

**PUBLIC AGENCY COMPENSATION  
TRUST**

**INTERLOCAL COOPERATION  
AGREEMENT**

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# **PUBLIC AGENCY COMPENSATION TRUST**

## **INTERLOCAL COOPERATION AGREEMENT**

THIS AGREEMENT, is made by and between the political subdivisions existing under the Constitution and laws of the State of Nevada and which are signatory to this agreement.

WHEREAS, Nevada Revised Statutes 277.080 to 277.180 permits political subdivisions to make the most efficient use of their powers by enabling them to cooperate with other political subdivisions on a basis of mutual advantage and thereby provide services which will be meet the needs of their citizens; and

WHEREAS, Nevada Revised Statutes 277.055 permits two or more political subdivisions of the State of Nevada to enter into a cooperative agreement for the purchase of insurance or the establishment of a self-insurance reserve or fund for coverage under a plan of workers compensation as defined in NRS 616 and 617 and employer's liability; or insurance for any combination of these kinds of insurance; and

WHEREAS, the political subdivisions executing this agreement desire to join together for the purpose of providing workers compensation coverage and jointly funding programs of pooled self-insurance, insurance and excess insurance for workers compensation pursuant to NRS 616B.350 and related provisions;

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein and subject to the provisions of Nevada Revised Statutes and all other applicable rules and regulations, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1. "Agreement" shall mean this agreement entitled "Public Agency Compensation Trust" and as amended in the future.

Section 2. "Board of Trustees" or "Board" shall mean the governing body of PACT.

Section 3. "Claim" shall mean a claim made against a Member arising out of a Loss which is covered by insurance or pooling program of PACT.

Section 4. "Excess or Reinsurance Program" shall mean a program of PACT under which Members or Participating Members are protected against designated Losses .

Section 5. "Executive Committee" shall mean the Executive Committee of the Board of Trustees as described in Article 12 of this Agreement.

Section 6. "Fiscal Year" shall mean that period of twelve months as established by the Board of Trustees as the fiscal year of PACT.

Section 7. "Loss" shall mean a liability or potential liability of a Member including litigation expenses, attorneys' fees and costs covered by an insurance or pooling program of PACT.

Section 8. "Maintenance Deductible" shall mean, as to any one Loss, that portion payable by the Member directly and not PACT or its excess insurers or reinsurers.

Section 9. "Member" shall mean any Public Agency which is a member of PACT and such districts to which the Board has granted voting status. Other district or agencies whether or not the governing body of the City or County is *ex officio* the governing body as described in and subject to Article 3 of this Agreement may be a party to this Agreement but shall not be considered a Member for the purpose of voting or participation as a voting member of the Board or of any Executive or other committee in which voting Member status is required except when granted voting status pursuant to the following criteria. Voting status as a Member may be granted for any Public Agency which meets the following criteria:

1. Pays assessments of at least \$20,000 annually
2. Maintains a payroll of least \$500,000 annually

Such criteria may be changed from time to time by vote of the Board of Trustees which change shall take effect subsequent to the meeting at which the Board approved the changes.

Section 10. "PACT" shall mean the Public Agency Compensation Trust created by this agreement.

Section 11. "Participating Member", as used in reference to an insurance or pooling program of PACT, shall mean a current Member of that program.



Section 12. "Policy Year" shall mean for each insurance or pooling program of PACT that period commencing upon the effective date of the program and each twelve month period thereafter.

Section 13. "Public Agency" shall mean any county, incorporated city and town, unincorporated town, school district, rural hospital as defined in NRS 449.0177 whether non-profit or public, and any special or other district or agency per NRS 277.100, organized and existing under the Constitution and laws of the State of Nevada.

Section 14. "Self-insured Retention" shall mean that portion of a Loss experienced by a Member which is retained as a liability or potential liability of PACT.

## ARTICLE 2

### PURPOSES OF PACT

The Members in entering into this Agreement, desire to establish:

- A. A mechanism whereby each Member may join with other Members to share their risks as an association of self-insured public agencies including group purchased insurance or reinsurance programs and jointly administer said programs in an effort to deliver to each of them a reasonable, cost effective workers compensation program

The Members hereby understand and agree that PACT is not an "insurer" and the PACT Coverage Form is not an "insurance policy" under Nevada law. As such, PACT and the Coverage Form are not governed by Nevada Revised Statute Insurance Title 57 or other laws typically governing insurance companies or the interpretation of insurance contracts, except as provided in NRS 616 and NRS 617.

- B. Procedures whereby additional qualifying political subdivisions of the State of Nevada may be added to this Agreement;
- C. A mechanism whereby additional and/or alternative insurance programs may be developed for the benefit of the Members; and
- D. Administrative services as necessary to implement this Agreement including, but not be limited to, risk management consulting, Loss prevention, Loss control, centralized Loss reporting, actuarial consulting, claims adjusting and legal services.

## ARTICLE 3

## PARTIES TO AGREEMENT

Section 1. Members. Each Member, as a party to this Agreement, certifies that:

- A. It intends to and does contract with all other Members as parties to this Agreement and with any other Public Agency as may later be added as parties to this Agreement;
- B. The removal of any party from this Agreement shall not affect this Agreement nor such Member's intent to contract as described in subsection A above with the other parties to the agreement then remaining.

Section 2. Other Districts or Agencies or Political Subdivisions. A Member may contract on behalf of any District, Public Agency or Political Subdivision as follows:

- A. Any district in which the city or county is *ex officio* the governing board, from the date that the Member provides PACT written notice of the name and inclusion of such district, upon approval of the Board;
- B. Any other local Public Agency or Political Subdivision at its request upon approval of the Board and from the date that such entity is accepted into PACT; and
- C. Such district local Public Agency or Political Subdivision shall be considered a separate party to this Agreement but shall not affect any Member's representation on the Board and shall be part of and represented by the Member for all purposes under this Agreement.

Section 3. Membership of Nevada Association of Counties and Nevada League of Cities. The Nevada Association of Counties and the Nevada League of Cities shall become a Member of PACT upon its execution of this Agreement, subject to all obligations and rights of all other Members, except that neither shall be counted for the purposes of determining a quorum or the number votes required for any purpose, and neither shall have an official representative nor be entitled to vote on any matter pursuant to this Agreement.

Section 4. Limitation on Right to Sue. In order to become and to maintain Fund member status, a member shall not sue or maintain any litigation or lawsuit for damages against the fund or its Board and specifically agrees to waive its right to maintain any litigation or lawsuit against the Fund or its Board. However,

this Section does not prohibit any declaratory relief action seeking to interpret this Agreement or any Fund coverage agreement.

#### ARTICLE 4

##### NAME OF PACT

The name of PACT established by the Members hereunder shall be "PUBLIC AGENCY COMPENSATION TRUST."

#### ARTICLE 5

##### POWERS OF PACT

PACT shall have all of the powers common to any Public Agency and all additional powers set forth in the interlocal cooperation laws of the State of Nevada, and PACT is authorized to do all acts necessary for the exercise of said powers, including but not limited to, the following:

- A. To make and enter into contracts;
- B. To incur debts, liabilities, and obligations;
- C. To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations and governmental entities;
- D. To sue and be sued in its own name, but not by its Members;
- E. To settle any claim against PACT or its Members as hereinafter provided;
- F. To receive and use contributions and advances from Members, including contributions or advances of personnel, equipment, or property;
- G. To invest any money in its treasury that is not required for its immediate necessities, pursuant to Nevada Laws applicable to investments by a Public Agency; and
- H. To carry out all provisions of this Agreement.

#### ARTICLE 6

##### MEMBERSHIP

Section 1. Eligibility. Membership in PACT shall be open to any political subdivision of the State of Nevada that is deemed by the Board to qualify for membership.

Section 2. Conditions. The Board may impose such conditions on membership to protect the interests of PACT and to provide for the benefits of Members as are required by this Agreement, the Bylaws of PACT, and other applicable statutes or regulations.

## ARTICLE 7

### BOARD OF TRUSTEES

Section 1. Appointment and Term of Office. Commencing with the effective date of the Agreement and annually thereafter in January, each Member shall appoint from its governing board, a voting representative and an alternate voting representative to the Board to serve for a term of one year. Such representatives must be officers or employees of the Member and shall be eligible for reappointments for successive one year terms and shall serve until his or her successor is duly appointed.

Section 2. Voting. Each Member shall be entitled to one vote by its representative to the Board or by its alternate voting representative in the absence of the representative. There shall be no voting permitted by proxies or other substitutes . All motions and actions of the Board shall be adopted by a majority of the Board Members unless otherwise provided by the Bylaws of PACT.

Section 3. Compensation of the Board. Members of the Board shall not receive any salary for the services to the Board, but the Board by resolution may allow actual and necessary expenses for attendance at Regular or Special meetings of the Board.

Section 4. Meetings. The Board shall provide for the holding of Regular and Special meetings.

Section 5. Quorum. A simple majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a quorum is present at any meeting, a majority of those Trustees as may be present may adjourn the meeting from time to time without further notice.

Section 6. Manner of Acting. The act of a majority of the Board of Trustees at a meeting at which a quorum is present shall constitute an act of the Board.

Section 7. Legal Counsel. The Board shall be advised in legal matters with respect to PACT operations by its legal counsel.

## ARTICLE 8

### MEETING OF THE BOARD OF TRUSTEES

Section 1. Regular Meetings. The Board shall hold at least one regular meeting each year, scheduling the time, date and place thereof by resolution.

Section 2. Special Meetings. Special meetings of the Board may be called by the Chair of the Board, or in his absence by the Vice Chair, or by any two members of the Board.

Section 3. Minutes. The Executive Director of PACT, described in Article 13 hereof, shall provide for the keeping of minutes of Regular and Special Meetings of the Board, and shall forward a copy of the minutes to each member of the Board.

Section 4. Open Meeting Law. All meetings of the Board shall be called, noticed, held and conducted in accordance with the provisions of the "Open Meeting Law", Nevada Revised Statutes, Chapter 241, and any other laws of the State of Nevada.

## ARTICLE 9

### POWERS OF THE BOARD OF TRUSTEES

The Board shall be the governing body of PACT to oversee, administer and determine its overall policies and shall have the following powers and authority:

- A. To manage the affairs of PACT and to do all things necessary or convenient for the furtherance of the purposes of PACT, including but not limited to: expending and receiving funds; entering into contract and other agreements; renting, leasing, purchasing and otherwise procuring or receiving property, real and personal; employing personnel either as employees or by contract; and employing professional consultants such as attorneys, auditors, accountants, risk managers and actuaries;
- B. To form an Executive committee, as provided in Article 12 hereof, and delegate to that committee such powers as it determines, provided that all such delegated powers to the Executive Committee shall be exercised under the direction of the Board;

- C. To form committees as appropriate to act in an advisory capacity and conduct the business of PACT, and the membership of such committee may consist in whole or in part of non-Board Members;
- D. To elect the officers and appoint staff of PACT as may be necessary for the administration of PACT and as described in Articles 10 and 13 hereof;
- E. To prepare and adopt the annual operating budget of PACT;
- F. To develop and adopt each program of PACT, including all provisions for insurance and reinsurance, and administrative services as necessary to carry out such programs;
- G. To provide for necessary services to PACT and its Members to include, but not be limited to, risk management consulting, Loss prevention and control, centralized Loss reporting, actuarial consulting, claims adjusting, and legal services;
- H. To provide general supervision and policy direction to its Executive Director, either directly or through the Executive Committee, and adopt policies and procedures to carry out the purposes of PACT;
- I. To receive, review and act upon periodic reports and audits of the funds of PACT as required;
- J. To elect the Executive committee by vote of its members present at the annual meeting;
- K. To amend the Bylaws of PACT by a two-thirds vote of the members present at a meeting, but no amendments shall take effect sooner than thirty days after adoption thereof; and
- L. To remove a member of the Board or of the Executive Committee by a two-thirds vote of the members present at a meeting.

## ARTICLE 10

### OFFICERS

Section 1. Chair and Vice Chair. The Board shall elect from its members a Chair and Vice Chair of the Board, each to hold office for two years effective from the beginning of the fiscal year following each election.

Section 2. Conducting Meetings. The Chair, or if absent, the Vice Chair, shall preside at and conduct all meetings of the Board and the Executive Committee.

Section 3. Powers and Duties of the Chair. The Chair, or together with such other officer or officers as the Board may designate by resolution, may execute any contracts or other instruments as authorized by the Board and shall generally perform all duties incident to the Office of Chair as may be prescribed by the Board.

Section 4. Powers and Duties of the Vice Chair. The Vice Chair shall act as Chair in the latter's absence or inability or refusal to act.

Section 5. Fiscal Officer. The Chair will appoint a Fiscal Officer with duties as described in Articles 15, 16 and 17 hereof to hold office for two years effective from the beginning of the fiscal year contemporaneously with the Chair and Vice Chair.

Section 6. The Fiscal Officer shall chair the Audit Committee.

## ARTICLE 11

### LIABILITY OF BOARD OF TRUSTEES OR OFFICERS

Section 1. Standard of Care. The members of the Board and officers of PACT should use ordinary care and reasonable diligence in the exercise of their powers and duties hereunder.

Section 2. Limitation of Liability. The members of the Board shall not be liable for any mistake of judgment or other action made, taken or omitted by any of their agents, employees or independent contractors selected by them with reasonable care nor for loss incurred through investment of, or failure to invest, PACT funds, and no trustee shall be liable for any action taken or omitted by any other trustee.

Section 3. No Bonds. No trustee shall be required to give a bond or other security to guarantee the faithful performance of duties hereunder.

Section 4. Insurance. PACT shall defend and hold harmless any trustee acting within the scope of his authority for PACT. PACT may purchase insurance providing coverage for acts or omissions taken by the Board or performed by an officer or trustee within the scope of his or her authority for PACT.

## ARTICLE 12

## EXECUTIVE COMMITTEE OF THE BOARD OF TRUSTEES

Section 1. Members. PACT shall be administered by the Executive Committee of the Board of Trustees, composed of persons from among the Members of the Board of Trustees, two of which shall represent Member counties or cities with a population of 35,000 or more, if there exist two such Members, two of which shall represent Member counties or cities with a population of under 35,000, one representative of school districts, one representative of hospitals, one representative of special districts and the Chair and Vice Chair of the Board of Trustees. The Executive Director shall be *ex officio*, non-voting members of the Executive Committee.

Section 2. Business of the Executive Committee. The Executive Committee shall conduct the business of PACT between meetings of the Board, exercising such powers as are delegated by and under the direction of the Board. If, at a duly noticed Board meeting, a quorum of the Board is not present, the Executive Committee hereby is delegated the power to conduct the business of PACT on behalf of the Board pursuant to the Board meeting agenda.

Section 3. Meetings. Meetings of the Executive Committee shall be called at the request of the Chair, or in his absence, the Vice Chair, but any two members may request a meeting, and all such meetings shall be conducted in compliance with the provisions of the Nevada Open Meeting Laws.

Section 4. Quorum. A majority of the Executive Committee constitutes a quorum for the transaction of business at any meeting, but if less than a majority is present at any meeting, a majority of the members present may adjourn the meeting from time to time without further notice. *Ex officio* members shall not be counted in determining a quorum.

Section 5. Manner of Acting. The act of a majority of the members present at the meeting at which a quorum is present shall be the act of the Executive Committee, unless a greater number is required by law or by the Bylaws of PACTPACT. An alternate representative shall not be allowed to act for a member of the Executive Committee.

### Section 6. Election and Term of Office

The Executive Committee shall be elected by the Members for two-year terms, which shall be staggered as follows:

- a. Two of the four representatives of cities and counties shall be elected for a two year term effective with the fiscal year beginning 2003
- b. Two of the four representatives of cities and counties shall be elected for a two-year term effective with the fiscal year beginning 2004
- c. The representative of school districts shall be elected for a two year term effective with the fiscal year beginning 2004



- d. The representative of special districts shall be elected for a two year term effective with the fiscal year beginning 2003
  - e. The representative of hospitals shall be elected for a two year term effective with the fiscal year beginning 2003
- Succeeding elections to those noted in a-e shall be for two year terms effective with the fiscal year following the election.

## ARTICLE 13

### STAFF

Section 1. Executive Director. The Board must employ or contract for an Executive Director to administer the business and activities of PACT, be responsible for all minutes and records of PACT meetings, notices and records of PACT, and such other duties as are assigned by the Board and the Executive Committee, subject to the general supervision and policy direction of the Board of Directors and the Executive Committee.

Section 2. Other Staff. The Board shall provide for the appointment of such other staff as may be necessary for the administration of PACT.

## ARTICLE 14

### DEVELOPMENT, FUNDING AND IMPLEMENTATION OF FUNDING PROGRAMS

Section 1. Program Coverage. Pooling or insurance programs of PACT may provide coverage for:

- A. Workers Compensation and Employer's Liability as defined in NRS 681A.020;

Section 2. Minimum Participation. The Board shall determine for each pooling program, described in Section 1 above, a minimum participation for program implementation, which shall be communicated to each Member and shall establish the amount of any Maintenance Deductible upon agreement with the excess insurers involved.

Section 3. Program and PACT Costs. General administrative expenses of PACT shall be allocated to the Members as a whole, whether or not every Member participates in all or part of any program of PACT. The Board shall determine the method of allocation to each Member and the amount of each Member's share.

Section 4. Development Charge. Development costs of a program shall be funded by a development charge, as determined by the Board of Trustees, to be paid by each Member joining in the development of the program and thereby reserving the option to participate in the program following its adoption by the

Board. Development charges are those costs incurred by the Public Agency Compensation Trust in developing a program for subsequent review and adoption by the Board, including, but not limited to research, feasibility studies, information and liaison work among Public Agencies, preparation and review of documents, and actuarial and risk management consulting services, and may also include a share of the Pool's general expense as allocated by the Board of Trustees.

Section 5. Billing. The development charge shall be billed to all Members upon authorization of program development by the Board and be payable within thirty (30) days of the billing date.

Section 6. Deficiencies. Upon the conclusion of program development, any deficiency in development funds shall be billed to all Members which have paid the development charge on a pro-rata or other equitable basis as determined by the Board, and any surplus in such funds shall be transferred into the loss reserve for the program, or, if the program is not implemented, PACT's general account.

Section 7. Annual Contributions. All costs of a program, excluding development charges, shall be funded by annual contributions charged to the Members participating in the program for each Policy Year and also by interest earned on the funds so accumulated. Such contributions shall be determined by the Board upon the basis of a cost allocation plan and rating formula developed by PACT with the assistance of a casualty actuary, risk management consultant or other qualified person. The contributions for each Participating Member shall include its share of expected program losses, program insurance and reinsurance costs, program administrative costs for the year, and its share of PACT's general expense allocated to the program by the Board.

Section 8. Billing. Annual contributions shall be billed by PACT at the beginning of each Policy Year and shall be payable within thirty (30) days of the billing date. At the end of each Policy Year, program costs shall be audited by PACT. Any deficiency or surplus in the contributions paid by the Participating Member, as shown by such audit, may be adjusted by a corresponding increase or decrease in the contribution charge to that Member for succeeding years, unless the Member withdraws or is canceled from the program, in which case the provisions of Articles 21, 22, 23, 24 and 25 hereof shall be applicable and controlling.

Section 9. Program Implementation and Effective Date. Following development of a program and its adoption by the Board, PACT shall give each Member written notice of the program which shall include:

A. The terms of coverage of the program;

- B. The requirements for program implementation; and
- C. The estimated first year contribution by the Member for program participation.

Section 10. Membership. Each Member or Participating Member may elect to enter the program by giving written notice of such election, in a form prescribed by PACT, accompanied by payment of the initial assessment, to the Executive Director within thirty (30) days of the date of PACT's notice of the establishment of the program.

Section 11. Late Entries. A Member not electing to enter a program upon its implementation or within 120 days thereafter pursuant to Section 10 above, or which becomes a party to the Agreement following implementation of the program, may petition the Executive Committee for late entry into the program.

## ARTICLE 15

### ACCOUNTS AND RECORDS

Section 1. Annual Budget. PACT shall annually adopt an operating budget to include a separate budget for each program under development or adopted and implemented by PACT.

Section 2. Funds and Accounts. The Fiscal Officer shall oversee such funds and accounts as may be required by good accounting practices and by the Board for each program and the books and records of PACT shall be open to inspection at all reasonable times by authorized representatives of Members.

Section 3. Report of the Fiscal Officer. The Fiscal Officer shall file the annual audit of PACT with the regulatory authority as required by statute.

Section 4. Annual Audit. The Board of Trustees shall engage a certified public accountant to make an annual Fiscal Year audit of all accounts and records of PACT, and a report of the audit shall be filed as a public record by PACT and each Member within one hundred eighty (180) days of the end of the Fiscal Year under examination.

## ARTICLE 16

### RESPONSIBILITIES FOR PACT'S FUNDS AND PROPERTY

Section 1. Custody and Disbursements. The Fiscal Officer shall oversee the custody of and disburse PACT's funds, but may delegate that disbursing

authority as may be authorized by the Board, subject to the requirements of Section 2 below.

Section 2. Maintenance and Safekeeping. The Fiscal Officer shall assure the following activities are carried out appropriately by the Executive Director who shall:

- A. Receive and acknowledge receipt for all funds of PACT and deposit them in PACT's treasury for the credit of PACT;
- B. Be responsible for the safekeeping and disbursement of all PACT funds;
- C. Pay any sums due from PACT as approved by the Board or by anybody or person to whom the Board has delegated approval authority;
- D. Verify and report in writing to the Executive Committee or the Board, as of the first day of each quarter of the Fiscal Year, the amount of money then held for PACT, the amount of receipts since the last such report, and the amount paid out since that report; and
- E. Invest monies in accordance with applicable laws and regulations governing investments by Public Agencies.

Section 3. Responsibility for Funds and Property. The Executive Director, Fiscal Officer, and such other persons as the Board may designate, shall have charge of, administer, and have access to the funds and property of PACT.

Section 4. Bonds. PACT may provide for fidelity bond or performance bonds in an amount and form specified by the Board or required by law for all of its officers and staff authorized by PACT to hold or disburse funds or have charge or access to property of PACT.

## ARTICLE 17

### TRUST ACCOUNT, CHECKS, DEPOSITS AND REVENUES

Section 1. Establishment of a Trust Account. A Trust Account shall be established, referred to hereafter at the "Trust Account", in which all Member contributions, policy dividends or premiums received by PACT, investments made by PACT and income thereon, and any other money or property which shall come into the possession or control of PACT shall be placed.

Section 2. Use of the Trust Account. The Board may use the Trust Account to pay all expenses of PACT, including, but not limited to, payment of premiums for insurance policies, compensation to employees and staff, legal counsel, auditors, consultants, contracted services and other persons as authorized by the Board.

Section 3. Expenditure from Trust. Expenditures from the Trust Account may be made for payment of Losses, litigation costs, investigation, insurance premiums and deductible amounts, costs of Loss control activities, and any other costs determined by the Board.

Section 4. Excess Funds. Any excess funds in the Trust Account may be used, as determined by the Board, to enhance programs and services, to reduce Member contributions, or to increase the cash surplus of PACT as determined by policies established by the Board.

Section 5. Expenses of Administration. Annually, the Executive Committee or the Board shall approve administrative expenses incurred for administration of the Trust Account and legal services related thereto and shall approve its budget.

Section 6. Checks. All checks, drafts or orders for payment of money, notes or any other evidence of indebtedness issued in the name of PACT shall be signed by the Executive Director, or by such other person and in the manner as the Board may designate, with two signatures required, and in such as shall be prescribed.

Section 7. Deposits. All funds of the Board shall be deposited to the credit of PACT in such banks, trust companies or other depositories as the Board may determine.

Section 8. Other Funds. PACT funds in possession or control of the Board shall be received, disbursed, controlled and accounted for under the supervision of the Fiscal Officer.

## ARTICLE 18

### RISK MANAGEMENT

Section 1. Risk Management Services The Executive Director or other individual or organization shall provide risk management and insurance consulting service to include Loss prevention, review of Loss data, promotion and evaluation of Loss prevention programs, and reports to Members. The responsibilities include:

- A. Liaison with the Member's staff assigned the risk management and safety responsibility;
- B. Assistance to Members in development and implementation or risk management policies;

- C. Identification and evaluation of risk and Loss potentials, aided by a claims service company and legal counsel;
- D. Recommendations as to affirmative steps in order to avoid or reduce risks and Losses;
- E. Development of a system of claims reporting and on the scene investigation by Member's personnel; and
- F. Development and production of risk prevention educational programs for Member's personnel.

Section 2. Treatment of Costs. Costs of the risk management services shall be a general administrative expense of PACT.

## ARTICLE 19

### RESPONSIBILITIES OF MEMBERS

Members shall have the following responsibilities:

- A. To appoint an officer or employee to be responsible for the risk management function within the Member's organization to serve as a liaison between the Member and PACT for all matters relating to risk management and insurance;
- B. To maintain an active safety program and act upon recommendations of PACT to reduce or eliminate unsafe practices;
- C. To pay development charges, annual contributions, insurance premiums, and contributions surcharges to PACT within thirty (30) days of the billing date thereof;
- D. To pay to PACT any additional insurance premiums or contributions due as determined and assessed by the Board within thirty (30) days after the Member's act of withdrawal, cancellation, or termination from PACT;
- E. To provide PACT at its request such other information or assistance as may be reasonably necessary for PACT to develop and implement programs under this Agreement;
- F. To cooperate with and assist PACT, and any insurer of PACT, in all matters relating to this Agreement;

- G. To comply with all Bylaws of PACT and other rules adopted by the Board; and
- H. To have such other responsibilities as provided in this Agreement or established by the Board under this Agreement.

## ARTICLE 20

### ADMINISTRATION OF CLAIMS AND LITIGATION

Section 1. PACT Responsibilities. PACT shall be responsible for the investigation, defense and settlement of claims made and suits or proceedings instituted against a Member arising out of a covered Loss.

Section 2. Information From Member. A Member shall furnish to PACT with respect to any claim for Loss or potential Loss:

- A. Prompt written notice of any claim made or suit brought against the Member;
- B. Any other information requested by PACT in order to settle or defend a claim or Loss;
- C. Cooperation in all matters in which PACT is acting on behalf of the Members or any other dispute against PACT or against a Member.

Section 3. Appointment of Claims Committee. The Chair of the Board shall appoint a five member committee as necessary, to be entitled the "Claims Committee", to oversee the claims services. The Executive Director, Risk Manager, Claims Administration Company, and PACT's Broker/Administrator shall be non-voting, ex-officio members of the Claims Committee.

Section 4. Litigation Cooperation. Members shall be kept advised of the progress of litigation. All claims or cases shall be referred immediately to PACT's Claims Administrator by the Member upon which notice is given by a claimant or a complaint served. The Claims Administrator shall review the claim or case, investigate the facts where appropriate, and assign defense counsel from PACT's approved panel of defense counsel. The assigned counsel shall cooperate with the Member's legal counsel in the defense or settlement of litigation.

Section 5. Litigation Management. Management of litigation shall include evaluation of claims, assignment of qualified attorneys to represent the Member, monitoring of the litigation, providing periodic status and evaluation reports to the

Executive Director, aid in promoting and evaluating risk management, and recommending reserves for claims in litigation.

Section 6. Litigation Costs. Litigation Management and fees from general counsel shall be treated as a general expense of PACT and fees of defense counsel shall be treated as a claims expense.

Section 7. Litigation Participation. A Member, exercising its own discretion and at its expense, shall have the right to participate with PACT in the settlement, defense, or appeal of such claim, suit or proceeding where, in the judgment of PACT, may involve liability of PACT.

Section 8. Advice From Members. Members will be given the reasonable opportunity in litigated cases or claims to advise PACT of the Member's preference with regard to settlement of the case or claim.

Section 9. Settlement Consent. A Member shall not enter into any settlement involving liability of PACT without the prior consent of PACT.

Section 10. Claims Handling. PACT shall select a duly licensed claims administration company on the basis of its ability to handle claims in a professional, efficient and economical manner, to be responsible for processing and settling claims filed against PACT.

Section 11. Claim Administration Company Responsibilities. PACT shall engage a Claims Administration Company which shall carry out the duties set forth in NRS 616.301 and:

- A. Investigate all claims against PACT or its Members for which PACT provides indemnification as directed by the Claims Committee;
- B. Make settlements in accordance with the authority delegated in the Claim's Administrator's contract;
- C. In addition to actually paying covered claims, provide periodic claim reports detailing each Member's losses, recommend proper and adequate reserves for outstanding and anticipated claims, file required reports to the State of Nevada, and provide any other related services as approved by the Board; and
- D. Consult with PACT's general counsel with respect to legal issues as necessary with approval of Executive Director.



## ARTICLE 21

### TERMS OF AGREEMENT

This Agreement shall be effective upon execution by the signatory parties and shall remain in effect until:

- A. Terminated upon election of three-fourths of the Members; or
- B. Suspended or superseded by a subsequent agreement between the Members.

## ARTICLE 22

### WITHDRAWAL

Section 1. Member Insolvency. A Member may not withdraw as a Member for a period of two (2) years after its initial entry, except in case of insolvency or change in its legal status as a Public Agency.

Section 2. Notice of Withdrawal. After two years following its initial entry, a Member may withdraw from PACT upon giving one hundred and twenty (120) days in advance of the program renewal date written notice to the Board.

Section 3. Effect of Withdrawal. The withdrawal of a Member shall not affect the continuance of PACT by the remaining Members.

Section 4. Payments Before Withdrawal. In order to withdraw, the Member shall pay any outstanding amounts due and owing to PACT.

Section 5. Release Conditions. Withdrawal does not release the withdrawing Member from liability for further payments or assessments as provided elsewhere in this Agreement.

## ARTICLE 23

### CANCELLATION OR TERMINATION OF MEMBERSHIP

The Board of Trustees may:

- A. Cancel the membership of any Member in PACT on a vote of two-thirds of the Board Members present at a meeting called for that purpose, and such Board action shall result in the cancellation of that Member's participation in all programs of PACT as of the date of the Board cancellation;
- B. Cancel any Member's participation in a program of PACT without canceling its membership in PACT or participation in other programs on a vote of two-thirds of the Board Members present at a meeting called for that purpose;
- C. Cause PACT to give one hundred and twenty (120) days advance written notice to the Member of the effective date of any cancellation under the foregoing provisions, and upon such effective date, the Member shall be considered as having voluntarily withdrawn from PACT, or from the program of PACT, as the case may be.
- D. Cancel the membership of any Member that has not paid any assessments when due upon thirty (30) days notice to the Member. Such notice for non-payment may be issued by the Executive Director without a vote of the Board of Trustees; however, the Executive Committee will be informed of the situation. The Executive Director may reinstate membership upon receipt of payment of the assessments prior to the effective date of the notice of cancellation. If payment is not received prior to the effective date of the notice of cancellation, the Member may apply for reinstatement through the Executive Director, which may be granted only by the Executive Committee."

## ARTICLE 24

### EFFECT OF WITHDRAWAL OR CANCELLATION FROM PACT

Section 1. Unearned Contributions. If a Member's participation in a program of PACT is canceled under Article 23 hereof, with or without cancellation of membership in PACT, and such cancellation is effective before the end of the Policy Year for that program, PACT shall promptly determine and return to the Member the amount of any unearned contributions payment for the Policy year.

Section 2. Entitlement to Return of Contributions. Except as provided in Section 1 above, a Member, which withdraws or has its membership canceled in PACT, or from any program of PACT, shall not be entitled to the return of any

contributions or other payments to PACT, or of any property contributed to PACT.

Section 3. Termination of PACT. In the event of termination of this Agreement and concomitantly PACT, a Member having withdrawn or have had its membership canceled prior thereto may share in the distribution of assets of PACT as determined by the Board.

## ARTICLE 25

### TERMINATION AND DISTRIBUTION OF ASSETS

Section 1. PACT Activities After Termination. If this Agreement is terminated at any time, PACT shall continue to exist after such termination for the limited purpose of disposing of all outstanding claims, distributing its assets, and performing all other functions necessary to conclude its affairs and business.

Section 2. Asset Distribution. All assets of PACT utilized in each program shall be distributed among those Members which participated in that program in accordance with a distribution plan developed by the Board. The Board shall determine such distribution within six months after final distribution of all claims pending at the termination of this Agreement and PACT.

Section 3. Final Contributions. Any Member, which was a participant in a program of PACT shall be responsible for any additional amount of contributions as determined by the Board in accordance with a Loss allocation formula as necessary for final disposition of all claims arising from losses under that program during the Member's period of participation.

## ARTICLE 26

### CONTRACTUAL OBLIGATION AND MEMBER'S LIABILITY

Section 1. Member's Additional Obligations. In addition to the obligations and responsibilities of the Members expressly set forth in the Agreement, the Members agree to take no action or engage in any conduct inconsistent with this Agreement and the Bylaws of PACT.

Section 2. Enforcement of this Agreement. Except as limited by the provisions in Article 3, Section 4, the terms of this Agreement may be enforced in a court of law by the Board.

Section 3. Consideration. The consideration for the duties herewith imposed upon the Members to take certain actions and to refrain from certain other

actions shall be based upon the mutual promises and agreements of the Members set forth herein.

Section 4. Duplicate Originals. This Agreement and the Bylaws of PACT may be executed in duplicate originals, and their execution and approval by the Members shall be evidenced by a certified copy of a resolution by the Board of Trustees, provided, however, that except to the extent of the financial contributions to PACT agreed to herein, or such additional obligations as may come about through amendments to this Agreement, or the Bylaws of PACT, no Member shall be responsible for any claims in tort or contract asserted against any other Member.

Section 5. Limitation of Members' Relationships. In the creation of PACT, the Members intend only to establish an organization for joint insurance and self-insurance programs in accordance with the terms and within the scope of this Agreement and have not intended to create as between Members any other relationships of surety, indemnification or responsibility for the debts or claims of any other Member.

Section 6. Members' Liability. The liability of each Member for the obligations of PACT shall be joint and several in accordance with the requirements as set forth in Chapters 616 and 617 of the Nevada Revised Statutes and regulations pertaining thereto.

Section 7. Responsibility for Assessments. Members who have withdrawn or have been terminated shall remain subject to the payments of any assessments for the year (s) during which such Member was a participant in the program of PACT.

## ARTICLE 27

### ASSESSMENTS

Section 1. Additional Contribution and Surcharges for Excessive Losses. If PACT experiences such a number of Losses or costs under a program during a Policy Year, so that notwithstanding insurance and reinsurance coverage for individual Losses, the joint pooled funds for the program may be exhausted, the Executive Committee may, upon consultation with a casualty actuary, impose contributions and/or surcharges on all Participating Members, which, in total amount, will assure adequate resources to PACT for the payment of all such Losses, but not to exceed two times the most recent annual contribution without approval of two-thirds of the Board of Trustees.

Section 2. Assessments When Liabilities Exceed Assets. The amount of any liability in excess of assets shall be assessed to the Members that are or were members of PACT within thirty (30) days after a deficiency is identified and shall be payable thereafter by the Members within ninety (90) days.

Section 3. Assessments for Operational Costs Deficiencies. The Board at its discretion may assess the Members for costs incurred in the operation and maintenance of PACT and for its purposes in the form, manner and amount prescribed by the Board for the Policy Year out of which the deficiency arose.

Section 4. Enforcement of Assessments. PACT is empowered to enforce the assessments hereunder and as provided elsewhere in this Agreement by appropriate legal proceedings.

## ARTICLE 28

### BYLAWS AND PROCEDURES MANUAL

Section 1. Bylaws. The Board shall adopt Bylaws to provide for the operation and administration of PACT.

Section 2. Procedures Manual. The Board shall cause the preparation of a Procedures Manual to govern the day-to-day operations of PACT.

## ARTICLE 29

### NOTICES

Section 1. Notices to Members. PACT shall address all notices, billings and other communications to a Member under this Agreement as directed by the Member of PACT.

Section 2. Notices to PACT. Members shall address notices and other communications to PACT to the Executive Director, Public Agency Compensation Trust, 201 S. Roop Street, Suite 102 , Carson City, Nevada, 89701.

ARTICLE 30

AMENDMENT

This Agreement may be amended at any time by a vote of two-thirds of the Members present at a meeting.

ARTICLE 31

PROHIBITION AGAINST ASSIGNMENT

No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any member shall have any right, claim or title to any part, share, interest, fund, contribution, premium or asset of PACT.

ARTICLE 32

AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the Members. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE 33

GOVERNING LAW AND SEVERABILITY

Section 1. Governing Law. The construction, validity, and affect of this Agreement shall be governed by the laws of the State of Nevada.

Section 2. Severability. Should any covenant, condition, term or provision in this Agreement be deemed by a court of competent jurisdiction to be invalid or unenforceable, all of the remaining covenants, conditions, terms and provisions herein shall remain in full force and effect.