

REVISED AND RESTATED
WORKERS' COMPENSATION
PROGRAM AGREEMENT

between the

MONTANA MUNICIPAL INTERLOCAL AUTHORITY
as Authority

and

The City/Town of _____

Effective: July 1, 2014



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REVISED AND RESTATED

WORKERS' COMPENSATION PROGRAM AGREEMENT

This REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT, by and between the MONTANA MUNICIPAL INTERLOCAL AUTHORITY, an interlocal agency duly organized and existing under the laws of the State of Montana, (the "Authority"), and the CITY (TOWN) OF _____, a political subdivision duly organized and existing under the Constitution and laws of the State of Montana, and such other political subdivisions that may hereafter become party hereto as provided herein, each a political subdivision duly organized and existing under the Constitution and laws of said State, (each a "Member Entity" and collectively the "Member Entities");

WITNESSETH:

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may (a) cooperate in the exercise of any function, power, or responsibility with, (b) share the services of any officer or facilities with, and (c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States;

WHEREAS, Title 7, Chapter 11, Part 1, Montana Code Annotated (Mont. Code Ann.), (the Interlocal Cooperation Act) authorizes political subdivisions to create interlocal agreements to perform jointly any undertaking that each such political subdivision unit is authorized by law to perform;

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the state to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part;

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Authority has been created pursuant to the Interlocal Cooperation Act for the purpose of providing, among other things, workers' compensation coverage pursuant to such statutes to Montana political subdivisions becoming members of the Authority and executing the necessary program documents for such coverage;

WHEREAS, the Member Entity has determined it to be in its best interest to join with other Member Entities in forming and creating the Authority through the Interlocal Cooperation Act for the purposes of:

1. developing effective risk management programs to reduce the amount and frequency of their losses;
2. sharing some portion, or all, of their losses;
3. jointly purchasing or otherwise acquiring insurance, excess insurance or reinsurance through a group program;

4. jointly issuing bonds or notes to fund a self-insurance or deductible reserve;

5. jointly purchasing administrative and other services through a group program when related to any of the other purposes;

6. jointly make deposits which may take the form of assessments to an account or surplus account and pay premiums for the purposes of participating in a group or captive insurance, excess insurance, or reinsurance programs, in whole or in part; and

WHEREAS, the Authority is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement;

WHEREAS, the Authority and each Member Entity, in consultation with independent professional consultants, have formulated a Workers' Compensation Program, administered by the Authority to meet the workers' compensation needs of each Member Entity, and which provides for joint and several liability of each Member Entity along with all other Member Entities for the full amount of any and all known or unknown claims of each Member Entity arising during the Member Entity's participation in the Program, and which will provide the following advantages, among others, to each Member Entity:

(a) spread and moderate the cost of claims loss to each Member Entity by paying annual Assessments on an experience-rated basis calculated actuarially;

(b) relief from the burden of paying premiums to insurers at levels reflecting the insurers' high costs of underwriting, administration and brokerage fees since the Authority's Program costs are limited to reasonable administrative costs,

(c) relief from commercial insurers' rights under excess liability policies to force claim settlements which are payable primarily in each case from the Member Entity's self-insurance funds,

(d) access to group insurance, excess insurance, reinsurance or other insurance programs which may provide such insurance at reasonable rates and on advantageous terms and conditions,

(e) actuarially determined Assessments calculated to provide amounts in each year necessary to maintain the Workers' Compensation Program at an actuarially sound level and therefore sufficient to reserve against the losses of the Member Entities;

WHEREAS, the Authority has established and offered to its members since January 1, 1986 the Program which has been approved annually as a duly authorized and existing workers' compensation program by the regulatory agency authorized by statute to review and approve such programs;

WHEREAS, by executing this Revised and Restated Workers' Compensation Program Agreement, the Member Entity signatory hereto has heretofore determined and does hereby

confirm that the Assessments and other charges required by the Workers Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

WHEREAS, it is the intent of the Member Entity that in executing this Revised and Restated Workers Compensation Program Agreement that the Workers' Compensation Program should remain in full force and effect and that continuity of the Workers' Compensation Program should be and is maintained with the execution of this Revised and Restated Workers' Compensation Program Agreement; and,

WHEREAS, the governing body of each Member Entity has authorized the execution of this Agreement for the purpose of providing Coverage for such Member Entity for the benefit of the Member Entity's employees, residents and taxpayers and for the health and safety of the public who interact with the Member Entity; and

WHEREAS, it is a matter for the governing board of the Member Entity to determine whether the amount of Assessments which the Member Entity pays for coverage is reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has heretofore determined and does hereby confirm that the Assessments to be required hereunder are reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has knowingly and willingly entered into this Agreement

NOW THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

SECTION I: DEFINITIONS

1.1 Definitions and Rules of Construction. Unless the context shall require otherwise, the terms defined below shall, for all purposes of this Revised and Restated Workers' Compensation Program Agreement, have the meanings herein specified.

Administrative Costs means those ordinary and necessary costs incurred in providing administrative services to the Program, including but not limited to, the following:

- a. General administrative services
- b. Loss prevention and risk assessment
- c. Investment services
- d. Legal services
- e. Accounting services
- f. Actuarial services
- g. Risk management consulting
- h. Brokerage services.

Agreement or Revised Agreement means this Revised and Restated Workers' Compensation Program Agreement, effective September 1, 2010, by and among the Authority and the political subdivisions signatory hereto, as Member Entities.

Annual Recomputed Amount means the re-computation of an Individual Member Entity's Account as provided in Section 5.2 of this Revised Agreement.

Assessment means Risk Assessments and Special Assessments payable for any Coverage Year.

Authority means the Montana Municipal Interlocal Authority, an interlocal agency, duly organized and existing under the Constitution and laws of Montana, its successors and assigns.

Board means the Board of Directors or its successor or governing body of the Authority.

Claim means a demand, action or suit against one or more Member Entity(ies) or the Authority to recover for losses or damages within or alleged to be within the scope of Coverage.

Consultant means a consultant qualified in the area of political subdivision workers' compensation coverage or actuarial science, as the Authority deems appropriate.

Coverage means the coverage, excess insurance, reinsurance, and other services provided pursuant to and in accordance with and on the terms set forth in this Agreement and in the Memorandum provided to each Member Entity, including, but not limited to, rights to payment of Settlements and Judgments from funds on deposit in the Program Operations Fund under the terms of this Agreement

Coverage Year shall mean the period beginning each July 1 and the twelve (12) consecutive months thereafter during which this Agreement and the Memorandum shall be in effect for each Member Entity, unless the Board of Directors designates such other period of twelve (12) consecutive months as the period during which this Agreement and the Memorandum may be in effect. In the case of a Member Entity which joins the Program during a Coverage Year, the Coverage Year shall be the remaining portion of the Coverage Year from the effective date of Coverage until the end of such Coverage Year.

Interlocal Agreement means that Interlocal Cooperation Agreement establishing the Montana Municipal Interlocal Authority pursuant to Title 7, Chapter 11, Part 1, Mont. Code .Ann.

Judgment means a final judgment entered in a court of competent jurisdiction or by an administrative tribunal after all appeals have been exhausted with respect to a Claim for which Coverage is provided under this Program. The amount of any Judgment may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Loss Reserve means amounts in the Program Operations Fund required to be designated as reserves for payment of Settlements and Judgments pursuant to Section 3.3 hereof in accordance with prudent practice as determined by the Qualified Claims Administrator, including additional reserves established because of changed circumstances subsequent to the year any such Claim is filed and including the amount determined by a Qualified Consultant for loss development of claims and unallocated loss adjustment expenses.

Member Entity means that political subdivision of the State of Montana duly organized and existing under the Constitution and laws of the State of Montana and which has complied with the terms and conditions of this Revised Program Agreement for participation in the Workers' Compensation Program.

Memorandum of Coverage means the Memorandum of Workers Compensation and Occupational Disease Coverage, as the same may from time-to-time be amended, setting forth the terms and conditions for which Coverage is provided under the Workers' Compensation Program.

Program means the Workers' Compensation Program established by the Authority and in effect as of the effective date of this Revised Program Agreement.

Program Operations Fund means the fund established to carry out the operations of the Program, including but not limited to payment of Claims, payment of Administrative Costs, other insurance, excess insurance or reinsurance, loss reserves and unencumbered reserves.

Qualified Claims Administrator means an individual or an organization experienced in the handling of public entity workers' compensation claims, appointed by the Authority, or the Authority itself provided the Authority employs individuals who have such experience in the handling of public entity workers' compensation claims.

Settlement means the Settlement by the Authority or Member Entity in accordance with the Memorandum of a Claim against such Member Entity. The amount of any Settlement may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Unencumbered Reserves means the amount in the Program Operations Fund in excess of the total amount that has been designated by the Authority as Loss Reserve and amounts required for operations.

1.2 Other Terms. Such other terms as may appear in this Agreement which are not defined in this Section 1 shall have such definitions as may be contained in the remainder of this Agreement.

SECTION 2: REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the Member Entity. The Member Entity represents, covenants and warrants to the Authority as follows:

- (a) Recitals Correct. The recitals to this Agreement are true and correct.
- (b) Due Organization and Existence. Such Member Entity is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.
- (c) Authorization; Enforceability. The Constitution and laws of the State authorize the Member Entity to enter into, execute, approve and issue, as the case may be, and to enter into the transactions contemplated by and to carry out its obligations under all of the Program Documents, and the Member Entity has duly authorized and executed all of the applicable Program Documents. The Program Documents constitute the legal, valid, binding and enforceable obligations of such Member Entity in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principals affecting the rights of creditors generally and except as to the limitations on remedies against public agencies generally.

(d) No Violations. Neither the execution and delivery of this Revised Agreement or the Interlocal Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which such Member Entity is now a party or by which the Member Entity is bound, or constitutes a default under any of the foregoing.

(e) Risk Management Guidelines. The Member Entity covenants to implement and follow risk management programs, guidelines and policies as adopted by the Authority for the Revised Program from time to time.

(f) Payment of Assessments and Acceptance of Coverage. The Member Entity agrees to pay when due Assessment for and accept the Coverage as described herein and the Memorandum of Coverage upon the terms and conditions set forth herein.

(g) Observance of Laws and Regulations by the Member Entity. The Member Entity agrees to keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of Montana, or by an officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Member Entity, including its right to exist and carry on business as a municipal corporation or other local government agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

2.2 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to each Member Entity as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence; Enforceability.

The Authority is a legal entity created pursuant to the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, Montana Code Annotated, duly organized, existing and in good standing under and by virtue of the laws of the State of Montana; has the power to enter into this Agreement and possesses by virtue of the Interlocal Agreement full power to provide coverage to parties signatory to the Interlocal Agreement and this Agreement. This Agreement and the other Program Documents constitute the legal, valid, binding and enforceable obligations of the Authority in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Encumbrances. The Authority will not pledge the Assessments or its rights under this Revised Agreement except as provided under the terms of this Revised Agreement.

(d) Equitable Exercise of Responsibilities. The Authority will exercise all rights and responsibilities hereunder reasonably and equitably for the benefit of all Member Entities without preference or discrimination among Member Entities.

(e) No Violations. Neither the execution and delivery of this Revised Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of the Bylaws of the Authority or any restriction on

any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(f) **Covenant to Comply with Regulations.** The Authority covenants that it will comply with the regulations concerning self-insurance and group self-insurance for workers' compensation coverage duly and lawfully promulgated by the Employment Relations Division of the Montana Department of Labor and Industry, and its successors.

(g) **Agreement to Provide Coverage.** The Authority agrees to provide the Coverage to the Member Entity described herein and in the Memorandum of Coverage and upon the terms and conditions set forth in this Revised Agreement.

SECTION 3: ESTABLISHMENT OF ACCOUNTS; COVERAGE; PAYMENT OF CLAIMS AND OTHER PROGRAM COSTS; PURCHASE OR ACQUISITION OF OTHER INSURANCE, EXCESS INSURANCE OR REINSURANCE

3.1 **Program Funds and Accounts.** The Authority hereby creates the following Funds and Accounts as set forth herein:

(a) **Program Operations Fund.** The Authority shall deposit in the Program Operations Fund all Assessments, investment income, and other funds or revenues allocated to the Program. This fund shall be used to pay all claims as well as the administrative costs of the Program. These funds may also be expended for investments, contribution or assessment for participation in a group or captive insurance program or pool as provided in Section 3.6.

(b) The Program Operations Fund shall have the following accounts:

- (i) one or more Program Checking Accounts into which assessments and other revenue items shall be deposited and from which shall be paid Program costs and expenses;
- (ii) Program Investment accounts. The Program shall maintain various investment accounts in compliance with MMIA's Investment Policy.

3.2 **Coverage.** The Authority through its Workers' Compensation Program hereby provides the Coverage to the Member Entity, and the Member Entity hereby agrees to accept the Coverage, upon the terms and conditions set forth in this Revised Agreement and the Memorandum of Coverage attached hereto as Exhibit A.

3.3 **Payment of Claims, Settlements, Judgments and Administrative Costs.**

(a) Settlements and Judgments which the Authority is obligated to pay under the terms of this Program Agreement and the Memorandum shall be paid on behalf of the Member Entities from the Program Operations Fund directly to the claimants or designees. An amount representing the Administrative Costs incurred by the Authority with respect to the Program shall be paid to the Authority.

(b) If the Program Operations Fund is insufficient to pay the award, the Authority shall individually assess each Member Entity to the extent necessary to pay the award, and the assessment charged each Member Entity shall be determined on a proportionate basis as may be

determined by the Board of Directors with the advice of its Consultant (“Special Assessment”). Any such Special Assessment shall be a contractual obligation of the Member Entity.

(c) Any lawful award entered against a Member Entity shall be a liability of the Program and a joint and several liability of each Member Entity as provided in this Revised Agreement.

3.4 Subrogation. Each Member Entity agrees that in the event of the payment of any loss by the Program under this Agreement, the Program shall be subrogated to the extent of such payment to all the rights of the Member Entity against any person or other entity legally responsible for damages for said loss, and in such event the Member Entity hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

3.5 Loss Reserves. The Authority shall employ or retain a Qualified Claims Administrator for the purpose of adjusting Claims and submitting a report to the Authority and each Member Entity setting forth (a) the amount of Loss Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Year(s), and (b) any adjustments (whether increases or decreases) necessary to be made in the amount of each Loss Reserve previously established pursuant to this Section and to make supplemental reports from time to time throughout each year as needed in accordance with prudent practice. In determining the amount of Loss Reserves necessary to be established or adjusted as described above, the Qualified Claims Administrator shall consider such facts and circumstances occurring during the period covered by such report as it, in its independent judgment, deems necessary in accordance with prudent practice. Notwithstanding the foregoing, the Qualified Claims Administrator shall take into account Settlements of Claims in accordance with the criteria set forth in this Section.

The Authority shall adjust Loss Reserves in the Program Operations Fund annually, and additionally from time to time throughout each year as needed in accordance with prudent practice. In the event that any such adjustment to Loss Reserves results in the Unencumbered Reserves being reduced to zero, the Authority shall provide prompt written notice of such fact to the Member Entities and the Authority shall have the discretion to impose, and the Member Entities shall be obligated to pay, any Special Assessment which the Board of Directors may determine is necessary in order to fund the Unencumbered Reserves at a prudent level with the advice of a qualified actuary or other person knowledgeable about public entity workers’ compensation programs.

3.6 Other Insurance, Excess Insurance or Reinsurance. The Authority may provide Coverage, or a portion of Coverage, to the Member Entities by purchase of specific and/or aggregate workers’ compensation insurance, excess insurance, or reinsurance with such self-insurance attachment points as at the time are in the best interests of the Program and the Member Entities as determined by the Board; by purchase of workers’ compensation insurance, excess insurance or reinsurance from a group or captive insurance program or pool; or by participation in a group or captive insurance program or pool for the purposes of acquiring workers’ compensation insurance, excess insurance or reinsurance. The Authority may use Unencumbered Reserves to purchase or make payments to acquire such insurance, excess insurance or reinsurance, or participate in such pool or program; provided, however, that the Authority may use Loss Reserves to purchase or otherwise acquire such insurance, excess insurance or reinsurance if the policy of commercial insurance, excess insurance or reinsurance to be purchased or otherwise acquired covers the claim for which such Loss Reserves were established. In the event of a dispute between the Authority and any Member Entity and any insurer, excess insurer or reinsurer as to payment of a Claim, the failure by either to pay such Claim shall not result in a default by the Authority under the terms of this Agreement.

In a Coverage Year for which the Authority has purchased or otherwise acquired insurance, excess insurance or reinsurance on behalf of a Member Entity, each such Member Entity shall be obligated to pay a proportion of the costs of such insurance, excess insurance or reinsurance, and Risk Assessment Adjustments.

Section 4: TERM OF AGREEMENT; ASSESSMENT; COMMINGLING OF FUNDS PROHIBITED

4.1 Term of Agreement; Termination of a Participant's Obligations to Pay Assessment. The Term of this Agreement shall commence on the date of its execution and shall continue until the Member Entity terminates the agreement as provided in Section 6 of this Agreement.

The obligation of any Member Entity to pay Assessments under this Agreement will terminate upon the terms and conditions set forth in Section 6 herein.

4.2 Budget and Appropriation of Assessment Payments. The Authority shall calculate the class code rates for Assessments to be paid by each Member Entity for the next succeeding Coverage Year as provided in Section 4.4 herein and provide preliminary class code rate information no later than April 15th of each year. During the term of the Agreement, Assessment invoices will be sent to Member Entities quarterly in arrears with payment being due by the 15th of the month following the end of the quarter being assessed. Each Member Entity covenants to take such action as may be necessary to include Assessment payments payable hereunder in its annual budget, to levy ad valorem taxes outside its permitted mill levy limitation, if necessary, on all property within its jurisdiction to fund such Assessment payments and to make the necessary annual appropriations for all such Assessment payments. The covenants on the part of the Member Entity herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Member Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member Entity to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by such Member Entity.

4.3 Obligation to Pay Assessments.

(a) No Withholding. Notwithstanding any dispute between the Authority and a Member Entity, including a dispute as to the scope or nature of Coverage provided by the Authority or the availability of amounts in the Program Operations Fund to pay Claims made against any Member Entity, or for any other reason (other than the termination of the obligation to pay Assessment pursuant to Section 4.1 hereof), the Member Entity shall appropriate funds sufficient to pay and shall make all Assessment payments when due and shall not withhold any Assessment payments pending the final resolution of such dispute.

(b) Rate on overdue Payments. In the event a Member Entity fails to make any of the payments required in this Section, the payment in default shall continue as an obligation of the Member Entity until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member Entity agrees to pay the same with interest or penalty thereon, at a rate or rates to be established by the Authority, from the date such amount was originally payable.

(c) Abatement. There shall be no abatement of Assessment payments.

4.4 Assessments

(a) **Total Risk Assessments.** With respect to each Coverage Year, the Authority shall retain a Consultant to determine and prepare a report by March 1 preceding the beginning of such Coverage Year setting forth the total amount of Risk Assessments payable in the aggregate by all Member Entities for such Coverage Year ("Total Risk Assessment"). The Total Risk Assessment shall be that amount which the Consultant estimates is required to be deposited into the Program Operations Fund at a confidence level of no less than fifty percent (50%), to maintain sufficient Loss Reserves to pay all Settlements and Judgments for all Member Entities, all Administrative Costs incurred during the Coverage Year, costs of other insurance, excess insurance, or reinsurance, and such other reasonable and necessary costs as may be incurred in the operation of the Program as may be determined by the Board of Directors of the Authority. The Total Risk Assessment may be increased by the Authority if, upon advice of the Consultant, the Board of Directors determines that a higher confidence level should be maintained. The Consultant shall utilize such methodology as adopted from time to time by the Authority upon notice to the Member Entities and shall certify that such methodology was used. The Authority shall collect from all Member Entities an amount equal to the Total Risk Assessment determined by the Consultant to maintain the designated confidence level in the Program. The amount collected from all Members may include funds obtained from Assessments, investment income and Unencumbered Reserves, as the Board of Directors may in the exercise of its discretion deem appropriate with respect to each Coverage Year.

(b) **Calculation of Individual Member Entity Risk Assessment.** The Risk Assessment rates established as provided in Section 4.4(a) shall then be applied to each Member Entity's estimated payroll by rating classification and further adjusted by an experience rating modification which shall be determined by the Board of Directors on the advice of an actuarial consultant utilizing commonly accepted actuarial principles. The amount so allocated to each Member Entity shall be the Risk Assessment due and owing by the Member Entity to the Program for such period.

(c) The aggregate Assessment and the Risk Assessment due and owing by each Member Entity shall be computed and adopted by the Board of Directors on a Coverage Year basis to be effective July 1, provided that the Board of Directors may make such mid-term adjustments to Risk Assessment rates as appropriate and in the best interests of the Program and the Member Entities to accomplish the goals of the Program in accordance with the Workers' Compensation and Occupational Disease Acts of Montana.

4.5. Risk Assessment Adjustment;

(a) For purposes of the Risk Assessment Adjustment Computation, "Incurred Losses" for each Member Entity shall mean the amount by which Loss Reserves for all Claims of each Member Entity are to be established or increased during each Coverage Year covered by the annual report which is submitted by the Qualified Claims Administrator pursuant to Section 3.5 hereof, exclusive of the most recently completed preceding full Coverage Year, netting out any decrease in Loss Reserves for Claims of each such Member Entity during such period.

(b) **Risk Assessment Adjustment Computation.** On or before March 31 of each year, the Authority shall compute the Risk Assessment Adjustment for each Member Entity. The Risk Assessment Adjustment, which may be an additional Assessment or a refund of a previous Assessment, shall be the sum of Incurred Losses, loss expenses, and administrative costs less Risk Assessments, inclusive of prior Risk Assessment Adjustments. The methodology and

limitations of additional assessment or refund shall be determined by the Authority based on the recommendation of the Consultant.

Notwithstanding the foregoing, the Authority is authorized to compute the Risk Assessment Adjustment more frequently than annually and/or inclusive of the most recently completed preceding full Coverage Year when the Board of Directors with due regard for the financial condition of the Program deems it prudent and necessary to do so.

(c) **Overriding Clause.** In the event Section 4.5(a) conflicts with any other section, provision, or definition in the Workers' Compensation Coverage Program Agreement, this section shall govern and supersede the same.

(d) **Prompt Notice of Risk Assessment Adjustments.** The Authority shall give each Member Entity prompt notice of the determination of Risk Assessment Adjustments.

(e) **Obligation to Pay Risk Assessment Adjustments.** The obligation of Member Entities to pay Risk Assessment Adjustments with respect to Coverage Years in which they were Member Entities determined subsequent to the date of withdrawal shall in no event be discharged by expulsion or withdrawal from the Program.

4.6 Assessments In The Event of Losses and Expenses In Excess of the Program Funds. In the event the Program losses and expenses for the Coverage Year exceed Risk Assessments, Loss Reserves, and interest income for that Coverage Year, the difference shall be charged to the Unencumbered Reserves, if funds are available. If funds are not available, the Board of Directors, in the exercise of its discretion and upon the advice of a qualified actuary may impose a Special Assessment.

Should funds be obtained by the Program from borrowing or from any other appropriate source in lieu of a Special Assessment, then such funds shall be used to pay Claims. In the event of such borrowing of funds by the Program, the Authority shall advise the Employment Relations Division of the Montana Department of Labor and Industry, or its successor responsible for the regulation of the Program.

Any sums expended by the Member Entity in the interim to pay Claims covered by the Program shall be reimbursed, if they would otherwise be covered by the Program.

Provided that nothing in this Section 4.6 shall be construed to limit the joint and several liability of individual Member Entities.

4.7 Commingling of Funds Prohibited. Assessments, Special Assessments, Loss Reserves, Unencumbered Reserves, investment income, or other income paid to or derived from the Program shall not be commingled with the funds of any other program which is or may be sponsored, operated, or controlled by the Authority. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of the Program for any purpose other than as set forth in this Revised Agreement. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of any other risk retention or other program which is or may be sponsored, operated, or controlled by the Authority for purposes of satisfying any obligation, debt, or covenant arising from or related to this Revised Agreement.

This prohibition on commingling of funds does not apply to the Montana Municipal

Interlocal Authority Workers' Compensation Program's proportionate share of the total amounts of any Assessment Deposits or Assessments received by Government Entities Mutual (GEM) from all participants of GEM, or held in any account or surplus account by GEM.

4.8 Assessment Audits. The Authority may at its discretion audit each Member Entity to determine the accuracy of the basis used for the Assessment calculations. An audit will be limited to the two Coverage Years prior to the Coverage Year during which the audit takes place. Refunds for overpayment or billing for underpayment will be limited to the same period.

4.9 Member Identified Errors. If an individual Member Entity finds errors in the amount of Assessments paid for prior periods, and submits documentation deemed adequate by the Authority (e.g. an independent audit or authorized change to reports submitted to some other government entity), a refund may be requested or additional Assessments paid in accordance with the time limits identified above for Assessment audits.

SECTION 5: INDIVIDUAL MEMBER ENTITY ACCOUNTS; ACCOUNT SETTLEMENT UPON WITHDRAWAL OR TERMINATION

5.1 Individual Member Entity Accounts. An Individual Member Entity Account in the name of each Member Entity will be established; and in the case of Member Entities who are Member Entities in the Program as of the effective date of this Agreement, the balance in their respective Individual Member Entity Accounts will be continued. Such Individual Member Entity Account will be used to identify the current financial condition of each Member Entity's participation in the Program. The Individual Member Entity Accounts will represent each Member Entity's share of Assessments less Claims, Judgments, Administrative Costs and other expenses which have been made against the Program.

The Individual Member Entity Accounts are for the purpose of determining each Member Entity's share of funds which:

- (a) may be credited against future Assessments or payable as dividends;
- (b) may be payable to each Member Entity who withdraws from the Program;
- (c) may be payable to each Member Entity on termination of the Program.

5.2 Annual Computation. Within 180 days of the end of each Coverage Year, the Individual Member Account of each Member Entity shall be computed by computing for the Program as a whole and by allocating to each Member Entity its proportionate share of the Assessments collected plus the investment income and other revenues of the Program at the end of the Coverage Year less the Claims (including claims paid, claims incurred, and claims incurred-but-not-reported), Judgments, loss development, Administrative Costs, and other operating costs for such Coverage Year.

Provided, however, that no Member Entity shall be entitled to receive any money or credit on account of having a positive balance in its Individual Member Entity Account unless the Unencumbered Reserves of the Program Operations Fund has an adequate fund balance, as determined by the Board in consultation with the programs actuary, and in such event the individual Member Entity shall be entitled to a proportionate share of the assets in the Unencumbered Reserves in satisfaction of its Individual Member Entity Account as provided in

this Agreement.

5.3 Settlement of Individual Member Entity Account upon Withdrawal. In the event a Member Entity withdraws from the Program in good standing as provided in Section 6.5, the withdrawing Member Entity's Individual Member Entity Account will be calculated as of that date and 10% of the amount due the withdrawing Member Entity based upon the status of its Individual Member Entity Account and subject to the provisions contained in Sections 5.1 and 5.2 will be paid to the Member Entity at that time. At the end of each of the next three years, the Individual Member Entity's Account will be recomputed based upon changes in incurred losses and investment income during the year and the amount then due and payable the withdrawing Member Entity shall be determined as provided in Section 5.2. At the end of the first year, twenty-five percent (25%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account will be paid to the Member Entity plus interest on that amount for one year and computed at the then rate of one-year U.S. Treasury Notes. At the end of the second year, the Member Entity shall be paid fifty percent (50%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account plus interest on that amount for two years and computed for each of those two years at the rate of one-year U.S. Treasury Notes at the end of each such year. At the end of the third year, the Member Entity shall be paid fifteen percent (15%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account plus interest on that balance for three years computed for each of those three years at the rate of one-year U.S. Treasury Notes at the end of such year. During the three-year period, the right of a withdrawing Member Entity to receive a settlement of its Individual Member Entity's Account is subject to the availability of funds in the Unencumbered Reserves as provided in Section 5.2, provided however, that this schedule for disbursements is subject to the limitation imposed by Section 6.5(c) of this Agreement.

5.4 Settlement of Individual Member Entity Account upon Termination. In connection with expulsion or suspension of a Member Entity pursuant to Section 6.5 herein, the Authority shall determine the Individual Member Entity Account of such Member Entity. The amount of the Individual Member Entity Account otherwise due to the Member Entity being expelled or suspended shall be applied to the obligations due from such Member Entity under the terms of this Agreement. Any remaining balance in the terminated Member's Individual Member Entity Account ("the Excess Individual Member Entity Account Balance") shall be held by the Authority and any interest thereon in a segregated account for the benefit of such Member Entity. The Authority will transfer to such Member Entity its Excess Individual Member Entity Account Balance, if any, on the earliest practicable date when the Member is no longer subject to any Assessments for any obligations under the terms of this Agreement, which will be the date when all Claims, including claims incurred during any Coverage Period prior to expulsion or suspension of such Member Entity, and Judgments have been finally determined and/or paid, and then pursuant to the schedule of payments set forth in Section 5.3 herein applicable to a Member Entity who withdraws in good standing, subject to the availability of funds in the Unencumbered Reserves as provided in Sections 5.2 and 5.3 and subject further to the limitation as provided in Section 6.5 (c).

SECTION 6: ADMISSION TO, WITHDRAWAL FROM AND EXPULSION FROM THE WORKERS' COMPENSATION RISK RETENTION PROGRAM

6.1 Transition Period. This Revised Agreement shall be effective September 1, 2010. Members of the Workers' Compensation Program who execute this Revised Agreement prior to the effective date shall continue to be covered under the terms and conditions of the Program

Agreement then in existence until the effective date of this Agreement. The effective date for those Member Entities of the Workers' Compensation Program who execute this Revised Agreement after September 1, 2010, will be retroactive to September 1, 2010.

6.2 Conditions for Providing Coverage to a New Member Entity. Applications for memberships in the Revised Program shall be submitted on an approved form to the Chief Executive Officer. The Board of Directors will consider and act upon each application. Concurrence by a majority of the Board and the Authority's excess insurance carrier is required in order for an applicant to be admitted as a Member Entity. The Authority may provide Coverage to a new Member Entity of the Program that is not currently a Member Entity under this Agreement, subject to the following conditions:

- (a) such new Member shall be a political subdivision of the state;
- (b) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall be signatory to the Interlocal Agreement and a member of the Authority;
- (c) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall have submitted a completed application for admission to the Revised Program as may be required by the Board of Directors; and

The minimum time requirements for execution and submission of documents as provided in subparagraphs (b) and (c) hereinabove may be waived by the Board of Directors at their discretion.

Coverage of such new Member Entity shall be effective on the first day of the quarter next succeeding the approval of the new Member's application by the Authority, unless determined otherwise by the Board of Directors, and the execution of the documents as provided herein.

6.3 Requirements for Participation in the Program.

Each Member Entity who participates in the Program shall execute this Agreement. Each Member Entity hereby acknowledges and agrees that, commencing with the effective date of its participation in the Program, the Member shall be obligated to pay Assessments as computed pursuant to this Agreement

6.4 Capital Assessment of New Member Entity to Program Operations Fund.

(a) If the Program Operations Fund is not adequately funded, the new Member Entity may be assessed a non-refundable amount to be deposited into the Program Operations Fund as determined by the Authority ("Capital Assessment"). Such new Member Entity shall pay all components of the Risk Assessment in addition to this Capital Assessment.

(b) If the Program Operations Fund is adequately funded as determined by a Consultant, no initial capital assessment will be required of the Member Entity.

6.5 Conditions for Permitting Withdrawal of a Member Entity from Coverage. The Authority shall permit a Member Entity to withdraw from Coverage under this Agreement, provided that the following are satisfied:

- (a) such Member Entity shall not be in default as to payment of any Assessments then

or theretofore due;

(b) at least 60 days preceding the effective date of such withdrawal, such Member Entity shall have provided written notice to the Authority of its intent to withdraw;

(c) Provided, however, if the Authority shall have received a certificate from a Consultant that such withdrawal will materially reduce the actuarial soundness of the Program, the Authority may, in its sole discretion and upon the advice of the Consultant, in order to minimize the financial, actuarial and economic impacts on the Program, extend the terms of the repayment of amounts due the withdrawing Member of the Member's Individual Member Entity Account as otherwise provided in Sections 5.2 and 5.3 of this Agreement.

(d) In no event shall withdrawal from Coverage or termination of a Member Entity's participation in the Program release a Member Entity from its obligation to pay damages resulting from default under the terms of this Revised Agreement, nor shall such withdrawal or termination release a Member Entity from its obligation to pay Assessments as provided herein. The Authority shall continue to pay covered Claims relating to the withdrawn Member Entity which arose prior to withdrawal as provided herein, unless the Member Entity defaults in the payment of its continuing obligations described in the preceding sentence. Notice of withdrawal shall be revocable by the Member Entity only with the consent of the Authority.

6.6 Conditions of Membership Review, Suspension and Termination Procedure.

(a) The Authority may suspend or expel a Member Entity from the Revised Program (i) if the Member Entity is in default under the terms of this Revised Agreement or (ii) when, in the determination of the Chief Executive Officer, a Member Entity has engaged in conduct, other than a default under this Revised Agreement, that warrants expulsion from membership in the Program. Suspension, termination or expulsion is subject to the conditions provided in Section 6.6 herein.

(b) The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall have the same meaning whenever they are used in this Agreement with respect to a Member Entity:

- (i) failure by such Member Entity to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to such Member Entity by the Authority, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Member Entity within the applicable period and diligently pursued until the default is corrected; or
- (ii) the filing by such Member Entity of a case in bankruptcy, or the subject of any right or interest of such Member Entity under this Agreement to any execution, garnishment or attachment, or, adjudication of such Member Entity as a bankrupt, or assignment by such Member Entity for the benefit of creditors, or the entry by such Member Entity into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member Entity in any proceedings instituted under the provisions of the federal bankruptcy code, as amended,

or under any similar act which may hereafter be enacted.

(c) When a Member Entity has been determined by the Authority to be in default under the terms of the Revised Agreement, the Member Entity shall be given written notice of such default and shall be required to cure such default within ten (10) calendar days of receipt of such notice. If such default is not cured within the time prescribed herein, said Member Entity will be suspended from the Program and Coverage of Claims under the Program shall be terminated during the period of suspension, which shall be effective, without the need for a meeting of the Board of the Authority, at 12:01 a.m. on the 30th day after notice of termination has been received by the Member Entity. Such period of suspension shall continue until the conditions of termination or expulsion stated in Section 5.4 of this Program Agreement have been met, at which time the defaulting Member Entity's participation in the Program shall be immediately terminated without a meeting.

(d) In the event the Chief Executive Officer has determined that the Member Entity has engaged in conduct that warrants expulsion other than a default under this Revised Agreement, the Chief Executive Officer shall file a written report with the Board of Directors. Said report shall contain a summary of the facts and the recommendations regarding continued membership status. A copy of the report shall be served by mail to the Member Entity along with a Notice of Meeting of the Board of Directors. Said Notice of Meeting shall include the place, date and time of the meeting. At its discretion, the Board of Directors may submit written questions to the Member Entity, written answers to which must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the date of the meeting. A Member Entity objecting to the report and recommendations of the Chief Executive Officer shall submit a written statement to the Board of Directors setting out in detail the basis for the objection and any other information the Member Entity desires to submit. Said statement must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the meeting. The Board of Directors shall meet at the time and place designated in the Notice of Meeting. The Member Entity shall be entitled to be represented at the meeting and present an oral statement and other information. Following the meeting, the Board of Directors shall affirm, modify, or reject the recommendation of the Chief Executive Officer. The Board of Directors shall have the authority: (i) to place a Member Entity on probation, the terms and duration of which it shall determine; (ii) to suspend a Member Entity from Coverage of Claims; or (iii) to expel a Member Entity from the Program. A copy of the Board of Directors' decision shall be served by mail on the Member Entity. In the event that the Board of Directors votes to suspend or terminate membership, such suspension or termination shall not take place for at least thirty (30) days after the Member Entity has received notice of the suspension or termination. The duration of the notice period shall be determined by the Board.

6.7 In no event shall involuntary termination or expulsion from the Revised Program release a Member Entity from its obligation to pay Assessments or comply with the other terms or conditions of this Revised Agreement, nor shall involuntary termination or expulsion release a Member from its obligation to pay damages resulting from a default under the terms of this Revised Agreement.

6.8 **Obligation to Notify Employment Relations Division upon Withdrawal or Termination.** Upon withdrawal or termination of a Member Entity, the Authority and the Member Entity shall promptly notify the Employment Relations Division of the Montana Department of Labor and Industry or its successor.

6.9 **No Remedy Exclusive.** No remedy conferred herein upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or

in equity, including, but not limited to the right by mandamus or other suit or proceeding at law or in equity to enforce his rights against the Member Entity and to compel the Member Entity to perform and carry out its duties under this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

6.10 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party awarded to the nondefaulting party by a court of competent jurisdiction.

6.11 No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7: JOINT AND SEVERAL LIABILITY

7.1 Guarantee to Pay Claims. The Member Entity agrees to assume and guarantee to pay, or otherwise discharge promptly, any and all the liabilities and obligations which the Program may incur for Claims for which Coverage has been provided pursuant to the terms of this Revised Agreement and the Workers' Compensation and Occupational Disease Acts of the State of Montana.

7.2 Joint and Several Liability. This Revised Agreement represents a direct financial guarantee to the employees of all Member Entities of the Program and dependents of the deceased employees of all Member Entities of the Program for the full amount of any and all liabilities or obligations for which Coverage has been provided pursuant to the terms of this Revised Agreement and any predecessor Agreement with respect to this Program in amounts not limited to this Member Entity's "pro rata" share. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amount of any and all known and unknown Claims incurred and incurred-but-not-reported during the Member Entity's participation in the Original Program and for the full amount of any and all known and unknown claims incurred and incurred-but-not-reported during the membership of the Member Entity in the Program.

7.3 Other Insurance Excluded. This Revised Agreement shall not cover or extend to any workers' compensation or occupational disease liabilities which are expressly insured by a carrier duly authorized to write Montana workers' compensation and occupational disease insurance, provided that the liabilities assumed by an excess insurance or reinsurance provider shall also remain the primary liabilities of the Program and its Member Entities.

7.4 Enforcement of Guarantee. In the event the Program shall fail to pay compensation, as compensation is defined in the Montana Workers' Compensation and

Occupational Disease Acts, when due, the Member Entity will pay the same, and the payment may be enforced against the Member Entity to the same extent as if said payment was its sole liability. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amounts of any and all known or unknown Claims of the Program arising during the membership of the Member Entity in the Program.

SECTION 8: INSPECTION OF FACILITIES AND EQUIPMENT; SAFETY CONSIDERATIONS AND NOTIFICATION OF ACCIDENT

8.1 Inspection of Facilities, Equipment and Records. The Board of Directors and any of their agents, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery and appliances covered by this Revised Agreement and shall be permitted at all reasonable times to examine Member Entity's payroll, personnel, injury and accident records, and Member Entity's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the Assessments which are payable under the terms hereof. This right to inspect or examine shall continue after termination of membership with respect to all claims or matters arising during or relating to membership status.

8.2 Safety Considerations. Each Member Entity must follow the safety recommendations of the Board of Directors and the service company or any other agent of the Authority in order to provide safe and sanitary working conditions.

8.3 Notification of Accident and Reimbursement to Authority for Penalty. Each Member Entity must give immediate notification to the Qualified Claims Administrator on the prescribed forms of any accident and reported Claim for any benefits whatsoever payable under the Workers' Compensation and Occupational Disease Acts.

Any penalty levied for failure to pay compensation benefits, medical expenses or travel allowances resulting from a Member Entity's failure to give timely notice to the claims adjuster of an accident or claim for any benefits as heretofore described may, by a vote of a majority of the Board of Directors, be assessed against the Member Entity.

SECTION 9: PROHIBITION OF UNAUTHORIZED PAYMENTS; PENALTY FOR EMPLOYMENT WITHOUT WORKERS' COMPENSATION COVERAGE

9.1 Prohibition of Unauthorized Payments by Member Entities. No Member Entity shall make voluntary payment of weekly benefits or medical expenses or enter into any agreement with any employee or his agent committing payment or admitting liability for any workers' compensation benefits as provided in the Workers' Compensation and Occupational Disease Acts without the prior approval of the Board of Directors or the Qualified Claims Administrator. Any Member Entity making such voluntary payments or entering into such an agreement may, by a vote of a majority of the Board of Directors, be held individually and separately liable for reimbursement to the Program for all benefits and medical expenses paid or committed.

9.2 Penalty for Employment of Persons without Workers' Compensation Coverage. No Member Entity shall contract with any person, including contractors, or subcontractors, who has not produced evidence of current workers' compensation insurance according to the

provisions of the Workers' Compensation and Occupational Disease Acts. Any Member Entity who contracts with any person who does not have current workers' compensation insurance will be charged an additional non-discounted Assessment based upon the full amount of the contract.

SECTION 10: AGREEMENT WITH SERVICE PROVIDERS

10.1 Agreements with Service Providers. The Board of Directors may enter into agreements with various service companies or employ individuals to provide the following services:

(a) Assist the Authority in securing specific and aggregate excess insurance or reinsurance.

(b) Inspect the work places, operations, machinery and equipment owned or operated by the participating Member Entities of the Program.

(c) Compile and file notices and reports required under the Workers' Compensation and Occupational Disease Acts upon receipt of initial report from either the Authority or any participating Member Entity; conduct any necessary investigation in order to determine the liability of the participating Member Entity under the Workers' Compensation and Occupational Disease Acts; and, process any and all lawful claims under rules established pursuant to applicable law and by such additional rules as may be promulgated.

(d) Furnish the Authority and participating Member Entities in the Program with periodic reports of all accidents and occupational disease, and of all payments made and reserves set up for benefits and expenses on account of liability and/or reasonably anticipated liability for accidental injuries and occupational diseases sustained by employees.

(e) Adjust the Assessments payable by participating Member Entities in the Revised Program by allowing for favorable or unfavorable experience so as to determine and assign Assessment modifications for each Member Entity in the Program annually in accordance with policies established by the Board of Directors.

(f) Bill for and maintain records of all Assessment payments to the Program in accordance with such rules as the Board of Directors adopt.

(g) Make payroll audits of participating Member Entities in the Program.

(h) Prepare on behalf of the Authority and the participating Member Entities in the Program for all scheduled hearings and generally administer all other details pertaining to each participating Member Entity's obligations to its employees under the Workers' Compensation and Occupational Disease Acts.

(i) Perform such other related services as may be reasonably necessary for the operation of the Program.

SECTION 11: INDEMNIFICATION AND RELEASE; DISCLAIMER

11.1 Release and Indemnification Covenants. Each Member Entity shall and hereby agrees to indemnify and save the Authority and all other Member Entities harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) its breach or default in the performance of any of its obligations under this Agreement or (ii) its act or negligence or that of any of its agents, contractors, servants, employees or licensees with respect to the Coverage. No indemnification is made under this Section or elsewhere in this Agreement for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Agreement by the Authority, its officers, agents, employees, successors or assigns.

11.2 Disclaimer. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF THE MEMBER ENTITIES.

11.3 Savings Clause for Joint and Several Liability. Nothing herein in this Section 11 shall be construed to limit or eliminate the obligation of the Member Entities with respect to their joint and several liability for Claims as provided in Section 7 of this Agreement.

SECTION 12: ASSIGNMENT AND AMENDMENT

12.1 No Assignment by the Member Entities. This Revised Agreement may not be assigned by any Member Entity.

12.2 Amendment. This Agreement may be amended by a written instrument duly authorized and executed by the Authority and a majority of the Member Entities. It is expressly agreed and understood that approval of any amendment by a majority of the Member Entities who are signatories to this Agreement at the time of such amendment shall operate to bind each Member Entity to such amendment. All costs and expenses incurred in connection with any amendment to this Agreement shall be borne pro rata by the Member Entities.

SECTION 13: MISCELLANEOUS

13.1 Notices. All notices, bonds or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) business days after deposit in the United States mail, certified, postage prepaid, to the Member Entities, the Authority at the following addresses:

If to the Member Entity

To the City or Town Clerk
At the address of the City or Town
as maintained in the official records of the
Authority

If to the Authority:

Montana Municipal Interlocal Authority
Attn: Workers' Compensation Program
PO Box 6669
Helena, Montana 59604-6669

The Authority and Member Entity, by notice given hereunder, may designate different addresses to which subsequent notices, bonds or other communications will be sent.

13.2 Binding Effect. This Revised Agreement shall inure to the benefit of and shall be binding upon the Authority and the Member Entities and their respective successors and assigns.

13.3 Enforceability. This Revised Agreement is enforceable by the Authority, Member Entities of the Revised Program, the employees of such Member Entities, and/or the Employment Relations Division of the Montana Department of Labor and Industry or its successor. The parties to this Revised Agreement are held and firmly bound for the payment of all legal fees and costs incurred by the State of Montana in any actions taken to enforce this Revised Agreement.

13.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13.5 Further Assurances and Corrective Instruments. The Authority and the Member Entities agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of this Revised Agreement.

13.6 Waiver of Notice as to Current Condition of Authority. The Member Entity waives any notices as to the current condition of said Authority, the Program, any changes therein, and the manner of conducting the Program. The Undersigned also waives, in the event of non-compliance by the Authority, any demand or notice in respect thereof and any requirement of legal or equitable proceedings or otherwise on the part of the Employment Relations Division of the Montana Department of Labor and Industry or its successor against the Authority as a condition precedent to enforcing the obligations of the Member Entities hereunder.

13.7 Execution in Counterparts. This Revised and Restated Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.8 Applicable Law. This Revised and Restated Agreement shall be governed by and interpreted in accordance with the laws of the State of Montana.

13.9 Effect of Revised Agreement. This Revised Agreement amends and supersedes each prior Workers Compensation Program Agreement, and this Revised Agreement shall effect a continuation of the Program for all purposes with respect to the continuity of Coverage, expenses, accounts, contracts, and other agreements related to the operation of the Program.

**MONTANA MUNICIPAL INTERLOCAL AUTHORITY
REVISED AND RESTATED
WORKERS' COMPENSATION
PROGRAM AGREEMENT
July 1, 2014
Signature Page**

IN WITNESS WHEREOF, The Authority has caused this Revised and Restated Workers' Compensation Risk Retention Program Agreement to be executed in its name by its duly authorized officers;

MONTANA MUNICIPAL INTERLOCAL AUTHORITY,
as Authority

By _____
Chief Executive Officer

Date Signed _____

and the Member Entity has caused this Revised Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

City of _____
As Member

Address _____

By _____

Its _____

Date Signed _____

ATTEST:

City Clerk