

FOURTH AMENDED

INTERGOVERNMENTAL AGREEMENT

1. Parties. The Parties to this Agreement are Arizona Counties, and other public agencies as approved by the Pool, which are signatories hereto ("Party" and/or "Parties"). The parties enter into this Intergovernmental Agreement ("Agreement") to provide to the Parties insurance and insurance services relating to their exposures for property, fidelity, employment, employer's liability, workers' compensation, liability losses, and other losses as may be permitted by law, pursuant to A.R.S. §§ 11-952 and 11-952.01 under the name Arizona Counties Insurance Pool ("ACIP").

2. Recitals. This Agreement is based upon certain understandings and in furtherance of certain purposes, as follows:

- 2.1 Arizona Revised Statutes § 11-952 provides that two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action.
- 2.2 Arizona Revised Statutes § 11-952.01(A) permits two or more public agencies to enter into contracts or agreements for the joint purchasing of insurance, including reinsurance, or to pool retention of their exposures for property, fidelity and liability losses and to provide for the payment of such property loss, fidelity loss or claim of liability made against any member of the pool, including any elected or appointed official, officer or employee covered by the pool, on a cooperative or contract basis with one another.
- 2.3 Arizona Revised Statutes § 11-952.01 (B) permits two or more public agencies to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a contract basis with one another.
- 2.4 The governing board of each Party has determined that it is in the Party's best interest and in the public interest that this Agreement be executed and that each Party shall participate in ACIP as set forth in this Agreement.

2.5 The governing board of each Party has determined that that Party should join together with the other Parties for the purposes of:

- a. Providing coverages for:
 1. property,
 2. automobile liability,
 3. workers' compensation and employer's liability,
 4. general liability, including employment practices liability, public officials liability, and law enforcement liability, and
 5. automobile physical damage,

and at the option of the Board other coverages as may be permitted by law;

- b. developing effective risk management programs to reduce the amount and frequency of their losses;
- c. pooling their self-insured losses;
- d. jointly purchasing excess insurance or reinsurance; ~~and~~
- e. adopting Memoranda of Coverage;
- f. providing claims services and claims administration;
- g. providing or purchasing such administrative services as the Board of ACIP determines is necessary for the appropriate administration of ACIP; and
- h. purchasing or providing other insurance or risk management services.

3. Term of Agreement. This Agreement shall become effective upon the later of July 1, 2022 or the approval of all parties as provided in paragraph 22, and shall continue in force and effect for a period of ten years or until terminated in accordance with the terms and provisions of this Agreement. This Agreement may be renewed for an additional ten-year term by mutual agreement by part or all of the Parties prior to the expiration of the original or any renewal term of this Agreement.

4. Modification of Agreement. This Agreement may be modified and/or amended by Addenda. An addendum shall be effective when approved by all the Parties. An addendum may include an agreement by the Parties to add new parties or to permit a new or existing party to participate in ACIP on terms and conditions different than those set forth in this Agreement.

5. Coverages. Coverages shall be as follows:

5.1 The specific exposures covered by ACIP, the procedure for making claims against ACIP, the persons or entities to be indemnified by ACIP, the limitations and exclusions on coverage, and various other matters necessary or appropriate to the functioning of ACIP are more particularly described in the one or more Memoranda of Coverage and Bylaws which shall be adopted by the Board. The terms of the Memoranda of Coverage may be amended by a majority vote of the Board from time to time; provided that all Parties shall be given at least ninety days prior written notice thereof; and provided further that the form of the Memoranda of Coverage shall be similarly amended at the same time for all Parties. The participation of a Party in any Memoranda of Coverage may be under different terms from other parties, as determined by the Party and the Board, and as defined by separate agreement.

5.2 The Board shall process, defend and pay all claims against the Parties which are included under the scope of the Memoranda of Coverage and as otherwise determined by the Board. The Parties shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. A list of current claims of each Party together with the status (pending) or disposition of each claim, shall be provided periodically to each Party. Each Party shall be notified as required by section 18 prior to settlement or payment of claim.

5.3 ACIP shall develop and implement programs for risk management and loss control and make them available to the Parties. The Parties may act cooperatively to share information and to implement programs developed by individual parties.

5.4 A Party is not relieved of its liability for claims against the Party incurred during the Party's participation in this Agreement, except through the payment of losses by ACIP or by the Party.

6. Participation. Based on such understandings and in furtherance of such purposes, the Parties agree to establish and participate in ACIP under the following terms and conditions:

6.1 Participation in this Agreement may not be terminated by any Party during the initial thirty-six months after the initial entry date of a Party except that coverage may be suspended or terminated as provided herein for nonpayment of premiums or other violations by a Party under the terms of this Agreement.

6.2 Participation in this Agreement may be terminated by any of the Parties, at any time after the initial thirty-six months from initial entry, effective as of the last day of ACIP's fiscal year, by written notice of termination given at least one year prior to the last day of ACIP's fiscal year.

6.3 Participation in this Agreement may be terminated as to any Party by a two thirds vote of the Board.

7. Termination of ACIP. ACIP shall be terminated upon the first to occur of any of the following events:

7.1 When all Parties but one in ACIP have ceased to participate;

7.2 At such time as the Board shall determine that the number of participating Parties and/or the size of ACIP is too small to adequately indemnify against the exposures specified in the Memoranda of Coverage, by a two-thirds affirmative vote of the Board.

Any termination pursuant to 7.2 above shall not be effective until the Board shall have given each participating Party at least six months written notice of such termination. Upon termination of ACIP, adequate provisions shall be made for all pending and anticipated claims against the Parties based on a sound actuarial study.

8. ACIP Funding. ACIP shall be funded as follows:

8.1 Deposit of Contribution. At such dates as may be determined by the Board, the anticipated liabilities and expenses of ACIP for the fiscal year or portion thereof shall be calculated based on use of services, loss history, and other underwriting criteria as approved by the Board. Such liabilities and expenses shall include expected losses to be covered by the Memorandum of Coverage, the cost of excess insurance and reinsurance, the costs of claims services, the cost of other administrative services, and other costs deemed appropriate by the Board. Such liabilities and expenses shall be allocated among ACIP's participating Parties based on the pro rata exposure of each Party and as otherwise determined by the Board based on each Party's utilization of resources. Each Party agrees to furnish all information requested by the ACIP as necessary to determine the relative exposure of the Parties. Each Party shall pay its deposit premium for the whole year to ACIP in cash within thirty days of such notification, or by such later date as shall be specified in the notice.

- 8.2 Assessment. If ACIP becomes insolvent or is otherwise unable to discharge its legal liabilities and other obligations, each Party shall be assessed by the Board for an additional contribution. In such case the Board shall determine the cause of the insolvency, which may be an overrun in expected costs in one or more risk retention pools, or an overrun in administrative costs. The Board shall assess contributions in a manner that reflects each party's participation in the cause or causes of the insolvency, up to the limit specified in A.R.S. § 11-952.01(O). For example, if the insolvency is caused by overruns in a particular risk retention pool, then only those Parties participating in that risk retention pool shall be subject to assessment. Each such assessment, and the manner of calculating the same, shall be given to each Party in writing, and the Party shall thereafter have sixty days in which to pay such assessment. Each Party shall remain liable for such assessments, regardless of the Party's withdrawal from participation or the termination of this Agreement for liabilities of the Pool incurred during the Party's period of membership.
- 8.3 Claims Reserves. ACIP shall maintain funds adequate to pay incurred claims which shall include known incurred losses and an estimate of incurred but not reported claims as may be appropriate for pooling participation. ACIP shall also maintain contingency margins deemed appropriate by the Board.
- 8.4 Banking Relationships. ACIP may enter into a financial services agreements with banks and other financial institutions and may issue checks in its own name to carry out the terms of this Agreement. ACIP may invest its monies in equity securities, mutual funds and investment funds registered with the United States Securities and Exchange Commission, debt obligations and any eligible investment permitted by A.R.S. § 35-323.
- 8.5 Distribution of Surplus. At the termination of ACIP's existence, any surplus funds in ACIP over and above those necessary to pay or reserve against the expenses and liabilities of ACIP shall be distributed among the then existing Parties that are participants in ACIP. Such distribution shall be allocated among such participants as required by law and as may be determined by the Board.

9. Workers' Compensation Provisions. The following provisions shall apply to the provision of workers' compensation insurance only:

- 9.1 ACIP shall provide such coverages to the employees of the Parties as meet the requirements for a self-insured employer under A.R.S. § 23-961.

9.2 The Board from time to time may, at its discretion, distribute surplus funds, or apply surplus funds to a Party's balance in other risk retention pools, based upon an experience formula as may be approved by the Board. Any experience formula shall be approved by two thirds vote of the Board.

10. Suspension. In the event any Party shall fail to make its contribution as specified herein, or shall fail to comply with any of the other terms of this Agreement, or the membership conditions as set forth in the Bylaws, the Board may, if such default is not cured within ten days' written notice to the Party, suspend the Party's coverage under this Agreement for a period of up to eighty days without further notice or action. The notice of default shall advise the Party that if the default is not cured within the ten-day period, termination of the Agreement may occur ninety days after the notice of default. During such eighty-day suspension period, the Board shall determine if suspension shall be made permanent, in which case the Agreement shall be deemed terminated effective as of the ninety days following from the written notice of default, or the circumstances, if any, under which the Party's participation in ACIP and the effectiveness of this Agreement may be restored. Should the Party be permanently suspended and this Agreement terminated, the Party shall forfeit all rights to any distribution of ACIP surpluses or property upon the termination of ACIP. Regardless of such termination, however, the Party's liability for retrospective premiums and assessments under Section 8 above shall be unaffected.

11. Effect of Withdrawal or Expulsion. The withdrawal or expulsion of any Party after its inception in ACIP will not terminate its responsibility:

- 11.1 to cooperate fully with ACIP in determining the cause of losses and the settlement of claims as described in the Memoranda of Coverage;
- 11.2 to pay any retrospective premium adjustments and assessments determined by the Board to be due and payable for each year of participation;
- 11.3 to provide the Executive Director with such statistical and loss experience data as may be necessary for the Executive Director to carry out this Agreement; and
- 11.4 to cooperate with the Board and assist the Executive Director and any insurer, common claims adjuster or legal counsel retained by ACIP, in all matters relating to this Agreement.
- 11.5 to pay all expenses of claims administration, administrative expense and other costs incurred in administering claims run off or the purchase of tail coverage; and
- 11.6 to pay any other expenses incurred by ACIP due to reductions in force or other employee or contract expenses incurred by the departure of the particular Party and particular to that Party.

12. Board of Trustees. ACIP shall be administered by a Board of Trustees consisting of at least five persons who are elected officials or employees of the Parties. Each Party shall appoint a Board member if there are at least five Parties signatory hereto. If there are less than five Parties signatory hereto, each Party shall appoint two Board members. Each Party must designate its Board member in writing. Each Board member shall be entitled to one vote in all matters that come before the Board.

13. Loss Control. ACIP may, with the approval of the Board, establish Loss Control Programs to be adopted and implemented by the Parties. The Executive Director may issue periodic loss-control recommendations to assist in control of identified risks. ACIP may, in its discretion, make services available to the Parties to assist in the implementation of a Loss Control Program or loss-control recommendations. The Parties agree that they will cooperate in the implementation of any and all loss-control recommendations and Loss Control Programs. Should any Party disagree with a loss-control recommendation issued by the Executive Director, that Party may request that the Board review the recommendation at its next scheduled meeting. A decision by the Board shall be final and binding on all Parties. Failure by a Party to comply with a directive by the Board may be subject to suspension pursuant to Section 10 of this Agreement.

14. Duties of the Board. The Board shall:

- 14.1 Establish the terms and conditions of coverage within ACIP, including exclusions of coverage;
- 14.2 Ensure that all claims covered by the Memoranda of Coverage for which each member incurs liability during the Party's period of membership are paid promptly;
- 14.3 Take all necessary precautions to safeguard the assets of ACIP;
- 14.4 Maintain minutes of its meetings;
- 14.5 Designate an Executive Director to carry out the policies established by the Board and this Agreement and provide day-to-day management of ACIP and delineate in the written minutes of its meetings the areas of authority delegated to the Executive Director; and
- 14.6 Notify the Director of the of Department of Insurance and the Director of the Industrial Commission of the existence of the Pool and file with such Director and with the Arizona Attorney General a copy of this Agreement, which the Attorney General shall file with the Secretary of State as prescribed by A.R.S. § 11-952.01(H).

- 14.7 In accordance with A.R.S. § 11-952.01(J), the Board shall not:
- a. Extend credit to a Party for payment of a premium, except pursuant to payment plans established by the Board; and
 - b. Borrow any monies from ACIP or in the name of ACIP except in the ordinary course of business.

15. Powers of the Board. The Board may:

- 15.1 Establish offices where necessary in the State of Arizona and employ necessary staff to carry out the purposes of ACIP;
- 15.2 Retain legal counsel, actuaries, auditors, engineers, private consultants, claims adjusters and advisors;
- 15.3 Make and alter Bylaws and rules pertaining to the exercise of its purpose and powers;
- 15.4 Purchase, lease or rent real or personal property as the Board deems necessary;
- 15.5 Enter into financial services agreements with banks and issue checks in its own name as provided in paragraph 8.5 above; and
- 15.6 Perform claims administration services and defend and settle claims; and
- 15.6 Perform such other matters and enter into other contracts as may be necessary to carry out this Agreement.

16. Inspection and Audit. ACIP and its representatives shall be permitted, but shall not be obligated, to inspect each Party's properties and operations at any time. Neither ACIP's right to make inspections nor the making thereof shall constitute an undertaking, on behalf of or for the benefit of the Party or others to determine or warrant that such property or operations are safe or are in compliance with any law, rule, or regulation.

- 16.1 ACIP may examine and audit a Party's books and records at any time during the period the Agreement is in effect, and during any extensions hereof, and within three years after the final termination of this Agreement, insofar as said books-and records may relate to the subject matter of this Agreement.
- 16.2 ACIP shall be audited annually at the expense of ACIP by a certificated public accountant, and a copy of the report shall be submitted to the governing boards of the Parties and to the Director of the Department of Insurance. The Board shall obtain an appropriate actuarial evaluation of the claim reserves of ACIP including an estimate of the incurred but not reported claims. ACIP shall also pay the cost of any examination of ACIP and its

reserves by the Director of Insurance as permitted by A.R.S. § 11-952.01(F).

17. Bylaws and Rules of Operation. The Board may make bylaws and rules pertaining to the exercise of its purpose and powers. The current ACIP Bylaws shall continue in full force and effect under this Agreement provided that the Board may, from time to time, propose revisions to said Bylaws, which shall become effective only upon approval by a two-thirds majority of all members of the Board. The Board may also from time to time adopt, by majority vote, policies, rules, and procedures for the administration and operation of ACIP so long as such policies, rules, and procedures are not inconsistent with this Agreement or the Bylaws. No provision of the Bylaws, policies, rules or procedures shall be inconsistent with the terms of this Agreement.

18. Objection to Payment of Claims.

18.1 Any Party may object to a decision by the Board to resolve a claim on behalf of that Party. An objection must be filed within ten days after notice to the Party of the Board's intention to pay a claim, and must be authorized by the Objecting Party's risk manager or county manager. The objection shall state specific reasons why the Objecting Party contends that the claim should not be resolved in the manner proposed by the Board. The Board will schedule a meeting during which formal action will be taken upon the objection and shall provide written notice to the Objecting Party including the date, time and location of the meeting. Upon conclusion of the meeting, the Board shall provide notice of its decision to the Objecting Party.

18.2 Should the Board's decision be adverse to the result sought by the Objecting Party, the Objecting Party shall provide written notice to the Board stating whether or not the Objecting Party intends to assume control of the litigation. If the Objecting Party assumes control of the litigation, ACIP shall reimburse the Objecting Party for all costs of defense, settlement, or judgment actually incurred by the Objecting Party, up to the amount which ACIP initially determined was necessary to resolve the claim, reduced by expenses incurred by ACIP. The Objecting Party shall be responsible for all other costs and expenses associated with the defense and satisfaction of the claim. If upon notice of the Board's decision, the Objecting Party elects not to assume the control of the litigation, ACIP will retain all control and responsibility for the defense of the claim and liability for the litigation including, but not limited to, final resolution of the claim.

18.3 The Board shall have the right to pay any claim which does not exceed Fifty Thousand Dollars (\$50,000.00) without providing notice of intent to pay the claim, unless the Party has filed a written request for notice of intent to pay the claim prior to payment. The authority of the Board and the Executive Director to settle and pay claims may be defined to a greater extent in the Bylaws. Each participant in this Agreement thereby appoints the Executive Director of ACIP as its attorney in fact with full authority to settle claims within the authority provided by this Agreement, by the Bylaws, by the Memoranda of Coverage, or by the Board.

18.4 All Parties to this Agreement are entitled to any and all information concerning claims made against them. Claims information shall be treated as confidential to the greatest extent which the law will allow.

19. Place of Business. ACIP shall establish a principal place of business within Arizona and shall notify all participants of such location.

20. Conformity with Law. In the event any term or provision of this Agreement shall be in conflict with the laws and statutes of the State of Arizona as they now exist or are hereafter amended, this Agreement shall be automatically deemed amended to conform to such laws and statutes.

21. Fiscal Year. The fiscal year shall begin on July 1 of each year and end of June 30 of each year.

22. Authorizing Action. This Agreement shall become effective upon its effective date as set forth in paragraph 3 of this Agreement and only upon the execution and delivery of this Agreement by an authorized representative of each Party on behalf of the Party and approved by the Party's County Attorney as to form.

23. Liability. No Party shall, by reason of this Agreement, have any liability for claims brought by third Parties against any other Party other than the obligation to contribute certain funds to ACIP as expressly provided herein. The liability for any claim against a Party shall remain the sole and exclusive liability of the Party; the obligation of ACIP is to indemnify that Party against such loss as provided in the Memorandum of Coverage to the extent and under the conditions contained therein.

24. Replaced Agreements. This Agreement replaces the Second Amended Intergovernmental Agreement filed with the Secretary of State on August 10, 1992 and renewed on August 10, 1998 and again on March 30, 2009 and again on June 30, 2012 and the Intergovernmental Agreement for a Workers' Compensation Pool filed with the Secretary of State on July 13, 1994 and renewed on June 30, 2004.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

COUNTY OF COCHISE

COUNTY OF COCHISE

By: _____
Its: _____
Date: _____

By: _____
Ann English, Chairman of the
Board

APPROVAL: This Agreement is in proper form and it is within the power and authority granted under the laws of the State of Arizona to the Board of Supervisors of Cochise County.

Date: _____

Witness: _____
Tim Mattix, Interim Clerk of the Board

Deputy County Attorney