



MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL
DECLARATION OF TRUST

AGREEMENT made and entered into effective the _____
_____ by and among _____

(hereinafter “Members”) and the Trustees who have heretofore or who may hereafter be appointed to serve as provided herein.

WITNESSETH:

WHEREAS, Members and Trustees desire to establish a group self-insurance fund pursuant to the provisions of Act 138 of the Michigan Public Acts of 1982 for the mutual benefit and protection of the Members; and

WHEREAS, it has been determined that it is in the best interests of the Members to establish a Trust for the purpose of receiving, protecting and disbursing monies paid pursuant to such fund:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Michigan County Road Commission Self-Insurance Pool be and is hereby established as follows:

ARTICLE I

CREATION OF THE TRUST

There is hereby established and created a Trust Fund which shall be known as the “MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL” and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Trust Fund in that name. This Trust Fund shall be used only for the purposes as hereinafter set forth.

ARTICLE II

PURPOSE

This Trust Agreement is made and executed for the purpose of forming a group self-insurance pool to provide for joint and cooperative action relative to Members’ financial and administrative resources for the purpose of providing to participating Members risk management and coverage for pool Members and their employees acting within the scope of their employment, for acts and/or omissions arising out of, or involving property used for purposes related to the jurisdiction, design, construction or maintenance of public roadways by a Member, or arising out of, or involving property used in relation to governmental activities of a county road commission acting as a commission or other governing board or body of a municipal corporation, governmental agency or an organization created by the execution of one or more Intergovernmental agreements (such as a Park Board or Water & Sewer Authority). Such coverage may include any or all of the following:



- (a) Casualty insurance, including general liability, public officials and employment practices liability and automobile liability, including no-fault coverages as required by Chapter 31 of the Michigan Insurance Code;
- (b) Physical damage coverage including equipment breakdown; and
- (c) Employee fidelity and faithful performance coverage.

ARTICLE III

DESIGNATION OF TRUSTEES

SECTION 1. Number of Trustees: Designation of Governing Body. The operation and the administration of the Trust shall be the joint responsibility of a Board of Directors consisting of not less than nine (9) Trustees. All Trustees shall serve as members of the Board of Directors.

SECTION 2. Appointment of Initial Board of Directors. The initial Board of Directors, as appointed by the Members, shall be:

	Term
Herbert O. Larkin	3
Kenneth R. Apsey	3
Donald Gillard	3
E. R. Amble	2
W. V. Wentela	2
Doris J. Younts	2
Thomas Brouwer	1
James M. Falk	1
D. Mack Rabourn	1

SECTION 3. Election of Directors: Terms of Office. The election of Directors, their term of office, and all related matters shall be governed by the By-Laws adopted by the Members in accordance with the terms and provisions of this Trust.

ARTICLE IV

BY-LAWS

SECTION 1. Adoption of By-Laws. By two-thirds (2/3) vote, the Board of Directors shall adopt By-Laws governing the operation and administration of the Trust; provided, however, that the By-Laws so adopted shall not become effective and binding until they have been approved by not less than two-thirds (2/3) of the Members.

SECTION 2. Amendment of By-Laws. Any amendment of the By-Laws must be approved by not less than two-thirds (2/3) of the Board of Directors and, in addition, by not less than two-thirds (2/3) of the Members before it shall become effective and binding.

SECTION 3. Binding Effect. The By-Laws and any amendments thereto properly adopted pursuant to the terms and provisions of this Trust shall be binding upon the Trustees acting as the Board of Directors of the Trust and the Members.

ARTICLE V

RULES AND REGULATIONS

The Board of Directors may prescribe such rules and regulations as may, in their judgement and discretion, be proper and necessary for the sound and efficient administration of the Trust provided, however, that the rules and regulations shall not be inconsistent with the provision of this Declaration of Trust, the By-Laws or applicable Federal and/or State laws and/or regulations.



ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

SECTION 1. General Powers. The Board of Directors shall have the power and authority and shall be charged with the duty of general supervision and operation of the Trust and shall conduct the business and activities of the Trust in accordance with this Declaration of Trust, the By-Laws adopted pursuant to the terms and provisions of this Trust, rules and regulations adopted by the Trustees, and applicable Federal and/or State laws and/or regulations.

SECTION 2. Deposit of Funds. The Board of Directors shall cause to be immediately deposited to the account of the Trust, at any bank or banks designated by the Board of Directors, all premiums as and when collected. Said monies shall be disbursed only as provided by the terms and provisions of this Trust, the By-Laws, rules and regulations adopted by the Board of Directors, agreements entered into by the Trust and applicable Federal and/or State laws and/or regulations.

SECTION 3. Appointment of Administrator. The Board of Directors may designate a fiscal agent and/or administrator to administer the operational and financial affairs of the Trust. Any fiscal agent and/or administrator so appointed shall furnish a fidelity bond with the Board of Directors as obligees, in an amount sufficient to protect the Trust and its assets against the misappropriation or misuse of any monies or securities held by or in the name of the Trust. The amount of the bond shall be determined by the Board of Directors and evidence of such bond shall be filed with the appropriate entities.

SECTION 4. Office of the Trust. The Board of Directors shall establish and maintain an office of the Trust, the exact location of which shall be made known to the parties interested in or participating in the Trust and to other interested parties. The books and records pertaining to the Trust and its administration shall be kept and maintained at the office of the Trust.

SECTION 5. Actions to Protect Against Losses. The Board of Directors is authorized and directed to take all reasonable precautions which it deems appropriate to protect the Members from losses. The Board of Directors shall provide for excess insurance coverage designed to protect said Members against excess losses, as the Board of Directors may deem appropriate and reasonable under the circumstances.

SECTION 6. Admission of New Members. The Board of Directors may admit as new members of this Trust whomever it determines, by not less than a two-thirds (2/3) vote, is acceptable and financially sound. The Board of Directors shall be the sole judge of whether or not an applicant for membership shall be admitted to membership.

SECTION 7. Suspension and Expulsion of Members. The Members may suspend or expel any Member from the Trust upon thirty (30) days advance written notice by not less than a two-thirds (2/3) vote. No liability shall accrue to the Trust or to its Members as a result of any claim asserted against any suspended or expelled Member arising out of any accident or other incident occurring after thirty days from the date the notice of suspension or expulsion has been given to the Member.

SECTION 8. Acceptance of Resignation of Member. The Board of Directors may accept the resignation or withdrawal of a Member; provided, however, that no liability shall accrue to the Trust or any Members other than the resigning or withdrawing Member with respect to a member who has resigned or withdrawn from the Trust arising out of any accident or other incident occurring on or subsequent to the effective date of the Member's resignation or withdrawal.



SECTION 9. Use of Funds. The Board of Directors shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Trust for that year. All remaining funds coming into its possession or under its control with respect to that fiscal year of the Trust shall be set aside and shall be used only for the following purposes:

- (a) Fee for any service agent(s) for that year of the Trust;
- (b) Payment of all claims and judgments for occurrences covered by the Trust for that Trust year;
- (c) Payment of the cost of all bonds and auditing expense required of the Trust or its agents;
- (d) Payment of all premiums and costs of excess insurance for protection obtained from outside carriers;
- (e) Payment of all costs associated with the operation and maintenance of the Trust;
- (f) Distribution among the members during that fiscal year in such manner as the Members and the Board of Directors shall deem to be equitable, of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of each Trust Year; and provided further, that undistributed funds from previous Trust Years may be distributed at any time if not required for loss funding and if approved for distribution by the Board of Directors. The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years;

- (g) The Board of Directors may establish from time to time a reasonable amount of reimbursement for expenses to cover attendance at meetings of the Board of Directors and the performance of the normal duties of a member of the Board of Directors. The reimbursement shall only include reimbursement of necessary expenses incurred.

ARTICLE VII

LIABILITY

SECTION 1. Good Faith Actions. No member of the Board of Directors shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except for gross negligence, or for any act of omission or commission by any other member of the Board of Directors or by any employee of the Board of Directors.

SECTION 2. Liability Insurance. The Board of Directors is hereby authorized and empowered to obtain, at the expense of the Trust, liability insurance fully protecting the members of the Board of Directors jointly and severally and the Trust from any loss or expense incurred, including reasonable attorney's fees, for all acts of the Board of Directors, except bad faith and gross negligence on the part of the Board of Directors. The Trust hereby agrees to save, hold harmless and indemnify each member of the Board of Directors while acting in its official capacity, excepting bad faith and gross negligence.

SECTION 3. Advice of Legal Counsel. The Board of Directors may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this agreement or the Trust hereby created; and the opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Board of Directors hereunder in good faith in accordance with the opinion of such counsel and the Board of Directors shall not be liable therefore.



ARTICLE VIII

DUTIES AND OBLIGATIONS OF MEMBERS

SECTION 1. Compliance with By-Laws, Rules and Regulations. Each member shall comply with and be bound by all By-Laws, Rules and Regulations adopted pursuant to the terms and provisions of this Trust.

SECTION 2. Additional Obligations. Each Member shall also comply with and be bound by each of the following additional obligations.

- (a) Each Member shall follow the safety and general recommendations of the Board of Directors and the service agent.
- (b) In the event of a claim, suit or occurrence which may give rise to a claim, each Member shall give immediate notification of the claim, suit or occurrence to the service agent on the prescribed forms.
- (c) Each Member shall promptly pay all premiums and assessments as required by the Board of Directors, which premiums are to be determined by applying applicable experience modification to the standard rates for the exposure to risk. Further, the premium shall include loss and expense constants and minimum premiums, where applicable. Finally, the premium may be reduced by any discount allowed by the Board of Directors. Each Member shall indemnify the Trust for all punitive or exemplary damages to the extent said damages are not covered by any issued insurance contract.

- (d) Each Member shall, and by signing this Trust Agreement or its counterpart, or by ratifying same, does appoint the current service agent of the Trust any successor service agent from time to time appointed by the Board of Directors as its agent and attorney-in-fact to act in its behalf and execute all contracts, reports, waivers and agreements, or arrange for payment of claims, medical expenses, and all other things required or necessary insofar as they affect its liability under Michigan law and as covered by the terms of this Trust Agreement and the rules and regulations as now provided or as hereafter promulgated by the Board of Directors.
- (e) The Member agrees that in the event of the payment of any loss by the Trust under this Trust, the Trust shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for said loss, and in such event the member hereby agrees to render all reasonable assistance other than pecuniary, to effect recovery; provided, however, that any sums recovered pursuant to subrogation shall be divided between the Member and the Trust in the same proportions as the amount of the expenses and judgment paid by the Member pursuant to its deductible and the amount of the expenses and judgment paid by the Trust (directly and through re-insurance).
- (f) The Board of Directors of the Trust, the Service Agency, and any of their agents, servants, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery, and appliances covered by this agreement, and shall be permitted at all reasonable times and within three (3) years after the final termination of the membership to examine Member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the premium which is payable under the terms hereof.



ARTICLE IX

OBLIGATIONS OF TRUST TO MEMBERS

The Trust will investigate, handle and, if appropriate, settle any claims made against any Member; and shall defend, in the name of and on behalf of, any Member, any litigation or other proceedings which may be instituted against a member on account of injuries, death or other damages or compensation, within the pervue of the Trust, subject to the coverage provided to the Member, or on the basis of the liability or alleged liability of the Member, and even if such claims, suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent; and to pay all judgments and costs taxed against the Member in any legal proceeding defended by the Pool, all interest accruing after entry of a judgment and all expenses incurred for investigation, negotiation or defense up to the limits of the liability of the Pool therefore.

ARTICLE X

MISCELLANEOUS

SECTION 1. Amendments. This Trust may be amended, in writing, at any time by the concurrence of not less than two-thirds (2/3) of the Board of Directors and the concurrence of not less than two-thirds (2/3) of the then current Members; provided, however, this Trust may not be amended so as to change its purpose as set forth in Article II above or to permit the diversion or application of any of the funds of the Trust for any purpose other than those specified herein. Upon receipt of a two-thirds (2/3) vote of the Pool Board, a copy of the proposed amendment shall be sent to all Members. The concurrence of the Members, if not provided at a duly called special or annual meeting of the Pool, may be delivered to the Pool office via the United States Postal Service or

overnight mail not later than forty (40) days from the date that the proposed amendment is furnished to the Members by the Pool Board. A copy of any such approved amendment shall be sent to all Members.

SECTION 2. Termination of Trust. This Trust may be terminated at any time by concurrence of all of the parties to this agreement, or their successors. This Trust shall terminate, in any case in the event that all of the members are dissolved, abolished or cease to exist as a municipal corporation or governmental entity. This agreement shall continue in full force and effect as it may be amended and supplemented from time to time, subject, however, to the above termination provision. In the event of termination, the remaining funds available in the Trust, after providing for all outstanding obligations, shall be distributed to the participating Members through a formula determined by the Board of Directors.

SECTION 3. Situs of the Trust. This Trust Agreement is executed by the parties hereto and accepted by the Trustees in the State of Michigan and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of Michigan.

SECTION 4. Execution of Documents. A certification signed by the Chairman and Secretary of the Trust shall be evidence of the action of the Board of Directors and any such certificate or other instruments so signed shall conclusively be presumed to be authentic and all facts and matters stated therein shall conclusively be presumed to be true.

SECTION 5. Fiscal Year of Trust. The Trust shall operate on the fiscal year designated in the By-Laws. Application for continuing membership, when approved in writing by the Board of Directors or its designee, shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Trust or unless the Member shall have resigned or withdrawn or been expelled from the Trust by written notice.



SECTION 6. Distribution of Dividends or Reserves. There will be no disbursement out of this Trust for any fiscal year by way of dividends or distribution of accumulated reserve to Members until (a) after provision has been made for all known obligations and (b) the Board of Directors shall deem the distribution to be proper.

SECTION 7. New Members. Any entity which subsequently formally applies for membership in this Trust and is accepted by the Board of Directors in accordance with the provisions of this Trust and the By-Laws thereupon become a party to this Trust and be bound by all of the terms and conditions hereof by the signing of a copy of the Trust, or the ratification thereof, which shall thereupon constitute a counterpart of this Trust.

SECTION 8. Board of Director Action. Except, as otherwise set forth in this Trust, all actions taken by the Board of Directors shall be by majority vote.

SECTION 9. Insolvency. In the event the Trust becomes insolvent, the Board of Directors shall adopt and implement a plan which will cure the insolvency or, in the alternative, shall take such action as is necessary to terminate the Trust. Any action taken pursuant to this Section shall require the approval of two-thirds (2/3) of the Board of Directors and two-thirds (2/3) of the Members.

SECTION 10. Captions. Captions in this Trust are used for convenience only and shall not limit, broaden or qualify the text.

SECTION 11. Severability. Should any provision of this Trust be or become invalid or unenforceable, the remaining provisions shall continue to be fully effective.

SECTION 12. Binding Effect. This Trust shall be binding upon and be fully enforceable as to each Member and the successors and assigns of each member.

SECTION 13. Counterparts. This Agreement is intended to be executed by each Member of the Pool in Counterparts, each of which shall be an original and all of which shall constitute the same instrument.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first written above.

COUNTY ROAD COMMISSIONS:

TRUSTEES:
