

NEW YORK STATE MUNICIPAL WORKERS COMPENSATION ALLIANCE PLAN DOCUMENT

Article I. Purpose

- a. Purpose: The purpose of the Plan is to provide for the efficient and economical evaluation, processing, administration, defense and payment of claims against Plan members for workers' compensation payments and employers' liability payments through self-insurance and otherwise; to effect cost savings insofar as may be possible in Plan members' expenses for such claims and services; to provide for centralized administration, funding, and disbursements for such services; and to provide for risk management to reduce future liability for workers' compensation payments and employers' liability payments. The Plan will function in compliance with the Workers' Compensation Law of the State of New York and all applicable rules, regulations and procedures promulgated by the Workers' Compensation Board of the State of New York.
- b. Fund Year: The Plan shall operate on a July 1 to June 30 fiscal year. The Plan shall continue from year to year until and unless terminated in the manner set forth herein.

Article II. Definitions

- a. "Plan" or "the Comp Alliance" shall mean the New York State Municipal Workers' Compensation Alliance Plan for Workers' Compensation, as provided for herein or as may hereafter be provided for by amendment.
- b. "Municipal Corporation" shall have the meaning as defined in Sections 2 and 6-n of the General Municipal Law.
- c. "Plan member" or "member" shall mean a municipal corporation that has elected to join the New York State Municipal Workers' Compensation Alliance Plan for group self-insurance.
- d. "Board of Trustees" or "Trustees" means the body that shall act as the fiduciary for the benefit of the members and is ultimately responsible for the overall governance of the Plan.
- e. "Plan-member Trustee" means a member of the Board of Trustees that is a public officer of a member municipal corporation.
- f. "At-large trustee" means a member of the Board of Trustees who is not a Plan-member trustee.
- g. "Key agent" means any person, firm or corporation hired by the Board of Trustees to serve as the group administrator, third party administrator, accountant, auditor, investment manager or actuary of the Plan.
- h. "Group Administrator" means an individual or entity licensed by the Workers' Compensation Board pursuant to the Workers Compensation Law which is responsible for assisting the Comp Alliance with complying with the provisions of the Workers Compensation Law and the rules and regulations promulgated there under, and for the coordination of services, including, but not limited to, claims processing, insurance purchasing, loss control, legal, accounting and actuarial services.
- i. "Third Party Administrator" or "Claims Administrator" means an individual or entity licensed by the Workers' Compensation Board pursuant to the Workers' Compensation

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Law which is responsible for the administration and defense of workers' compensation claims of members.

- j. "Workers' compensation payments" shall mean all payments which a Plan member may become obligated to make directly to, or for the benefit of, an employee of the Plan member by operation of the Workers' Compensation Law of the State of New York.
- k. "Employers' liability payments" shall mean all payments which a Plan member may become obligated to make to third-parties by reason of such third-parties' liability to an employee of a Plan member by reason of acts or events which also give rise to compensable claims under the Workers' Compensation Law of the State of New York.
- l. "Opening fund balance" shall mean unspent moneys held by the Plan as of the first day of any fiscal year, but shall not include funds which have been reserved or otherwise set aside as against previously reported claims, whether or not formally asserted, for workers' compensation payments or employers' liability payments.
- m. "Plan Sponsor" shall mean the Association of Towns of the State of New York

Article III. Trustees

- a. Number of Trustees: The Plan shall be governed in all respects by the Board of Trustees. The Board of Trustees shall consist of at least seven (7) trustees. A majority of trustees shall be public officers of Plan Members. No person who is a key agent shall serve on the Board of Trustees.
- b. Trustee Responsibilities: Trustees shall be responsible for the governance of the Plan, including oversight of all monies collected or disbursed by the Plan, engaging and coordinating any and all key agents, maintaining the integrity of the Plan's investments, and taking all necessary actions to ensure that the Plan complies with the Workers' Compensation Law and all applicable rules and regulations. The Board of Trustees shall cause a certified financial statement to be prepared at the end of each fiscal year by an independent certified public accountant approved by the Board of Trustees, which shall be furnished to all trustees and made available to all Plan Members.
 - i.
- c. Trustees Held Harmless: No trustee or former trustee shall be liable to any other trustee or Plan member for actions taken in good faith and within the scope of such trustee's authority; and the Plan shall indemnify, save and hold harmless each trustee or former trustee from any liability arising from any claim, judgment, lawsuit, action or other proceeding, by virtue of their capacity as trustee or in connection with actions taken in good faith and within the scope of such trustee's authority, including reasonable and necessary attorneys' fees and disbursements incurred in connection therewith.
- d. Bylaws: Except as set forth herein, the operations of the Board of Trustees shall be governed by bylaws adopted by it, as amended from time to time.

Article IV. Members

- a. Eligibility: Membership in the Plan is limited to municipal corporations.

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- b. Admission of New Members: Each prospective member of the Plan must execute a Participation Agreement for the group acknowledging that the member understands and agrees to the requirements, obligations and responsibilities associated with membership in the Plan, including, but not limited to joint and several liability and the obligation to pay all funding contributions, WCB assessments and supplemental assessments. The Participation Agreement shall take such form and contain such information as determined by the Board of Trustees. The Board of Trustees shall be under no obligation to admit new members to the Plan.
- c. Member Responsibilities: Members shall comply with all of the responsibilities set forth in the Plan Document and the Participation Agreement.

Each member shall be responsible, jointly and severally, for all liabilities of the Plan under the Workers Compensation Law and all rules and regulations enacted pursuant thereto during its respective period of membership.

- d. Terms and Conditions of Membership: Municipal corporations, including school districts and boards of cooperative educational services, may be permitted to join the Plan at such times and on such terms as may be approved by a majority vote of the Board of Trustees; provided, however, that the Board of Trustees shall be under no obligation to admit new members to the Plan. The Board of Trustees may require applicants for Plan membership to furnish fiscal and loss information, to submit to examinations of their records and operations, and to bear the reasonable expense of such examination. All members must enter into a Participation Agreement, and it is expressly understood and agreed by each Plan member that:
- i. each member understands and accepts that it is responsible pursuant to the Laws of the State of New York for workers' compensation payments to employees and for employers' liability payments to third-parties, and the existence of this Plan shall not relieve or displace any such liability; provided, however, that the Plan shall be liable to its members, and the members shall be liable to the Plan and each other, for the obligations set forth herein.
 - ii. each member will appear before the Workers' Compensation Board, and before any other tribunal having jurisdiction over workers' compensation or employers' liability claims, in the name of the Plan and, further, that the Plan shall furnish representation as provided herein.
 - iii. each member agrees that it will adhere to the requirements of the Plan, will cooperate in such inquiries and furnish such information as may be necessary or appropriate for Plan purposes, and will promptly pay such initial assessments, continuing assessments, and supplementary assessments, as may properly be made pursuant to the Plan.
 - iv. each member consents that the Plan may, in its own name, commence such legal or equitable actions or proceedings in the Supreme Court of the State of New York or in any other competent tribunal having jurisdiction against any member to enforce the obligations of such member pursuant to the Plan.

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- v. as a condition precedent to membership to the Plan, each Plan member represents and warrants to the Plan and to every other member that it has in all respects the power and authority to participate in the Plan as a member; and that it has lawfully and properly taken all steps and performed all acts which may be required to participate in the Plan pursuant to the Plan itself and all applicable laws.
- vi. it is understood and agreed by each Plan member that the funding contributions received from each member will be commingled, and that funds received from one member may, in accordance with Plan criteria, be disbursed for the benefit of other members.
- vii. member obligations: All members shall be responsible for:
 - 1. the prompt payment of all assessments;
 - 2. the maintenance of accurate books and records with respect to workers' compensation and employers' liability claims;
 - 3. the prompt furnishing of information regarding actual and anticipated workers' compensation and employers' liability claims, and with respect to matters likely to give rise to such claims;
 - 4. cooperation with and facilitation of all reasonable inquiries which may be made by the Board of Trustees or Key Agents with respect to specific claims and with respect to loss experience in general; and
 - 5. cooperation with all risk management and loss control programs which may be instituted by the Board of Trustees.
- viii. no municipal corporation, including school district or board of cooperative educational services, shall be admitted to plan membership until its governing body has adopted a resolution accepting the terms of this Plan Document and entered into a Participation Agreement. Sample enabling resolutions in the forms set forth in Appendices A & B hereto, or in such other forms as may from time to time be prescribed by the Board of Trustees.
- ix. Once admitted to plan membership, each member shall be obligated to cooperate in the administration of the plan and to perform all requirements of continuing membership set forth in the Participation Agreement.
- x. The Board of Trustees may decide to pay, compromise or contest any claim. A decision by the Board of Trustees to pay, compromise, or contest any claim shall be final and binding.

Article V. Revocation and Termination of Membership

- a. Any member which fails to pay a required fund contribution, WCB assessment or supplemental assessment within 90 days after the date on which such fund contribution or supplemental assessment was payable will be deemed to have given notice of withdrawal from the Plan, effective at the end of the policy year following the 90-day period. The withdrawal of a member for the failure to pay a required

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funding contribution or supplemental assessment shall not relieve the member of any funding contribution or supplemental assessment due to the Plan for the full policy year. No forbearance with respect to any Plan member or any payment will be deemed to create a waiver with respect to subsequent defaults by the same or any other member.

- b. The Board of Trustees may terminate the membership of any Plan member with not less than 90 days notice, as follows:
 - i. By majority vote, for failure to comply with any of the provisions of the Plan Document or Participation Agreement; or
 - ii. By two-thirds vote, for any other reason.
- c. A plan member reserves the right to revoke this agreement upon sixty (60) days written notice to the Plan. The effective date of termination will be the end of the member's policy year following the sixtieth day from the mailing of such written notification. Any plan member who withdraws or is terminated pursuant to this paragraph from membership will assume sole responsibility as of the effective date of termination for all workers' compensation and employers' liability claims against it which relate to occurrences which take place after the termination date. As of such termination date, the withdrawing or terminated member shall cease to have any liability with respect to any occurrences which took place prior to the termination date regardless of when the claim is submitted, except that such withdrawing or terminated member shall be responsible for any supplemental assessment resulting from a plan shortfall for those claims which arose prior to the date of such termination or withdrawal, as set forth in Article VI of the Plan Document.
- d. It is expressly understood that any notice to revoke, notice to withdraw, or termination as set forth above shall in effect release the Plan and each of the remaining Plan members from any liability to the withdrawing or expelled member, except as expressly provided herein.

Article VI. Fund Contributions and Supplemental Assessments

- a. Annual Fund Contribution: Upon joining the Comp Alliance, and in each year thereafter that the member remains in the plan, the member shall make a fund contribution in exchange for the coverage for workers' compensation payments and employers' liability payments provided by the Plan. Each members fund contribution shall reflect the: a) exposure and loss experience of the member; b) services to be rendered to the member; and c) any other equitable factor. The Board of Trustees reserves the right to adjust the annual fund contribution of any particular member in the event the initial fund contribution calculation was the result of a material error, omission or misstatement of loss data or any other information necessary to arrive at the appropriate funding level that is furnished by the member, its agents or representatives.
- b. Supplemental assessments: As set forth herein, the Board of Trustees may cause to be levied supplemental assessments against its members. Supplemental assessments shall be determined by the ratio that each individual members fund contribution bears to the

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aggregate fund contribution for the plan fiscal year or years to which the supplemental assessment applies. The Board of Trustees may levy supplemental assessments in the following circumstances:

- i. upon winding up or termination of the plan; or
- ii. where there exists a deficiency in the overall funding of the plan, as determined by the audited financial statements for that year or years; or
- iii. where otherwise required by law.

Members who leave the plan shall remain liable any such supplemental assessments levied for the years during which they were a member of the plan. Prior to levying a supplemental assessment, the Board of Trustees shall develop a plan to ensure that such supplemental assessments are charged in a fair and equitable manner, and shall give notice to members and former members of the plan as soon as practicable prior to levying such assessment. The failure to receive such notice shall not relieve the member or former member of their obligation to pay such supplemental assessment.

Article VII. Administration

- a. The Board of Trustees shall at all times be responsible for the governance of the Plan. Day-to-day administration of the Plan shall be vested in such group administrators, third-party administrators and other key agents as determined by the Board of Trustees. The Board of Trustees may contract with a group administrator, third party administrator, and such other persons, firms or corporations as it deems necessary to perform the day-to-day administration of the Plan.
- b. The engagement of a Group Administrator and / or a Third-Party Administrator shall be effected by a written contract, approved by the Board of Trustees and Executed by the Chair. All such contracts shall be for a term not to exceed five years. Such contract(s) shall provide, at a minimum, for:
 - i. investigation, processing and filing of claims with the Workers' Compensation Board;
 - ii. representation, whether directly or through counsel, of Plan members before the Workers' Compensation Board and other appropriate administrative and judicial tribunals;
 - iii. making recommendations for the payment or compromise of claims;
 - iv. making recommendations for the procuring of insurance to effectuate the purposes and preserve the financial stability of the Plan;
 - v. making recommendations with respect to the administrative and fiscal management of the Plan;
 - vi. reviewing and making recommendations with respect to the funding of the Plan from year to year;
 - vii. conducting surveys and studies with respect to individual Plan members and

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- otherwise, and making recommendations with respect to risk management and loss control programs;
- viii. evaluating new applicants for Plan membership and making recommendations with respect to such applications;
 - ix. designing and implementing all necessary re-insurance and excess programs; and performing such other functions as may properly be delegated by the Board of Trustees.
- c. Such group administrator and / or third-party administrator shall be responsible for assisting the Plan by coordinating the services and management of the Plan's affairs, determining and collection of annual fund contributions and supplemental assessments, loss-control, independent medical examinations, claims processing, legal, accounting and bookkeeping services.
 - d. Notwithstanding paragraphs a-c of this section, the Board of Trustees may hire and employ such key agents and employees as they deem necessary for the efficient and effective administration of the Plan.
 - e. Plan Sponsor: The plan sponsor shall serve as custodian of the funds of the Plan, and at all times have custody of the Plan's funds. The plan sponsor shall:
 - i. maintain a separate fund for workers' compensation and, if authorized by the Board of Trustees and shall maintain separate workers' compensation reserve funds.
 - ii. be bonded in an appropriate amount as approved by the Board of Trustees.
 - iii. maintain complete and accurate books of account for all funds in its custody in accordance with generally accepted accounting principles applicable to public bodies in general and Municipal corporations in particular.
 - iv. invest any Plan funds not needed for current operating expenses in accordance with the investment policy adopted by the Board of Trustees.
 - v. designate a depository for the Plan, which will be reviewed from time to time by the Board of Trustees.
 - vi. undertake to accomplish those tasks or assignments received from the Board of Trustees as they relate to the administration or implementation of the Plan.
 - vii. report to the Board of Trustees with respect to the source and application of funds.
 - f. The Plan shall indemnify, save and hold harmless the Plan Sponsor from any liability arising from any claim, lawsuit, action or other proceeding, in connection with actions taken in good faith and within the scope of the plan sponsor's authority, including reasonable and necessary attorneys' fees and disbursements incurred in connection therewith.

Article VIII. Investments

- a. The Board of Trustees shall contract with an investment manager for the investment of funds not needed for current operating expenses in accordance with the investment policy

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established by the Board of Trustees. The investment policy shall be formally approved and adopted by the Board of Trustees of the Comp Alliance and reviewed annually by the audit and finance committee or its successor, on an annual basis. All amendments to the policy shall be effective upon adoption by the Board of Trustees by resolution.

- b. The Comp Alliance's investment program will be consistent with its overall financial needs and results in the prudent management of invested funds, the availability of operating funds when needed to pay claims, operating and administrative expenses, and to provide an acceptable market-based investment return. The Comp Alliance investment program shall be operated in conformance with all applicable federal and state laws and regulations, and in accordance with the Plan Document.
- c. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the Comp Alliance. The "prudent investor" standard of care shall apply to the management of the Comp Alliance portfolio.
- d. The audit and finance committee shall, in advance of the regularly scheduled board meeting, meet with the investment manager, and report to the board on the investments of the Plan.

Article IX. Amendment And Termination Of Plan

- a. The Plan may be amended by a two-thirds vote of the Board of Trustees. Copies of amendments will be filed with the Workers' Compensation Board.
- b. The Plan may be terminated by a two-thirds vote of the Board of Trustees, effective at the end of the then-current fiscal year; provided, however, that the Plan shall remain in existence for the winding up of its affairs as provided in this Article.
- c. In the event that the Plan be terminated, the Board of Trustees shall, no later than the effective date of termination, cause to be prepared a dissolution plan that includes schedules of the Plan's assets and the Plan's current and future liabilities, including all liquidated, contingent and disputed liabilities. The Plan's liabilities shall not include any obligation for workers' compensation or employers' liability claims against Plan members, except for those by members that have arisen prior to the termination date of Plan.
- d. The dissolution plan shall provide for:
 - 1. the payment of all current and acknowledged liabilities;
 - 2. the establishment of a reserve fund for the payment of all future and contingent liabilities, as such liabilities are determined by the plan's actuary;
 - 3. the administration and run-off of future and contingent liabilities;

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4. the return to members of any funds deemed to be in excess of those necessary to run off future and contingent liabilities within a reasonable period of time. The return of funds to members shall be subject to a finding by the Workers' Compensation Board that, with the understanding that such funds are to be returned to the public fisc of the member, such excess amounts are not necessary for the payment of future or contingent liabilities;
 5. the levying of a special assessment in the event the Plan's assets are insufficient to pay all of the Plan's current and future liabilities.
- e. Supplemental assessments levied against, or distribution of surplus funds to, Comp Alliance members as a result of the dissolution of the Plan shall be determined in a fair and equitable manner and may consider each members longevity with the Comp Alliance, its proportionate share of funding contributions and its proportionate share of liabilities.
- f. Funds in excess of what is necessary to pay for the liabilities of the plan shall be returned to members within a reasonable period of time following the dissolution of the Plan, subject to:
1. a determination by the Workers' Compensation Board that such funds are no longer necessary to pay for the liabilities of the Plan;
 2. each then-current Plan member executing a release in suitable form relieving the Plan, and each other then-current member from any liability arising from the Plan.

Article X. Reformation & Supervening Law

To the extent that any provision of the Plan be determined by a court of competent jurisdiction to be invalid in whole or in part under existing or hereafter-enacted law, the remaining provisions of this instrument shall remain in full force and effect, and any disputed provision shall, to the extent possible, be interpreted in such manner as to conform to applicable legal requirements. In the event that the Board of Trustees determines that the complete or partial invalidity of any provision of this instrument would materially prevent or impede the accomplishment of the essential purposes of the Plan, then the Plan shall be terminated in accordance with the Plan.

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APPENDIX A

WHEREAS there has been proposed a "NEW YORK STATE MUNICIPAL WORKERS' COMPENSATION ALLIANCE PLAN DOCUMENT" pursuant to Section 50 3-a of the Workers' Compensation Law (hereinafter "the Plan"); and

WHEREAS the (*Municipality*) is eligible for membership in the Plan; and

WHEREAS the (*Municipality*) has made an independent investigation of the Plan and reviewed the Plan document, and has concluded that it would be in the interests of the (*Municipality*) to participate therein; now, therefore, be it

RESOLVED that the (*Municipality*) enter into membership in the Plan pursuant to Section 50 Subdivision 3-a of the Workers' Compensation Law; and be it further

RESOLVED, that (*Signature Authority*) be and hereby is authorized and instructed to execute the Plan's charter document on behalf of the (*Municipality*); and be it further

RESOLVED, that the custody of all joint Plan moneys by the Plan Administrator under the Plan be and the same hereby is approved.

A MOTION was made by (*Name*) and seconded by (*Name*) to adopt the above resolution by the (*Governing Board*) of the (*Municipality*) at its (*Date*) meeting.

S _____(signature)

E _____(name/title)

A _____(date)

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APPENDIX B

EXTRACT OF MINUTES

The following is an exact copy of a portion of the Minutes of the
(*Governing Board*) meeting dated (*Date*).

"WORKERS' COMPENSATION - SELF INSURANCE"

"A MOTION was made by (*Name*) and seconded by (*Name*) to
adopt the following resolution:

"RESOLVED, that the (*Municipality*) hereby elects, pursuant to
Subdivision 3-a of Section 50 of the Workers' Compensation Law, to
become a self-insurer as to Workers' Compensation claims against
this Municipality; and be it further

"RESOLVED, that pursuant to Section 50 Subdivision 3-a of said
Workers' Compensation Law, notice of such election shall be filed
forthwith with the Chairman of the Workers' Compensation Board,
Self-Insurance Section; and be it further

"RESOLVED, that this election shall become effective on (*Date*).

"MOTION carried".

S _____(signature)

E _____(name/title)

A _____(date)

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APPENDIX C

(TO BE TYPED ON MUNICIPALITY LETTERHEAD)
(SEND REGISTERED MALL RETURN RECEIPT)

TO: Present Insurance Carrier

RE: Name of Municipality
Policy No.
Policy No. -for *Volunteer Fire Fighters (if different from above, if applicable)* Policy No. -for *Volunteer Ambulance Corps (if different from above, if applicable)*

Sir or Madam:

This letter is to advise you that the *(Name of Municipality)* has elected to become self-insured, effective *(Effective Date)*, in accordance with Subdivision 3-a of Section 50 of the Workers' Compensation Law.

Notice is hereby given of this Municipality's intention to cancel the subject policy with *(Name of Insurance Carrier)* as of *(Effective Date)* . This notice is timely in accordance with the notice of cancellation requirement.

We wish to thank you for your efforts and services during the term of this policy.

Very truly yours,

(Please send us a copy of this letter when mailed.)