

**ALASKA PUBLIC ENTITY INSURANCE  
JOINT INSURANCE ASSOCIATION  
COOPERATIVE PARTICIPATION AGREEMENT**

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## COOPERATIVE PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered into in the State of Alaska by and among those municipalities and their public corporations, city and borough school districts, and regional education attendance areas organized and existing under the Constitution or laws of the State of Alaska, hereinafter collectively referred to as "Participants" or "Participating Members," and individually as "Participant," which are parties signatory to this Agreement.

**WHEREAS**, AS 21.76.010 provides that two or more local governmental entities may, by Cooperative Agreement, enter into joint insurance arrangements for certain purposes by any one or more of certain specific methods; and

**WHEREAS**, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling self-insured losses and jointly purchasing excess insurance, reinsurance or other reserve funding mechanisms, and administrative services in connection with a Joint Insurance Arrangement; and

**WHEREAS**, it appears economically feasible and practical for the parties to this Agreement to do so;

**NOW, THEREFORE**, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

### **SECTION 1: Definitions**

The following definitions shall apply to the provisions of the Agreement:

(1) "**Administrator**" or "**Association**" shall mean Alaska Public Entity Insurance, a joint insurance association, a nonprofit corporation organized under the laws of the State of Alaska.

(2) "**Board of Directors**" or "**Board**" shall mean the governing body of the Association.

(3) "**Bylaws**" shall mean those bylaws of the Association as adopted by the Board of Directors of such Association, and as thereafter duly amended. The bylaws, including without limitation, all definitions set out therein, are incorporated herein by this reference.

(4) "**Insurance**" shall mean and include self-insurance through a funded program and/or any commercial insurance contract. This joint insurance arrangement shall not be considered insurance for any other purpose, pursuant to AS 21.76.020(a).

(5) "**Fund**" or "**Joint Insurance Fund**" shall have the meanings ascribed to those terms in AS 21.76.900.

Notwithstanding the foregoing definitions, this Agreement is not intended to be a contract for insurance.

## **SECTION 2: Purposes**

This Agreement is entered into by the Participants in order to provide effective insurance coverage, including risk management services, as authorized pursuant to AS 21.76.

## **SECTION 3: Parties to Agreement**

Each party to this Agreement certifies that it intends to, and does, contract with all other parties who are signatories to this Agreement and, in addition, with such other parties as may later be added to and become signatories of this Agreement pursuant to Section 16. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Sections 17 and 18, shall not affect this Agreement or such party's intent as described above with the other parties to the Agreement then remaining. A roster of participants to the Agreement is attached hereto as Exhibit 1.

## **SECTION 4: Term of Agreement**

This Agreement shall become effective on the date coverage commences for the Participant. The Agreement shall continue in effect unless insurance coverage is canceled, nonrenewed, or otherwise terminated.

## **SECTION 5: Powers of the Administrator**

The Administrator shall have the powers necessary to administer this joint insurance arrangement pursuant to AS 21.76.030(2) and AS 21.76.900(2). The Administrator is authorized to do all acts necessary for the exercise of said powers pursuant to the terms hereof and in the manner provided by law, including, but not limited to, any or all the following:

- 1) to make and enter into contracts;
- 2) to incur debts, liabilities or obligations;
- 3) to acquire, hold and dispose of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities;
- 4) to sue and be sued in its own name;
- 5) to exercise all powers necessary and proper to carry out

the terms and provisions of this Agreement, or otherwise authorized by law; and

6) all other and further powers that may be authorized by the Articles of Incorporation and Bylaws of the Association and permitted or not otherwise prohibited by law.

#### **SECTION 6: Board of Directors**

The Association shall be governed by the Board of Directors, which is hereby established and which shall be composed according to Article 6 of the Bylaws. Each member of the Board shall have one vote. A list of the names of the board of directors of the Association is attached hereto as Exhibit 2.

#### **SECTION 7: Powers of the Board of Directors**

The Board of Directors of the Association shall have the powers and duties set out in the Bylaws and such other powers and functions as are provided for in this Agreement including, but not limited to, the power to authorize contracts in accordance with AS 21.76 upon such terms and conditions as the Board shall deem appropriate.

#### **SECTION 8: Insurance Coverage**

As provided in AS 21.76, as that statute now exists or may hereafter be amended, the joint insurance arrangement may provide any kind of insurance except for health insurance, life insurance and title insurance.

#### **SECTION 9: Establishment and Administration of the Joint Insurance Fund**

(1) The method of apportioning costs among Participants is through the determination of each Participant's contribution. The contribution for each Participant shall be determined by the Administrator, in its discretion, which shall consider, but not be limited to, exposure factors such as property values, payroll, average daily attendance, vehicles, cost of insurance and reinsurance, loss and risk factors, and the financial needs of the Association. The contribution includes any adjustments based on exposure audit provisions in insurance policies obtained pursuant to this Agreement.

(2) Participants shall not be assessed for costs or expenses in excess of their contribution payment. In order to enforce payment of contributions, the policies of Participants whose payments are in default shall be subject to cancellation. The Board shall determine the disposition of excess contributions. Excess contributions are amounts remaining after the loss reserves have been certified as actuarially sound and adequate by a member

of the casualty actuarial society. Excess contributions may be used to strengthen the financial condition of the Association or as determined by the Board.

(3) The Administrator shall administer the Joint Insurance Fund. Money held by a fund as reserves and money not needed for daily operations may be invested by the Board.

(4) Excess contributions may be used to make additional contributions to the Joint Insurance Fund, to adjust contributions, or to refund amounts to Participants based upon a fair formula which shall consider, but not be limited to, loss and risk factors and the financial needs of the Association.

(5) The Joint Insurance Fund or funds will consist of money:

(a) contributed by Participants;

(b) collected by the joint insurance arrangement through subrogation of claims paid from the fund to a Participant or Participants;

(6) Expenditures from the Joint Insurance Fund or funds will be made only to:

(a) pay claims, losses, or benefits, including interest on them and administrative and adjustment expenses incurred in connection with them;

(b) pay contractual obligations of a joint insurance fund established by a municipal joint insurance arrangement to the Alaska Municipal Bond Bank Authority or other lender; and

(c) purchase insurance coverage for members of a municipal joint insurance arrangement on a group basis.

(7) The Joint Insurance Fund or funds shall be kept separate from other member funds and for each type of protection offered by the joint insurance arrangement, the method of accounting shall show the order, source, date and amount of each payment from the fund. Within 150 days from the end of the fiscal year, a detailed report of the operation and condition of the fund shall be furnished to the Director of Insurance and to the Board.

## **SECTION 10: Accounts and Records**

(1) Annual Budget. The Board shall annually adopt an operating budget.

(2) Funds and Accounts. The Administrator shall establish and maintain such funds and accounts as may be required by the Legislative Budget and Audit Committee, applicable law or regulation, or generally accepted accounting practices. Financial books and records of the joint insurance arrangement shall be in the

hands of the Administrator and shall be open to inspection at all reasonable times by representatives of the Participants.

(3) Administrator's Report. The Board shall provide for an annual audit of the accounts and records of the joint insurance arrangement. This audit shall conform to generally accepted auditing standards, and shall include a determination, by a casualty actuary who is a member of the American Academy of Actuaries, that procedures for establishing reserves for losses are actuarially sound, and that the level of reserve is adequate. By October 1 of each year, a report of the financial condition of the Joint Insurance Arrangement, certified by a certified public accountant, shall be filed as a public record with each of the Participants and with the Legislative Budget and Audit Committee, as required by AS 21.76.020(b).

(4) Annual Audit. The Board shall provide for an annual independent audit of the accounts and records of the joint insurance arrangement. Such audit shall conform to generally accepted auditing standards. When such an audit of the accounts and records is made by a Certified Public Accountant, a report thereof shall be filed as a public record with each of the Participants and with the Legislative Budget and Audit Committee. The audit shall include, or be accompanied by, a determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the Joint Insurance Arrangement are actuarially sound and that the level of reserves is adequate pursuant to AS 21.76.040.

(5) Costs. Any costs of the audit and actuarial review, including contracts with, or employment of, Certified Public Accountants, and actuaries in making an audit pursuant to this Section, shall be borne by the Association.

#### **SECTION 11: Responsibility for Funds**

The Treasurer of the Association shall have the custody of and disburse the joint insurance arrangement's funds in accordance with this Agreement, with Board policy and subject to Board approval. The Board shall periodically approve other authorized signatories to whom the Treasurer may delegate the signatory function.

#### **SECTION 12: Establishing and Promoting an Aggressive Risk Management Program.**

The Administrator shall:

(1) Provide insurance coverage based on mutual agreements with Participants.

(2) Assist each Participant's risk management coordinator or safety and loss control representative in identifying and reducing risks.

(3) Provide loss prevention and safety and consulting services to Participants as needed.

(4) Provide claims adjusting services as needed.

(5) Provide loss information to assist each Participant in managing its claims management and loss control program.

(6) Provide for Participants, as needed, a review of their contracts to determine sufficiency of indemnity and insurance provisions.

(7) Undertake all other responsibilities deemed necessary by the Board in order to carry out the purposes of this Agreement.

### **SECTION 13: Responsibility of Participants**

Participants shall have the following responsibilities:

(1) The City Council, Assembly, School Board, or appointing official of each Participant shall appoint a representative as provided in Article 5, Section 2 of the Bylaws.

(2) Each Participant shall appoint an employee of the Participant to be responsible for the risk management function within that entity, and to serve as a liaison between the Participant and the Association as to risk management.

(3) Each Participant shall pay its contribution promptly when due. The contribution constitutes the member's financial obligation to the joint insurance arrangement for the policy period. The Administrator may cancel a Participant's coverage pursuant to applicable law if a contribution for any insurance policy obtained pursuant to this Agreement for that Participant is not paid when due.

### **SECTION 14: Claims Administration and Payment of Losses**

(1) Each Participant shall give prompt notice of any claims to the Administrator, and failure to give prompt notice of claims shall constitute a waiver of coverage.

(2) The Administrator will investigate all claims against the Participants and will attempt to adjust or settle such claims. Subject to the provisions of this Agreement and all applicable coverage agreements or policies, legal counsel selected by the Association will defend claims against the Participants. The Participant also agrees to provide and make available to the Administrator all information and all personnel as may be reasonably required to fully investigate and defend each claim.

(3) The Administrator shall pay claims according to the

provisions set forth in this Agreement and all applicable coverage agreements or policies.

(4) In the event the Administrator or its counsel wishes to settle a claim, the Participant will accept the Administrator's recommendation and judgment and enter into such settlements as the Administrator determines to be appropriate.

#### **SECTION 15: Coverage Determination and Appeal**

It shall be the duty and responsibility of the Administrator to make all initial determinations regarding rights to coverage protections provided under the joint insurance arrangement. A determination by the Administrator denying coverage shall be reviewed by the Board upon appeal by the aggrieved Participant.

#### **SECTION 16: New Members**

Additional Participants may be permitted, in the discretion of the Administrator, to become signatories of this Agreement or a similar agreement.

#### **SECTION 17: Withdrawal**

(1) A Participant may withdraw as a party to this Agreement pursuant to the requirements of this Section.

(2) A Participant may elect to agree not to withdraw for a period of three years. In the event a Participant elects to agree not to withdraw for three years, that Participant will receive a credit on its required contribution in an amount determined by the Administrator.

(3) Withdrawing members must give written notice of intent to withdraw at least 90 days prior to the insurance policy expiration (currently June 30).

(i) Members that give 90 days written notice to the Administrator and have paid their contribution will have completed their financial responsibility for the policy period. A member that gives notice pursuant to this section will be eligible for readmission to the program only with the approval of the Board of Directors.

(ii) A Member that gives less than 90 days written notice to the Administrator, gives written notice to the Administrator of an intention to withdraw during a policy period, or has its coverage canceled by the Administrator for failure to pay the required contribution will be responsible for the greater of 25% of the total annual contribution for the Member or the short-rate cancellation penalty applicable for the period that any insurance is in place.

(iii) A Member that gives 90 days written notice to the Administrator prior to the insurance policy expiration but before the conclusion of a three year agreement under (2) of this section will forfeit all credits received pursuant to the three year agreement and will be required to repay all such credits to the Association, plus any future credits reasonably due for the remainder of the unexpired three-year term, as determined by the Administrator.

(4) The withdrawal of any Participant from this Agreement shall not terminate it.

#### **SECTION 18: Termination and Distribution**

(1) This Agreement may be terminated by the written consent of three-fourths of the Participants; provided, however, that this Agreement and the Association will continue to exist for the purpose of disposing of all claims, distribution of assets and all other functions necessary to wind up the affairs of the Association.

(2) Upon termination of this Agreement, all assets of the Association shall be distributed after the payment of, or provision for, all debts, claims, and liabilities, only among the Participants (including Participants who have withdrawn from the Association) who have a positive balance in their capital account. The Board shall determine such distribution within six months after the last pending claim or loss covered by this Agreement has been fully disposed of.

(3) The Board is vested with all powers of the Association for the purpose of winding up and dissolving affairs of the Association.

#### **SECTION 19: Bylaws**

The Board has caused to be developed and maintained Association bylaws to govern the day-to-day operations of the Association. Each Participant shall receive a copy of such bylaws and shall be bound by the provisions thereof.

#### **SECTION 20: Notices**

Notices to Participants hereunder shall be sufficient if mailed to the address listed on the application form of the respective Participant. A Participant may change such address from time to time by providing written notice of such change to the registered agent of the Association at its registered office.

**SECTION 21: Amendment**

This Agreement may be amended at any time by the written approval of a majority of the Participants signatory to it.

**SECTION 22: Prohibition Against Assignment**

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

**SECTION 23: Agreement Complete**

This Agreement, along with the exhibits hereto and documents incorporated by reference herein, constitute the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

**SECTION 24: Governing Law**

This Agreement shall be interpreted according to the laws of the State of Alaska. If suit is brought relating to any dispute hereunder or related hereto, such shall be filed in the Superior Court of Alaska in Juneau, and in no other place.

**SECTION 25: Construction of Contract**

Separate agreements shall be executed by all Participants and all such agreements shall be construed as a single collective contract.

## Exhibit 1

### ROSTER OF PARTICIPANTS

The following is a list of the participants to this Agreement:

#### **School District Members**

Alaska Native Cultural Charter School  
Aleutian Region School District  
Annette Island School District  
Aquarian Charter School  
Bering Strait School District  
Chatham School District  
Chugach School District  
Copper River School District  
Cordova School District  
Delta/Greely School District  
Denali Borough School District  
Eagle Academy Charter School  
Family Partnership Charter School  
Galena City School District  
Highland Tech  
Hydaburg City School District  
Kashunamiut School District  
Klawock City School District  
Kuspuk School District  
Lake & Peninsula School District  
Lower Kuskokwim School District  
Lower Yukon School District  
Nome Public Schools  
NW Arctic Borough School District  
Petersburg City School District  
Rilke Schule German School of Arts & Science  
Skagway City School District  
Southwest Region School District  
St. Mary's School District  
Unalaska City School District  
Winterberry Charter School  
Wrangell Public Schools  
Yupiit School District

#### **Municipality Members**

Alaska Association of Conservation District  
City of Aniak  
City of Bethel  
City of Buckland  
Chugiak Volunteer Fire & Rescue  
City of Cordova  
City of Craig  
Girdwood Volunteer Fire & Rescue Dept.  
City of Gustavus  
Haines Borough  
City of Hooper Bay  
City of Houston  
City of Kenai  
City of Ketchikan  
City of Klawock  
City of Kodiak  
City of Kupreanof  
City of Nondalton  
City of Palmer  
City of Petersburg  
Municipality of Skagway  
City of Soldotna  
City of St. Paul  
City of Unalaska  
City of Valdez  
City of Wasilla  
City and Borough of Wrangell

Exhibit 2

NAMES OF THE MEMBERS OF THE  
BOARD OF DIRECTORS

The following are the members of the board of directors:

Larry Semmens	<i>City of Soldotna</i>	Board Chair
Bob Herron	<i>At Large</i>	Board Vice Chair
Elizabeth Masoni	<i>City of Unalaska</i>	
Carl Rose	<i>Alaska Association School Boards</i>	
Amy Lujan	<i>At Large</i>	
Pamela Roope	<i>Wrangell Public Schools</i>	
John Lamont	<i>Lower Yukon School District</i>	
Karen Goodwin	<i>NW Arctic Borough School District</i>	
Sandra Garley	<i>City of Palmer</i>	
Mark Vink	<i>Bering Strait School District</i>	
Terry Eubank	<i>City of Kenai</i>	

Current as of 7-1-2010