

RESOLUTION NO. 05-21
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON
THE 25th DAY OF JANUARY, 2021.

A RESOLUTION APPROVING THE AMENDED AGREEMENT AND BYLAWS OF MIAMI VALLEY RISK MANAGEMENT ASSOCIATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AGREEMENT ON BEHALF OF THE CITY OF CENTERVILLE.

WHEREAS, the Miami Valley Risk Management Association (MVRMA), established in 1988, is a jointly administered self-insurance pool established and maintained pursuant to Chapter 22744.081 of the Ohio Revised Code for the public purpose of enabling subscribing political subdivisions to obtain insurance coverage; and

WHEREAS, MVRMA is currently made up of 21 member jurisdictions; and

WHEREAS, pursuant to Resolution 25-04, adopted by this Council on August 16, 2004, the City of Centerville became a member jurisdiction of MVRMA and continues to be a member; and

WHEREAS, MVRMA maintains an Agreement and Bylaws, originally established and adopted in 1988 by the current member jurisdictions, and subsequently amended; and

WHEREAS, all member jurisdictions are subject to the Agreement and Bylaws of MVRMA; and

WHEREAS, an ad hoc committee undertook a review of the Agreement and Bylaws and has recommended revisions to the document; and

WHEREAS, said revisions reflect improvements in wording, clarification of the document's intent and substantive changes reflecting the evolution of the member pool; and

WHEREAS, to effect the revisions in the documents, at least 2/3rd of the political subdivisions must approve a resolution approving said changes; and

WHEREAS, the City of Centerville has reviewed the proposed revisions and is in agreement with said revisions.

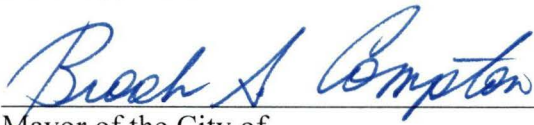
NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY RESOLVES:

Section 1. That City Council for the City of Centerville hereby after reviewing the changes to the Agreement and Bylaws, hereby approves of said changes and hereby approves said revisions as set forth in the Amended Agreement and Bylaws, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

Section 2. That the City Manager is hereby authorized and directed to execute the Amended Agreement and Bylaws in the form set forth hereto as Exhibit "A".

Section 3. That this Resolution shall become effective at the earliest date allowed by law.

PASSED THIS 25th day of January, 2021.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 05-21, passed by the Council of the City of Centerville, Ohio on the 25th day of January, 2021.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

**AMENDED AGREEMENT AND BYLAWS
OF
MIAMI VALLEY RISK MANAGEMENT ASSOCIATION, INC.**

Effective December 1, 1988

Amended: February 15, 1990

Amended: May 20, 1991

Amended: July 10, 1995

Amended: February 14, 1997

Amended: May 28, 2002

**As Recommended by
the Board of Trustees
12/21/20**

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**AGREEMENT AND BYLAWS OF
MIAMI VALLEY RISK MANAGEMENT ASSOCIATION, INC.**

ARTICLE I. PURPOSE

The purpose of this Agreement is to establish and maintain a joint self-insurance pool under Chapter 2744.081 of the Ohio Revised Code for the public purpose of enabling the subscribing political subdivisions to obtain insurance coverage, to provide methods for paying claims, and to provide for a formalized, jointly administered self-insurance pool for members of the Miami Valley Risk Management Association, Inc. Specifically, the Association is intended to qualify as an instrumentality of its members used by such members in the exercise of an essential governmental function within the meaning of §115(1) of the Internal Revenue Code of 1986, as amended. The foregoing activities of the Association are intended to perform such essential governmental function for the members at a cost which is lower than would be obtainable by the members acting separately. This Agreement shall constitute such a joint self-insurance pool (the "Pool"). It is contemplated that the members will cause to be formed and contract with a not-for-profit corporation to be known as Miami Valley Risk Management Association, Inc. (the "Association") for purposes of administering the Pool. This Agreement shall constitute the bylaws of the Association and shall also constitute an agreement between the Pool and the Association.

A copy of the Articles of Incorporation of the Association is attached hereto as Appendix A and is hereby incorporated herein.

As set forth in this Agreement, the members of the Pool shall also be members of the Association. The members of the association shall appoint the Board of Trustees of the Association.

The Association shall utilize the funds contributed by the members to defend and protect the members against certain stated liabilities or losses and to otherwise do all things necessary to fulfill the purposes of the Association and exercise its powers on behalf of the members as set forth in this Agreement, the laws of the State of Ohio governing not-for-profit corporations and the Pool and such other powers and duties as may be assigned to it by the members. Included within the powers of the Association is the right to purchase Excess Insurance, Stop Loss Insurance and Reinsurance to supplement to the Pool's funds.

All funds contributed to the Pool are funds directly derived from the members all of which are and will be political subdivisions within the State of Ohio. It is the intent of the parties to this Agreement that, to the fullest extent possible, the scope of risk management undertaken by them through the Pool using governmental funds shall not waive, on behalf of any political subdivision or public officials or employees, any defenses or immunities provided to political subdivisions or their public officials or employees as provided by Ohio law. Specifically, the members of the Association intend to effect no waiver of immunities through their contribution of public funds retained within the Pool and not used to purchase Excess Insurance Stop Loss Insurance or Reinsurance. It is further intended by the members that the Association shall make no profit and that the funds contributed by the members and utilized by the Association to fulfill its purposes and obligations shall not be considered income to the Association.

ARTICLE II. DEFINITIONS

ASSOCIATION – A not-for-profit corporation known as Miami Valley Risk Management Association, Inc. created pursuant to the Agreement and pursuant to Chapter 1702 of the Ohio Revised Code for the purpose of administering the Pool. This Agreement and Bylaws shall constitute the Bylaws of the Association.

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BOARD OF TRUSTEES – Those persons who, from time to time, are duly appointed and serving as the Board of Trustees of the Association and having the powers and duties described in Article V.

CLAIMS ADMINISTRATOR – A person or group of persons under the supervision of the Executive Director, who are employed either as employees or independent contractors to administer the claims made against the members and to perform such other duties which may be assigned by the Board of Trustees.

EXCESS INSURANCE – Insurance purchased by the Association on behalf of the members and the Pool, which covers losses in excess of a stated amount or specified primary insurance or self-insurance.

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EXECUTIVE DIRECTOR – A person or group of persons designated by the Association to perform certain duties related to Risk Management and administration of claims made against the members.

JOINT SELF-INSURANCE – A self-insurance program in which political subdivisions agree to contribute annual and, when required, supplementary payments to support the Risk Management program, the Pool and administration of the Pool.

MEMBERS – The political subdivisions which initially subscribe to or such political subdivisions as later subscribe to the intergovernmental joint self-insurance pool established by this Agreement and which shall also be members of the Association until termination of membership as hereinafter provided.

POOL – The legal entity established pursuant to Section 2744.081 of the Ohio Revised Code by the members for the public purpose of enabling the members to obtain insurance or to provide for a formalized, jointly administered self-insurance fund for the members.

POOL CONTRIBUTION FACTOR – Each member’s required portion of the costs of and the contributions to the Pool and the Association expressed as a percentage of total costs and contributions. The procedure to be used and the items to be considered in determining a Pool Contribution Factor for each member together with the current Pool Contribution Factor are determined by the Board of Trustees pursuant to Article V(i)(6). The members’ Pool Contribution Factors shall be reviewed and established preliminarily in September each year and revised again and adopted as part of the annual association budget in December each year.

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REGULAR ANNUAL PAYMENT – The total annual contribution computed using the relevant Pool Contribution Factor of each member set forth and established in the annual Association Budget for any particular fiscal year for payment of all estimated costs, whether fixed, variable, or otherwise classified, regardless of the amount billed or paid therefore.

REINSURANCE – An agreement in which the reinsurer, in consideration of a premium paid to it, agrees to indemnify the Association, in accordance with the terms, conditions and limits of the reinsurance agreement for part or all of the claim liabilities assumed under the coverage documents issued by the Association.

RISK MANAGEMENT – The process of assessing exposures to loss and implementing actions that will avoid or minimize the adverse effects of losses.

SELF-INSURANCE – The amount of coverage provided by the Association, which falls between the members’ deductible and the limits of any insurance policies obtained by the Association.

SELF-INSURANCE LOSS FUND – The fund or funds established by the Association for the payment of claims within the Self-Insurance level.

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STOP LOSS INSURANCE – Insurance purchased by the Association on behalf of the members and the Pool from an insurance company providing certain coverage up to a contracted amount for otherwise uninsured losses.

ARTICLE III. POWERS AND DUTIES OF THE ASSOCIATION

The powers of the Association to perform and accomplish the purposes set forth herein and in its Articles of Incorporation shall, within the budgetary limits established, the procedures and provisions set forth in this Agreement and the Articles of Incorporation of the Association, be the following:

- 1) To retain independent contractors including, without limitation, attorneys, accountants and insurance service providers or administrators, and to employ agents or employees;
- 2) To lease or purchase real property and to purchase or lease equipment, machinery, or personal property necessary for the carrying out of the purposes of the Association;
- 3) To carry out educational and other programs relating to Risk Management;
- 4) To oversee the collection of funds for, and to administer the Pool;
- 5) To borrow money and to incur indebtedness to accomplish the purposes of the Association, including the power to incur debt to pay claims made against the Pool,

the members or the Association, and to issue and grant such security interests in the assets of the Pool or the Association as are deemed necessary or appropriate by the Board of Trustees to accomplish the foregoing;

- 6) To purchase Excess Insurance, Stop Loss Insurance and Reinsurance on behalf of and for benefit of the Pool;
- 7) To establish reasonable and necessary loss reduction and prevention procedures to be followed by the members;

8) ~~To provide Risk Management services;~~

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9) ~~To provide~~ defense of and settlement of claims;

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10) Solely within the budgetary limits established by the members, to carry out such other activities as are necessarily implied or required to be carried out under the purposes of the Association specified herein, under Ohio law, or the Articles of Incorporation of the Association and to perform any and all other activities which are not inconsistent with the provisions of Chapter 1702 and Section 2744.081 of the Ohio Revised Code, including without limitations, the exercise of all powers of the Pool and the members authorized now or hereafter by Ohio Revised Code Chapter 2744, or otherwise.

ARTICLE IV. MEMBERSHIP IN ASSOCIATION; TERM OF MEMBERSHIP;

- (a) After the initial one (1) year term of the Association, the members may extend the term of the Association for individual extended terms, each of which may not be for less than one (1) year. Adoption by the Board of Trustees of the final budget pursuant to Article VIII(b) shall constitute such extension for the upcoming fiscal year.

(b) So long as the Association shall continue in existence, any new member joining the Association shall remain a member for the remaining period of the then current term. Any member of the Association may withdraw from the Association at the end of any fiscal year of the Association upon giving at least sixty (60) days' prior written notice. Such notice shall be addressed to the President of the Association and shall be accompanied by a resolution or ordinance of the governing body of the member determining to withdraw from the Association. To the extent that there are surplus operating funds in the Association, which are allocable to such withdrawing member, such surplus operating funds shall be distributed to the withdrawing member, after taking into proper account reserves for future liabilities pursuant to this agreement. Pursuant to Article VIII(f), the withdrawing member shall not receive a distribution of surplus funds held for the payment of claims if such distribution was approved by the Board of Trustees subsequent to the member's withdrawal. When any member withdraws from the Association, at a time when the Association shall continue in operation, the withdrawing member shall continue to hold membership on the Board of Trustees, but only for the purpose of voting on matters affecting its limited continuing interest in the Association for such years as it was a member of the Association.

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(c) The Association will commence its operations and its initial one (1) year term at 12:01 a.m. on December 1, 1988. After the date of commencement of operations of the Association, new members may be admitted only in the manner set forth in this Agreement and upon such other terms and conditions as may be determined by the then existing members and the Board of Trustees.

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ARTICLE V. BOARD OF TRUSTEES OF THE ASSOCIATION

- a) The Association shall have a Board of Trustees who shall serve in accordance with Ohio not-for-profit corporation laws. Each member shall be entitled to one (1) representative on the Board of Trustees and an alternate representative to serve when the Trustee appointed by that member is unable to carry out his or her duties as Trustee. Unless otherwise designated by resolution or ordinance of the governing body of a member, the Trustee and alternate Trustee shall be the Chief Administrative Officer of the member, whether the Mayor, City Manager or Executive Administrator, and/or the appointees thereof. Once such appointments are made known to the Association, the persons appointed shall remain in office until the Association receives evidence of the appointment of their successors. The Association shall be the judge of the proper appointment of members of the Board of Trustees and alternates and shall utilize in case of dispute general principles of Ohio law. No Trustee or alternate Trustee need to be an elected official of the member.
- b) The Board of Trustees shall annually select a President, who shall preside at all meetings of the Board of Trustees. In the absence of an Executive Director, the President shall be the Chief Executive Officer of the Association unless the Board of Trustees appoints another person to serve as Interim Chief Executive Officer.
- c) The Board of Trustees shall determine the general policy of the Association which policy shall be followed by the Association officers, agents, employees and independent contractors employed by the Association. Among other duties, it shall have the responsibility for:
- 1) Hiring of the Executive Director, agents, and independent contractors;

- 2) Setting of all compensation for all persons, firms and corporations employed by the Association;
- 3) Setting of fidelity bonding requirements for employees or other persons other than those set forth herein;
- 4) Recommending amendments to the Bylaws of the Association;
- 5) ~~Approving~~ the acceptance of new members;
- 6) Expelling members;
- 7) Approving and amending the annual budget of the Association;
- 8) Resolving disputes over the scope of pooled self-insurance coverage provided by the Association;
- 9) Approving educational and other programs relating to risk reduction;
- 10) Approving reasonable and necessary loss reduction and prevention procedures to be followed by all members;
- 11) ~~Approving the Pool Contribution formula and procedure and revisions thereto;~~
- 12) Approving the Regular Annual Payment and supplementary payments to the Pool for each member;
- 13) Establishing such rules and regulations regarding the payout of funds from the Pool as shall from time to time seem appropriate, including the determination of persons who may settle claims against the Pool or the members and monetary levels at which such persons may settle claims; and
- 14) Performing such other duties as shall be necessary to carry out the purpose of the Association under these Bylaws, the Articles of Incorporation, this Agreement and

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Ohio law and such other responsibilities, powers and duties as may be assigned by the members.

15) Unless a term of employment or contract is specifically approved by the Board of Trustees, all employment and contracts shall be at the will and pleasure of the Board of Trustees and subject to termination without cause.

d) Each Trustee shall be entitled to one (1) vote on the Board of Trustees. Voting shall be conducted by voice vote, except those matters which, under the Bylaws require a 2/3 majority of all the Trustees on the Board to approve for passage. A roll call vote shall be required in these instances where one (1) or more Trustees shall request a roll call vote.

e) Trustees shall serve on the Board at the pleasure of each member's appointing authority, for as long or short a period as the appointing authority determines. In the event that a vacancy occurs in the Board of Trustees, the member which had appointed the Trustee whose seat became vacant shall designate a successor to fill the vacancy. The failure of a member to designate or appoint a Trustee or the failure of that Trustee to participate shall not affect the responsibilities or duties of a member under this Agreement and Bylaws.

f) The Board of Trustees shall have the power to establish both standing and ad hoc committees. The President may also establish ad hoc committees which do not conflict with those established by the Board of Trustees. Unless the Board of Trustees shall establish some other procedure, the selection of Trustees who shall serve on such committees and chair them shall reside with the President. The President may appoint nonvoting persons who are not Trustees to serve on committees of the Association. The Board of Trustees may assign to a committee the authority to authorize the expenditure of

funds and to settle claims or suits brought against members within the scope of coverage provided by the Association. The President, Executive Director or Claims Administrator may also be granted such authority. The Board of Trustees may authorize the establishment of an Executive Committee. The Board of Trustees may accord to the Executive Committee the authority to approve expenditures, authorize settlement of claims and suits and take such other action as shall be specifically delegated to it.

g) The Board of Trustees may establish rules governing its own conduct and procedure not inconsistent with these Bylaws.

h) A quorum shall consist of two-thirds (2/3) of the Board of Trustees. Except as provided in Subsections (i) and (j), herein, or elsewhere in these Bylaws, a simple majority of a quorum shall be sufficient to pass upon all matters.

i) A two-thirds (2/3) vote of all the Trustees on the Board of Trustees shall be required for the following matters:

- 1) Expulsion of a member.
- 2) Establishment and amendment of budgets or scope of loss coverage.
- 3) Changes in the amount of a member's deductible.
- 4) Returns to members of unused loss funds.
- 5) Any establishment of or changes in a member's Regular Annual Payment.
- 6) The establishment or changes to the Pool Contribution Factor formula and procedure.
- 7) Calls for supplementary payments.
- 8) Termination of the Association.
- 9) Admission of new members.

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10) Such other matters as the Board of Trustees by a two-thirds (2/3) vote may establish within its rules to require a two-thirds (2/3) vote.

j) An approving Resolution passed by the governing bodies of at least two-thirds (2/3) of the members after recommendation by two-thirds (2/3) of all Trustees on the Board of Trustees shall be required in order to amend the Association's Agreement and Bylaws.

k) No one serving on the Board of Trustees shall receive any salary or other payment from the Association for serving on the Board of Trustees. Any salary or compensation for serving on the Board of Trustees shall be paid by each member separate and apart from this Agreement. However, a Board of Trustees member may be reimbursed pursuant to the policy of the Board of Trustees as may be amended from time to time for expenses incurred on behalf of the Association.

ARTICLE VI. MEETINGS OF THE BOARD OF TRUSTEES

Regular meetings of the Board of Trustees shall be held at least quarterly. The dates of regular meetings of the Board shall be established prior to the beginning of each fiscal year. Any item of business may be considered at a regular meeting. Special meetings of the Board of Trustees may be called by the President or by a simple majority of the Trustees. Five (5) days' written notice of regular meetings and three (3) days' written notice of special meetings shall be given to each Trustee. An agenda specifying the subjects to be considered shall accompany such notice. Business conducted at special meetings shall be limited to those items specified in the agenda.

To the extent not contrary to these Bylaws, and except as modified by the Board of Trustees, Roberts Rules of Order, latest edition, shall govern all meetings of the Board of

Trustees. Minutes of all regular and special meetings of the Board of Trustees shall be provided to all members.

ARTICLE VII. OFFICERS OF THE ASSOCIATION

The Association shall have a President, Vice President, Treasurer and Secretary and such other officers as may be determined necessary to the Board of Trustees. The office of Treasurer and Secretary may be held by the same person. The officers shall be elected annually by the Board of Trustees to hold offices for a term of one (1) year. The Board of Trustees shall fill any vacancies which may occur in such offices for the remainder of the term.

The President of the Board of Trustees shall preside at all meetings of the Board of Trustees. In the absence of an Executive Director, the President or Interim Chief Executive Officer appointed by the Board of Trustees, shall be the Chief Executive Officer of the Association and shall in general supervise and control the day-to-day operations of the Association and shall carry out the policies of the Association as established in these Bylaws and by the Board of Trustees. The President may request information from any officer of the Association or any employee or independent contractor of the Association. The President shall vote on all matters that come before the Board or Committees on which the President serves. The President shall be a nonvoting ex-officio member of all committees of the Association on which the President does not directly serve. The President shall have such other powers as are set forth in these Bylaws and such other powers as he may be given from time to time by action of the Board. Without limitation, the President or, at the direction of the Board, the Executive Director shall:

- 1) Sign, with such other person authorized by the Board of Trustees, any instruments which the Board of Trustees has authorized to be executed and, in general perform

all duties incident to the office of the President and such other duties as may be prescribed by the Board of Trustees from time to time.

- 2) Prepare a proposed annual budget, proposed Regular Annual Payments to be made by the members, and where required, supplementary payments to be paid by the members and submit such proposals to the Board of Trustees.
- 3) Where necessary, make recommendations regarding policy decisions, the creation of other Association officers and the employment of agents and independent contractors.
- 4) At each regular meeting of the Board of Trustees and at such other times as he shall be required to do so, he shall present a full report of his activities and the fiscal condition of the Association.
- 5) Report or cause reports to be made quarterly to all members on all claims filed and payouts made.
- 6) Within the constraints of the approved or amended budget, hire all employees and expend funds for administrative expenses.

The Vice President shall carry out all duties of the President during the absence or inability of the President to perform such duties and shall carry out such other functions as are assigned from time to time by the President.

The Treasurer, or, at the direction of the Board, the Executive Director shall:

- 1) Have charge and custody of and be responsible for all funds and securities of the Association, receive and give receipts for moneys due and payable to the Association from any source whatsoever; deposit all such moneys in the name of the Association in such banks, savings and loan associations or

other depositories as shall be selected by the Board of Trustees; invest the funds of the Association as are not immediately required in such securities as the Board of Trustees shall specifically or generally select from time to time; and maintain the financial books and records of the Association; provided, however, that all investments of Association funds shall be made only in those securities which may be purchased by the Association under Ohio or other applicable law and within policies established by the Board of Trustees.

- 2) In general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or the Board of Trustees.

The Secretary, or his designee, shall keep the minutes of the meetings of the Board of Trustees; see that all notices of meetings are duly given in accordance with the provisions of these regulations, and as required by applicable law, provided, however, that any persons calling such meetings may, at their options, themselves give such notice; be custodian of the corporate records; and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board of Trustees.

The Association may purchase such fidelity bonds, or equivalent insurance policy(ies), as may be determined to be appropriate by the Board of Trustees to assure the fidelity of the President, Vice President, Treasurer, Secretary, and any other officer, committee member, or employee who shall have the right to authorize the transfer or payment of Association funds. Without amendment of these Bylaws, the Board of Trustees, by motion, may increase or decrease the amount of such bonds or change the persons covered thereby.

ARTICLE VIII. FISCAL YEAR; FINANCIAL MATTERS;

RISK MANAGEMENT POOL

- a) The fiscal year of the Association shall commence on January 1, and end on December 31.
- b) The Board of Trustees shall approve a preliminary budget for the administration of the Association during the upcoming fiscal year by September 30 of each year. The Board of Trustees shall approve a final budget for the administration of the Association during the upcoming fiscal year by December 31 of each year. Copies of all preliminary and final budgets shall be promptly distributed to each Trustee and to any additional persons designated by the members. In adopting a final budget, the Board of Trustees shall also determine the amount of Regular Annual Payments to be made by each member. Failure of the Board of Trustees to approve a preliminary or final budget within the times set forth within this Section shall not relieve the members of the obligations to make Regular Annual Payments or supplementary payments to the Association as long as such budgets are finally adopted and the members are given at least (30) days after the passage of the final budget in which to make payments to the Association.
- c) Annually, the Board of Trustees shall, after reviewing the updated underwriting information or audited information (when required by the Board of Trustees) submitted from each member, establish a Pool Contribution Factor for each member in accordance with the formula and procedure set forth pursuant to Article V(c)(11). Notice of this Pool Contribution Factor shall be sent to each member. If a member wishes to contest the

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determination, it may request a hearing before the Board of Trustees. The decision by the Board of Trustees after such a hearing shall be final unless the Board of Trustees shall be found by a court to have committed a clear abuse of discretion.

d) Budgets, which shall specify the Regular Annual Payment for each member, may be amended at any time by two-thirds (2/3) vote of the Board of Trustees. Calls for supplementary payments may be made by the Board of Trustees by two-thirds (2/3) vote of the Board of Trustees. The Board of Trustees may make calls for supplementary payments from members, including withdrawn or expelled members, for the years of their membership. The payment of such Regular Annual Payments and supplementary payments shall be made within a time specified in notices to the members giving not less than thirty (30) days to make such payments. Supplementary payments shall ~~be required~~ by the Board of Trustees only in a situation in which there is a reasonable concern that the amounts remaining from the Regular Annual Payments will not be sufficient to meet the responsibilities of the Association. Members shall be responsible for supplementary payments during the entire life of the Association and any later period when claims or expense need to be paid which are attributable to any year of membership during which the event out of which the expense or claim occurred.

e) The Board of Trustees may permit the Regular Annual Payments or supplementary payments to be made on a periodic basis as determined by the Board of Trustees. The amount of such Regular Annual Payments and any supplementary payments required shall be based upon the Pool Contribution Factor established annually. The funds derived through application of the Pool Contribution Factor shall be sufficient to annually produce a sum of money within the Pool adequate in amount to fund the purchase of Excess

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Insurance, Stop Loss Insurance and/or Reinsurance, the administrative expenses of the Association and to create adequate reserves for the scope of Risk Management set forth herein and as may be determined by the members.

f) If for any year during which the Association was in existence, all claims known or unknown have either been paid or provision has been made for such payment, the Board of Trustees as then constituted may, at its sole discretion, distribute part or all of any surplus funds held for the payment of claims attributable to that year. Such distribution shall be made to the members which constituted the membership of the Pool in that prior year, provided, however, that such members must also be members of the Pool in the year in which such distribution is made, after first deducting therefrom reasonable administrative and other non-allocated costs incurred by the Association in the processing of the claims in years other than the one in which the claim was made. The distribution among the members shall be in the same proportion to the total as was their Regular Annual Payment, for the respective year, to the Regular Annual Payments of all members for that year. Such surplus funds shall be distributed in accordance with a policy approved by the Board.

g) The Association shall provide to the members an annual audit of the financial affairs of the Association in accordance with generally accepted auditing standards. The audit shall be conducted by a certified public accounting firm. The annual audit report shall be delivered to such person or persons as may be designated by each member.

h) As required by law or as otherwise determined necessary by its Board of Trustees, the Association shall, on an annual basis, employ a person or company who, as an independent contract, shall prepare an actuarial audit of the affairs of the Association. Such actuarial audit shall be authorized within a reasonable period of time after the end of

Deleted: The Association shall be provided with a report, at least semiannually, from all agents and independent contractors, including attorneys, with regard to the status of their work for the Association, problems encountered during the performance of their duties and recommendations for improvements in the performance of the Association, including their efforts on the Association's behalf. ...

each fiscal year. The entity chosen to carry out the actuarial audit shall be one which specializes in the performance of an audit of this nature. The audit may be a part of the financial audit of the Association. ~~The Board of Trustees may, from time to time, direct the preparation of a report on~~ the adequacy of the pooled funds maintained by the Association in relationship to claims made and those actuarially expected to be made in the future.

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ARTICLE IX. SCOPE OF LOSS PROTECTION

The Association shall provide loss protection ~~by providing adequate funding to the Self-Insurance Loss Fund, and purchasing Excess Insurance, Stop Gap Loss Insurance and Reinsurance~~ for the benefit of its members. The intent of this Agreement and Bylaws shall be that except to the extent to which the scope of coverage provided by the Association is specifically expanded by action of the Board of Trustees and its members, the members herein do not intend to utilize the Self-Insurance Loss Fund of the Association to cover matters for which Excess Insurance, Reinsurance or Stop Loss Insurance coverage is contemporaneously provided.

Deleted: <#>The Board of Trustees, utilizing someone other than the Treasurer to carry out this function, shall cause on an annual basis an analysis to be made of the extent to which the pooled funds of the Association are invested in a manner so as to reasonably assure their security and availability for the payment of claims and other expenses. An analysis shall also be undertaken of the extent to which the investment of such funds has produced interest revenues which provide a reasonable return based upon the investments made. In analyzing this matter, national indices or other similar standards shall be utilized. Unless these analyses are specifically directed by the Board of Trustees to be conducted in another manner, they shall be carried out in the manner chose by the President. ...

Deleted: to the extent that protection would be accorded

Deleted: within the terms of the Excess Insurance and Stop Loss Insurance policies and any Reinsurance obtained from time to time by the Association

By entering into this Agreement and Bylaws, each member agrees to be bound by a decision by a majority vote of the Board of Trustees of the Association that a particular matter presented to the Association for defense and indemnification is or is not within the scope of coverage provided by the Association. Any member may request that the Board of Trustees take official action to affirm or reverse a decision by the President, Executive Director or other officer, employee or independent contractor of the Association that a particular matter is or is not within the scope of coverage provided herein. The member requesting such a consideration by the Board of Trustees shall have a full opportunity to explain the position

being urged by the member. The decision of the Board of Trustees of the Association shall be final in the absence of a clear abuse of its discretion, but the Association may institute legal proceedings to further resolve the issue by final judicial determination.

The Executive Director, after having reviewed a claim forwarded to the Association for coverage, shall be permitted to decline to provide coverage for such claim if, in his opinion, the claim is not within the scope of coverage afforded herein. The Executive Director may also agree to accept the claim and provide a defense but may reserve the right of the Association to withdraw from the defense or to refuse to provide indemnification against the claim in the event that it is later determined that the claim is not properly within the scope of protection accorded by the Association.

ARTICLE X. INSURANCE

The Association may purchase Excess Insurance and Reinsurance. Unless otherwise directed by the Board, said purchase shall be from a company approved or authorized by the Department of Insurance to write such coverage in Ohio.

In addition to the Excess Insurance coverage and/or Reinsurance, the Association may obtain Stop Loss Insurance such that in the event that the Association should in any single year expend a maximum aggregate sum set from time to time by the Board of Trustees for the payment of claims, the stop loss protection would pay additional claims above that amount to a certain maximum annual amount. In lieu of purchasing Stop Loss Insurance, the Board of Trustees may elect to self insure this coverage by establishing a separate fund from member contributions, as determined by Board policy.

The sequence of the obligations of the members, the Association and the insurer for a claim resulting in liability within the scope of the Self-Insurance, Excess Insurance, Reinsurance and Stop Loss Insurance to be provided is as follows:

~~The member's deductible established by the Board of Trustees pursuant to Article V(i)(3) shall first be paid for any valid claim.~~ The next payment will come from the

Deleted: first \$2,500 of any valid claim shall be paid by the member

Deleted: (This is sometimes known as "deductible".)

Association in accordance with the scope of loss protection set forth in Article IX. In the event the Association shall have determined in a particular year to create a Self-Insurance Loss Fund from Regular Annual Payments which shall produce a sum less than the amount at which the Excess Insurance, Reinsurance and Stop Loss Insurance shall commence coverage, and if additional funds are required, the Association may call for supplementary payments attributable to that year. The next level of responsibility shall be assumed by the excess insurer and/or reinsurer. In the event that a single loss should exceed the amount of coverage provided by the Self-Insurance Loss Fund, and the Excess Insurance and/or Reinsurance, then the payment of such uncovered valid loss shall be the obligation of the individual member or members against which the claim was made. This sequence of obligations shall apply to all claims within the scope of coverage of the Pool and the Association from its inception on December 1, 1988, and shall apply to all members for those claim years during which they were members. The Association shall make payments from the Self-Insurance Loss Fund, Excess Insurance, Reinsurance and Stop Loss Insurance proceeds in the order in which the judgments against a member or the Association have been entered or settlements of claims have been reached.

Notwithstanding the obligation of the member to pay the Regular Annual Payments and the Supplemental payments assessed pursuant to this Agreement, no member shall be liable to the Association for any amount in excess of the amounts payable pursuant to this Agreement and otherwise. No member shall, in any way, be liable for the payment of the claims and judgments against any of the other members.

ARTICLE XI. OBLIGATIONS OF MEMBERS

The obligations of the members of the Association shall be as follows:

- 1) To appropriate or budget for and, when necessary, to levy for and to promptly pay all Regular Annual Payments and supplementary or other payments to the Pool at such times and in such amounts as shall be established by the Board of Trustees within the scope of this Agreement. Any delinquent payments shall be paid with a penalty as determined by Board policy.
- 2) To allow the Association reasonable access to all facilities of the members and all records, including but not limited to, financial records which relate to the purpose of powers of the Association.
- 3) To allow attorneys employed by the Association to represent the member in investigation, settlement discussions and all levels of litigation arising out of any claim made against the member within the scope of loss protection furnished by the Association.
- 4) To provide full cooperation to the Association's attorneys, claims adjusters, the Executive Director and any agent, employee, officer or independent contractor of the Association relating to the purpose and powers of the Association.

- 5) To follow in its operations all loss reduction and prevention procedures established by the Association within its purpose and powers.
- 6) To furnish to the Association updated underwriting information of all revenues and expenditures received by the member for any fiscal year of the member for which figures are requested by the Association and to furnish any other information required by the Association to assist it in making its determination of a Pool Contribution Factor, which information may include, but is not limited to, providing information about the members' properties. When requested by the Board of Trustees, the member shall provide the Association with the above-stated information in a form satisfactory to the Board of Trustees.
- 7) To report to the Claims Administrator as follows:
 - i. To report immediately, but in no event more than two (2) business days after receipt, a statutory notice of claim, a summons and complaint or other pleading before a court or agency for which overage from the Association is sought.
 - ii. To report, within ten (10) calendar days after receipt, a written demand for monetary relief for which coverage from the Association is sought.
 - iii. To report at the earliest practicable moment any information of an occurrence received by the member and from which the member could reasonably conclude that coverage from the Association will be sought.

In the event the terms set forth above are not submitted to the Claims Administrator within the time period set forth above, the Board of Trustees of the Association, by a vote of a majority of a quorum of the Board of Trustees, at a regular or special meeting, any in whole or in apart decline to provide a defense to the member or to utilize the funds of the Association

for the payment of losses or damages incurred. In reaching its decision, the Board of Trustees shall consider whether and to what extent the Association was prejudiced in its ability to investigate and defend the claim due to the failure of the member to promptly furnish notice of the claim to the Claims Administrator. In the absence of fraud or a clear abuse of discretion, the decision of the Board of Trustees shall be final.

ARTICLE XII. LIABILITY OF TRUSTEES OR OFFICERS

The Association shall indemnify any Trustee or officer or any former Trustee or officer of the Association against reasonable expenses, judgments, decrees, fines, penalties or amounts paid in settlement actually and necessarily incurred by him in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he is or may be made a party by reason of being or having been such Trustee or officer, provided it is determined in the manner hereinafter set forth: (a) that such Trustee or officer was not, and is not adjudicated to have been, negligent or guilty of misconduct in the performance of his duty to the Association; (b) that he acted in good faith in what he reasonably believed to be the best interest of the Association; (c) that, in any matter the subject of a criminal action, suit, or proceeding, he had no reasonable cause to believe that his conduct was unlawful; and (d) in case of settlement, that the amount paid in the settlement was reasonable. Such determination shall be made either: (a) by the Board of Trustees acting at a meeting at which a quorum consisting of Trustees who are not parties to or threatened with any such action, suit or proceeding is present; or (b) in the event of settlement, by a written opinion of independent legal counsel selected by the Board of Trustees.

Funds to cover expenses with respect to any pending or threatened action, suit, or proceeding, may be advanced by the Association prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that he is entitled to indemnification hereunder.

The indemnity herein above provided for shall not be deemed to be exclusive of: (a) any other rights to which any person may be entitled under any agreement, any insurance acquired with funds in the Pool or provided by the Association, or otherwise; (b) any immunity, qualified or otherwise, afforded a Trustee or officer pursuant to Chapter 1702 and Section 2305.38 of the Ohio Revised Code; or (c) the power of the Association to indemnify any person who is or was an employee of the Association to the same extent and in the same situations and subject to the same determinations as are herein above set forth with respect to a Trustee or officer. The Association may purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, or employee against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article XII.

ARTICLE XIII. ADDITIONAL INSURANCE

The Association through the distribution of the minutes of the Board of Trustees or through other means shall inform all members of the scope and amount of Excess Insurance, Stop Loss Insurance or Reinsurance in force from time to time. Membership in the Association shall not preclude any member from purchasing any insurance coverage above those amounts purchased by the Association. The Association may make its facilities

available to advise members of the types of additional or different coverages available to units of local government.

ARTICLE XIV. OPTIONAL DEFENSE BY MEMBERS

Whenever the Association proposes to settle any pending claim or suit where the amount of that proposed settlement shall exceed Twenty-Five Thousand Dollars, the member involved and all members shall be given advance notice of that settlement. Such notice may be given by the establishment of a reserve amount in excess of Twenty-Five Thousand Dollars, provided the amount of the settlement does not exceed the amount reserved. The officers and employees of the Association shall, however, endeavor to give specific oral or written notice to the member involved of the exact amount of any proposed settlement in excess of Ten Thousand Dollars at least ten (10) days prior to the date at which the Association proposes to bind itself to pay such settlement amount. It is recognized by the members that under some circumstances the Association may not be able to given ten (10) days prior oral or written notice of the proposed settlement. The officers, employees or independent contracts of the Association shall attempt to give the member as much notice of the settlement as is possible under the circumstances of each case.

In the event the members should disagree with the amount at which the Association proposes to settle a case or claim, that member through its Law Director, Chief Administrative officer, Trustee or alternate Trustee may notify the Executive Director of the Association that the member exercises its right to prevent the Association from reaching a settlement at the agreed upon amount. The Executive Director may require that such information be transmitted in writing. In the event the Association does not settle a case based upon the objection of the member, the Association shall continue to provide a defense to the defendants unless the

member should desire to itself undertake the defense. In the event the case or claim is eventually resolved through a settlement or judgement in an amount less than the amount at which the case could have been previously settled by the Association, then the member which has undertaken the costs of its own defense shall be entitled to its actual costs, including attorneys' fees, up to the level at which the case could have been settled by the Association. To the extent the case or claim is resolved through settlement or judgement at an amount greater than that at which the case or claim could have been previously settled by the Association, the member shall be obligated for its actual costs, including attorneys' fees, and the portion of the settlement or judgment which exceeds the amount at which the case could have been settled by the Association. If the member wishes to have the Association continue to provide the defense, the member shall be obligated for any additional costs incurred by the Association, including attorneys' fees, and that portion of the settlement or judgment which exceeds the amount at which the case could have been settled by the Association. The Association may require periodic supplementary payments from the member. The member shall pay its portion of the judgment or settlement directly to the plaintiff, and the Association shall not be required to pay the member's portion of such judgment or settlement.

The Association 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.

To the extent that payment shall be made with funds derived from Excess Insurance or Stop Loss Insurance or other insurance, the provisions of this Article XIV shall prevail when not contrary to those insurance contracts.

ARTICLE XV. CONTRACTUAL OBLIGATION

This document shall constitute a contract among those political subdivisions which become members of the Pool and between the Pool and the Association. The obligations and responsibilities of the members set forth herein, including the obligation to take no action inconsistent with these Bylaws as originally written or validly amended, shall remain a continuing obligation and responsibility of the member. The terms of this Agreement may be enforced in a court of law by the Association or any of its members.

The consideration for the duties herewith imposed upon the members to take certain actions and refrain from certain other actions shall be based upon the mutual promises and agreements of the members set forth herein. This Agreement and Bylaws may be executed in duplicate originals and their adoption by political subdivisions shall be evidenced by a certified copy of an ordinance or resolution passed in accordance with law. Provided, however, that except to the extent of the limited financial contributions to the Association agreed to herein or such additional obligations as may arise through amendments to this Agreement or these Bylaws, no member agrees to contracts herein to be held responsible for any claims in tort or contract made against any other member. The contract parties intend in the creation of the Pool and Association to establish an organization for joint risk management only within the scope herein set out and have not herein created as between any members any relationship of surety, indemnification or responsibility for the debts of or claims against any member.

ARTICLE XVI. EXPULSION OF MEMBERS

By the vote of two-thirds (2/3) of the entire membership of the Board of Trustees, any member may be expelled. Such expulsion may be carried out for one or more of the following reasons:

- (a) Failure to make any Regular Annual Payments or other payments due to the Association when due;
- (b) Failure to undertake or continue loss reduction and prevention procedures adopted by the Association;
- (c) Failure to allow the association reasonable access to all facilities of the member and all records which relate to the purpose or powers of the Association;
- (d) Failure to provide full cooperation to the Association's attorneys, claims adjusters, the Executive Director and any agent, employee, officer or independent contract of the Association relating to the purpose and powers of the Association; or
- (e) Failure to carry out any obligation of a member which impairs the ability of the Association to carry out its purpose or powers.

No member may be expelled except after notice from the Association of the alleged failure along with a reasonable opportunity of not less than thirty (30) days to cure the alleged failure, provided, however, that if the failure is a failure to make a Regular Annual Payment or other payment due the Association, such a failure must be cured within ten (10) days of the due date of such payment. The member may request a hearing before the Board of Trustees before any decision is made as to whether the expulsion shall take place. The Board of

Trustees shall set the date for a hearing which shall not be less than ten (10) days after the expiration of the time to cure has passed. A decision by the Board of Trustees to expel a member after notice and hearing and a failure to cure the alleged effect shall be final unless the Board of Trustees shall be found by a court to have committed a clear abuse of discretion. The Board of Trustees may establish the date at which the expulsion of the member shall be effective at any time not less than sixty (60) days after the vote expelling the member has been made by the Board of Trustees. If the motion to expel the member or a subsequent motion does not state the time at which the expulsion shall take place, such expulsion shall take place sixty (60) days after the date of the vote by the Board of Trustees expelling the member.

After expulsion, the former member shall continue to be fully obligated for its portion of any claim against the assets of the Pool which was created during the term of its membership along with any other unfulfilled obligation as if it was still a member of the Association. The expelled member shall, after expulsion, no longer be entitled to participate or vote on the Board of Trustees.

ARTICLE XVII. TERMINATION OF THE ASSOCIATION

If, sixty (60) days prior to the conclusion of any fixed term of the Association, the Board of Trustees does not vote to continue the existence of the Association, then the Association shall cease its existence at the close of the then current fiscal year. Under those circumstances, the Board of Trustees shall continue to meet on such a schedule as shall be necessary to carry out the winding up of the affairs of the Association. It is contemplated that the Board of Trustees may be required to continue to hold meetings for some substantial period of time in order to accomplish this task.

All members of the Association, including those which have withdrawn or been expelled, shall remain fully obligated for the payment of supplementary payments attributable to years during which they were members of the Association. Such supplementary payments may include but are not limited to sums sufficient to pay claims, retain reserve levels and pay for continuing claims administration. In addition, all members shall continue to be responsible for all other obligations of membership attributable to such prior years.

After all claims and liabilities have been properly paid or reserves established for the payment of any such claims, any surplus funds of the Association shall then be distributed to the members in proportion to their interest in such surplus funds.

ARTICLE XVIII. COUNTERPARTS

This Agreement may be executed in separate counterparts, each of which shall constitute an original but all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and executed this Agreement and Bylaws this _____ day of _____, 20_____, at _____ County, Ohio, Pursuant to the authority of ordinances or resolutions as hereinafter certified.

Approved as to Legal Form:

By _____

(Name)

Law Director

City of _____

By _____

(Name)

(Office)

Pursuant to Ordinance / Resolution No. _____ Passed on ____/____/_____

CERTIFICATION

I hereby certify that the money required to meet this contract has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit

to this fund free from any previous obligation or certification as required by Ohio Revised Code §§5705.01 to 5705.47.

(Name)

Director of Finance

