

**TEXAS ASSOCIATION OF SCHOOL BOARDS
RISK MANAGEMENT FUND
Interlocal Participation Agreement
Employee Benefits — Administrative Services Only**

This Interlocal Participation Agreement (“Agreement”) is entered into by and between the Texas Association of School Boards Risk Management Fund (“Fund”), an administrative agency of cooperating local governments, (“Fund Members”), acting on its own behalf and the behalf of all Fund Members, and the undersigned local government of the State of Texas (“Program Participant”). The purpose of this Agreement is to facilitate effective risk management of the employee benefits obligations of the Program Participants.

WITNESSETH:

WHEREAS, the Program Participants are authorized by the Texas Political Subdivision Employees Uniform Group Benefits Act (“the Act”) [Chapter 172, Texas Local Government Code], Texas Revised Civil Statutes Annotated Article 715c (Vernon's 1993), Section 22.005 of the Texas Education Code, and the Texas Interlocal Cooperation Act (Chapter 791, Title 7, Texas Government Code) to provide a plan of employee benefits; and

WHEREAS, the provision of employee benefits to their eligible employees is an obligation and/or an essential and important public, administrative, and governmental function of each Program Participant; and

WHEREAS, the Fund is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Program Participant desires to utilize the services of the Fund in the administration of the Program Participant's own self-funded employee benefits plan; and

WHEREAS, the Program Participant desires to have available to it choices in risk financing and management offered by the Fund and does hereby become a member of the Fund.

NOW BE IT RESOLVED, that the undersigned Program Participant, in consideration of the agreement of the Fund and the Fund Members to provide services as detailed in this Agreement, does hereby agree to the following terms, conditions, and general provisions.

In return for the payment of service fees and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **Adopts Interlocal Agreement.** The Program Participant, acting by and through its duly authorized representative, by this Agreement hereby approves and adopts the Restatement of Interlocal Agreement in accordance with the terms and conditions set forth in that certain Interlocal Agreement promulgated on July 2, 1974, and Restated on May 20, 1997.
2. **Contribution and Coverage Summary.** The Program Participant and the Fund agree that the participation period, and services provided hereunder shall be as specified in the Contribution and Coverage Summary, the fee schedule, and any other attachments as provided to the Program Participant.
3. **Term.** The term of this Agreement is for one year, and it automatically renews for successive one-year terms thereafter, unless sooner terminated as provided herein. The initial one-year term shall commence at 12:01 a.m., on January 1, 2005, and shall automatically renew upon that anniversary date, unless sooner terminated in accordance with the provisions of this Agreement, or any subsequent renewal thereof. Each subsequent automatic renewal shall be subject to the provisions of this Agreement, and expressly subject to the Fund's right to recalculate and assign the Program Participant's service fees, unless otherwise specified in the Contribution and Coverage Summary.
- 4.



4. **Termination.**
- a. **By Either Party.** This Agreement may be terminated by either party on any successive renewal date by giving written notice to the other party no later than sixty (60) days prior to the next anniversary date.
 - b. **By Program Participant.** This Agreement may be terminated by the Program Participant at any time after having first given 60 days advance written notice of termination.
 - c. **By Program Participant Upon Adverse Governmental or Judicial Intervention.** This Agreement may be terminated by the Program Participant according to the terms of paragraph 12 of the General Provisions section of this Agreement
 - d. **By Fund.** The Fund may also terminate this Agreement.
 - (1) Giving thirty (30) days notice by certified mail to the Program Participant if the Program Participant fails or refuses to make the payments as herein provided. The Program Participant shall have the right to remedy the default within the ten (10) days written notice period provided herein; or
 - (2) Giving thirty (30) days notice by certified mail to the Program Participant if Program Participant fails to cooperate and comply with any reasonable requests for information and/or records made by the Fund; or
 - (3) Giving thirty (30) days written notice by facsimile, electronic mail, or certified mail to the Program Participant if the Program Participant fails or refuses to comply with any agreement or undertaking on its part set forth in this Agreement or otherwise breaches this Agreement, including the obligation to have monies on deposit and/or available to pay claims when processed and due. Program Participant will bear the additional costs, fines, penalties, and other expenses occasioned by failure to keep adequate funds available for payment of claims.
 - e. **Financial Responsibilities Upon Termination.** If the Program Participant terminates its participation during the term of this Agreement or otherwise breaches this Agreement, or if the Fund terminates participation of the Program Participant under any provision of this Article, the Program Participant shall bear the full financial responsibility for any unpaid benefits and expenses related to claims, asserted or unasserted, against the Fund or the Program Participant which are made on behalf of the terminated Program Participant's employees or former employees and/or their dependents and shall forfeit all service fees already made to the Fund.
5. **Service Fees.** The Program Participant shall pay service fees based on standard rates approved by the Fund, as shown on the Contribution and Coverage Summary, and may hold its own funds for payment of covered claims. All service fees are payable monthly by the tenth (10th) of the month for that month. Late charges amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the first (1st) day following the due date, and continue until the service fees and late charge are paid in full. The Fund shall bear no responsibility for the adequacy of the funds collected or held by the Program Participant for payment of covered claims.
6. **Fund Reporting.** The Fund shall provide periodic claim activity reports to the Program Participant and the Program Participant's designee. These reports may be modified from time to time as deemed appropriate by the Fund. Any customized reports requested by the Program Participant shall be agreed upon by the Fund and the Program Participant for an additional fee, if appropriate.



7. **Administration of Claims.** The Fund or its designee agrees to handle any and all claims presented. The Program Participant hereby authorizes the Fund or its designee, to act in all matters pertaining to processing and handling of employee benefits claims and shall cooperate fully in supplying any information that is necessary in such matters. The Program Participant waives none of its immunities and authorizes the Fund or its designee to plead such immunities on its behalf and on behalf of the Fund or its designee. It is the intent of the parties that the Fund shall have the same rights, responsibilities, and benefits, including without limitation, immunities, as the Program Participant. All decisions on individual cases shall be made by the Fund or its designee in accordance with the plan document provided by the Program Participant.
8. **Master Plan Document.** The Program Participant agrees that conditions of coverage for benefits provided to its employees and/or dependents, for the participation period specified in the Contribution and Coverage Summary, shall be as specified in the Master Plan Document furnished to the Fund by the Program Participant.
9. **Excess Loss Coverage.** The Program Participant may, at its own expense, secure and hold, on behalf of the Program Participant, catastrophic or excess loss coverage. The Program Participant is bound by the terms and conditions of the excess loss coverage agreement. A copy of the excess loss agreement will be provided to the Fund. The Program Participant shall be responsible for notifying the Fund of any changes in excess loss coverage. The Fund shall be responsible for providing claims information as required and/or requested by the Program Participant's excess loss insurance carrier.

GENERAL PROVISIONS

1. **Appeals.** The Program Participant's employees shall have the right to appeal any claim decision or recommendation to the Program Participant, whose determination will be final. Any appeal shall be made in writing to the Program Participant plan trustees within 30 days of the claim decision or recommendation. The Program Participant may ask the Fund to provide additional information regarding any appealed claims decision or recommendation, however the Fund shall bear no responsibility, financial or otherwise, for final determinations made by the Program Participant.
2. **Audit.** The Fund shall provide an annual audit of its financial statements by a certified public accounting firm.
3. **Authorization to Participate.** Each Program Participant represents and warrants that its governing body has duly authorized its participation in the Fund and has authorized the Fund to provide administrative services only in paying claims on behalf of the Program Participant.
4. **Bylaws.** The Program Participant agrees to abide by the Bylaws of the Fund, as they may be amended, and any and all reasonable policies and procedures established by the Fund as they pertain to the administrative service only of payment of claims by the Fund on behalf of the Program Participant.
5. **Compensation.** The parties agree that the contractual payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Fund for the services or functions performed under the Agreement.
6. **Cooperation and Access.** The Program Participant agrees that it will cooperate and comply with any reasonable requests for information and/or records made by the Fund. The Fund reserves the right to audit the relevant records of any Program Participant. The Program Participant also reserves the right to audit the relevant records pertaining to the Program Participant's plan document.
7. **Coordinator.** The Program Participant agrees to designate a program coordinator(s), which shall be listed on the Contribution and Coverage Summary. The program coordinator(s) shall have express authority to represent and bind the Program Participant, and the Fund will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Program Participant. The Program Participant reserves the right to change the coordinator(s) as needed by giving written notice to the Fund. Such notice is not effective until actually received by the Fund.
8. **Current Revenue.** The Program Participant hereby warrants that all payments, contributions, fees, and



disbursements required of it hereunder shall be made from current revenues available to the Program Participant.

9. **Defense and Prosecution of Claims.** The Program Participant authorizes the Fund to regulate the commencement, defense, or other appearance of the Fund in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Fund's sole discretion, with respect to such litigation.
10. **Governance.** The Fund shall be governed by a Board of Trustees ("Board") in accordance with the Bylaws.
11. **Insurance Terminology.** Any reference in this Agreement to an insurance term not ordinarily part of self-insurance terminology shall be deemed to apply to self-insurance and is not to be construed as being contrary to the self-insurance concept.
12. **Intervening Legislative or Judicial Action.** If after the execution of this Agreement, the State or Federal governments or the highest courts of either enact any statute, pass any rule or enter any decision that would substantially impact the rights or financial obligation of the Fund or the Program Participant as it pertains to this Agreement, the Fund or the Program Participant is given the right to request that the parties to this Agreement review the Program Participant's and the Fund's obligations under this Agreement in light of the impact of the intervening governmental or judicial event.
13. **Lawsuit.** The Fund does hereby agree that any suit brought against the Program Participant, pursuant to the provisions of the specific program may be defended in the name of the Program Participant by the counsel selected by the Program Participant, in its sole discretion, or its designee, on behalf of and at the expense of the Program Participant as necessary for the prosecution of any litigation. Full cooperation by the Fund shall be extended to supply any information needed or helpful in such defense.
14. **Membership.** In the interest of providing effective school governance, the Program Participant must be a member of the Texas Association of School Boards and the TASB Risk Management Fund.
15. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Contribution and Coverage Summaries, Service Fee Summaries, and Master Plan Documents, represent the complete understanding of the Fund, and Program Participant regarding services provided by the Fund.
16. **Notice.** Any written notice to the Fund shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director for Risk Management Services, Texas Association of School Boards, Inc., P. O. Box 400, Austin, Texas 78767-400. Any written notice to the Program Participant shall be made by first class mail, postage pre-paid and delivered to Ector County I.S.D., Attention Medical Plan Trustee Chairman, P.O. Box 3912, Odessa, Texas, 79760.
17. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
18. **Standards of Performance.** Time shall be of the essence in the reporting of claims to the Fund, payment of any contributions or monies due and delivery of any written notices under this Agreement.
19. **Subrogation and Assignment of Rights.**
 - a. The Program Participant, on its own behalf and on behalf of any person entitled to benefits under this Agreement, holds all subrogation rights, and all rights to any suit, claim, demand, or cause of action against any third party who may bear any liability for injuries upon which any claim of coverage may be predicated under this Agreement, including the full right and power to maintain an action against any third party, to settle, compromise, or reassign any cause of action, and to give a full release in full discharge of any liability. The Program Participant has the right, in its sole discretion, without notice to the Fund, to bring all claims and lawsuits in the name of the Program Participant, and the Fund acknowledges and understands that all subrogation rights and recoveries belong to the Program Participant, up to the amount of benefits,



expenses, and attorney fees incurred by the Program Participant. Award of funds to any person entitled to coverage hereunder, whether by judgment or settlement, shall be conclusive proof that the injured party has been made whole. The Fund may provide assistance to the Program Participant in any subrogation activity at the request of the Program Participant.

- b. **No Waiver of Subrogation Rights.** The Program Participant and/or the Fund shall do nothing before or after a loss, or before, during, or after the term of this Agreement to prejudice the Program Participant's and/or the Fund's existing or prospective subrogation rights under this Agreement.
 - c. **Disclosure of Prior Waivers.** If prior to the execution of this Agreement or of a loss covered by this Agreement, the Program Participant and/or the Fund has executed any agreement with a third party or entity that waives or purports to waive any rights that would potentially affect the Program Participant and/or the Fund's subrogation rights under this Agreement, the Program Participant and/or the Fund shall upon the execution of this Agreement (or upon later discovery of such third party waiver) immediately in writing disclose all of the details of such transactions to the other party.
 - d. **Disclosure or Discovery of Subrogation Rights Waived After Loss.** If after a loss covered by this Agreement that would have given the Program Participant and/or the Fund subrogation rights against third parties (absent a nondisclosed waiver by Program Participant and/or the Fund), the Program Participant and/or the Fund becomes aware of or discovers that the Program Participant and/or the Fund has done any action that would adversely affect the either parties rights to recover damages, and/or expense and/or attorney fees from another, then the Program Participant and/or the Fund shall have the right to recover from the other party any and all monies, expenses and attorneys fees that the Program Participant and/or the Fund could have recovered from the third party or entity, and its reasonable expenses of collection.
 - e. The Program Participant's right to be made whole has a priority as to all funds recovered and a prior right to any full or partial payment, up to the amount of benefits and expenses incurred by the Program Participant. The Program Participant may enter into an Agreement, with notice to the Fund, with a third party or the Fund, which provides the Program Participant with recovery assistance in subrogation matters.
20. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas, unless otherwise mandated by law.
21. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

Signature page on reverse side 



TO BE COMPLETED BY THE FUND:

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the term specified in Article 3.

TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND

By:
Chair, Board of Trustees
Texas Association of School Boards Risk Management Fund,
acting on behalf of all other participating Fund Members

Date: September 13, 2005

TO BE COMPLETED BY FUND MEMBER:

_____ Name of Program Participant

By: _____
Signature of authorized representative of Program Participant

Date: _____

Printed name of authorized representative

