

**JOINT POWERS AGREEMENT**

**MONTANA ASSOCIATION OF COUNTIES  
PROPERTY & CASUALTY TRUST  
(MACo PCT)**

**PROPERTY AND CASUALTY  
SELF-INSURED POOL**

**Revised June 2015**

**Established in 1987  
A service provided by the Montana Association of Counties**

**JOINT POWERS AGREEMENT  
MONTANA ASSOCIATION OF COUNTIES PROPERTY & CASUALTY TRUST**

THIS AGREEMENT is entered into pursuant to the provisions of Montana Code Annotated, Section 2-9-211 that, among other things, allows Counties of Montana to obtain insurance separately or jointly with other counties, including establishing a self-insurance program. There is therefore created a legal entity to be known and designed as the Montana Association of Counties Property & Casualty Trust, hereinafter referred to as "MACo PCT".

WITNESSETH:

WHEREAS, Counties have the authority under Section 2-9-211, MCA, to purchase liability insurance for themselves and their employees; and

WHEREAS, it is to the mutual benefit of counties to join together to establish this joint powers agreement to accomplish the purposes hereinafter set forth; and

WHEREAS, the signatories hereto have determined that there is a need by counties to jointly create an insurance program utilizing a joint risk management pool with authorization for additional coverage from excess lines companies.

NOW, be it therefore resolved, and in consideration of the mutual advantages and benefits to each party and the mutual covenants herein contained, the members agree as follows:

ARTICLE I  
Definitions

As used in this agreement, the following terms shall have the meaning hereinafter set out:

(1) AGGREGATE STOP LOSS INSURANCE. Insurance coverage purchased by MACo PCT to cover losses borne by the joint risk management pool to the extent that they, in the aggregate, exceed a pre-established amount during the period of the policy. This insurance provides coverage for loss in a policy period in excess of the pre-established amount specified in the aggregate stop loss insurance policy, up to the limits of the policy.

(2) BOARD. Board of Trustees of MACo PCT.

(3) CATASTROPHE EXCESS INSURANCE. Insurance coverage purchased by MACo PCT to cover single losses borne by the joint risk management pool to the extent that such single loss shall exceed a pre-established amount. This insurance provides coverage in a policy period for the amount of each covered single loss in excess of the pre-established amount specified in the catastrophe excess insurance policy, up to the limits of the policy.

(4) DEDUCTIBLE. That amount of any claim paid by the member and eligible insureds in which the claim occurred.

(5) ELIGIBLE INSUREDS. Special districts or entities as may be allowed from time to time by the Board of Trustees to be insured by the Trust.

(6) INSURANCE YEAR. July 1 to June 30.

(7) JOINT RISK SHARING POOL. A fund of public monies established by MACo PCT to self-insure certain risks jointly within a defined scope and to purchase catastrophe, excess and/or aggregate stop loss insurance when deemed prudent.

(8) JOINT SELF-INSURANCE. A self-insurance program in which two or more members agree to pool their retained risks and their resources for the purchase of funding potential losses resulting from these risks. In such a program, the participating members agree to contribute annual and, where required, supplementary payments to support a risk management program and a joint risk management pool.

(9) MACo PCT. The Montana Association of Counties Property & Casualty Trust as authorized under the laws of this state and by this joint powers agreement.

(10) MEMBERS. The counties which enter into this joint powers agreement.

(11) RISK MANAGEMENT. A program of identification and control of exposures to loss, together with financial planning for potential losses. The purpose of risk management is to reduce or limit losses to members and eligible insureds' property and injury to persons or property caused by member and eligible insureds' operations and to establish prudent funding for potential losses in order to conserve the assets of the member and eligible insureds while enabling the member and eligible insureds to continue to effectively function and provide services to their residents.

ARTICLE II  
Creation of MACo PCT

Montana Association of Counties Property & Casualty Trust, a separate and independent governmental and legal entity, is hereby created by this joint powers agreement by member counties.

MACo PCT's principal place of office shall be located at 2715 Skyway Drive, Helena, Montana. Other offices for the transaction of business may be located at such other places as the Board may, from time to time, designate.

ARTICLE III  
Purposes and Duration

(1) The purposes of MACo PCT are to provide a joint risk sharing pool and to assist members to prevent and reduce losses and injuries to members' property and to persons or property which might result in claims being made against members of MACo PCT, their employees, officers, or agents whether appointed or volunteer.

(2) It is the intent of the members of MACo PCT to create an entity with unlimited duration which will administer a joint risk sharing pool and use funds contributed by the members of MACo PCT against stated liability or loss, to the limit of financial resources of MACo PCT. It is also the intent of the members to have MACo PCT provide continuing stability and availability of needed coverage at reasonable costs. All income and assets of MACo PCT shall be at all times dedicated to the exclusive benefit of its members.

(3) It is the intent of the members that the MACo PCT may provide coverage under its programs to eligible insureds as determined by the Board and rules of the particular program.

ARTICLE IV  
Manner of Financing

Financing of the MACo PCT shall be based upon risk and loss experience of the members. Annual contributions from members shall include a percentage of Pool expenses and contributions based on risk and loss experience of the insureds, as set by the Board of MACo PCT.

ARTICLE V  
MACo PCT Powers and Duties

The powers of MACo PCT to perform and accomplish the purposes set forth above shall, within the budgetary limits and procedures set forth in this agreement, be the following:

- (1) To employ administrators, agents, employees and independent contractors.
- (2) To purchase, sell, encumber and lease real property and to purchase, sell, or lease equipment, machinery, and personal property.
- (3) To invest funds as allowed by policies adopted by the Board.
- (4) To carry out educational and other programs relating to risk management.
- (5) To create, collect funds for, and administer a joint risk sharing pool.
- (6) To purchase catastrophic, excess and/or aggregate stop loss insurance to supplement the joint risk sharing pool.
- (7) To establish reasonable and necessary loss reduction and prevention procedures to be followed by the members.

(8) To provide risk management and claim adjustment or to contract for such services, including the defense and settlement of claims, subject to specific limitations or restrictions, which shall be imposed and adopted by MACo PCT.

(9) To carry out such other activities as are necessarily implied or required to carry out the purposes and powers of MACo PCT.

(10) To sue and be sued.

(11) To enter into contracts.

(12) To reimburse trustees for reasonable and approved expenses, including expenses incurred in attending board meetings.

(13) To purchase fidelity bonds for all officers, trustees, and employees of MACo PCT.

#### ARTICLE VI Participation

Participation in the MACo PCT shall be limited to counties which are members of the Montana Association of Counties who properly enter into and adopt this agreement, and such other special districts or entities defined as eligible insureds as may be qualified from time to time by the Board for membership. New members shall be admitted subject to the payment of such sums and under such conditions as the board shall in each case or from time to time establish.

#### ARTICLE VII Members' Power and Meetings

(1) The members at a meeting thereof shall have the power to:

(a) Amend the Joint Powers Agreement by a vote of two-thirds (2/3) of the members present at any annual or regular meeting or at any special meeting called for that purpose. Any amendment proposed for submission at any meeting of the members shall be set out in full in the notice of such meeting.

(b) Expel members by a 2/3 vote of the members present at a meeting.

(c) Remove a trustee of the board by a 2/3 vote of the members present at a meeting.

(2) Meetings of the members shall be held as follows:

(a) Members shall meet in January or February at a time and place to be set by the board, with notice mailed to each member at least ten (10) days in advance. Efforts will be made by the board to coordinate the meeting time with other MACo activities such as the annual MACo mid-winter meeting.

(b) Special meetings may be called by the board or by a petition of 1/3 of the members. Notice of special meetings shall be mailed to each member at least ten (10) days in advance.

(c) The chairman of the board will preside at the meetings.

(d) Fifty percent of the members shall constitute a quorum to do business.

(e) A member may vote by proxy only if the proxy is in writing, is limited to particular matters or motions specified in the written proxy and the written proxy gives direction to the member holding the proxy regarding how the absent member's vote is to be cast. Written proxies shall be delivered to the Trust Secretary at or prior to the convening of the meeting.

Proxies shall be in substantially the following form:

#### **GRANT OF PROXY**

In accordance with Article II, Section (2e) of the By-Laws of the Montana Association of Counties Property & Casualty Trust, we/I hereby grant our/my proxy to (insert name of individual and

member entity county) for the purpose of voting on (specify the matter(s) for which the proxy is granted) for the meeting of the Member Entities or Trustees to be held on (insert date of meeting) and direct that our/my vote be cast as follows: \_\_\_\_\_ .

(Signature of Member Entity Representative).

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

- (f) Each member is entitled to one vote on each issue.

ARTICLE VIII  
Obligation of Members

The obligations of members of MACo PCT are as follows:

(1) To pay promptly all annual or other payments to MACo PCT at such times and in such amounts as shall be established by the board pursuant to this agreement. All delinquent payments shall be paid with interest at the rate of 1/2% per month. Annual payments will be considered delinquent after August 15 of each policy year. Payments will not be considered delinquent if other prior arrangements are made for payment and approved by the board. When other arrangements for payment are made, the unpaid amount of the payment shall bear interest at the rate of 1/2% per month. MACo PCT may terminate any policy that involves a delinquent annual payment retroactive to the beginning of the policy year. Other payments will be considered delinquent 30 days after the mailing date of the invoice for payment. MACo PCT may terminate any policy for such delinquent payments 30 days after the mailing date of the invoice for payment.

(2) To designate a voting representative and alternate for the members' meetings. A member's voting representative must be an employee or officer of the member county, but may be changed from time to time.

(3) To allow the board and its agents, officers and employees reasonable access to all premises of the member and all member records, including but not limited to financial records, as required for the administration of MACo PCT.

(4) To cooperate fully with the board's attorneys, claims adjusters and any other administrators, agents, employees, or officer of MACo PCT in activities relating to the purposes and powers of MACo PCT.

(5) To follow the loss reduction and prevention procedures established by the board.

(6) To report to MACo PCT immediately all incidents or occurrences which could reasonably be expected to result in MACo PCT being required to consider a claim against the members, its agents, officers, or employees, or for casualty losses to members' property within the scope of coverage undertaken by MACo PCT.

(7) To adopt a risk management statement approved by the board.

(8) To report to MACo PCT as soon as reasonably possible the addition of new programs and facilities or the significant reduction or expansion of existing programs and facilities or other acts which will cause material changes in the members' risk.

(9) To provide MACo PCT periodically, as requested, with information on the value of buildings and contents and other real and personal properties.

(10) To participate in coverage of losses and to pay contributions as established and in the manner set forth by the board.

ARTICLE IX  
Contributions

It is the intention of MACo PCT to assess contributions from the members as established by the board. The board may increase contributions charged to any members to reflect increased risk resulting from a refusal to participate in or willful violation of safety or loss prevention programs or for other reasons established by the board. Conversely, the board may reduce contributions for any

member that faithfully participates in loss prevention and safety programs or for other reasons established by the board.

ARTICLE X  
Board of Trustees

(1) The business and property of MACo PCT shall be supervised by a seven-member board of trustees. The board shall consist of the president, the 1st vice president, and the executive director of the Montana Association of Counties. The remaining four (4) members shall be elected by the members at the MACo PCT annual membership meeting for a staggered term of 3 years each. Except as herein or by law otherwise required, the trustees shall act by majority vote of the trustees present at a meeting at which a quorum is present. A majority of the board then in office shall constitute a quorum to do business. Each trustee shall have one vote.

(2) Vacancies on the Board elected by the member counties may be filled by a majority of the remaining Trustees, and each Trustee so appointed shall hold office until the next annual membership meeting and until that Trustees' successor has been elected and qualified.

(3) If the president or the 1st vice president is from a non-member county, the trustee position will be immediately filled by a member MACo executive committee officer in the following order: 2nd vice president, fiscal officer, past president, immediate past president and urban representative. If the position cannot be filled as specified above, it will immediately be filled by nominations from the floor at the annual meeting, to be voted upon by the members present, with the member elected serving in the context of the non-MACo PCT member executive committee person.

(4) The board may appoint such secretaries, treasurers and additional officers as it deems advisable. All officers so elected or appointed shall serve at the pleasure of the board.

(5) The board may delegate to MACo staff, a service agent, or an administrator the authority to act on all claim matters between full board meetings.

(6) Trustees shall be reimbursed per diem provided by the MACo officers for each duly called meeting attended, for actual and reasonable expenses incurred in carrying out duties as trustees.

ARTICLE XI  
Officers

(1) There shall be a chairman of the board. Such chairman shall be elected from the board membership at the first meeting of the board after the election of the board at the annual meeting. The chairman shall serve for a term of one year. There is no restriction in serving as chairman in successive years. There shall be a vice chairman of the board. Such vice chairman shall be elected from the board membership at the first meeting of the board after election of the board at the annual meeting. The vice chairman shall serve for a term of one year. There is no restriction in serving as vice chairman in successive years.

(2) The chairman of the board shall preside at all meetings of the trustees and of the members of MACo PCT; shall have general supervision over the affairs of the MACo PCT and over other officers; and shall perform all such other acts and duties as are incident to such executive office, which is comparable to that of president of a corporation. In case of the absence or disability of the chairman, the duties shall be performed by the designated vice-chairman.

(3) The secretary shall record the minutes of all meetings and prepare agendas, records, etc., and other duties normally required of a secretary.

(4) The trustees shall appoint an investment trustee to hold and invest the funds. The investment trustee shall have discretion as to the securities in which the monies of the authority are invested or reinvested, provided that all such investments shall be limited to investments which are permissible under the law and which meet the criteria established for authority investments by the trustees. The trustees may from time to time change the investment trustee at their discretion.

ARTICLE XII  
Powers and Duties of the Board of Trustees

The board shall have the following powers and duties:

- (1) To admit new members in accordance with Article VI.

- (2) To cancel coverage of eligible insureds for nonpayment of premium, deductibles and/or noncompliance with policy conditions and agreements.
- (3) To expel members for noncompliance with this agreement or with the provisions of the manuscripted policy.
- (4) To set underwriting criteria and establish contributions by the members and premiums for eligible insureds.
- (5) To establish the types of losses to be covered, limits of liability on insurance policies, and the types of deductibles which MACo PCT provides.
- (6) To provide for personnel necessary for the MACo PCT administration.
- (7) To set the dates, places and provide an agenda for board and members' meetings.
- (8) To exercise all powers of MACo PCT except powers reserved to the members.
- (9) To prepare, adopt and report MACo PCT's budget to the members.
- (10) To make reports to the members at their meetings.
- (11) To adopt, and to amend from time to time, the insurance policy manuscript governing insurance coverage under the pool.
- (12) To provide for claims administration, settlement, and loss control procedures.
- (13) To provide for the investment and disbursement of funds.
- (14) To establish procedures governing its own conduct and the powers and duties of its officers not inconsistent with this agreement.
- (15) To provide to members annually:
  - (a) An audit of the financial affairs of MACo PCT to be made by a certified public accountant at the end of each fiscal year in accordance with generally accepted auditing principles and state law; and
  - (b) An annual report of operations.
- (16) To form committees and provide other services as needed by MACo PCT. The board shall determine the method of appointment and terms of committee members.
- (17) To do all acts necessary and proper for the operation of MACo PCT and implementation of this agreement subject to the limits of this agreement and not in conflict with this agreement.
- (18) Dissolve MACo PCT and disburse its assets by a 2/3 vote of the entire membership.

ARTICLE XIII  
Meetings of the Board of Trustees

- (1) MACo PCT shall operate on a fiscal year beginning on July 1 and ending on June 30.
- (2) Special meetings of the board may be called by the chairman, and in the chairman's absence by the vice chairman or by any three members of the board. By unanimous consent of the trustees, special meetings of the board may be held without notice; otherwise, notice of all regular and special meetings of the board shall be mailed to each trustee at least ten (10) days prior to the time fixed for the meeting. All notices of special meetings of the board shall state the purpose therefore. If all of the members of the board shall consent in writing to any action taken or to be taken by MACo PCT, such action is valid action as though it had been authorized at a meeting of the board.
- (3) A quorum for the transaction of business at any regular or special meeting of the board shall consist of a majority of the trustees then in office.

(4) The board shall meet no less often than each four months. Notification of all meetings of the board shall be mailed to all members of the Trust at least ten (10) days prior to the time fixed for the meeting. All notices shall state the purpose therefore.

(5) Each trustee member of MACo PCT shall have one vote.

(6) A Trustee may vote by proxy only if the proxy is in writing, is limited to particular matters or motions specified in the written proxy and the written proxy gives direction to the Trustee holding the proxy regarding how the absent Trustee's vote is to be cast. Written proxies shall be delivered to the Trust Secretary at or prior to the convening of the meeting.

Proxies shall be in substantially the following form:

**GRANT OF PROXY**

In accordance with Article XIII, Section 6 of the By-Laws of the Montana Association of Counties Property & Casualty Trust, we/I hereby grant our/my proxy to (insert name of individual and member entity county) for the purpose of voting on (specify the matter(s) for which the proxy is granted) for the meeting of the Member Entities or Trustees to be held on (insert date of meeting) and direct that our/my vote be cast as follows: \_\_\_\_\_.

(Signature of Trustee).

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(7) MACo PCT member counties/affiliate members may attend board of trustee meetings to present information regarding claims adjustments, defense or settlements.

ARTICLE XIV

Liability of Board of Trustees of Officers

The trustees and officers of MACo PCT should use ordinary care and reasonable diligence in the exercise of their power, and in the performance of their duties hereunder; they shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care. No trustee shall be liable for any action taken or omitted by any other trustee. MACo PCT shall obtain a bond or other security to guarantee the faithful performance of each trustee's and officer's duties hereunder. The joint risk management pool shall be used to defend and indemnify any trustee, officer, or employee for actions taken by each such persons in good faith within the scope of his or her authority for MACo PCT. MACo PCT may purchase insurance providing similar coverage for such trustees, officers and employees.

ARTICLE XV

Withdrawal from Membership

Any member may withdraw from MACo PCT after the member's initial two (2) year term effective July 1 by giving notice in writing of its desire to withdraw, no later than thirty days after the renewal proposal was sent or presented to the member. Any member may withdraw from MACo PCT within fifteen (15) days after the adoption of an amendment to this agreement by giving notice in writing to the board of its intent to withdraw. The withdrawn member shall not be entitled to any reimbursement of loss fund contributions that have been paid or surplus and dividends that become payable in the future, and shall continue to be obligated to make any payment for which such obligation arose prior to such withdrawal. A member of MACo PCT that subsequently terminated such membership in MACo PCT and that chooses to again become a member of MACo PCT must petition the board, and receive approval from the board, before again becoming a member.

ARTICLE XVI

Expulsion of Members

(1) By a two-thirds (2/3) vote of the members present at a meeting, any member may be expelled. Such expulsion, which shall take effect sixty (60) days after such meeting, may be carried out for one or more of the following reasons:

(a) Failure to undertake or continue loss reduction and prevention procedures adopted by MACo PCT.

(b) Failure to allow MACo PCT reasonable access to all facilities and records of the members necessary for proper administration of MACo PCT.

(c) Failure to fully cooperate with MACo PCT's attorneys, claims adjusters, or other administrator, agent, employee, or officer of MACo PCT.

(d) Failure to carry out any obligation of a member who impairs the ability of MACo PCT to carry out its purpose or powers.

(2) No member may be expelled except after notice from the board of the alleged failure along with the reasonable opportunity of not less than thirty (30) days to cure the alleged failure. The member may request a hearing before the members before any final decision, which shall be held within fifteen (15) days after the expiration of the time to cure has passed. The board shall present the case for expulsion to the members. The member affected may present its case. A decision by the membership to expel a member after notice and hearing and failure to cure the alleged defect shall be final and take effect sixty (60) days after the decision to expel is approved by the members. After expulsion, the former member shall be liable for any unpaid contributions or other charges pro rata to the effective date of expulsion, and shall not be entitled to reimbursement of contributions that are to be paid or that shall become payable in the future.

ARTICLE XVII  
Contractual Obligation

This document shall constitute a joint powers agreement among those counties which become members of MACo PCT. The terms of this agreement may be enforced in court by MACo PCT itself or by any of its members. The consideration for the duties herewith imposed upon the members to take certain actions and to refrain from certain other actions shall be based upon the mutual promises and agreements of the members set forth herein. A certified copy of the ordinance, resolution or other document of approval for each member accompanied by the county clerk's certification of proper authority and adoption shall be attached to the original agreement on file with MACo PCT. Except to the extent of the limited financial contributions to MACo PCT agreed to herein or such additional obligations as may come about through amendments to this agreement, no member agrees or contracts herein to be held responsible for any claims in tort or contract made against any other member. The contracting parties intend in the creation of MACo PCT to establish an organization for joint risk management only within the scope herein set out, and have not herein created as between member and member any relationship of surety, indemnification or responsibility for the debts of or claims against any other member.

ARTICLE XVIII  
Distribution of Property, Funds, and Supplies Upon Termination of this Agreement

Termination of this agreement shall be accomplished by a majority vote of the member counties of the State of Montana. If the members order termination of this agreement, after honoring all claims and related expenses, then all unused consumable supplies, nonconsumable supplies or other property acquired by the MACo PCT shall be disposed of in a manner permissible by law, and the proceeds of such liquidation shall be disbursed to the members at a rate equal to each member's pro rata share of its equity into the MACo PCT joint risk management pool from the time said program was commenced until the time that it was terminated.

ARTICLE XIX  
Severability

If any article, provision, clause, or other part of this agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, provisions, clauses, applications, or occurrences, and this agreement is expressly declared to be severable.

ARTICLE XX  
Financing Technique

Anything elsewhere in this agreement to the contrary notwithstanding, MACo PCT shall also have the power to finance all or any portion of the risks or liabilities assumed by it hereunder through the use of bonds or any other risk financing techniques now known or devised in the future and to utilize such bonds and other risk financing techniques singly, or in any combination thereof, or in combination with traditional insurance or excess insurance coverages and pooled self-insurance, as the trustees may deem appropriate from time to time.

ARTICLE XXI  
Joint and Several Liability

Anything elsewhere in this agreement to the contrary notwithstanding, the members shall be jointly and severally liable for the obligations of MACo PCT properly entered into under the terms of this agreement, including, but not necessarily limited to, the liability of MACo PCT under any coverage agreement properly issued by it hereunder to members, costs of operation of MACo PCT, insurance premiums and liability for repayment of principal and interest in relation to any bond issue or other debt instrument properly entered into under the terms hereof.