

INTERGOVERNMENTAL CONTRACT AND COVERAGE DOCUMENT FOR THE SDML WORKERS' COMPENSATION FUND

THIS AGREEMENT, is made and entered into by the undersigned who, upon execution of this Agreement, will be contractually bound with all other signatories and other Members who have entered into similar agreements creating and becoming Members of the Fund herein created.

WHEREAS, the acts of the State of South Dakota authorizes and/or permits various governmental authorities to contract;

WHEREAS, the undersigned desires along with other such public agencies, to form or join a pool arrangement to be known as the SDML Workers' Compensation Fund;

WHEREAS, the undersigned executes this document for purposes of joining, by virtue of an intergovernmental contract, the pool arrangement known as the SDML Workers' Compensation Fund;

NOW, THEREFORE, the undersigned executes this agreement in consideration of and in conjunction with other governmental authorities executing this agreement for the purpose of joining a pool arrangement known as the SDML Workers' Compensation Fund. 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

The pool created by this agreement shall be known as the SDML Workers' Compensation Fund, hereinafter referred to as "Fund."

The signatories hereto, together with past and future signatories, establish a contractual pool arrangement for the purposes of effectuating this agreement; this pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of this agreement and the bylaws of the Fund.

ARTICLE II PURPOSE

The purpose of this agreement is to enter into an intergovernmental contract to form a pool arrangement to provide for joint and cooperative action by Members for the purpose of providing workers compensation coverage to the Members and the Members' employees, and to

defend and protect in accordance with this agreement, any Member of the Fund against liability as outlined in this agreement. This agreement and the activities hereunder shall not constitute doing an insurance business, nor the formation of a separate legal entity. Nothing contained herein is intended or should be construed to create an entity of any kind. This agreement is intended to create a contractual relationship and agreement between the signatories and all current and future Members of the Fund which shall now or at any time enter into this agreement and become Members of the Fund.

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 Member.

ARTICLE III MEMBERS COSTS

Fund Members' annual cost of membership will be based on contributions individually estimated on the basis of the payroll of the Member as provided by the Member. Yearly, at the anniversary of the contract, an audit will be conducted to determine actual payrolls and the audited and final contribution amount for each Member.

Rates approved by the Fund will be used to determine standard contributions for each Member. In the initial year, each Member's experience modification will be used as established by the NCCI (National Council of Compensation Insurance). If none has been promulgated, the Fund or its agent will provide an experience modifier.

ARTICLE IV MEMBERS, TERMS, WITHDRAWAL, TERMINATION

Membership in the Fund will be limited to public agencies, as defined by SDCL 1-24-1(1), or any joint power agreement or separate entities consisting entirely of public agencies which meet that definition. Membership in the Fund is subject to the approval of the Fund Board of Trustees.

The minimum term of membership shall be one (1) year. A Member may withdraw its membership for any year thereafter upon the giving of not less than sixty (60) days written notice, prior to the beginning of the new plan year, to the Fund or its agent(s). If a Member withdraws without the required sixty (60) day written notice prior to the end of the plan year, a sixty (60) day short rate penalty may be applied.

A Member may be terminated from the Fund under the rules set forth in the bylaws for reasons which include, but are not limited to, the following:

1. Failure to make the required contributions on the date when due or within the period of time allowed by the Fund for payment thereof.

2. Failure to meet other requirements as they may be found for continued participation in the Fund to preserve the stability and strength of the Fund including participation and programs or efforts designed to reduce losses or adjust claims, consistent with this fund agreement and the bylaws of the Fund.

By accepting membership in the Fund, the Member agrees that it may be sued by the Fund in any court having jurisdiction over the Fund and/or the Member for any contributions, charges, penalties or other monies that are not paid to the Fund on the due date thereof, including reasonable attorney fees and other related litigation expense in the collection of the same.

ARTICLE V COVERAGE

In consideration of payment of the Members' contributions as described by this agreement, the Fund agrees to the following:

1. Coverage. The Fund will promptly pay when due all compensation and other benefits required of the Member by South Dakota Workers' Compensation Law, as such law may be amended from time to time, and any such amounts or benefits due on the basis of Employers Liability.

2. Defense, Settlement, and Supplementary Payments. As respect to the coverage afforded by the terms of this agreement, the Fund shall:

a. defend any proceeding against the Member seeking such benefits and any suit against the Member alleging such injury and seeking damages on account thereof, even though such suit, proceeding, allegation, or demand may be groundless, false or fraudulent, but the Fund shall make such investigation, negotiation, and settlement of any claim or suit as it deems appropriate.

b. pay all expenses incurred by the Member or the Fund, all costs assessed against the Member or Fund in any such proceeding or suit and all interest occurring after entry of judgment until the Member or Fund has paid or tendered or deposited in Court such part of a judgment as does not exceed the limit of the Fund's liability thereon.

3. Applicability of Coverage. Benefits under this agreement apply only to injuries occurring during a period in which the employer is a Member of the Fund. Coverage will not be provided for entities located outside of South Dakota. Those Members who are hiring employees

outside the State of South Dakota may be offered coverage with prior approval of the Fund. Member employees traveling outside the State of South Dakota at the direction of the Member will be covered.

4. Conditions. If any changes in classification, rates or rating plans is or becomes applicable to the coverage under any law regulating this coverage or because of any amendments affecting the benefits provided by South Dakota Workers' Compensation Law, such coverage and changes shall be stated in an effective date thereof.

5. Payroll Records. Each Member shall maintain records of the information necessary for contribution computation and shall send copies of such records to the Fund at the end of the benefit period, or at such time during the benefit period as the Fund may direct.

6. Other Insurance. The Fund will not pay more than its share of damages and costs covered by this coverage and other insurance or self insurance. Subject to limits of liability that apply, all shares will be equal until the loss is paid. If any coverage, insurance or self insurance is exhausted, the shares of all remaining coverage, insurance and self insurance will be equal until the loss is paid.

7. Scope of Coverage for Foreign Voluntary Workers' Compensation and Employers' Liability For Traveling Employees.

A. The coverage afforded by this Agreement also applies to Employees as defined in Article V Section 8 of this Agreement, who are traveling for work at locations within the following county or countries:

anywhere in the world outside the United States or United States possessions and territories, except Countries or areas of Countries that are assigned, at any time during the Liability Period, a Travel Advisory Ranking of "Level 4: Do Not Travel" as shown on the US Department of State – Bureau of Consular Affairs website at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html>.

B. Benefits payable for Employees as defined in Article V Section 7 and Section 8 of this Agreement are the same as those that would be payable if the Employees in question were subject to the Worker's Compensation Law of the State of South Dakota.

8. Employees Covered

A. It is agreed that the coverage afforded by this Agreement applies to those Employees of the MEMBER who are traveling at the direction of the MEMBER to work at locations within the country or countries not excluded under Article V Section 7 Sub-Section A of this Agreement.

B. With respect to any such Employee traveling at the direction of the MEMBER to work at locations within the country or countries not excluded under Article V Section 7 Sub-Section A of

this Agreement, the coverage afforded by this Agreement shall apply in the same manner as if said Employee was performing work within the United States of America and subject to the Worker's Compensation Law of the State of South Dakota.

C. The coverage afforded by this Agreement shall not apply to persons who are citizens or residents of the United States of America and are temporarily within the country or countries stated in Article V Section 7 Sub-Section A of this Agreement.

All other terms, conditions, agreements and stipulation remain unchanged.

9. Agreement Modifications. This Agreement may be amended by the Board of Trustees with the approval of two-thirds (2/3) of the members of the Board. All Members agree to properly execute and adopt amendments so approved. The payment of the Member's Contribution to the Fund for the upcoming year shall be deemed consent of that Member to the terms and conditions of this Agreement and any Amendments thereto.

ARTICLE VI MEMBERS' OBLIGATIONS

Each Member agrees to be bound by all the terms, conditions and requirements of the bylaws of the Fund, as amended from time to time, and as provided to the Member upon application and acceptance of membership by the Fund, and to abide by the rules and regulations promulgated by the Fund for the administration of the Fund, which shall include, but are not limited to, the following:

1. Each Member agrees to initiate and maintain a safety program to give its employees safe and sanitary working conditions and agrees to follow the general recommendations of the Fund, its loss control administrator and/or agents to promote the general welfare of its employees. Each Member, however, shall remain solely responsible for all decisions concerning its safety program and practices and is independently charged with relying or not relying upon the evaluations and recommendations made by the Fund and/or its agents and is solely responsible for the final decision concerning its safety programs and practices.
2. When an injury to an employee covered by this agreement occurs, the Member shall immediately complete an Employer's First Report of Injury Form (DOL-LM-101) (most recent version) as issued by the South Dakota Department of Labor, Division of Labor and Management, and file the original with the appointed agent of the Fund who is to handle claims administration, or any other agent as appointed by the Fund.

3. If a claim is made or suit, or other proceeding is brought against the Member, the Member shall immediately forward to the Fund or its appointed agent every demand, notice, summons or other process received.
4. The Member shall cooperate with the Fund and its appointed agents and upon request shall attend hearings and trials and shall assist in effecting settlements, the securing and giving of evidence, obtaining the attendance of witnesses and shall otherwise cooperate as determined to be necessary by the Fund in the conduct of suits, hearings or proceedings.
5. The Members shall not, except at its own costs which shall not be reimbursed by the Fund, voluntarily make any payment, assume any obligation, or incur any expense other than for such immediate medical and other services at the time of injury as are required by South Dakota Workers' Compensation Law.
6. Each Member shall make prompt payment of all contributions and payments as required under this agreement.
7. Each Member does hereby appoint the Fund, its Board of Trustees and any of its duly authorized and appointed agents as agent and attorney-in-fact to act on the Members behalf to file reports and pay expenses and all other things required or necessary insofar as they affect the Members liability under South Dakota Workers' Compensation Law or such Members obligation under the rules, regulations and orders of the South Dakota Department of Labor.
8. Each Member agrees that in the event of the payment of any loss by the Fund under this agreement, the Fund shall subrogate to the extent of such payment to all rights of the Member against any person or other entity legally responsible for damages of or on said losses, and in such event, the Member hereby agrees to render all reasonable assistance, other than pecuniary assistance, to effect recovery by the Fund under such right.
9. The trustees of the Fund, or their duly appointed and authorized agents, servants, employees or attorneys shall be permitted at all reasonable times to inspect the Members' work place, plants, works, machinery and appliances covered by this agreement and shall be permitted following the termination of membership to examine Members' books, vouchers, contracts, documents and records which show or tend to show or verify contributions which are payable or were paid to the Fund on any claim as it may appear to be due. Following membership termination, the Member agrees to cooperate in good faith and comply fully with the terms of this agreement as they relate to any and all liabilities still existing, or possibly still existing as determined by the Fund, under the agreement between the Fund and the Member. All rights and authorities herein granted the Fund and obligations of

the Member herein shall continue and survive the termination of membership of the Member as long as any liability or possibility of liability exists, as determined by the Fund, under this agreement.

ARTICLE VII MISCELLANEOUS

1. Should any section, provision or portion of this agreement be held or found unenforceable or invalid for any reason, the remaining sections, provisions and portions shall be unaffected by such holding or finding and shall remain in full force and effect.

2. This agreement contains the entire agreement between the parties with respect to the issues and coverages addressed herein, and no statement, promise, or inducement made by any signing party or agent of any signing party that is not contained in this agreement shall be valid or binding; all oral understandings between the parties are hereby merged into this agreement, and this agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed thereon.

3. Provided the Fund performs all of its obligations under this agreement, the Member agrees to defend, indemnify and hold the Fund, its Trustees and agents harmless from any and all liabilities, losses or damages that the Member may suffer by reason of this agreement, provided however, that the acts of the Fund, its Trustees and agents must be conducted in a good faith manner and in a manner reasonably believed to be in the best interests of the Fund and the individual Member.

4. The acceptance of a late contribution by the Fund or the acquiescence either through action or inaction of the Fund in any default or failure to comply with this agreement or the bylaws of the Fund by the Member shall not be a waiver of the right of the Fund to insist upon timely contributions and compliance with the other provisions of the bylaws of the Fund or this agreement in the event of any subsequent breach of this agreement or the bylaws of the Fund by the Member.

5. It is contemplated by the Fund and the Member that this agreement may be executed in multiple counterpart originals, each such counterpart original shall have equal force and effect.

**ARTICLE VIII
NOTICE**

Any notice required by this agreement shall be sufficient if delivered personally or given by depositing the same in a United States Post Office Box in a sealed, prepaid envelope, addressed to the person to be notified at his last address as the same appears in the records of the Fund, or any mail notice shall be deemed to have been given on the date of mailing, provided, that any notice that is mailed pursuant to a termination or cancellation of any right or obligation under this agreement shall be considered mailed on the date of mailing if said item is mailed by certified mail.

Notices to be given under this Agreement shall be sent to all Members or their representatives following Board action at their last known address or their last known electronic address.

**ARTICLE IX
EFFECTIVE DATE AND TIME**

The Fund shall operate on a fiscal year from 12:01 am January 1st to 12:01 am January 1st of the next year.

IN WITNESS WHEREOF, the parties hereto have entered into this intergovernmental contract and coverage document for the SDML Workers' Compensation Fund by the execution of the signatures below and acknowledge that they have and are authorized to enter into the same.

Dated _____ 2023


Name of Public Agency:

Authorized Signature: _____

Title: _____

Date _____ 2023

SDML Workers' Compensation Fund

By: 
Its: Administrator