and return to Jonathon Siaperas via mail or email at memberservices@mtcounties.org Feel free to contact me should you have any questions.

Sincerely,

Shannon Shanholtzer
PCT/WCT Trust Administrator

**MONTANA ASSOCIATION OF COUNTIES
WORKERS' COMPENSATION TRUST
BY-LAWS**

Revised February 2018

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ARTICLE I
NAME AND LOCATION

1. The name of this organization shall be the Montana Association of Counties Workers' Compensation Trust hereinafter referred to as the "Trust".
2. Its principal office shall be located at 2715 Skyway Drive, Helena, State of Montana.
3. Other offices for the transaction of business may be located at such places as the Board of Trustees, hereinafter referred to as the "Board", may from time to time determine.
4. These By-Laws are adopted pursuant to and in compliance with the laws of the State of Montana and with the rules of the Montana Department of Labor and Industry Employment Relations Division, hereinafter referred to as "Department".

ARTICLE II
ELIGIBILITY

Members of the Trust must be members of the Montana Association of Counties, an incorporated association organized under the laws of the State of Montana, and meet such other qualifications as may from time to time be set by the Board and appropriate governmental authorities.

ARTICLE III
BOARD OF TRUSTEES

1. The business and property of the Trust shall be supervised by the Board. The Board shall consist of the Executive Committee of the Montana Association of Counties: The President, the 1st Vice President, the 2nd Vice President, the Fiscal Officer, the Past President, the Urban County Representative, and as well as ~~the MACo Executive Director~~ one elected Sheriff from a member county that will be nominated by the Montana Sheriff and Peace Officers' Association and elected by the members at the MACo WCT annual membership meeting for a one year term. Except as herein or by law otherwise required, the Board shall act by majority vote of the trustees present at a meeting at which a quorum is present. A majority of the Board then in office shall constitute a quorum to do business. Each trustee shall have one vote. A Board member may vote by proxy only if the proxy is in writing, if it is limited to particular matters or motions specified in the proxy, and if the proxy specifies how the absent Board member's vote is to be cast.

The Board shall:

- (a) Supervise the administration of the Trust.
 - (b) Employ legal counsel, accountants and such other professional services, as it from time to time shall deem appropriate to promote the safe and proper operation of the Trust, with financially stable members who are amenable to proper operation of the Trust and good safety procedures.
 - (c) Set requirements for the admission of members to the Trust and for continuing membership, which shall include such precautions as it from time to time shall deem appropriate to promote the safe and proper operation of the Trust, with financially stable members who are amenable to proper operation of the Trust and good safety procedures.
 - (d) Endeavor to see that the Trust is safely and prudently administered to ensure its financial stability.
 - (e) Perform any other function incident to their offices and in keeping with the laws of the State of Montana.
2. In the case where an elected member of the Executive Committee is from a county that is not a member of the Trust, the position will be filled by the remaining Trustees. In filling the position, the Trustees shall give preference to those past presidents of the Montana Association of Counties who are eligible and willing to serve as a Trustee. If no past president is eligible and willing to serve, the Trustees shall appoint some other eligible member as a Trustee. The member appointed shall serve in the context of the of the membership at which time nominations shall be accepted for the Board position filled by appointment, to be voted upon by the members present with the member-elected serving in context of non-Trust member Executive Committee person.

3. The Chair of the Board shall be the President of the Montana Association of Counties, the Vice Chair shall be the 1st Vice President of the Montana Association of Counties, ~~and the MACo Fiscal Officer shall serve as Board Treasurer and Fiscal Officer, and the MACo Executive Director shall serve as Secretary of the Board.~~ In addition, the Board may appoint such assistant secretaries, assistant treasurers and additional officers as it deems advisable. All officers so elected or appointed shall serve at the pleasure of the Board.

4. The Board may delegate to MACo staff the authority to act on all claim matters between full board meetings.

5. The Board may appoint such secretaries, treasurers and additional officers as it deems advisable. All officers so elected or appointed shall serve at the pleasure of the board.

6. The Board may delegate to MACo staff the task(s) of ensuring that the Montana Association of Counties Workers' Compensation Trust meets the Safety Culture Act Standards set by the Montana Department of Labor and Industry.

7. The Board shall not extend credit to any member for payment of premiums or for any other purpose whatsoever and shall not borrow any money from the Trust or in the name of the Trust without a two-thirds (2/3) vote of the Board and without the approval of the Department.

8. Any member may be expelled from the Trust by the majority vote of the Board in compliance with the provisions of Article VIII of these By-Laws.

9. Board members shall be reimbursed per diem provided by the MACo offices for each duly called meeting attended, for actual and reasonable expense incurred in carrying out duties as a Board member.

ARTICLE IV **OFFICERS**

1. The Chair of the Board shall preside at all meetings of the Board and of the members of the Trust and shall have general supervision over the affairs of the Trust and over other officers; and shall perform all such other acts and duties as are incident to the executive office, which is comparable to that of president of a corporation. In case of the absence or disability of the Chair, the duties shall be performed by the Vice Chair.

2. ~~The Executive Director shall be the Secretary and shall also be a Board member.~~ The Secretary shall record the minutes of all meetings and prepare agendas, records, etc., and other duties normally required of a Secretary.

3. The Board shall appoint an investment trustee to hold and invest the funds of the Trust. The investment trustee shall have discretion as to the securities in which the funds of the Trust are invested or reinvested, provided that all such investments shall be limited to investments which are permissible under the law and which meet the criteria established for Trust investments by the Board. The Board may from time to time change the investment trustee at its discretion.

ARTICLE V **MEETINGS**

1. The Trust shall operate on a fiscal year beginning on October 1 and ending on September 30. The Trust shall hold an annual meeting, and the meeting shall be generally held in January or February. Efforts will be made by the Board to coordinate the meeting time with other MACo activities such as the annual loss control workshop or the MACo midwinter meeting. The Secretary shall mail or email each member written notice of the time, date and place at least ten (10) days prior to the date of the meeting.

2. At each annual meeting of the members of the Trust, the Chair of the Board shall submit a statement of the claims experiences of the Trust during the preceding fiscal year, together with a financial report of the Trust for the same period.

3. Special meetings of the Board may be called by the Chair, by the Vice Chair in the absence of the Chair, or by any three members of the Board. By unanimous consent of the Trustees, special meetings of the Board may be held without notice; otherwise,

notice of all regular and special meetings of the Board shall be mailed or emailed to each Board member at least ten (10) days prior to the time

fixed for the meeting. All notices of special meetings of the Board shall state the purpose therefore. in the event all of the members of the Board shall consent in writing to any action taken or to be taken by the Board, such action is valid action as though it had been authorized at a meeting of the Board.

4. A quorum for the transaction of business at any regular or special meeting of the Board shall consist of a majority of the Board members then in office.

5. The Board shall meet no less often than each four months.

6. Special meetings of the members may be called by the Chair of the Board, by the Vice Chair of the Board in the absence of the Chair, by any three members of the Board, or by petition signed by one-third of the members. All notices of special meetings of the members shall state the purpose therefore, and in the event a special meeting is sought to be called by petition, the petition shall state the specific purpose for such special meeting. No business other than that specified in the notice or petition shall be considered at the special meeting called in that manner.

7. Trustees unable to attend a regular meeting or special board meeting in person may participate in the meeting telephonically. A trustee who wishes to participate in a meeting telephonically shall give notice that they wish to participate in the meeting telephonically to the Trust Secretary.

8. The board may conduct meetings by means of a telephone conference call or other electronic means, of which all persons participating in the meeting shall have an equal opportunity to hear and participate in the entire meeting. Participation by such means shall constitute presence in person at a meeting.

9. Each member of the Trust shall have one vote.

10. Fifty (50) percent of the members shall constitute a quorum to do business.

11. A Trustee or member may vote by proxy only if the proxy is in writing, is limited to particular matters or motions specified in the written proxy and the written proxy gives direction to the member or Trustee holding the proxy regarding how the absent Trustee's or member's vote is to be cast. Written proxies shall be delivered to the Trust Secretary at or prior to the convening of the meeting.

Proxies shall be in substantially the following form:

GRANT OF PROXY

In accordance with Article III, Section 9 of the By-Laws of the Montana Association of Counties Workers' Compensation Trust, we/I hereby grant our/my proxy to (insert name of individual and member entity county) for the purpose of voting on (specify the matter(s) for which the proxy is granted) for the meeting of the Member Entities or Trustees to be held on (insert date of meeting) and direct that our/my vote be cast as follows:

(Signature of Member Entity Representative or Trustee).

Dated this _____ day of _____, 20 _____ .

ARTICLE VI
OBLIGATIONS OF MEMBERS

In addition to the other obligations set forth in these By-Laws, members shall:

1. Pay promptly all payments due the Trust at such times and in such amounts as shall be established by the Trust.
2. Designate a voting representative and alternate for member meetings.
3. Allow officers and employees of the Trust reasonable access to all premises of the member and all member financial records as required for administration of the Trust.
4. Cooperate fully with the Trust's attorneys, claims adjusters, and other agents and employees of the Trust in activities relating to the operations of the Trust.
5. Report to the Trust immediately all incidents or injuries which could reasonably be expected to result in claims for workers' compensation and occupational disease benefits.

ARTICLE VII **FINANCES AND DIVIDENDS**

1. The Board shall operate at least one (1) bank account. This account shall be the primary working account of the Trust.
2. All monies of the Trust shall be deposited in the aforementioned account, or such other account as the Board from time to time shall determine to be appropriate.
3. The MACo staff shall collect all premium contributions and shall immediately remit them to the depository bank for deposit as directed by resolution of the Board. The MACo staff shall determine and bill for all appropriate insurance premium costs, all self-insurance bond costs, all industrial and/or state taxes, and services fees.
4. That portion of each member's contribution which shall not be required to pay claims, pay administration expenses and fees or required for appropriate reserves may be returned to the members of the Trust from time to time. No surplus accumulations may be returned if such payment will impair the capital stability and/or security of the Trust. Any member who withdraws and/or is not in good standing shall not be eligible to receive any return from surplus accumulation until the applicable statutes of limitation shall expire on all open or potential claims for the fiscal year involved. "Open claims" for this purpose shall mean any situation where notice of injury was given to the member, whether or not the member reported the same. In the event the Board is unable to identify or deliver a refund for any reason, such monies shall remain in the Fund for the benefit of the remaining members.
5. All costs of administration of the Trust not otherwise provided for herein shall be paid out of the aforementioned account.
6. An annual audit shall be made of the Trust by accountants selected by the Board. The expense of this audit will be paid out of the aforementioned account. Copies of each year's audit shall be made available to each member (upon request) during that year.
7. Each fiscal year shall be maintained separately for accounting purposes for the benefit of the Trust members active during the year.

ARTICLE VIII **GENERAL PROVISIONS AND COLLECTION OF CONTRIBUTIONS**

1. The Board shall require each member of the Trust to be a member in good standing of the Montana Association of Counties.
2. Each member shall deliver to MACo an accounting of its actual payroll and make payment of its contributions no later than fifteen days following the end of each calendar quarter.
3. At the inception of each successive year, the Board will determine each member's deposit for that year (which will be based on the member's loss experience for the prior year) and shall promptly after the determination notify each member thereof. Each member's deposit shall be subject to review by the Board.
4. It is required that members adopt a risk management or safety statement approved by the Board. Members must follow the

loss reduction and prevention procedures established by the Board.

5. Members must keep accurate records and cooperate with the Board, MACo staff, and the representatives of the applicable state agencies having jurisdiction over workers' compensation or safety matters. It is required that each member take all necessary action to carry out the recommendation of any loss control inspections.

6. The Board shall issue reasonable operating procedures and regulations for the operation of the Trust. All such procedures shall be reduced to writing and a copy given to each member and shall be deemed binding immediately upon receipt.

ARTICLE IX **TERMINATION OF MEMBERSHIP**

1. Membership of any member in the Trust shall automatically terminate upon the occurrence of any of the following:

(a) Whenever the member ceases to be a member in good standing of MACo.

(b) Whenever the member resigns from the Trust. A member may resign only after giving 90 days' written notice to the Trust of its intent to resign. Prior to acceptance of any resignation, the Trustees may require the member to meet with the Trustees to explain the member's reason for resigning. The withdrawn member shall not be entitled to any reimbursement of premiums that have been paid or dividends and reimbursements that may become payable in the future, and shall continue to be obligated to make any payments which may be due in the future should the Trust need such funds to meet its obligations for claims and claim administration for the years in which the withdrawn member was a member of the Trust. A member of the Trust that subsequently terminated such membership in the Trust and that chooses to again become a member of the Trust must petition the Board, and receive approval from the Board, before again becoming a member.

(c) Whenever the term expires for which premiums and deposited have been paid by the member.

2. Membership of any member in the Trust may be terminated by majority vote of the Board and the member expelled from the Trust upon the occurrence of any of the following:

(a) Failure of the member to pay any premiums or assessments required, on or before the due date thereof. All delinquent payments shall be paid with interest. The interest will be set on the highest rate paid by the financial institution investing the majority of the workers' compensation funds during the delinquent period. Payments will be considered delinquent forty-five (45) days following the due date.

(b) Failure of the member to timely file any report or census required by MACo, the Department, or the Law.

(c) Failure of the member to maintain a safety/loss control program acceptable to the Board.

(d) The member's filing of any report or census required to be filed with contains any materially false statement or omits any material information required.

(e) Failure of the member to otherwise meet the requirements of Law, the Department, or the Board.

For purposes of this Section 2 only, a member shall be given thirty (30) days' written notice of the grounds asserted for termination of membership, during which time the member shall be given an opportunity to correct all deficiencies in order to remain a member in good standing. This compliance period may be extended by the Board on its own motion or upon application of the member, but only for good cause shown.

Notice of termination shall be given by the Board to the member and the Department simultaneously. Notice to the member shall be sent by registered or certified mail, return receipt required.

ARTICLE X **AMENDMENTS**

Amendments to these By-Laws may be made by a vote of two-thirds (2/3) of the members present at any annual or regular meeting or at any special meeting called for that purpose. Any amendment proposed for submission at any meeting of the Board or the members shall be set out in full in the notice of such meeting.

MONTANA ASSOCIATION OF COUNTIES
WORKERS COMPENSATION TRUST

JOINT POWERS AGREEMENT

(ORIGINALLY ADOPTED JUNE 1992)

MONTANA ASSOCIATION OF COUNTIES
WORKERS COMPENSATION TRUST
JOINT POWERS AGREEMENT

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JOINT POWERS AGREEMENT

TO

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

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

WITNESSETH

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

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

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

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

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

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

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

1. CREATION OF A JOINT POWERS ENTITY

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

2. FUNCTIONS OF THE TRUST

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

B. The functions of the Trust are:

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

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

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

3. POWERS OF THE TRUST

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

4. TERMS OF THE AGREEMENT

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

5. BOARD OF TRUSTEES POWERS AND DUTIES

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

B. Powers and Duties of the Board of Trustees

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

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

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

C. Meetings of the Board of Trustees

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

6. BY-LAWS

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

7. MEMBERSHIP IN THE TRUST

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

8. WITHDRAWAL OR REMOVAL FROM MEMBERSHIP

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

9. TERMINATION OF AGREEMENT

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

10. DISPOSITION OF PROPERTY AND FUNDS

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

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

11. AMENDMENTS

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

12. SEVERABILITY

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

13. LIABILITY

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

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

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

14. ENFORCEMENT

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

15. DEFINITIONS

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

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

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

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

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

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

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

17. SERVICE OF PROCESS

The principal office of the Pool is located at 2715 Skyway Drive, Helena, Montana, and the agent for Service of Process is Executive Director, C. Gordon Morris, or successor, designated as Secretary of the Board of Trustees of the Montana Association of Counties Workers Compensation Trust as set forth in the By-Laws place of office shall be located at 2715 Skyway Drive, Helena, Montana. Other offices for the transaction of business may be located at other places as the Board of Trustees may, from time to time, designate.