

NEW JERSEY MUNICIPAL ENVIRONMENTAL RISK MANAGEMENT FUND

BY-LAWS

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NEW JERSEY MUNICIPAL ENVIRONMENTAL RISK MANAGEMENT FUND
Park 80 West Plaza One
Saddle Brook, N.J. 07663

By-laws

Organized: _____ By-laws Adopted: _____

STATEMENT OF PURPOSE

In 1984, the commercial insurance marketplace excluded all environmental risks from general liability insurance policies underwritten for municipalities and other Local Units. Since then, there has been no coverage available for these exposures, leaving the municipalities and other Local Units substantially at risk for the full financial burden of environmental claims.

Municipalities remain liable for damages caused by waste they have generated and disposed of at sites which are the subject of investigations and/or clean-ups under CERCLA or the New Jersey Spill Act, both of which provide for joint and several liability of any generator, hauler, or operator of a disposal site with regard to damages, injury, and environmental damage. Furthermore, the state and federal laws governing the removal and testing of underground storage tanks imposes similar liability on municipalities and Local Units. In addition, municipalities and Local Units remain exposed for damages suffered or caused by illegal dumping on their property, and accidental spills of hazardous or toxic materials on their property.

The Municipal Excess Liability Joint Insurance Fund ("MEL") provides excess casualty coverage for Property and Casualty Joint Insurance Funds ("JIFs"). However, neither the JIFs or the MEL currently provide environmental coverage.

Pursuant to enabling legislation enacted in October, 1993, environmental joint insurance funds are now permitted, resulting in the creation of the New Jersey Environmental Risk Management Fund, ("Fund"). The Fund is established by JIFs which seek to provide their member municipalities and utility authorities with environmental coverages.

ARTICLE I - DEFINITIONS

The By-laws adopt the definitions set forth in NJAC 11:15 2.1 et seq by reference. For the purposes of the By-Laws, unless the context requires otherwise, the following words and phrases shall have the meanings indicated:

"ACTUARY" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent Experience in Loss reserving.

"ADMINISTRATOR" or **"EXECUTIVE DIRECTOR"** means a person, partnership, corporation or other legal entity engaged by the Fund to act as Executive Director, to carry out the policies established by the Fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the Fund.

"BOND" means bonds and other obligations, such as letters of credit, authorized and issued by the Fund.

"BOND RESOLUTION" means a resolution adopted by the Fund describing the bonds to be authorized and issued and the bonds or indebtedness to be funded or refunded.

"EXCESS INSURANCE" means insurance purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner of Insurance as a surplus lines insurer, covering losses in excess of an amount set forth in the insurance contract on a specific per occurrence, or per accident, or annual aggregate basis.

"FUND" means the New Jersey Municipal Environmental Risk Management Fund.

"FUND YEAR" means the Fund's calendar year of January 1st through December 31st.

"INDEMNITY AND TRUST AGREEMENT" means a written contract signed by and duly adopted by the members of the Fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the Fund.

1. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the Fund commissioners as fiduciaries for the benefit of Fund claimants.
2. Where the Fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities, the agreement shall require and provide for the establishment of a separate trust account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums.

"LOCAL UNIT" means a municipality, county, or any board of education which is a member of a PARTICIPANT as defined herein.

"PARTICIPANT" means a Property-Casualty Joint Insurance Fund organized pursuant to N.J.S.A. 40A:10-36 et.seq. or N.J.S.A. 18A:18B-1 et. seq., a municipal or county utilities authority, or a county, municipality, or Board of Education which is not a member of a property-casualty Joint Insurance Fund.

"SERVICING ORGANIZATION" means an individual, partnership or corporation which provides services to the Fund not provided by the Administrator, Fund Attorney, Treasurer, Auditor or Underwriting Manager, including but not limited to:

- Claims adjusting
- Environmental safety engineering
- Compilation of statistics and the preparation of assessment, loss and expense reports.
 - Preparation of reports required pursuant to P.L.1983 c.372 or any regulations and/or rules of the New Jersey Department of Insurance including but not limited to N.J.A.C. 11:15-2.
- Claims administration
- Actuarial Services

"SURPLUS" means that amount of monies in a trust account that is in excess of all costs, earned investment income, returned surplus, incurred losses and loss adjustment expenses and incurred but not reported reserves including the associated loss adjustment expenses attributed to the Fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

ARTICLE II - MEMBERSHIP

Agreement To Join The Fund:

1. Pursuant to N.J.S.A. 40A:10-36, the governing body of a qualified Participant shall by resolution or ordinance, as appropriate, agree to join the Fund.
 - a. The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the Fund's bylaws or approved and adopted pursuant to N.J.S.A. 40A:10-36.
 - b. The agreement shall specify the extent of the Participant's participation in the Fund with respect to the types of insurance coverage to be provided by the Fund and shall include the duration of Fund membership, which in no event shall exceed three years pursuant to N.J.S.A. 40A:11-15 (6).

2. The agreement shall include an executed Indemnity and Trust agreement.
3. All applicants to the Fund must also include a written statement certifying that the applicant has never defaulted on claims if self-insured, and has not been canceled for non-payment of insurance premiums for a period of at least two years prior to the application.

Initial Membership:

Any Participant which participated in the feasibility study may be a part of the Fund's application subject to approval by the Commissioner of Insurance and the Department of Community Affairs.

Subsequent Membership:

1. Any applicant seeking membership after the Fund's initial approval by the Commissioners of the state Department of Insurance and Department of Community Affairs shall submit an application for membership to the Fund on a form acceptable to the Commissioner of Insurance. The application shall include an executed Indemnity and Trust agreement and other documentation required in Section A above.
2. An application may be approved by a majority vote of the Fund commissioners or two-thirds vote of the full authorized membership of the executive committee based on the following criteria:
 - a. The applicant's control of environmental hazards and its environmental claims history is consistent with the Fund's objectives and indicates a prospective likelihood of satisfactory future claim performance.
 - b. The Fund has the administrative capability to absorb additional memberships.
 - c. If the applicant has a sewage treatment facility(ies), the rated capacity must be less than 80 million gallons per day.
3. If the application is approved by the Fund, it shall be concurrently filed with the state Department of Insurance and the Department of Community Affairs and shall be accompanied by such amendments to the Fund's Budget and Plan of Risk Management as may be appropriate.
4. No new membership in the Fund shall become effective until the application and accompanying amendments to the Fund's Budget and Plan of Risk Management are approved by the Commissioners of Insurance and Community Affairs.

Conditions Of Membership:

As a condition of membership, each Participant shall:

1. Actively participate in all Fund sponsored Environmental Risk Management Programs.
2. Provide for one or more Insurance Producers, as defined under N.J.S.A. 17:22A-1, who shall not be a Fund commissioner, or employed by or under contract to the Fund, to be a servicing organization or an administrator.
 - a. The Insurance Producer(s) shall be appointed by the Participant or Local Unit in conformance with the Local Public Contracts Law. The contract shall be submitted to the Fund for approval, after which the contract shall be filed by the Fund with the Department of Insurance and the Department of Community Affairs, Division of Local Government Services.
 - b. The Participant shall inform the Fund in writing of the manner in which it will provide for the Insurance Producer(s) prior to the effective date or renewal date of its coverage for the ensuing Fund year.
 - c. A Participant may elect to perform all or any portion of the duties of the Insurance Producer through its own staff upon approval of the Fund.
 - d. If the Participant performs the services of the Insurance Producer itself, it shall agree to indemnify and hold harmless the Fund, Fund commissioners, appointed officials and other Fund servants, agents and employees from any and all claims arising from its decision to act in such manner.
 - e. The Insurance Producer's specific responsibilities shall include, but not be limited to:
 - i. Evaluation of the Local Unit's exposure.
 - ii. Explanation of the various coverages available from the Fund and assisting the Local Unit in the selection of proper coverage.
 - iii. Preparation of applications, statement of values, etc., required by the Fund.
 - iv. Review of the Participant's and/or Local Unit's assessment.
 - v. Assist in the claims settlement process
 - vi. Review losses and engineering reports and provide assistance to the Local Unit's safety committee.

Membership Renewals:

1. Participants may renew their participation by execution of a new agreement to join the Fund ninety (90) days prior to the expiration of the term.
2. The Fund commissioners/executive committee must act upon any renewal application no later than forty five (45) days prior to the expiration of the term period. Otherwise, the renewal application is automatically approved.
3. In order to deny a renewal application, the Fund shall find by majority vote that the applicant has failed to fulfill its responsibilities as a Participant or no longer meets the Fund's written environmental risk management standards or other objective criteria duly adopted.
4. If a Participant's renewal application is rejected, the Fund shall comply with the provisions as outlined in subsection F2, 3 and 4 below.
5. Non-renewal of a Fund member does not relieve the Participant of responsibility for claims or other liabilities incurred during its period of membership.

Termination And/Or Withdrawal Of Fund Participants:

1. A participating Participant must remain in the Fund for the full term of membership unless earlier terminated by a majority vote of the Fund commissioners or a two-thirds vote of the executive committee for non-payment of assessments or continued non-compliance after receiving written notice to comply with the Fund's bylaws or other obligations. However, a Participant shall not be deemed terminated until:

- a. The Fund gives, by registered or certified mail to the Participant, a written notice of its intention to terminate the Participant in ten (10) days; and
- b. Like notice shall be filed with the Department of Insurance and Department of Community Affairs, together with a certified statement that the notice provided for above has been given; and
- c. Ten (10) days have elapsed after the filing required by "b" above.

2. A Participant of the Fund that does not desire to continue as a member after the expiration of its membership term shall give written notice to the Fund of its intent ninety (90) days before the expiration of the term period. The Fund shall immediately notify the Department of Insurance and the Department of Community Affairs that the Participant has given notice to leave the Fund.
- 7 3. A Participant that has been terminated or does not continue as a Participant of the Fund shall remain jointly and severally liable for claims and other liabilities incurred

by the Fund and its Participants during the period of its membership, including, but not limited to being subject to and liable for supplemental assessments.

4. The Fund shall immediately notify the Department of Insurance and the Department of Community Affairs if the termination or withdrawal of a Participant causes the Fund to fail to meet any of the requirements of P.L. 1983, c.372 (NJSA 40A:10-36 et seq.) or any other law or regulation of the State of New Jersey. Within fifteen (15) days of such notice, the Fund shall advise the Department of Insurance and the Department of Community Affairs of its plan to bring the Fund into compliance.
5. A Fund Participant is not relieved of the claims or other liabilities incurred during its period of membership except through payment by the Fund or Participant of those claims or liabilities.

ARTICLE III - ORGANIZATION

Commissioners:

1. Appointment:

a. **Commissioners:** In the manner generally prescribed by law, each Participant shall appoint one (1) commissioner to the Fund who shall be a member of the governing body, or an employee of the Participant.

b. **Alternate:** Each Participant shall appoint one (1) alternate to attend either regular or special meetings on behalf of the Participant in the absence of the Fund commissioner. The alternate shall exercise the full power and authority of the Fund commissioner in his/her absence, including the right to vote and shall be either a member of the governing body, or an employee of the Participant.

2. Terms of Office and Vacancy:

a. All terms of office shall expire on January 1st or until a successor is duly appointed and qualified.

b. A commissioner who is a member of a Local Unit's governing body shall hold office for two years or for the remainder of his/her term of office as a member of the governing body, whichever shall be less.

c. Commissioners shall hold office at the pleasure of the Participant and can be removed by the Participant at any time without cause.

- d. Where a vacancy occurs, the unexpired term of a commissioner, shall be filled by the appointing Participant in the manner generally prescribed by law.
- e. Fund commissioners/executive committee may vote to pay themselves a fee for attending meetings, not to exceed \$150 per meeting as authorized by Section 2 of P.L.1983 c.372 (C.40A:10-37)

3. **Responsibilities and Powers:**

- a. Each commissioner's vote shall be proportional to the current year's assessment of the Participant represented by the commissioner.
- b. Each commissioner shall be responsible to monitor all Fund activities through attendance at meetings and/or examination of the monthly minutes and reports.
- c. The commissioners are hereby authorized and empowered to operate the Fund in accordance with these bylaws and appropriate state laws and regulations.
- d. For the purpose of raising funds to provide for environmental impairment liability insurance or for the purpose of funding or refunding a bond or other indebtedness, including a letter of credit in connection with environmental impairment liability insurance, the commissioners shall have the power to authorize and issue or provide for the issuance of bonds except that the total aggregate amount of any such bonds, borrowings and letters of credit outstanding at any one time shall not exceed ten million dollars (\$10,000,000.00).

- i. No funds so raised shall be used for administrative expenses of the Fund.
- ii. Before issuing or providing for the issuance of bonds, the commissioners and/or executive committee as applicable shall adopt a bond resolution which shall (a) describe the bonds to be authorized and issued and the bonds or indebtedness to be funded or refunded, if any; (b) state the cost or estimated cost of the project, if any; and (c) provide for the issuance of bonds in accordance with NJSA 40A:10-36.
- iii. No bond resolution shall be adopted unless the Participants representing at least two-thirds of the Fund's current annual assessments have approved the proposed bond resolution by resolution or ordinance of each approving Participant, which resolution or ordinance has been duly certified by the appropriate officer of the Participant and filed with the secretary of the Fund.
- iv. Any debt incurred by the Fund shall be subject to the oversight provisions of sections 6, 7 and 8 of NJSA 40A:5A-6 and NJSA 40A:5A-8.
- v. Upon adoption of a bond resolution, the commissioners and/or executive committee as applicable shall have the power to incur indebtedness, including bond anticipation notes, borrow money and issue its bonds for the purpose of providing environmental impairment liability insurance or funding or refunding any bonds or other indebtedness including letter of credit. A bond may be issued in one or more series. A bond shall bear the date provided in the resolution and shall mature on a date not exceeding 20 years from the date on the bond. A bond shall bear interest at a rate within the maximum rate, be in the denomination and the form, carry the conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the State, and be subject to such terms of redemption, with or without premium, as the bond resolution may provide.
- vi. Bonds may be sold by the Fund at public or private sale at a price determined by the commissioners of the Fund.
- vii. A copy of a bond resolution shall be filed for public inspection in the Fund office and in the offices of the clerks of the Participants which are members of the Fund. The Fund shall cause to be published in a newspaper published or circulating in the jurisdiction of the Participants a notice stating the fact and date of the adoption, the

places where the bond resolution has been filed for public inspection, and the date of the first publication. The notice also shall state than any action or proceeding of any kind in any court questioning the validity or proper authorization of a bond provided for by the bond resolution, or the validity of any covenant, agreement or contract provided for by the bond resolution shall be commenced within 20 days after the first publication of the notice. If after the notice is published, no action or proceeding questioning the validity or proper authorization of a bond provided for by the bond resolution referred to in the notice, or the validity of a covenant, agreement or contract provided for by the bond resolution is commenced within 20 days after the first publication of the notice, then all Participants of the Fund, their residents, and all other persons shall be forever barred from commencing an action or proceeding, questioning the validity of the creation and establishment of the Fund, or the validity or proper authorization of the bonds, or the validity of a covenant, agreement or contract, and the Fund shall be conclusively deemed to have been validly created and established and to be authorized to transact business and exercise powers as a joint insurance fund and the bond, covenant, agreement or contracts shall be conclusively deemed to be a valid and binding obligation in accordance with its terms and tenor.

- viii. The commissioners and/or executive committee as applicable shall have the power by provision in the bond resolution to covenant and agree with the several holders of a bond, as to:
- a) the custody, security, use, expenditure or application of the proceeds of a bond;
 - b) payment of the principal of or interest on a bond and the sources and methods thereof, the rank or priority of a bond obligation as to a lien or security, or the acceleration of the maturity of a bond;
 - c) the use and disposition of any moneys of the Fund;
 - d) pleading, setting aside, depositing or trusteeing all or any moneys of the Fund to secure the payment of the principal of or interest on the bond, and the powers and duties of a trustee with regard thereto;
 - e) the setting aside out of the moneys of the Fund of reserves and sinking funds, and the source, custody, security, regulation, application and disposition thereof;
 - f) determination or definition of the moneys of the Fund or of the expenses of its operation;

- g) The assessment or other charges imposed by the Fund and the fixing, establishment, collection and enforcement of same, the amount to be raised thereby, and the disposition and application of the amount charged or collected;
- h) the assumption or payment of any indebtedness, lien or other claim against the Fund or any obligation having or which may have a lien on any moneys of the Fund;
- i) limitations on the issuance of additional bonds or on the incurrence of indebtedness of the Fund;
- j) vesting in a trustee or trustees within or without the State the rights, powers and duties in trust determined by the fund, which powers and duties may include any or all of the rights, powers and duties of the trustee appointed by the holders of bonds and limiting or abrogating the right of the holders to appoint a trustee or limiting the rights, duties and powers of the trustee;
- k) payment of costs or expenses incident to the enforcement of the bonds or of the provisions of the bond resolution or of any covenant or contract with the holders of the bonds;
- l) the procedure, if any, by which the terms of a covenant or contract with, or duty to, the holders of bonds may be amended or abrogated, which holders of bonds are required to consent to such an amendment or abrogation before it can be enforced, and the manner in which the consent may be given or evidenced; or
- m) any other matter or course of conduct which, by recital in the bond resolution, is declared to further secure the payment of the principal of or interest on the bonds.

All provisions of the bond resolution and all covenants and agreements shall constitute valid and legally binding contracts between the Fund and the several holders of the bonds, regardless of the time of issuance of the bonds, and shall be enforceable by any holder by appropriate action, suit or proceeding in lieu of prerogative writ.

- ix. If the bond resolution authorizing or providing for the issuance of a series of bonds provides in substance that the holders of the bonds in the series shall be entitled to the benefits of this subsection, then in the event that there is a default in the payment of principal of or interest on any bonds of the series after the same becomes due, whether at maturity or upon call for redemption, and the default continues for a period of 30 days, or in the

event that the Fund fails or refuses to carry out and perform the terms of a contract with the holders and the bonds, and the failure or refusal continues for a period of 30 days after written notice to the Fund of its existence and nature, the holders of 25 percent in aggregate principal amount of the bonds of the series then outstanding by instrument or instruments filed in the office of the Secretary of State and proved and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds of the series to exercise all powers and rights granted to a trustee pursuant to NJS 40A:10-36.

- x. If the bond resolution authorizing or providing for the issuance of a series of its bonds provides in substance that the holders of the bonds of the series are entitled to the benefits of subsection ix of this section and further provides that any trustee appointed pursuant to subsection ix of this section or having the powers of such a trustee has the powers provided by this subsection, then the trustee, whether or not all of the bonds of the series have been declared due and payable, shall be entitled as of right to the appointment of a receiver of the Fund, and the receiver may enter upon and take possession of all moneys and other property of the fund and fix, charge, collect, enforce and receive the assessments and all moneys thereafter arising subject to any pledge thereof or contract with the holders of the bonds relating thereto and perform the duties and carry out the contracts and obligations of the Fund in the same manner as the Fund itself might do and under the direction of the court.
- xi. Neither the commissioners of the Fund nor any person executing bonds issued pursuant to these By-laws shall be liable personally on the bonds by reason of the issuance thereof. Bonds issued by the Fund pursuant to NJS 40A:10-36 shall not be in any way a debt or liability of the State, either legal, moral or otherwise, nor shall they be in any way a debt or liability of any Participant of the Fund, either legal, moral or otherwise, except as provided by NJS 40A:10-36 and nothing in these By-laws shall be construed to authorize the Fund to incur any indebtedness on behalf of or in any way to obligate the State or any Participant.
- xii. Nothing in these bylaws shall be construed to alter or impair the power of the Commissioner of Insurance to suspend or terminate the authority of the Fund or to assume control of the Fund in order to enable the Fund to meet its obligations, cover its expected losses or to liquidate, rehabilitate or otherwise modify its affairs.

Officers:

1. At the January meeting, the commissioners shall meet to elect the officers of the Fund from its own membership. Fund officers shall serve until the January meeting of the following year, or until a successor is duly elected and qualified.
 - a. **Chairperson:** The chairperson shall preside at all meetings of the Fund commissioners/executive committee and shall perform such other duties provided for in these bylaws and the laws and regulations of the State of New Jersey.
 - b. **Secretary:** The secretary shall preside over the meetings of the Fund commissioners/executive committee in the absence of the chairperson, maintain written minutes of its meetings, retain all books, records, files and other documents of the Fund, and shall perform such other duties as provided for in these bylaws and the laws and regulations of the state of New Jersey.

The secretary shall have the responsibility to maintain the books and records of the Fund at the office of the Fund as from time to time designated by the Fund commissioners, which office the secretary shall have free access to.

2. In the event of a vacancy in any of the officer positions caused by other than the expiration of the term of office, the commissioners shall by majority vote fill the vacancy for the unexpired term.
3. Any officer can be removed without cause at any time by a two-thirds vote of the full membership of the Fund commissioners. In this event, the full membership of the Fund commissioners shall vote to fill the vacancy for the unexpired term.

Fund Professionals:

At the January meeting, the commissioners/executive committee shall meet and select individuals to serve in the following professional positions. These individuals shall serve until the January meeting of the following year, or until a successor is duly appointed and qualified where permitted by law. Where required by law, all professional officials shall be retained pursuant to the "Local Public Contracts Law."

1. **Treasurer:** The Treasurer shall not be a commissioner. The Treasurer shall have the following duties and responsibilities:
 - a. The Treasurer shall be the custodian of the Fund's assets and shall maintain the various trust Funds.
 - b. The Treasurer shall approve all receipts, payments, and financial records.
 - c. The Treasurer shall prepare the Fund's cash management plan and shall invest all balances.

- d. The Treasurer shall perform such other duties as provided for by the Fund commissioners/executive committee, these bylaws and in the laws and regulations of the State of New Jersey.
- e. The Treasurer shall be covered by a fidelity bond protecting the Fund's assets in a form and amount to be determined annually by the commissioners/executive committee. Said bond to be paid for by the Fund.

2. Executive Director/Administrator:

- a. The Administrator shall be experienced in risk management matters and shall not be a commissioner of the Fund.
- b. Except with the approval of the Commissioner of Insurance, the Administrator, its employees, officers or directors shall not be an employee, officer or director of or have either a direct or indirect financial interest in a servicing organization or any organization which acts as an insurance producer for member Participants.
- c. The Administrator shall have the following duties and responsibilities:
 - i. Prepare for approval of the Executive Committee and implement the Fund's operations manual and the policy and procedures manual.
 - ii. Prepare the Fund's budget, compile and bill the assessments.
 - iii. Maintain the Fund's underwriting files, prepare new member submissions for review by the Executive Committee, and supply underwriting data to other Fund professionals as needed.
 - iv. Maintain the Fund's general ledger, accounts payable and accounts receivable functions.
 - v. Coordinate the Fund's meeting agendas, minutes, elections, contracts, as well as, maintain the Fund's official records and office.
 - vi. Prepare all filings required by the State regulators.
 - vii. Attend all meetings of the Executive Committee.
 - viii. Perform such other duties specified by the Executive Committee in its manual of operations, pertaining to the Executive Director.
 - ix. Assume overall Executive responsibility for the operations of the Fund except that the Administrator shall not be responsible for the errors and omissions of any other servicing organization except as to generally monitor the compliance of said organization with the directions of the Executive

Committee, their service Provider contract, or applicable statutes and regulations as to form and timeliness of said undertakings. For example, the Administrator shall be responsible to verify the issuance of the excess or reinsurance policies and the timely receipt of said policies by the Fund, however, the Administrator shall not be responsible for the content of the policies or the adequacy of the coverage.

d. The Administrator shall be bonded in a form and amount acceptable to the Commissioner of Insurance. The Administrator shall also be covered by Errors and Omissions insurance as provided by NJAC 11:15-2 and/or supplements or amendments thereto. Said coverage to be paid by the Fund.

3. **Auditor:** The auditor shall be an independent certified public accountant (CPA) or a registered municipal accountant (RMA) but shall not be a commissioner. The auditor shall conduct the annual audit of the Fund and shall perform such other duties as provided for by the Fund commissioners/executive committee, these By-laws and the laws and regulations of the State of New Jersey.

4. **Attorney:**

a. The Attorney shall be admitted to the New Jersey Bar but shall not be a Fund commissioner.

b. The Attorney shall have the following responsibilities:

i. The Attorney shall advise the Fund on legal matters and the appropriateness of claim settlements recommended by the claims administrator.

ii. The Attorney shall advise the commissioners/executive committee on the selection of counsel to represent the Fund in the defense of claims. However, the Attorney or any member of the Attorney's law firm shall not defend any claim which is the responsibility of the Fund without the authorization of the commissioners/executive committee.

iii. The Attorney shall perform such other duties as provided for by the Fund commissioners/executive committee, these bylaws and the laws and regulations of the State of New Jersey.

5. **Underwriting Manager:**

a. The Underwriting Manager shall be experienced in risk management matters and shall have the minimum qualifications as defined in NJSA 17:22 A-1. The Underwriting Manager shall not be a commissioner of the Fund.

b. The Underwriting Manager shall have such duties as detailed in the Plan of Risk Management which may include:

- i.Coordinating the insurance producers appointed by the Participants pursuant to Article II subsection D.
 - ii.Assisting in developing and implementing the Fund's membership programs designed to attract potential members as well as retain existing membership.
 - iii.Providing input to the Fund's Coverage Committee in the preparation of the Coverage Manual.
 - iv.Attend meetings of potential members at the request of a Producer or the Fund.
 - v. Performing such other duties as provided for by the Fund.
6. **Service Agent:** The Fund shall designate and appoint an agent in New Jersey to receive service and process on behalf of the Fund.
7. All Fund professionals shall be retained on a contractual basis which shall be approved by the Fund commissioners/executive committee and submitted to the Commissioner of Insurance and the Commissioner of Community Affairs.
8. Fund professionals shall be compensated for their services pursuant to written fee guidelines submitted annually and approved by a majority of the Fund commissioners/executive committee. The written fee schedule shall be part of the official contract.

Executive Committee:

1. If the total number of commissioners exceeds seven (7),as soon as possible after the beginning of the year, the Fund commissioners shall meet and elect five (5) Fund commissioners to serve with the chairperson and the secretary as the executive committee of the Fund. During their term of office, members of the executive committee shall exercise the full power and authority of the commissioners except as otherwise provided. Wherever the term "commissioners/executive committee" appears in these By-laws, that term shall be interpreted to mean "executive committee", except in those cases where the express language and content of these By-laws or applicable statutes dictate otherwise.
2. The executive committee shall serve co-terminously with their underlying office, until the January meeting of the following year, or until their successors are duly elected and qualified.

3. In the event the commissioners shall elect an executive committee, they may also elect no more than seven (7) commissioners to serve as alternate members of the executive committee to attend either regular or special meetings to serve in the absence of a member or members of the executive committee. An alternate or alternates serving in the absence of a member, or members, of the executive committee shall exercise the full power and authority of an absent member or members.
 - a. Alternates shall serve in established priority order, designated as alternate #1 and alternate #2, etc.
4. Vacancies on the executive committee caused by a reason other than the expiration of the term of office shall be filled by the Board of Fund Commissioners.
5. The executive committee shall oversee the Fund professionals and the operation of the Fund to assure compliance with these By-laws and applicable rules and regulations.

Indemnification Of Officers And Employees:

1. The Servicing Organization and Administrator shall provide Errors and Omissions coverage in a form satisfactory to the Commissioner of Insurance.
2. The Fund commissioners/executive committee, at their discretion may require the auditor, Treasurer, Fund Attorney, defense attorneys or other Fund professionals and/or servicing organizations, to produce evidence of Errors and Omissions coverage, and such other coverages as they deem advisable, as a condition of employment.
3. Except to the extent covered by Errors and Omissions insurance as may be required, as set forth above, the Fund shall indemnify any past, present or future Fund commissioner, official or employee of the Fund for claims arising from an act or omission of such Fund commissioner, official or employee within the scope of the performance of such individuals' duties as Fund commissioner, officials or employee. Such defense and indemnification shall include reasonable attorney's fees, costs and expenses incurred in defending such claims. Nothing contained herein shall require the Fund to pay punitive damages or exemplary damages or damages arising from the commission of a crime by such an individual and the Fund shall not be required to provide for the defense or indemnification of such an individual when the act or omission which caused the injury was the result of actual fraud, malice, gross negligence or willful misconduct of such individual or in the event of a claim against such an individual by the State of New Jersey or if such Fund commissioner, official or employee is either covered, or required to be covered by Errors and Omissions liability insurance.

The determination as to whether an individual's conduct falls within any of the above exceptions shall be made by the Fund commissioners/executive committee. Nothing herein contained is intended to shield any employee or appointed official from liability

for any act, omission or wrongdoing which would not customarily be covered by Errors and Omissions insurance if same had been required of said employee or appointed official.

4. A present, past or future Fund commissioner, official or employee of the Fund shall not be entitled to a defense or indemnification from the Fund unless:
 - a. Within ten (10) calendar days of the time he or she is served with the summons, complaint, process, notice or pleading, he or she delivers the original or exact copy to the Fund chairman with a copy to the Fund Attorney, selected by the Fund to handle such matters, together with a written request that the Fund provide for his or her defense.
 - b. He or she cooperates in the preparation and presentation of the defense with the attorney selected to defend the case.
 - c. He or she agrees that the Fund and its counsel shall have exclusive control over the handling of the litigation, and the right to settle the litigation, except in those instances where a conflict of interest exists, as determined by an attorney selected by the Fund to handle such matters.
5. The forgoing right of indemnification shall not be exclusive of any other rights to which any Fund commissioner, official or employee may be entitled as a matter of law or which may be lawfully granted to him or her; and the right to indemnification hereby granted by this Fund shall be in addition to and not in restriction or limitation of any other privilege or power which the Fund may lawfully exercise with respect to the indemnification or reimbursement of a Fund commissioner, official or employee; except that in no event shall a Fund commissioner, official or employee receive compensation in excess of the full amount of a claim and reasonable costs and expense incurred in defending such claim.
6. Expenses incurred by any Fund commissioner, official or employee in defending an action, suit or proceeding may be paid by the Fund in advance of final determination of such action, suit or proceeding as authorized by the Fund in a specific case upon receipt of an undertaking by or on behalf of such member or officer to repay such amount in the event of an ultimate determination that his or her conduct was such as to fall outside the scope of coverage under this indemnification provision.

Environmental Safety Committee:

1. **Membership:** Each Local Unit shall appoint one of its management employees to serve as the environmental safety coordinator for the Local Unit. The Local Unit shall also designate a management employee to serve as alternate environmental safety coordinator whenever the environmental safety coordinator is unable to serve. The environmental safety coordinator and the alternate shall serve at the pleasure of the

Local Unit and shall perform those duties specified in the Fund's Environmental Loss Control Program.

2. The Fund's environmental safety committee shall consist of at least five (5) members as follows:
 - a. A member of the Fund's Executive Committee who shall serve as chairperson of the Environmental Safety Committee;
 - b. The Fund's environmental safety director; and
 - c. At least three (3) other members appointed by the Executive Committee.
3. Duties: The environmental safety committee shall meet at least annually and shall have the following duties or responsibilities.
 - a. Confer with the Fund's environmental safety director to develop a comprehensive environmental safety and loss control program and recommend same for approval by the Fund's Executive Committee.
 - b. Monitor all environmental loss trends in order to identify problem areas and Local Unit activities and programs requiring more frequent loss control surveys and evaluations.
 - c. Assist in the development of an environmental safety educational program that will include visual aids, equipment, etc.
 - d. Make recommendations to the Fund for policies that will implement a comprehensive environmental safety and loss control program for the Fund and the member Local Units.
 - e. Perform such other duties that are assigned by the Fund commissioners or required by law.

ARTICLE IV -OPERATION OF THE FUND

General Operation:

1. The Fund shall be subject to and operate in compliance with the provisions of the Local Fiscal Affairs Law (N.J.S.A. 40A:5-1 et seq.), the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the "Local Government Ethics Law" (N.J.S.A. 40A:9-1, et.seq.) and the various statutes authorizing the investment of public funds, including but not limited to N.J.S.A. 40A:10-10 (b), 17:12B-241 and 27:9-4.1.

2. The Fund shall be considered a Local Unit for purposes of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.
3. The Fund shall be operated with sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met. The Fund shall prepare a financial statement on a form acceptable to the Commissioner of Insurance showing the financial ability of the Fund to meet its obligations. The Participants through their representative Commissioners, may, upon majority vote, request that the Commissioner of Insurance order an examination of any Fund Participant which the Fund commissioners in good faith believe may be in a financial condition detrimental to other Fund Participants or to the public. The same action described in this paragraph may be taken by a majority vote of the executive committee members.

Risk Management Plan:

1. The Fund commissioners/executive committee shall prepare or cause to be prepared, a Plan of Risk Management for the Fund. The Plan shall include, but not be limited to:
 - a. The perils or liability to be insured against.
 - b. Limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier or reinsurance or excess insurance.
 - c. The amount of risk to be retained by the Fund.
 - d. The amount of reserves to be established.
 - e. The proposed method of assessing contributions to be paid by each member of the Fund.
 - f. Procedures governing loss adjustment and legal fees.
 - g. Coverage to be purchased from a commercial insurer, if any.
 - h. Reinsurance to be purchased, if any, and the amount of premium therefore.
2. The Risk Management Plan and all amendments must be approved by the Commissioner of Insurance and the Commissioner of the Department of Community Affairs before it takes effect.

Servicing Organizations:

1. The Fund shall contract to have the following services performed:

- . Claims administration
 - . Environmental Safety Engineering
 - . Actuarial Services
2. Except with the approval of the Commissioner of Insurance, no servicing organizations or its employees, officers or directors shall have either a direct or indirect financial interest in an administrator or be an employee, officer or director of an administrator.
 3. Each service contract shall include a clause stating "unless the Commissioner of Insurance otherwise permits, the servicing organization providing claims administration shall handle to its conclusion all claims and other obligations incurred during the contract period."
 4. Each Servicing Organization shall provide a surety bond and Errors and Omissions coverage as provided by Department of Insurance regulation (N.J.A.C. 11:15-2 et seq.).

Financial Statement And Reports:

1. The Fund shall provide its members with periodic reports concerning the activities and status of the Fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the Fund commissioners.
2. A sworn annual report in a form prescribed by the Commissioner of Insurance shall be prepared by the Fund, filed concurrently with the Department of Insurance and the Department of Community Affairs and made available to each Fund member on or before July 1st of each year. The report shall be accompanied by:
 - a. An annual audited statement of the financial condition of the Fund prepared by the auditor and performed in accordance with generally accepted accounting principles and Sec. II of PL 1983, c.372.
 - b. Reports of outstanding liabilities showing the number of claims, amounts paid to date and current reserves for losses, claims and unearned assessments as certified by an actuary.
3. Such other information as may be required by the Department pursuant to NJAC 11:15-2.24.

Coverages:

The Fund shall offer environmental impairment liability coverages and related services to the Participants in accordance with the adopted Plan of Risk Management.

ARTICLE V - MEETINGS AND RULES OF ORDER

Meetings:

1. **Annual Organization Meeting** - At the January meeting, the Fund commissioners shall meet to elect officers and the executive committee, if any, to appoint officials and conduct such other business as is necessary. The time and place for the meeting shall be established by the chairperson, and the secretary shall send written notice to each Participant at least two (2) weeks in advance.
2. **Business Meetings** - The Fund commissioners/executive committee shall establish a schedule of meetings to conduct the business of the Fund. All Fund commissioners may attend open or closed sessions of the executive committee.
3. **Special Meetings** - The chairperson or three (3) commissioners may call a special meeting by notifying the Fund's secretary at least three (3) days in advance. The secretary shall notify the Fund commissioners/executive committee by telephone. If the secretary is unable to reach a commissioner as of forty-eight (48) hours before the meeting, the secretary shall telephone the Participant's alternate commissioner.

Notice shall state the purpose of the meeting and whether it is called for the executive committee only or full membership of Fund commissioners.

4. **Commissioners Quorum** - The quorum for a full Fund commissioners meeting shall be the number of Fund commissioners who represent Participants which together comprise the majority of the Fund's current year's assessments.
5. **Executive Committee Quorum** - A quorum for Executive Committee meetings shall be a majority of the total Committee.

Conduct Of Meetings:

1. All meetings of the Fund shall be subject to the rules and regulations of the Open Public Meetings Act.
2. Unless otherwise provided in these bylaws, or in the laws or regulations of the State of New Jersey, "Robert's Rules of Order" shall govern the conduct of all meetings.

Amendments To The By-laws:

1. Any commissioner may propose an amendment to the By-laws by filing the proposed amendment in writing with the secretary.
2. Upon receipt of a proposed amendment, the secretary shall notify the chairperson who shall schedule a hearing to be held not more than ninety (90) days from the date the amendment was filed. The secretary shall notify in writing all Fund commissioners of the hearing date and shall send all Fund commissioners a copy of the proposed amendment.
3. The amendment is adopted by the Fund when the Participants representing three-fourths (3/4) of the current year's assessment approve the amendment within six (6) months of the hearing on the amendment. If after six (6) months the Secretary has not received written notice of approval from three-fourths (3/4) of the Participants, the Secretary shall notify the members that time has expired for the adoption of the amendment.
4. If adopted, the amendment shall not take effect until approved by the Commissioner of Insurance and the Commissioner of the Department of Community Affairs.
5. Within ninety (90) days after the effective date of any amendment to the By-laws, a Participant which did not approve the amendment may withdraw from the Fund provided that it shall remain liable for its share of any claims or liabilities incurred by the Fund during its period of membership.

ARTICLE VI - BUDGETS

Budget Preparation:

1. In or before October of each year, the Fund shall prepare the budget for the upcoming calendar year. The budget shall identify the proposed items and amounts of expenditure for its operations, including Producer fees not to exceed six percent (6%) of assessments, the anticipated amounts and sources of assessments and other income to be received during the fiscal year and the status of the self insurance or loss retention accounts.
2. The budget shall be reviewed by an actuary who shall comment on its adequacy and shall recommend changes, as appropriate.

Budget Adoption:

1. Not later than November 30th of each year the Fund commissioners/ executive committee shall adopt by majority vote the budget for the Fund's operation for the coming calendar year.
2. A copy of the Fund's proposed budget as changed to reflect the actuary report shall be sent to each Participant at least two (2) weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all Participants the opportunity to present comments or objections.
3. An adopted budget may be amended by majority vote of Fund commissioners/executive committee after giving the Participants two (2) weeks advance written notice and conducting a hearing on the proposed amendment.
4. A copy of the adopted budget and any amendment shall be filed within thirty (30) days of its adoption with each Participant, the Commissioner of Insurance, and the Commissioner of the Department of Community Affairs.

ARTICLE VII - ASSESSMENTS

Annual Assessment:

1. The annual assessment of each Participant shall be its pro rata share of the budget for the upcoming year for each line of coverage as computed by the Actuary.
2. The calculation of pro rata shares shall be based on each Participant's composite premium by Fund year for that line of coverage.
3. The total amount of each member's annual assessment shall be certified by majority vote of the Fund commissioners/executive committee to the governing body of each Participant's at least one (1) month prior to the beginning of the next fiscal year.
4. The annual assessment shall be paid to the Fund in two (2) installments, to be determined by the Fund commissioners/executive committee which shall conform with N.J.A.C. 11:15-2.15(a).
5. The Treasurer shall deposit each member's assessment into the appropriate accounts, including the administrative account, the claim or loss retention trust Fund account, or any other account as permitted by law.
6. If a Participant becomes a member of the Fund or elects to participate in a line of coverage after the start of the Fund year, such Participant's assessments and supplemental assessments shall be reduced in proportion to that part of the year for which coverage had elapsed.

Supplemental Assessments:

1. The Fund commissioners/executive committee shall by majority vote levy upon the Participants additional assessments wherever needed or so ordered by the Commissioner of Insurance to supplement the Fund's claim, loss retention or administrative accounts to assure the payment of the Fund's obligations.
 - a. All supplemental assessments shall be charged to the Participants by applicable Fund year and shall be apportioned by that year's earned assessments for that line of coverage.
 - b. All Participants shall be given thirty (30) days advance written notice of the Fund's intention to charge an additional assessment, and the Fund shall conduct a hearing before adopting the supplemental assessment.
 - c. Participants shall have sixty (60) days to pay the Fund from the date any supplemental assessment is adopted.
2. The Fund shall submit to the Commissioner of Insurance and the Commissioner of Community Affairs a report of the causes of the Fund's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a reoccurrence of such circumstances.

Failure Or Refusal To Provide Required Assessments:

Should any Participant fail or refuse to pay its assessments or supplemental assessments, or should the Fund fail to assess funds required to meet its obligations, the Chairperson or in the event by his or her failure to do so, the custodian of the Fund's assets, shall notify the Commissioner of Insurance and the Commissioner of Community Affairs. Past due assessments shall bear interest at the rate of interest to be established annually by the Fund commissioners/executive committee.

Insolvency And/Or Bankruptcy Of Fund Members:

The insolvency or bankruptcy of a Participant does not release the Fund, or any other Participant, of joint and several liability for the payment of any claim or liability incurred by the Participant during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

ARTICLE VIII - REFUNDS

- A. Any monies for a Fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the Fund in accordance to the regulations promulgated by the state Department of Insurance.
- B. A refund for any Fund year shall be paid only in proportion to the Participant's participation in the Fund for such year. Payment of a refund on a prior year is not contingent on the Participant's continued membership in the Fund.
- C. At the option of the Participant, the refund may be retained by the Fund and applied towards the Participant's next annual assessment.

ARTICLE IX - EXCESS INSURANCE

- A. Where self insured the Fund will provide a plan for specific and aggregate excess insurance and/or reinsurance and for retention in accordance with sound actuarial principles and the Plan of Risk Management.
- B. If due to conditions in the commercial insurance market specific and/or aggregate excess insurance or reinsurance is either not available or the pricing is such that, or for other valid reasons, in the judgment of the Fund Commissioners/Executive Committee it would be in the best interest of the Fund not to carry such specific and/or aggregate insurance or reinsurance and if the Fund's Actuary certifies that the retention is in accordance with sound actuary principles, the Fund Commissioners/Executive Committee may apply to the Commissioner of Insurance for a waiver of the requirements of N.J.A.C. 11:15-2.6(b)5.
- C. If the waiver referred to in Article IX B. above is granted by the Commissioner of Insurance and results in a revision(s) and /or amendment(s) of either Plan of Risk Management or Budget, the same shall not be effective until same has been approved by the Commissioner of Insurance and the Commissioner of Department of Community Affairs.
- D. No later than forty-five (45) days before the beginning of the calendar year, the Fund shall notify all Participants of changes in the coming year's excess insurance or reinsurance policies. The Fund shall also notify the Participants of any changes in the policies which occur during the year. The Fund shall also notify the Commissioner of Insurance of any changes in the policies during the year or of changes in the coming year's excess insurance or reinsurance policies.
- E. Certificates of excess insurance showing policy limits and other information shall be issued to the Commissioner of Insurance. Copies of all policies shall be available to the Participants.

FUND ACCOUNTS ARTICLE X -TRUST, INVESTMENTS AND DISBURSEMENTS

Establishment Of Trust Fund Accounts:

1. By resolution, the Fund shall designate a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14.
2. The Fund shall establish a separate Trust Fund Account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each type of liability or risk retained jointly on a self-insured basis. Such accounts shall be designated as Claims or Loss Retention Fund Accounts. The recording and accounting of all transactions in such accounts shall be maintained by Fund year.
 - a. Other than for claims, allocated claims expense, or excess insurance premiums, no transfers or withdrawals may be made from a claim or loss retention account without the prior written approval of the Commissioners of Insurance and the Department of Community Affairs.
3. The Fund shall also establish an administrative account which shall be utilized for payment of the Fund's general operating expenses, loss prevention activities, data processing services, and general legal expenses, and shall record and account for all such transactions by Fund year.
4. If this section regarding trust fund accounts is at any time in conflict with amended or newly created regulations as adopted by the Department of Insurance and/or Department of Community Affairs, or as provided by statute, then in any such event, the new or amended regulation or statute shall supersede and take precedence over the wording of these By-laws.

Investments:

1. The balance of any account shall be invested to obtain the maximum interest return practical. All investments shall be in accordance with the Fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b. The commissioners may also invest the funds in investments which are approved for investment in the regulations of the State Investment Council for surplus moneys of the state or the commissioners may transfer moneys held in the Fund to the Director of the Division of Investment in the Department of the Treasury for investment pursuant to NJSA 40A:10-36.
2. The investment and interest income earned by the investment of the assets of the claim or loss retention account shall be credited to that account.
3. The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

4. If permitted by law, the commissioners may enter into agreements with other joint insurance funds or the state treasurer to jointly invest funds pursuant to NJSA 40A:10-36 and to share in the expenses of administrating the investment program.

Disbursements:

1. Prior to any commitment or agreement requiring the expenditure of funds, the custodian of the Fund's assets shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted.
2. All disbursements, payments of claims or expenditure of funds must be approved by a majority vote of the Fund commissioners/executive committee.
3. Notwithstanding Sub-paragraph C. 1 and 2 above, the Fund may provide for the expedient resolution of certain claims by designating the Fund's Administrator or service organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The Fund may authorize the certifying and approving officer to approve for payment any specified claims in an amount not to exceed an amount approved by the Commissioner of Insurance. The Fund shall establish such other procedures and restrictions on the exercise of this authority as the Fund deems appropriate.
4. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the custodian of the Fund's assets, directing that a check for payment be prepared.
5. Each month, the certifying and approving officer shall prepare a report of all claims approved since the last report, detailing the nature and the amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be reviewed and approved or rejected by vote of the Fund commissioners/executive committee at their next regularly scheduled meeting. If any payment is not approved, the reasons for rejection of such claim shall be provided to the claimant.
6. All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the Fund having knowledge of the facts that the goods have been received by, or the services rendered to the Fund. In the case of claims or losses to be charged against any loss fund, the Fund's claims administrator shall certify as to the claims correctness and validity.
7. All claims shall be paid by check. The checks shall be signed by two persons so designated by the Fund commissioners/executive committee. The Executive Director/Administrator shall not be a signatory on the Fund's account.

8. All claims or other disbursements approved for payment by the Fund shall be recorded in a claims register maintained by the custodian of the Fund's assets.

ARTICLE XI - CONFLICT OF INTEREST

- A. No official or employee of a Participant or any members of the family of such officials or employees, or any businesses in which such officials, employees or family members have a beneficial interest shall seek to obtain or participate in any contract to be entered into by the Fund for administration, loss control, investment or depository services, insurance coverage or any other service, commodity or material without first fully disclosing in writing the nature and extent of such interest, financial or otherwise, to the Fund commissioners. It shall be the responsibility of the Fund commissioners/executive committee to determine if the interest so disclosed is such as to constitute an actual or potential conflict of such degree as to impair the ability of the officer, employee, family member or business from fully and impartially performing the duties required by the Fund. If so, the officer, employee, family member or business shall be prohibited from entering into such contract until the cause of such conflict is removed.
- B. Any contract entered into between the Fund and any individual, firm, corporation or agency which fails to disclose an actual or potential conflict situation shall be void.
- C. There shall be no collusion or evidence or appearance of collusion, between any official or employee of the members or employees of the Fund and any official or employee of any contractor, vendor, insurance company, bank, consultant, brokerage firm or any other profit making or non-profit firm attempting to solicit a contract with the Fund or awarded a contract by the Fund.

ARTICLE XII - VOLUNTARY DISSOLUTION OF THE FUND

- A. If the Fund commissioners/executive committee deem it in the best interest of the Participants to dissolve the Fund, they shall by majority vote direct that a written Plan of Dissolution be prepared.
- B. The Plan of Dissolution must provide for the payment of all incurred losses and liabilities of the Fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the Fund or the trust fund accounts may be used for any other purpose.
- C. Upon completion of the plan, the Chairperson shall call a general meeting of all Fund commissioners/executive committee who shall review the plan and make any appropriate amendments. By majority vote, the Fund commissioners may recommend to the members that the Fund be dissolved in accordance with the Plan of Dissolution.

- D. A majority of the governing bodies of the Participants must by resolution vote to accept the Plan of Dissolution in order to dissolve the Fund.
- E. Such Plan of Dissolution shall contain a statement of the Fund's current financial condition computed according to generally accepted accounting principles as attested to by an independent certified accountant.
- F. The Plan of Dissolution and other such information as may be required, must be filed with and approved in writing by the Commissioner of Insurance and the Commissioner of the Department of Community Affairs before the dissolution of the Fund is effective.

ARTICLE XIII - CLAIMS HANDLING PROCEDURE

Registration Of Claims:

Upon receipt of initial notice of claim, whether by service of process, notice of claim or petition or otherwise, the claims administrator shall cause each claim to be numbered, and to be included on a monthly report to the Fund commissioners/executive committee. The monthly report shall set forth the name of the claimant, the nature of the claim, the type insurance coverage claimed against, and to the extent known, an approximate estimate of the magnitude of the potential loss.

Claims Response:

Upon receipt of the initial notice of claim described above, the Local Unit shall immediately forward the notice of claim and any other information available to the claims service agency and, where appropriate, to the Fund's Attorney for initial contact, investigation, court actions or other appropriate response.

Claims Acknowledgment And Initial Evaluation:

Upon receipt of an assignment of claim handling, the claims service agency and, where appropriate, the defense attorneys shall acknowledge receipt of the claim and within thirty (30) days of receipt, submit a report indicating their initial assessment of the merits and exposure represented by the claim and a summary of the actions taken to date in response to said claim.

Periodic Review Of Claim Status:

Each claim shall be reviewed at intervals of not greater than ninety (90) days as to their status. In particular, the Fund commissioners/executive committee shall determine whether

the investigation and defense of the claim is adequate, and the adequacy of the reserves posted for the claim.

Notice Of Settled Claims:

Where permitted by the bylaws, and settlements have been concluded without action of the Fund commissioners/executive committee, a complete report thereof as provided by the bylaws shall be furnished to the Fund commissioners/executive committee.

Notice Of Intended Settlement:

Whenever an investigation discloses that the prompt fair and equitable settlement of a claim is appropriate and possible, the claims service agency shall submit to the Administrator for review at a Fund commissioners/executive committee meeting, a notice of recommended settlement. This notice shall be on forms acceptable to the Fund commissioners/executive committee and shall set forth identifying information concerning the claim, recommendations where appropriate concerning the legal liability of the Fund, a summary of investigative work concerning the merits of the claim and the reasons underlying the recommended settlement.

Approval Of Payments And Settlements:

Whenever the Fund shall make any payment or settlement of any claim, a notation thereof identifying the claim, the amount paid and the reasons underlying the payment shall be approved by the Fund commissioners/executive committee and entered upon a ledger of claims paid.

ARTICLE XIV - COMPLAINTS HANDLING PROCEDURE

- A. Whenever any interested party shall submit a complaint in writing to the Fund, the Executive Director/Administrator, or any member of the Fund, a copy thereof shall be forthwith communicated to the Fund commissioners/executive committee for consideration at its next regularly scheduled meeting.
- B. At said meeting the Fund commissioners/executive committee shall consider the complaint, and by recorded vote take such action as might be appropriate.
- C. The complaining party, and the Fund commissioner from the Participant shall receive written notice of the Fund commissioners/executive committee findings. The written notice to the complaining party, may where appropriate, include an opportunity for the complaining party to have a hearing concerning his/her complaint before the Fund commissioners/executive committee.

D. The Fund shall keep a separate record of all complaints received and the disposition of same.

ARTICLE XV - OTHER CONDITIONS

Inspection And Audit:

The Fund shall be permitted but not obligated to inspect, at any reasonable time, the workplaces and operations of each Participant or Local Unit covered by this agreement. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Participant or Local Unit or others, to determine or warrant that such workplaces, operations, are safe or healthful, or are in compliance with any law, rule or regulation.

The Fund shall be permitted to examine and audit the Participant's or Local Unit's payroll records, general ledger, disbursements, vouchers, contracts, tax reports and all other books, documents and records at any reasonable time as far as they show or tend to show or verify the amount of remuneration or other premium basis, or relate to the subject matter of this agreement.

Notice Of Injury Or Damage:

When an injury or damage occurs, written notice shall be given by or on behalf of the Local Unit to the Fund or any of its authorized agents as soon as practical. Such notice shall contain particulars sufficient to identify the Local Unit and also reasonably obtainable information respecting the time, place and circumstances of the injury, the names and addresses of the injured and of available witnesses.

Notice Of Claim Or Suit:

If claim is made or formal petition or a suit or other proceedings are brought against the participant, the Participant and/or Local Unit shall immediately forward to the Fund every demand, notice, summons or other process received by him or his representative.

Assistance And Cooperation Of The Participant:

The Participant and/or Local Unit shall cooperate with the Fund, and upon the Fund's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits or proceedings. The Participant and/or Local Unit shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense.

Action Against Fund:

No action shall lie against the Fund unless, as a condition precedent thereto, the Participant and/or Local Unit shall have fully complied with all the terms of these By-laws, and not until the amount of the Participant's and/or Local Unit's obligation to pay shall have been finally determined either by judgment against the Participant and/or Local Unit after actual trial or by written agreement of the Participant and/or Local Unit, the claimant and the Fund. Nothing contained in these By-laws shall give any person or organization any right to join the Fund as a co-defendant in any action against the Participant and/or Local Unit to determine the Participant's and/or Local Unit's liability.

Bankruptcy or insolvency of the Participant shall not relieve the Fund of any of its obligations.

Subrogation:

In the event of any payment, the Fund shall be subrogated to all rights of recovery therefore of the Participant and/or Local Unit and any person entitled to the benefits of this agreement against any person or organization and the Participant and/or Local Unit shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Participant and/or Local Unit shall do nothing after loss to prejudice such rights.

Conformance With Statute:

In the event any portion of these bylaws conflict with any statute or administrative regulation covering joint insurance funds, the provision of any such regulation shall control to the extent it conflicts. Notwithstanding the provisions of Article V Section C, the Fund Commissioners, or Executive Committee as appropriate, may by majority vote, amend these bylaws to conform with any statute or administrative regulation to the extent of any such conflict.

THUS DONE, READ AND PASSED in my office in the Borough of Hackensack, State of New Jersey.

NEW JERSEY MUNICIPAL ENVIRONMENTAL RISK MANAGEMENT FUND

