NEW MEXICO MUNICIPAL LEAGUE

1229 Paseo de Peralta • Santa Fe, NM 87501

Date: June 15, 2021
From: AJ Forte, *Executive Director*, New Mexico Municipal League
To: Member Insureds
Re: Joint Powers Agreement

To Member Insureds:

At its June 3, 2021 Regular Meeting, the New Mexico Self Insurer's Fund Board of Trustees formally approved the attached update to your Joint Powers Agreement. This document reflects the first substantive change to your partnership in over thirty years, and represents a significant step forward in equity, transparency, and accountability, which together were cornerstone considerations in the Board's editing process. Although the Board's approval itself compels your assent with changes to the agreement's terms, you still must sign the document for it to take legal effect. We ask that you do so at your earliest opportunity.

For your convenience, please see below for the more notable changes made to the agreement. This list is not exhaustive, and some changes are aesthetic and thus not included:

- several references to statute (i.e., the Joint Powers Agreement Act, the Pooling Statute), tying certain requirements to authority;
- requirement to establish a committee to review the agreement every four years;
- vests authority in the Board to vote on elections for Board leadership;
- allows for expansion of Board membership, removes risk of overrepresentation, and clarifies process for removal of Board members;
- creates greater separation of duties with regard to financial practices and procedures;
- provides for delegations of power to the Administrator, assigns additional duties thereto, and provides additional Board oversight of such person;
- protects Fund members more completely upon membership withdrawals;
- removes certain appeal functions that were alternatively unused or unnecessary;
- grants greater actuarial authority to Board upon dissolution of Fund; and
- increases continuity by raising the floor for dissolving the Fund or changing the agreement.

We ask that you return the signature page of the attached back to our office, with advance .pdf copy email to cnicley@nmml.org, and via mail to 1229 Paseo de Peralta, Santa Fe, NM 87501 no later than June 25, 2021. If you have any questions at this time, you can reach me at (505)-699-6944.

Respectfully,

AJ Forte
Executive Director

JOINT POWERS AGREEMENT
NEW MEXICO MUNICIPAL LEAGUE
NEW MEXICO SELF INSURERS' FUND

This New Mexico Municipal League Joint Powers Agreement (hereinafter "Agreement") is executed by and among its Members in consideration of the representations contained herein and for the purposes set forth more fully below.

RECITALS

WHEREAS, the Joint Powers Agreement Act (NMSA 1978 §§ 11-1-1 to 11-1-6 (as amended), hereinafter "the Act") allows for two or more public agencies, as defined in the Act, to jointly exercise any power common to the public agencies desiring such an arrangement; and

WHEREAS, the parties (hereinafter "Members") currently part of the New Mexico Municipal League (hereinafter "the League") that participate in the New Mexico Self Insurers' Fund (hereinafter "the Fund") each meet the criteria of the term "public agency" as defined in NMSA 1978 § 11-1-2; and

WHEREAS, the Members are each empowered with statutory authority per NMSA 1978 §§ 3-62-1 and 3-62-2 to obtain insurance coverage through a self-insurance schema funded through the pooling of municipal, local public body, or political subdivision resources; and

WHEREAS, the Members are desirous of relying upon statutory pooling language to obtain such coverage through the joint exercise of this common power;

THEREFORE, the Members now enter this Agreement outlining the procedural and substantive posture of the Fund, in mutual agreement with what follows:

I. DEFINITIONS

For the purpose of this Agreement:

A. "Administrator" shall mean the Executive Director of the League, or the Executive Director's designee;
B. "Board of Trustees" or "Board" shall mean the board of trustees of the Fund;
C. "Employee" shall mean an employee of a Member and as may be further defined by applicable contract between the Fund and a Member, by applicable law, or by the board of trustees;
D. "Fund" shall mean the New Mexico Self Insurer's Fund;
E. "Insurance" shall mean indemnification against loss, damage, or liability arising from unknown or determinable contingencies, or payment of a specified amount upon determinable contingencies;
F. "League" shall mean the New Mexico Municipal League;
G. "Member" shall mean any incorporated municipality, local public body, or political subdivision, including a county, housing authority, or joint powers agency whose membership consists in whole or in part of a municipality, an instrumentality of a

municipality as determined by the Internal Revenue Service, or a special district lying in whole or in part in a municipality, in the State of New Mexico which has joined the Fund;

H. "Plan" shall mean any program for insurance or self-insurance for members or their employees, including benefits, services, protection, or indemnification for life, accident and health, worker's compensation, casualty, surety, or other lines of coverage;

I. "Premium" shall mean the consideration for insurance or self-insurance as further defined by applicable contract between the Fund and a Member.

J. "Risk" shall mean any chance of loss from contingencies or perils.

II. PURPOSE

The purpose of this Agreement is as follows:

A. Permit the Members joining herein to make a more efficient use of their powers and resources by cooperating on a basis that will be of mutual advantage; and

B. Provide a procedure for securing benefits, services, indemnification, or protection for Members and their employees relating to insurance or self-insurance, as authorized by law.

III. EFFECTIVE DATE

The effective date of this agreement and bylaws shall be July 1, 2021, or upon approval by the Secretary of Finance and Administration as provided by the Act, whichever is later. The Fund shall continue from year to year, without the necessity of a formal renewal by any Member, unless sooner dissolved by mutual agreement. The Fund shall establish a subcommittee to formally review this agreement every four (4) years.

IV. CREATION OF FUND

To carry out the purposes of this Agreement, the Fund is created, which Fund is formed, financed, organized, shall operate, and may be dissolved in accordance with the provisions of this Agreement and bylaws and any contract between the Fund and a Member. The principal office and situs of the Fund is located at 1231 Paseo de Peralta, Santa Fe, New Mexico 87501.

V. MEMBERSHIP

Membership in the Fund shall consist of those Members which are or become parties to this Agreement and contract for insurance for the Fund. Each Fund Board Member shall be entitled to one vote on elections of members of the Fund Board, approval to be conferred by such Board on nominees brought forward by the Executive Director, New Mexico Municipal League President, and Fund Chair.

VI. BOARD OF TRUSTEES

A. There shall be a Board of Trustees consisting of at least eleven (11) trustees responsible for the Fund who are elected from among the Members of the Fund, with at least one trustee-representing Member from each of the districts established by the League. The trustees shall be elected for three-year terms commencing on the first day of October after their election. The Board may from time to time increase or decrease the number of board members by

majority vote of the Board, provided that the number of trustees shall not be less than eleven (11), shall always be an odd number, and that no more than two (2) trustees shall be from the same district. The terms of office for board members shall be staggered so that approximately the same number of seats are up for election in any given year.

B. Each trustee shall be an elected or appointed officer or employee of a Member of the Fund. If a trustee ceases to be an elected or appointed officer or employee of a Member of the Fund, the trustee's position shall be deemed vacant.

C. Any vacancy for any unexpired term on the Board shall be filled for the duration of the term by the Chairperson's appointment with the advice and consent of the remaining trustees.

D. Trustees may be reimbursed for their time and expenses incurred to perform their respective duties as authorized by applicable law and subject to Board approval. No trustee nor the administrator appointed in Article VII shall incur any liability for any action, or failure to act, in such capacity except for gross negligence or willful misconduct.

E. A trustee shall be removed from office when the trustee misses three (3) consecutive Board meetings, and may be removed from office by a two-thirds (2/3) vote of the other members of the Board for convenience. removed

F. The Board establishes and manages plans, policies, and other services contemplated in this agreement and bylaws and the contract or agreement between the Fund and a Member, to include:

1. Prepare specifications, request bids, and enter into any contract for the purpose of underwriting, administering or providing any part or all of the Plans, policies, or services on behalf of and with a Member;
2. Determine the rates, risks, benefits, and terms of any Plans, policies, or services contemplated in this agreement; adjust the rates and benefits based on claim experience after notice to affected Members;
3. Provide for individual or collective underwriting or other agreements for Members in any Plan, policy, or service, serve as the policyholder of any group policies or Plans; determine the methods of claim administration and payment, and provide for claim experience for Members collectively or separately;
4. Determine the amount of contributions or appropriations required from Members for the purpose of participating in any part or all of the Plans, policies, or services established pursuant to this Agreement and bylaws;
5. Establish standards for eligibility of Members or Employees in any Plan, policy, or service, and procedures for enrollment and withdrawal in any Plan, policy, or service; and establish effective dates of coverage;
6. Provide for the administration of the fund or funds established herein, for the manner of payments to such fund and for payment of all expenses in connection with the Plans, policies, or services which may be established; and establish procedures for safekeeping, handling, and investing such fund or funds and any monies received or paid;
7. Establish the duties and responsibilities of the Administrator to enable the correct billing of Premiums and fees, enrollment of Members and their Employees, and payment of claims;
8. Study the operation of Plans, policies, or services, gross and net costs, administrative costs, benefits, utilization of benefits and claims administration;
9. Incur expenses, acquire and hold property, and enter into agreements necessary to accomplish the purposes of this Agreement and bylaws; exercise the full power and authority of any Member of the Fund when requested to do so by the Member

governing body; or otherwise provide for necessary activities to accomplish the purposes of this Agreement;

10. The Board shall have the authority, by a majority vote, to delegate power of the Board to the Administrator.

G. Subject to Board approval, the Administrator shall ensure the Fund maintains cash reserves and supplemental reserves computed in accordance with standard actuarial principles, taking into account historical and other data, designed to measure claims development and claims incurred but not yet reported, so that funds will be available to meet these claims as they become due.

VII. OFFICERS, MEETINGS, PROCEDURES

The trustees shall elect from among their membership a Chair, Vice-Chair, and Treasurer. The Board shall fix the date, time, and place of regular meetings. The Board shall hold a regular meeting, which shall be the annual meeting, at which officers shall be elected following a nomination and voting of Members in accordance with a procedure adopted by the Board. Special meetings may be called by the Chair, and in the Chair's absence the Vice-Chair, or any three (3) individual members of the Board.

A quorum for the transaction of business shall consist of a majority of the trustees, but any action of the Board regarding rates, membership in the Fund, settlement of claims requiring Board approval and offering or termination of lines of coverage must have a favorable vote by a majority of the trustees of the Board as constituted. The Board shall adopt such procedures as are deemed necessary and desirable for the conduct of business.

VIII. ADMINISTRATOR AND STAFF

The Executive Director of the League shall serve as Administrator of the Fund. The Administrator may appoint other employees, deputy treasurers, or employ or contract for legal counsel, actuaries or other consultants, as the Executive Director deems necessary to administer Plans, policies, or services established pursuant to this Agreement and the League's bylaws.

IX. FINANCING

The Board shall establish a fund or funds as it deems necessary for the purpose of, but not limited to, the following:

A. Payment of premiums or fees for any part of the Plans, policies, or services established pursuant to this Agreement and bylaws;
B. Payment of necessary expenses approved by the Board;
C. Payment of claims;
D. Payment of administration expenses;
E. Payment of other expenses incurred in accomplishing the purposes of this Agreement and bylaws.

All monies paid to such fund or funds shall be held in the name of the Fund. After payment of any expenses authorized and compensation of the administrator or other employees and other incidental expense, any remaining money shall be held for the benefit of the Fund.

The Board shall provide for the manner and dates for preparation by the Administrator of reports on the financial condition of any fund or funds.

Each member shall pay for all costs, Premiums, or other fees attributable to its respective participation in any Plan, policy, or service established under this Agreement, and shall be responsible for its obligations under any contract entered into with the Fund.

Subject to review and approval of the Board, the Administrator shall establish written financial policies relating to the handling of the Fund. The Fund shall provide for an annual audit of its financial records, and Members shall have access to all records relating thereto, excepting those items that contain confidential or protected information.

The Board shall provide for strict accountability of all receipts and disbursements.

X. ADDITIONAL MEMBERS, PARTICIPATION, TERMINATING MEMBERSHIP

A. Any eligible Member, as defined above, may join the Fund by adoption of the Agreement by its governing body or board in accordance with the procedures of the Joint Powers Agreement Act. Any Member may withdraw from the Fund by a resolution of its governing body after one hundred and eighty (180) days' notice is given in writing to the Chair of the Board. The withdrawing Member may retract their withdrawal at any time of the one-hundred-and-eighty-day period provided for above. Following the conclusion of the one hundred and eighty days above, the withdrawing Member is prohibited from rejoining the Fund for a period of two (2) years. Any withdrawing Member shall relinquish all voting rights and privileges. Any and all claim of title or interest to any asset of the Fund after its withdrawal from the Fund shall be as determined by the Board, in accordance with this Agreement and bylaws and a contract.
B. The Fund may be terminated by a unanimous vote of the Board as constituted.
C. Participation by a Member in any contract of insurance offered by the Fund becomes effective at the date and time shown on the certificate or declarations and may be terminated by sixty (60) days' written notice of termination by either party unless otherwise specified under the terms herein or by Board resolution. Termination of any contract of insurance by a member which occurs without proper notice or on a date other than the renewal date of the contract for insurance shall cause the Member to be subject to short rating and penalties as determined by the Board. In the event that the Member fails or refuses to make the payments of Premiums as herein provided, the Fund reserves the right to terminate such Member by giving ten (10) days' written notice and to collect any and all Premiums that are earned pro-rata for the period preceding contract termination. Interest, collection expenses or penalties may also be levied for non-payment of Premium as the Board may decide. No liability shall accrue to the Fund or its Members for any injury or accident occurring to an Employee of a Member after the effective date of the termination notice.
D. The safety engineering and loss control services of the Fund are designed to assist Members in following a plan of loss control that may result in reduced losses. The Member agrees

that it will cooperate in instituting loss control resolutions and policies that may be recommended by the Board for the purpose of eliminating or minimizing losses.

E. The Member agrees that it will appoint a coordinator and that the Fund shall not be required to contact any other individual except this one person. Any notice to or any agreements with the coordinator shall be binding upon the Member. The Member reserves the right to change the coordinator from time to time by giving written notice to the Fund.

F. The Fund agrees to handle any and all covered claims after notice of injury or claim has been given, and provide a defense. The Member hereby appoints the Fund as its agent and attorney in fact to act in all matters pertaining to processing and handling of claims and shall cooperate fully in supplying any information needed or helpful in such defense. The Fund shall carry on all negotiations and negotiate within authority granted it. If a personal appearance by the Member or an Employee is necessary, the expense of this appearance will be paid by the Member unless otherwise agreed. The Fund will retain and supervise legal counsel on behalf of and at the expense of the Fund necessary for the prosecution of any litigation. All decisions on individual cases shall be made by the Fund, which includes the decision to appeal or not to appeal a final ruling and decision. Any suit brought or defended by the Fund shall be in the name of the Member. Notwithstanding any provisions of this paragraph, all reports and filings required by the Worker's Compensation Act and the state of any employer will be the responsibility of the Member.

G. The Member agrees to abide by this Agreement, bylaws, and resolutions of the Board, and any amendments thereto.

H. The Fund and its agents are authorized to inspect, subject to appointment during business hours established by a Member, all work places, machinery, appliances, and equipment of the Member, and books, contracts, and records related to payroll, employment job class, Premium, expenditures, or any financial and employment data during the Members' enrollment in the Fund and within two (2) years after final termination of membership in the Fund.

XI. DISSOLUTION AND DISPOSITION OF PROPERTY

The title to all property, real and personal, acquired by the Fund shall be vested in the Fund. In the event of termination of the Fund, such property, including any surplus money on hand, shall belong to the Members of the Fund according to their participation in the Fund and in accordance with any further applicable criteria developed by the Board.

Upon partial or complete termination of the Fund, the vote of at least two-thirds (2/3) of the Board of the Fund is binding in all respects as to the disposition of property and dissolution of the Fund. The Board shall serve as trustees for the disposition of property or funds, including retention of an actuarial consultant, payment of obligations, dissolution and winding up of the affairs of the Fund.

XII. AMENDMENT

This Agreement may be amended from time to time upon:

A. Recommendation of any member of Board and approval by at least two-thirds (2/3) of the Board as constituted; or

B. Petition proposed by at least fifty percent (50%) of the Members of the Fund and approval by at least two-thirds (2/3) of the members of the Board as constituted.

Any proposed amendment shall be circulated to the Board at least thirty (30) days prior to the date that approval is set for a vote.

XIII. COUNTERPARTS

This Agreement may be executed in counterparts, which together with this document shall be considered one Agreement. The Executive Director shall be responsible for maintaining a copy of this Agreement and all signed counterparts on file.

XIV. SIGNATURES

Approved by:

Chair of the Board (printed)	Member (printed)
Chair of the Board (signature)	Member (signature)
Municipality/Entity	Municipality/Entity
Date	Date