

**INTERGOVERNMENTAL AGREEMENT
ESTABLISHING THE
OREGON PUBLIC ENTITY EXCESS POOL**

THIS INTERGOVERNMENTAL AGREEMENT establishes the Oregon Public Entity Excess Pool ("OPEEP"), for the purpose of administering joint risk retention and group purchasing of insurance and reinsurance.

RECITALS

A. PARTIES

1) The parties to this Agreement are the following entities:

- 1. CIS TRUST
- 2. CLACKAMAS COUNTY, OREGON
- 3. DESCHUTES COUNTY, OREGON
- 4. WASHINGTON COUNTY, OREGON

2) Parties to the Agreement are hereinafter described as "Founding Members." The Parties also may be referred to as "Members" herein.

B. AUTHORITY

- 1) ORS 190.010 provides that "a unit of local government may enter into a written agreement with any other unit of units of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform."
- 2) ORS 30.282(1-2) authorizes public entities to procure insurance and to establish a self-insurance program.
- 3) ORS 30.282(3) authorizes public entities to "jointly provide by intergovernmental agreement" the collective procurement of insurance and to collectively establish a self-insurance program.

C. PURPOSE

The purpose of this Agreement is to establish OPEEP as an intergovernmental entity as a means for local public entities to jointly develop and fund predictable, stable, cost-effective and efficient pooled risk-retention and risk purchasing programs ("Programs"). Such Programs may include, but are not limited to, the creation of risk-retention, risk-purchasing of reinsurance, risk management training, and administrative services.

THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

I. ORGANIZATION AND NAME

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- (a) The Oregon Public Entity Excess Pool (hereinafter referred to as "OPEEP") is an intergovernmental agency established effective the date set forth adjacent to the signatures below, by and between the PARTIES to this Agreement.
- (b) While OPEEP is created expressly for the benefit of certain political subdivisions, OPEEP is not itself a political subdivision. OPEEP is a "public body" as that term is defined in ORS 30.260(4). OPEEP is also a "public corporation" as that term is defined in ORS 297.405(6) and applied in ORS 307.090(1).
- (c) OPEEP shall in all respects be governed by the laws of the state of Oregon and shall be administered primarily as herein provided and secondarily pursuant to the OPEEP BYLAWS to accomplish the purposes contained expressly and by necessary implication herein. The debts, liabilities, or obligations of OPEEP are not the debts, liabilities, or obligations of participating Members, except to the extent of agreed contributions.
- (d) It is intended that the maintenance and administration of OPEEP shall constitute the exercise of essential government functions within the meaning of Section 115(1) of the Internal Revenue Code.
- (e) The public entities that are parties to this Agreement are establishing OPEEP under the authority of ORS 30.282, by intergovernmental agreement pursuant to ORS 190.010, in order to jointly form a risk retention and risk purchasing group and provide related risk management services. As a result, ORS 731.036(4-5) exempts OPEEP from application of the State Insurance Code.

II. Membership in OPEEP

"Public bodies" as defined in ORS 30.260 (4) (b) and (c), and public entity risk pools, shall be eligible to participate in coverage, programs, and services offered by and through OPEEP, subject to further terms of OPEEP Bylaws and the rules and policies adopted by the OPEEP Board of Directors.

III. Governance

A. Board of Directors

OPEEP shall be governed by a Board of Directors that shall be composed as follows:

- (a) One director from each Member, appointed by the Member's governing body and serving at the pleasure of that Member. A director shall be an elected official or employee of the Member. Upon termination of office or employment with the Member, the director shall automatically terminate membership on the OPEEP Board.
- (b) Unless membership on the Board of Directors is terminated under Section (a) above, the term of a director shall be three years, however the Board may shorten or lengthen appointments to begin a process of staggering the expiration of the Directors' terms.

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Directors may be reappointed for subsequent terms at the discretion of the Member's governing body.

(c) Any vacancy in a director position associated with a Member shall be filled by the governing body of that Member.

(d) A majority of the membership of the Board shall constitute a quorum for the transaction of business. Each member of the Board shall have one vote. Except as otherwise provided in this Agreement or the Bylaws, all actions of the Board shall require the affirmative vote of a majority the Executive Committee, with regard to the powers and duties delegated to it, or, the affirmative vote of a majority of the full Board.

B. Executive Committee

(a) The Board of Directors shall form an Executive Committee of up to seven (7) Members to conduct the business of OPEEP, as delegated by the Board and defined herein, between Board meetings.

(b) The Board may delegate to the Executive Committee and the Executive Committee may discharge any powers or duties of the Board except adoption of OPEEP's annual budget. The powers and duties so delegated shall be specified in resolutions adopted by the Board and incorporated into the Bylaws.

(c) Members of the Executive Committee shall be the Founding Members, plus three directors appointed by the Founding Members, unless such directors decline to participate in said Committee. The Founding Members shall represent 4/7ths of the Executive Committee membership, unless a Founding Member completely resigns its membership in OPEEP. In such case the remaining Founding Members can appoint a new Executive Committee Member. If three (3) or more Founding Members completely resign their membership in OPEEP, regular Executive Committee members will be elected by the full Board of Directors.

(d) The terms of office of the Executive Committee shall be as provided in the Bylaws.

C. Powers of the Board of Directors

(a) The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of OPEEP.

(b) The Board may form such other committees, in addition to the Executive Committee, as it deems appropriate to conduct the business of OPEEP. The membership of any such

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committees may consist in whole or in part of persons who are not members of the Board, provided that the Board may delegate its powers and duties only to a committee of the Board composed of a majority of Board members. Any committee that is not composed of a majority of Board members may function only in an advisory capacity.

(c) The Board shall appoint or retain an Administrator of OPEEP and shall authorize the Administrator to employ and supervise all additional staff and contracted service providers. The Administrator shall not simultaneously serve on the Board of Directors.

(d) The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of OPEEP.

(e) The Board, directly or through the Executive Committee, shall develop, or cause to be developed, and shall adopt, review, and modify as necessary each insurance program of OPEEP, including all provisions for reinsurance and administrative services necessary to carry out such program.

(f) The Board, directly or through the Executive Committee, shall provide for necessary services to OPEEP and to Members, by contract or otherwise, which may include, but shall not be limited to, actuarial consulting, financial services, training, claims management, leasing property and legal services.

(g) The Board, through the Executive Committee, shall provide general supervision and policy direction to the Administrator.

(h) The Board shall receive and act upon reports and recommendations of the committees and the Administrator.

(i) The Board may, in its sole discretion, authorize a review, audit, report or recommendations with regard to the safety or claims administration functions of any Member, insofar as those functions affect the liability or potential liability of OPEEP. The Board may forward any or all such recommendations to the Member with a request for compliance and a statement of potential consequences for noncompliance, which can include termination of one or more coverage. Members have a duty of reasonable cooperation with such requests.

(j) The Board shall receive, review and act upon periodic reports and audits of the funds of OPEEP.

(k) The Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of OPEEP.

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B. Meetings of the Board of Directors

(a) The Board shall hold at least one regular meeting each year and shall provide for such other regular meetings and for such special meetings as it deems necessary.

(b) The Administrator shall provide for the keeping of minutes of regular and special meetings of the Board, and shall provide a copy of the minutes to each Member of the Board at the next scheduled meeting.

C. Officers

The Executive Committee shall elect from its membership a President and Vice President of the Board, pursuant to the Bylaws. The President, or in his or her absence, the Vice President, shall preside at and conduct all meetings of the Board and shall chair the Executive Committee.

D. Administration

The Administrator shall administer the business and activities of OPEEP, subject to the general supervision and policy direction of the Board of Directors and Executive Committee. The Administrator shall be responsible for all minutes, notices and records of OPEEP and shall perform such other duties as are assigned by the Board and Executive Committee.

The Administrator may enter into contracts on behalf of OPEEP.

Staff positions shall be authorized by the Board of the Executive Committee and shall be hired and managed by, or pursuant to the direction of, the Administrator.

E. Liability of Board of Directors, Officers, Committee Members, and Advisors

The members of the Board of Directors, Officers, committee members and professional advisors to any Board or committees of OPEEP shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of OPEEP funds, or failure to invest.

No Director, Officer, committee member, or professional advisor to any Board or committee shall be responsible for any action taken or omitted by any other Director, Officer, committee member, or professional advisor to any committee. No Director, Officer, committee member or professional advisor to any committee shall be required to give a bond or other security to guarantee the faithful performance of their duties.

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The funds of OPEEP shall be used to defend, indemnify and hold harmless OPEEP and any Director, Officer, committee member or professional advisor to any committee for their actions taken within the scope of OPEEP. Nothing herein shall limit the right of OPEEP to purchase insurance to provide such coverage as is hereinabove set forth.

IV. Responsibilities of Members

Members shall have the following responsibilities under this Agreement.

- (a) The governing body of each Member shall appoint a representative to the Board of Directors.
- (b) Each Member shall appoint an officer or employee of the Member to be responsible for the risk management function for that Member and to serve as a liaison between the Member and OPEEP for all matters relating to risk management.
- (c) Each Member shall maintain active safety and risk management programs, and shall consider and act upon recommendations of OPEEP concerning the reduction of unsafe practices and utilization of best practices. Members shall reasonably cooperate with risk management requests by OPEEP
- (d) Each Member shall maintain its own claims and loss records in each category of liability covered by a Program of OPEEP in which the Member is a participant, and shall provide copies of such records to OPEEP as directed by the Board of Directors or Executive Committee, or to such other committee as directed by the Board or Executive Committee.
- (e) Each Member shall appropriate adequate revenues, as permitted by applicable law, for and to pay promptly all Contributions, Premiums and Fees to OPEEP at such times and in such amounts as shall be established by the Board within the scope of the Agreement, Bylaws, Coverage Agreement, or Policy of Insurance.
- (f) Each Member shall provide OPEEP such other information or assistance as may be necessary for OPEEP to develop and implement Programs under this Agreement.
- (g) Each Member shall cooperate with and assist OPEEP, and any reinsurer or legal counsel of OPEEP, in all matters relating to this Agreement, and shall comply with all Bylaws, and other rules established by the Board of Directors.
- (i) Each Member shall have such other responsibilities as are provided elsewhere in this Agreement, the Bylaws, the Coverage Agreement, and such rules that are established by the Board of Directors in order to carry out the purposes of this Agreement.

V. Administration of Claims

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(a) Subject to subparagraph (e), each Member shall be responsible for the investigation, settlement or defense, and appeal of any claim made, suit brought, or proceeding instituted against the Member arising out of a loss.

(b) OPEEP may develop standards for the administration of claims for each insurance program of OPEEP so as to permit oversight of the administration of claims by the Members.

(c) Each participating Member shall give OPEEP timely written notice of claims in accordance with the provisions of the Bylaws.

(d) A Member shall not enter into any settlement involving liability of OPEEP without the advance written consent of OPEEP.

(e) OPEEP, at its own election and expense, shall have the right to participate with a Member in the settlement, defense, or appeal of any claim, suit or proceeding which, in the judgment of OPEEP, may involve liability of OPEEP.

VI. Termination of Membership

A. Voluntary Withdrawal of Membership By Member Entity

A Member may withdraw from a Program and/or membership in OPEEP only at the end of a policy year, and only if it gives OPEEP at least six months written notice.

B. Involuntary Cancellation By Board of Directors

(a) The Board of Directors may:

(1) Cancel any Member from one or more Programs on a majority vote of the Executive Committee or a majority vote of the full Board. If a Member is cancelled from all Programs, such that the Member no longer participates in any Program with OPEEP, then the entity's membership in OPEEP is also cancelled.

(2) Cancel any Member's participation in a Program of OPEEP, without canceling the Member's membership in OPEEP or participation in other Programs, on a majority vote the Executive Committee or a majority vote of the full Board.

(b) The Board shall give thirty (30) days advance written notice to a Member who may be cancelled from a program. Prior to a vote, the potentially affected Member shall be given an opportunity to provide the voting members with a written or oral statement. If the Board votes to cancel, it must give sixty (60) days advance written notice of the effective date of any cancellation under the foregoing provisions.

C. Effect of Withdrawal or Cancellation

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(a) Any Member that withdraws or is cancelled from a Program may not reenter such Program for a period of three years from the effective date of withdrawal or cancellation.

(b) If a Member's participation in a Program is canceled effective prior to the end of the policy year for that Program, OPEEP shall promptly determine and return to that Member the amount of any unearned contributions from the Member for the policy year, to be calculated on a pro-rata basis from the effective date of cancellation.

(c) Except as provided in (b) immediately above, a Member that withdraws or is canceled from participation in a Program shall not be entitled to the return of any contributions or other payments to OPEEP, or of any property contributed to OPEEP.

(d) A Member that withdraws or is canceled from participation in a Program shall pay:

(1) All contributions which the Administrator determines are due for the coverage year in which the Member was a participant regardless of the date of entry or date of cancellation in the Program.

(2) Any assessment charged to all participants in the Program(s) either during the coverage year or upon final disposition of all claims arising from losses under the Program during the entire coverage year in which the Member was a participant. Any such charges shall be paid in accordance with OPEEP's payment policy for active members.

VII. Dissolution

(a) A three-fourths vote of the Board is required to terminate this Agreement; provided, however, that this Agreement and OPEEP shall continue to exist after such election for the purpose of disposing of all claims, distributing all assets, and performing all other functions necessary to conclude the affairs of OPEEP.

(b) Upon termination of this Agreement, all assets of OPEEP in each Program shall be distributed among those Members participating in that Program at the time of termination in proportion to their cash contributions paid and property contributed (at market value when contributed). The Administrator shall determine such distribution within twelve (12) months after disposal of the last pending claim or other liability covered by the program.

(c) Following termination of this Agreement, any Member that was a participant in a Program shall pay any additional amount of contribution, determined by the Administrator and approved by the Board in accordance with a loss allocation formula, which may be necessary to enable final disposition of all claims arising from losses under that Program during the entire coverage year in which the Member was a participant regardless of the date of entry into such Program.

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(d) If the parties cannot agree to a division of assets and liabilities, then the circuit court of Marion County has authority to determine such division.

(e) Upon dissolution, any debts or liabilities or other obligations of OPEEP shall be the debts of OPEEP and not of its individual members unless affirmative accepted in writing by such member(s).

VIII. Amendments

This Agreement may be amended from time to time by:

(a) Mutual written agreement of the Executive Committee, provided a copy of the proposed amendment is given to each Member at least 14 calendar days prior to taking any action approving the amendment, and consider any written or oral comments by the Members; or by

(b) A two-thirds (2/3) vote of the full Board of Directors.

IX. Notices

OPEEP shall address notices, billings and other communications to a Member as directed by the Member. Each Member shall provide and update OPEEP with up-to-date contact information (e.g. names, titles, email and mailing addresses, fax and telephone numbers) of the contact person responsible for implementation of this Agreement. Members shall address notices and other communications to the Administrator of OPEEP, at the office address for OPEEP as set forth in the Bylaws.

X. Prohibition Against Assignment

No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee, or third party beneficiary of any Member shall have any right claim or titled to any part, share, interest, fund, contribution or asset of OPEEP.

XI. Severability

If any provision of this Agreement is adjudicated to be invalid, unenforceable, or unconstitutional, the remainder of the provisions not subject to such adjudication shall not be affected and shall continue in full force and effect.

XII. Effective Date and Term of Agreement

The effective date of this Agreement is MARCH 27, 2015

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The term of this Agreement is perpetual until all Members terminate their membership in OPEEP, or OPEEP is dissolved in accordance with Article VII.

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XIII. Signatures and Execution of Agreement in Counterparts

The parties may execute this Agreement in counterparts, each of which shall be deemed to be an original thereof.

APPROVED AND AGREED UPON by the member entities on the dates set forth adjacent to the signatures of the parties below.

CIS TRUST

By: Lynn McClaman
Date: Feb. 13, 2015
Title: Executive Director

CLACKAMAS COUNTY, OREGON

By: [Signature]
Date: 2-25-15
Title: Commission Chair

DESCHUTES COUNTY, OREGON

By: [Signature]
Date: 27 MARCH 15
Title: Anthony DeBone, Chair
Deschutes County Board of Commissioners

WASHINGTON COUNTY, OREGON

By: [Signature]
Date: 3/9/15
Title: ASSISTANT COUNTY ADMINISTRATOR

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