

**ARIZONA FIRE DISTRICT WORKERS'
COMPENSATION POOL, INC.**

PARTICIPATION AGREEMENT

This Participation Agreement (the “Agreement”) is entered into between the **Arizona Fire District Workers’ Compensation Pool, Inc.**, an Arizona nonprofit corporation established pursuant to A.R.S. § 11-952.01(B) (the “Pool”) and _____, a special taxing district (fire district) authorized pursuant to title 48, chapter 5 of the Arizona Revised Statutes (the “Member”). The Pool and Member agree as follows:

1. Recitals.

- 1.1. Authority. A.R.S. § 11-952.01, as may be amended, permits two or more public agencies including (without limitation) fire districts (as defined in A.R.S. § 11-951)
 - a) to enter into contracts or agreements to establish a separate pool and to provide for the payment of workers’ compensation and employer liability claims pursuant to A.R.S. Title 23, Chapter 6, on a cooperative or contract basis with one another, and
 - b) to jointly form a nonprofit corporation to carry out the provisions of A.R.S. § 11-952.01, as may be amended, on behalf of the public agency Members of the nonprofit corporation directly or by contract with a private party.
- 1.2. Formation of Pool. Certain special taxing districts have formed the Pool to carry out the purposes of A.R.S. § 11-952.01, as may be amended, by creating a separate workers’ compensation pool for member special taxing districts who choose to participate in the Pool.
- 1.3. Member Participation. The Member desires to enter into an agreement to join or participate in the workers’ compensation pool established by the Pool and to provide for the payment of workers’ compensation claims pursuant to A.R.S. Title 23, Chapter 6, and employer liability claims on a cooperative or contract basis with the Pool and with other special taxing districts that are members of the Pool.
- 1.4. Multi- Year Agreement. The Member finds as follows: (1) the estimated requirements of the Member cover the term of the agreement and are reasonable and continuing; (2) the Agreement will serve the best interests of the Member by promoting economies in procurement by the Member and (3) the Member estimates that it has sufficient funds appropriated to fulfill its obligations as stated below.
- 1.5. Purpose. The purpose of this Agreement is to set forth the terms of Member’s participation in the Pool.

NOW, THEREFORE, it is agreed among the Parties to this Agreement and Pool as follows:

2. Board of Directors.

2.1. Board of Directors. The Pool shall be operated by a Board of Directors (the “Board”) consisting of at least three persons who are elected officials or employees of a public entity special taxing district member of the Pool. The Board of Directors shall ensure that the Pool notifies the Arizona Department of Insurance of the existence of the Pool and will ensure that the necessary approval of the Pool is obtained from the Industrial Commission of Arizona.

2.2. Powers and Duties. The Board shall have all of the powers, duties and responsibilities as set forth in the provisions of A.R.S. § 11-952.01(H) and shall not take any actions that would be in violation of A.R.S. § 11-952.01(J).

3. Pool Administration.

3.1. Appointment. The Pool shall designate and appoint an Administrator (the “Administrator”) to, among other things, carry out the policies of the Pool as established by the Board and provide day-to-day management of the Pool.

3.2. Delegations of Authority. The Board shall also delineate in written minutes of its meeting the areas of authority it delegates to the Administrator.

4. Capitalization. Each Member joining the Pool shall contribute to the initial capitalization (“Capitalization”) of the Pool as follows:

4.1. One Year Capitalization Option. The Member will pay sixty percent (60%) of the Member’s initial annual contribution as defined in Section 9 for the Member’s first year in the Pool.

4.2. Three Year Capitalization Option. The Member will pay twenty-five percent (25%) of the Member’s initial annual contribution as defined in Section 9 for the Member’s first year in the Pool for three (3) consecutive fiscal years. Should Member terminate pursuant to Section 7 or Section 12 prior to the conclusion of the third fiscal year of participation in the Pool, Member shall be responsible for paying the entirety of the Member’s Capitalization, which shall be assessed at seventy-five percent (75%) of the Member’s initial first year annual contribution as defined in Section 9. The Pool may retain any funds due and owing to the Pool upon Member’s termination pursuant to Section 7.2 to recoup capitalization costs.

4.3. Five Year Capitalization Option. The Member will pay twenty-five percent (20%) of the Member’s initial annual contribution as defined in Section 9 for the Member’s first year in the Pool for five (5) consecutive fiscal years. Should Member terminate pursuant to Section 7 or Section 12 prior to the conclusion of the fifth fiscal year of participation in the Pool, Member shall be responsible for

paying the entirety of the Member's Capitalization, which shall be assessed at one hundred percent (100%) of the Member's initial first year annual contribution as defined in Section 9. The Pool may retain any funds due and owing to the Pool upon Member's termination pursuant to Section 7.2 to recoup Capitalization.

- 4.4. Less than a Full Year Term. Should a Member's initial term of membership in the Pool be less than a full year, the Member's initial contribution will be annualized for purposes of determining Capitalization..
- 4.5. Individual Capitalization Options. The Board may waive, modify or extend capitalization funding terms for any Member upon a majority vote of the Board.
5. Participation and Coverage Agreement. Member will participate in the Pool on the terms of this Agreement. Member acknowledges that it is bound by the Coverage Agreement, attached as Appendix A (the "**Coverage Agreement**"), which is incorporated herein by reference and sets forth:
 - a) the workers' compensation claims and expenses covered by the Pool;
 - b) the procedure for making claims against the Pool;
 - c) the means and procedures for defending against such claims;
 - d) the persons or entities to be indemnified by the Pool;
 - e) the limitations and exclusions on coverage; and
 - f) various other matters necessary or appropriate to the functioning of the Pool.

The Coverage Agreement governs all matters relating to the payment by the Pool of claims made against the Member.

6. Amendment of Agreement or Coverage Agreement. The Board may amend this Agreement or the Coverage Agreement, and each Member agrees to be bound by the amendments if:
 - a) two-thirds (2/3) vote of the members of the Board present at a duly called meeting of the Board (at which a quorum is present) vote to amend;
 - b) the Member is given written notice at least ninety (90) days before the amendment is effective;
 - c) and the form of this Agreement or the Coverage Agreement are similarly amended at the same time for all members of the Pool.

7. Term and Termination.

- 7.1 Term and Renewal. This Agreement shall become effective _____, 20__ ("**Agreement Effective Date**"). The initial Agreement period shall be for a three-year period ("**Initial Agreement Period**"). The anniversary date of this

Agreement shall be July 1 of the year following the Initial Agreement Period , and each subsequent July 1 so long as the Member remains in the Pool (“**Anniversary Date**”). This Agreement shall automatically be renewed annually thereafter unless terminated pursuant 7.2 or Section 8 of this Agreement.

7.2 Termination.

- a) Termination. A Member or the Pool may terminate this Agreement, after the Initial Agreement Period, by written notice of termination provided at least ninety (90) days’ prior to the then current Anniversary Date of July 1st, unless an earlier termination effective date is agreed to by the Pool and the Member.
- b) Distribution of Funds On Termination. If the Member terminates this Agreement for any reason, or if the Pool terminates this Agreement as a result of the Member’s breach of this Agreement, the Member will forfeit all rights to the return of any surplus, unearned Contributions and other distributions from the Pool, and the Member shall remain liable for any and all amounts due to the Pool.
- c) Notice to Industrial Commission. As required by A.R.S. §11-952.01(L), as may be amended, the Pool will notify the Industrial Commission of Arizona of any suspension, termination, cancellation or expiration of this Agreement, at least thirty (30) days before the Effective Date of the suspension, termination, cancellation or expiration.

8. Termination of the Pool.

- 8.1 Election to Terminate. Notwithstanding any other provision of this Agreement, the Board may terminate the Pool at any time (by a two-thirds vote of the members present at a duly called meeting of the Board at which a quorum is present) if it determines that the number of Members in the Pool are insufficient or that the size of the Pool is too small to indemnify adequately against the risks covered in the Coverage Agreement. A termination under this Section will not be effective until the Pool has given each Member in the Pool at least ninety (90) days’ written notice.
- 8.2 Distributions or Assessment upon Termination. Upon termination of the Pool (under this Section or for any other reason), and after making adequate provision for all pending and anticipated claims as determined by the Pool’s actuary, run-out operating expenses, and other Pool liabilities, the assets of the Pool will be liquidated, a final accounting will be made, and the funds remaining in the Pool will be distributed among the then existing Members of the Pool in accordance with an asset distribution plan as established by the Board. If there are inadequate funds to meet all claims and expenses of the Pool, an assessment will be made, pursuant to this Agreement and A.R.S. § 11-952.01.

9. Contribution. The Member will pay to the Pool a Contribution (the “**Contribution**”) which will be the Member’s required annual Contribution to the Pool. The Contribution will be computed and paid on the following basis:
- 9.1. Based on Costs. The Contribution is based on the anticipated liabilities and expenses (the “**Costs**”) of the Pool for each fiscal year, including (1) the needs of the Pool to pay its current claim and expense liabilities, (2) an allowance for claims reported but not expected to be paid in the fiscal year, (3) an allowance for claims incurred but not reported, (4) an allowance for the general administrative expenses, management fees, reinsurance costs, loss control and safety programs, and overhead of the Pool, and (5) an allowance for capitalization or fund balance, if necessary as determined by the Board. If there is any change in the costs because of any general rate increase or any legislative amendment affecting the benefits under the Workers’ Compensation Law of Arizona, then the change will be made a part of this Agreement.
- 9.2. Information. The Member will (1) furnish the Pool all available information requested by the Pool’s actuary or the Administrator, so that adequate and timely underwriting can occur and in order to process any and all claims, and (2) reply promptly to all other correspondence or inquiries from the Pool.
- 9.3. Contribution Payment. The Member will remit Contributions to the Pool at the beginning of each quarter of the fiscal year by paying to the Pool four quarterly installments (every three months of the plan year) of twenty-five (25) percent each of the estimated annual Contribution, or as mutually agreeable by both the Member and the Pool.
- 9.4. Payroll Information. When requested by the Pool, the Member will promptly, and no later than thirty (30) calendar days after the request, prepare a report showing, by classification, the amount of remuneration earned by its employees during the reporting period requested. The remuneration earned during such period by all employees (including volunteers) engaged in each classification covered by this Agreement will be computed in accordance with the rules set forth in the appropriate Manual of Workers’ Compensation and Employers’ Liability Insurance.
- 9.5. Untimely Submission of Information Penalty. If a Member fails to timely submit the information required in section 9.2 and 9.4 above prior to the renewal date, the Pool may charge a penalty of \$100 for each month or portion thereof that the information is not received.
- 9.6. Audit Adjustments. An audit may be made at the end of the fiscal year to determine actual remuneration for that fiscal year. The Pool will calculate a final adjustment of Contributions due to the Pool. If the Contribution calculated as a result of the audit is in excess of the Contribution collected for the fiscal year, the Member must

pay the difference to the Pool, no later than 30 days after invoice. If the Contribution calculated as a result of the audit is less than the Contribution collected for the fiscal year, the Pool, at its option, will return the difference or give an appropriate credit against future Contributions.

- 9.7. Payment of Contribution is a Condition of Coverage. Member agrees to pay to the Pool the annual Contribution amount determined for the Member based upon the Pool's calculation. The existence of any coverage provided pursuant to this Agreement is expressly conditioned upon, in addition to any other requirements under this Agreement, full and timely payment of annual Contribution and all Costs by the Member for any such coverage.
- 9.8. Prepaid Account. Members may create a restricted account within the Pool to prepay contributions ("Prepaid Account"). Members shall retain any and all rights to its Prepaid Account balance, provided the Member has no outstanding balance owed to the Pool.
10. Reduction in contribution. At the end of each fiscal year, the Member's Contribution for the following fiscal year may be reduced. For members of the Pool, the amount of the reduction may include a component based on the amount, if any, of the Pool's Fund Balance for the preceding fiscal year (the "Fund Balance"). For Members in the Pool, the amount of the reduction may also depend on other factors the Board reasonably considers in evaluating how to allocate all or part of the Fund Balance among Members in the Pool (for example, a Member's loss experience, aggregate payment of Contributions, or uninterrupted membership or participation in the Pool). The Board may reduce the amount of the Member's Contribution only if the Board determines that it is financially appropriate based on the Pool's most recent actuarial review. Any decision to reduce Contributions for one fiscal year does not obligate the Board to reduce Contributions in a similar manner or at all in succeeding fiscal years.
11. Assessments. If the Pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, the Members of the Pool shall be assessed on a pro rata basis as calculated by the amount of each Member's annual Contribution in order to satisfy the deficiency. The amount of such assessment ("**Assessment**") may not exceed the amount of the Member's annual Contribution 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.
12. Suspension. If:

- a) the Member fails to pay its Contribution, fails to pay Capitalization, fails to pay an Assessment, fails to pay any penalty owed, or fails to comply with any other terms of this Agreement, and
- b) the Member's failure is not cured within 30 days after written notice of default,

then the Board may suspend the Member's coverage under the Coverage Agreement. The suspension may be made permanent 90 days after the date of the notice of default and suspension. During the suspension period, the Board will either

- a) decide that the suspension will be made permanent, in which case the notice of default and suspension will be deemed a notice of termination and this Agreement will be deemed terminated 90 days after the date of notice of suspension, or
- b) decide the conditions, if any, under which the Member's participation in the Pool and coverage under the Coverage Agreement may be restored.

If the Member is permanently suspended, and this Agreement is terminated, the Member will be relieved of liability for Contributions for fiscal years after the fiscal year of the termination. The Member's liability for Assessments and Capitalization will continue to the extent provided elsewhere in this Agreement.

13. Inspection and Audit. If the Pool requests, the Member must permit the Administrator, or any other designee of the Pool to complete the following actions.

13.1. Inspection. The Pool, at its option, may inspect the Member's properties and operations upon timely notice and during regular business hours. Neither the right to make inspections nor the making of an inspection will constitute a determination or warranty that the properties and operations are safe or are in compliance with any law or rule.

13.2. Audit. The Pool may examine and audit the Member's financial and administrative records that relate to the subject matter of this Agreement. An examination may be made at any time during the term of this Agreement or within five years after the termination of this Agreement.

14. Audit of the Pool. The Pool, at its expense, will arrange annually for an audit of its operations by a certified public accountant. A copy of the report will be submitted to the Board, the Member, the Arizona Department of Insurance, the Arizona Industrial Commission and any other government agency to which a copy must be submitted in accordance with law. The Board will obtain an appropriate actuarial evaluation of the Pool, including an estimate of incurred but not reported claims. The Pool will also pay the cost of any examination of the Pool by the Director of the Arizona Department of Insurance as permitted by A.R.S. § 11-952.01(M), as may be amended.

15. Loss Control. The Member will implement a program of loss control in substantial conformance with the Loss Control Program Standards for Members as established (and amended from time to time) by the Pool (the “**Loss Control Standards**”). The Member acknowledges, understands and agrees that (a) the Loss Control Standards are only recommendations of minimum standards that should be adopted by each member of the Pool, (b) the Pool makes no representation or warranty that the Loss Control Standards are sufficient or adequate for the Member, and (c) the Member must tailor its loss control program to the meet Member’s specific requirements.
16. Claims.
 - 16.1. Claims Submitted. Member shall submit claims to the Pools as set forth in each applicable Coverage Agreement or as otherwise required by the Pool or State law.
 - 16.2. Member to Cooperate. If the Pool needs assistance from Member or Member’s employees regarding a claim, Member will cooperate with the Pool and will provide such assistance.
17. Subrogation. If a recovery is obtained against a third party pursuant to the right of subrogation set forth in the Coverage Agreement, such recovery will be paid (a) first to reimburse the Pool for costs of recovery and (b) the balance, if any, to the Pool and the Member in proportion to their respective losses from the occurrence giving rise to the recovery.
18. Conformity with the Law. If any term of this Agreement is in conflict with the laws of Arizona (as they now exist or are later amended) this Agreement will be amended automatically to conform to such laws.
19. 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 set forth all covenants, promises, agreements, conditions and understandings between the Pool and the Member as of each Anniversary Date. 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.
20. Legal Arizona Workers Act Compliance. The Pool is required to comply with A.R.S. §41-4401, and hereby warrants that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the “state and federal immigration laws”). The Pool further agrees to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws. A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the party who breaches may be subject to penalties up to and including termination of the Agreement. The Member retains the legal right to

inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other party is complying with the warranties regarding compliance with the state and federal immigration laws.

21. Non-appropriation. This Agreement shall be subject to available funding for the Member and nothing in this Agreement shall bind Member to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement. The parties acknowledge that the Member is a government entity, and the contract validity is based upon the availability of public funding under its authority.
22. Authorized Representative. The Pool and the Member will each designate a representative authorized to act on their behalf in all matters pertaining to this Agreement. The initial representative of each is designated on the signature page of this Agreement. Either party may change its representative, or their address, by written notice to the other.
23. Authorizing Action. This Agreement will become effective only upon: (a) the execution of this Agreement by an authorized representative of the Pool, (b) the execution of this Agreement by an authorized representative of the Member, and (c) the delivery to the Pool of a fully executed Agreement.
24. Claim Reserves. The Pool will maintain claim reserves at least equal to known incurred losses and an estimate of incurred but not reported claims consistent with the recommendation of the Pool's actuary.
25. Liability.
 - 22.1. Limited Liability of the Pool, the Board, and the Administrator. The Pool, the Board, and the Administrator have (a) no obligation to pay or defend claims except from the funds in the Pool and (b) no liability under this Agreement except to disburse funds in the Pool in accordance with the terms of this Agreement and the Coverage Agreement. If, after collecting all Contributions, Capitalization and Assessments from the members in the Pool, there are insufficient funds in the Pool to pay the expenses and to discharge the obligations of the Pool, then neither the Pool, nor the Board, nor the Administrator have any further obligation to defend or pay claims.
 - 22.2. No Liability of Other Members; Liability of Pool. No Member in the Pool has any liability for claims brought by third parties against any other Member in the Pool, other than the obligation to contribute Contributions, Capitalization and Assessments to the Pool as expressly required by this Agreement. The liability for any claim against the Member will remain the sole and exclusive liability of the Member. The obligation of the Pool is to reimburse the Member for liability (a) within the limits of the Coverage Agreement and (b) to the extent there are funds in the Pool.

- 22.3. Member Liability. As required by A.R.S. § 11-952.01(K)(4) (as may be amended), the following statement is included in this Agreement: the Member is not relieved of its liability incurred during the Member's period of membership or participation in the Pool except through the payment of losses by the Pool (to the extent required by the Coverage Agreement) or by the Member.
26. Invalidity of a term. If any term, covenant or condition of this Agreement is invalid or void, the invalidity will not affect any other term, covenant, or condition of this Agreement.
27. Prohibition against Discrimination. If it applies, the parties will comply with the Arizona Governor's Executive Order No. 2009-09 entitled "Prohibition of Discrimination in State Contracts - Non-Discrimination in Employment by Government Contractors and Subcontractors," and any subsequent superseding Executive Order.
28. Governing Law and Venue. This Agreement will be construed under the laws of the State of Arizona. Any action arising out of this Agreement must be brought in Maricopa County.
29. Arbitration. To the extent permitted by A.R.S. §§12-1518 and 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration.
30. Amendments to Statutes. All references to provisions of statutes, codes and regulations include any and all amendments thereto.
31. Counterparts. This Agreement may be executed in any number of counterparts. All counterparts will be deemed to constitute one and the same instrument, and each counterpart will be deemed an original.
32. Conflict of Interest. The parties acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.
33. Boycott. To the extent applicable, 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.
34. Act of Forbearance. No act of forbearance on the part of either party to enforce any provisions of this Agreement shall be construed as a modification of this Agreement nor shall the failure of any party to exercise any right or privilege herein granted be considered a waiver of such right or privilege.
35. Appendices. The Appendices are attached to this Agreement and incorporated by this reference. The Appendices include Appendix A, Coverage Agreement, Appendix B, Articles of Incorporation, Appendix C, Bylaws, and Appendix D, Coverage Acceptance Form.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of _____, 2020.

**ARIZONA FIRE DISTRICT
WORKER'S COMPENATION POOL, INC**

By: John H. Ashton
Executive Director
333 E. Osborn Road, Suite 300
Phoenix, AZ 85012
Telephone: 602-222-2105

Authorized Representative for the Member:

DISTRICT: _____

By: Authorized Representative

Printed Name

Title

Address

City State Zip Code

Telephone: _____