

**Alaska Municipal League  
Joint Insurance Association, Inc.**

**COOPERATIVE  
PARTICIPATION  
AGREEMENT**  
*July 1, 2015*



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# COOPERATIVE PARTICIPATION AGREEMENT

**THIS AGREEMENT** is made and entered into in the State of Alaska by and among the Alaska Municipal League Joint Insurance Association, Inc., and the participating local public entities, hereinafter collectively referred to as “Participants” or “Participating Members,” and individually as “Participant,” which are parties signatory to this Agreement.

**WHEREAS**, AS 21.76.010 provides that two or more local governmental entities may, by Cooperative Agreement, enter into joint insurance arrangements for certain purposes by any one or more of certain specified methods; and

**WHEREAS**, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling self-insured losses and the group purchase of insurance, excess insurance, reinsurance or other reserve funding mechanisms, and administrative services including risk management, loss control and claims services in connection with a Joint Insurance Arrangement; and

**WHEREAS**, it appears economically feasible and practical for the parties to this Agreement to do so;

**NOW, THEREFORE**, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

## **SECTION 1: General Provisions and Definitions.**

The following definitions shall apply to the provisions of the Agreement:

- (1) **“Administrator”** shall mean the person appointed by the Board of Trustees to serve as chief executive officer (executive director) of the Association.
- (2) **“Association”** or **“JIA”** shall mean the Alaska Municipal League Joint Insurance Association, Inc., a nonprofit corporation organized under the laws of the State of Alaska.
- (3) **“Board of Trustees”** or **“Board”** shall mean the governing body of the Association acting as a board of directors.
- (4) **“Bylaws”** shall mean those bylaws of the Alaska Municipal League Joint Insurance Association, Inc., as adopted by the Board of Trustees of such Association, and as thereafter duly amended. The bylaws, including without limitation, all definitions set out therein, are incorporated herein by this reference.
- (5) **“Claim”** shall mean a demand made against the Association arising out of an occurrence that is within the scope of coverage of the Association's Joint Insurance Arrangement as developed by the Board.
- (6) **“Excess insurance”** or **“reinsurance”** shall mean that insurance coverage purchased on behalf of the Association to protect the funds of the Association against catastrophes or an unusual frequency of losses during a single year.

- (7) **“Fiscal Year”** shall mean that period of twelve months that is established as the fiscal year of the Association.
- (8) **“Insurance”** shall mean and include self-insurance through a funded program and/or any commercial insurance contract. This joint insurance arrangement shall not be considered insurance for any other purpose, pursuant to AS 21.76.020(a).

Notwithstanding the foregoing definitions, the parties hereto agree that the words and phrases defined above shall be interpreted as defined by the policy of excess insurance or reinsurance in effect at the time of the occurrence that gives rise to the question of interpretation. This Agreement is not intended to be a contract for insurance.

## **SECTION 2: Purposes.**

This Agreement is entered into by the Participants in order to provide more comprehensive and economical coverage, to provide for the pooling of contributions in order to assume risks from losses to the Participants on a group basis, to provide self-insurance coverage to the Participants for all forms of insurance available or required by law for local public agencies and for which state law authorizes the formation of joint insurance arrangements to provide such insurance, to reduce the amount and frequency of Participants' losses, and to decrease the cost incurred by Participants in the handling and litigation of claims. This purpose shall be accomplished through the exercise of the powers of the Participants jointly in the creation of the Association to administer a Joint Insurance Arrangement wherein Participants will pool their losses and claims, jointly purchase insurance, and provide reserve funding mechanisms and administrative and other services, including claims adjusting, risk management consulting, loss prevention, legal and related services, as authorized pursuant to AS 21.76.

## **SECTION 3: Parties to the Agreement.**

Each Participant certifies that it intends to, and does, contract with all other Participants and, in addition, with such other parties as may later be added to and become signatories of this Agreement. Each Participant also certifies that the deletion of any Participant from this Agreement, shall not affect the validity of this Agreement or such Participant's intent to contract as described above with the other Participants to the Agreement then remaining. A roster of Participants to the Agreement is attached hereto as Exhibit 1..

## **SECTION 4: Term of Agreement.**

This Agreement shall become effective on the date coverage commences for the Participant. The Agreement shall continue in effect unless canceled, nonrenewed, or otherwise terminated in accordance with this Agreement and the Association bylaws.

## **SECTION 5: Liability of the Association.**

Pursuant to Alaska law, the debts, liabilities, and obligations of the Association shall not constitute debts, liabilities, or obligations of any Participant, except as hereinafter expressly set forth.

Specifically, all debts, liabilities, and obligations of the Participants shall be several and not joint, except to the extent of contractually obligated payments provided hereunder for purposes of risk pooling. The debts, liabilities and obligations of AMLJIA shall not constitute debts, liabilities or obligations of its officers, directors, employees, agents, Board of Trustees, committees or executive director.

#### **SECTION 6: Powers of the Association.**

The Association shall have the powers common to the Participants and is hereby authorized to do all acts necessary for the exercise of said common powers pursuant to the terms hereof and in the manner provided by law, including, but not limited to, any or all of the following:

- (1) to make and enter into contracts;
- (2) to incur debts, liabilities or obligations;
- (3) to acquire, hold or dispose of real and personal property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities;
- (4) to sue and be sued in its own name;
- (5) to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law; and
- (6) all other and further powers that may be authorized by the Articles of Incorporation and bylaws of the Association and permitted or not otherwise prohibited by law.

#### **SECTION 7: Board of Trustees.**

The Association shall be governed by the Board of Trustees, which is hereby established and which shall be composed according to the bylaws. The Board shall meet at least annually. Each member of the Board shall have one vote. A list of members of the Board of Trustees is attached hereto as Exhibit 2.

#### **SECTION 8: Powers of the Board of Trustees.**

The Board of Trustees of the Association shall have the powers and duties set out in the bylaws and such other powers and functions as are provided for in this Agreement.

#### **SECTION 9: Insurance Coverage.**

The Association may provide any kind of insurance for Participants required by law or regulation or as the Board shall determine, and not otherwise prohibited under AS 21.76.010(b). All applicable insurance policy forms, as they may be adopted and amended from time to time by duly-approved motion of the Board, are incorporated herein by this reference.

#### **SECTION 10: Development of the Joint Insurance Arrangement.**

- (1) The Board has adopted the Association's Joint Insurance Arrangement, including the insurance coverage provided for in Section 9, the amount of initial contributions, the cost allocation plan and formula, and the amount and type of insurance to be procured.

- (2) The Joint Insurance Arrangement provided by the Association shall extend to all Participant operations, unless otherwise expressly excluded by the Board, or by the provisions of such policy or policies of insurance as are obtained.
- (3) The initial contribution for each Participant shall be determined by the Board, in its discretion, based upon a fair formula which shall consider, but not be limited to, total Participant payroll, administrative experience of the Participant, the previous loss experience of the Participant, the liability risks of the Participant, if the Participant has a self-insured retention or deductible, and the costs to the Association of adding the Participant as a member. The initial contribution is an estimate and may be revised at any time by the Association based on actual pooled loss experience, individual exposure or other factors.
- (4) The Board shall adopt reasonable criteria for determining each Participant's annual share of pooled expenses, which may include the Participant's payroll as compared to the total payroll of all Participating members, the Participant's individual loss experience, and such other criteria as the Board may determine to be relevant.
- (5) The Board, by an affirmative vote of the majority, shall have the authority to intercept State revenue-sharing, municipal assistance, and other funds due to be paid by the State to any Participant that has failed to pay its annual deposit as agreed herein as and when due, in an amount equal to the unpaid portion of the deposit, plus interest, from the due date until paid, at the rate of 10.5 percent per annum or a lesser rate set by the Board or required by law.

#### **SECTION 11: Method of Apportioning Costs**

- (1) **Contribution Calculation.** The cost allocation plan and formula adopted by the Board shall provide for review of the Participants' contributions in order to produce a contribution for the following year for each Participant that is derived by consideration of the following factors:
  - (a) the amount of losses borne individually by the Participant, if determined by the Board;
  - (b) the amount of pooled losses and other expenses, if determined by the Board; and
  - (c) the Participant's contribution to reserves for incurred-but-not-reported losses, the amount of such reserves to be determined by the Board;
  - (d) the amount of the Participant's self-insured retention or deductible;
  - (e) the cost of reinsurance, excess insurance or other costs of coverages purchased for, and on behalf of, the Participants;
  - (f) rating criteria and other factors such as, but not limited to, fire protection, risk management programs, and the nature of risk to be insured;
  - (g) any adjustments based on experience or exposure audit provisions in the Participant Coverage Memorandum or any reinsurance, excess insurance or other insurance policies obtained pursuant to this Agreement; and
  - (h) any funds set aside by the Board to fund any catastrophic loss reserve fund, rate stabilization fund, or excess loss fund established by the Board.
- (2) **Members' Equity and Dividend Distribution.** Unallocated surplus, Participants' retained earnings, or Participants' equity are amounts considered to be funds in excess of the amount set aside each year for reserves and incurred-but-not-reported losses.
  - (a) The Board in its sole discretion may utilize the unallocated surpluses from any policy year to provide for funding capital reserves, purchasing personal and real property beneficial to



the Association, stabilizing rates, developing loss programs for members, and furthering any other legitimate Association purpose.

- (b) The Board in its sole discretion may transfer surplus funds to any program year that is actuarially unsound in order to supplement funds needed to provide coverage for that program year.
- (c) The Board, by affirmative action, may determine an amount (if any) of excess funds that may be distributed to Participants based on their pro-rata portion of contribution for those years from which those excess funds are selected.
- (d) Adjustments to the cost allocation formula may be made to account for Participants with varying levels of self-insured retentions and/or deductibles.
- (e) Dividend payments shall be paid after July 1 each year, but only to eligible Participants who are Participants after July 1 of the current policy year.
- (f) Participants who withdraw from membership shall not again be eligible for dividend distributions until after July 1 of the third year of their renewed membership.
- (g) Except for dividend payments determined by the Board, no assets of the Association designated as unallocated surplus, Participants' retained earnings, or Participants' equity shall be available for use by any Participant.
- (h) Participants who withdraw from membership in the Association or Participants whose membership is terminated shall forfeit all interest in any dividend, unallocated surplus, Participants' retained earnings, or Participants' equity in the Association.

## **SECTION 12: Accounts and Records.**

- (1) The Board shall establish a joint insurance fund and administer the fund as required by statute.
- (2) Annual Budget. The Association shall annually adopt an operating budget pursuant to this Agreement.
- (3) Funds and Accounts. The Association shall establish and maintain such funds and accounts as may be required by the Legislative Budget and Audit Committee, applicable law or regulation, or generally accepted accounting practices. Financial books and records of the Association shall be in the hands of the Treasurer or his or her designee and shall be open to inspection at all reasonable times by representatives of the Participants.
- (4) Administrator's Report. Within 150 days of the end of the fiscal year of the Association, the Administrator shall furnish a detailed report of the operation and condition of the joint insurance fund to the Board and the Director of the Division of Insurance.
- (5) Annual Actuarial Determination. The Association shall require an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the Association are actuarially sound.
- (6) The Board shall provide for an annual independent audit of the accounts and records of the Association. The audit shall conform to generally accepted auditing standards, and include a review of the actuarial assumptions used for establishing the reserves for losses of the Association by a casualty actuary who is a member of the American Academy of Actuaries. The audit report shall include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions used by the Association continue to be sound and the level of the reserves of the Association are adequate. By

October 1 of each year, the Administrator shall prepare and deliver to the Legislative Budget and Audit Committee and the Director of the Division of Insurance a report of the true and accurate financial condition of the Association. The report shall be attested to by the Administrator and the Board; include an analysis, certified by a member of the American Academy of Actuaries of the sufficiency of the loss reserves of the Association; and be certified by a certified public accountant. The report shall also be filed as a public record with each of the Participants.

### **SECTION 13:        Responsibility for Monies.**

- (1) The Treasurer of the Association or his or her designee shall have the custody of and disburse the Association's funds subject to Board approval. He or she shall have the authority to delegate the signatory, receiving, safekeeping, and disbursement functions to such persons as are authorized by the Board. The Treasurer may also serve in such other official or employee status as the Board may direct.
- (2) A fidelity bond or comparable security in an amount set by the Board, but not less than \$1,000,000 shall be required of all officers and personnel authorized to disburse funds of the Association. This bond shall be purchased by the Association.
- (3) The Treasurer's duties shall include:
  - (a) receiving all money of the Association and place it in the treasury to the credit of the Association;
  - (b) being responsible upon his or her official bond for the safekeeping and disbursement of all of the Association's money so held by him or her;
  - (c) paying, when due, out of money of the Association so held by him or her, all sums payable on outstanding debts of the Association; and
  - (d) paying any other sums due from the Association only upon request for payment signed by the Chairman of the Board or the Administrator. The Board may designate alternate persons to sign payment requests by the Chairman of the Board or the Administrator.

### **SECTION 14:        Responsibilities of the Association.**

The Association shall perform the following functions in discharging its responsibilities under this Agreement:

- (1) Provide insurance coverage as necessary including, but not limited to, a self-insurance fund and commercial insurance, as well as excess or reinsurance coverage and umbrella insurance, by negotiation or bid, and purchase, as necessary;
- (2) Assist each Participant's assigned risk manager with the implementation of that function;
- (3) Provide loss prevention and safety and consulting services to Participants as required;
- (4) Provide claims adjusting and subrogation services for claims covered by the Association's Joint Insurance Arrangement;
- (5) Provide loss analysis by the use of statistical analysis, data processing, and record and file-keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- (6) Provide for Participants, as needed, a review of their contracts to determine sufficiency of indemnity and insurance provisions;

- (7) Invest monies not required for its immediate operations; and
- (8) Undertake all other responsibilities deemed necessary by the Board in order to carry out the purposes of this Agreement.

## **SECTION 15: Responsibilities of Participants.**

Participants shall have the following responsibilities:

- (1) Each Participant shall appoint a representative as provided in Article 5, Section 2 of the Bylaws.
- (2) Each Participant shall appoint an employee of the Participant to be responsible for the risk management function within that entity, and to serve as a liaison between the Participant and the Association as to risk management.
- (3) Each Participant shall maintain an active safety officer and/or committee, and shall comply with all recommendations of the Association concerning the development and implementation of a loss control policy to prevent unsafe practices.
- (4) Each Participant shall maintain its own set of records in all categories of loss to ensure accuracy of the Association's loss reporting system.
- (5) Each Participant shall pay its contribution to the Association when due. The Association may cancel a Participant's coverage pursuant to applicable law if a contribution for any insurance policy obtained pursuant to this Agreement for that Participant is not paid when due.
- (6) Upon withdrawal, cancellation by the Board, or other termination, each Participant shall immediately pay to the Association its share of contribution, calculated pro rata to the date of withdrawal, cancellation, or other termination, plus accrued interest at the rate of 10.5 percent per annum or a lesser rate set by the Board or required by law. When and if required of it by the Board pursuant to Sections 21 or 22 of this Agreement, plus, in the case of a Participant that terminates its participation for any reason before the end of the term of this Agreement, liquidated damages in an amount equal to 20 percent of the Participant's estimated deposit for each year remaining in the term of this Agreement, to compensate the Association for the loss of its contribution to the Association's surplus for the remainder of the term of this Agreement.
- (7) No Participant shall enter into an agreement to purchase insurance for the risks as to which insurance will be provided under this Agreement, for coverage during the period that the Participant is a member of the program except with the express written permission of the Administrator.
- (8) Each Participant shall provide the Association with such other information or assistance as may be necessary for the Association to carry out the Joint Insurance Arrangement under this Agreement.
- (9) Each Participant shall in all ways cooperate with and assist the Association, and any insurer of the Association, in all matters relating to this Agreement and covered losses, and will comply with all bylaws, rules, regulations, and policies adopted by the Board.

## **SECTION 16: Claims Administration and Payment of Losses.**

- (1) Each Participant shall give prompt notice of any claims to the Association, and failure to give immediate written notice of claims shall constitute a waiver of coverage.
- (2) The Association will investigate all potentially covered claims against the Participants and will attempt to adjust or settle such claims. Subject to the provisions of this Agreement and rules and regulations promulgated by the Board, legal counsel selected by the Association will defend such claims against the Participants. The Participants shall have the right to hire, at its own expense, its own co-counsel to work with defense counsel employed by the Association. The Participant agrees to provide and make available to the Association all information and all personnel as may be reasonably required to fully investigate and defend each claim.
- (3) The Association shall pay claims according to the provisions set forth in this Agreement and the rules and regulations promulgated by the Board, and all applicable coverage agreements or policies.
- (4) In the event the Association or its counsel wishes to settle a claim, the Participant and its co-counsel (if any) will accept the Association's recommendation and judgment and enter into such settlements as the Association determines to be appropriate.
- (5) Participants with a self-insured retention, with the express written permission of the Association, may be permitted to administer, defend and adjust claims within its own self-insured retention, in a manner consistent with the Participant Coverage Memorandum and Association approved claims policies and procedures. Such written permission does not relieve the Participant from notice requirements as defined in the Participant Coverage Memorandum. Once the self-insured retention is reached, all remaining defense and adjustment of the claim will be handled by the Association pursuant to paragraphs (1)-(4) above. Written permission notwithstanding, the Association retains the right to take over handling of claims below the Participant's self-insured retention in its sole judgment and discretion.

## **SECTION 17: Coverage Determination and Appeal.**

- (1) It shall be the duty and responsibility of the Association, to make all initial determinations regarding rights to coverage protections provided under the joint insurance arrangement. Upon making a determination of coverage or non-coverage, the Association shall notify the Participant of its determination in writing. In the written determination of coverage or non-coverage, the Association shall advise the Participant whether the Association will defend the claim and/or indemnify the Participant, whether the Association is reserving any rights to make any subsequent determinations regarding coverage, or whether the Association is denying coverage.
- (2) The Board shall promulgate rules and procedures whereby a determination by the Association denying coverage shall be reviewed by the Board upon appeal by the aggrieved Participant.

## **SECTION 18: New Members.**

Additional Participants may be permitted, in the complete discretion of the Administrator, to become signatories to this Agreement or a similar agreement.

## **SECTION 19: Withdrawal.**

- (1) Any withdrawal by a Participant shall be effective only at the end of the fiscal year, and only after the Participant gave the Association not less than six months' written notice of intent to withdraw. The first opportunity to provide such notice of intent to withdraw shall be as provided in the Bylaws.
- (2) Any Participant who gives written notice of intent to withdraw as provided herein shall deliver it to the Association by mail, by facsimile, or by hand delivery, and shall obtain and, if requested, proffer proof of timely delivery.
- (3) After withdrawal, the former Participant shall remain liable to the Association for additional contribution or assessments as described in the Bylaws or elsewhere in the CPA.
- (4) The withdrawal of any Participant from this Agreement shall not terminate it.
- (6) Upon withdrawal, cancellation by the Board, or other termination, each Participant shall immediately pay to the Association its share of contribution, calculated pro rata to the date of withdrawal, cancellation, or other termination, plus accrued interest at the rate of 10.5 percent per annum or a lesser rate set by the Board or required by law. When and if required of it by the Board pursuant to Sections 21 or 22 of this Agreement, plus, in the case of a Participant that terminates its participation for any reason before the end of the term of this Agreement, liquidated damages in an amount equal to 20 percent of the Participant's estimated deposit for each year remaining in the term of this Agreement, to compensate the Association for the loss of its contribution to the Association's surplus for the remainder of the term of this Agreement.
- (7) Participants who withdraw from membership in the Association or Participants whose membership in the Association is terminated shall remain liable for their proportionate share of additional contribution or assessments for losses and expenses attributable to the time periods of their participation in the Association. There shall be no time limitation on former Participant liability under this section.

## **SECTION 20: Cancellation.**

The Association shall have the right to cancel any Participant's membership in the Joint Insurance Arrangement as provided in the Bylaws. Any Participant so cancelled shall be given not less than 30 days' notice before the effective date of the cancellation. If cancellation is due to nonpayment of amounts owing or any other default by a Participant, the notice period for the default (with notice indicating possible cancellation due thereto) may be included within the 30-day notice period provided by this section. After cancellation, the former Participant shall remain liable for additional contributions or assessments as described in the Bylaws or elsewhere in the CPA.

**SECTION 21: Termination and Distribution.**

- (1) This Agreement may be terminated by the written consent of three-fourths of the Participants; provided, however, that this Agreement and the Association shall continue to exist for the purpose of disposing of all claims, distribution of assets and all other functions necessary to wind up the affairs of the Association.
- (2) Upon termination of this Agreement, all assets of the Association shall be distributed after the payment of, or provision for, all debts, claims, and liabilities, only among the Participants, in accordance with and proportionate to their pro-rata share of contributions. The Board shall determine any such distribution within six months after the last pending claim or loss covered by this Agreement has been finally disposed of.
- (3) The Board is vested with all powers of the Association for the purpose of winding up and dissolving the business affairs of the Association. These powers shall include the power to require Participants, including those which were program participants at the time the claims arose or at the time the covered loss was incurred, to pay their share of any cash assessment deemed necessary by the Board for final disposition of all such claims and covered losses subject to the Agreement.

**SECTION 22: Bylaws.**

The Board has caused to be developed and maintained Association bylaws to govern the day-to-day operations of the Association. Each Participant shall receive a copy of the bylaws, and shall be bound by the provisions thereof.

**SECTION 23: Notices.**

Notices to Participants hereunder shall be sufficient if mailed to the address listed on the application form of the respective Participant. A Participant may change such address from time to time by providing written notice of such change to the Association, at its registered office at: 807 G Street, Suite 356, Anchorage, Alaska 99501.

**SECTION 24: Amendment.**

This Agreement may be amended by a vote of two-thirds (2/3) of the Trustees present at any annual meeting, regular meeting, or special meeting of the Trustees called at least in part for the purpose of amending this Agreement. Any amendment to this Agreement shall be effective immediately unless otherwise stated therein.

**SECTION 25: Prohibition Against Assignment.**

No Participant may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third-party beneficiary of any Participant shall have any right, claim, or title to any part, share, interest, fund, premium, contribution, or asset of the Association.

**SECTION 26: Agreement Complete.**

This Agreement, along with the exhibits hereto and documents incorporated by reference herein, constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

**SECTION 27: Governing Law.**

This Agreement shall be interpreted according to the laws of the State of Alaska. If suit is brought relating to any dispute arising hereunder or related hereto, such shall be filed in the Superior Courts of Alaska in Anchorage, Fairbanks, or Juneau, and in no other place.

**SECTION 28: Severability**

If a provision of this Agreement is or becomes illegal, invalid or unenforceable, the remainder of this Agreement shall remain valid and enforceable.

**SECTION 29: Construction of Contract.**

Separate agreements shall be executed by all Participants and all such agreements shall be construed as a single collective contract.

**SECTION 30: Conformity to Statute.**

In the event any term or provision of this Agreement is found to be in conflict with the statutes of the State of Alaska, such term or provision shall be construed so as to conform to such statutes.

**IN WITNESS WHEREOF**, the parties hereto, acting through properly authorized officials, hereby execute this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**City/Borough/School District**

By: \_\_\_\_\_  
**Name**

Its: \_\_\_\_\_  
**Title**

\_\_\_\_\_  
ATTEST

\*\*\* To be completed by AML/JIA \*\*\*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Alaska Municipal League Joint Insurance Association, Inc.**

By: \_\_\_\_\_  
**Name**

Its: Executive Director  
**Title**

\_\_\_\_\_  
ATTEST