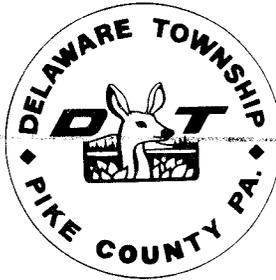


# Delaware Township

R.D. #1 - Box 219-D



# Board of Super

Dingman's Ferry, Pa. 1

August 3, 1989

717-828-2347

ORDINANCE 603

## ORDINANCE AUTHORIZING DELAWARE TOWNSHIP TO JOIN THE PENNSYLVANIA GOVERNMENTAL RISK MANAGEMENT ASSOCIATION

This is an Ordinance authorizing Delaware Township to join with other local government units as a Member of the Pennsylvania Intergovernmental Risk Management Association (the "Association") for the purpose of entering into an Intergovernmental Contract to form a Local Government Risk Pool, to provide for joint or cooperative action by Members relative to their financial and administrative resources for the purpose of providing risk management services and risk sharing facilities to the Members and to the Members' Employees, and to defend and protect, in accordance with this Agreement, any Member of the Pool against liability as outlined in the Appendix to the Intergovernmental Contract.

Whereas, the Association was formed in accordance with the authorization contained in the Intergovernmental Cooperation Act (1972 P.L. 762 No. 180), initially by the Borough of Bath and Township of Moore; and

Whereas, the Intergovernmental Cooperation Act provides that any joining cooperation agreement shall be deemed in force as to any municipality, when the same has been adopted by ordinance by all cooperating municipalities;

Now, therefore, it shall be ordained as follows:

Section 1. This municipality shall join with other municipalities in accordance with the Pennsylvania Intergovernmental Cooperation Act by becoming a Member of the Association and entering into the Intergovernmental Contract which was adopted by reference with the same effect as if it had been set out verbatim in this section and a copy of which shall be filed with the minutes of the meeting at which this Ordinance was adopted.

Section 2. This municipality is authorized to enter into the Intergovernmental Contract for the purposes contained therein. These actions are to be taken by the member (s) or employee (s) of this municipality designated for this purpose, pursuant to general or specific instructions by the governing body adopting this Ordinance.

Section 3. The Association is designated as having official custody of this municipality's funds which are invested by Association pursuant to the terms of the Intergovernmental Contract.

August 3, 1989

Section 4. As required by the Intergovernmental Cooperation Act the following matters are specifically found and determined:

- a. The conditions of the agreement are set forth in the Intergovernmental Contract referred to in Section 1;
- b. This municipality's participation in the Association shall be terminable at any time by ordinance;
- c. The purposes and objectives of the agreement are set forth herein above and the Intergovernmental Contract and actions contemplated thereby and purposes and objectives contained therein are otherwise legal as part of a pooled arrangement with other governmental units, thereby achieving economic and other advantages of intergovernmental cooperation;
- d. It is not necessary to finance the agreement authorized herein from municipal funds except through the contribution of this municipality's Basis Rate (as such term is defined in the Intergovernmental Contract) to the Association.
- e. The Association shall be managed by a Board of Commissioners or Executive Committee as set forth in the By-laws of said Association, a copy of which has been provided for review in connection with the adoption of this Ordinance.
- f. All property, real or personal, shall be acquired, managed or disposed of by the Association in accordance with the terms of the Intergovernmental Contract.

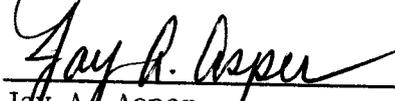
Section 5. This Ordinance shall become effective at the earliest date permitted by law.

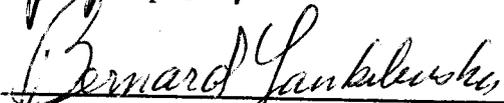
ENACTMENT

This Ordinance shall become effective immediately. IN WITNESS WHEREOF the Supervisors have set their hands and have caused the Township seal to be affixed this 3 day of August, 1989.

BOARD OF SUPERVISORS OF DELAWARE TOWNSHIP  
PIKE COUNTY, PENNSYLVANIA

  
\_\_\_\_\_  
John P. Field

  
\_\_\_\_\_  
Jay A. Asper

  
\_\_\_\_\_  
Bernard Yankelevsky

ATTEST:   
\_\_\_\_\_  
Secretary

(Seal)

**INTERGOVERNMENTAL CONTRACT**  
**FOR**  
**PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION**

This Contract is made and entered into by the undersigned Governmental Entities who, upon execution of this Contract, will become Members of PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION.

Whereas, the Acts of the Commonwealth of Pennsylvania authorizes and/or permits various Governmental Entities to form a local government risk pool;

Whereas, the undersigned desires, along with other such entities, to form or join a local government risk pool now being or heretofore created known as PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION;

Whereas, the undersigned executes this document for purposes of joining, by virtue of an intergovernmental contract, the local government risk pool known as PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION;

Now, therefore, the undersigned executes this Agreement in consideration for other Governmental Entities executing this Agreement for the purpose of joining and establishing a local government risk pool known as PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION. The undersigned agrees to abide by the terms and conditions of this Contract and all actions taken pursuant to this Contract. In consideration of the mutual covenants of all signatories to this Intergovernmental Contract it is agreed as follows:

**ARTICLE I - NAME - ENTITY**

The name of the entity created herewith shall be PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION.

The signatories hereto, together with future signatories, establish a local government risk pool as a separate legal and administrative entity for the purpose of effectuating this Agreement; which Pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of this Agreement.

**ARTICLE II - PURPOSE**

The purpose of this Agreement is to enter into an intergovernmental contract to form a local government risk pool, to provide for joint or cooperative action by Members relative to their financial and administrative resources for the purpose of providing risk management services and risk sharing facilities to the Members and to the Members' employees, and to defend and protect, in accordance with this Agreement, any Member of the Pool against liability as outlined in the Appendix. The powers and duties created hereunder and the activities of this Pool shall not constitute doing an insurance business.

This Agreement shall constitute a contract among those Governmental Entities which shall now or at any time enter into this Agreement and become Members of the Pool.

The liability of each Member is limited to the financial contributions required to be made to the Pool pursuant to this Agreement.

This Agreement shall not inure to the benefit of third parties nor does any party hereto waive such sovereign or governmental immunity as may be available to it individually. Furthermore, nothing contained herein shall be construed so as to create responsibility in one Member for the liabilities of any other Members.

In no event shall a Member be responsible, jointly or severally, for the liabilities of any other Member.

**ARTICLE III - DEFINITIONS**

In the interpretation of this Agreement the following definitions shall apply unless the context requires another interpretation:

1. Act —“Act” shall mean such Acts of the Commonwealth of Pennsylvania, pursuant to which this Pool is organized, as the same may be amended from time to time.
2. Administrator —“Administrator” shall mean American Risk Pooling Consultants, Inc. the entity designated to supervise the administration of the Pool and to perform such additional duties as shall be delegated by the Board in accordance with a certain Administration Agreement incorporated herein by reference.
3. Agreement —“Agreement” shall mean this Intergovernmental Contract for PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION and all of the counterparts subsequently executed.
4. Annual Budgetary Contribution —“Annual Budgetary Contribution” shall mean those amounts necessary to fund the expenses of the Pool, including, but not limited to, administrative expenses, reinsurance expenses, or other fundings required to satisfy the requirements of any regulatory authority having jurisdiction over the Pool and those other obligations of Members required by this Agreement.

5. Basis Rate —“Basis Rate” shall mean that amount annually promulgated by the Administrator deemed necessary to provide the Scope of Coverage afforded to a Member for the period of one year with due consideration to the Member’s individual characteristics.
6. Board —“Board” shall mean the Board of Directors of PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION.
7. Budgetary Fund —“Budgetary Fund” shall mean those amounts paid by Members pursuant to Article IX.
8. Cumulative Reserve Fund —“Cumulative Reserve Fund” shall mean those amounts paid by Members pursuant to Articles IX and X, supplemented by investment earnings.
9. Cumulative Reserve Fund Contribution —“Cumulative Reserve Fund Contribution” shall mean those amounts paid by Members to fund the Cumulative Reserve Fund.
10. Governmental Entity —“Governmental Entity” shall mean a municipality as defined in the Act.
11. Member —“Member” shall mean a Governmental Entity participating in PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION, by executing this Agreement.
12. Members’ Contribution —“Members’ Contribution” shall mean those amounts paid by Members to the Budgetary Fund and Cumulative Reserve Fund.
13. Municipal or Municipality —“Municipal” or “Municipality” shall mean any Governmental Entity.
14. Pool —“Pool” shall mean PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION, an unincorporated association of all of its Members.
15. Risk Sharing Certificate —“Risk Sharing Certificate” shall mean that document provided a Member evidencing its scope, nature, and limits of participation in the Pool.
16. Scope of Coverage —“Scope of Coverage” shall mean the coverage, limits, deductibles as outlined in the Appendix and subsequent amendments thereto.

**ARTICLE IV - MEMBERSHIP**

The membership of the Pool shall consist of Governmental Entities who have entered into this Agreement or its counterpart by and through an individual duly authorized to execute this Agreement, and who have agreed to make the initial contributions into the Cumulative Reserve Fund and the Budgetary Fund pursuant to the further provisions hereof. Members agree to the admission of future Members and acknowledge that they shall have no right to object to the addition of such Members, provided they are admitted in accordance with the terms hereof. This Agreement shall be automatically renewed unless the provisions for withdrawal or termination are applied.

Each Member shall appoint an individual and an alternate to represent the Member with the Pool. That individual shall act as liaison between the Member and the Pool for purposes of relating risk reduction and loss control information, and any other information or instructions concerning the obligations of the Member imposed by this Agreement and the rules and regulations established hereunder. The individual or alternate shall cast on behalf of the Member, any vote to which the Member is required or permitted to cast.

The obligations of Members of the Pool shall be as follows:

1. To promptly report to the Pool any incident which could result in a claim being made by or against the Member within the Scope of Coverage;
2. To cooperate with and institute to the degree possible all loss prevention procedures established by the Board or the Administrator pursuant to this Agreement;
3. To provide to the Pool such information as needed for rating purposes, including, but not limited to, an audit prepared by the Member’s staff or a certified public accountant of all revenues and expenditures for any fiscal year of the Member requested by the Pool;
4. To provide representatives of the Pool access to all records, including financial records and/or properties of the Member, provided the Pool or the Administrator determines the information or access is necessary;
5. To cooperate with the Pool’s attorneys, claims adjustors, the Administrator and any employee, officer or subcontractor relating to the purpose and powers of the Pool;
6. To allow attorneys and others employed by the Pool to represent the Member in investigation, settlement, and all levels of litigation arising out of any claim made against the Member within the Scope of Coverage furnished by the Pool;
7. To pay when due all annual contributions or other contributions, due or required, to the Budgetary Fund or Cumulative Reserve Fund pursuant to this Agreement.

## ARTICLE V - BOARD OF DIRECTORS

1. **Administration of the Pool.** The administration of the Pool and management of the Budgetary Fund and Cumulative Reserve Fund shall be initially governed by a Board of three (3) Directors to be expanded to seven (7) Directors by vote of the Board as soon as practicable but no later than by the end of the first fiscal year of the Pool.

2. **Directors Qualifications.** Directors shall be either;

- a. Elected or appointed officials of Pool Members, or
- b. Representative or employees of Pool Members, or
- c. A representative of the Administrator.

No more than one Director may be a representative of the Administrator.

3. **Eligibility and Vacancies.** Should the number of Directors become less than seven (7) due to disqualification, death, incompetence, resignation or other cause, the remaining Directors shall appoint a person or persons to fill such vacancy or vacancies so that a Board of seven (7) persons shall be maintained. Any Director may resign by sending notice of his resignation to the Administrator.

4. **First Board.** A majority of the initial Members at the time the Pool is activated shall appoint three (3) eligible individuals to serve as the first Board.

5. **Term of Directors.** The First Board shall have two (2) Directors appointed for a one (1) year term and the remaining Director appointed for a two (2) year term. Thereafter, an election shall be held within thirty (30) days after the beginning of the fiscal year of the Pool to elect Directors for those whose terms have expired. Directors so elected shall serve for a two (2) year term or until such new Directors are elected. In the event that the Board is expanded the initial term of the expanded Board shall be staggered so as to allow approximately one half (1/2) of the Board to be elected in successive years. Members and the Administrator may nominate candidates for the terms to be filled according to rules to be promulgated by the Board. Each Member shall have one (1) vote which shall be cast either in person or by proxy or by mail. There shall be no prohibition on election to successive terms, and election shall be by a majority of those Members voting.

6. **Meetings of the Board of Directors.** Meetings of the Board shall be held at least annually at such time as it shall prescribe. Any item of Pool business may be considered at such meetings. Special meetings may be called by the Administrator or by a majority of the Board. Meetings may be held by telephone or by written executed document.

7. **Executive Committee.** The Board shall from time to time elect an Executive Committee of no more than three (3) of its members. Membership of the Executive Committee may be changed at any time by majority vote of the Board. The Executive Committee shall inform and direct the Administrator on Board policy and shall exercise powers for and on behalf of the Board as it deems necessary for the prudent operation and management of the Pool until matters requiring Board action are considered at the next Board meeting.

8. **Directors Compensation.** The Directors shall be entitled to reimbursement of actual expenses incurred in the pursuit of Pool business and such other reasonable and lawful compensation as may be awarded from time to time by a majority vote of the Board.

9. **Officers.** By majority vote, the Board at its first regular meeting of each fiscal year, shall select from the Directors a Chairman, Vice-Chairman and Secretary. No Director shall serve more than two (2) consecutive terms as Chairman.

10. **Clerk.** The Administrator shall serve as clerk to the Board and shall attend all Board meetings.

## ARTICLE VI - POWERS & DUTIES

The Board shall be permitted and authorized to perform and carry out, or delegate to others to perform and carry out, on behalf of the Pool, each and every act necessary, convenient or desirable to, and for carrying out the purpose of the Pool, including, but not limited to:

1. Administer the Pool, receive Members' Contributions to the Pool, and settle and pay claims and losses on behalf of its Members;
2. Make and enter into contracts to conduct and operate the business of the Pool, including, but not limited to, the execution of an Administration Agreement;
3. Employ agents and employees;
4. Incur debts, liabilities and obligations, but no debt, liability or obligation so incurred shall be the debt, liability or obligation of any Member to this Agreement;
5. Sue or be sued in its own name, and prosecute and defend claims;
6. Acquire, hold or dispose of personal property;
7. Advise Members on loss control guidelines and procedures, and provide them with risk management services, loss control and risk reduction information;
8. Purchase reinsurance and/or excess insurance and enter into such excess risk sharing pools as may be available and deemed desirable for the protection of the Members and/or the Pool itself;
9. Invest Pool funds in securities and investments in a prudent and lawful manner;
10. Promulgate procedures and regulations for the general operation of the Pool;

11. Take such action as is necessary to terminate the participation of any Member that fails to comply with the reasonable requirements of the Board concerning contractual obligations;
12. Provide surety and/or fidelity bonds, as may be available, for Directors, Officers, and all persons charged with the custody or investment of Pool monies.

#### **ARTICLE VII - ADMINISTRATOR**

By contract with the Administrator, the Board may hire and delegate to said Administrator such of its contractual powers and duties (set forth in Article VI above) as the Board shall deem advisable and all signatories hereto hereby ratify and endorse the Administrative Agreement by and between the Pool (executed by the Board) and the Administrator under which those duties and powers are delegated to the Administrator. The undersigned further acknowledges that in the event the Administrative Agreement has been executed prior to the execution of this Intergovernmental Contract, the undersigned ratifies and adopts the Administrative Agreement.

The Board shall receive, at least annually, a report from the Administrator. The nature and details of the report shall be established by the Board and shall be in addition to or supplemental to any reports that the Administrator shall be required to file with any regulatory authority having jurisdiction over the Pool.

#### **ARTICLE VIII - LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS, ADMINISTRATOR, SUBCONTRACTORS OR EMPLOYEES**

The Directors and Officers of the Pool and the Administrator, its directors, officers, employees, and subcontractors shall:

1. Use reasonable and ordinary care in the exercise of their duties hereunder;
2. Be afforded all of the privileges and immunities that attach generally to governmental officers;
3. Not be liable for, and be held harmless and defended by the Pool, for any act of negligence, any mistake of judgment or any other action, made, taken or omitted in good faith;
4. Not be liable for any loss incurred through investment of funds or failure to invest such funds.

The Pool may purchase, subject to availability and cost, insurance providing coverage for Directors, Officers and the Administrator.

The undersigned shall and agrees that the funds of the Pool shall be used to hold harmless and defend any Director, Officer, Administrator or its employees (including its officers) or its subcontractors for any act or omission taken or omitted in good faith by the Board or a Director or by the Administrator, its employees (including its officers) or its subcontractors relating to or arising out of the conduct of Pool business. The hold harmless and indemnity provisions of the undersigned shall be joint and several with all signatories to this Contract; provided, however, this obligation shall be considered an expense of the Pool and in no event shall any individual signator be liable for more than its pro-rata annual contribution herein.

Neither the Administrator, its employees (including its officers) nor any of its subcontractors shall be liable for any act of negligence, any mistake of judgment or any other action made, taken, or omitted by them in good faith, nor for any loss incurred investment of funds or failure to invest the same, unless the same is the result of a willful act done in bad faith.

No covenant or agreement contained herein shall be deemed to be covenant or agreement of any member of the Board or the Administrator nor any of its employees (including its officers) or subcontractors and none of such persons shall be subject to any personal liability or accountability by reason of the acceptance of a position or the undertaking of the performance of any of the responsibilities or obligations or duties contemplated in the carrying out of this Agreement, whether by virtue of any construction, statute or rule of law.

#### **ARTICLE IX - ESTABLISHMENT OF BUDGETARY FUND**

1. The Board shall establish a Budgetary Fund which shall consist of Annual Budgetary Contributions in amounts the Administrator deems sufficient to annually produce the sum of money reasonably necessary to fund the Pool's general and administrative expenses, the Pool's reinsurance expenses, the Pool's current year claims and claims expenses, all or any portion of any deficiencies which may occur in the Pool's Cumulative Reserve Fund and the Pool's obligation to satisfy the requirements of any regulatory authority; the sum of which shall be known as the Annual Budget.

2. Thirty (30) days prior to the Pool's fiscal year end the Administrator shall prepare an Annual Budget for the succeeding fiscal year. Each Member's share of the Annual Budget shall be assessed to the Member as its Annual Budgetary Contributions. Each Member's Annual Budgetary Contribution shall be in the proportion that said Member's total paid Basis Rate, modified to reflect the loss experience of the Member, bears to the total of all Members' total paid Basis Rates as of the date of such calculation.

3. In the event that there shall exist a surplus in the Budgetary Fund at the end of any fiscal year, such surplus in the Budgetary Fund shall be applied toward the Annual Budget for the subsequent year.

4. In the event that the Budgetary Fund is exhausted during any Pool fiscal year, any funds required to fulfill the purpose of the Budgetary Fund shall be withdrawn from the Cumulative Reserve Fund. The sum so withdrawn shall constitute a deficiency in the Cumulative Reserve Fund.

## ARTICLE X - ESTABLISHMENT OF CUMULATIVE RESERVE FUND

In addition to the Annual Budgetary Contributions made into the Budgetary Fund pursuant to Article IX, Members shall make annual contributions for the establishment of a Cumulative Reserve Fund. Such contributions shall be based on each Member's Basis Rate in accordance with the following schedule:

Initial Contribution	100% of Basis Rate
First Anniversary	75% of Basis Rate
Second Anniversary	50% of Basis Rate
Third Anniversary	30% of Basis Rate
Fourth Anniversary	25% of Basis Rate
Fifth Anniversary	20% of Basis Rate

Thereafter, no further annual contribution shall be made to the Cumulative Reserve Fund unless the Board shall require further annual contributions for the purpose of maintaining the Cumulative Reserve Fund at a level equal to 300% of the total current Basis Rates of all Members or to comply with the requirements of any applicable regulatory authority having jurisdiction over the Pool.

## ARTICLE XI - MEMBER'S WITHDRAWAL, CANCELLATION, OR TERMINATION

1. Members agree to continue membership for a period of not less than one full year. At the conclusion of such period, or anniversary thereof, a Member who has given sixty (60) days prior written notice to the Pool may withdraw. Within 120 days following withdrawal, the Pool will refund to the withdrawing Member that percentage of those Cumulative Reserve Fund contributions made to the Pool by said withdrawing Member according to the following schedule:

End of Member's First Full Year	50%
End of Member's Second Full Year	60%
End of Member's Third Full Year	70%
End of Member's Fourth Full Year	80%
End of Member's Fifth Full Year	90%
End of Member's Sixth Full Year and thereafter	100%

The Pool shall deduct from such refund the Annual Budgetary Contribution which the withdrawing Member would have made for the one year period following withdrawal together with the withdrawing Member's proportionate share (determined in the manner set forth in Article IX above) of any deficiency in the Cumulative Reserve Fund created pursuant to paragraph 4 of Article IX.

Effective 12:01 a.m. on the date of withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all claims and claims expense shall thereafter become the sole responsibility of the withdrawing Member without regard to whether a claim occurred or was reported prior to the withdrawal of the Member's participation in the Pool.

At the request of the withdrawing Member, the Pool will continue to service all claims which have been reported to the Pool during the withdrawing Member's period of participation so long as the withdrawing Member shall promptly reimburse the Pool for all claims expenses incurred. Payment of all claims so serviced by the Pool for a withdrawing Member shall be the sole responsibility of the withdrawing Member and the Pool shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph.

2. The Pool may, by a two-thirds (2/3) majority of the Board and by providing a Member sixty (60) days prior written notice, cancel that Member's participation in the Pool effective at the end of any Risk Sharing Certificate year. Thereafter it shall be the responsibility of the Pool to defend, settle and pay claims within the scope and limits set forth in the cancelled Member's Risk Sharing Certificate in effect on the date of the occurrence out of which such claim arose. This provision shall apply solely to claims which occurred during a Member's participation and evidenced by the Member's Risk Sharing Certificate. The cancelled Member shall have the right, prior to the actual date of cancellation, to withdraw from the Pool by giving notice of such withdrawal. Electing to so withdraw, the Member shall be subject to the provisions of paragraph one (1) of this Article. Failing to elect to give notice of withdrawal, the cancelled Member forfeits all rights to refund of those Cumulative Reserve Fund contributions made to the Pool by said cancelled Member.

3. Any Member failing to make payments when due as required by this Agreement, shall be terminated from the Pool effective on the date the payment was due and upon that effective date of termination all coverages and benefits hereunder shall cease. All claims and claims expenses thereafter shall become the sole responsibility of the terminated Member without regard to whether a claim occurred or was reported prior to the termination of the Member's participation in the Pool. At the request of the terminated Member, the Pool will continue to service all claims which have been reported to the Pool during the terminated Member's period of participation so long as the terminated Member shall promptly reimburse the Pool for all claims expenses incurred. Payment of all claims so serviced by the Pool for a terminated Member shall be the sole responsibility of the terminated Member and the Pool shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph. The terminated Member shall also forfeit all rights to any return of contributions including its vested interest in the Cumulative Reserve Fund. The Pool shall apply any or all of the terminated Member's forfeited funds towards said Member's Annual Budgetary Contribution due for the one (1) year period following termination. If the Member shall subsequently submit its payment, the Administrator may, in its discretion, reinstate such membership.

## ARTICLE XII - SCOPE OF RISK SHARING PROTECTION

1. The Pool provides risk sharing protection to each Member and will make or secure payment on behalf of each Member under criteria and procedures to be established for the payment of claims as provided in the Member's Risk Sharing Certificate. A Member may, with the approval of the Administrator, add additional parties to its Risk Sharing Certificate provided it is the Member's obligation or prerogative to provide risk sharing coverage for such additional named party.
2. The Pool may obtain excess insurance or reinsurance, or join in excess risk sharing pools.
3. In the event that a claim or a series of claims exceed the amount of risk sharing protection provided by the Member's Risk Sharing Certificate, or in the event that a claim or a series of claims should exhaust the Budgetary Fund, the Cumulative Reserve Fund and any reinsurance, then payment of valid claims shall be the sole and separate obligation of the individual Member or Members against whom the claim was made and perfected by litigation or settlement.
4. A Member may purchase, in its sole discretion, any insurance coverage in addition to those amounts purchased by the Pool.
5. The Board may make changes in the Scope of Coverage, the amount of risk sharing protection or risk sharing retention by the Pool upon consideration of the needs and requirements of Members, loss experience, the kind and amounts of reinsurance coverage available and any such changes shall require a two-thirds (2/3) majority of the Board. Where the Board takes such action immediate notice after the taking of such action shall be sent to all Members (or their representatives) together with a replacement or updated Appendix to reflect the changes made.

## ARTICLE XIII - TERMINATION

The Pool shall terminate at such time as two-thirds (2/3) of the Members vote for such termination. After a vote to terminate, the Board shall commence with the orderly liquidation of the Pool's business and shall complete the same as promptly as possible. During such period of liquidation the Pool shall continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Pool are exhausted. After payment of all claims and losses, any remaining funds held by the Pool shall be paid to all those Members of the Pool at the time of the vote of termination, on a pro rata basis determined by the Board.

No Member shall be responsible for any claim, claims, judgment or judgments against any other Member or Members except to the extent of the assets of the Cumulative Reserve Fund and the Budgetary Fund. However, if upon termination of the Pool the remaining assets of the Pool are insufficient to satisfy indebtedness of the Pool (excluding claims or judgments against the Members), such deficiency shall be made up by assessments against Members of the Pool by a fair and reasonable method established by the Board.

## ARTICLE XIV - MISCELLANEOUS PROVISIONS

1. The provisions of this Agreement shall be interpreted pursuant to the laws of the Commonwealth of Pennsylvania.
2. The parties hereto consent that courts in the Commonwealth of Pennsylvania shall have jurisdiction over any dispute arising under this Agreement. The terms of this Agreement may be enforced in a court of law in the Commonwealth of Pennsylvania either by the Pool or by any Member.
3. The consideration for the obligations imposed upon Members pursuant to and under this Agreement shall be based upon the mutual promises and agreements of all Members who now execute or who hereinafter execute this Agreement.
4. This Agreement may be executed in duplicate originals or counterparts now or at any time in the future. The individual executing this Agreement on behalf of participating Member hereby represents and certifies that he is duly empowered to so execute this document.
5. No waiver of any breach of this Agreement or any provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any of the other provisions herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligations or acts.
6. This Agreement shall be binding and shall inure to the benefit of all Members who shall have executed this Agreement and complied with the financial requirements hereunder and provided that the Members shall have been duly approved in accordance with the terms and provisions of this Agreement.
7. The provisions of this Agreement shall be deemed severable and if any provision or part thereof is held illegal, void or invalid under applicable law, such provision or part may be changed to the extent reasonably necessary to make the provision or part, as so changed, legal, valid or binding. If any provision of this Agreement is held illegal, void, or invalid in its entirety, the remaining provisions of this Agreement shall not in any way be affected or impaired but shall remain binding in accordance with their terms and this Agreement shall be so interpreted.
8. This Agreement, the Appendix, and the Risk Sharing Certificate contain the complete Agreement between the parties and no representations or oral statements made or heretofore given shall constitute a part of this Agreement. In the event that any provision of this Agreement is in conflict with or is incompatible with the Appendix or attachments hereto or the Risk Sharing Certificate issued hereunder, the terms and conditions of this Agreement shall prevail and take precedence.

9. This Agreement may be altered or amended only by amendments duly adopted in accordance with the terms and conditions of this Agreement; provided, however, that the Risk Sharing Certificate may be amended from time to time to reflect the exposures of each Member and such changes shall be exempted from the preceding terms of this paragraph.

10. The caption headings used in this Agreement are used merely for identification purposes and shall not be deemed a part of this Agreement.

11. Whenever in this Agreement words, including pronouns, are used in the singular or plural, or masculine or feminine, they may be read and construed in the plural or singular, or feminine or masculine, respectively wherever they so apply.

12. This Agreement may be amended by the Board with the approval of two-thirds (2/3) of the Directors; all Members agree to properly execute and adopt amendments so approved.

13. The Board may, with the approval of two-thirds (2/3) of the Directors, elect to reform or reconstitute the Pool to a stock, mutual, or reciprocal insurance company operating as a captive, Risk Retention Group, or other risk bearing entity.

14. The Pool shall maintain a fiscal year ending December 31st.

#### ARTICLE XV - AGENT AND OFFICE

The agent of the Pool for service of notice shall be PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION, attention General Counsel. The office of the Pool shall be 29621 Northwestern Highway, Southfield, Michigan 48034.

#### ARTICLE XVI - ADMINISTRATOR'S CONTRACT

Wherever the term "Administrator" is used in this Agreement, that term shall refer to American Risk Pooling Consultants, Inc. or its successors. Wherever the term "Administration Agreement" is used in this Agreement that term shall refer to the Administration Agreement which the First Board shall be authorized to enter into with Administrator, which agreement is incorporated herein by reference by execution of this Intergovernmental Contract the undersigned hereby ratifies, adopts and approves Administrator and the Administration Agreement and authorizes the Administrator to perform its duties and exercise its power hereunder.

#### ARTICLE XVII - NOTICE

All notices required to be given under this Agreement shall be in writing and sent certified mail return receipt requested with postage prepaid Notices by a Member to the Pool shall be sent to the address in Article XV to the attention of the Administrator. Notices to any Member shall be sent to the representative of the Member at the Member's last known address.

In the event that any party to this Agreement desires to change its address, notice of change of address shall be sent to the other party in accordance with the terms and provisions of this Article.

In Witness whereof, this Agreement was executed on the 3 day of August, 19 89, by the undersigned duly authorized officer of the Governmental Entity indicated below:

GOVERNMENTAL  
ENTITY: Delaware Township

By: J. P. Fuld  
TITLE: Chairman

ACCEPTED FOR THE

\_\_\_\_\_

By: \_\_\_\_\_  
ADMINISTRATOR ON BEHALF OF ALL OTHER CURRENT AND  
FUTURE SIGNATORIES.

# PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION

## APPENDIX

### SCOPE OF COVERAGE

The Pennsylvania Intergovernmental Risk Management Association provides the following:

#### 1. Coverage

##### (a) Municipal General Liability coverage including the following extensions:

- (1) All premises and operations exposures, including streets and roads, except those listed in Item 3;
- (2) Additional persons covered including all elected and appointed officials and all employees and volunteers;
- (3) Completed Operations and/or Products Liability;
- (4) Contractual liability;
- (5) Personal Injury liability;
- (6) Broad Form Property Damage (including Completed Operations);
- (7) Incidental Malpractice - paramedics, E.M.T., ambulance attendants or drivers;
- (8) Host liquor liability;
- (9) Extended Bodily Injury coverage;
- (10) Watercraft liability (subject to specific limitations);
- (11) Explosion collapse and underground property damage;
- (12) Bodily Injury or Personal Injury to fellow employees;

##### (b) Automobile Liability coverage including:

- (1) All owned or leased vehicles;
- (2) Uninsured and Underinsured motorists coverage;

##### (c) Public Officials coverage.

##### (d) Police Professional Liability coverage.

#### 2. Deductibles

Deductibles may be applied as appropriate to the individual risk subject to approval of the Administrator.

#### 3. Municipal General Liability exposures excluded, unless specifically accepted by the Administrator:

- (a) The ownership, maintenance, operation or use of ski lifts, ski tows or ski runs;
- (b) The ownership, maintenance, operation, use, loading or unloading of any aircraft, airfields, runways, hangars or other properties in connection with aviation activities;
- (c) The ownership, maintenance, operation or use of any medical clinic;
- (d) The ownership, maintenance, operation or use of any hospital or other type of medical care facility;
- (e) The ownership, maintenance, operation or use of any nursing home, convalescent home or home for the aged;
- (f) The ownership, maintenance, operation or use of any public housing authority;
- (g) The ownership, maintenance, operation or use of any natural gas transmission system or a public gas utility system;
- (h) The ownership, maintenance, operation or use of any public electric utility system;
- (i) The ownership, maintenance, operation or use of any educational system;
- (j) The ownership, maintenance, operation or use of any jail or similar type facility;
- (k) The ownership, maintenance, operation or use of any automobile racing facility;
- (l) Operations in any way connected with the principles of eminent domain, condemnation proceedings or inverse condemnation, except as relates to antitrust allegations or suits brought pursuant to zoning actions, by whatever name called, whether such liability accrues directly against the Member or by virtue of any agreement entered into by or on behalf of the Member.
- (m) Personal injury resulting from the activities of any law enforcement agency.

**4. Limit of Liability (Maximum Limit)**

- (a) General Liability coverage - \$2,000,000. Each Occurrence
- (b) Automobile Liability coverage - \$2,000,000. Each Accident
- (c) Public Officials Liability coverage - \$1,000,000. Each Claim and in the Aggregate
- (d) Police Professional Liability coverage - \$1,000,000. Each Person  
\$1,000,000. Each Occurrence  
\$2,000,000. Aggregate

**5. Pool Retention**

General, Automobile, Public Officials Liability, Police Professional Liability - \$250,000 any one claim.

**6. Coverage Excess of Pool Retention**

American Public Entity Excess Pool:

\$5,000,000 in the aggregate annually, \$2,000,000 each claim subject to the aggregate and retention, \$5,000,000 excess of funds available subject to the per claim and aggregate limit for General, Automobile, Public Officials Liability, and Police Professional Liability coverage.

**7. Coverage Document**

- (a) The coverages and exclusions listed above are intended to broadly outline the program provided by the Pool.
- (b) A separate coverage document, the Risk Sharing Certificate, itemizing all coverage inclusions, exclusions, and conditions will be issued to each Member.

**8. Underwriting**

- (a) All risks will be properly underwritten by conventional underwriting practices which will take into account individual loss experience.
- (b) Any Municipality or location may be excluded if deemed unacceptable or inappropriate by the Administrator.

**9. Possible Additional Coverages**

- (a) Additional coverages are subject to the laws of the Commonwealth of Pennsylvania.
- (b) The addition of any coverages shall be at the option of the Board.
- (c) Notice will be provided to all Members with respect to coverage changes.

PROXY STATEMENT

Be it known, that the undersigned representative of the Governmental Sub-Division (hereinafter referred to as MEMBER) hereby nominates and appoints the following individual and alternate to represent the MEMBER with the Pennsylvania Intergovernmental Risk Management Association (hereinafter referred to as POOL). The individual and alternate shall act as liaison between the MEMBER and the POOL for the purposes of relating risk reduction and loss control information, and any other information or instructions concerning the obligations of the MEMBER imposed by signing of the Intergovernmental Contract and the rules and regulations established thereunder, to the same extent and with like effect as the undersigned could do if personally present and the undersigned does hereby ratify and confirm and adopt all action done or taken by the individual or alternate.

Individual: J.R. Tully

Alternate: Jay A. Asper

Title: Chairman

Title: Vice - Chairman

In witness whereof, this Proxy was executed on the 3 day of August, 19 89, by the undersigned duly authorized officers of the Governmental Sub-Division indicated below:

Governmental  
Sub-Division: Delaware Township

By: Bernard Yankeluney

Title: Supervisor

By: Linda Wagner  
Its Clerk