

**THE INTERGOVERNMENTAL COOPERATIVE AGREEMENT**

**A CONTRACT AND BY-LAWS**

**FOR**

**PUBLIC RISK MANAGEMENT OF FLORIDA**



**(PRM)**

**AS AMENDED AND RESTATED THROUGH APRIL 27, 2018**

THE INTERGOVERNMENTAL COOPERATIVE AGREEMENT  
(A CONTRACT AND BY-LAWS FOR PUBLIC RISK MANAGEMENT OF FLORIDA)  
(PRM)

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ARTICLES OF ASSOCIATION  
AND BY-LAWS  
OF  
PUBLIC RISK MANAGEMENT OF FLORIDA  
(PRM)

BE IT KNOWN THAT:

The below named public agency or agencies of the State of Florida for the purpose of forming a risk management and self-insurance association pursuant to the terms of Florida Statutes Sections 768.28(16)(a), 440.57, and 163.01, Florida Interlocal Cooperation Act of 1969, do bind themselves contractually to and adopt these Articles of Association and By-Laws.

Article 1 - Name and Duration

1.1 Name. The name of this association shall be Public Risk Management of Florida, referred to hereinafter as the Pool.

Article 2 - Definitions and Purpose

2.1. Definitions. As used in this agreement, the following terms shall have the meaning hereinafter set out:

"Annual Payments": The amount each Member must annually pay to fully fund the costs of the full operation of the Pool.

"Aggregate Excess Insurance": Stop Loss Insurance purchased by the Pool from insurance companies and/or Lloyd's of London, or other similar entities, approved by the Board of Directors, or any committee appointed by the Board for such purpose, to protect the Pool from an accumulation of losses in any policy year should the "Loss Fund" be exhausted. Once the "Aggregate Excess Insurance" is triggered, any further losses within the "Self Insured Retention" will be paid by this coverage.

"Fiscal Year": The fiscal year of the Pool shall begin on October 1<sup>st</sup> and end on September 30<sup>th</sup>.

"Joint Self-Insurance" or "Self-Funded": A self-insurance or self-funded program in which Members agree to annual payments to fully fund the operations of the Risk Management Pool.

"Loss Fund": The fund established to pay claims occurring within the "Self Insured Retention." The "Loss Fund" represents the maximum amount for which the Pool is exposed in a single policy period.

“Maintenance Deductible”: The amount paid by the “Member” before the loss is paid by the “Self Insured Retention.” This is a nominal amount designed to protect the “Loss Fund” from small claims. The “Maintenance Deductible” applies only to property, automobile physical damage and crime losses.”

“Member Deductible”: The portion or monetary amount that PRM will invoice member as mutually agreed.

“Member Self-Insured Retention”: A layer of assumed risk where the Member self-insures a pre-determined amount of loss per occurrence.

"Members": The public agencies of the State of Florida which initially or later enter into the intergovernmental association established by this Intergovernmental Agreement.

“Multi-Loss Coverage”: This multiple loss protection limits a loss involving more than one line of coverage from one occurrence (i.e. property, liability, workers’ compensation) to one “Self Insured Retention.”

“Policy Year”: The policy year of the Pool shall be from the date of inception of coverage to the termination of said coverage, or on other dates as approved by the membership in attendance at a scheduled meeting of the membership.

"Pool": Public Risk Management of Florida established pursuant to the Constitution and the Statutes of the State of Florida by this Intergovernmental Agreement.

“Preferred Member/membership”: A Member with the Pool, who finds several benefits in pooling, including the multiple benefits to be achieved in participating in all available lines of coverage.

"Risk Management": A program attempting to reduce or limit casualty and property losses to Members and injuries to employees caused by or arising out of the operations of Members. Where claims arise the Pool will provide processing of claims, investigation, defense and settlement within the financial limits of the Pool as established in accordance with this Intergovernmental Agreement and will tabulate such claims, costs and losses.

"Risk Management Pool": A fund of public monies established by the Pool to jointly self-insure and self-fund property coverages, general liability, automobile liability, professional liability, public officials' liability and workers' compensation, and any other coverage lines approved by the Board of Directors.

"Self-Insurance": The decision by a public agency not to purchase insurance coverage for risks below certain limits; to seek and maintain immunities provided by law for a noninsured public agency; to rely upon its financial capabilities to pay covered losses which occur in case third-party claims are held valid and not barred or capped by available immunities; and to purchase some insurance to protect against catastrophic or aggregate losses. The purchase of liability insurance by the Pool or any of its Members is not intended to, and does not, waive sovereign immunity. Purchase of liability insurance shall only be pursuant to Florida Statutes, which allow for the purchase of insurance by the Pool without the waiver of sovereign immunity

by the Pool or any of the Pool's Members and is not pursuant to any other statute of the State of Florida.

“Self Insured Retention”: A layer of assumed risk where the pool or Member self-insures a pre-determined amount of loss per occurrence.

"Specific Excess Insurance": Insurance purchased by the Pool from insurance companies and/or Lloyd's of London, approved by the Board of Directors, or any committee appointed by the Board for such purpose, that provides catastrophe coverage up to the limit(s) chosen by the Pool.

“Standard Member/membership”: A Member with the Pool, who finds several benefits in pooling and who values pricing and the ability to not participate in all available lines of coverage.

2.2. Purpose: The Pool is a cooperative agency voluntarily established by Members as set forth in Florida Statutes Sections 163.01, 768.28 and 440.57 for the purpose of seeking the prevention or lessening of casualty and property losses to Members and injuries to persons or employees which might result in claims being made against Members. The purpose of this Pool is to carry out and effect the agreed upon functions and purposes of this Intergovernmental Agreement as stated herein.

It is the intent of the Members of this Pool to create an entity, which will administer a Risk Management Pool and utilize such funds to defend and protect, in accordance with this Intergovernmental Agreement, any Member of the Pool against liability for a covered loss. This Agreement shall constitute the substance of a contract among the Members.

All funds contained within the Risk Management Pool are funds directly derived from its Members who are public agencies of the State of Florida. It is the intent of the Members in entering into this Intergovernmental Agreement that, to the fullest extent possible, the scope of Risk Management undertaken by them through a Joint Self-Insurance or Self-funded program using governmental funds shall not waive, on behalf of any Member or such Member's employees as defined in Florida Statutes Section 768.28, any defenses or immunities therein provided, or provided by the laws of the State of Florida. The Pool and the Members of this Pool intend to effect no waiver of sovereign immunities through their use of public funds retained within the Risk Management Pool. Such funds being utilized to protect against risks in accordance with Florida Statutes Section 768.28 are not intended to constitute the existence, issuance or purchase of a policy for insurance. This Intergovernmental Agreement is not to be considered such as would cause this Pool to be treated as an "insurer" within the meaning of any legislation giving risk to liability or applicability to "insurer", for damages, costs, fees or expenses, etc., under Florida Statutes Sections 624.155, 626.9541, 626.9561, 627.426, 627.428, or other statutes applicable to Public Entity Self Insurance in the State of Florida.

2.3 Non- Assessable: Public Risk Management is a non-assessable pool.

### Article 3 - Power and Duties

3.1. Powers: The powers of the Pool to perform and accomplish the functions and purposes set forth herein, within the budgetary limits and procedures set forth in this Intergovernmental Agreement, shall be as follows:

3.1.1. To establish By-Laws and Amendments to By-Laws, and operational procedures governing the operations of the Pool which are consistent with this Intergovernmental Agreement as set forth in Florida Statutes Sections 768.28, 163.01 and 440.57, and to not waive any sovereign immunity not waived statutorily under Florida Law, and to expressly negate any past, present, or future waiver of sovereign immunity under Florida Statutes, and to continue to negate any waiver of sovereign immunity for discretionary and planning functions of government.

3.1.2. To employ agents and independent contractors and approve the rate of compensation, benefits and/or contracts that apply to Pool employees, Pool officers and service providers, and to ensure all benefits of Florida Statutes Section 163.01(9)(a) and all other applicable Florida Statutes.

3.1.3. To lease real property and to purchase or lease equipment, machinery or personal property necessary for the carrying out of the purpose of the Pool.

3.1.4. To carry out educational and other programs relating to risk reductions.

3.1.5. To cause the creation of this Pool and see to the collection of funds for the continued administration of the Risk Management Pool.

3.1.6. To purchase Aggregate Excess Insurance, Reinsurance, Excess Property Insurance, Excess Workers' Compensation Insurance, Excess Liability Insurance, Pollution Insurance, Boiler & Machinery Insurance and Specific Excess Insurance, and any other form of insurance deemed reasonable and necessary by the Board of Directors to promote or serve the powers and duties of the Pool to supplement the Risk Management Pool without such being a waiver of sovereign immunity under Florida Law.

3.1.7. To establish reasonable and necessary loss reduction and prevention procedures, which shall be followed by the Members.

3.1.8. To provide Risk Management services including the defense of and settlement of claims and to have the authority granted by Florida Statutes Section 768.28(16).

3.1.9. To negate, pursuant to Florida Statutes, any implication of a waiver of sovereign immunity, and to negate any waiver of sovereign immunity other than to the extent required under Florida Statutes Section 768.28.

3.1.10. To act solely within the budgetary limits established by the Members to carry out such other activities as are necessarily implied or required to carry out the purposes of the Pool.

3.1.11. To sue or be sued as a separate legal entity.

#### Article 4 - Participation and Term

4.1. Term: The initial term of the Pool shall be from 12:01 a.m. on October 1, 1987 to 12:01 a.m. September 30, 1989. After the initial two (2) year term of the Pool, the term shall automatically be renewed for an additional term of one (1) year each. Provided, however, the Members may, through the manner provided in Section 6.9.4., terminate the Pool as of the end of the initial or any additional term during which such action is taken.

4.2. Notice of Intent to Withdraw: So long as the Pool shall continue in existence, any current or new Preferred Member joining the Pool shall remain a Member for an initial two-year term, except a new Member coming into the Pool after the first day of the policy year shall be obligated to be a member for not less than eighteen (18) months. A new Preferred Member's rates will be guaranteed for their initial term.

Any Member may withdraw from the Pool at the end of the policy year upon serving on the Pool at least forty-five (45) days prior with a written Notice of Intent to Withdraw. Such notice shall be addressed to the Executive Director of the Pool and shall be accompanied by a resolution of the governing body of the Member with intent to withdraw from the Pool.

4.3. Actual Withdrawal/Required Withdrawal. Any Member who has served the Executive Director with prior written notice of its intent to withdraw at least forty-five (45) days prior to the beginning of the policy year for which the notice to withdraw is applicable, shall serve in writing to the Executive Director, no later than ten (10) days prior to the beginning of such policy year, a verification as to whether the Member intends to actually withdraw from the Pool at the end of the current policy year. Failure to serve such verification no later than ten (10) days prior to the beginning of the policy year for which notice of intent to withdraw is applied, shall be deemed a revocation of the prior notice of intent to withdraw; thus, binding the Member to the Pool for the ensuing policy year. An action to expel a Member shall be taken by the Executive Board in the manner described in Article 17 hereafter.

4.4. Admission of New Members: The Pool's Executive Board shall establish and periodically review standards and the approval process for the admission of new Members. Upon approval of these standards and of the approval process for admission by the Board of Directors, the Pool's Executive Board may grant or deny admission to proposed new Members based upon such criteria. Consideration of new Members may be communicated to all PRM Board Members by the Executive Director for any information or feedback that a Member may have regarding the prospective member.

## Article 5 - Commencement of the Pool

5.1. Commencement Date: The Pool shall commence operations on October 1, 1987.

## Article 6 - Board of Directors of the Pool

6.1. The Board: There is hereby established a Board of Directors (sometimes hereinafter referred to as the "Board") of the Pool. Each Member shall appoint one (1) person to represent that body (the "Representative") on the Board of Directors along with another person to serve as an alternate representative (the "Alternate") when the Representative is unable to carry out that Representative's duties. The Representative and Alternate shall be appointed in writing by the governing body of the Member and a copy of the written appointment shall be provided to the Executive Director of the Pool. Once such appointments are made known to the Pool, the persons appointed shall remain in office until the Pool receives evidence in writing of the appointment of other persons by the Member's governing body. The Representative and Alternate selected must be an employee, an appointed official or elected official of the entity.

6.2. The Chair and Vice Chair: The Board of Directors shall, commencing the 2003 fiscal year, select a Chair for a three year term. Thereafter, the Board of Directors shall bi-annually select a Chair to serve a two year term. The term of office for the Chair shall begin on the 1<sup>st</sup> day of a fiscal year and expire on the last day of a fiscal year. The Chair shall preside at all meetings of the Board. The Chair shall vote on all matters that come before the Board. The Chair shall have such other powers as may be given from time to time by action of the Board.

The Board of Directors shall bi-annually select a Vice Chair during the final quarter of each two-year term to serve during the subsequent two-year term. The term of office for the Vice Chair shall begin on the first day of a fiscal year and expire on the last day of a fiscal year. The Vice Chair shall carry out all duties of the Chair of the Board during the absence or inability of the Chair to perform such duties and shall carry out such other functions as are assigned from time to time by the Chair or the Board of Directors. The Board of Directors may from time to time appoint other officers of the Board.

6.3. Board Responsibilities. The Board of Directors shall have the responsibility for: (1) hiring of Pool officers, agents/brokers, and independent contractors; (2) setting of compensation for Executive Director, agents/brokers and all persons, firms and corporations employed by the Pool; (3) approval of amendments to the Intergovernmental Agreement; (4) approval of the expulsion of Members, except that the approval may be delegated to the Executive Board under Article 4 above, or by such procedures as are contained in the motion making delegation; (5) approval and amendment of the annual budget of the Pool; (6) approval of the operational procedures developed by the Executive Director; (7) approval of educational and other programs relating to risk reduction; (8) approval of reasonable and necessary loss reduction and prevention procedures which shall be followed by all Members; and (9) termination of the Pool in accordance with this Intergovernmental Agreement.

6.4. Voting: Each Preferred Member shall be entitled to one (1) vote on the Board of Directors. Standard Members have no entitlement to any vote on the Board of Directors, or



otherwise. Such vote by each Preferred Member may be cast only by the Representative of the Preferred Member or in the Representative's absence by the Alternate. No proxy votes or absentee votes shall be permitted. Voting shall be conducted by show of hands or any method established by the Board that is consistent with Florida law. A simple majority vote of those Representatives present shall be required to pass on any motion. On such matters, the Chair and the Executive Director of the Pool shall cause each Member's Representative and Alternate to receive the proposed ballot which will include at a minimum the text of the motion to be voted upon and the purpose of such motion. Only the Representative or the Alternate may vote on such ballots (not both). If both the Alternate and Representative submit ballots, only the Representative's ballot will be counted. Favorable votes by a majority of the Members' Representatives (or Alternates in their absence) entitled to vote shall pass any action unless an action is taken which is subject to 6.9 below, in which case passage will be based on the required number of votes as if each Member's Representative or Alternate was present at a regular or special meeting called to decide such question.

6.5. Representatives: The Representative selected by the Member shall serve until a successor has been selected. The Representative chosen by the Member may be removed at any time by the vote of the Member's governing body. In the event that a vacancy occurs in the position of Representative or Alternate selected by the governing body of a Member, that body shall appoint a successor in writing within 60 days of such vacancy occurring. The failure of a Member to select a Representative or the failure of that person to participate shall not affect the responsibilities or duties of a Member under this Intergovernmental Agreement.

6.6. The Executive Board and other Committees: The Board of Directors shall establish an Executive Board (known previously in this Agreement as Executive Committee). That Executive Board shall consist of the Chair of the Board of Directors, the Vice Chair of the Board of Directors, the Treasurer and four (4) Representatives elected by the Board of Directors. The Executive Board shall have the power to establish both standing and ad hoc committees to further the functions and purpose of this Pool. Unless the Board of Directors establishes some other procedure, the authority for selection of Representatives or Alternates serving on the Executive Board who shall serve on such committees and chair them shall reside with the Chair of the Board of Directors. The Chair of the Board of Directors may appoint non-voting and non-paid persons who are not Members of the Board of Directors to serve on committees of the Pool. The Board of Directors shall, bi-annually select the four (4) Representatives during the final quarter of each two-year term to serve during the subsequent two-year term. The term of office for the four (4) Representatives shall begin on the first day of a fiscal year and expire on the last day of a fiscal year. The Executive Board shall have the specific authority and power, as afforded herein by the Board of Directors, to grant binding approval for, and on behalf of, the Pool to bind any and all coverages for both Preferred Members and Standard Members with excess insurers, reinsurers, specific excess insurers, insurance underwriters, insurance wholesalers, insurance brokers and/or intermediaries, and with independent insurance contractors providing and/or affording both insurance and self-insurance coverages to the Pool Members. The Board of Directors shall grant to the Executive Board the authority to approve expenditures, authorize a settlement of claims and suits and take such other action as shall be specifically delegated to the Executive Board. The Executive Board may from time to time appoint interim replacements for any Executive Board member or Pool Officer who vacates their position on the Executive Board, who shall serve until the next scheduled election of such Executive Board member.

6.7. Operating Rules: The Board of Directors may establish rules governing its own conduct and procedure not inconsistent with this Intergovernmental Agreement.

6.8. Quorum: A quorum shall consist of a majority of the Representatives (or in their absence their Alternates) serving on the Board of Directors, or serving on the Executive Board. Except as provided in Section 6.9 herein, or elsewhere in this Intergovernmental Agreement, a simple majority of a quorum shall be sufficient to pass upon all matters.

6.9. Super-Majority Voting: A greater vote than a majority of a quorum shall be required to approve the following matters:

6.9.1. Such matters as the Board of Directors shall establish within its rules as requiring for passage a vote greater than a majority of a quorum, provided, however, that such a rule can only be established by a greater than a majority vote at least equal to the greater than majority vote required by the proposed rule.

6.9.2. (Deleted effective June 19, 2009).

6.9.3. Any amendment of this Intergovernmental Agreement, except as provided in Subsection 4 below, shall require two-thirds (2/3) vote of all the Representatives serving on the Board of Directors.

6.9.4. The amendment of this Intergovernmental Agreement to cause a reduction or elimination in the scope of loss protection set out in Article 10 to be furnished by the self-insurance pool derived from payments from the Members, shall require that specific written notice of the proposed change be sent by registered or certified mail to the governing body of the Member and to the Representative serving on the Board of Directors, no less than ten (10) days prior to a meeting of the Executive Board at which this matter is proposed and the amendment as proposed or as amended must receive the approval of at least five (5) out of seven (7) Representatives of the then current Executive Board representing the then Members of the Pool.

6.9.5. In the event of a reduction or elimination in the scope of loss protection as set forth in Article 10 of this Intergovernmental Agreement receives the approval of at least five (5) out of the seven (7) Representatives of the then-current Executive Board as set forth in section 6.9.4, any Member may request, within twenty (20) days of the Executive Board voting to approve such reduction or elimination in the scope of loss protections as set forth in Article 10 of this Intergovernmental Agreement, in writing to the Chair of the Board of Directors that the Executive Board, at a special meeting, take official action to affirm, modify or reverse a decision of the Executive Board affecting the reduction or elimination in the scope of loss protection as set forth in section 6.9.4. The Member shall be provided a full opportunity to explain their position to the Executive Board. The Executive Board, by majority vote, may affirm, modify, reverse or defer the matter to the Board of Directors.

Any Member who disagrees with the Executive Board's final determination may request in writing, within twenty (20) days of the Executive Board's final determination, that the Board of Directors take action to affirm, modify or reverse the decision of the Executive Board. The Member shall be provided a full opportunity at a special, or regular, meeting to explain their position to the Board of Directors. The Board of Directors, by majority vote of the Members, may affirm, modify or reverse the final determination or decision of the Executive Board. Failure on the part of any Member to comply timely with the requirements for appealing the determination by the Executive Board to the Board of Directors within twenty (20) days thereof shall be deemed to be a waiver of any contractual, legal or other rights of appeal by, or on the part of, that Member.

6.10. Compensation of Board of Directors: No Representative or Alternate serving on the Board of Directors shall receive any salary from the Pool.

6.11 Conflict of Interest: Representatives and Alternates shall abide by the guidelines established by the State Ethics Commission in the performance of their duties, particularly as it applies to conflicts of interest and financial disclosure.

#### Article 7 - Board of Directors Meetings

7.1. Meetings: The Executive Board will establish regular meetings, which shall be held at least three (3) times a year. Regular meetings of the Board of Directors may be held up to four (4) times a year. The tentative times, dates, and locations of regular meetings of the Board shall be established at the beginning of each fiscal year, and the Executive Board will establish the tentative times, dates and locations of its regular meetings, and give timely and appropriate prior notice of said meetings to all Preferred and Standard Members. Any item of business may be considered at a regular meeting, including the scheduling of future regular meetings. The Executive Director shall attend all Board meetings and Executive Board meetings to serve as an advisor and to report as the administrative officer of the Pool.

7.2. Special Meetings: Special meetings of the Board of Directors or the Executive Board may be called by its Chair, or by any three Representatives (or in their absence their Alternates), with no less than 48 hours prior written notice. The Chair or in their absence, the Vice Chair, shall give ten (10) days written notice of regular or special meetings to the Representative and Alternate of each Member and an agenda specifying the subject of any special meeting shall accompany such notice. Business conducted at special meetings shall be limited to those items specified in the agenda. The time, date and location of special meetings of the Board of Directors shall be determined by the Chair of the Board of Directors, or in their absence, by the Vice Chair. The Executive Board shall have the authority to call such special meetings when: (1) a threatened or actual natural disaster or other emergency exists which requires the scheduling of a special meeting; (2) it is substantially certain that a quorum of voting members will not be present for a scheduled, or upcoming, regular meeting of either the Board of Directors or Executive Board, such that consideration should be given to cancelling or rescheduling said meeting, and/or; (3) the Executive Board is requested to authorize the renegotiation of existing excess, reinsurance and any and all other coverages which occur or take place because of a significant reduction in the availability of existing capacity due to market conditions at that time.

7.3. Conduct of Meetings: To the extent not contrary to this Intergovernmental Agreement and except as modified by the Board of Directors, Robert's Rules of Order, latest edition, shall govern all meetings of the Board of Directors. Minutes of all regular and special meetings of the Board of Directors shall be sent to all Representatives (or in their absence their Alternates) serving on the Board of Directors.

#### Article 8 - Pool Officers

8.1. Officers: Officers of the Pool shall consist of an Executive Director, a Treasurer, a Secretary and such other officers as are established from time to time by the Board of Directors. All Pool officers, with the exception of the Board Secretary who is hired by and reports directly to the Executive Director, shall be appointed by the Board of Directors.

8.2. Executive Director: The Executive Director shall be the chief administrative officer of the Pool and shall in general supervise and control the day to day operations of the Pool and shall carry out the policy and operational procedures of the Pool as established in this Intergovernmental Agreement and by the Board of Directors. Among the Executive Director's duties shall be the following:

8.2.1. The Executive Director may sign, with such other person authorized by the Board of Directors or by the Executive Board, any instruments which the Board of Directors or Executive Board have authorized to be executed and, in general, shall perform all duties incident to the office of Executive Director and such other duties as may be prescribed by the Board of Directors.

8.2.2. The Executive Director shall prepare a proposed annual budget and shall submit such proposals to the Board of Directors, and to the Executive Board.

8.2.3. The Executive Director shall, where necessary, make recommendations regarding policy decisions, the creation of other Pool officers and the employment of agents and independent contractors. At each regular meeting of the Board of Directors and at such other times, as shall be required to do so, shall present a full report of activities and the fiscal condition of the Pool.

8.2.4. The Executive Director shall report annually to all Members on all claims filed and payouts made.

8.2.5. The Executive Director shall, within the constraints of the approved or amended budget, employ all secretarial, clerical and other similar help and expend funds for administrative expenses.

8.3. Treasurer: The Treasurer shall:

8.3.1. Provide general financial oversight of the pool; shall have the authority and shall perform the duties prescribed by the Board of Directors or by direction of any Officer authorized by the by laws or the Board of Directors; shall be selected by the Board of Directors;

8.3.2. In general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to that individual by the Board of Directors. The Board of Directors shall bi-annually select a Treasurer to serve a two year term. The term of office for the Treasurer shall begin on the 1<sup>st</sup> day of a fiscal year and expire on the last day of a fiscal year.

8.4. Secretary: The Secretary shall issue notices of all Board meetings, and shall attend and keep the minutes of same. The Secretary shall have charge of all corporate books, records and papers; shall be custodian of the corporate seal; and shall keep all written contracts of the Pool. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Executive Director or the Board of Directors.

8.5. Third Party Delegations: The Board may select a financial institution or certified public accountant to carry out some or all of the functions which would otherwise be assigned to a Treasurer and may select a risk management company or agent to serve as claims administrator or to carry out some or all of the functions which would otherwise be assigned to the Executive Director. The Board may also employ persons or companies as independent contractors to carry out some or all of the functions of officers of the Pool.

8.6. Officer Vacancies: In the absence of the Executive Director, Treasurer or Secretary, or in the event of the inability or refusal of such officers to act, the Chair of the Board of Directors may perform the duties of the Executive Director, Treasurer or Secretary, and, when so acting, shall have all of the powers of and be subject to all of the restrictions upon the Executive Director, Treasurer or Secretary.

#### Article 9 - Finances and Risk Management Pool

9.1. Fiscal Year: The fiscal year of the Pool shall commence on October 1, and end on September 30, of each year.

9.2. Budget: The Board of Directors shall approve a preliminary budget for the administration of the Pool. Copies of all preliminary and final budgets shall be provided to each Member of the Board of Directors. The Board of Directors shall adopt a final budget.

9.3. Annual Payment Factors: In determining the amount of the Annual Payment due from each Member, the Executive Director may consider some or all of the following factors:

9.3.1. Number of employees;

9.3.2. Property values of the Member;

9.3.3. Number and type of vehicles owned by the Member and the use made of the vehicles;

9.3.4. Population of the geographic area represented by the Member;

- 9.3.5. The payrolls of the Member;
- 9.3.6. Any unusual exposures presented by the Member;
- 9.3.7. The operating expenditures of the Member; and
- 9.3.8. The claims and loss experience of the Member.
- 9.3.9 Member Deductible
- 9.3.10 Member Self-Insured Retention

9.4. Budget Amendments: Budgets may be amended at any time by majority vote of the Board of Directors.

9.5. Payments – Timing: In subsequent years, the Board of Directors may permit the Annual Payments to be made on a monthly or quarterly basis.

9.6. Retirement Fund Obligations: Members shall be both severally and jointly liable to the State of Florida Department of Administration, Division of Retirement for any Florida Retirement Systems' contributions, which are owed by the Pool for Pool employees. Each member shall be responsible for expenses incurred which are attributable to the years of membership as outlined in the Intergovernmental Agreement, Article 11.

9.7. Distribution of Surplus Upon Cessation of the Pool: If in the event that the Pool ceases to exist or operate for any year during which the Pool was in existence, all claims known or unknown have either been paid or provision has been made for such payment, the Board of Directors as then constituted shall distribute surplus funds to the Members who constituted the membership of the Pool in that prior year, after first deducting there from reasonable administrative and other non-allocated costs incurred by the Pool in the processing of the claims in years other than the one in which the claim was made. The distribution among the Members shall be in the same proportion to the total as was their Annual Payment for that year to the Annual Payments of all Members for such year.

9.8. Audit: The Board of Directors shall provide to the Members an annual audit of the financial affairs of the Pool to be made by a certified public accountant at the end of each fiscal year in accordance with generally accepted auditing principles.

#### Article 10 - Excess Insurance

10.1. Specific Excess Insurance: The Pool may purchase Specific Excess Insurance from underwriters of insurance, insurance companies and/or Lloyd's of London, approved by the Board of Directors, or any committee appointed by the Board for such purpose, in such amounts which shall be approved by the Board of Directors and underwriters, based upon but not limited to the current assets, risk analysis, and loss history of the Pool. The purchase of Specific Excess Insurance does not, and is not, intended to waive sovereign immunity under Florida law.

10.2. Aggregate Excess Insurance: The Pool may purchase Aggregate Excess Insurance from underwriters of insurance, insurance companies and/or Lloyd's of London, approved by the Board of Directors, or any committee appointed by the Board for such purpose, in such amounts which shall be approved by the Board of Directors and underwriters, based upon but not limited, to the current assets, risk analysis, and loss history of the Pool. The purchase of Aggregate Excess Insurance does not, and is not, intended to waive sovereign immunity under Florida law.

10.3. Multiple Loss Coverage: The Pool may purchase Multiple Loss Coverage in the event a single occurrence involves more than one line of coverage, limiting the occurrence to a single "Self Insured Retention."

10.4. Losses: The Risk Management Pool (Loss Fund), the Specific Excess Insurance and any optional Aggregate Excess Insurance purchased, shall provide payment for covered losses in any one policy year for members up to the limits approved by the Board of Directors. Should losses in any one policy year extinguish all available funds provided by the Pool then the individual Member or Members whose judgment or settlement of claim has been perfected by Florida law shall be responsible for any additional payment. The Pool shall make payments in the order in which the judgments against the Pool have been entered or settlement of claims have been reached or other manner established at a meeting by the Board. Membership in the Pool shall not preclude any Member from purchasing any insurance coverage above those amounts purchased by the Pool.

#### Article 11 - Obligations of Members

11.1. Member Obligations: The obligations of Members of the Pool shall be as follows:

11.1.1. To budget for, where necessary, to levy for and to promptly pay all payments to the Risk Management Pool at such times and in such amounts as shall be established by the Board of Directors within the scope of this Intergovernmental Agreement. Any delinquent payments shall be paid with a penalty, which shall be set by the Board, but such rate shall not exceed the highest interest rate allowed by statute to be paid by a Florida public agency.

11.1.2. To select, in writing, a Representative to serve on the Board of Directors and to select an Alternate Representative.

11.1.3. To allow the Pool reasonable access to all facilities of the Member and all records including, but not limited to, financial records, which relate to the purpose or powers of the Pool.

11.1.4. To allow attorneys employed by the Pool to represent the Member in investigation, settlement discussions and all levels of litigation arising out of any claim made against the Member within the scope of loss protection furnished by the Pool.

11.1.5. To furnish full cooperation with the Pool attorneys, claims adjusters, the Executive Director and any agent, employee, officer or independent contractor of the Pool relating to the purpose or powers of the Pool.

11.1.6. To follow in its operations all loss reduction and prevention procedures established by the Pool within its purpose or powers.

11.1.7. To report to the Executive Director or their designee within the time limit specified the following items:

11.1.7.1. To provide on or before November 1 of each policy year of the Pool, the Member's renewal application shall be completed by the member as required by the Underwriters.

11.1.7.2. To report, within five (5) days of receipt, any and all statutory notices of claims, as well as summons and complaint or other pleading before a court or agency involving any claim for which Pool coverage is sought.

11.1.7.3. To report, within ten (10) days of receipt, any oral or written demand for monetary relief for which coverage is sought to the Pool Executive Director.

11.1.7.4. To report to the Executive Director at the earliest practicable moment any information of an occurrence, claim or incident received by the Member and from which the Member could reasonably conclude that coverage will be sought by said Member for such an occurrence, claim or incident.

In the event that the items set forth above are not submitted to the Executive Director within the time periods set forth above, the Board of Directors of the Pool, by a vote of a majority of a quorum of the Board, at a regular or special meeting, may in whole or part decline to provide a defense to the Member or to extend the funds of the Pool for the payment of losses or damages incurred. In reaching its decision, the Board shall consider whether and to what extent the Pool was prejudiced in its ability to investigate and defend the claim due to the failure of the Member to promptly furnish timely notice of the occurrence, claim or incident to the Executive Director. The decision of the Board of Directors shall be final. Failure of a Member to abide by these requirements shall also be grounds for expulsion from the Pool.

11.1.8. To make Payment of any required Deductible(s).

11.2. Cancellation/Suspension of Coverage: In the event that a Member has made a material misstatement or failed to comply with an underwriting requirement that created a substantial change in risk exposure, the Executive Board has the authority to cancel or suspend coverage. The Member shall be notified of the reason in writing by the Executive Director and given a reasonable time to take corrective measure prior to the Executive Board's action.

## Article 12 - Liability of Board of Directors or Officers of the Pool

12.1. Liability of Directors and Officers: The Representatives (or in their absence their Alternates) serving on the Board of Directors or officers of the Pool should use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties hereunder; they shall not be liable for any mistake of judgment or other action made, taken or



omitted by them in good faith; nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care; nor for loss incurred through investment of Pool funds, or failure to invest. No Representative shall be liable for any action taken or omitted by any other Representative. Representatives shall have the immunities provided by law and in particular Florida Statutes Section 163.01. The Pool may purchase insurance providing liability coverage for such Representatives or officers.

#### Article 13 - Additional Insurance

13.1. Member's Option to Purchase Additional Insurance: The Pool, through the distribution of the minutes of the Board of Directors or through other means shall inform all Members of the scope and amount of Specific Excess and Aggregate Excess Insurance in force at all times. Membership in the Pool shall not preclude any Member from purchasing any insurance coverage above those amounts purchased by the Pool. Such purchase shall not be construed to waive sovereign immunity of the Members of the Pool or the Pool. The Pool shall make its facilities available to advise Members of the types of additional or different coverages available to Pool Members.

#### Article 14 - Settlements

14.1. Settlement/Advance Notice: Whenever the Pool proposes to settle any pending claim or suit where the amount of that proposed settlement shall exceed Ten Thousand Dollars (\$10,000.00), the Member shall be given advance notice of that settlement. Such notice may be given by the establishment of a reserve amount in excess of Ten Thousand Dollars (\$10,000.00), provided that the amount of the settlement does not exceed the amount reserved. The officers and employees of the Pool shall, however, endeavor to give specific oral or written notice to the Member's Representative or Alternate of the exact amount of any proposed settlement in excess of Ten Thousand Dollars (\$10,000.00) prior to the date at which the Pool proposes to bind itself to pay such settlement amount. The officers, employees or independent contractors of the Pool shall attempt to give the Members, as much notice of the settlement negotiations as is possible under the circumstances of each case.

#### Article 15 – Coverage & Indemnity Dispute Resolution

15.1. After having reviewed a claim forwarded to the Pool, the Executive Director, officer, employee or independent contractor shall, in writing, be permitted to decline to provide coverage or indemnification for such claim not believed to be within the scope of coverage provided by the Pool. The claim may also be accepted and defense provided but the Pool may reserve the right to withdraw from the defense or to refuse to provide indemnification against the claim in the event that it is later determined that the claim is not properly within the scope of coverage afforded by the Pool.

Any Member may request in writing to the Chair of the Board of Directors, that the Executive Board, at a regular scheduled meeting, take official action to affirm, modify or reverse a decision that a particular matter is or is not within the scope of coverage or indemnification provided by the Pool. The Member shall be provided a full opportunity to explain their position to the Executive Board. The Executive Board, by majority vote, may affirm, modify, reverse or

defer the matter to the Board of Directors, subject to any insurance or reinsurance contractual obligations.

Any Member who disagrees with the Executive Board's determination may request in writing that the Board of Directors, at a regular scheduled meeting, take action to affirm, modify or reverse the decision of the Executive Board. The Member shall be provided a full opportunity to explain their position to the Board of Directors. The Board of Directors, by majority vote of the Members, may affirm, modify or reverse the decision of the Executive Board, subject to any insurance or reinsurance contractual obligations.

Any Member may seek binding arbitration, if available, pursuant to the Pool's General Coverage Document and, is not required to appeal a coverage or indemnification declination to either the Executive Board or Board of Directors.

#### Article 16 - Contractual Obligation

16.1. Enforcement: This document shall constitute a binding contract under the Florida Interlocal Cooperation Act of 1969 among those public agencies, which become Members of the Pool. The obligations and responsibilities of the Members set forth herein, including the obligation to take no action inconsistent with this Intergovernmental Agreement as originally written or validly amended, shall remain a continuing obligation and responsibility of the Member. The terms of this Intergovernmental Agreement may be enforced in a court of law by the Pool.

The consideration for the duties herewith imposed upon the Members to take certain actions and to refrain from certain other actions shall be based upon the mutual promises and agreements of the Members set forth herein. This Intergovernmental Agreement may be executed in duplicate originals and its passage by the Member's governing body shall be evidenced by a certified copy of a resolution passed by the members of the governing body in accordance with the rules and regulations of such public agency, provided, however, that except to the extent of the limited financial contributions to the Pool agreed to herein or such additional obligations as may come about through amendments to this Intergovernmental Agreement no Member agrees or contracts herein to be held responsible for any claims in tort or contract made against any other Member. The Members intend in the creation of the Pool to establish an organization for Risk Management only within the scope herein set out and have not herein created as between Member and Member any relationship of surety, indemnification or responsibility for the debts of or claims against any Member.

16.2. Attorneys' Fees: In any legal action between the parties arising out of this Agreement, any attempts to enforce this Agreement, or any breach of this Agreement, the prevailing party may recover its expenses of such legal action including, but not limited to, its costs of litigation (whether taxed by the court or not) and its reasonable attorneys' fees (including fees generated on appeals) from the other party.

## Article 17 - Expulsion or Termination of Members

17.1. Expulsion. By the vote of two-thirds (2/3) of the Directors serving on the Board of Directors, and by a vote of at least five (5) out of the seven (7) Members serving on the Executive Board on decisions, determinations or issues involving section 4.3 of this Intergovernmental Agreement, any Member may be expelled. Such expulsion may be carried out for one or more of the following reasons:

17.1.1. Failure to make any timely payments due to the Pool.

17.1.2. Failure to undertake or continue loss reduction and prevention procedures adopted by the Pool.

17.1.3. Failure to allow the Pool reasonable access to all facilities of the Member and all records which relates to the purpose, powers or functioning of the Pool.

17.1.4. Failure to furnish full cooperation with the Pool's attorneys, claims adjusters, the Executive Director and any agent, employee, officer or independent contractor of the Pool relating to the purpose, powers and proper functioning of the Pool.

17.1.5. Failure to carry out any obligation of a Member which impairs the ability of the Pool to carry out its purpose or powers or functions.

17.1.6. The Preferred Member has given the forty-five (45) days notice described in Section 4.2 and 4.3 above.

17.2. Notice: No Member may be expelled except after notice from the Pool of the alleged failure along with a reasonable opportunity of not less than thirty (30) days to cure the alleged failure. The Member may request a hearing before the Board before any decision is made as to whether the expulsion shall take place. The Board shall set the date for a hearing which shall not be less than fifteen (15) days after the expiration of the time to cure has passed.

A decision by the Board to expel a Member after notice and hearing and a failure to cure the alleged defect shall be final. The Board of Directors may establish the date at which the expulsion of the Member shall be effective at any time not less than sixty (60) days after the vote expelling the Member has been made by the Board of Directors. If the motion to expel the Member made by the Board of Directors or a subsequent motion does not state the time at which the expulsion shall take place, such expulsion shall take place sixty (60) days after the date of the vote by the Board of Directors expelling the Member.

17.3. Responsibilities of Terminated Member: A former Member shall only continue to be fully responsible only for its' portion of any obligations incurred but not satisfied during the period of time they were a Member of the Pool. Such obligations may include, but not be limited to, premiums, loss fund payments, maintenance deductibles, workers' compensations, final audit and administrative fees, etc., owed or unpaid by the former Member. The former Member shall no longer be entitled to participate or vote on the Board of Directors.

## Article 18 - Special Provisions for Deferred Funding

During the fiscal years commencing on October 1, 1987 and ending on September 30, 1990, the entire Annual “Loss Fund” Contribution was not required by the Board of Directors to be paid within the fiscal year to which it was applicable. The difference between the Annual “Loss Fund” Contribution and the amount required by the Board of Directors to actually be paid to the Pool during such year by a Member is referred to herein as Deferred Funding. Members and former Members during any year for which there existed Deferred Funding may be required by the Board of Directors upon recommendation of the Executive Director to pay their applicable portion of the Deferred Funding in subsequent years. Members or former members will be allowed forty-five (45) days after notification to make any payments of Deferred Funding. The amount of any payments required for Deferred Funding as to each Member shall be based upon the same formula as was used in establishing the Annual “Loss Fund” Contribution for that year.

## Article 19 - Termination of the Pool

19.1. Termination: If, at the conclusion of any term of the Pool, the Board of Directors votes to discontinue the existence of the Pool in accordance with Section 6.9.4., then the Pool shall cease its existence at the close of the then current fiscal year. Under those circumstances, the Board of Directors shall continue to meet on such a schedule as shall be necessary to carry out the termination of the affairs of the Pool. It is contemplated that the Board of Directors may be required to continue to hold meetings for some substantial period of time in order to accomplish this task, including the settlement of all covered claims incurred during the term of the Pool. The Pool shall continue to be fully responsible and obligated to pay covered claims and expenses owed by the Pool, which accrued before the Pool's termination. The money used to pay such covered claims and expenses shall remain with the Pool until such claims are settled and expenses are paid.

19.2. Post-Termination Responsibilities of Member: After termination of the Pool, the Member shall continue to hold membership on the Board of Directors but only for the purpose of voting on matters affecting their limited continuing interest in the Pool for such years as they were Members of the Pool.

In witness whereof, this agreement has been executed by the Entity: \_\_\_\_\_ . The approval of the foregoing agreement was passed by the Entity: \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and attached hereto, I do hereby execute and the \_\_\_\_\_ does hereby attest to my signature as evidence that the \_\_\_\_\_ has approved and hereby becomes a bound signatory member of the "Intergovernmental Cooperative Agreement" for Public Risk Management of Florida, a copy of which is attached hereto, and which is pursuant to Florida Statutes Section 163.01, which commenced its term on October 1, 1987.

\_\_\_\_\_  
Chair of Board

\_\_\_\_\_  
Chair, Public Risk  
Management of Florida

ATTEST:

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.