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MEMORANDUM

Agenda Item # 66

Date: May 7, 2009
To: Metropolitan Planning Commission
From: Dee Anne Reynolds, Finance Manager
Subject: New Interlocal Cooperation Agreement Relative to Participation in the Tennessee Municipal League Risk Management Pool; For May 14, 2009 MPC Board Meeting (5-E-09-OB)

Summary:

MPC holds its liability policy for automobile coverage and workers compensation insurance policy with TML Risk Management Pool. MPC has participated with TML Risk Management Pool for many years and annually submits a re-rate application for both policies with a subsequent payroll audit for the workers comp policy.

TML Risk Management Pool recently updated their previous agreement to remove an assessment clause, add the 2006 state required ethics policy, and housekeep board structure as per their charter. TML has requested all pool participants to formally adopt the new Interlocal Cooperation Agreement as a requirement to continue participation.

Staff Recommendation: Staff recommends approval of the agreement.

MPC Executive Committee Recommendation: The Executive Committee met on May 4, 2009 and recommends approval to the Planning Commission.

Attachments: Resolution, Interlocal Cooperation Agreement Relative to Participation in the Tennessee Municipal League Risk Management Pool, Addendum # 1 to the TML Pool Interlocal Agreement – Ethics Policy, and Corporate Charter of TML Risk Management Pool.

RESOLUTION

WHEREAS, Chapter 282 of the Tennessee Public Acts of 1979 grants governmental entities the specific power to secure risk management, insurance, or self-insurance for themselves and their employees in different areas of liability and insurability through joint and cooperative action with other municipalities under Section 12-9-101 et seq., Tennessee Code Annotated, as amended, known as the Interlocal Cooperation Act;

WHEREAS, the Cities of Athens and Hendersonville have heretofore entered into an agreement under said Interlocal Cooperation Act to create and establish the TML Risk Management Pool, a not-for-profit corporation, for the purpose of organizing and operating an insurance pool offering risk management and other related services in addition to basic insurance coverages;

WHEREAS, said agreement authorized any political subdivision of the State of Tennessee to become a participant in said agreement by adoption of an appropriate ordinance or resolution;

WHEREAS, the Board of the Knoxville / Knox County Metropolitan Planning Commission (MPC) has determined that said government agency will benefit from its participation in said agreement with the City of Athens and Hendersonville and such other municipalities as may participate therein;

WHEREAS, it has been proposed that the Knoxville / Knox County Metropolitan Planning Commission enter into a contact with the TML Risk Management Pool, a copy of said contract being attached hereto as Exhibit A and incorporated herein as fully as though copies; and,

WHEREAS, the Board of the Knoxville / Knox County Metropolitan Planning Commission has reviewed the provision of said contact and has determined it to be in the best interests of said government agency and its citizens that appropriate steps be taken to enter into said contract.

NOW, THEREFORE, BE IT RESOLVED BY THE Knoxville / Knox County MPC Board of Commissioners as follows:

1. The Knoxville / Knox County Metropolitan Planning Commission shall participate in the agreement between the Cities of Athens and Hendersonville and such other municipalities as participate therein, said agreement being to cooperate in creating establishing and contracting with the TML Risk Management Pool, a not-for-profit Tennessee corporation organized to provide a method for political subdivisions of the State of Tennessee to obtain risk management, insurance, self-insurance or any combination thereof for any and all areas of liability or insurability.
2. The form, content and provision of the contract, a copy of which is attached hereto as Exhibit A and incorporated herein as fully as though copied, are hereby approved.
3. The MPC Board Chair is empowered and directed on behalf of the Knoxville / Knox County Metropolitan Planning Commission to enter into said contract with the TML Risk Management Pool for certain services of risk management and insurance in accordance with Chapter 282 of the Tennessee Public Acts of 1979, and to take such steps as may be necessary to implement and carry out the intent of the Resolution.
4. This resolution shall become effective upon its passage, the public welfare requiring it.

APPROVED AND ADOPTED THIS 14th DAY OF May, 2009

MPC Board Chair

ATTEST:

MPC Executive Director

EXHIBIT A

**INTERLOCAL COOPERATION AGREEMENT
RELATIVE TO PARTICIPATION IN THE
TENNESSEE MUNICIPAL LEAGUE RISK MANAGEMENT POOL**

INTERLOCAL COOPERATION AGREEMENT

RELATIVE TO PARTICIPATION IN THE

TENNESSEE MUNICIPAL LEAGUE RISK MANAGEMENT POOL

This agreement is entered into by the undersigned political subdivision of the State of Tennessee pursuant to the Interlocal Cooperation Act, Tennessee Code Annotated, Section 12-9-101, et seq., and the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, Section 29-20-101, et seq.

Each political subdivision entering into this Interlocal Cooperation Agreement agrees to exercise its powers, privileges, authority, and financial and administrative resources jointly with other political subdivisions to provide a method for obtaining risk management, self insurance, insurance and reinsurance, or any combinations thereof, for any and all areas of their liability or insurability, including, but not limited to, property insurance, the liabilities created by the Tennessee Governmental Tort Liability Act, liabilities under the Workers' Compensation Law, and any other areas of liability or insurability authorized by Tennessee Code Annotated, Section 29-20-401. The Agreement to establish the TML Insurance Pool, an Interlocal Cooperation Agreement between the Tennessee cities of Athens and Hendersonville, became effective in 1979 and the corporation was created. The name of the corporation was changed to Tennessee Municipal League Risk Management Pool in 1984. The Corporation's political subdivisions who have participated in the Tennessee Municipal League Risk Management Pool (TML Pool) pursuant to the 1979 Agreement ratify that Agreement, and amend it by substituting this Agreement. The power and authority conferred by the 1979 Agreement are carried forward and continued in this Agreement.

Any other political subdivision of the State of Tennessee may become a participant in this Agreement by passage of an ordinance or resolution as may be legally appropriate. This Agreement shall be completely terminated only upon the action of all but one participating political subdivision to repeal, revoke, or rescind that action authorizing and effectuating their participation unless otherwise terminated by the board of directors. If the Agreement is completely terminated, the property of the Corporation shall be disposed of as provided in the Charter.

In order for this political subdivision to increase the advantages of exercising its powers, privileges, authority, and financial and administrative resources jointly with other political subdivisions and to effectuate this Agreement, it approves the creation, establishment, and operation of the not-for-profit Tennessee corporation known as the Tennessee Municipal League Risk Management Pool, whose charter and amendments are in Exhibit A, attached to and incorporated in this agreement, with the powers, purposes, and attributes set forth in them.

After joining the Interlocal Cooperation Agreement, each political subdivision may enter in to plans, agreements, or contracts with the TML Pool for the provision of any or all of the services the TML Pool is created to provide upon terms agreed to by the political subdivision and the TML Pool. Terms shall include the nature and scope of services to be provided; the method by which contributions or premiums shall be levied and paid, and any other necessary terms.

The TML Pool shall be financed from the contributions or premiums paid by participating political subdivisions, to the TML Pool, in accordance with the terms of their plans, agreements, or contracts with the TML Pool.

Establishment and maintenance of a budget for the Corporation shall be the responsibility of the Board of Directors.

The powers of the corporation shall be exercised by the Board of Directors in accordance with its charter.

The Corporation may do all acts authorized by the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, Section 29-20-101, et seq., and as it may be amended, and as authorized by the Tennessee Non-profit Corporation Act, Tennessee Code Annotated, Section 48-51-101, et seq., and as it may be amended.

INTERLOCAL COOPERATION AGREEMENT

SIGNATURE SECTION

Signed By:

Name

MPC Board Chair

Title

Knoxville / Knox County MPC

Entity

Attest:

Name

Executive Director, MPC

Title

Date:

May 14, 2009

Addendum #1 to the TML Pool Interlocal Agreement - Ethics Policy

RESOLUTION NO. 2007- 01

A RESOLUTION OF THE TML RISK MANAGEMENT POOL BOARD ESTABLISHING A CODE OF ETHICS

WHEREAS, the Comprehensive Governmental Ethics Reform Act of 2006 (Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly), requires governmental entities to adopt a Code of Ethics, and

WHEREAS, the Act provides that such Code of Ethics shall apply to all boards, commissions, authorities, corporations, and other entities created or appointed by such governmental entities, as well as their employees.

NOW THEREFORE, BE IT RESOLVED BY THE TML POOL BOARD OF DIRECTORS, THAT THE TML POOL CODE OF ETHICS SHALL READ AS FOLLOWS:

TML RISK MANAGEMENT POOL CODE OF ETHICS

SECTION 1: Applicability and interpretation.

(a) This article establishes the code of ethics for the TML Risk Management Pool (the Pool) and applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation or other instrumentality appointed or created by the Pool. When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel provisions. In any situation in which a personal interest is also a conflict of interest under state law, the more restrictive provision shall apply.

(b) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

SECTION 2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Censure means an expression of severe criticism or reproach.

Credible, for the purposes of complaints alleging that any official or employee has violated any provision of this article, means that the complaint is not:

- (1) Submitted anonymously.
- (2) Clearly unbelievable.
- (3) From a source not considered to be trustworthy under the circumstances.

Employment interest includes a situation in which an official or employee or a designated family member is employed with or negotiating possible employment with a person or organization that is the subject of a vote or that is to be regulated or supervised.

Gift means the transfer of anything of economic value, regardless of form, without reasonable consideration. "Gift" may include a subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value, conveyed or transferred. "Gift" does not include political campaign contributions which are solicited or accepted in accordance with applicable laws and regulations.

Official(s) means the members of the board of directors, or other person(s) in a position of authority, as well as members appointed thereby to committees, task forces, etc.

Personal interest means:

- (1) Any financial, ownership or employment interest in the subject of a vote by the Pool board not otherwise regulated by state statutes on conflicts of interests; or
- (2) Any financial, ownership or employment interest in a matter to be regulated or supervised; or
- (3) Any such financial, ownership or employment interest of the official's or employee's immediate family. For the purposes of this article, "immediate family" includes spouse, children (including natural, step and adoptive), parents (including natural, step and adoptive), siblings, parents-in-law, siblings-in-law, grandparents and grandchildren, and any other individual residing within the employee's household who is a legal dependent of the employee for income tax purposes.

Pool means The TML Risk Management Pool.

SECTION 3. Disclosure of personal interest by official with vote.

An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself from voting on the measure.

SECTION 4. Disclosure of personal interest in nonvoting matters.

An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of discretion shall disclose the interest, before the exercise of the discretion when possible, on a form provided by and filed with the personnel director. Copies of such forms filed with the personnel director shall be provided to the President and, in the case of an employee, filed in the employee's personnel file. In addition, the official or employee may, to the extent allowed by law, charter, or policy, recuse himself from the exercise of discretion in the matter.

SECTION 5. Acceptance of gifts, gratuities, etc.

(a) An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the Pool:

- (1) For the performance of an act, or refraining from performance of an act, that the individual would be expected to perform, or refrain from performing, in the regular course of the individual's duties; or
- (2) That might reasonably be interpreted as an attempt to influence the individual's action, or reward the individual for past action, in executing Pool business.

(b) Unless impartiality and independent judgment of an official or employee would be compromised, this section shall not apply to meals provided to officials or employees or gifts of food, candy or other items of de minimis value.

SECTION 6. Use of information.

(a) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(b) An official or employee may not use or disclose information obtained in his official capacity or position of employment and not available to the general public with the intent to result in financial gain for himself or any other person or entity.

(c) Confidential information will remain the exclusive property of the employer and will only be used by an employee for permitted purposes. Employees will not use confidential information for any purpose which might be directly or indirectly detrimental to the employer or any of its affiliates.

SECTION 7. Use of Pool time, facilities, etc.

An official or employee may not use or authorize the use of Pool time, facilities, equipment, supplies or other resources for private gain or advantage to himself or to any private person or entity, except as authorized by legitimate contract or lease that is determined by the board of directors to be in the best interests of the Pool. This prohibition shall not apply when the board of directors or the President has authorized the use of such resources and established policies governing such use.

SECTION 8. Use of position or authority.

(a) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the Pool; provided, however, that this section shall not apply to reasonable amounts paid for:

- (1) Food, transportation, lodging and other travel expenses incurred in accordance with the Pool's adopted travel policy.
- (2) Dues, registrations, meals and similar expenses incurred in conjunction with membership or participation in a professional or community organization to which the official or employee belongs in his official capacity.
- (3) Meals purchased in the course of an official business meeting conducted on the Pool's behalf.

(b) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized in this article or by law, the charter, or policy of the Pool.

(c) No official or employee shall provide commercial or advertising endorsements in such a manner as to convey the Pool's approval of any private for-profit enterprise; provided, however, that an official or employee may respond to inquiries seeking information as to the Pool's experience with a vendor or other private enterprise.

SECTION 9. Ethics opinions; complaints; investigations.

(a) *Ethics officer.* The general counsel is designated as the ethics officer of the Pool. The general counsel, in his discretion, may request that the President or board of directors appoint another attorney, individual or entity to act as ethics officer for the purposes of any specific investigation. For complaints considered by the board of directors under the provisions of this section, the board of directors may choose an individual or entity other than the general counsel to act as the ethics officer for the purposes of investigating the complaint.

(b) *Ethics opinions.* Upon the written request of an official or employee potentially affected by a provision of this article, the ethics officer may render an oral or written advisory ethics opinion based upon this article and other applicable law.

(c) *Ethics complaints and investigations* Allegations that any official or employee has violated any provision of this article will be processed and handled as follows:

- (1) A complaint will be acted upon only if the complaint is in writing, signed by the person making the complaint and submitted to:
 - a. The ethics officer, if the complaint is against any employee other than the President or the ethics officer.
 - b. The President, if the complaint is against the ethics officer or any official.
 - c. The chairman of the board, if the complaint is against the President.
- (2) The ethics officer shall investigate any credible written complaint against an employee, other than the President or the ethics officer.
- (3) When a complaint is filed against the President, the ethics officer, an appointed official or a member of the board of directors, the complaint shall be referred to the board of directors. For any such complaint, other than a complaint against the President, the President may gather information and present pertinent facts to assist the board of directors in its determination. The board of directors, by majority vote of its entire membership, shall determine that the complaint is credible and that a violation of this article has occurred, that the complaint is not credible or does not have merit, or that the complaint has sufficient merit to warrant further investigation; except that if the complaint is filed against a member of the board of directors, the disposition of the complaint shall be determined by a majority vote of the remaining members of the board of directors. If the board of directors determines that a complaint warrants further investigation, it shall authorize an investigation by the ethics officer, provided that the board of directors may choose an individual or entity other than the general counsel to act as the ethics officer for the purposes of the investigation.
- (4) The ethics officer may also undertake an investigation on his own initiative when he acquires information indicating reasonable suspicion of a violation.

- (5) Any person who is the subject of an investigation by the ethics officer shall be notified in writing at the beginning of the investigation and allowed the opportunity to respond to all allegations in person and/or in writing during the course of the investigation.
- (6) In the course of an investigation, the ethics officer, at his discretion, may hold meetings and conduct interviews in person or by telephone, involving officials and employees of the Pool, as well as other individuals. The ethics officer may also request any information that he believes may be pertinent to the investigation. An employee's failure to cooperate in any investigation by the ethics officer shall be considered an act of insubordination and treated as such under the Pool's personnel rules and regulations.
- (7) At the conclusion of an investigation, the ethics officer may issue written findings and make recommendations for action to end or seek remedies for any activity that, in the ethics officer's judgment, constitutes a violation of this code of ethics. For an investigation of any employee other than the President, copies of such findings and recommendations shall be provided to the employee, the President, the personnel director and the employee's department head. For an investigation of any other individual, copies of such findings and recommendations shall be provided to the President, the board of directors and the individual who is the subject of the investigation.

SECTION 10. Violations.

(a) A member of the board of directors who violates any provision of this article is subject to punishment as provided by the Pool's charter, bylaws and/or other applicable law, and in addition is subject to censure by the board of directors. Any action taken by the board of directors against a member of the board of directors shall be determined by a majority vote of the remaining members of the board of directors.

(b) An official other than a member of the board of directors who violates any provision of this article is subject to punishment as provided by the Pool's charter, bylaws, and/or other applicable law. In addition, the board of directors may, by majority vote of its entire membership, censure the official or remove the official from office in such manner as may be permitted by law.

(c) In addition to any other remedy provided by law, an employee who violates any provision of this article is subject to disciplinary action, in accordance with the Pool's personnel rules and regulations, including but not limited to dismissal.

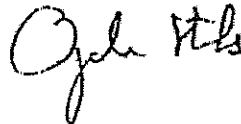
SECTION 11. In case of conflict between this policy or any part hereof, and the whole or part of any existing policy of the Pool, the provision that establishes the higher standard shall prevail.

SECTION 12. If any section, subsection, clause, provision or portion of this policy is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this policy.

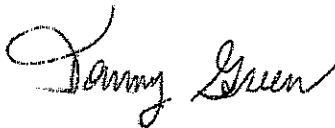
THIS RESOLUTION SHALL TAKE EFFECT FROM AND AFTER ITS FINAL PASSAGE IN ACCORDANCE WITH THE COMPREHENSIVE GOVERNMENTAL ETHICS REFORM ACT OF 2006 (Public Chapter 1 of the Extraordinary Session of the 2006 General Assembly).

DATE APPROVED BY BOARD: June 8, 2007

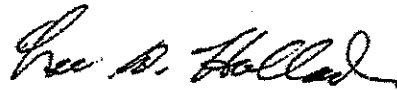
APPROVED FOR LEGAL FORM:



General Counsel



CHAIRMAN



PRESIDENT

CORPORATE CHARTER
OF
TENNESSEE MUNICIPAL LEAGUE RISK MANAGEMENT POOL

**CORPORATE CHARTER
OF
TML RISK MANAGEMENT POOL**

The undersigned natural persons, having capacity to contract and acting as the incorporators of a corporation under the Tennessee General Cooperation Act, adopt the following charter for such corporation:

- 1. The name of the corporation is Tennessee Municipal League Risk Management Pool.**
- 2. The duration of the corporation is perpetual.**
- 3. The address of the principal office of the corporation in the State of Tennessee is 5100 Maryland Way, Brentwood, Tennessee 37027.**
- 4. The corporation is not for profit. It shall not have any power to issue certificates of stock or declare dividends, and no part of its net earnings shall inure to the benefit of any trustee, officer, or individual.**
- 5. The purpose or purposes for which the corporation is organized are:
 - (a) to provide to governmental entities of the State of Tennessee including but not limited to, any municipality, metropolitan government, county, utility district, school district, human resource agency, and development district, duly created and existing pursuant to the constitution and laws of Tennessee, or any instrumentality of government created by any one or more of the herein named local government entities, or any instrumentality of government created by an act of the general assembly, such financial, administrative, and other services in the areas of risk management, insurance, and self-insurance in all areas of liability and insurability for such governmental entities, and to provide means for joint and cooperative action by such governmental entities, including a means for the pooling of their financial and administrative resources.****

(b) to have and exercise all the powers necessary or convenient to effect any or all of the purposes mentioned in subsection (a) for which the corporation is organized, including but not limited to, the power to:

(1) prepare specifications, request bids, and enter into any contract for the purpose of underwriting, administering, or providing any part or all of the plans, policies, or services which may be provided by the corporation on behalf of and with participating governmental entities;

(2) determine the rates, risks, benefits and terms of any plans, policies, or services offered by the corporation; adjust the rates and benefits based on claim experience after proper notice to affected participating governmental entities;

(3) provide for individual or collective underwriting or other agreements for participating governmental entities in any plan, policy, or service offered by the corporation; serve as the policy-holder of any group policies or plans; determine the methods of claim administration and payment; provide for claim experience for participating governmental entities, collectively or separately; provide for risk management and loss prevention services for participating governmental entities;

(4) determine the amount of contributions, premiums or assessments required from participating governmental entities for the purpose of participating in any part or all of the plans, policies, or services established by the corporation;

(5) establish standards for eligibility of participating governmental entities or their employees in any plan, policy, or service; establish procedures for enrollment and withdrawal in any plan, policy, or service; and to establish effective dates of coverage;

(6) provide for the administration of all corporate funds, for the method of payments to such funds and for payment of all expenses in connection with the plans, policies, or services which may be established which shall include the power to provide for the partial for

complete pooling of such funds and to establish procedures for safekeeping, handling, and investing such fund or funds and any monies received or paid;

(7) to establish procedures for grievances of governmental entities and employees regarding allowance and payment of claims, eligibility, and other matters;

(8) employ such administrative, actuarial, legal, technical, clerical, or other employees or consultants as may be necessary to effectuate the purposes of the programs of the corporation;

(9) incur expenses, acquire and hold property, and enter into contracts necessary to accomplish the purposes of the corporation;

(10) to compromise and settle any action for damages or relief brought under the Tennessee Governmental Tort Liability Act, including specifically the provisions of T.C.A. 23-3321;

(11) act as the self-insuror for each governmental entity contracting with the corporation as to its liabilities under the Tennessee Governmental Tort Liability Act for purposes of the statutory limits on such liabilities, as they are now codified at T.C.A. 23-3327, or as the same may be modified;

(12) hire any individual, partnership, or corporation to provide any or all of the services, or to perform any or all of the acts which the corporation is authorized to provide; and,

(13) exercise the powers granted by Tennessee Code Annotated 48-402.

(c) to reinsure, in whole or in part, any of the areas of liability or insurability of governmental entities or governmental employees through the creation, operation, or ownership, in whole or in part, of reinsuring entities, by entering into contract or treaties or reinsurance with reinsuring entities, or by any combination thereof, provided that the reinsuring entity is lawfully created under the laws of its jurisdiction, or

otherwise as permitted by law. This power to create, operate, or own shall include the power to invest the assets of the corporation in such reinsuring entities or to guarantee any loans or letters of credit in favor of such reinsuring entities.

6. The corporation is not to have members.
7. These articles may be amended in the manner provided by statute at the time of amendment.
8. In the event of any dissolution or liquidation of the corporation, the assets of the corporation shall be distributed in accordance with the vote of five-sevenths of the Board of Trustees provided that none of the assets of the corporation shall be distributed to any individual. In the event of the dissolution of this corporation, or in the event it shall cease to carry out the objects and purposes herein set forth, all the business, property, and assets of the corporation shall be distributed to such municipal corporation, or corporations, or governmental entities as may be selected by the Board of Trustees of this corporation. In no event shall any of the assets or property of this corporation, or the proceeds of any of the assets or property, be distributed to any individual, it being the intent in the event of dissolution of this corporation, or upon its ceasing to carry out the object and purposes herein set forth, that the property and assets then owned by the corporation shall be devoted to the selected governmental entities for the purpose of benefiting such entities and the public.