

Municipal Excess Liability Residual Claims Fund
9 Campus Drive – Suite 16
Parsippany, NJ 07109

Bylaws
Adopted November 20, 1995
Revised 7/24/98

WHEREAS: Public Law 1983, c.372 (N.J.S.A. 40A:10-36 et seq) permits local units to join together to form a joint insurance fund; and

WHEREAS: Said statute was designed to give local units the opportunity to use alternative risk management techniques, providing they are based on sound actuarial principles; and

WHEREAS: 278 municipalities and 52 utility authorities have formed 15 local joint insurance funds which secure excess coverage from the Municipal Excess Liability Joint Insurance Fund, hereinafter called the "MEL"; and

WHEREAS: The 15 local joint insurance funds and the MEL have reviewed options to finance the residual risk arising out of older fund years; and

WHEREAS: The joint insurance funds annexed to this document also studied the feasibility of forming a joint insurance fund to insure residual risk; and

WHEREAS: It has been concluded that the formation of a joint insurance fund to insure residual risk will result in significant savings in insurance cost as well as providing stability in coverage.

NOW, THEREFORE, in consideration of the premises and in order to create said fund to be known as the Municipal Excess Liability Residual Claims Fund, hereinafter called "Fund", it is mutually understood and agreed as follows:

Article I
DEFINITIONS

"ACTUARY" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"ADMINISTRATOR" means a person, partnership, corporation or other legal entity engaged by the Fund to act as Executive Director, to carry out the

policies established by the Fund Commissioners or Executive Committee and to otherwise administer and provide day-to-day management of the Fund.

"ALLOCATED CLAIMS EXPENSE" means attorneys' fees, expert witness fees (i.e. engineering, physicians, etc.), medical reports, professional photographers' fees, police reports and other similar expenses. The exact definition of "allocated claims expense" or similar terms for any line of insurance coverage shall be the definition in the excess insurance or reinsurance policy purchased by the Fund.

"EXCESS INSURANCE" means insurance purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner of Insurance as a surplus lines insurer, covering losses in excess of an amount set forth in insurance contracts on a specific occurrence, or per accident or annual aggregate basis.

"FUND" means the Municipal Excess Liability Residual Claims Fund (hereinafter referred to as the Fund).

"FUND YEAR" means the Fund's fiscal year of January 1st through December 31st. All residual claims incurred by the Fund during a fund year shall be considered as the same fund year, even if said claims involve various member fund years.

"INCURRED CLAIMS" means all claims assumed by the Fund during a fund year including claims reported or paid during a later period. The "fund year" for a residual claim incurred by the Fund is the year in which the liability for that claim was transferred to the Fund, not the year in which the claim was originally incurred by the member joint insurance fund. The exact definition of "incurred claims" or any similar term is the definition used in the excess insurance or reinsurance policy purchased by the Fund.

"INDEMNITY AND TRUST AGREEMENT" means a written contract signed by and duly adopted by the members of the Fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the Fund. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the Fund Commissioners as fiduciaries for the benefit of Fund claimants.

"MEMBER FUND YEAR" means the fund year of a member joint insurance fund during which a claim was originally incurred by the member.

"OCCURRENCE" means a single event. The exact definition of "occurrence" or any similar term shall be the definition used in the excess insurance or reinsurance policy purchased by the Fund.

"PROBABLE NET COST" means the estimated ultimate cost of claims incurred during a fund year plus the cost of allocated claims expense and other costs of operating the Fund until all claims incurred during the fund year are settled. For purposes of computing the probable net cost, losses within the deductible of participating local units and future investment income on outstanding loss reserves held by the Fund shall not be taken into consideration.

"RESIDUAL RISK" means claims incurred by the member joint insurance fund during a particular member fund year which have not settled, and are being assumed by the Municipal Excess Liability Residual Claims Fund.

"SERVICING ORGANIZATION" means an individual, partnership, association, or corporation, other than the administrator, that has contracted with the Fund to provide, on the Fund's behalf, any function as designated by the Fund Commissioners including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the Fund's underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the Fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. and N.J.A.C. 11:15-2, and such other duties as designated by the Fund.

"SURPLUS" means that amount of monies in a trust account that is in excess of all costs, earned investment income, returned surplus, incurred losses and loss adjustment expenses and incurred but not reported reserves including the associated loss adjustment expenses attributed to the Fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

Article II MEMBERSHIP

A. AGREEMENT TO JOIN THE FUND:

- 1.) Pursuant to Section I of P.L. 1983, c.372, a qualified joint insurance fund shall by resolution or ordinance, as appropriate, agree to join the Fund.

- a.) The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the Fund's Bylaws as approved and adopted pursuant to Section 4 of the Act.
 - b.) The agreement shall specify the extent of the member joint insurance fund's participation in the Fund with respect to the types of insurance coverage to be provided by the Fund and shall include the duration of Fund membership, which in no event shall exceed three years pursuant to N.J.S.A. 40A:11-15 (6).
 - c.) The agreement shall also specify the member fund years of residual claims which are being transferred to the Fund, and the member joint insurance fund's self-insured retention being assumed by the Fund.
- 2.) The agreement shall include an executed Indemnity and Trust Agreement.
 - 3.) All applicants to the Fund must also include a written statement certifying that the applicant has never defaulted on claims if self-insured, and has not been canceled for non-payment of insurance premiums for a period of at least two years prior to the application.

B. INITIAL MEMBERSHIP: Any joint insurance fund affiliated with the Municipal Excess Liability Joint Insurance Fund which participated in the feasibility study may be a part of the Fund's application subject to approval by the Commissioner of Insurance and the Department of Community Affairs.

C. SUBSEQUENT MEMBERSHIP:

- 1.) Any joint insurance fund seeking membership after the Fund's initial approval by the Commissioners of the State Department of Insurance and Department of Community Affairs shall submit an application for membership to the Fund on a form acceptable by the Commissioner of Insurance. The application shall include an executed Indemnity and Trust agreement and other documentation required under Section A above.
- 2.) An application may be approved by a majority vote of the Fund Commissioners or two-thirds vote of the full authorized membership of the Executive Committee based on the following criteria:
 - a.) The applicant is affiliated with the Municipal Excess Liability Joint Insurance Fund.

- b.) The applicant's claims history shows performance consistent with the Fund's objectives and the applicant demonstrates a prospective likelihood of satisfactory future claim performance.
 - c.) The Fund has the administrative capability to absorb additional memberships without undue inconvenience or strain.
- 3.) If the application is approved by the Fund, it shall be concurrently filed with the state Department of Insurance and the Department of Community Affairs and shall be accompanied by such amendments to the Fund's Budget and Plan of Risk Management as may be appropriate.
 - 4.) No new membership in the Fund shall become effective until the application and accompanying amendments to the Fund's Budget and Plan of Risk Management are approved by the Commissioners of Insurance and Community Affairs.

D. CONDITIONS OF MEMBERSHIP: As a condition of membership, each member joint insurance fund shall:

- 1.) Engage a qualified Executive Director/Administrator to coordinate the member's residual claims, and act as liaison between the Fund and the member joint insurance fund. The individual or firm so engaged shall be designated as a Deputy Executive Director/Administrator of the Fund.
- 2.) Engage a qualified Fund attorney to coordinate the legal defense of the member's residual claims. The individual or firm so engaged shall be designated as a deputy Fund attorney of the Fund.
- 3.) Maintain in full force and effect a contract with a qualified adjusting service company to adjust the member's residual claims. The claims adjusting service company so engaged shall be designated as a deputy claims adjusting service company of the Fund.
- 4.) In the event a member is not in compliance with the section, or the individuals or firms engaged do not meet the Fund's written criteria, the Fund may contract to provide these services and assess the cost of these engagements to the member joint insurance fund.

E. MEMBERSHIP RENEWALS:

- 1.) Members may renew their participation by execution of a new agreement to join the Fund ninety (90) days prior to the expiration of the term.
- 2.) The Fund Commissioners/Executive Committee must act upon any renewal application no later than forty five (45) days prior to the expiration of the term period. Otherwise, the renewal application is automatically approved.
- 3.) In order to deny a renewal application, the Fund shall find by majority vote that the applicant has failed to fulfill its responsibilities as a member.
- 4.) If a member's renewal application is rejected, the Fund shall comply with the provisions as outlined in Subsection F2, 3 and 4 below.
- 5.) Non-renewal of a Fund member does not relieve the member of responsibility for claims incurred during its period of membership.
- 6.) Renewal of membership does not commit the member joint insurance fund to transfer any additional member fund year's of residual claims to the Fund.

F. TERMINATION AND/OR WITHDRAWAL OF FUND MEMBERS

- 1.) A participating joint insurance fund must remain in the Fund for the full term of membership unless earlier terminated by a majority vote of the Fund Commissioners or a two-thirds vote of the Executive Committee for non-payment of assessments or continued non-compliance after receiving written notice to comply with the Fund's Bylaws or other obligations. However, a participating joint insurance fund shall not be deemed terminated until:
 - a.) The Fund gives, by registered mail, to the member a written notice of its intention to terminate the member in ten (10) days; and
 - b.) Like notice shall be filed with the Department of Insurance and Department of Community Affairs, together with a certified statement that the notice provided for above has been given; and
 - c.) Ten (10) days have elapsed after the filing required by "b" above.
- 2.) A member of the Fund that does not desire to continue as a member after the expiration of its membership term shall give written notice to the Fund of its intent

ninety (90) days before the expiration of the term period. The Fund shall immediately notify the Department of Insurance and the Department of Community Affairs that the member has given notice to leave the Fund.

- 3.) A member that has been terminated or does not continue as a member of the Fund shall remain jointly and severally liable for claims incurred by the Fund and its members during the period of its membership, including, but not limited to being subject to and liable for supplemental assessments.
- 4.) The Fund shall immediately notify the Department of Insurance and the Department of Community Affairs if the termination or withdrawal of a member causes the Fund to fail to meet any of the requirements of P.L. 1983, c.372 (NJSA 40A:10-36 et seq.) or any other law or regulation of the State of New Jersey. Within fifteen (15) days of such notice, the Fund shall advise the Department of Insurance and the Department of Community Affairs of its plan to bring the Fund into compliance.
- 5.) A Fund member is not relieved of the claims incurred during its period of membership except through payment by the Fund or member of those claims.

Article III ORGANIZATION

A. COMMISSIONERS:

- 1.) Appointment:
 - a.) Commissioners: In the manner generally prescribed by law, each participating joint insurance fund shall appoint one (1) Commissioner to the Fund. Each participating member shall select a member of its Board of Fund Commissioners.
 - b.) Alternate: Each member shall appoint one (1) alternate to attend either regular or special meetings on behalf of the member in the absence of the Fund Commissioner. The alternate shall exercise the full power and authority of the Fund Commissioner in his/her absence, including the right to vote. Each member joint insurance fund shall select either a member of its governing body or one of its employees.
 - c.) Special Commissioner: In the event that the number of participating joint insurance funds is an even number, one (1) additional Commissioner and an

alternate to the Special Commissioner shall be appointed annually by a participating joint insurance fund on a rotating basis determined alphabetically.

The member's privilege to appoint the Special Commissioner shall remain with that member for one entire fund year and the subsequent admission to the Fund of a member with a preceding alphabetical prefix shall not deprive any member already a member of the Fund of its prerogative to appoint a Special Commissioner during a current fund year.

2.) Terms of Office and Vacancy:

- a.) All terms of office shall expire on January 1st or until a successor is duly appointed and qualified.
- b.) A Commissioner, other than the Special Commissioner, shall hold office for two years or for the remainder of his/her term of office as a member of the member's Board of Fund Commissioners, whichever shall be less.
- c.) The Special Commissioner, if any, shall serve until January 1st of the year following appointment.
- d.) The unexpired term of a Commissioner other than the Special Commissioner, shall be filled by the appointing joint insurance fund in the manner generally prescribed by law.
- e.) In the event of a vacancy of the Special Commissioner caused by reason other than the expiration of the term of office, the member which appointed the Commissioner shall appoint the replacement for the unexpired term.
- f.) Any Commissioner can be removed from office for cause by two-thirds vote of the full membership of the Fund Commissioners/Executive Committee. Upon such a vote, it shall be incumbent upon the member joint insurance fund to replace the Commissioner.
- g.) Fund Commissioners/Executive Committee may vote to pay themselves a fee for attending meetings, not to exceed the amount authorized by N.J.S.A. 40A:10-37.

3.) Responsibilities:

- a.) The Commissioners are hereby authorized and empowered to operate the Fund in accordance with these Bylaws and appropriate state laws and regulations.
- b.) Each Commissioner shall have one vote provided, however that the Special Commissioner, if any, shall only vote in the event of a tie.

B. OFFICERS:

- 1.) As soon as possible after the beginning of each year, the Commissioners shall meet to elect the officers of the Fund from its own membership. Fund officers shall serve until January 1st of the following year, or until a successor is duly elected and qualified.
 - a.) Chairperson: The chairperson shall preside at all meetings of the Fund Commissioners/Executive Committee and shall perform such other duties provided for in these Bylaws and the laws and regulations of the State of New Jersey.
 - b.) Secretary: The secretary shall preside over the meetings of the Fund Commissioners/Executive Committee in the absence of the chairperson, maintain written minutes of its meetings, retain all books, records, files and other documents of the Fund, and shall perform such other duties as provided for in these Bylaws and the laws and regulations of the State of New Jersey.

The secretary shall have the responsibility to maintain the books and records of the Fund at the office of the Fund as from time to time designated by the Fund Commissioners, which office the secretary shall have free access to.
- 2.) In the event of a vacancy in any of the officer positions caused by other than the expiration of the term of office, the Commissioners shall by majority of vote fill the vacancy for the unexpired term.
- 3.) Any officer can be removed without cause at any time by a two-thirds vote of the full membership of the Fund Commissioners. In this event, the full membership of the Fund Commissioners shall vote to fill the vacancy for the unexpired term.

C. FUND PROFESSIONALS:

As soon as possible after the beginning of each year, the Commissioners/Executive Committee shall meet and select individuals to serve in the following professional positions. These individuals shall serve until January 1st of the following year, or until a successor is duly appointed and qualified. Where required by law, all professional officials shall be retained pursuant to the "Local Public Contracts Law."

- 1.) Treasurer: The treasurer must possess a valid certified municipal finance officer's certificate issued pursuant to N.J.S.A. 40A:9-140.2 and shall not be a Commissioner. The treasurer shall have the following duties and responsibilities:
 - a.) The treasurer shall be the custodian of the Fund's assets and shall maintain the various trust funds.
 - b.) The treasurer shall approve all receipts, payments, and financial records.
 - c.) The treasurer shall prepare the Fund's cash management plan and shall invest all balances.
 - d.) The treasurer shall perform such other duties as provided for by the Fund Commissioners/Executive Committee, these Bylaws and in the laws and regulations of the State of New Jersey.
 - e.) The treasurer shall be covered by a fidelity bond protecting the Fund's assets in a form and amount to be determined annually by the Fund Commissioners/Executive Committee. Said bond to be paid for by the Fund.

- 2.) Executive Director/Administrator:
 - a.) The administrator shall be experienced in risk management matters and shall not be a Commissioner of the Fund.
 - b.) Except with the approval of the Commissioner of Insurance, the administrator, its employees, officers or directors shall not be an employee, officer or director of or have either a direct or indirect financial interest in a servicing organization.
 - c.) The administrator shall have the following duties and responsibilities:

- i.) The administrator shall act as the executive director to carry out the policies established by the Commissioners/Executive Committee and to otherwise administer and provide for the day-to-day management of the Fund.
 - ii.) The administrator shall advise the Commissioners/Executive Committee on risk management matters and shall prepare a draft Risk Management Plan.
 - iii.) The administrator shall maintain underwriting data and assist the Fund in the purchase of insurance or excess insurance, provided, however that the administrator shall not act in the capacity of insurance producer with respect to the placement of the Fund's insurance or excess insurance.
 - iv.) The administrator shall prepare draft requests for proposals for services to be provided by servicing organizations.
 - v.) The administrator shall monitor the performance of the service companies.
 - vi.) The administrator shall prepare a draft budget and assessments for review by the Fund Commissioners/Executive Committee.
 - vii.) The administrator shall perform such other duties as provided for by the Fund Commissioners/Executive Committee, these Bylaws, and the laws and regulations of the State of New Jersey.
- d.) The Fund shall also appoint the Executive Director/Administrator of each member joint insurance fund as a Deputy Executive Director/Administrator of the Fund to assist the Fund's Executive Director in the coordination of the residual claims incurred by that member joint insurance fund. The Deputy Executive Director may not be a Fund Commissioner.

The administrator and deputy administrator (s) shall be bonded in a form and amount acceptable to the Commissioner of Insurance. The administrator and deputy administrator (s) shall also be covered by Errors and Omissions insurance as provided by NJAC 11:15-2 and/or supplements or amendments thereto. Said coverage to be paid by the Fund.

- 3.) Auditor: The auditor shall be an independent certified public accountant (CPA) or a registered municipal accountant (RMA) but shall not be a Commissioner. The

auditor shall conduct the annual audit of Fund and shall perform such other duties as provided for by the Fund Commissioners/Executive Committee, these Bylaws and the laws and regulations of the State of New Jersey.

- 4.) Attorney:
 - a.) The attorney shall be admitted to the New Jersey Bar but shall not be a Fund Commissioner.
 - b.) The attorney shall have the following responsibilities:
 - i.) The attorney shall advise the Fund on legal matters and the appropriateness of claim settlements recommended by the claims administrator.
 - ii.) The attorney shall advise the Commissioners/Executive Committee on the selection of counsel to represent the Fund in the defense of claims. However, the attorney or any member of the attorney's law firm shall not defend any claim which is the responsibility of the Fund without the authorization of the Commissioners/Executive Committee. The Fund attorney may, however, be involved with the defense of certain matters where the nature of the matter deems it more expeditious, cost effective or otherwise as agreed between the attorney and the Fund Commissioners/Executive Committee.
 - iii.) The attorney shall perform such other duties as provided for by the Fund Commissioners/Executive Committee, these Bylaws and the laws and regulations of the State of New Jersey.
 - c.) The Fund shall also appoint the Fund attorney of each member joint insurance fund as a Deputy Attorney of the Fund to assist the Fund Attorney in the coordination of the legal defense matters for residual claims incurred by that member joint insurance fund. A deputy fund attorney shall not be a Commissioner of the Fund.
- 5.) Service Agent: The Fund shall designate and appoint an agent in New Jersey to receive service and process on behalf of the Fund.

All fund professionals shall be retained on a contractual basis which shall be approved by the Fund Commissioners/Executive Committee and submitted to the Commissioner of Insurance and the Commissioner of Community Affairs.

Fund professionals shall be compensated for their services pursuant to written fee guidelines submitted annually and approved by a majority of the Fund Commissioners/Executive Committee. The written fee schedule shall be part of the official contract.

D. Executive Committee:

- 1.) If the total number of Commissioners exceeds seven (7), as soon as possible after the beginning of the year, the Fund Commissioners shall meet and elect five (5) Commissioners to serve with the chairperson and the secretary as the Executive Committee of the Fund. During their term of office, members of the Executive Committee shall exercise the full power and authority of the Commissioners except as otherwise provided. Wherever the term "Commissioners/Executive Committee" appears in these Bylaws, that term shall be interpreted to mean "Executive Committee", except in those cases where the express language and content of these Bylaws or applicable statutes dictate otherwise.
- 2.) All meeting of the Fund shall be meetings of the full Board of Fund Commissioners, and the Executive Committee shall only convene if the full Board of Fund Commissioners fails to reach a quorum.
- 3.) The Executive Committee shall serve until January 1st of the following year, or until their successors are duly elected and qualified.
- 4.) In the event the Commissioners shall elect an Executive Committee as provided for above, they shall also elect up to seven (7) Commissioners to serve as alternate members of the Executive Committee to attend either regular or special meetings to serve in the absence of a member or members of the Executive Committee. An alternate or alternates serving in the absence of a member, or members, of the Executive Committee shall exercise the full power and authority of that absent member or members. Alternates are expected to attend all meetings.
 - a.) The number of alternates to be elected shall be the number of Fund Commissioners minus seven (7).
 - b.) Alternates shall serve in established priority order, designated as alternate #1, alternate #2, etc. Alternate #1 shall serve in the absence of one member of the Executive Committee or in the absence of Alternate #1, Alternate #2 may serve. Alternates #1 and #2 shall serve in the absence of two or more Executive Committee members, etc.

- 5.) Vacancies on the Executive Committee caused by a reason other than the expiration of the term of office shall be filled by a majority vote of the full remaining membership of the Executive Committee.

E. INDEMNIFICATION OF OFFICERS AND EMPLOYEES:

- 1.) The servicing organization (s), administrator, deputy administrator (s) and producer engaged by the Fund to negotiate excess insurance or reinsurance shall provide Errors and Omissions coverage in a form satisfactory to the Commissioner of Insurance.
- 2.) The Fund Commissioners/Executive Committee, at their discretion may, but shall not be required to, have any other individual or organization engaged by the Fund produce evidence of Errors and Omissions coverage, and such other coverages as they deem advisable, as a condition of employment.
- 3.) Except to the extent covered by Errors and Omissions insurance as may be required, as set forth above, the Fund shall indemnify any past, present or future Fund Commissioner, official or employee of the Fund for claims arising from an act or omission of such Fund Commissioner, official or employee within the scope of the performance of such individuals' duties as Fund Commissioner, officials or employee. Such indemnification shall include reasonable cost and expenses incurred in defending such claims. Nothing contained herein shall require the Fund to pay punitive damages or exemplary damages or damages arising from the commission of a crime by such an individual and the Fund shall not be required to provide for the defense or indemnification of such an individual when the act or omission which caused the injury was the result of actual fraud, malice, gross negligence or willful misconduct of such individual or in the event of a claim against such an individual by the State of New Jersey or if such Fund

Commissioner, official or employee is either covered, or required to be covered by Errors and Omissions liability insurance.

The determination as to whether an individual's conduct falls within any of the above exceptions shall be made by the Fund Commissioners/Executive Committee. Nothing herein contained is intended to shield any employee or appointed official from liability for any act, omission or wrongdoing which would not customarily be covered by Errors and Omissions insurance if same had been required of said employee or appointed official.

- 4.) A present, past or future Fund Commissioner, official or employee of the Fund shall not be entitled to a defense or indemnification from the Fund unless:

- a.) Within ten (10) calendar days of the time he or she is served with the summons, complaint, process, notice or pleading, he or she delivers the original or exact copy to the Fund attorney, selected by the Fund to handle such matters, together with a request that the Fund provide for his or her defense.
 - b.) He or she cooperates in the preparation and presentation of the defense with the attorney selected to defend the case.
 - c.) Except in those instances where a conflict of interest exists, as determined by an attorney selected by the Fund to handle such matters, the past, present or future Fund Commissioner, official or employee shall agree that the Fund and its counsel shall have exclusive control over the handling of the litigation.
- 5.) The forgoing right of indemnification shall not be exclusive of any other rights to which any Fund Commissioner, official or employee may be entitled as a matter of law or which may be lawfully granted to him or her; and the right to indemnification hereby granted by this Fund shall be in addition to and not in restriction or limitation of any other privilege or power which the Fund may lawfully exercise with respect to the indemnification or reimbursement of a Fund Commissioner, official or employee; except that in no event shall a Fund Commissioner, official or employee receive compensation in excess of the full amount of a claim and reasonable costs and expense incurred in defending such claim.
 - 6.) Expenses incurred by any Fund Commissioner, official or employee in defending an action, suit or proceeding may be paid by the Fund in advance of final determination of such action, suit or proceeding as authorized by the Fund in a specific case upon receipt of an undertaking by or on behalf of such member or officer to repay such amount in the event of an ultimate determination that his or her conduct was such as to fall outside the scope of coverage under this indemnification provision.

Article IV OPERATION OF THE FUND

A. GENERAL OPERATION:

- 1.) The Fund shall be subject to and operate in compliance with the provisions of the Local Fiscal Affairs Law (N.J.S.A. 40A:5-1 et seq.), the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and the various statutes authorizing the investment of

public funds, including but not limited to N.J.S.A. 40A:10-10 (b), 17:12B-241 and 27:9-4.1.

- 2.) The Fund shall be considered a local unit for purposes of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.
- 3.) The Fund shall be operated with sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met. The Fund shall prepare a financial statement on a form acceptable to the Commissioner of Insurance showing the financial ability of the Fund to meet its obligations. The members may, upon majority vote, request that the Commissioner of Insurance order an examination of any Fund member which the Fund Commissioners/Executive Committee in good faith believes may be in a financial condition detrimental to other Fund members or to the public.

B. RISK MANAGEMENT PLAN:

- 1.) The Fund Commissioners/Executive Committee shall prepare or cause to be prepared, a Plan of Risk Management for the Fund. The Plan shall include, but not be limited to:
 - a.) The perils or liability to be insured against.
 - b.) Limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier or reinsurance.
 - c.) The amount of risk to be retained by the Fund.
 - d.) The amount of reserves to be established.
 - e.) The proposed method of assessing contributions to be paid by each member of the Fund.
 - f.) Procedures governing loss adjustment and legal fees.
 - g.) Coverage to be purchased from a commercial insurer, if any.
 - h.) Reinsurance to be purchased, if any, and the amount of premium therefore.
 - i.) Procedures for the closure of Fund years, including the maintenance of all relevant accounting records.

- j.) The assumptions and methodology used for the calculation of appropriate reserves required to be established, maintained and administered in accordance with sound actuarial principles.
 - k.) The maximum amount a certifying and approving officer may approve.
- 2.) The Risk Management Plan and all amendments must be approved by the Commissioner of Insurance and the Commissioner of the Department of Community Affairs before it takes effect.

C. SERVICING ORGANIZATIONS:

- 1.) The Fund may contract to have the following services performed:
- a.) actuarial;
 - b.) claims administration;
 - c.) cost containment;
 - d.) loss prevention/safety engineering;
 - e.) legal;
 - f.) auditing;
 - g.) financial;
 - h.) compilation and maintenance of the Fund's underwriting file;
 - i.) coordination and preparation of coverage documents;
 - j.) risk selection and pricing;
 - k.) excess insurance or reinsurance producer;
 - l.) member assessment and fee development;
 - m.) report preparation pursuant to N.J.S.A. 40A:10-36 et seq.; and
 - n.) such other services designated by the Fund.
- 2.) No servicing organization or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10, or their employees, officers or directors shall have either a direct or indirect interest in the administrator or be an employee, officer or director of the administrator unless notice of such interest has been provided to the Fund Commissioners and members. No administrator, or their employees, officers or directors shall be an employee, officer or director, or have either a direct or indirect financial interest in a servicing organization of the Fund or the insurance producer that may be appointed by the Fund pursuant to N.J.A.C. 11:15-2.6(c) 10-1 unless notice of such interest has been provided to the Fund Commissioners and members.

- 3.) Each service contract shall include a clause stating "unless the Fund Commissioners otherwise permit, the servicing organization shall handle to its conclusion all claims and other obligations incurred during the contract period."
- 4.) Each Servicing Organization shall provide a surety bond and Errors and Omissions coverage in a form and amount acceptable to the Commissioner of Insurance, and as provided elsewhere in these Bylaws.

D. FINANCIAL STATEMENT AND REPORTS:

- 1.) The Fund shall provide its members with periodic reports concerning the activities and status of the Fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the Fund Commissioners.
- 2.) A sworn annual report in a form prescribed by the Commissioner of Insurance shall be prepared by the Fund, filed concurrently with the Department of Insurance and the Department of Community Affairs and made available to each Fund member on or before June 30th of each year.
- 3.) Such other information as may be required by the Department pursuant to NJAC 11:15-2.24.

E. COVERAGES:

- 1.) The Fund shall offer the following coverages to the members:
 - a.) Workers' Compensation and Employer's Liability. The Workers' Compensation benefits levels will equal those required by the Workers' Compensation law and other applicable statutes. The Fund shall make payment to Workers' Compensation recipients in a timely fashion in accordance with the regulations of the Department of Insurance.
 - b.) Liability other than Motor Vehicles.
 - c.) Property Damage including Motor Vehicle.
 - d.) Motor Vehicle Liability.
- 2.) Coverage shall be afforded on a residual basis for claim liabilities incurred by the member joint insurance fund for member fund years at least 18 months after the end of the member fund year.

- 3.) *“Notwithstanding the 18 month minimum period in subsection 2 above, the Fund may also afford coverage on a residual basis for run-in claim liabilities assumed by a member joint insurance fund from any of its member local units provided that this assumption of run-in claims from the member joint insurance fund is reinsured.”*

Article V
MEETINGS AND RULES OF ORDER

A. MEETINGS:

- 1.) Annual Organization Meeting - As soon as possible after the beginning of the year, the Fund Commissioners shall meet to elect officers and the Executive Committee, if any, to appoint officials and conduct such other business as is necessary. The time and place for the meeting shall be established by the chairperson, and the secretary shall send written notice to the clerks of participating local units at least two (2) weeks in advance.
- 2.) Business Meetings - The Fund Commissioners/Executive Committee shall establish a schedule of meetings to conduct the business of the Fund. All Fund Commissioners may attend open or closed sessions of the Executive Committee.
- 3.) Special Meetings - The chairperson or three (3) Commissioners may call a special meeting by notifying the Fund's secretary at least three (3) days in advance. The secretary shall notify the Fund Commissioners/Executive Committee by telephone. If the secretary is unable to reach a member as of forty-eight (48) hours before the meeting, the secretary shall telephone another official of the member local unit using the following order: local unit's Executive Director/Administrator, chairperson, secretary.

Notice shall state the purpose of the meeting and whether it is called for the Executive Committee only or full membership of Fund Commissioners.
- 4.) Quorum - The quorum for full Fund Commissioners meeting shall be a majority of the total number of Fund Commissioners.
- 5.) A quorum for Executive Committee meetings shall be a majority of the total Committee.

B. CONDUCT OF MEETINGS:

- 1.) All meetings of the Fund shall be subject to the rules and regulations of the Open Public Meetings Act.
- 2.) Unless otherwise provided in these Bylaws, or in the laws or regulations of the State of New Jersey, "Robert's Rules of Order" shall govern the conduct of all meetings.

C. AMENDMENTS TO THE BYLAWS:

- 1.) Any Commissioner may propose an amendment to the Bylaws by filing the proposed amendment in writing with the secretary.
- 2.) Upon receipt of a proposed amendment, the secretary shall notify the chairperson who shall schedule a hearing to be held not more than forty-five (45) days from the date the amendment was filed. The secretary shall notify in writing all Fund Commissioners of the hearing date and shall send all Fund Commissioners a copy of the proposed amendment.
- 3.) The amendment is adopted by the Fund when three-fourths (3/4) of the member joint insurance funds approve the amendment within six (6) months of the hearing on the amendment. In the event Section 40A:10-43 is amended, the procedure and vote required by said statute as amended shall control. If after six (6) months the Secretary has not received written notice of approval from three-fourths (3/4) of the participating local units, the Secretary shall notify the members that time has expired for the adoption of the amendment.
- 4.) If adopted, the amendment shall not take effect until approved by the Commissioner of Insurance and the Commissioner of the Department of Community Affairs.
- 5.) Within ninety (90) days after the effective date of any amendment to the Bylaws, a member which did not approve the amendment may withdraw from the Fund provided that it shall remain liable for its share of any claims or expenses incurred by the Fund during its period of membership.

**Article VI
BUDGETS**

A. BUDGET PREPARATION:

- 1.) In November of each year, the Fund shall prepare the budget for the upcoming fiscal year. The budget shall identify the proposed items and amounts of expenditure for

its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year, and the status of the self insurance or loss retention accounts.

- 2.) Non-claim expenses shall be allocated among fund years.
- 3.) In the event the budget for the upcoming fiscal year includes provision for the transfer residual risk by member joint insurance funds for member fund years not yet transferred:
 - a.) participation by a member joint insurance fund in such transfer shall be optional; and
 - b.) the budget for such transfer shall include provision to pay non-claim expenses associated with the transfer.
- 4.) The budget shall be reviewed by an actuary who shall comment on its adequacy and shall recommend changes, as appropriate, by November 15th.

B. BUDGET ADOPTION:

- 1.) Not later than December 31st of each year the Fund Commissioners/Executive Committee shall adopt by majority vote the budget for the Fund's operation for the coming fiscal year.
- 2.) A copy of the Fund's proposed budget as changed to reflect the actuary report shall be sent to each participating joint insurance fund at least two (2) weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all participating local units the opportunity to present comments or objections.
- 3.) Any time during the year, the Fund may investigate the feasibility of assuming the residual risk of additional member fund years. Participation in such transfers shall be optional on the part of each member joint insurance fund, and shall require the Fund to amend its budget and secure an amended indemnity and trust agreement from each member joint insurance fund which wishes to transfer the residual risk for additional member fund years.
- 4.) An adopted budget may be amended by majority vote of Fund Commissioners/Executive Committee after giving the participating joint insurance

funds two (2) weeks advance written notice and conducting a hearing on the proposed amendment.

- 5.) A copy of the adopted budget and any amendment shall be filed within thirty (30) days of its adoption with the governing body of each participating joint insurance fund, the Commissioner of Insurance, and the Commissioner of the Department of Community Affairs.

Article VII ASSESSMENTS

A. ANNUAL ASSESSMENT

- 1.) By November 15th of each year, the actuary shall compute the probable net cost for the upcoming fund year and for each prior fund year. The actuary shall include all budget items in these computations.
- 2.) That portion of the non-claim budget which relates to residual risk already transferred to the Fund shall be charged to the member funds based on their share of each such fund year.
- 3.) That portion of the budget related to the transferring residual risk not yet transferred shall be charged to the members pro rata, based on the actuarial evaluation of the ultimate cost, including IBNR of the claims to be transferred.
- 4.) Any other budget item shall be charged to the members, based on the value of the service provided.
- 5.) The total amount of each member's annual assessment shall be certified by majority vote of the Fund Commissioners/Executive Committee to the governing body of each participating member at least one (1) month prior to the beginning of the next fiscal year.
- 6.) The annual assessment shall be paid to the Fund in installments, to be determined by the Fund Commissioners/Executive Committee which shall conform with N.J.A.C. 11:15-2.15(a).
- 7.) In the event the final budget passed in December necessitates changes in the annual assessment, the second installment shall be adjusted to reflect this difference.

- 8.) The Treasurer shall deposit each member's assessment into the appropriate accounts, including the administrative account and the claim or loss retention trust fund account by fund year in which the member participates.

B. SUPPLEMENTAL ASSESSMENTS:

- 1.) The Fund Commissioners/Executive Committee shall by majority vote levy upon the participating joint insurance funds additional assessments wherever needed or so ordered by the Commissioner of Insurance to supplement the Fund's claim, loss retention or administrative accounts to assure the payment of the Fund's obligations.
 - a.) All supplemental assessments shall be charged to the participating joint insurance fund by applicable fund year, and shall be apportioned by that year's premium.
 - b.) All joint insurance funds shall be given ninety (90) days advance written notice of the Fund's intention to charge an additional assessment, and the Fund shall conduct a hearing before adopting the supplemental assessment.
 - c.) Member joint insurance funds shall have thirty (30) days to pay the Fund from the date any supplemental assessment is adopted.
- 2.) The Fund shall submit to the Commissioner of Insurance and the Commissioner of Community Affairs a report of the causes of the Fund's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a reoccurrence of such circumstances.

C. FAILURE OR REFUSAL TO PROVIDE REQUIRED ASSESSMENTS: Should any member fail or refuse to pay its assessments or supplemental assessments, or should the Fund fail to assess funds required to meet its obligations, the Chairperson or in the event by his or her failure to do so, the custodian of the Fund's assets, shall notify the Commissioner of Insurance and the Commissioner of Community Affairs in writing. Past due assessments shall bear interest at the rate of interest to be established annually by the Fund Commissioners/Executive Committee.

D. INSOLVENCY AND/OR BANKRUPTCY OF FUND MEMBERS: The insolvency or bankruptcy of a member does not release the Fund, or any other member, of joint and several liability for the payment of any claim incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

Article VIII
REFUNDS

- A. Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the Fund in accordance to the regulations promulgated by the state Department of Insurance.
- B. A refund for any fiscal year shall be paid only in proportion to the member's participation in the Fund for such year. Payment of a refund on a previous year is not contingent on the member's continued membership in the Fund after that year.
- C. Upon payment of premium to the Fund for the transfer of residual risk, the member joint insurance fund shall provide the Fund with a list of its member local units, and how much of the premium relates to each such member local unit. The Fund shall maintain records of how much of the premiums for each fund year relates to each member local unit of each member joint insurance fund, and shall compute dividends down to the member local unit level. At the option of the member joint insurance fund, surplus refunds shall be paid directly to the member local units.

Article IX
EXCESS INSURANCE

- A. The Fund shall purchase excess insurance and/or reinsurance in a form and amount from an insurance company acceptable to the Commissioner of Insurance.
 - 1.) Member joint insurance funds shall arrange to have the Fund designated as an additional named insured on each policy of single accident (i.e. specific) excess insurance or reinsurance covering claims from member fund years transferred to the Fund. In the event such policy of excess insurance or reinsurance fails to cover a claim, the member joint insurance fund shall be responsible for the amount of the claim which, otherwise, such policy would have covered. In no event shall the Fund be responsible for any claim amount in excess of the member joint insurance fund's self-insured retention as specified in the member's coverage documents.
 - 2.) The Fund shall either:
 - a.) purchase aggregate excess insurance or reinsurance to cap its total exposure for residual claims incurred by the Fund during a fund year; or
 - b.) establish an aggregate excess loss contingency fund.

The aggregate excess insurance or reinsurance may cover various member fund years. All residual claims incurred by the Fund during a fund year shall be considered as the same Fund year, even if said claims involve various member fund years.

- 3.) In the event such excess insurance or reinsurance is not available at a reasonable premium, the full Board of Fund Commissioners may vote to suspend and/or modify this requirement upon the approval of the Commissioner of Insurance.
- B.** No later than forty-five (45) days before the beginning of the fiscal year, the Fund shall notify all members of changes in the coming year's excess insurance or reinsurance policies. The Fund shall also notify the members of any changes in the policies which occur during the year. The Fund shall also notify the Commissioner of Insurance of any changes in the policies which occur during the year or of changes in the coming year's excess insurance or reinsurance policies.
- C.** Certificates of excess insurance showing policy limits and other information shall be filed with each member and the Commissioner of Insurance. Copies of all policies shall be provided to the members.

Article X

TRUST FUND ACCOUNTS, INVESTMENTS AND DISBURSEMENTS

A. ESTABLISHMENT OF TRUST FUND ACCOUNTS

- 1.) By resolution, the Fund shall designate a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14.
- 2.) The Fund shall establish a separate Trust Fund Account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums by fund year. Such accounts shall be designated as Claims or Loss Retention Fund Accounts.
 - a.) Other than for claims, allocated claims expense, or excess insurance premiums, no transfers or withdrawals may be made from a claim or loss retention account without the prior written approval of the Commissioner of Insurance.
- 3.) The Fund shall also establish an administrative account which shall be utilized for payment of the Fund's general operating expenses, loss prevention activities, data processing services, and general legal expenses.

B. INVESTMENTS

- 1.) The balance of any account shall be invested to obtain the maximum interest return practical. All investments shall be in accordance with the Fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.
- 2.) The investment and interest income earned by the investment of the assets of each claim or loss retention account shall be credited to each account.
- 3.) The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

C. DISBURSEMENTS

- 1.) Prior to any commitment or agreement requiring the expenditure of funds, the custodian of the Fund's assets shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted.
- 2.) All disbursements, payments of claims or expenditure of funds must be approved by a majority vote of the Fund Commissioners/Executive Committee.
- 3.) Notwithstanding numbers 1 and 2 above, the Fund may provide for the expedient resolution of certain claims by designating the Fund's Administrator or service organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The Fund may authorize the certifying and approving officer to approve for payment any specified claims in an amount not to exceed an amount established in the Fund's Plan of Risk Management. The Fund shall establish such other procedures and restrictions on the exercise of this authority as the Fund deems appropriate.
- 4.) Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the custodian of the Fund's assets, directing that a check for payment be prepared.
- 5.) Each month, the certifying and approving officer shall prepare a report of all claims approved since the last report, detailing the nature and the amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be reviewed and approved or rejected by vote of the Fund Commissioners/Executive Committee at their next regularly scheduled meeting. If any payment is not approved, appropriate action shall be taken.

- 6.) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the Fund having knowledge of the facts that the goods have been received by, or the services rendered to the Fund. In the case of claims or losses to be charged against any loss fund, the Fund's claims administrator shall certify as to the claims correctness and validity.
- 7.) All claims shall be paid by check. The checks shall be signed by two persons so designated by the Fund Commissioners/Executive Committee.
- 8.) All claims or other disbursements approved for payment by the Fund shall be recorded in a claims register maintained by the custodian of the Fund's assets.

**Article XI
CONFLICT OF INTEREST**

- A. All officials and employees of a member joint insurance fund and its member local units or any members of the family of such officials or employees shall comply with N.J.S.A. 40A:22.1 et seq. (the "Local Government Ethics Laws").

**Article XII
VOLUNTARY DISSOLUTION OF THE FUND**

- A. If the Fund Commissioners/Executive Committee deem it in the best interest of the members to dissolve the Fund, they shall by majority vote direct that a written Plan of Dissolution be prepared.
- B. The Plan of Dissolution must provide for the payment of all incurred losses of the Fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the Fund or the trust fund accounts may be used for any other purpose.
- C. Upon completion of the plan, the Chairperson shall call a general meeting of all Fund Commissioners/Executive Committee who shall review the plan and make any appropriate amendments. By majority vote, the Fund Commissioners may recommend to the members that the Fund be dissolved in accordance with the Plan of Dissolution.
- D. A majority of the governing bodies of the participating joint insurance fund must by resolution vote to accept the Plan of Dissolution in order to dissolve the Fund.

- E. Such Plan of Dissolution shall contain a statement of the funds current financial condition computed according to generally accepted accounting principles as attested to by an independent certified accountant.
- F. The Plan of Dissolution and other such information as may be required, must be filed with and approved in writing by the Commissioner of Insurance and the Commissioner of the Department of Community Affairs before the dissolution of the Fund is effective.

Article XIII
CLAIMS HANDLING PROCEDURE

- A. **REGISTRATION OF CLAIMS:** Upon receipt of initial notice of claim, whether by service of process, notice of claim or petition or otherwise, the claims administrator shall cause each claim to be numbered, and to be included on a monthly report to the Fund Commissioners/Executive Committee. The monthly report shall set forth the name of the claimant, the nature of the claim, the type insurance coverage claimed against, and to the extent known, an approximate estimate of the magnitude of the potential loss.
- B. **CLAIMS RESPONSE:** Upon receipt of the initial notice of claim described above, the local unit shall immediately forward the notice of claim and any other information available to the claims service agency and, where appropriate, to the Fund's attorney for initial contact, investigation, court actions or other appropriate response.
- C. **CLAIMS ACKNOWLEDGEMENT AND INITIAL EVALUATION:** Upon receipt of an assignment of claim handling, the claims service agency and, where appropriate, the defense attorneys shall acknowledge receipt of the claim and within thirty (30) days of receipt, submit a report indicating their initial assessment of the merits and exposure represented by the claim and a summary of the actions taken to date in response to said claim.
- D. **PERIODIC REVIEW OF CLAIM STATUS:** Each claim shall be reviewed at intervals of not greater than ninety (90) days as to their status. In particular, the Fund Commissioners/Executive Committee shall determine whether the investigation and defense of the claim is adequate, and the adequacy of the reserves posted for the claim.
- E. **NOTICE OF SETTLED CLAIMS:** Where permitted by the Bylaws, and settlements have been concluded without action of the Fund Commissioners/Executive Committee, a complete report thereof as provided by the Bylaws shall be furnished to the Fund Commissioners/Executive Committee.
- F. **NOTICE OF INTENDED SETTLEMENT:** Whenever an investigation discloses that the prompt fair and equitable settlement of a claim is appropriate and possible, the claims

service agency shall submit to the administrator for review at a Fund Commissioners/Executive Committee meeting, a notice of recommended settlement. This notice shall be on forms approved by the Fund Commissioners/Executive Committee and shall set forth identifying information concerning the claim, recommendations where appropriate concerning the legal liability of the Fund, a summary of investigative work concerning the merits of the claim and the reasons underlying the recommended settlement.

- G. APPROVAL OF PAYMENTS AND SETTLEMENTS:** Whenever the Fund shall make any payment or settlement of any claim, a notation thereof identifying the claim, the amount paid and the reasons underlying the payment shall be approved by the Fund Commissioners/Executive Committee and entered upon a ledger of claims paid.

Article XIV COMPLAINT HANDLING PROCEDURE

- A.** Whenever any interested party shall submit a complaint in writing to the Fund, the executive director/administrator, or any member of the Fund, a copy thereof shall be forthwith communicated to the Fund Commissioners/Executive Committee for consideration at its next regularly scheduled meeting.
- B.** At said meeting the Fund Commissioners/Executive Committee shall consider the complaint, and by recorded vote take such action as might be appropriate.
- C.** The complaining party, and the Fund Commissioner from the member joint insurance fund shall receive written notice of the Fund Commissioners/Executive Committee findings. The written notice to the complaining party, may where appropriate, include an opportunity for the complaining party to have a hearing concerning his/her complaint before the Fund Commissioners/Executive Committee.
- D.** The Fund shall keep a separate record of all complaints received and the disposition of same.

Article XV OTHER CONDITIONS

- A. INSPECTION AND AUDIT:** The Fund shall be permitted but not obligated to inspect, at any reasonable time, the work places and operations of each participant covered by this agreement. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the participant or others, to determine or warrant that such work places, operations, are safe or healthful, or are in compliance with any law, rule or regulation.

The Fund shall be permitted to examine and audit the participant's payroll records, general ledger, disbursements, vouchers, contracts, tax reports and all other books, documents and records at any reasonable time as far as they show or tend to show or verify the amount of remuneration or other premium basis, or relate to the subject matter of this agreement.

- B. NOTICE OF INJURY:** When an injury occurs, written notice shall be given by or on behalf of the participant to the Fund or any of its authorized agents as soon as practical. Such notice shall contain particulars sufficient to identify the participant and also reasonably obtainable information respecting the time, place and circumstances of the injury, the names and addresses of the injured and of available witnesses.
- C. NOTICE OF CLAIM OR SUIT:** If claim is made or formal petition or a suit or other proceedings are brought against the participant, the participant shall immediately forward to the Fund every demand, notice, summons or other process received by him or his representative.
- D. ASSISTANCE AND COOPERATION OF THE PARTICIPANT:** The participant shall cooperate with the Fund, and upon the Fund's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits or proceedings. The participant shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and other services at the time of injury as are required by the Workers' Compensation Law.
- E. ACTION AGAINST FUND:** No action shall lie against the Fund unless, as a condition precedent thereto, the Participant shall have fully complied with all the terms of this agreement, not until the amount of the participant's obligation to pay shall have been finally determined either by judgment against the participant after actual trial or by written agreement of the participant, the claimant and the Fund. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this agreement to the extent of the protection afforded by this agreement. Nothing contained in this agreement shall give any person or organization any right to join the Fund as a co-defendant in any action against the participant to determine the participant's liability.

Bankruptcy or insolvency of the participant shall not relieve the Fund of any of its obligations.

- F. SUBROGATION:** In the event of any payment under the agreement, the Fund shall be subrogated to all rights of recovery therefore of the participant and any person entitled to the benefits of this agreement against any person or organization and the Participant shall execute and deliver instruments and papers and do whatever else is

necessary to secure such rights. The participant shall do nothing after loss to prejudice such rights.

- G. CONFORMANCE WITH STATUTE:** In the event any portion of these Bylaws conflict with any statute or administrative regulation covering joint insurance funds, the provision of any such regulation shall control to the extent it conflicts.

MUNICIPAL EXCESS LIABILITY RESIDUAL CLAIMS FUND