

ORDINANCE NOE-0149

**A ORDINANCE AUTHORIZING THE
APPROVAL AND EXECUTION OF AN EXTENSION
TO THE HELP CONTRACT AND BY-LAWS DOCUMENT**

WHEREAS, in the 1980s, governmental bodies had difficulty purchasing excess insurance policies which offered reasonably broad coverages or were only able to purchase such insurance at rapidly increasing costs; and

WHEREAS, many governments had some prior experience with the use of intergovernmental self-insurance pools to replace or augment conventional insurance; and

WHEREAS, a number of municipalities engaged in a project to develop the contract and by-laws and coverage document for a governmental self-insurance pool to protect against high-level risks; and

WHEREAS, that intergovernmental self-insurance pool, the High-Level Excess Liability Pool ("HELP"), will conclude its first fixed term on April 30, 1998; and

WHEREAS, the existing Members of that Pool have caused the preparation of a new intergovernmental agreement which will extend the term of the HELP Pool, pursuant to this new contract, for an additional term of ten (10) years; and

WHEREAS, Illinois State law permits governmental bodies to enter into intergovernmental agreements to provide joint self-insurance for periods of up to twelve (12) years;

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WHEATON, IN DUPAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute on behalf of the City and to cause this community to become bound by the Contract and By-Laws which would cause the commencement of the High-Level Excess Liability Pool for a second term of ten (10) years commencing on May 1, 1998.

SECTION 2: For the term of the intergovernmental agreement, the execution of which is hereby authorized, this municipality shall be subject to that contract, including such amendments to that contract as shall be approved in accordance with its terms.

SECTION 3: All actions taken by the Board of Directors of the High-Level Excess Liability Pool up to the date of this Ordinance, are hereby approved and ratified, and is hereby found to be a valid act of that intergovernmental agency.

SECTION 4: The obligation of this municipality to become bound by the Contract and By-Laws document, extending the term of the HELP Agency (which is attached hereto as Appendix 1) shall only take effect upon the approval of that Contract and By-Laws document by all existing Members of the Agency, which actions must be taken by July 1, 1997.

SECTION 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

PASSED this 16th day of JUNE, 1997.

AYES: Councilwoman Davenport; Councilman Eckhoff; Mayor Carr; Councilman Johnson; Councilwoman Johnson.

NAYS: None.

ABSENT: Councilman Gresk and Councilman Mork.

APPROVED this 16th day of JUNE, 1997.

James Carr

Mayor

ATTEST:

Candy M. Connelage

City Clerk

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APPENDIX 1

FIRST EXTENSION OF THE
CONTRACT AND BY-LAWS
HIGH-LEVEL EXCESS LIABILITY POOL

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**CONTRACT AND BY-LAWS OF THE
HIGH-LEVEL EXCESS LIABILITY POOL**

ARTICLE I. Definitions and Purpose.

DEFINITIONS:

As used in this agreement, the following terms shall have the meaning hereinafter set out:

AGENCY - The High-Level Excess Liability Pool (H.E.L.P.) established pursuant to the Constitution and the statutes of this State by this intergovernmental agreement.

ANNUAL PAYMENT - The minimum amount a MEMBER shall be obligated to pay to the AGENCY during a fiscal year.

CLAIMS ADMINISTRATOR - A person or group of persons who either as employees or independent contractors are employed to administer the claims made against the MEMBERS.

CONVENTIONAL INSURANCE - Insurance coverage which may from time to time be purchased by or through the AGENCY from an insurance company approved by the Department of Insurance to write such coverage in Illinois for risks which the MEMBERS determine will not be covered or be entirely covered by the JOINT RISK MANAGEMENT POOL; CONVENTIONAL INSURANCE shall also include excess insurance and reinsurance.

DEBT INSTRUMENTS - Bonds, letters of credit, loan agreements, or other documents by which funds are borrowed by the AGENCY

or by a MEMBER of the AGENCY to fund in whole or in part the Joint Risk Management Pool.

HOST MEMBER - A MEMBER of the AGENCY which issues or becomes principally obligated for a debt instrument.

JOINT RISK MANAGEMENT POOL - A fund of public monies established by the AGENCY to provide risk management services, administer and jointly self-insure certain claims within an agreed scope, to purchase conventional insurance where such coverage is available in reasonable amounts, and where issued, to repay debt instruments and to pay other costs within the purposes of the AGENCY; also RISK MANAGEMENT POOL.

JOINT SELF-INSURANCE - A self-insurance program in which MEMBERS agree to contribute annual, and where required, supplementary payments and other required payments such as interest payments to support the costs of administration, a risk management program and joint risk management pool.

MEMBERS - Units of local government and joint contractual agencies composed of units of local government which initially or later enter into the intergovernmental contract established by this intergovernmental agreement.

POOL CONTRIBUTION FORMULA - A formula approved by the Board of Directors which will establish the amount of required annual payment to the AGENCY.

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RISK MANAGEMENT - A program attempting to reduce or limit injuries to persons or property caused by the operations of MEMBERS.

SUPPLEMENTARY PAYMENTS - Payments which may be called for, in accordance with the Contract and By-Laws, by the Board of Directors from time-to-time if the amount of the annual payment is insufficient to fund the AGENCY.

PURPOSE:

The AGENCY is a cooperative agency voluntarily established by contracting units of local governments and similar governmental entities as defined in the Illinois Constitution of 1970 pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, 5 ILCS 220/6 and 745 ILCS 10/1-101, et seq., for the purpose of seeking the prevention or lessening of liability claims for injuries to persons or property or claims for errors and omissions made against the MEMBERS and other parties included within the scope of coverage of the AGENCY.

It is the intent of the MEMBERS of the AGENCY to create an entity which will administer a Joint Risk Management Pool and utilize such funds contributed by the MEMBERS to defend and protect, in accordance with these By-Laws, any MEMBER of the AGENCY and other parties against stated liability. Such By-Laws shall constitute the substance of a contract among the MEMBERS.

All funds contained within the Risk Management Pool are funds directly derived from its MEMBERS which are units of local government or similar governmental entities within the State of Illinois. It is the intent of the parties in entering into this agreement that, to the fullest extent possible, the scope of risk management undertaken by them through a joint self-insurance program using governmental funds shall not waive, on behalf of any local public entity or public employees as defined in the Local Governmental and Governmental Employees Tort Immunity Act, any defenses or immunities therein provided.

Specifically, the MEMBERS of this AGENCY intend to effect no waiver of immunities through their contribution of public funds retained within the risk management pool. Such contributions being reserves to protect against uninsured risks in accordance with 5 ILCS 220/6, are not intended to constitute the issuance of a policy for insurance coverage, (by an insurance company authorized by the Department of Insurance to write such coverage in Illinois). Nor do the MEMBERS, if permitted by law, intend to waive any immunities by the purchase of conventional insurance by the AGENCY.

In the event that the AGENCY, either itself or through a HOST MEMBER, should sell debt instruments, the obligation of the MEMBERS to repay their proportional share of the retirement of debt instruments shall continue under whatever repayment schedule is contained within the debt instruments. In addition, by entering into a contract which will provide some coverage on an occurrence

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basis, even if the claim is filed at some time after the expiration of the term of the AGENCY, but during the period of coverage, the MEMBERS state and acknowledge their continuing contractual obligations arising out of occurrences which take place during the term of this contract.

In creating an excess self-insurance pool, the MEMBERS of this AGENCY are entering into a type of intergovernmental contract which has not previously existed in Illinois. In forming such an AGENCY, the MEMBERS state and acknowledge that the AGENCY has no responsibility for the payment of claims from the Joint Risk Management Pool for amounts less than the level at which the scope of coverage of this AGENCY shall from time to time commence or higher than the level of the self-insured retention of the AGENCY. The scope of coverage to be provided by the AGENCY is excess coverage to commence only after the MEMBER or some other party on behalf of the MEMBER has fully paid the amount of its self-insured retention. At the commencement of the term of the AGENCY, the amount of that retention is \$1,000,000, per occurrence. The AGENCY, always subject to any limit on aggregate payments, shall not be obligated to expend any funds or pay any claim until the MEMBER, or some party on behalf of the MEMBER, has paid \$1,000,000, including costs of defense, for each occurrence against which a claim is made against the assets of the AGENCY.

ARTICLE II. Powers.

The powers of the AGENCY to perform and accomplish the purposes set forth in Article I shall, within the budgetary limits and procedures set forth in these By-Laws, be the following:

- (a) To employ agents, employees and independent contractors,
- (b) To lease real property and to purchase or lease equipment, machinery, or personal property necessary for the carrying out of the purpose of the AGENCY,
- (c) To carry out educational and other programs relating to risk reductions,
- (d) To cause the creation of, see to the collection of funds for, and administer a joint risk management pool and to repay debt instruments of the AGENCY, its MEMBERS, or both,
- (e) To purchase conventional insurance or reinsurance to supplement the joint risk management pool,
- (f) To establish reasonable and necessary loss reduction and prevention procedures which shall be followed by the MEMBERS. It is the intent of the MEMBERS that the use of this power shall be exercised with discretion with a goal of undertaking oversight responsibilities rather than the direction by the AGENCY of the day-to-day operations of a MEMBER,

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- (g) To provide risk management services, and, where required, the investigation, defense, litigation, or settlement of claims,
- (h) To admit and expel MEMBERS as provided herein,
- (i) Solely within the budgetary limits established by the MEMBERS to carry out such other activities as are necessarily implied or required to carry out the purposes of the AGENCY specified in Article I or the specific powers enumerated in Article II.

ARTICLE III. Participation and Term.

All MEMBERS of the AGENCY, except for those whose membership is terminated in accordance with the expulsion provisions of Article XV, and such extension of the term as may be made if the fiscal year of the AGENCY is changed, shall remain MEMBERS of the AGENCY for a period of ten (10) years after the AGENCY shall have commenced its operations under the terms of this First Extension.

New MEMBERS, including those units of local government listed in Appendix A, which do not join at the inception of the AGENCY, under the terms of this First Extension shall be admitted only by a two-thirds (2/3) affirmative vote of the entire membership of the Board of Directors and subject to the payment of such funds and under such conditions as the Board shall in each case or from time to time establish, including provisions relating to the payment of any funds available after all claims have been paid or provision has been made for the payment of all claims.

MEMBERS of the AGENCY, which were not MEMBERS on July 1, 1997, shall receive no coverage for periods of time prior to their membership. The obligation of such MEMBERS to make supplementary payments shall, however, be the same as the obligation of the MEMBERS of the AGENCY on that date.

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ARTICLE IV. Commencement and Term of the Agency.

The First Extension of the Contract and By-Laws of the AGENCY calling for its continuing existence shall be in full force and effect on May 1, 1998, if by July 1, 1997, all of the MEMBERS whose names appear upon Appendix A, attached to and made part of this contract, have, through an ordinance or resolution, of their corporate authorities, authorized the execution of this First Extension. Evidence that such actions have been taken shall be transmitted to:

Daniel Wiersma
Secretary, HELP Pool
City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187

who shall inform the MEMBERS if the action necessary to cause the adoption of this First Extension have taken place prior to the date by which such action must be taken. In the event that all MEMBERS execute the First Extension, they shall be permitted to merge funds from the prior term of the AGENCY subject to any limitation in the amount of coverage for MEMBERS which have had claims paid by the AGENCY. Such limitation, however, shall not limit the aggregate payment to the MEMBERS during the First Extension to less than Five Million Dollars (\$5,000,000.00). The utilization of funds for the payment of claims arising from the First Extension of the AGENCY shall not, however, diminish the obligations of the MEMBERS of the

AGENCY for any financial obligations arising out of membership in the initial eleven-year term.

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ARTICLE V. Board of Directors.

(a) There is hereby established a Board of Directors of the AGENCY. Each MEMBER shall appoint one (1) person to represent that body on the Board of Directors along with another person to serve as an alternate representative when the initial representative is unable to carry out that representative's duties. The representative and alternate shall be appointed in the same manner as other appointive officers are selected when no specific method for such office is established by statute. Once such appointments are made known to the AGENCY the persons appointed shall remain in office until the AGENCY receives evidence of the appointment of other persons. The AGENCY shall be the judge of the proper appointment of representatives and alternates to the Board of Directors and shall utilize in case of dispute general principles of Illinois law. The representative and alternate selected need not be elected officials of the MEMBER. It is anticipated, but not required, that persons chosen to serve on the Board will have responsibilities within their MEMBER community for some management duties relating to the AGENCY.

The Board of Directors shall select from among the representatives a Chairman, Vice Chairman, Secretary and Treasurer. In the fiscal year of the AGENCY, commencing

on May 1, 1998, these persons in office on April 30, 1998, shall serve for an additional fiscal year. Thereafter, they will be selected during the final quarter of the appropriate fiscal year to serve two-year terms commencing at the start of the next fiscal year or until the termination of the AGENCY. No person may serve as Chairman of the Board of Directors for more than two (2) consecutive full two-year terms. The Chairman shall be the chief executive officer of the AGENCY. The Chairman shall preside at all meetings of the Board and the Executive Committee at which the Chairman is present. The Chairman may request information from any officer of the Board or the AGENCY or any employee or independent contractor of the AGENCY. The Chairman shall vote on all matters that come before the Board or Committees on which the Chairman serves. The Chairman shall be a non-voting ex-officio member of all committees of the AGENCY on which the Chairman does not directly serve. The Chairman shall have such other powers as are set forth in these By-Laws and such other powers as he may be given from time to time by action of the Board.

The Vice Chairman shall carry out all duties of the Chairman of the Board during the absence or inability of the Chairman to perform such duties and shall carry out

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such other functions as are assigned from time to time by the Chairman or the Board of Directors.

The Treasurer shall have charge and custody of and be responsible for all funds and securities of the AGENCY; receive and give all receipts for moneys due and payable to the AGENCY from any source whatsoever; deposit all such moneys in the name of the AGENCY in such banks, savings and loan associations or other depositories as shall be selected by the Board of Directors; invest the funds of the AGENCY as are not immediately required in such investments as the Board of Directors shall specifically or generally select from time to time; and maintain the financial books and records of the AGENCY. Provided, however, that all investments of AGENCY funds shall be made only in the manner permitted to an Illinois home rule community, or to a governmental self-insurance pool. The Treasurer shall, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by him by the Board of Directors.

The Secretary shall keep the official records of the AGENCY. The Secretary shall see to the keeping of the minutes of meetings of the AGENCY and shall retain past financial records of the AGENCY. The Secretary shall see

to the sending of all notices required by these By-Laws and shall carry out other clerical duties of the AGENCY.

The AGENCY shall purchase a bond in the cumulative amount of at least \$1,000,000.00 to assure the fidelity of the Chairman and Vice Chairman of the Board, the Treasurer and any other officer, committee member, or employee who shall have the right to authorize the transfer or payment of AGENCY funds. Without amending these By-Laws, the Board of Directors, by motion, may increase the amount of the bonds or the persons covered.

The Board may select a financial institution to carry out some or all of the functions which would otherwise be assigned to a Treasurer and may select a risk management company or agent to serve as claims administrator. The Board may also employ persons or companies as independent contractors to carry out some of the functions of officers of the AGENCY. The Board of Directors may from time to time establish other officers of the Board and may elect a representative on the Board to serve in any of such offices. The Board shall fill any vacancies which may occur in any offices for the remainder of the term.

(b) The Board of Directors shall determine the general policy of the AGENCY which policy shall be followed by the AGENCY officers, agents, employees and independent

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contractors employed by the AGENCY. Among other items it shall have the responsibility for (1) Hiring of AGENCY officers, agents, employees and independent contractors; (2) Setting of compensation for all persons, firms and corporations employed by the AGENCY; (3) Setting of fidelity bonding requirements for officers, employees or other persons; (4) Approval of amendments to the By-Laws; (5) Approval of the acceptance of new MEMBERS and expulsion of MEMBERS; (6) Approval and amendment of the annual budget of the AGENCY; (7) Establishment and amendment of the scope and amount of pooled self-insurance coverage offered by the AGENCY; (8) Resolution of disputes over the scope of pooled self-insurance coverage provided by the AGENCY; (9) Approval of educational and other programs relating to risk reduction; (10) Approval of reasonable and necessary loss reduction and prevention procedures which shall be followed by all MEMBERS; (11) Purchase of conventional insurance; (12) Authorization to a host MEMBER to issue debt instruments when all other contractual prerequisites for such issuance have been effected; (13); Approval of annual and supplementary payments to the Risk Management Pool for each MEMBER; (14) Approval of rules and regulations regarding the payout of funds from the Risk

Management Pool as shall from time to time seem appropriate.

(c) Each MEMBER shall be entitled to one (1) vote on the Board of Directors. Such vote may be cast only by the designated representative of the MEMBER or in the representative's absence, by an alternate selected by the MEMBER in the same manner as specified for the selection of the principal representative. No proxy votes or absentee votes shall be permitted. Voting shall be conducted by voice vote unless one (1) or more MEMBERS of the Board of Directors shall request a roll call vote; provided, however, that:

1. Any vote which requires a greater than majority vote for passage shall be by roll call vote, and

2. Any member of the Board who abstains or casts a vote in a minority position on a matter upon which a voice vote is taken may have that vote specifically recorded in the minutes by indicating such desire to the presiding officer.

(d) The representative selected by the MEMBER shall serve until a successor has been selected. The representative chosen by the MEMBER may be removed in the same manner as other appointive officers within the MEMBER. In the

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event that a vacancy occurs in the representative or alternate representative selected by the Corporate Authorities of a MEMBER, that body shall appoint a successor. The failure of a MEMBER to select a representative or the failure of that person to participate shall not affect the responsibilities or duties of a MEMBER under this Contract.

(e) The Board of Directors shall have the power to establish both standing and ad hoc committees. The committees of the AGENCY may, among other titles and functions, include: Finance, Risk Management, Claims Review and Membership and Revenue. The Chairman of the Board may also establish ad hoc committees which do not conflict with those established by the Board. Unless the Board of Directors shall establish some other procedure, the selection of members of the Board of Directors who shall serve on such committees and chair them shall reside with the Chairman of the Board of Directors, but such decisions shall be confirmed by the Board. The Chairman may make interim appointments to fill vacancies which occur between Board meetings.

The Board of Directors may assign to a committee the authority to authorize the expenditure of funds for administrative expenses, but the settlement of claims or suits to be paid from the joint risk management pool

shall be decided by the Board of Directors, except as the Board shall specifically assign in whole or in part such function to a person or committee.

- (f) The Board of Directors shall create an Executive Committee. That Executive Committee shall at a minimum consist of the Chairman and Vice Chairman of the Board, the Treasurer, the Secretary, the representative or alternate of any host MEMBERS, and the Chairman of the other standing committees of the AGENCY along with other persons. The Executive Committee shall make recommendations to the Board and shall undertake other functions as the Board shall assign.
- (g) A quorum shall consist of a majority of the MEMBERS of the Board of Directors. Except as provided in Subsection (h), herein, or elsewhere in these By-Laws, a simple majority of a quorum shall be sufficient to pass upon all matters.
- (h) A greater vote than a majority of a quorum shall be required to approve the following matters:
 - (i) Such matters as the Board of Directors shall establish within its rules as requiring for passage a vote greater than a majority of a quorum, provided, however, that such a rule can only be established by a greater than a majority vote at

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least equal to the greater than majority percentage within the proposed rule.

- (ii) The approval of the payment of the settlement of claims from the joint risk management pool shall require the concurrence of a majority of the entire membership of the Board of Directors. By such a vote, the Board of Directors may also establish procedures whereby, in cases where a rapid decision on the terms of a prospective settlement must be made, a committee or person may approve settlements in an amount higher than that previously authorized by the Board, subject to limitations established by the Board.
- (iii) The admission of a new MEMBER and the expulsion of a MEMBER shall require at least the concurrence of two-thirds (2/3) of the entire membership of the Board of Directors.
- (iv) The purchase of any form of conventional insurance shall require at least the concurrence of two-thirds (2/3) of the entire membership of the Board of Directors.
- (v) Any amendment of these By-Laws except as provided in Subsection (vi) below, shall require at least the concurrence of two-thirds (2/3) of the entire membership of the Board of Directors.

(vi) The amendment of these By-Laws to cause the termination of this agreement sooner than ten (10) years after its commencement but only if any debt instruments issued have been entirely paid or provision has been made for their payment, or the amendment of these By-Laws to cause a modification of more or less than the high or low range of the debit-credit formula, as provided for in Article VII(j), or the modification of the scope of amount of coverage of the AGENCY and the authorization to a host MEMBER which has specifically agreed by resolution of its corporate authorities to obligate itself to execute a debt instrument shall require that specific written notice of the proposed change be sent by registered or certified mail to the chief executive officer of the MEMBER and to the regular and alternate representative of the MEMBER on the Board of Directors, no less than ten (10) days prior to a meeting at which this matter is proposed and that the amendment as proposed or as amended at a Board meeting shall require concurrence of at least two-thirds (2/3) of the entire membership of the Board of Directors.

(i) No one serving on the Board of Directors shall receive any salary or other payment from the AGENCY. Any salary,

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compensation, payment or expenses for such representative, shall be paid by each MEMBER separate from this Contract. Provided, however, that the Chairman of the Board, Vice Chairman, Treasurer and Secretary and such other Board officers as are given by the Board of Directors a right to reimbursement may submit to the Board of Directors for its approval claims for reimbursement of expenses incurred in the pursuit of their positions as officers of the AGENCY. The reimbursement for such expenses shall include amounts advanced on behalf of the AGENCY either by the officer himself or by a MEMBER of the AGENCY. A host MEMBER may be compensated for agreeing to issue or issuing a debt instrument, be reimbursed for expenses or be granted credits for sums otherwise due the AGENCY.

ARTICLE VI. Board of Directors Meetings.

(a) Regular meetings of the Board of Directors shall be held at least three (3) times a year. The dates of regular meetings of the Board shall be established at the beginning of each fiscal year. Any item of business may be considered at a regular meeting. A special meeting may be held any time after all of the MEMBERS have approved this First Extension upon not less than seven (7) days' written notice from any three (3) MEMBERS.

At least one (1) meeting must be held during the first half of the fiscal year. Special meetings of the Board of Directors may be called by its Chairman, or by representatives of any three (3) MEMBERS. Ten (10) days' written notice of regular or special meetings shall be given to the official representatives of each MEMBER government and an agenda specifying the subject of any special meeting shall accompany such notice. Business conducted at special meetings shall be limited to those items specified in the agenda. Provided, however, that where it is necessary to call an emergency meeting of the Board to authorize the payment of the settlement of a claim or claims or other matter requiring rapid attention, such a meeting may be called by delivered written or telephonic notice of no less than 24 hours.

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- (b) The time, date and location of regular and special meetings of the Board of Directors shall be determined by the Chairman of the Board of Directors or by the convening authority.
- (c) To the extent not contrary to these By-Laws, and except as modified by the Board of Directors, Roberts Rules of Order, latest edition, shall govern all meetings of the Board of Directors.
- (d) Minutes of all regular and special meetings of the Board of Directors shall be sent to all Members and alternate members of the Board of Directors within twenty (20) days after each meeting. The Board shall subsequently vote on the approval of the minutes.

ARTICLE VII. Finances and Risk Management Pool.

- (a) The fiscal year of the AGENCY shall commence on May 1 and shall be for a twelve (12) month period except that the Board may change the date of the commencement of the fiscal year. In the event that the Board chooses to change the fiscal year of the AGENCY, the term of this contract shall be extended for the number of months necessary to accommodate the new fiscal year.
- (b) The Board of Directors shall approve a preliminary budget for the administration of the AGENCY for each forthcoming year during the final quarter of the prior fiscal year. Copies of all preliminary and final budgets shall be promptly mailed to each MEMBER of the Board of Directors. The Board of Directors shall, before the end of the year prior to the start of each fiscal year, approve a final budget, the pool contribution formula, and the amount of annual payments due from each MEMBER, including, where applicable, a debit and credit calculation for each MEMBER and the date upon which the payment is due. Provided, however, in the first year of operations under the First Extension, the annual payment and budget shall be approved by the Board of Directors during the final quarter of the prior fiscal year.

Failure to approve a preliminary or final budget within the times set forth within this Section shall not

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relieve the MEMBERS of the obligation to make annual or supplementary payments to the AGENCY so long as such budgets are finally adopted, and the MEMBERS are given at least thirty (30) days after the passage of the final budget or the determination of amounts due in which to make payments to the AGENCY. Where the proceeds of a debt instrument have been received, the obligation of MEMBERS to repay that debt shall not be dependent upon the approval of a budget. Budgets may be amended at any time by majority vote of the Board of Directors.

(c) Calls for supplementary payments shall be made by the Board of Directors. Supplementary payments shall be called for where required in order that the scope and amount of coverage of the AGENCY can be provided to all MEMBERS. The Board shall, where necessary, make calls for supplementary payments from MEMBERS, including expelled MEMBERS, claims which occurred during the time of their membership. Provided, that in any year in which the scope of coverage is provided on a "claims made" basis, supplementary payments may only be used to pay and administer claims made during the subject year or such later period as assumed by the AGENCY or specified in a conventional insurance policy purchased by the AGENCY.

The forwarding of annual and supplementary payments within a time specified in notices to the MEMBERS giving

them not less than thirty (30) days to make such payments, shall be of the essence of this contract. Supplementary payments shall only be required by the Board of Directors in a situation in which there is a reasonable concern that the sum remaining from the annual payment or prior supplementary payments will not be sufficient to meet the responsibilities of the AGENCY. MEMBERS shall be responsible for supplementary payments during the entire life of the AGENCY and any later period when claims or expenses need be paid which are attributable to the year of membership when the event out of which the expense or claim occurred or for "claims made" coverage during that claim year or such later period assumed by the AGENCY or specified in a conventional policy. The Board of Directors may permit annual or supplementary payments to be made on a monthly or quarterly basis. Each MEMBER shall make supplementary payments in an amount that shall be based upon the amount that its annual payments and equity payments bear to the annual payments and equity payments of other MEMBERS. If additional supplementary payments are required to pay a claim for which earlier supplementary payments have been made, the proportional share of each MEMBER shall be recomputed to include the appropriate proportional figure

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for annual payments made in any subsequent fiscal years for which figures are then available.

(d) Each MEMBER shall have prepared and submit to the AGENCY an annual audited statement of all revenues prepared by a certified public accountant on a G.A.A.P. basis. For the purpose of computing amounts due for participation in the AGENCY, revenues shall be classified by fund type as follows:

General Fund:

Included:

- 1). taxation of all types; real estate, sales, utility, income tax etc.
- 2). license and permit fees
- 3). intergovernmental revenue
- 4). fines and forfeitures
- 5). interest earnings
- 6). fees charges or service
- 7). franchise revenues

Excluded:

- 1). refunds
- 2). interfund transfers
- 3). installment contract proceeds
- 4). income from joint ventures

Special Revenue Funds

Included:

- 1). taxation of all types
- 2). intergovernmental revenue
- 3). interest earnings
- 4). grant funds

Excluded:

- 1). interfund transfers
- 2). refunds
- 3). installment contract proceeds
- 4). income from joint ventures

Debt Service Funds

Excluded:

- 1). bond proceeds

Special Assessment/Special Service District Funds

Included:

- 1). taxation of all types
- 2). interest earnings

Excluded:

- 1). proceeds from new debt where proceeds are to be used to retire existing debt
- 2). interfund transfers
- 3). bond proceeds
- 4). installment contract proceeds

Capital Project Funds

Included:

- 1). taxation of all types
- 2). interest earnings
- 3). developer contributions
- 4). grant funds

Excluded:

- 1). interfund transfers
- 2). bond proceeds
- 3). installment contract proceeds

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Enterprise Funds

Included:

- 1). all sales
- 2). license and permit fees
- 3). service charges
- 4). interest earnings
- 5). taxation
- 6). grant funds

Excluded:

- 1). interfund transfers
- 2). revenues collected while acting as an agent for another governmental body where amounts collected are passed through
- 3). bond proceeds
- 4). installment contract proceeds
- 5). income from joint ventures

Internal Service Funds - ExcludedTrust and Agency funds - ExcludedGeneral Exclusion

All revenues associated with a specifically excluded risk or activity will not be included for the calculation of premiums.

Revenues shall be computed using the figures shown in the annual audit statement of the MEMBER for the last fiscal year available on the date at which the audits are due. In the event a current audited financial statement is not available, or, if available, does not present revenues in the manner required, the Board of Directors shall estimate the revenues of the MEMBER based upon the best figures then available. The decision of the Board shall be final.

(e) The Board of Directors shall in subsequent years after reviewing the audit submitted from each MEMBER establish a tentative computation of the revenues of each MEMBER. Written notice of this tentative determination shall be sent to each MEMBER. If a MEMBER wishes to contest the determination of the amounts, it may request a hearing before the Board of Directors. The decision by the Board after such hearing shall be final unless the Board shall be found by a court to have committed a clear abuse of discretion.

(f) During the final quarter of each fiscal year, the Board of Directors shall establish the pool contribution formula which will be used in determining the annual payments due from each MEMBER for the next succeeding fiscal year. The four factors which will be equally weighted in creating the formula are: Revenues, as defined in Article VII(d), Miles of Streets, Full-Time Equivalent Employees and the Total Number of State Licensed Vehicles and fire vehicles. MEMBERS shall be required to provide information to the AGENCY which will allow the Board of Directors to quantify each of these four factors. All questions relating to the computation of these four factors will be resolved by the Board of Directors and will be applied equally to all MEMBERS. The assessment of supplementary payments, whenever

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required to be paid, will be based upon the same proportion which the payment of one MEMBER bears to the payment of another MEMBER in the annual payment, except where the Board of Directors should modify that proportion based upon an error in the information reported or an error in computation. In the event that for any reason the proportional payments due from a MEMBER shall be adjusted, the amounts due from other MEMBERS shall likewise be subject to adjustment but the implementation of the adjustment may be delayed until the funds are needed.

(g) If all claims known or unknown within the scope of coverage provided by the AGENCY, plus any other amounts owed by the AGENCY during any particular period for which funds of the AGENCY were combined to create the joint risk management pool, have either been paid or provision has been made for such payment, the Board of Directors as then constituted shall distribute any surplus funds to the MEMBERS which constituted the membership of the Pool during that period after first deducting therefrom reasonable administrative and other non-allocated costs incurred by the AGENCY in the processing of the claims in years other than the period for which the claim was made. The distribution among the MEMBERS shall be in the same proportion to the total as their payments during the

period bore to the payments of all MEMBERS less any sums owed the AGENCY. Provided, however, that a MEMBER may elect to transfer such excess funds to the Joint Risk Management Pool for any later or prior period for which it owes or will owe funds to the AGENCY. MEMBERS shall remain obligated for all payments due the AGENCY under this Contract and By-Laws if it should be determined even after the payment of any rebate that additional sums are necessary to fulfill the contractual obligations agreed to herein. Such obligation shall continue so long as there are claims made against the AGENCY for injuries that fall within the scope of coverage provided by the AGENCY for the period in question.

- (h) The Board of Directors shall provide to the MEMBERS an annual audit of the financial affairs of the AGENCY to be made by a certified public accountant at the end of each fiscal year in accordance with the generally accepted auditing principles. The annual report shall be delivered to each MEMBER within 180 days after the close of the prior fiscal year.
- (i) The Board of Directors may require reports from all agents and independent contractors including attorneys with regard to the status of their work for the AGENCY, problems encountered during the performance of their duties, and recommendations for improvements in the

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performance of the AGENCY including their efforts on the AGENCY'S behalf.

(j) The Board of Directors may apply to the annual and supplementary payments due from a MEMBER a debit or credit computed in a manner determined by the Board of Directors which shall affect the payment due from the MEMBER to the extent that the number and the amount of reserved claims and losses attributable to that MEMBER in no more than three prior years , in amounts of at least \$10,000.00, shall compare with the general frequency and amount of similar claims and losses attributable to MEMBERS of the AGENCY in proportion to the level of their payments to the AGENCY in relationship to all payments made to the AGENCY. In developing a debit-credit formula, the AGENCY may also consider the existence and effectiveness of the loss prevention programs put in place by the MEMBERS. All adjustments shall not result in a credit of more than 25% nor a debit of more than 25% from the average. The Board of Directors shall approve the debit or credit formulation either directly or in the approval of the adjusted annual payment due from the MEMBERS. Provided, however, that the Board of Directors shall, for each year of the existence of the AGENCY provide a sum in the joint risk management pool which, after the debit or credit adjustment has been made, shall

be in a gross amount sufficient to pay for the anticipated total costs required to fully fund the operations of the AGENCY.

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ARTICLE VIII. Scope and Amount of Loss Protection.

Scope of coverage and the amount of coverage to be provided by the AGENCY shall be determined from time to time by the Board of Directors. The AGENCY may modify both the scope of coverage and the amount of coverage, both upward and downward, provided, however, that any modifications shall only apply prospectively.

No indemnification shall be provided by the AGENCY until the MEMBER has expended \$1,000,000 in loss payments as a result of the occurrence. Defense costs shall be included toward satisfying both the loss payment by the MEMBER and the coverage provided by the AGENCY.

Coverage, other than errors and omissions coverage, is provided by the AGENCY only for those occurrences which occur during the fiscal year for which the MEMBER has made an ANNUAL PAYMENT and all required SUPPLEMENTARY PAYMENTS and for which written notice is given to the AGENCY within ten (10) years subsequent to the date of occurrence. Where an occurrence is continuous and involves more than one such fiscal year, coverage is provided only to the extent of the coverage amounts in effect, as regards the MEMBER, during the fiscal year in which the occurrence began.

Errors and omissions coverage is provided by the AGENCY only for those occurrences which take place subsequent to the first day of membership in the AGENCY by the MEMBER and for which written notice is first given to the AGENCY during a fiscal year for which

the MEMBER has made an ANNUAL PAYMENT and all required SUPPLEMENTARY PAYMENTS.

Aggregate limits placing a total cap on payments which may be made to or on behalf of a MEMBER shall be established for the initial term of the AGENCY and this First Extension. Provided, however, that the per-occurrence or aggregate limits for MEMBERS during the initial term or during this First Extension shall not be less for each term than Five Million Dollars (\$5,000,000). The fulfillment of the payment of aggregate limits may only be made from payments received both from the self-insured retention funds of the AGENCY and will not be reached by payments from conventional insurance.

At the commencement of the term of this First Extension, the amount of money which a MEMBER must pay before the obligation of the AGENCY will commence is a self-insured retention by the MEMBER of \$1,000,000 per occurrence. Under no circumstances shall the obligation of this AGENCY commence until a MEMBER has paid for that occurrence the amount of the self-insured retention established by the AGENCY from time to time. The MEMBERS of the AGENCY are aware of a limited number of cases in the United States in which insurance companies purporting to offer coverage excess of a deductible or a self-insured retention amount have been compelled by courts to commence the level of their coverage at lower levels. By entering into this contract, each MEMBER acknowledges that it is the absolute understanding of the MEMBERS of this AGENCY that under no circumstances shall the AGENCY be compelled to make any payments

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until a MEMBER has fulfilled the full responsibility of paying the total amount of the self-insured retention. Nor shall the AGENCY, under any circumstances, be obligated for payments in excess of the maximum per occurrence or aggregate amounts established from time-to-time which are to be paid from the self-insured retention of the AGENCY. Because of the right of each MEMBER to participate in the decisions reached by the AGENCY, and because of the uncertain results which may occur in claims seeking large payments, no claim of a bad faith failure to settle shall be made against the AGENCY in the absence of fraud.

MEMBERS may fund the amount of the self-insured retention through reserve funds, conventional insurance, membership in pools, the issuance of judgment funding bonds or other methods. The method by which a MEMBER of the AGENCY fulfills its responsibility to fund the self-insured retention is a matter of no consequence to this AGENCY. This AGENCY intends to offer a scope of coverage which will commence only in excess of the self-insured retention. The extent of intergovernmental cooperation or contractual obligation of the MEMBERS to fund the AGENCY does not extend whatever to any primary coverage or obligations below the amount of the self-insured retention. The MEMBERS of the AGENCY would not have entered into this Contract and By-Laws if any MEMBER understood the obligation of the AGENCY to its MEMBERS to extend in any manner below the level of the self-insured retention or above the level of self-insured retention coverage established. The AGENCY, however, may, from time-to-time, fund a part of its self-insured retention through the purchase of conventional insurance

and may offer coverage which, in each case, will be payable only from conventional insurance in amounts in excess of its self-insured retention.

The Board of Directors shall, by a vote of at least the concurrence of a majority of the entire membership of the Board of Directors, from time-to-time approve a specific text of the scope of coverage offered in the manner provided in Article V(h) (vi). In the event that there should be a conflict between the text of the scope of coverage document and the Contract and By-Laws, this later document shall prevail. The AGENCY may from time to time expand the scope or amount of coverage to be provided, which expansion may be extended to the payment of claims which occurred prior to the date of the expansion. In the event that the AGENCY should reduce or modify the amount or scope of coverage to be provided, such reduction shall only apply to claims which occurred subsequent to the date of the modification.

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ARTICLE IX. Obligations of Members.

The obligations of MEMBERS of the AGENCY shall be as follows:

- (a) To appropriate, budget for, where necessary to levy for and to promptly pay all annual and supplementary or other payments to the AGENCY at such times and in such amounts as shall be established by the Board of Directors within the scope of this agreement. MEMBERS shall also be required to pay their proportional share of the repayment of principal and interest obligations and other costs incurred by a host MEMBER in obligating itself under a debt instrument. The proportional share of each MEMBER shall be that proportion its annual payment for that fiscal year bears to the annual payments of the other MEMBERS. Any delinquent payments shall be paid with a penalty which shall be equal to the highest interest rate allowed by statute to be paid by an Illinois home rule municipality or the prime rate then in effect at the First National Bank of Chicago, or, in the event that such bank is no longer in existence, then the prime rate in effect at that bank, with its principal office in Illinois, with the largest assets, whichever rate is lower.
- (b) To select a person to serve on the Board of Directors and to select an alternate representative.
- (c) To allow the AGENCY reasonable access to all facilities of the MEMBER and all records relating to claims and the financial obligations of a MEMBER.

- (d) To provide the Pool the right and give it the opportunity to associate with the MEMBER or any conventional insurance carrier providing coverage to the MEMBER, or both, in the defense and control of any claim, suit or proceeding which involves or may involve the Pool and in which event the MEMBER, such insurers and the Pool shall cooperate in all things in defense of such claim, suit or proceeding.
- (e) To furnish full cooperation with the AGENCY'S attorneys, claims administrator and any agent, employee, officer or independent contractor of the AGENCY relating to the purpose and powers of the AGENCY.
- (f) To follow in its operations all loss reduction and prevention procedures established by the AGENCY within its purpose and powers, including, but not limited to the use of release forms, posting of notice, participation in educational and record-keeping programs, limitations in activities offered, and the use of loss preventative techniques and devices.
- (g) To furnish to the AGENCY an audit prepared by a Certified Public Accountant of all revenues of the MEMBER for any fiscal year of the MEMBER for which figures are requested by the AGENCY. If an audit is not furnished, the AGENCY may employ an auditor to perform such an audit and the MEMBER shall be required to pay the reasonable cost of such audit.

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(h) To report to the Secretary of the AGENCY and the claims administrator, at the earliest practicable moment, any information of a claim received by the MEMBER and from which the MEMBER could reasonably conclude that coverage from the AGENCY will be sought. In the event that the required information is not submitted to the Secretary and claims administrator within the time periods set forth above, the Board of Directors of the AGENCY, may in whole or in part decline to provide a defense to the MEMBER or to extend the funds of the AGENCY for the payment of losses or damages incurred. In reaching its decision, the Board shall consider whether and to what extent the AGENCY was prejudiced in its ability to investigate, defend or earlier settle the claim due to the failure of the MEMBER to promptly furnish notice of the claim to the Secretary. In the absence of a fraud or a clear abuse of discretion, the decision of the Board of Directors shall be final. Information must be furnished to the AGENCY not only at the time that a claim is made which could reasonably be expected to be within the scope of coverage of the AGENCY, but also updated information must be provided as the nature of the claim becomes more fully known and litigation occurs and proceeds. Information must also be furnished if a claim reasonably thought to be below the level of the amount of coverage provided by the AGENCY should approach or be asserted by the claimant to fall within the amount of coverages.

- (i) To either employ a professional claims administration firm to handle all self-insured claims, enter into an insurance contract (for claims at lower levels of coverage than those provided for by the AGENCY) which includes an obligation of that insurance company to furnish information to the AGENCY of pending claims or, if the MEMBER performs claims administration utilizing its own personnel, the obligation to employ a firm to perform claims auditing. The claims auditing firm will be chosen by the AGENCY and the reasonable cost of such audit will be borne by the MEMBER.
- (j) In the event that the AGENCY shall be required to expend funds for administrative, legal or other costs brought about by the failure of a MEMBER to pay sums owed the AGENCY or to take other actions required under this Contract and By-laws, such amounts expended shall be added to the sums due the AGENCY and shall be payable by the MEMBER.
- (k) To fully cooperate to allow the AGENCY to subrogate any amounts the AGENCY has paid from entities against which the MEMBER has any claim. Amounts which the AGENCY is able to recover through subrogation shall, after the payment of expenses, be credited against claims paid on behalf of a MEMBER so as to restore the amount of coverage which has been charged against that MEMBER's aggregate limit.

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- (1) To the extent that the coverage provided by the AGENCY should extend to officers or employees of the MEMBER or others, those entities shall be responsible for fulfilling all of the obligations of the MEMBER as it shall apply to that claim.

ARTICLE X. Liability of Board of Directors or Officers.

The members of the Board of Directors or officers of the AGENCY should use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties hereunder; they shall not be liable for any mistake of judgment or 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 AGENCY funds, or failure to invest. No Director shall be liable for any action taken or omitted by any other Director. No Director shall be required to give a bond or other security to guarantee the faithful performance of the Director's duties hereunder. The Board of Directors shall authorize, if necessary, the use of the joint risk management pool to defend and hold harmless any Director or officer for actions taken by the Board or performed by the Director or officer within the scope of his authority for the AGENCY. The AGENCY may purchase conventional insurance providing similar coverage for such Directors and officers and if such coverage has been purchased shall require that the coverage of the insurance company shall be relied upon before utilizing the funds of the joint risk management pool to provide a defense or make a settlement.

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ARTICLE XI. Additional Coverage.

Membership in the AGENCY shall not preclude any MEMBER from purchasing any insurance coverage above those amounts purchased by the AGENCY. The AGENCY shall make its facilities available to advise MEMBERS of the types of additional or different coverages available to units of local government.

ARTICLE XII. Optional Defense by Member.

The scope of coverage provided by this AGENCY shall only commence at such point that the MEMBER has made a good faith offer to settle the claim at a level within the self-insured retention of the MEMBER and that offer has been rejected. Where the scope of coverage of the AGENCY is activated, the MEMBER, through the procedure set out in this article, shall have an opportunity to object to a settlement whenever the AGENCY proposes to settle any pending claim or suit. The MEMBER shall be given advance notice of any proposed settlement. Such notice may be given by the establishment of a reserve amount in documents provided to the MEMBER by or through the AGENCY, provided that the amount of the settlement does not exceed the amount reserved. The officers and employees of the AGENCY shall, however, endeavor to give specific oral or written notice to a MEMBER of the exact amount of any proposed settlement at least fourteen (14) days prior to the date at which the AGENCY proposes to bind itself to pay such settlement amount. It is recognized by the MEMBERS that under some circumstances the AGENCY may not be able to give fourteen (14) days' prior oral or written notice of the proposed settlement. The officers, employees or independent contractors of the AGENCY shall attempt to give the MEMBERS as much notice of the settlement as is possible under the circumstances of each case.

If a MEMBER should disagree with the amount for which the AGENCY proposes to settle a case or claim, the representative of the MEMBER on the Board of Directors of the AGENCY, the alternate member, the local governmental attorney or the chief administrative

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officer of the MEMBER may notify the claims administrator of the AGENCY that the MEMBER exercises its right to prevent the AGENCY from reaching a settlement at the agreed-upon amount. The claims administrator may require that such information be transmitted in writing.

In the event that the case or claim is eventually resolved through a settlement or judgment within the dollar limits of coverage provided by the AGENCY and in an amount less than the amount at which the case could have been previously settled by the AGENCY, then the MEMBER which has undertaken the costs of its defense shall be entitled to its additional actual costs including reasonable attorneys' fees, up to the level at which its costs and the prior allocated costs of the AGENCY, including reasonable attorneys' fees, equal the amount at which the case could have been settled by the AGENCY. To the extent that the case or claim is resolved through settlement or judgment at an amount greater than that at which the case or claim could have been previously settled by the AGENCY and a claim is thereby made within the dollar limits of coverage provided by the AGENCY, the MEMBER shall be obligated for that portion of the settlement or judgment which exceeds the sum of money at which the case could have been earlier settled by the AGENCY including all allocated costs of the AGENCY. If at any time the amount of the allocated costs of the AGENCY devoted to the case shall equal or exceed the amount at which the case could have been settled and the AGENCY is providing a defense, the AGENCY may require periodic supplementary payments from the MEMBER if the MEMBER wishes to have the AGENCY continue to provide the defense.

Allocated costs shall mean those costs which are allocated to individual cases under the bookkeeping and accounting system utilized by the AGENCY. The AGENCY may establish the amount at which it could have settled the case through a written settlement offer by the plaintiff or through other competent evidence of the availability of the settlement at a particular sum and the desire of the MEMBER to preclude settlement discussions and the sum at which the AGENCY believed the case could have been settled.

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ARTICLE XIII. Contractual Obligation.

This document shall constitute a contract among those entities which become MEMBERS of the AGENCY. The obligations and responsibilities of the MEMBERS set forth herein, including the obligation to take no action inconsistent with these By-Laws as originally written or validly amended shall remain a continuing obligation and responsibility of each MEMBER. The terms of this Contract may be enforced in a court of law by the AGENCY or any of its MEMBERS.

The consideration for the duties herewith imposed upon the MEMBERS to take certain actions and to refrain from certain other actions is based upon the mutual promises and agreements of the MEMBERS set forth herein. If any dispute arises regarding this Contract, the MEMBERS agree that a court shall interpret the actions and duties of the parties in accordance with the specific standard or burden of proof set out in this Contract and By-Laws. This Contract and By-Laws may be executed in duplicate originals and its passage by entities listed in Appendix A shall be evidenced by a certified copy of an ordinance or resolution passed by a majority of the members of the governing board then in office. Provided, however, that except to the extent of the financial contributions of the AGENCY agreed to herein or such additional obligations as may come about through amendments to these By-Laws no MEMBER agrees or contracts herein to be held responsible for any claims in tort or contract made against any other MEMBER. The contracting parties intend in the creation of the AGENCY to establish an organization for joint risk management only within the

scope herein set out and have not herein created an insurance company or as between MEMBER and MEMBER, except for that limited extent, any relationship of surety, indemnification or responsibility for the debts of or claims against any MEMBER.

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ARTICLE XIV. Host Member.

Any home rule MEMBER of the AGENCY may voluntarily agree to be a host MEMBER.

ARTICLE XV. Expulsion of Members.

By the concurrence of two-thirds (2/3) of the entire membership of the Board of Directors present at a regular or special meeting, any MEMBER may be expelled. Such expulsion may be carried out for one or more of the following reasons:

- (a) Failure to make any payments due to the AGENCY.
- (b) Failure to undertake or continue loss reduction and prevention procedures adopted by the AGENCY.
- (c) Failure to allow the AGENCY reasonable access to all facilities of the MEMBER and all records which relate to the purpose or powers of the AGENCY.
- (d) Failure to furnish full cooperation with the AGENCY'S attorneys, claims administrator and any agent, employee, officer or independent contractor of the AGENCY relating to the purpose and powers of the AGENCY.
- (e) Furnish incorrect financial, claims history or other information to the AGENCY.
- (f) Failure to carry out any obligation of a MEMBER which impairs the ability of the AGENCY, to carry out its purpose or powers.
- (g) A history of excessive pending or closed claims or losses which in the absolute discretion of the Board of Directors creates an unacceptable risk of similar adverse future claims or losses. If a MEMBER is expelled pursuant to Subsection (g), all prior reported claims shall remain eligible for the coverage of the AGENCY.

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No MEMBER may be expelled except after written notice from the AGENCY of the alleged failure along with the reasonable opportunity of not less than thirty (30) days to cure the alleged failure. Provided, however, that no opportunity to cure shall be necessary for an expulsion brought in whole or in part because of a poor loss or claim history. The MEMBER may request a hearing before the Board before any decision is made as to whether the expulsion shall take place. The hearing must be requested in writing not later than five (5) days after the time to cure has expired or in case no time to cure is required within 30 days of the notice by the Board of an intent to expel. Times required for notices under this contract shall be measured from the date of mailing or delivery if personally delivered. The Board shall set the date for a hearing which shall not be less than ten (10) days after the request for the hearing. If the time to request a hearing has passed and the MEMBER has not requested a hearing or if no hearing is required or if such a hearing has been requested, no later than sixty (60) days after the close of that hearing, the Board shall determine whether the MEMBER will be expelled. A decision by the Board to expel a MEMBER shall be final unless the Board shall be found by a Court to have committed a clear abuse of discretion. The Board of Directors may establish the date at which the expulsion of the MEMBER shall be effective at any time not less than thirty (30) days after the vote expelling the MEMBER has been made by the Board of Directors. If the motion to expel the MEMBER made by the Board of Directors or a subsequent motion does not state the time at which the expulsion shall take place, such expulsion shall take place thirty (30) days

after the date of the vote by the Board of Directors expelling the MEMBER.

After expulsion, the former MEMBER shall continue to be fully obligated for any annual or supplementary payments for which it was delinquent at the time of its expulsion and supplementary payments later voted by the AGENCY for losses which were within the scope of coverage of the AGENCY during the time of its membership, along with any other unfulfilled obligation as if it was still a MEMBER of the AGENCY. The expelled MEMBER shall, after expulsion, no longer be entitled to participate or vote on the Board of Directors or to receive the benefits of self-insurance coverage for any claim otherwise covered on an occurrence basis which occurred before the expulsion and for any claim otherwise covered on a claims made basis which had both occurred and been reported prior to the expulsion. The Board of Directors may deduct from any payments made on behalf of an expelled MEMBER all amounts due the AGENCY. No MEMBER expelled from the AGENCY, except for the payment of third-party claims, shall receive any return from the AGENCY of funds paid into the Joint Risk Management Pool.

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ARTICLE XVI. Termination of the Agency.

At the conclusion of the ten (10) year term of this Contract and By-Laws under the First Extension, all MEMBERS shall remain fully obligated for their portion of any claim against the assets of the Joint Risk Management Pool which is within the scope of coverage of the AGENCY along with any other unfulfilled obligation, including but not limited to calls for supplementary payments attributable to the period of their membership which may be called for in subsequent years. The Board of Directors shall continue to meet on such a schedule as shall be necessary to carry out the winding up of the affairs of the AGENCY. Because of the nature of claims filed against governmental bodies, it is contemplated that the Board may be required to meet for some time to conclude all matters relating to the termination of the AGENCY. When all of the affairs of the AGENCY are wound up and all claims and expenses of the AGENCY are paid, or provision is made for their payment, the members of the Board of Directors shall distribute any funds remaining in the joint risk management pool to the MEMBERS in the proportion which those MEMBERS contributed funds to the AGENCY. MEMBERS expelled from the AGENCY shall not be entitled to the return of any funds. At the conclusion of the ten (10) year term of this Contract and By-Laws, if all debt instruments shall have been repaid, MEMBERS of the AGENCY may elect to distribute to the then existing MEMBERS some of the funds contained within the Joint Risk Management Pool. The distribution of those funds, however, shall not affect the obligation of the MEMBERS to make supplementary payments to the Joint Risk Management Pool in the

event that claims which fall within the scope of coverage of the AGENCY need to be paid at subsequent times. In determining the amount of funds which may be returned to the MEMBERS, the AGENCY shall procure the recommendation of an actuary. The AGENCY may also purchase conventional insurance to fund either the remaining known claims against the AGENCY or incurred but not reported claims.

DATED: , 19_____.

A C C E P T E D

Mayor

Municipal Clerk

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WHEREUPON under the authority granted to me by Ordinance (Resolution) No. _____, passed by the Corporate Authorities on the _____ day of _____, 19_____, I do hereby execute and the Clerk does hereby attest to my signature as evidence that the _____

_____ has approved participation in the FIRST EXTENSION OF THE HIGH-LEVEL EXCESS LIABILITY POOL (HELP), in accordance with this Contract and By-Laws in its executed form and as it may subsequently be validly amended.

ATTEST:

This _____ day of _____, 19_____.

APPENDIX A

Names of MEMBERS

Arlington Heights
Chicago Ridge
Deerfield
Des Plaines
Elk Grove Village
Glenview
Hoffman Estates
Lincolnshire
Mt. Prospect
Oak Lawn
Park Ridge
Skokie
Streamwood
Wheaton
Winnetka