

**ARIZONA MUNICIPAL RISK RETENTION POOL
FOURTH AMENDED AND RESTATED MEMBERSHIP AGREEMENT**

1. Parties. The parties to this Fourth Amended and Restated Membership Agreement (the “**Agreement**”) are the Arizona Municipal Risk Retention Pool, an Arizona nonprofit corporation (the “**Pool**”), and The City of Flagstaff (the “**Member**”), a political subdivision of the State of Arizona.

2. Recitals. This Agreement is based upon certain understandings and in furtherance of certain objectives:

2.1. WHEREAS, A.R.S. § 11-952.01 permits two or more public agencies (as defined in A.R.S. § 11-951) to enter into contracts or agreements to purchase insurance jointly or to pool retention of such public agencies' property, liability and workers' compensation risks, and to jointly form a nonprofit corporation to carry out such purposes on behalf of the public agency members of the nonprofit corporation directly or by contract with a private party; and

2.2. WHEREAS, the Pool is administered by an administrator (the “**Administrator**”) designated by the Board of Trustees of the Pool (the “**Board**”); and

2.3. WHEREAS, the Member desires to enter into this agreement to:

2.3.1 pool retention of the Member's risk for property, liability and casualty losses with that of other cities, towns or other political subdivisions of the State of Arizona that are members of the Pool and to provide for the payment of such losses or claims; and/or

2.3.2 provide for the payment of workers' compensation claims made against other cities, towns or other public agencies of the State of Arizona that are members of the Pool and to provide for the payment of such claims;

NOW, THEREFORE, the Pool and Member agree as follows:

3. Coverage and Participation.

3.1. The Pool shall offer coverages for property, liability and workers' compensation. The procedure for making claims for such losses against the Pool, the means and procedures for defending against such claims, the persons or entities to be indemnified by the Pool, the limitations and exclusions on coverage, and various other matters necessary or appropriate to the functioning of the Pool in connection with property and liability losses are more particularly described in a coverage agreement to be negotiated between the Member and the Pool and attached hereto as Appendix A, and incorporated by this reference (the “**Property and Liability Coverage Agreement**”). The effective date of the Property and Liability Coverage Agreement (the “**Property and Liability Coverage Effective Date**”) shall be set forth in the Property and Liability Coverage Agreement. The procedure for making claims in connection with coverage for employees of the Member as required for a self-insured employer pursuant to A.R.S. § 23-961 (as may be amended), the means and procedures for defending

against such claims, the persons or entities to be compensated by the Pool, the limitations and exclusions on coverage, and various other matters necessary or appropriate to the functioning of the Pool are more particularly described in the coverage agreement to be negotiated between the Member and the Pool and attached hereto as Appendix B and incorporated by this reference (the “**Workers’ Compensation Coverage Agreement**”). The effective date of the Workers’ Compensation Coverage Agreement (the “**Workers’ Compensation Coverage Effective Date**”) shall be set forth in the Workers’ Compensation Coverage Agreement. The Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement shall be referred to collectively as the “**Coverage Agreements.**” The Property and Liability Coverage Effective Date and the Workers’ Compensation Coverage Effective Date shall be referred to collectively as the “**Coverage Effective Dates.**”

3.2. The terms of this Agreement, the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement may be amended by majority vote of the Board, provided that any amendment to this Agreement, the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement shall become effective upon a date designated by the Board after first giving the Member at least thirty (30) days’ prior written notice thereof. Notwithstanding the foregoing, the Board may, without prior notice to the Member, amend the Property and Liability Coverage Agreement and the Workers’ Compensation Coverage Agreement if the amendment does not decrease or materially change the insurance coverage available to the Member including, but not limited to, incidental or grammatical amendments that do not decrease insurance coverage available to the Member.

4. Term and Renewal. Insurance coverage under this Agreement shall be effective as set forth in each Coverage Agreement and shall be automatically renewed (for each Coverage Agreement) unless terminated pursuant to Section 5 of this Agreement.

5. Termination of Agreement.

5.1. With Cause. The Board may at any time during the term of this Agreement or any extensions thereof suspend or terminate coverage for (i) nonpayment of the Membership Fees or any other breach by the Member of the terms of this Agreement; or (ii) the failure to satisfy underwriting requirements established by the Pool. In such case, coverage shall be suspended or terminated, and membership shall be terminated pursuant to Section 8 of this Agreement.

5.2. Without Cause. Insurance coverage under this Agreement may be terminated by the Pool or the Member by written notice of termination given at least ninety (90) days prior to the anniversary of the Property and Liability Coverage Effective Date (in the case of the Property and Liability Coverage Agreement) or at least ninety (90) days prior to the anniversary of the Workers’ Compensation Coverage Effective Date (in the case of the Workers’ Compensation Coverage Agreement). For example, if the Member has entered into both a Property and Liability Coverage Agreement and a Workers’ Compensation Coverage Agreement, coverage under either Coverage Agreement may be terminated by either party without cause by written notice of termination given at least ninety (90) days prior to the anniversary of the applicable Coverage Effective Date. Terminating coverage under one Coverage Agreement without cause pursuant to this Section 5.2 does not necessarily terminate

coverage under the other Coverage Agreement. The Board may in its sole and absolute discretion, and only in the event of extraordinary circumstances demonstrated by the Member, grant the Member a thirty (30) day extension of coverage under the Property and Liability Coverage Agreement or the Workers' Compensation Coverage Agreement on such renewal terms and conditions that are submitted to the Member by the Administrator for the next succeeding renewal year, prorated by the Administrator for the thirty (30) day extension period. Any extension granted pursuant to this Section 5.2 shall not change the Coverage Effective Date for the applicable Coverage Agreement or the term of this Agreement and any renewals thereof.

5.3. Termination of Coverage. This Agreement shall terminate and the Member shall cease being a member of the Pool upon the termination of all coverage under the Coverage Agreements. Upon such termination, the terminated Member may not apply to rejoin the Pool for a period of three (3) years after the date of termination.

5.4. Distribution of Assets On Termination. In the event the Member shall terminate this Agreement for any reason, or in the event the Board shall terminate this Agreement pursuant to Section 5.1 and Section 8 of this Agreement, the Member shall thereupon forfeit any and all rights to the return of any surplus, unearned contributions, or other legally permitted distributions from the Pool.

5.5. Effect of Termination. Notwithstanding the termination of this Agreement, following the date of termination a Member shall (i) cooperate fully with the Administrator in connection with the resolution of covered claims; and (ii) cooperate and assist the Administrator and any claims adjuster or legal counsel retained by the Pool.

6. Termination of the Pool. Notwithstanding any other provision hereof, the Pool may be terminated at such time as the Board determines (by a vote of at least two-thirds of the number of Board members then serving on the Board at a duly called meeting of the Board at which a quorum is present) that the number of members of the Pool or the size of the Pool is too small to provide coverage against the risks specified in the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement. Any termination pursuant to this Section 6 shall not be effective until the Board shall have given each member of the Pool at least twelve (12) months' written notice.

7. Membership Fees. The Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement shall each set forth the fees for the coverages selected by the Member (collectively, the "**Membership Fees**"). The Membership Fees shall be based on sound underwriting criteria as recommended by the Pool's actuary and the Administrator. The Member agrees to furnish the Administrator all available data regarding exposures and loss experience of the Member necessary to calculate Membership Fees. The Member shall pay its total Membership Fees to the Pool in cash pursuant to a payment plan established by the Board.

8. Suspension. In the event the Member (i) fails to pay its Membership Fees as specified herein; (ii) fails to comply with any of the other terms of this Agreement; or (iii) fails to satisfy underwriting requirements established by the Pool, the Board may, if such failure is not cured after ten (10) days' written notice, terminate the Member's coverage under the applicable

Coverage Agreement. The date of such termination shall be referred to as the “**Coverage Termination Date.**” Notwithstanding such termination of coverage, the Member shall retain its rights to the return of any surplus or other distributions from or assets of the Pool for a ninety (90) day period (the “**Ninety Day Reinstatement Period**”) following such notice by the Pool. To retain this right, the Member must notify the Pool in writing during the Ninety Day Reinstatement Period of the Member’s election (the “**Reinstatement Election**”) to reinstate coverage by delivering to the Pool a payment in an amount equal to any outstanding Membership Fees and otherwise curing the failure giving rise to the termination of coverage. Upon the Pool’s receipt of such payment and evidence documenting that the Member has cured the failure giving rise to the termination of coverage, together with such underwriting data and other information as the Pool may reasonably request, and provided that the Administrator determines (in the exercise of the Administrator’s sole and absolute discretion) that the reinstatement of coverage is appropriate based on sound business judgment, loss control and underwriting criteria, and loss experience during the Ninety Day Reinstatement Period (or applicable portion thereof), coverage under the applicable Coverage Agreement will be reinstated, effective as of the Coverage Termination Date. If the Member fails to provide the Pool the Reinstatement Election (together with such documentation, data and other information as required pursuant to this Section 8) during the Ninety Day Reinstatement Period, or if the Member provides the Reinstatement Election (together with such documentation, data and other information as required pursuant to this Section 8) during the Ninety Day Reinstatement Period and the Member’s coverage reinstatement is denied pursuant to this Section 8, upon the expiration of the Ninety Day Reinstatement Period, and if the Member no longer has coverage under both Coverage Agreements, the Member shall cease to be a member of the Pool and shall lose all rights as a member of the Pool including (without limitation) the right to return of any surplus or other distributions from or assets of the Pool and coverage under any Coverage Agreement. In the event of such termination, the Member shall be relieved of any liability for ordinary Membership Fees under Section 7 for fiscal years after the year of the Member’s termination. The Member’s liability for additional assessments shall continue to the extent provided in Section 9 below.

9. Assessment. The Member shall be subject to assessment pursuant to A.R.S. § 11-952.01(M), as may be amended, and the terms of such statute are incorporated by reference. The amount of such assessment may not exceed the amount of the Member's annual Membership Fees to the Pool for the year in which the assessment is made or (if the Member has withdrawn from the Pool) for the last year that the Member was a member of the Pool. The amount of each assessment and a description of the manner of calculating the same shall be provided to the Member in writing (the “**Assessment Notice**”), and the Member shall pay such assessment pursuant to the terms and conditions of the Assessment Notice. The Member shall remain liable for assessments for liabilities of the Pool incurred during the Member's period of membership in the Pool, notwithstanding the Member's withdrawal from participation in the Pool or the termination of this Agreement.

10. Inspection and Audit. The Administrator or any other designee of the Pool shall be permitted, but shall not be obligated, to inspect the Member's properties and operations at any time. Neither the Administrator's right nor any such designee's right to make inspections nor the making thereof shall constitute an undertaking on behalf of or for the benefit of the Member or others to determine or warrant that such properties or operations are safe or are in compliance with any law or rule.

10.1. The Administrator or any other designee of the Pool may examine and audit the Member's financial and administrative records that relate to the subject matter of this Agreement at any time during the period of this Agreement is in effect and within five (5) years after the termination of this Agreement.

10.2. The Pool shall be audited annually at the expense of the Pool by a certified public accountant, and a copy of the report shall be submitted to the Board, the Member, and the Arizona Department of Insurance. The Board shall obtain an appropriate actuarial evaluation of the claim reserves of the Pool including, an estimate of the incurred but not reported claims and shall maintain claim reserves equal to known incurred losses and an estimate of incurred but not reported claims, as determined by the Board.

11. **Risk Management.** The Member shall maintain a program of risk management in substantial conformance with the Risk Management Program for Members, a copy of which is attached hereto as Appendix C and incorporated by this reference (the “**Risk Management Program**”). The Member acknowledges, understands and agrees (i) that the Risk Management Program is simply recommendations concerning the minimum standards that should be adopted by each member of the Pool, (ii) that to be effective, a risk management program must be tailored to the specific requirements of each member of the Pool, (iii) that the Pool makes no representation or warranty that the Risk Management Program is sufficient or adequate to meet the specific requirements of the Member, and (iv) that it is the Member's sole responsibility to modify the Risk Management Program to meet the specific requirements of the Member.

12. Subrogation. In the event a recovery is obtained against a third party pursuant to the right of subrogation set forth in the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement, such recovery shall first be applied to the costs of recovery, and the balance, if any, shall be apportioned between the Pool and the Member in proportion to their respective losses from the occurrence giving rise to such recovery.

13. 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.

14. Authorized Representatives; Prompt Reply. The Pool and the Member shall each designate a representative authorized to act on each of the respective parties' behalf in all matters pertaining to this Agreement.

For the Pool:

Name

Title

Address

City, State, Zip Code

Telephone

Email Address

For the Member:

Name

City Manager

Title

211 West Aspen Avenue

Address

Flagstaff Arizona 86001

City

State

Zip Code

Telephone

Email Address

Such representatives and/or addresses may be changed by either party from time to time by written or electronic notice to the other. The Member (through its Authorized Representative listed above) shall reply promptly to all correspondence or inquiries from the Pool.

15. Prior Acts of Parties. All covenants, promises, agreements, conditions and understandings between the Pool and the Member, and any other acts of the parties undertaken pursuant to A.R.S. § 11-952.01 are superseded by and merge into this Agreement, and this Agreement and any Appendices hereto set forth all covenants, promises, agreements, conditions and understandings between the Pool and the Member as of the date hereof. There are no covenants, promises, agreements, conditions or understandings either oral or written between the Pool and the Member other than set forth herein and in the Appendices hereto.

16. Liability. The Pool, the Board and the Administrator shall have no obligation to pay or defend claims except from the funds in the Pool, and no liability pursuant to this Agreement and any Appendix hereto except to disburse funds in the Pool in accordance with the terms of this Agreement. In the event that after collecting all assessments or Membership Fees from the members of the Pool as provided for herein, there are insufficient funds in the Pool to pay the expenses and to discharge the obligations of the Pool, neither the Pool, the Board nor the Administrator shall have any further obligation to defend or pay claims.

16.1. No member of the Pool has any liability for claims brought by third parties against any other member of the Pool, other than the obligation to contribute certain funds to the Pool as expressly required by this Agreement. The liability for any claim against the Member shall remain the sole and exclusive liability of the Member. The obligation of the Pool is to indemnify the Member against such liability as required by the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement, and only to the extent there are funds in the Pool for such indemnification.

16.2. The Member is not relieved of its liability incurred during the Member's period of membership in the Pool except through the payment of losses by the Pool (as required by the Property and Liability Coverage Agreement and the Workers' Compensation Coverage Agreement) or by the Member.

17. Invalidity of a Term. The parties agree that in the event any term, covenant or condition herein contained should be held to be invalid or void by a court of competent jurisdiction, the invalidity of any term, covenant or condition shall in no way affect any other term, covenant or condition of this Agreement.

18. Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order No. 75-5, entitled "Prohibition of Discrimination in State Contracts - Non-Discrimination in Employment by Government Contractors and Subcontractors," and any subsequent similar Executive Order.

19. Governing Law And Venue. This Agreement shall be construed under the laws of the State of Arizona. Any action arising out of this Agreement, whether for the enforcement thereof or otherwise, shall be brought in Maricopa County.

20. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of such counterparts shall be deemed an original hereof.

21. Conflict of Interest and Israel Provision. The parties acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. 38-511, the provisions of which are incorporated herein. The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35- 393.

22. In addition to Appendices A, B and C previously referred to herein, the following Appendices are attached hereto and incorporated by this reference as if set forth in full, and such Appendices are subject to amendment pursuant to each of their respective terms:

Appendix D – Bylaws of the Pool

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _day
of _____, 20¹

POOL:

ARIZONA MUNICIPAL RISK RETENTION
POOL, an Arizona nonprofit corporation

By: _____

Its: _____

THE MEMBER:

By: _____

Its: _____