

MICHIGAN MUNICIPAL LEAGUE
LIABILITY & PROPERTY POOL

INTERGOVERNMENTAL CONTRACT



December 2014

Forward

This Intergovernmental Contract forms the legal basis for the operation of the Michigan Municipal League Liability & Property Pool.

The mission of the Pool is “To provide a long-term, stable, cost-effective risk management alternative for members and associate members of the Michigan Municipal League.”

Each municipality or other public agency that accepts the Pool’s offer of membership must execute this Intergovernmental Contract by one or more signatures of its authorized officials. The rights and obligations of Pool members are set forth in this Contract.

Current and prospective Pool members who have questions about the provisions of this Contract should contact the Risk Management Services Division of the Michigan Municipal League.

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**Intergovernmental Contract
for the Michigan Municipal League
Liability & Property Pool**

This Agreement is made and entered into by and between Michigan municipal corporations which are now or hereafter become Members of the Michigan Municipal League Liability & Property Pool herein created:

WHEREAS, 1951 P.A. 35, as amended by 1988 P.A. 36, (MCL 124.1, et seq.; MSA 5.4081 et seq.,) authorizes municipal corporations to form group self insurance Pools;

WHEREAS, certain municipal corporations who are signatories to this Agreement have formed a group self-insurance Pool pursuant to said statute;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

**Article 1
Establishment of Pool**

Section 1.1 Pool Created The Michigan Municipal League Liability & Property Pool functions as an unincorporated nonprofit association in the manner herein expressed. The purpose of this Agreement is to jointly exercise powers common to each participating municipal corporation; to establish and administer a risk management service; to prevent or lessen the incidence and severity of casualty losses occurring in the operation of local governmental functions; and to defend and protect, in accordance with this Agreement, any Member of the Pool against stated liability or loss. The powers and duties created hereunder and the activities of this Pool shall not constitute operating an insurance business.

**Article 2
Definitions**

In the interpretation of this Agreement, the following definitions shall apply unless the context requires another interpretation:

1. "Pool" shall mean the Michigan Municipal League Liability & Property Pool.
2. "Board" shall mean the Board of Directors of the Pool.
3. "Loss Fund" shall mean those funds remaining from the contributions of Pool Members after the payment of the cost of excess insurance and administrative services.
4. "Administrator" shall mean the person or agency designated to supervise the administration of the Pool and to perform such duties and exercise such powers as shall be specifically delegated by the Board.
5. "Member" shall mean a municipal corporation as defined in 1951 P.A. 35, as amended, or a League associate member participating in the Pool in conformity with this Agreement.
6. "Service Company" shall mean persons or agencies designated to provide Pool services under such supervision as the Board shall direct.
7. "League" shall mean the Michigan Municipal League.

Article 3 Board of Directors

Section 3.1 Board, Size & Qualifications The Board of Directors shall consist of nine members. Each Director shall be an elected or appointed officer of a Pool Member, except that one of the Directors shall be the Executive Director of the League, Ex-officio. Candidates for the Board shall be nominated by the Board of Trustees of the League and shall be elected by Members of the Pool by means of a mail or electronic ballot. The vote of each Member for Pool Directors shall be cast as may be determined by the governing body of the Member.

Section 3.2, Election of Directors: Directors shall be elected to serve a term of three years or until their successors are elected and qualified. No Director shall serve for more than four (4) consecutive three year terms except that the Executive Director of the of the League shall be a Director for so long as he/she retains his/her position as League Executive Director. Any Director vacancy due to death, resignation, disqualification or inability to act shall be filled until the next succeeding election of the Board by appointment of the remaining Directors. Any Director who ceases to be an official or employee of a member or ceases to occupy the municipal position he or she held when elected or appointed as a Director may continue in office until the next election of Directors, if approved by the majority of remaining Directors. The terms of Directors elected prior to January 1, 2015 shall be amended to coincide with this provision.

Section 3.3 Fiscal Year The Pool shall maintain a fiscal year commencing January 1 of each year and ending December 31.

Section 3.4 Compensation The Board shall provide for the reimbursement to Directors of actual expenses incurred in the pursuit of Pool business and may provide for other compensation if agreed by the Board of Trustees of the League.

Section 3.5. Organization The Board at its first regular meeting of each fiscal year shall select from the Directors a Chairperson and a Vice-Chairperson. The Administrator shall act as Secretary to the Board. At such meeting the Board may also name three of its members to an Executive Committee to act for and on behalf of the Board between Board meetings. The Executive Committee shall provide direction to the Administrator on Board policy and shall exercise Board powers necessary for prudent management of the Pool until matters requiring Board action can be considered at the next regular or special meeting.

Section 3.6 Meetings The Board will hold a minimum of two regular meetings during each fiscal year. A quorum consisting of five Directors must be present to conduct business. Any item of Pool business may be considered at a regular meeting. The Administrator or a majority of the Board may call a special meeting. Advance notice will include the agenda for the special meeting, and business at a special meeting will be limited to agenda items.

Section 3.7 Board Committees The Board may create regular or ad hoc committees and provide for the committee mission and the procedure for the appointment of members.

Section 3.8 Liability of Directors Directors of the Pool shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties. They shall not be liable for any mistakes or 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 funds or failure to invest. No Director shall be liable for any action taken or omitted by any other Director. No Director shall be required to give a bond or other security to guarantee the faithful performance of their duties hereunder. The Pool shall defend and hold harmless any Director, for actions taken by the Board or performed by the Director within the scope of his or her authority for the Pool. The Pool may purchase insurance providing similar coverage for such Directors.

Article 4 Board Powers and Duties

Section 4.1 General Powers The Board is authorized in the name of the Pool to do all the acts necessary to perform and accomplish the purposes set forth in this Agreement within the limits and procedures herein set forth, including but not limited to:

1. Make and enter into contracts.
2. Incur debts, liabilities and obligations.
3. Acquire, hold or dispose of real and personal property.
4. Sue or be sued in its own name, and take all measures necessary or desirable in the prosecution or defense of claims.
5. Administer a risk management Pool, collect contributions thereto and pay claims on behalf of its members.
6. Establish risk management policies and member core services.
7. Purchase reinsurance or excess insurance as necessary to protect the interests of the Members and the Pool.
8. Employ an attorney or attorneys as desirable in the operation of the Pool.
9. Determine the general policy for operation of the Pool that shall be followed by all committees, officers, agents and independent contractors employed by the Pool.
10. Adopt rules for the conduct of the affairs of the Pool and in recording of data required by law and sound management.
11. Terminate membership of any Member which the Board deems undesirable from an underwriting stand point, or which fails to comply with the reasonable requirements of the Board concerning payment of contributions, installation of safety requirements, cooperation with the Pool's attorneys and agents or compliance with the obligation of members under Article 6, or for any other action that may be detrimental to the fiscal soundness or efficiency of the Pool.

Article 5 Membership in Pool

Section 5.1 Members Members shall be admitted upon approval of the Board of Directors after execution of this Agreement and by payment of prescribed contributions pursuant to this Agreement. Every Member agrees to the admission of additional Members pursuant thereto. This Agreement shall be automatically renewed unless the provisions for withdrawal or termination are applied.

Section 5.2 Member Representatives The city manager or equivalent highest ranking administrative official of a Member shall be the Member's designated representative to the Pool. If a Member's organizational structure does not provide for a city manager or equivalent administrator, the highest ranking elected official shall be the designated representative to the Pool. The designated representative shall be responsible for execution of the member's responsibilities under this agreement, including, but not limited to, membership dues, fund contributions and compliance with risk management practices.

Section 5.3 Nonrenewal of Membership

1. Each Member shall continue its membership for a period of not less than one year. Effective upon the conclusion of such period, or effective at the end of any subsequent year, a Member may withdraw by giving written notice to the Pool sixty (60) days in advance of termination. The Pool shall continue to administer any covered claim after the withdrawal of that Member.
2. Pool membership shall be on a year-to-year basis. The Pool may, with sixty (60) days written notice to a Member, determine not to renew a Member's participation in the Pool effective at the end of that Member's coverage year.
3. Any Member failing to make payments required by Article 8 of this Agreement when due, shall upon twenty (20) days notice be terminated from membership and the Members coverage and benefits hereunder shall cease. If the Member subsequently submits its payment, the Administrator may reinstate such membership.

4. All Members will maintain membership or associate status in the League and on failure to do so shall be notified that their membership in the Pool shall be terminated, including the effective date of termination, if League dues and Pool contribution are not received. Such termination shall be effective on the date that the Member's next contribution to the Pool comes due thirty (30) days or more from the lapse in League membership.

Section 5.4 Membership Termination

1. When in the determination of the Administrator a Member has engaged in conduct, other than non-payment of premiums, that warrants termination of that Member, the Administrator shall file a written report and recommendation to the Executive Committee which shall act on the recommendation. At least fifteen (15) days notice of termination shall be given to the Member by registered mail.
2. A Member which has received a notice of termination for reasons other than nonpayment of premium may request a hearing before the Executive Committee. The Member shall serve a request for hearing and reinstatement upon the Administrator within ten (10) days of the notice of termination.
3. If the Member has requested a hearing before the Executive Committee, the Administrator shall serve a copy of the recommendation of termination and a report upon the Member and Executive Committee, along with a notice of hearing, within ten (10) days of receiving the Member's request for hearing.
4. The notice of hearing shall include the place, date, time of the hearing and the hearing shall occur not less than thirty (30) days before cancellation date. A Member objecting to the notice of cancellation shall submit a written statement to the Executive Committee setting out in detail the basis of the objection and any other information that the Member desires to submit. The Member's statement shall be served upon the Administrator and Executive Committee no later than seven (7) days prior to the hearing.
5. The Executive Committee shall meet at the time and place designated in the notice of hearing. The Administrator and Member shall be entitled to be represented at the hearing and present an oral statement and other information.
6. Following the hearing, the Executive Committee shall affirm, modify or reject the cancellation notice. A copy of the Executive Committee's decision shall be served by mail upon the Member at its last known mailing address.
7. The action of the Executive Committee shall be final and binding upon the parties.

Article 6 Obligations of Members

The obligations of Members of the Pool shall be as follows:

1. To appropriate for and promptly pay all annual and supplementary or other payments to the Pool at such times and in such amounts as shall be established by the Board within the scope of this Agreement.
2. To allow the Board or its service company 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.
3. To allow attorneys assigned by the Pool to represent the Member in defense or litigation arising out of any claim made against the Member within the scope of coverage furnished by the Pool.
4. To furnish full cooperation with legal counsel assigned by the Pool to represent the Member, and to cooperate with the Pool's administrative staff, claims adjusters or service company relating to the purposes and powers of the Pool.
5. To follow all loss reduction and prevention procedures established by the Pool within its purposes and powers.
6. To furnish to the Pool budget information and an audit prepared by a Certified Public Accountant of all revenues and expenditures of the Member for any fiscal year of the Member for which figures are requested by the Pool.
7. To report as promptly as possible all incidents which could result in the Pool being required to consider a claim for damage to municipal property or injuries to persons or property within the scope of coverage as outlined in the coverage document in accordance with such rules as the Board shall prescribe.
8. A breach of any of the obligations set forth in Article 6 may be the basis of termination of membership by the Pool.

Section 6.1 Optional Defense by Member The Board shall promulgate rules to allow Members a reasonable opportunity in liability cases or claims to participate in their own defense, or to prevent the settlement of such cases or claims by the Pool in a manner contrary to the wishes of the Member.

The rules shall provide that where a Member has exercised its privilege to prevent settlement of the case or claim, the Member shall be responsible for any later judgment in excess of any settlement agreement that was accepted by the Pool and the opposing plaintiffs.

Section 6.2 Contractual Obligation This Agreement shall constitute a contract among Members of the Pool. The obligations and responsibilities of the Members set forth herein include the obligation to take no action inconsistent with this Agreement, which shall remain a continuing obligation and responsibility of the Member. This contract may be executed in duplicate originals and the Agreement of a municipal corporation thereto shall be evidenced by a signed copy of a resolution adopted by its legislative body. Except to the extent of the financial contributions to the Pool agreed to herein, or such additional obligations as may come about through amendment hereto, no Member agrees or contracts herein to be held responsible for any claims in tort, contract or otherwise made against any other Member. The contracting parties intend to create a municipal group self-insurance Pool for joint risk management only within the scope of this Agreement and nothing herein contained shall be deemed to create any relationship of surety, indemnification or responsibility between Members for the debts of or claims against any other Member.

Article 7 Amendments to Agreement

Section 7.1 Procedure This Agreement may be amended by a majority vote of the Board at a regular meeting of the Board as defined in Article 3. Prior to the Board acting on an amendment, the Administrator will advise members of the proposed amendment(s) to this Agreement. Members will have an opportunity to comment upon any amendment to this Agreement prior to a vote by the Board.

Section 7.2 Adoption of Operating Procedures or Bylaws The Board shall have the power and authority to adopt Pool operating procedures, Board resolutions, or bylaws supplementary to this Agreement but not inconsistent or in contradiction thereof.

Article 8 Establishment of Loss Fund

Section 8.1 Pool Contributions The Board shall establish a schedule of Member contributions which shall annually produce a sum of money necessary to pay the expenses of the Pool and to create adequate loss fund reserves for the Pool. Each Member's contribution rate shall be determined in accordance with rating guidelines approved by the Board.

Section 8.2 Pool Net Assets In the event that the Board should find that the amount in the loss fund shall be more than sufficient to pay claims and maintain prudent reserves, the Board shall control the Pool net assets to benefit the membership and maintain the Pool's financial integrity.

Section 8.3 Annual Audit The Board shall provide to the Members an annual audit report of the financial affairs of the Pool to be made by an independent Certified Public Accountant at the end of each fiscal year in accordance with generally accepted auditing principles.

Section 8.4 Reports The Administrator shall report to the Board on the activities and performances of agents, independent contractors and service providers of the Pool, and make recommendations for improving the performance of the Pool.

Article 9
Loss Fund Protection

Section 9.1 Limits of Liability The Pool's coverage document will provide detail on the coverage the Pool provides for each member. Also, the Pool will operate in accordance with the financial plan that is attached as Appendix A.

Section 9.2 Excessive Losses In the event that a single loss should exceed the limits of coverage provided by the Pool, or in the event a series of losses should deplete or exhaust the limits of coverage, then payment of claims shall be the obligation of the individual Member or Members against whom the claim was made.

Section 9.3 Additional Insurance Membership in the Pool shall not preclude any Member from purchasing any insurance coverage above the amounts provided by the Pool.

Section 9.4 Adjustments in Scope and Limits The Board may adjust the scope of loss coverage, limits of protection, or the amount of retention by the Pool in consideration of loss experience, additional protection required by Members, or amounts and scope of reinsurance coverage available. Any such adjustment shall require a two-thirds vote of the Board present and voting.

Article 10
Termination

Section 10.1 Cessation of Activities The Pool shall cease its activities upon an affirmative vote of not less than six (6) members of the Board requiring such cessation. However, to the extent of funds remaining in the loss fund, the Pool shall continue to pay claims and losses incurred within the time protection was afforded to Members until the loss fund is exhausted. In the event funds remain in the loss fund after payment of all claims and losses, the Board shall determine a method for a pro-rata refund to Members who were Members at the time the Pool ceased its activities. The same method shall be used for the sale and distribution of proceeds in the event that there shall be any property, real or personal, belonging to the Pool at such time.

Section 10.2 Liability for Non-Claim Expenses No Member shall be responsible for any claims or judgments against any other Members. If on cessation of activities as provided in Section 10.1, the remaining assets of the Pool are insufficient to satisfy expenses of the Pool other than for claims or judgments against Members, the Board shall approve a pro-rata plan to pay these expenses. The Pool shall not incur debt in excess of ten percent (10%) of the written premium for the most recent fiscal year.

Article 11
Excess Insurance or Reinsurance

Section 11.1 Authority to Obtain The Pool may obtain excess or reinsurance as authorized by law.

Appendix A Financial Plan

In accordance with the provisions of Section 7, 1951 P.A. 35, as amended by 1988 P.A. 36, the Michigan Municipal League Liability and Property Pool provides the following coverages:

- I. **Casualty Coverages**
 - A. Municipal liability – bodily injury and property damage
 - B. Emergency medical services liability
 - C. Personal and advertising injury liability
 - D. Medical payments
 - E. Public officials liability
 - F. Police professional

- II. **Property Coverages**
 - A. Real and personal property
 - B. Boiler and machinery
 - C. Employee dishonesty and bonds

- III. **Automobile Coverages**
 - A. No fault
 - B. Liability - bodily injury and property damage
 - C. Physical damage

- IV. **Deductibles**

Deductibles are typically \$1,000 for property coverages, and a minimum of \$250 for automobile physical damage. Liability deductibles, if any, will vary based on the size and historical loss experience of the Member.

- V. **Areas of Liability (not property) Excluded, Unless Specifically Accepted by the Pool (partial list)**
 - A. Airports or other mass transit facilities
 - B. Hospitals, clinics or other medical facilities
 - C. Schools, colleges and county road commissions
 - D. Ski facilities
 - E. Environmental protection or impairment
 - F. Amusement parks
 - G. Collapse of dams

- VI. **Coverage Document**
 - A. The coverages and exclusions listed above are intended to broadly outline the program provided by the Pool.
 - B. A separate Coverage Document itemizing all coverage inclusions, exclusions and conditions is issued to each Pool Member.
 - C. Pool Members will be offered limits of liability of \$1,000,000 or more, as confirmed by the Coverage Document.

- VII. **Underwriting**
- A. All risks are underwritten by an experienced underwriter who will take into account loss experience and individual risk characteristics.
 - B. Any municipality or location may be excluded if deemed unacceptable or inappropriate by the underwriter.
 - C. All new Members must be approved by the Board of Directors.
- VIII. **Pool Retention** The Pool shall obtain excess insurance or reinsurance as protection for losses above the Pool retention. The Pool retention shall be based on assets, net assets, written premium and the advice of a professional actuary.
- IX. **Case Reserves and Loss Fund** The Pool loss fund shall be set aside for the payment of claims. The adequacy of loss reserves will be certified annually by an independent actuary.

The Pool shall maintain appropriate accounting entries for the allocation of Pool funds and reserves to various exposure areas.

Effective Date of Revisions

This Agreement became effective February 13, 1992

This Agreement became effective October 14, 1999

This Agreement became effective February 14, 2003

This Agreement became effective December 5, 2014

Michigan Municipal League Liability & Property Pool

Intergovernmental Contract

In witness whereof, this Agreement was executed on this _____ day of _____, _____, by the undersigned duly authorized officer(s) of the municipality indicated below and pursuant to a resolution of said municipality dated the _____ day of _____, _____.

Name of Pool Member _____

Street Address _____

City, State & Zip _____

In the County of _____

Official Signature _____

Printed Name _____

Title _____

December 1982
Revised February 13, 1992
Revised October 14, 1999
Revised February 14, 2003
Revised December 5, 2014