



INTERLOCAL PARTICIPATION AGREEMENT
FOR
TEXAS ASSOCIATION OF COUNTIES
WORKERS' COMPENSATION SELF-INSURANCE FUND

This agreement, entered into between the Texas Association of Counties Workers' Compensation Self-Insurance Fund (hereinafter called "Fund") and Wise County (hereinafter called "Member") shall be effective as of the date hereinafter shown.

RECITALS

WHEREAS, the Fund is sponsored by the Texas Association of Counties (hereinafter called "TAC"), and the Fund was created to provide workers' compensation coverage for its Members pursuant to the provisions of Chapter 504, Labor Code, V.T.C.A.; Article 715c, Rev. Civ. Stat. Ann.; and Chapter 791, Government Code, V.T.C.A.; and

WHEREAS, in consideration of other Member counties and political subdivisions executing other interlocal participation agreements with the Fund, which need not be identical in form or content and in consideration of the provision of a plan of pooled self-insurance, as authorized in the above-referenced statutes, to obtain workers' compensation coverage through the economical method of pooled self-insurance; and

WHEREAS, Member, a Texas political subdivision, desires to take advantage of the benefits made available through the Fund; and

WHEREAS, the parties recognize that the Fund is a Workers' Compensation self-insurance fund authorized by statute and the coverage provided is not considered and does not constitute insurance under any Texas law, including the Texas Insurance Code nor under the common law;

NOW, THEREFORE, it is Agreed and Understood among the parties as follows:

Table with 4 columns: Post-it* Fax Note, Date, # of pages, To, From, Co./Dept., Co., Phone #, Fax #. Contains handwritten entries for Diana Alexander and Cynthia Brammer.

W/C Board Approved 11/25/97
LGL

SECTION 1

PARTICIPATION

1.01 Agreement to Participate

Fund Member hereby contracts to become a member of the Fund. THIS IS NOT A CONTRACT OF INSURANCE and Member does not and cannot hereby elect to create any contract of insurance.

1.02 Term of Agreement

The term of this Agreement shall commence on the 1st day of January, 1998, and shall continue in full force and effect for a period of one (1) year. This Agreement shall be automatically renewed annually for an additional one (1) year term without the necessity of any action by the parties other than the acceptance of any amendments to the coverage contract and rates. Either party may elect not to renew this Agreement by giving written notice at least thirty (30) days prior to the end of the original term or any renewal term.

1.03 Termination of Agreement

This Agreement may be terminated by either party by giving sixty (60) days written notice of intent to terminate the Agreement to the other party. Any notice of intent to terminate must be delivered by deposit in the U. S. Mail, certified, return receipt requested. The Fund may, in its discretion, permit any Member, upon Member's written request, to terminate the Agreement by giving to the Fund written notice of not less than sixty (60) days. The Fund may terminate the Fund Member with immediate effect for non-compliance with the provisions of this agreement or the bylaws of the Fund.

SECTION 2

ADMINISTRATION

2.01 Fund Administrator

The Texas Association of Counties (hereinafter referred to as "TAC") or its designee, is the administrator of the Fund. All communications and correspondence relative to the Fund shall be addressed unless notified of a change of address, to TAC as follows:

Texas Association of Counties
Workers' Compensation Self-Insurance Fund
P. O. Box 2131
Austin, Texas 78768

W/C Board Approved 11/25/97

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SECTION 3**MEMBER CONTRIBUTION****3.01 Annual Estimated Payroll**

An annual estimated payroll, by payroll classifications of the Fund Member, shall be submitted by the Fund Member to TAC no later than sixty (60) days prior to the first day of the Fund year. It is understood that the annual estimate shall be adjusted at the end of each Fund year to reflect the actual payroll on the books of the Fund Member. The Fund year shall be from January 1 to December 31.

3.02 Contribution determination

The Fund Member agrees to pay into the Fund a contribution amount determined in accordance with subparagraph (a) or (b), and (c) as follows:

(a) the contribution amount shall be equal to the premium payable as a manual premium for a workers' compensation insurance policy except as modified hereunder. The manual premium shall be computed by using as a guide the rates promulgated and payroll classifications established for use in workers' compensation insurance by the Texas Department of Insurance. The amount adduced using the above formula shall be modified by the "experience modifier", computed in accordance with the Texas Experience Rating Plan Manual or other experience rating plan approved by the Board, applicable to the Fund Member. An initial experience modifier shall be applicable, if the Fund Member previously was insured by a policy of workers' compensation insurance and earned an "experience modifier" for the current policy year. The "initial experience modifier", if applicable to the Fund Member, shall be the same as the "experience modifier" earned while insured under a policy of workers' compensation insurance. Should the Fund Member not have earned an "experience modifier", the premium produced by using the rates promulgated and payroll classifications established by the Texas Department of Insurance shall be the annual amount of contribution due and payable to the Fund until an "experience modifier" is earned. If an experience modifier has not been earned, the Fund, using the prospective Fund Member's loss experience and payroll exposure data on file with the Texas Department of Insurance, may compute a modifier in accordance with the Experience Rating Plan Manual or other plan as approved by the Board. Should the Fund Member not have earned an experience modifier and verifiable loss/payroll data is not available to calculate one, the premium produced by using the rate promulgated and payroll classifications established by the Texas Department of Insurance shall be the amount of contribution due and payable to the Fund.

(b) The Fund may, at any time, as an alternative method of determining the contribution amount, adopt a rate plan based upon the experience of the Fund and/or its members, or upon other factors.

(c) Once the annual amount of contribution due is determined less any TAC discount, if applicable, the Fund Member shall pay such amount in advance quarterly, with the four (4) payments due upon receipt of invoices. It is understood by the Fund Member that the annual payment of contributions may be altered on an interim basis as a result of increased benefit levels mandated pursuant to the Texas Workers' Compensation Act or other adjustments in the law.

If the contribution amount is determined under subparagraph (a) herein, any alteration of the annual amount of contributions shall be predicated on the rates and payroll classifications of the Texas Department of Insurance. All contributions due hereunder shall be payable to the Fund at the offices of TAC.

3.03 Estimated Contribution

The estimated annual amount of contribution for the Fund Members shall be based upon payroll estimates and shall be payable as provided in No. 4 above. At the end of each and every Fund year there shall be submitted by the Fund Member actual payrolls as reflected by the books and records of the Fund Member. Actual payrolls shall be submitted no later than thirty (30) days after the end of the Fund year. Any additional amounts of contribution payable shall be billed and overpayment adjusted by refund to the Fund Member. The Fund reserves the right to audit the payroll records of any Fund Member.

3.04 Experience Modifier

The Fund shall calculate and furnish each Fund Member its individual experience modifier, when earned, in accordance with the provisions of the applicable experience rating plan as approved by the Board.

3.05 Department Rates as Guide

In order to have an orderly and well understood basis for contributions to the Fund, unless another plan is adopted by the Fund's Board of Trustees under the Fund Bylaws, the current plans and further amendments with respect to workers' compensation rates and premiums of the Texas Department of Insurance are hereby adopted as a guide, but by such adoption it is recognized that the rating structure promulgated by the Texas Department of Insurance is not applicable to self-insurance, and there is no intention to bestow rating authority over this plan of self-insurance upon the Texas Department of Insurance. Any reference at any time in this contract to an insurance term not ordinarily a part of self-insurance shall be deemed for convenience only and is not to be construed as

being contrary to the self-insurance concept except where the context clearly indicates no other possible interpretation, such as, but not limited to, reference to the term "reinsurance".

SECTION 4

REINSURANCE

4.01 Provision of Reinsurance

The Fund agrees that it shall endeavor to maintain an aggregate stop loss reinsurance treaty and/or reserves sufficient to assure that the incurred, fully developed losses and expenses for the total Fund shall not exceed the contributions paid and payable by the Fund Members into this Fund. The Fund Member has no joint or several liability other than the maximum annual contribution payable by the Fund Member. Any savings to the Fund resulting from overall loss experience shall be available for dividend credit, or other appropriate use for the benefit of the Members, as determined by the Board of Trustees (hereinafter referred to as "Board") from time to time. The Fund shall invest any and all funds that are on deposit with the Fund and the investment earnings from these particular funds shall be used for the benefit of the Fund Members until such time as the Board deems that it is financially feasible to declare dividends or make other appropriate use for the benefit of the Members.

The Fund may provide for reinsurance of the Fund itself at a level to be determined by the Fund Board of Trustees in their sole discretion. The participation of the Fund Member shall at all times be on a nonassessable basis beyond the annual amount of contribution.

SECTION 5

SAFETY

5.01 Regulations, Inspections and Reports

The undersigned Fund Member agrees to cooperate in instituting any and all reasonable safety regulations that may be recommended for the purpose of eliminating or minimizing hazards that may contribute to the workers' compensation losses. In the event that the recommendations submitted by the Fund seem unreasonable, the Fund Member has a right to appeal to the Board of Trustees. Fund Member agrees to comply with any safety program adopted by the Board of Trustees which is in accordance with any standard recognized nationally or statewide. Fund Member hereby consents to safety inspections to be made by Fund, and the making of written reports of Fund's findings to Fund Member and the State Workers' Compensation Commission or other relevant State agency. Fund Member hereby agrees to hold Fund harmless from any liability which

may arise as a result of any such report if such report is prepared pursuant to the request of any state or federal agency. Such safety inspections are for the benefit of the Fund exclusively, and not for Fund Member. Such safety inspections shall not relieve Fund Member of any duty it has under law to provide safety inspections.

SECTION 6

MEMBER'S FUND COORDINATOR

6.01 Appointment and Notices

The Fund Member agrees to appoint a workers' compensation coordinator for the Fund Member and that the Fund and TAC shall not be required to contact any other individual except this one person. Any notice to, or any agreements with, the workers' compensation coordinator shall be binding upon the Fund Member. The Fund Member reserves the right to change the coordinator from time to time by giving written notice to the Fund and to TAC.

SECTION 7

CLAIMS FUNCTIONS

7.01 Claims Administration

The Fund agrees to administer the payment, settlement and denial of, as appropriate, any and all claims for workers' compensation benefits after the notice of injury has been given, to prepare all forms required of the Fund by the relevant state agency, and to provide a defense. The Fund shall carry on all negotiations with the injured employee or such employee's attorney throughout all administrative and legal proceedings. If a personal appearance by employer or co-employee is necessary, the expense of this appearance shall be paid by the Fund Member. The Fund shall retain and supervise legal counsel in behalf of and at the expense of the Fund necessary for the prosecution or defense of any workers' compensation litigation. There will be safety engineering services provided by or arranged by the Fund for the Fund Members to assist them in following a plan of loss control that may result in reduced losses. TAC or its designee shall provide all of the services and perform the duties of the Fund under this contract as provided in a service contract entered into by and between TAC or its designee and the Fund on behalf of the Fund Member.

7.02 Claims Information

There shall be supplied to each Fund Member timely computer printouts involving a statement of claims, claims status, and activity reports cumulative for each Fund year.

SECTION 8**AUTHORIZATIONS****8.01 Rating Forms and Data**

The Fund Member agrees to execute necessary authorization forms permitting the Fund and TAC to obtain from the Texas Department of Insurance the experience rating modification for the Fund Member if the Fund Member previously carried workers' compensation insurance. Upon any contract termination (or nonrenewal), the Fund Member agrees that the Fund may file with the relevant State Agency loss and payroll data pertaining to the Fund Member as used to develop experience and modification.

SECTION 9**SUITS FOR BENEFITS****9.01 Defense and Settlement**

The undersigned Fund Member does hereby agree that any suits brought by one of its employees for benefits pursuant to the provisions of Chapter 504, *Labor Code, V.T.C.A.*, shall be defended in the name of the county by the counsel selected by the Fund. Full cooperation shall be extended to supply any information needed or helpful in such defense. The prerogative to settle, defend, or appeal such suits shall rest solely with the Fund with the advice of the Commissioners' Court or other appropriate governing body, if warranted, and, in accordance with usual procedures in the insurance industry in the settlement of workers' compensation claims.

SECTION 10**FORWARDING DOCUMENTS TO FUND****10.01 Obligation to Promptly Forward Documents**

The Fund Member agrees to promptly forward to the Fund or its designee all documents (or copies if appropriate) in its possession which are relevant to any workers' compensation claim to be handled by the Fund. The Fund Member further agrees to promptly forward to the Fund or its designee all documents (or copies if appropriate) in

its possession which relate to any claim, lawsuit or proceeding brought by any third party, if the claim, lawsuit or proceeding concerns or involves the Fund Member's workers' compensation coverage under this Interlocal Participation Agreement.

SECTION 11

BYLAWS AND BYLAWS AMENDMENTS

11.01 Bylaws and Changes to Bylaws Binding

The Fund Member agrees to abide by the Bylaws of the Fund as adopted by the Board of Directors of the Texas Association of Counties. Any amendment to the Bylaws shall become binding on Fund Member upon its adoption unless it is in direct conflict with specific vested rights of Fund Member. The provisions of any amendment which alter accrued rights of a Member under this contract shall be effective on the tenth (10th) day after written notice of the provision has been served on Member, or otherwise as the parties may agree. If Fund Member objects to change affecting existing rights, Member may appeal the matter to the Board within ten (10) days of receipt of the notice. The effective date of the proposed change shall then be abated pending resolution of the matter by the Board.

SECTION 12

AUDITS

12.01 Fund Arrangement for Annual Audit

The Fund shall be annually audited by a certified public accounting firm, as arranged by the Fund.

SECTION 13

EXTENT OF COVERAGE

13.01 Coverage only for Benefits

The Fund Member agrees that it, and not the Fund, is responsible for any liabilities or payments in excess of the benefits regularly provided by the workers' compensation law, including, but not limited to, those incurred where the Fund Member discharges, coerces or otherwise discriminates against any employee in violation of the workers' compensation law, and nothing herein shall be construed to create an obligation of the Fund to provide a defense to claims or allegations of such violations in a lawsuit.

SECTION 14**FAILURE OF PAYMENT****14.01 Suit Upon Failure to Pay**

Should the Fund Member fail to make the required quarterly payment hereunder, this Interlocal Participation Agreement may be cancelled or suit may be brought to collect any outstanding contributions due and payable to the Fund. The Fund Member agrees that in such a suit, Fund shall be entitled to reasonable attorney's fees, plus court costs.

14.02 Termination Upon Failure to Pay

In the event that the Fund Member fails or refuses to make the payments of contributions as herein provided, the Fund reserves the right to terminate such Fund Member by giving ten (10) days written notice and to collect any and all contributions that are earned pro-rata for the period preceding contract termination. If the Fund Member is terminated hereunder, the Fund Member shall not be entitled to any dividends developed and payable or that may become developed and declared for any period prior to the termination.

SECTION 15**AMENDMENT OF THIS AGREEMENT****15.01 Amendment by Agreement or Other Provisions**

This Agreement shall not be amended or modified other than in a written agreement signed by the parties, or as otherwise provided under this Agreement.

SECTION 16**MISCELLANEOUS****16.01 Eligibility of Fund Member**

The Fund may permit membership of any entity authorized by statute to participate in the Fund.

16.02 Applicable Law

This Agreement is entered into, and executed and is totally performable in the State of Texas, County of Travis, and all questions pertaining to its validity or construction shall be determined in accordance with the laws of the State of Texas.

16.03 Acts of Forbearance

No act of forbcarance on the part of either party to enforce any of the provisions of this Agreement shall be construed as a modification of this Agreement nor shall the failure of any party to excreise any right or privilege herein granted be considered a waiver of such a right or privilege.

16.04 Effect of Partial Invalidity

In case any provision of this Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Agreement.

EXECUTION

IN WITNESS WHEREOF, we hereunto affix our signatures as of the date indicated below.

TEXAS ASSOCIATION OF COUNTIES
WORKERS' COMPENSATION SELF-
INSURANCE FUND

By: *Sam D. Seale*
Sam D. Seale
Executive Director, or authorized
designee for Texas Association of
Counties

Date: December 22, 1997

Wise County
MEMBER

By: *L. B. McDonald*
Title County Judge

Date: 1-7-98

Member's Fund Coordinator
Name: Katherine Canoh, Wise County Treasurer
Address: P. O. Box 554
Declar, TX 76234
Phone: 940-627-3540