

**TEXAS ASSOCIATION OF COUNTIES
RISK MANAGEMENT POOL
INTERLOCAL PARTICIPATION AGREEMENT**

This Agreement, entered into by and between the Texas Association of Counties Risk Management Pool (hereinafter called "Pool") and **Collin County** (hereinafter called "Member") shall be effective as of the last date on which a party to the Agreement signs the Agreement.

RECITALS:

WHEREAS, the Pool is sponsored by the Texas Association of Counties (hereinafter called "TAC"), and the Pool was formed by the entry into a charter interlocal agreement by the Texas Association of Counties Workers Compensation Self-Insurance Fund, the Texas Association of Counties Property & Casualty Self-Insurance Fund and the Texas Association of Counties County Government Risk Management Pool;

WHEREAS, the Pool was created as an interlocal entity organized under Chapter 791, GOVERNMENT CODE, V.T.C.A, to provide self-insurance for all risks, including workers' compensation, property and casualty and liability coverages as authorized by CHAPTER 2259, GOVERNMENT CODE, V.T.C.A, Chapter 504, LABOR CODE, V.T.C.A., Chapter 119, LOCAL GOVERNMENT CODE, V.T.C.A. and other law;

WHEREAS, Member, a local government as defined in Chapter 791 GOVERNMENT CODE and a governmental unit as defined in Chapter 2259 GOVERNMENT CODE, desires to take advantage of the benefits made available through the Pool;

WHEREAS, the Member's governing body has approved this agreement; and

WHEREAS, the parties recognize that the Pool is a Risk Management Pool authorized by statute and the coverage provided is not considered and does not constitute insurance under any Texas law, including the Texas Insurance Code nor under the common law and is not regulated by the Texas Department of Insurance;

NOW, THEREFORE, it is Agreed and Understood among the parties as follows:

SECTION 1. PARTICIPATION

1.01. Agreement to Participate

Member hereby contracts to become a Member of the Pool. **THIS IS NOT A CONTRACT OF INSURANCE** and Member does not and cannot hereby elect to create any contract of insurance. The Pool is not a trust and Member does not intend to create a trust.

1.02. Benefits and Obligations Described in Coverage Documents

Member shall have benefits and obligations as more particularly described in the coverage document(s) which may be provided to Member under the terms and conditions of any particular Pool coverage purchased by Member pursuant to this Agreement. A coverage acceptance form, received by the Pool after completion of the underwriting process, or an application for renewal of existing coverage, followed by issuance of a Declarations Page by the Pool for the coverage, shall evidence the acceptance of the terms and conditions of the coverage purchased. Member's rights under any coverage document are subject to the terms and conditions contained in the coverage document.

1.03. Term of Agreement

The term of this Agreement shall commence on the 1st day of October, 2019 and shall continue in full force and effect for a period of one (1) year. This Agreement shall be automatically renewed annually for an additional one (1) year term without the necessity of any action by the parties other than the acceptance of any amendments to the coverage contract and rates. Either party may elect not to renew this Agreement by giving written notice at least thirty (30) days prior to the end of the original term or any renewal term. In the event some coverage is added during the term of this Agreement, the Agreement shall be automatically extended to coincide with the coverage document period provided for the new coverage, except that the term of the Agreement shall continue in accordance with the term(s) of coverage(s) in effect, should any such new coverage be subsequently terminated.

1.04. Termination Without Cause During the Term of the Agreement

A. Termination of This Agreement

This Agreement may be terminated by either party by giving sixty (60) days prior written notice of intent to terminate the Agreement to the other party. Any notice of intent to terminate must be delivered by deposit in the U. S. Mail, certified, return receipt requested. Termination of this Agreement by either party terminates membership in the Pool and any coverages obtained pursuant to this Agreement.

B. Termination of a Coverage Provided Under This Agreement

Subject to Section 1.06, any coverage provided under this Agreement may be canceled by either party by giving sixty (60) days written notice of intent to cancel the coverage to the other party, unless the terms of the applicable coverage document conflict with this provision, in which case the provision in the coverage document controls.

1.05. Addition or Change of Coverages

Pool coverages may be added to the Member's existing coverage(s) provided pursuant to this Agreement, or the provisions of any coverage may be changed, by agreement in writing of the parties.

1.06. Failure to Maintain Coverage

The failure to maintain at least one coverage through the Pool will result in the automatic and immediate termination of this Agreement.

1.07. Coverage Documents

Any coverage documents used by the Pool shall be approved by the Board of Directors of the Texas Association of Counties Risk Management Pool (“the Board”), or by the Pool Administrator, subject to review by the Board.

SECTION 2. POWER, DUTIES AND ORGANIZATION

2.01. Powers of Pool

The Pool shall have any power necessary to carry out the purpose of this Agreement which may be conferred by Chapter 791, V.T.C.A., GOVERNMENT CODE, by Chapter 2259, GOVERNMENT CODE, V.T.C.A ; by Chapter 504, LABOR CODE, V.T.C.A , by Chapter 119, V.T.C.A., and by any other law empowering the Pool, and by this Agreement and the Bylaws of the Texas Association of Counties Risk Management Pool (“the Bylaws”). The Pool shall have the power to execute interlocal participation agreements following the form of this Agreement with other Members. The Pool shall have the power to employ a Pool Administrator and independent contractors to assist in carrying out this Agreement.

2.02. Member Compliance

By execution of this Agreement, Member agrees to comply with and abide by the Bylaws, applicable Coverage Documents, and the rules and regulations of the Pool, as now in effect and as hereafter amended.

2.03. Incorporation of Bylaws and Bylaws' Amendments

The Bylaws are incorporated by reference and made a part of this Agreement for all purposes as if fully set out herein. Any amendment to the Bylaws adopted by the Board shall become binding on Member immediately upon its adoption unless it is in direct conflict with the rights of Member under this Agreement. Any amendment to the Bylaws which alters the rights of a Member under this Agreement shall be effective on the sixtieth (60th) day after written notice of the provision has been

served on Member, or otherwise as the parties may agree. If Member objects to any change in the Bylaws affecting such rights, Member may appeal the matter to the Board within ten (10) days of receipt of the notice. The proposed change will not apply to the objecting member until resolution of the matter by the Board.

2.04 Execution of New Agreement

The Pool may require Member to execute a new Interlocal Participation Agreement at any time in order for Member to continue participation. Should Member fail to execute and return such an Agreement, the Pool may terminate the Member's participation in the Pool in accordance with the Bylaws.

2.05 Pool Administrator

The Texas Association of Counties (hereinafter referred to as "TAC") or its designee, is the administrator of the Pool.

2.06 Provision of Reinsurance

The Pool may provide for reinsurance at a level to be determined by Board in its sole discretion.

2.07 No Joint and Several Liability

The Member has no joint or several liability other than the maximum annual contribution payable by the Member. The participation of the Member shall at all times be on a nonassessable basis beyond the annual amount of contribution.

2.08 No Guaranty Fund

RMP is a self-insurance pool that does not participate in a guaranty fund, so funding for Member's claims under the coverage documents will come solely from the Pool's resources. If the Pool's resources are insufficient to satisfy a claim, the Member will be responsible for the claim. The Pool shall endeavor to maintain at all times stop loss insurance and reserves sufficient to assure that all incurred, fully-developed losses and expenses for the total Pool can be paid from available Pool resources.

2.09 Dividends, Investments and Use of Surplus

Any surplus shall be invested or distributed in accordance with the Bylaws.

2.10 Pool Arrangement for Annual Audit

The Pool shall be annually audited by a certified public accounting firm retained by the Pool.

SECTION 3. POOL COORDINATOR

3.01. Appointment

Member shall by written instrument appoint a Pool Coordinator. The name of the Pool Coordinator and the address for which notices may be given by the Pool shall be set forth in the space provided at the end of this Agreement. The Pool Coordinator shall promptly provide the Pool with any required information.

3.02. Change of Pool Coordinator

Member may change its Pool Coordinator and/or the address for notice by giving written notice to Pool of such change prior to the effective date of the change.

3.03. Responsibility of Pool Coordinator

Any failure or omission of the Member's Pool Coordinator shall be deemed a failure or omission of Member. The Pool is not required to contact any other individual with respect to Member's business except the named Pool Coordinator unless notice or contact to another individual is required by applicable statute. Any notice given by Pool or its contractor to the Pool Coordinator or such individual as is designated by statute for a particular notice, shall be deemed notice to Member.

SECTION 4. ANNUAL CONTRIBUTION

4.01 Submission of Information

Member shall timely submit to the Pool documentation necessary for the Pool to use to determine the risk to be covered for the next renewal period and to properly underwrite the risk exposure. The Pool will provide forms identifying the information requested.

A Member obtaining Workers' Compensation coverage through the Pool must submit an annual estimated payroll, by payroll classifications of the Member, to the Pool no later than sixty (60) days prior to the first day of the coverage period. At the end of the coverage period, Member must provide the Pool with the actual payroll for the coverage period.

4.02 Failure to Timely Submit Information

If Member fails to timely submit the information required in section 4.01 prior to the renewal date, the Pool may charge a penalty of \$100 for each month or portion thereof that the information is not received. Failure to submit the required information within 30 days of the renewal date or failure to pay any penalty provided for in this section may result in termination of Membership under this Agreement or or cancelation of the applicable coverage.

4.03 Determination of Member' Annual Contribution

(a) The contribution for coverage provided by the Pool to Member shall be determined annually. In the event that charges are adjusted during a coverage year, the adjustment will become effective on the annual renewal date for that coverage.

(b) The contribution for the Member shall be based upon the information provided pursuant to section 4.01 of this Agreement, as well as information obtained from any audit or inspection of operations and property of the Member by the Pool.

For liability and property coverages, Members will be charged an annual flat rate contribution that is not subject to audit and adjustment.

For workers' compensation coverage, Member will be charged an annual estimated contribution based on the estimated payroll provided pursuant to Section 4.01, but the contribution is subject to year-end audit and adjustment. If the Member's actual annual payroll differs from the estimated payroll, the amount of the annual contribution may be adjusted. If, after this adjustment, the actual contribution is more than the estimated contribution paid by the Member, the Pool shall notify Member of the difference and Member shall immediately remit the additional amount to the Pool. If the actual contribution is less than the estimated contribution paid by the Member, the Pool shall refund the excess amount to the Member.

(c) The Pool shall calculate the annual contribution for Member using the appropriate discount and/or surcharge if applicable, as approved by the Board.

(d) The Pool will adopt a rate plan for each line of coverage. For workers' compensation coverage, the Pool shall calculate and furnish each Member its individual experience modifier, when earned, in accordance with the provisions of the applicable experience rating plan as approved by the Board.

4.04 Payment of Contribution Is a Condition of Coverage

Member agrees to pay to the Pool the annual contribution amount determined for Member based upon the Pool's calculation. The parties agree that the annual contribution will be paid from current revenues available to Member. The existence of any coverage provided pursuant to this Agreement is expressly conditioned upon, in addition to any other requirements under this Agreement, full and timely payment of charges for any such coverage by Member. Payment shall be paid from Member's current revenues.

4.06 Billing and Payment of Annual Contribution

The contribution for coverage provided by the Pool to Member shall be determined annually. In the event that charges are adjusted during a coverage year, the adjustment will become effective on the annual renewal date of the coverage document.

The Pool shall bill the annual contribution in advance. Member shall pay the Pool at the address specified in Paragraph 7.07. For liability and property coverages, the annual contribution must be paid in advance in its entirety. For workers' compensation coverage, the annual contribution must be paid in four quarterly payments. For workers' compensation coverage, the Pool will submit quarterly invoices in advance and the Member must pay in advance of the quarter. For all coverages, Member's payment is due upon receipt of invoice and, unless the Pool exercises its right to terminate for non payment as provided in Section 4.07, any payment not received within thirty (30) days of the date of billing shall accrue interest at the rate of 1% per month, or as allowed pursuant to Texas law.

4.07 Termination for Failure to Pay

Notwithstanding any other provision in this Agreement, if any payment or contribution for coverage owed by Member to the Pool is not paid as required by this Agreement, the Pool may cancel such coverage or terminate this Agreement, as the Pool deems appropriate, in accordance with the Bylaws and the applicable coverage document. Member shall remain obligated for such unpaid contribution or charge for the period preceding termination.

4.08 Pool's Right to Audit

The Pool has the right, but no obligation, to audit and inspect Member's operations and property at any time upon reasonable notice and during regular business hours, as the Pool deems necessary to protect the interest of the Pool.

4.09 Charges or Rates in Recognition of High Loss Experience

With respect to any Pool coverage, in the event any Member has a higher loss experience than identified in the underwriting standards relevant to that coverage, the Pool may impose on that Member a different or additional rate structure or charge for coverage than those otherwise generally provided to other Members, as a condition of that Member's participation in the relevant coverage.

4.10 Short Rate for Early Withdrawal

Should the Member withdraw before the end of the annual contract period, Member will be subject to the short rate earned contribution factors.

4.11 Collection of Outstanding Contributions

Should the Member fail to make the required payment hereunder, this Agreement may be canceled by its terms and suit may be brought to collect any outstanding contributions due and payable to the Pool. Alternatively, at the option of the Pool, claims costs normally paid by the Pool, up to the total amount of contribution due, must be paid by Member. If this provision is invoked, notwithstanding any provision to the contrary, the Pool has no liability to pay claims expenses until the Member has paid in claims expenses an amount equal to the amount of the contribution due. It is understood and agreed among the parties that, to the extent allowed by law, venue for any suit brought for the purpose of collecting any contributions due and payable to the Pool shall be in Travis County, Texas, and that this contract was made and all actions under this Agreement are performable in, Austin, Travis County, Texas. The party prevailing in any action brought for the purpose of collecting any outstanding contributions due and payable to the Pool shall be entitled to reasonable attorney's fees, plus court costs. For purposes of this provision, the Pool shall be the prevailing party if it is awarded any relief sought in such preceding.

SECTION 5. CLAIMS

5.01 Claims Submitted

Member shall submit claims to the Pool as set forth in each applicable Coverage Document or as otherwise required by the Pool or state law.

5.02 Member to Cooperate

If the Pool needs assistance from Member or Member's employees regarding a claim, Member will cooperate with the Pool and will provide such assistance.

SECTION 6. SAFETY

6.01 Safety Program

The Member agrees to cooperate in instituting any and all reasonable safety regulations that may be recommended for the purpose of eliminating or minimizing hazards that may contribute to losses. In the event that the Member determines any recommendation submitted by the Pool, or a contractor authorized by the Pool to make such recommendations on behalf of the Pool is unreasonable, the Member has a right to appeal to the Board.

SECTION 7. MISCELLANEOUS

7.01 Amendment

Except as provided in this Agreement and the Bylaws, this Agreement shall not be amended or modified other than in a written agreement signed by both parties.

7.02 Applicable Law

This Agreement is entered into and executed in the State of Texas, and all questions pertaining to its validity or construction shall be determined in accordance with laws of the State of Texas. This agreement is made and performable in Travis County, Texas.

7.03 Suit Against the Pool. The Pool retains its governmental immunity except to the extent it is waived by the Legislature. The parties agree that the following adjudication procedures apply to any legal dispute, and that Member's right to sue the Pool is contingent upon compliance with these procedures: 1) prior to filing suit, Member must comply with all of its obligations under this Agreement and any applicable coverage document; 2) prior to filing suit, Member will participate in good faith in mediation in Travis County, Texas; and 3) any suit against the Pool must be brought in Travis County, Texas.

7.04 Acts of Forbearance

No act of forbearance on the part of either party to enforce any of the provisions of this Agreement shall be construed as a modification of this Agreement nor shall the failure of any party to exercise any right or privilege herein granted be considered as a waiver of such right or privilege.

7.05 Effect of Partial Invalidity

In case any provision of this Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Agreement.

7.06 Headings and Captions

The headings and captions in this Agreement are inserted for the purpose of convenience only and shall not be considered in the construction of any provision.

7.07 Notices and Payments

Any notice required to be given to the Pool shall be deemed properly sent if addressed to:

Texas Association of Counties
Risk Management Pool
P. O. Box 2131
Austin, Texas 78768

and deposited in the United States Mail with proper postage. Payments must be sent to either the above address or to the address specified in the Pool's invoice. The Pool may change its address by giving notice to Member. Any notice required to be given or payment required to be made to Member shall be deemed properly sent if addressed to the Member's Pool Coordinator at the address set forth below. Such person and address may be changed by Member if written notice of such change is given to Pool.

7.08 Counterparts

This Agreement may be executed in counterparts, each of which, when taken separately, shall be deemed an original.

7.09 Right to Enforce

No person or entity not a party to this Agreement may bring suit, as a third-party beneficiary or otherwise, to enforce this Agreement.

7.10 Prior Agreements Superseded

This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior agreements respecting the services to be provided under this Agreement.

EXECUTION

IN WITNESS WHEREOF, we hereunto affix our signatures as of the date indicated below.

TEXAS ASSOCIATION OF COUNTIES
RISK MANAGEMENT POOL

Collin County

By: *Susan M Redford*
Susan Redford, Executive Director
Texas Association of Counties

By: _____
Hon. Chris Hill
Collin County Judge

Date: 10/01/2019

Date: _____

MEMBER'S POOL COORDINATOR

Name: _____

Address: _____

