



**PARK DISTRICT RISK MANAGEMENT AGENCY**

**CONTRACT AND BYLAWS**

**Approved by the Membership Assembly on May 8, 2013**

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**ARTICLE I  
NAME AND AUTHORITY**

The organization shall be known as the Park District Risk Management Agency (hereinafter referred to as the “Agency”) which is an intergovernmental cooperative agency established by units of local government and other entities as permitted pursuant to Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Governmental Cooperation Act, 5 ILCS 220/1 et seq (1998).

**ARTICLE II  
DEFINITIONS**

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

“Agency Policies”

The rules, regulations, and policies that shall, in addition to this Contract and By Laws, govern the operation of the Agency.

“Agency Procedures”

The methods used to deal with the operation of the Agency and its Programs.

“Member(s)”

The unit(s) of local government, intergovernmental contractual entities, local public entities, as that term is defined by 745 ILCS 10/1-206, and non-profit public service entities which initially or later enter into the intergovernmental contract established by this intergovernmental agreement.

“Membership”

Participation in at least (a minimum of) one (1) of the Agency’s Programs.

“Program”

A line of coverage or service provided by the Agency.

**ARTICLE III  
PURPOSE**

The purpose of the Agency is to administer funds contributed by Members to provide Programs including but not limited to property, liability, workers’ compensation, unemployment compensation, and health benefits and to provide risk management and other services related to these Programs.

The Agency is also authorized to engage in other activities and provide such other Programs and services as the Board of Directors may from time to time determine are in the best interests of the Agency and as may be permitted under Illinois law.

It is the intent of the parties by entering into this agreement that, to the fullest extent possible, the scope of activities undertaken by them using governmental funds shall not waive any defenses or immunities provided in the Local Governmental and Governmental Employees Tort Immunity Act on behalf of any Member or public employees as defined therein and shall not affect the right to assert or utilize any defense or immunity, common law or statutory, provided in The Park District Code or other applicable statute that are available to Members or their employees as defined therein. Funds contributed to the Agency by its Members are not intended to constitute the purchase and/or issuance of a policy of insurance.

#### **ARTICLE IV POWERS OF THE AGENCY**

The powers of the Agency to perform and accomplish the purposes set forth shall be as follows:

- A. To employ agents, employees and independent contractors;
- B. To purchase, sell or lease real property, equipment, machinery, or personal property necessary for the carrying out of the purpose of the Agency;
- C. To carry out educational and other activities relating to risk and loss prevention and reduction;
- D. To cause the creation of, see to the collection of funds for, and administer the Agency and its Programs and services;
- E. To purchase excess, stop loss, aggregate, reinsurance or any other insurance deemed appropriate;
- F. To establish reasonable and necessary loss prevention and reduction procedures which shall be followed by the Members;
- G. To provide risk management services including legal defense, payment and settlement of claims, and payment of judgments against Members for covered claims and losses;
- H. To collect funds from Members to purchase conventional insurance; and
- I. To carry out such other activities as are necessarily implied or required to carry out the purposes of the Agency.

#### **ARTICLE V LIMITATION ON THE LIABILITY OF MEMBERS**

Each of the Agency's Programs shall be self-sustaining and a Member shall not be responsible for any liability resulting from a Program in which it does not participate.

Except as specifically provided in the foregoing provision of this ARTICLE, any and all of the Agency's assets may be used to discharge the general obligations and liabilities of the Agency. In the event that assets of one Program are required to pay an obligation of another Program, the Agency shall, to the fullest extent permitted by law, be authorized to transfer surplus funds from the Member's account in one Program(s) to its account in another Program or assess the Members of the receiving Program the amount necessary to reimburse the contributing Program.

The manner in which transfers and/or assessments are made shall be as set forth in the Agency Policies.

**ARTICLE VI  
MEMBERSHIP ASSEMBLY**

A Membership Assembly is hereby established which shall consist of one (1) representative designated by each Member. The qualifications and other rules governing appointment of representatives shall be as set forth in the Agency Policies.

The representative shall have one vote for each Program in which the Member participates that may be cast by proxy or at a meeting of the Membership Assembly.

The Membership Assembly's powers and duties shall be as follows:

- A. Elect the Board of Directors;
- B. Provide input and guidance to the Board of Directors;
- D. Approve Contract and By Laws amendments;
- E. Establish the term of the Agency;
- F. Authorize a Member of the Agency to issue bonds or other debt instruments; such authorization shall bind the Members to pay their proportional share of the cost of issuance, administration and retirement of the debt.

This Contract and By Laws shall be effective beginning 12:01 a.m. on January 1, 2013. The Membership Assembly shall meet at least one (1) time a year with the date(s) of the regular meeting(s) to be established at the beginning of the fiscal year. Other meeting provisions shall be as set forth in the Agency Policies.

**ARTICLE VII  
BOARD OF DIRECTORS**

A Board of Directors is hereby established which shall govern the Agency and provide leadership to achieve the mission and purpose of the Agency.

The Board of Directors' powers and duties shall be as follows:

- A. Provide the vision for and establish the Agency's strategic plan;
- B. Approve new Programs and terminate Programs solely upon the recommendation and approval of the Program Council;
- C. Select, employ, set the compensation of, and evaluate the President/Chief Executive Officer;
- D. Adopt the Agency budget;
- E. Approve the distribution of surplus funds to Members;
- F. Approve Agency Policies;
- G. Expel Members from a Program or from the Agency;
- H. Approve revision of Program Membership terms;

- I. Approve new members to the Agency; and
- J. Have such other powers and duties, as it may deem necessary to govern the Agency and authority to take such action necessary to discharge its responsibilities.

The Board of Directors may assign its powers and duties as set forth in the Agency Policies.

The Board shall be comprised of a maximum of nine (9) Directors, a minimum of six directors who are representatives of the Members, as set forth in the Agency Policies, and a maximum of three other directors.

A majority of the Directors who are representatives of the Members shall submit any proposal to add other Directors and/or to compensate Directors to the Membership Assembly for approval.

The Directors' qualifications and term shall be as set forth in the Agency Policies.

There shall be established the offices of Chairman, Vice-Chairman, Secretary, and Treasurer. The Board of Directors may establish other offices or terminate existing offices from time to time, as it sees fit. The Board of Directors by a majority vote shall elect the persons to fill all such offices. The selection process, qualifications, term, and duties and responsibilities of the officers shall be as set forth in the Agency Policies. No non-Member representative Director shall serve as Chairperson or Vice Chairperson of the Agency.

## **ARTICLE VIII SUCCESSION**

This Contract and By Laws shall be effective beginning 12:01 a.m. on January 1, 2013. The Agency shall continue to carry out all of the duties as provided in the Contract and By Laws which were in effect prior to January 1, 2013..

## **ARTICLE IX PROGRAM COUNCILS**

Program Councils are hereby established for each of the Agency's Programs. Each Program Council shall consist of one (1) representative designated by those Members participating in each such Program. The qualifications and other rules governing appointment of such representatives shall be as set forth in the Agency Policies.

The Program Council's powers and duties shall be as follows:

- A. Determine its Program coverage, plan design and limits that are to be provided by the Agency;
- B. Approve its Program budget, rates and Member contributions;
- C. Approve the manner in which costs are allocated among Members of its Program;

- D. Recommend to the Board of Directors the distribution of surplus funds of its Program to Members;
- E. Approve supplementary payments needed from Members of its Program;
- F. Recommend to the Board of Directors that its Program Membership term be revised;
- G. Recommend that its Program be terminated;
- H. Approve Agency Procedures for its Program; and
- I. Such other powers and duties as set forth in the Agency Policies.

**ARTICLE X  
AGENCY TERM**

The term of the Agency shall be twelve years beginning January 1, 2013 and concluding December 31, 2024. The Membership Assembly may extend the term of the Agency as provided by Illinois law and in the manner set forth in the Agency Policies.

**ARTICLE XI  
MEMBERSHIP TERM**

Each entity joining the Agency shall remain a Member for the Membership term as set forth in the Agency Policies. The Membership term for existing Members on January 1, 2013 shall remain the same as exists for each such Member. . When that existing Membership term expires, the subsequent Membership term shall be as set forth in the Agency Policies.

The Program Councils may recommend to the Board of Directors that the Membership term of its Program be revised. However no change to a Membership term shall be applied retroactively.

A Member may terminate its participation in a Program only at the end of its Membership term, except as provided below or as otherwise provided by law. The termination procedure shall be as set forth in the Agency Policies.

However, a Member may be allowed to terminate its participation in a Program prior to the end of its Membership term by motion of the Program Council. The motion allowing a Member to terminate its participation in the Program shall specify the financial and other obligations of the Member upon which such early termination is conditioned.

**ARTICLE XII  
FINANCES**

The finances of the Agency, including but not limited to calculations of Members' Program contributions, shall be as set forth in the Agency Policies.

**ARTICLE XIII  
SCOPE AND AMOUNT OF COVERAGE**

Program Councils may establish their own scope of coverage document(s) or adopt the language of a conventional insurance policy. The Agency shall have the authority to make decisions whether to decline coverage for any submitted claim or otherwise limit the extent to which the Agency shall provide defense or coverage as set forth in the Agency Policies. Members shall have the ability to appeal the Agency's decision as set forth in the Agency Policies.

By entering into this Contract and By-Laws, each Member of the Agency agrees to be bound by the decision of the Agency whether a particular matter presented to the Agency for defense and indemnification is or is not within the scope of coverage provided by the Agency.

**ARTICLE XIV  
OBLIGATIONS OF MEMBERS**

The obligations of Members shall be as follows:

- A. To appropriate, budget for, where necessary to levy for, and to promptly pay all annual and supplementary payments including those payments arising from the authorized issuance of bonds or other debt instruments or other payments to the Agency at such times and in such amounts as shall be established by the Agency within the scope of this agreement. Any delinquent payments shall be paid as set forth in the Agency Policies;
- B. To select a person(s) to serve on the Membership Assembly and Program Council(s);
- C. To allow the Agency reasonable access to all facilities of the Member and all records and information which relates to the purpose, authority or powers of the Agency;
- D. To allow attorneys employed or retained by the Agency to represent the Member in investigation, settlement, negotiations and all levels of litigation arising out of any claim made against the Member within the scope of loss protection furnished by the Agency;
- E. To furnish full cooperation with the Agency's attorneys, claim representatives, the President/Chief Executive Officer and any agent, employee, officer or independent contractor of the Agency relating to the purpose, authority and powers of the Agency;
- F. To follow in its operations all loss prevention and reduction procedures established or recommended by the Agency within the Agency's purpose, authority and powers;
- G. To report claims to the Agency's claims representative(s) within the time limit as set forth in the Agency Policies; and
- H. To timely submit to the Agency any and all documents, data and information for underwriting purposes, the development of rates, budgets and Member contributions and any other information which relates to the purpose, authority or powers of the Agency.

All Members of the Agency, including those which have terminated their participation in a Program or have been expelled, shall remain fully obligated for the payment of supplementary



and other payments attributable to years during which they were Members of the Agency. Such supplementary payments, within the limitation as may be set forth in the Agency Policies, may include but are not limited to sums sufficient to pay claims, retain reserve levels and pay for continuing claims administration and other administrative expenses. In addition, all such Members shall continue to be responsible for all other obligations of membership attributable to years during which they were Members.

**ARTICLE XV**  
**LIABILITY OF THE MEMBERSHIP ASSEMBLY, BOARD OF DIRECTORS,**  
**OFFICERS AND PROGRAM COUNCILS**

Those persons serving on the Membership Assembly, Board of Directors, Program Councils and officers 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 mistakes 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 Member, its representative, director or officer shall be liable for any action taken or omitted by any other Member, its representative, director or officer. No Member, its representative, director or officer shall be required to give a bond or other security to guarantee the faithful performance of duties hereunder.

The Agency will protect, defend, indemnify and hold harmless any person who is or has served on the Membership Assembly, the Board of Directors and/or the Program Councils (hereinafter in after referred to as “the bodies”), and/or any Agency committees, or who is or has been an Agency employee, officer, or volunteer against any and all claims, suits, actions or proceedings concerning the Agency incurred while acting within the scope of their official duties and which result from any errors, omissions or acts, including without limitation, legal fees and costs and amounts paid in any compromise, settlement or judgment, unless such errors, omissions or acts constitute intentional conduct, criminal acts, or conduct outside the scope of their duties.

Notwithstanding the above, the Agency, on a claim-by-claim basis, will exercise its discretion to assume the defense of claims, subject to a reservation of rights, when such claims and/or damages requested, arise out of alleged intentional conduct, criminal acts, or conduct outside the scope of their duties, and when such claims initially appear to be frivolous, without merit or otherwise unsubstantiated.

The scope and amount of coverage that the Agency provides for its Members will also apply to those persons who are or have served on the bodies, any Agency committees, and officers, employees, and volunteers of the Agency.

**ARTICLE XVI  
CONTRACTUAL OBLIGATION**

These By Laws shall constitute a contract among entities that become Members of the Agency and shall allow Members to participate in one or more of the Agency's Programs. The obligations and responsibilities of the Members set forth herein and in the Agency Policies, 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 the Member. The Agency or any of its Members may enforce the terms of this Contract in a court of law.

The consideration for the duties herewith imposed upon the Members to take certain actions and to refrain from certain other actions shall be based upon the mutual promises and agreements of the Members set forth herein. This Contract and By-Laws may be executed in duplicate originals and a certified copy of a resolution passed by a majority of the corporate authorities or governing board then in office shall evidence its passage. Provided, however, that except to the extent of the financial contributions to 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 only within the scope herein set out and have not herein created as between Member and Member any relationship of surety, indemnification or responsibility for the debts of or claims against any Member. The contractual obligations agreed to herein shall survive the term of this agreement for the payment of claims that occurred during the contract term and were reported within the time established in the scope of coverage as the coverage period.

**XVII  
TERMINATION OF THE AGENCY**

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

Upon conclusion of all business required to be transacted by the Agency or at a time otherwise authorized by the Board of Directors, remaining assets of the Agency shall be distributed as set forth in the Agency Policies.

All Members of the Agency, including those which have terminated their participation in a Program or have been expelled, shall remain fully obligated for the payment of supplementary and other payments attributable to years during which they were Members of the Agency. Such supplementary payments, within the limitation provided for in the Agency Policies, may include

but are not limited to sums sufficient to pay claims, retain reserve levels and pay for continuing claims administration. In addition, all such Members shall continue to be responsible for all other obligations of membership attributable to such prior years.

## **ARTICLE XVIII GENERAL PROVISIONS**

**Headings and Sub-Titles.** The headings of paragraphs and any sub-titles in the Contract and By Laws are for convenience only and form no part of this Contract and By Laws and shall not affect its interpretation.

**Construction.** In any dispute regarding the interpretation or enforcement of this Contract and By Laws, the laws of the State of Illinois shall be applied to its interpretation. The Members further agree that the jurisdiction and venue for any lawsuit shall be the 18<sup>th</sup> Judicial Circuit Court, DuPage County, State of Illinois. In any lawsuit brought by a Member or the Agency, the prevailing party shall be entitled to recover, as part of any judgment, the reasonable legal fees and costs incurred by said party in pursuing or defending such litigation.

**Severability.** If any provision, or any portion thereof, contained in this Contract and By Laws is held to be unconstitutional, invalid, or unenforceable, the remainder of this Contract and By Laws or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**Notice.** Any notice required or permitted to be given under this Contract and By Laws shall be sufficient if given in writing and sent by registered or certified mail, return receipt requested and postage prepaid to the Agency, or to the Member as the case may be, at the address of its corporate offices.

**No Third Party Beneficiaries.** Notwithstanding any provision herein to the contrary, these Contract and By Laws are entered into solely for the benefit of the Members, and nothing in these Contract and By Laws are intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to these Contract and By Laws or to acknowledge, establish or impose any legal duty to any third party. No claim as a third party beneficiary under these Contract and By Laws by any person, firm, or corporation shall be made or be valid against the parties of the Contract and By Laws.

WHEREUPON under the authority granted me by Resolution Number 3-10-11, passed by the Governing Board on the 17 day of October, I do hereby execute and the Secretary does hereby attest to my signature as evidence that the Frankfort Square Board of Park Commissioners has approved participation in the Park District Risk Management Agency for a term commencing on November 1, 2013 in accordance with this Contract and By Laws in its executed form and as it may subsequently be validly amended.

AYES:

NAYS:

ABSENT:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary