

AGENDA
LEAGUE ASSOCIATION OF RISK MANAGEMENT
BOARD OF DIRECTORS MEETING
March 14, 2018 1:30 p.m. CT
Via Conference Call
1919 S. 40th, Suite 212, Lincoln Ne. 68506

In accordance with Section 84-1412 sub-section six (6) of the Reissue Revised Statutes of the State of Nebraska 1943, as amended, one copy of all reproducible written material to be discussed is available to the public at this meeting for examination and copying.

A. CALL TO ORDER

1. 1:30 p.m. – call meeting to order
2. Inform the public about the location of the Open Meetings Act available in the meeting room and accessible to members of the public.
3. Pledge of Allegiance to the flag of the United States of America
4. Roll call
5. Nebraska Revised Statutes - § 84-1412 (2) states, "It shall not be a violation of subsection (1) of this section for any public body to make ~~and enforce~~ reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings." The primary purpose of the March 14 meeting is to correct the error of a Board member whom the meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln. The March 14 agenda will be nearly the same as the prior February 12 meeting, but will also include a motion to nullify the February 12 meeting. The March 14 agenda will include a 15-minute public comment period at the start of the Board meeting for member comments on agenda items, followed by an additional item for Board comments. There will be no further discussion by the Board or member participants regarding agenda items C-1, C-2 and C-3 under Special Presentations and D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11 and D-12 under Current Business. The Board will reapprove or approve each of these items separately.

B. RECOMMENDED ACTIONS

1. All items listed with an asterisk (*) are considered to be routine by the LARM Board and will be enacted by one motion. There will be no separate discussion of these items unless a Board member or a citizen so requests, in which event the item will be removed from consent status and considered in its normal sequence on the agenda.
2. Public comment on the agenda or member concerns. (15-minute time limit.)
3. Board comments to member concerns.

C. SPECIAL PRESENTATION

1. Presentation by LARM Executive Director Mike Nolan of information concerning Pools in America. (This item, presented initially on February 12, will not be presented again. The LARM Board will approve a motion reaccepting the report.)
2. Presentation by LARM Executive Director Mike Nolan of chronology of important events since December 14, 2017 in the working relationship between LARM and LONM. (This item, presented initially on February 12, will not be presented again. The LARM Board will approve a motion reaccepting the report.)
3. Presentation by LARM special counsel David Domina of the legal opinion concerning organizational issues of the League Association of Risk Management.

D. CURRENT BUSINESS

1. Consideration of Board motion to reapprove the LARM Bylaws that were initially approved by the LARM Board on December 17, 2013. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
2. Consideration of Board motion to affirm the election of LARM Board members currently serving. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
3. Consideration of Board motion to reaffirm election of Gerald Solko as LARM Board Chair and Lane Danielzuk as LARM Board Vice Chair. (This item, considered by the Board on February 12, will not be discussed again. The LARM

Board will approve a motion reapproving the February 12 decision.)

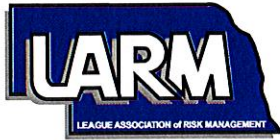
4. Consideration of Bylaw changes to provide that LARM will be represented by nine Board members; to establish that the LONM Executive Board and LONM Executive Director have no policy or administrative authority concerning LARM; to delete any remaining language conflicting with the December 17, 2013 Board decision to eliminate annual meeting and delegation of member proxies to LONM Executive Director. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
5. Consideration of motion to authorize reimbursement to LARM members of their proportional share of the 2% of LARM gross revenues collected in FY 2017-2018 that will no longer be paid to the League of Nebraska Municipalities. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
6. Consideration of motion to oppose LR293CA concerning a Nebraska ballot proposal on medical marijuana and authorization for Board Chair Gerald Solko to sign a letter to Speaker of the Legislature Jim Scheer, copied to other Senators, indicating LARM's opposition. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
7. Consideration of motion to approve reestablish procedural elements of the LARM Investment Policy for a standard report by US Bank provided to the Investment Committee on a quarterly basis, and ultimately to the LARM Board at each quarterly meeting. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
8. Consideration of motion to approve settlement of July 5, 2016 City of Columbus property claim from severe wind damage in amount of \$293,950. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
9. Consideration of action concerning deleterious statements and conduct of persons with fiduciary duties to LARM. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.)
10. Consideration by Board of requesting legal opinion from Domina Law Firm concerning validity of LARM Board service by current members. (This item, considered by the Board on February 12, will not be discussed again. The

LARM Board will approve a motion reapproving the February 12 decision.)

11. Consideration of motion to void the meeting and minutes of the LARM Board Meeting of February 12, 2018 due to an inadvertent error that violated the Nebraska Open Meetings Law when a Board member whom the meeting notice stated would participate from the St. Paul Utilities Superintendents office at 704 6th Street, St. Paul, participated instead from the LARM office at 1919 South 40th, Suite 212, Lincoln.
12. Consideration of motion to establish the League Association of Risk Management Voting Protocol.

E. ADMINISTRATIVE REPORTS

- *1. Report about current recipients of *Lean on LARM Safety Grant*. (This item, considered by the Board on February 12, will not be discussed again. The LARM Board will approve a motion reapproving the February 12 decision.).



Telephone Conference #:

1-641-715-3655

Enter Code #: 457582

**STAFF MEMORANDUM
LEAGUE ASSOCIATION OF RISK MANAGEMENT
BOARD OF DIRECTORS MEETING
Via Conference Call
March 14, 2018, 1:30 p.m. CT**

A. CALL TO ORDER

1. Call meeting to order.
2. Inform the public about the location of the Open Meetings Act posted in the meeting room and accessible to members of the public.
3. Pledge of Allegiance to the flag of the United States of America.
4. Roll call.

B. RECOMMENDED ACTION

1. Approval of consent agenda. *
- *2. Approval of minutes from the LARM Board Meeting of January 16, 2018.

C. SPECIAL PRESENTATIONS

1. The Board should reapprove acceptance of the report that the LARM Executive Director Mike Nolan presented to the Board and members on February 12, 2018, regarding current facts about pools and their affiliation with sponsoring organizations. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.
2. The Board should reapprove acceptance of the report that the LARM Executive Director Mike Nolan presented to the Board and members on February 12, 2018, regarding a chronology of important events in the working relationship between LARM and the League of Nebraska Municipalities (LONM) since December 14, 2017. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.
3. Enclosed in the agenda package is LARM special counsel David Domina's legal opinion of organizational issues concerning the League

Association of Risk Management. David Domina will provide the Special Presentation during the March 14 Board meeting. The Board should approve a motion accepting the report.

See Enclosure C-3.

D. CURRENT BUSINESS

1. The Board should reapprove the December 17, 2013 Bylaws again. At the February 12, 2018 Board meeting, on the advice of LARM's special counsel Mr. David Domina, the LARM Board reapproved LARM Bylaws that were initially approved by the LARM Board on December 17, 2013. The current Bylaws that were approved on December 17, 2013 are enclosed. The Board should reapprove the motion made on February 12. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

See Enclosure D-1.

2. The Board should reapprove the election of Board members currently servicing. At the February 12, 2018 Board meeting, on the advice of LARM's special counsel Mr. David Domina, the LARM Board approved a motion to reaffirm the election of LARM Board members currently servicing on the LARM Board. Those members are Gerald Solko, representing the City of St. Paul; Lane Danielzuk, representing the City of Gering; Andrew Ward, representing the City of Valentine; Beth Bonderson, representing the Hoskins Rural Fire District; Kimberly Neiman representing the Village of Pilger; Shannon Stucklik, representing the Northeast Nebraska Economic Develop District; Vince Knight, representing Stanton County SID #1; David Hunter, representing the Auburn Board of Public Works; and Michael Werner, representing the City of Waverly. The Board should reapprove the motion made on February 12. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.
3. The Board should reapprove election of Gerald Solko as LARM Board Chair and Lane Danielzuk as LARM Board Vice Chair. At the February 12, 2018 Board meeting, on the advice of LARM's special counsel Mr. David Domina, the LARM Board approved a motion to reaffirm the election of Gerald Solko as LARM Board Chair and Lane Danielzuk as LARM Vice Chair. The motion to reapprove is necessary to correct the

inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

4. The Board should reapprove the final draft revision of the revised LARM Bylaws that were approved on the February 12, 2018 Board agenda. Enclosed in the agenda package are the draft redlined and final revisions to LARM's Bylaws that establish that the LONM Executive Board and LONM Executive Director have no policy or administrative authority concerning LARM; that delete any remaining language conflicting with the December 17, 2013 Board decision to eliminate annual meeting and delegation of member proxies to the LONM Executive Director. The LONM President and LONM Executive Director continue to serve as ex-officio, non-voting members, but the proposed Bylaws preclude them from participating in LARM closed sessions unless specifically requested to do so by the LARM Board.

With suggestions from the LARM Board and special counsel Dave Domina, Mike Nolan drafted the draft redlined and final versions and discussed with the Board during the February 12, 2018 meeting.

The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

Also enclosed in the agenda package are emails exchanged between Mike Nolan and Krystle Garcia Ledvina, Nebraska Department of Insurance (NDOI) staff member who communicates with LARM regarding regulatory matters. Bylaw changes will be forwarded to NDOI after Board reapproval.

See Enclosures D-4.

5. The Board should reapprove the motion approved at the February 12 Board meeting to reimburse to members the balance of the FY 2017-2018 2% of LARM revenues remitted to LONM. Enclosed in the agenda package is a report prepared by Chris Cadwell of York at LARM Executive Director Mike Nolan's request that calculates the 2% of annual LARM revenues that was collected and remitted to LONM. At the December 14, 2018 Board meeting, the Board approved a motion to no longer remit the 2% to LONM. The remaining balance of the 2% sum collected in FY 2017-2018 is shown in the report. At the February 12 LARM meeting, the Board decided to reimburse the entire amount re

maining of the 2% to the LARM members. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

See Enclosure D-5.

6. The Board should reapprove a motion approving the February 12 motion to oppose legislation concerning medical marijuana. Enclosed in the agenda package are materials related to LR 293CA, a proposed Nebraska Constitutional Amendment authorizing medical marijuana. Materials include a *Public Management* article on medical marijuana, a Loss Control staff report of a survey of Nebraska law enforcement opponents of the proposal, email exchanged between LARM Executive Director Mike Nolan and LONM Executive Director Lynn Rex, and the draft letter of opposition to Legislative Speaker Jim Scheer from LARM Chair Gerald Solko. Staff recommend opposition the medical marijuana proposal and authorization for Gerald Solko to sign the letter. At the February 12 Board meeting, staff recommended that the Board approve opposition to LR 293CA and authorization for Gerald Solko to sign the letter to the Legislature. The Board also approved tabling the motion unless LR 293CA comes out of the Judiciary Committee, in which case Gerald's letter would be sent. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

See Enclosures D-6.

7. Enclosed in the agenda package is a report, "List of Investment Purchases and Sales" that York requested from US Bank to reestablish procedural elements of the LARM investment policy that has inadvertently been waylaid since LARM changed its bank depository to U.S. Bank more than a year ago. Lyndee Black noted in a recent audit that the LARM investment policy requires review and dissemination of this information on a quarterly basis. After any Board discussion, staff recommend that the Board (a) accept the report; (b) have staff communicate to U.S. Bank's investment managers that the Board desires the report to be regularly forthcoming; and (c) directs staff to invite the U.S.

Bank investment managers overseeing LARM's investments to provide a special presentation at the next regular Board meeting. At the February 12 LARM meeting, the Board approved a motion that provides for these three actions. The Board should reapprove the same motion. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

See Enclosure D-7.

8. Enclosed in the agenda package is a memorandum from Fred Wiebelhaus, LARM's assistant loss control and field claims supervisor that discusses the July 5, 2016 City of Columbus property claim from severe wind damage, mostly to trees in two golf courses and Pawnee Park. The claim was settled on January 4, 2018 for \$293,950, which exceeds the Executive Director's authority of \$200,000. At the February 12 Board meeting, the Board passed a motion approving the settlement. The Board should reapprove the settlement. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

See Enclosure D-8.

9. At the February 12 meeting, the Board approved a motion to table a motion of censure of the LONM Executive Director concerning deleterious statements and conduct of persons with fiduciary duties to LARM. The Board should reapprove the motion to table the motion to censure. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.
10. At the February 12 meeting, the Board approved a motion to request a legal opinion from LARM's defense counsel Domina Law Firm concerning validity of LARM Board service by current members. The Board should reapprove the motion again. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln.

11. The Board should approve a motion to void the February 12, 2018 Board meeting and the minutes of the meeting due to an inadvertent error that violated the Nebraska Open Meetings Law when a Board member whom the meeting notice stated would participate from the St. Paul Utilities Superintendent's office at 704 6th Street, St. Paul, participated instead from the LARM office at 1919 South 40th, Suite 212, Lincoln. The draft February 12, 2018 Board minutes are enclosed.

See Enclosure D-11.

12. Enclosed in the agenda package is a draft Voting Protocol for the Board's consideration that is based on Nebraska statutes. Staff recommend that the Board pass a motion approving the Voting Protocol.

See Enclosure D-12.

E. ADMINISTRATIVE REPORTS

- *1. Enclosed in the agenda package is a report about the current recipients of the *Lean on LARM Safety Grant*. The Board should reapprove a motion accepting the report. The motion to reapprove is necessary to correct the inadvertent error of a Board member whom the February 12 meeting notice indicated would participate from his advertised location and instead participated from the LARM office in Lincoln. (This is on the consent agenda. The Board should reapprove the consent agenda.)

See Enclosure E-1.

**Meeting Minutes
LARM Board Meeting
January 16, 2018**

The League Association of Risk Management (LARM) Board of Directors meeting was held January 16, 2018 at 9:30 a.m. CT via phone conference.

For the roll call, the following members were present by phone: Dave Hunter, Auburn Board of Public Works office, 1600 O St, Auburn NE; Michael Werner, City of Waverly Office, 14130 Lancashire St., Waverly NE; Beth Bonderson, Village office, Hoskins; Kim Neiman, Pilger City Hall, 220 N. Main St., Pilger; Vince Knight, SID #1 Stanton County Office, 99 Market PL, Norfolk; Shannon Stuchlik, Mayors Office, 106 S 1st, Pierce NE; Lane Danielzuk, Gering City Administration, 1025 P St., Gering and Gerald Solko, St. Paul Utilities Superintendents office, 704 6th St., St. Paul.

Staff members present at 1919 S 40th, Ste 212, Lincoln NE: Tracy Juranek and Michael Nolan.

Staff members present by phone: Fred Wiebelhaus, Diane Becker, Randy Peters, Paige Buffington and Dave Bos.

Guests present by phone: LONM Executive Director, ex-officio, non-voting LARM Board Member, Lynn Rex, and LONM's attorney, Andre Barry (Cline Williams) at City of Waverly office.

Guests present by phone: Mark Nestor, ICRMS; Chris Cadwell, York; Jo Leyland, Imperial; and numerous others not announced (see attached call report).

Notice of the meeting was emailed to members on January 11, 2018. The notice was posted on the LARM website as well as the LARM Facebook page on January 12, 2018. The agenda was emailed to the Board on January 12, 2018.

Gerald Solko called the meeting to order at 9:30 am and announced consent agenda item B-2 was the approval of the minutes from the December 7th & 14th meetings. Kim Neiman made a motion to approve item B-2, seconded by Vince Knight. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Knight, Neiman, Solko and Stuchlik. Nays: none. Motion carried.

B-2
3-14-2018

Solko announced item D-1 was on the consent agenda and was the approval of new LARM member, Village of Emerson. Beth Bonderson made a motion to approve item D-1, seconded by Lane Danielzuk. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Neiman, Solko and Stuchlik. Nays: none. Motion carried.

Gerald Solko announced item D-2 consideration of Board approval of a contract with Paradigm Management Services, LLC for management of the catastrophic workers' compensation claim affecting LARM's client, City of North Platte, in the amount of \$1,467,920.

Nolan said on November 1, 2017 an employee (name withheld) of LARM's client City of North Platte, fell from a scaffold and sustained multiple cranial and other injuries that resulted in a catastrophic worker's compensation claim. LARM staff, representatives of York, ICRMS, coverage attorney Bill Austin and LARM's workers' compensation defense counsel David Dudley have had numerous phone conferences to develop structures for managing this claim. LARM's workers' compensation reinsurer Midwest Casualty has recommended that LARM retain specialized contractor Paradigm Management Services, LLC, to manage this claim. On January 11, 2018, LARM staff, Mark Nestor of ICRMS; Chris Cadwell and Chris Dondzila of York; and several Paradigm staff had a phone conference that included three LARM Board members: Gerald Solko, Lane Danielzuk, and Dave Hunter. The purpose of the call was to discuss the claim's injury complexity, treatment requirements, estimated financing and the Paradigm contract.

Supporting materials included with the agenda and staff memo include: Paige Buffington's staff work on the reserve increase; Paradigm's cost value analysis; Paradigm's outcome contract plan; Paradigm's payment schedule.

Nolan said what was not included in the agenda package were some correspondence between LARM's coverage attorney, Bill Austin and Paradigm's attorneys on some stylistic and word changes that are currently being discussed. LARM anticipates that if the Board authorizes LARM to have the Board Chair approve the agreement after the Board gives its consent that that would be inclusive of anything that Bill Austin and Paradigm would negotiate to the contract.

Staff recommend that the LARM Board approve a motion that: (a) approves the contract between Paradigm and LARM to manage the catastrophic claim; (b) approves the current reserve estimate of \$1,467,920. LARM's retention of

\$750,000 is LARM's obligation, and the balance of the estimated \$1,467,920 will be reimbursed by Midwest Casualty after the contract is paid.

Kim Neiman made a motion to approve item D-2, seconded by Lane Danielzuk. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Neiman, Solko, Stuchlik and Werner. Nays: none.

The motion to adjourn was made by Kim Neiman, seconded by Beth Bonderson. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Neiman, Solko, Stuchlik and Werner. Nays: none. The meeting was adjourned at 9:40.

NOTE: Should any citizen of Nebraska request a copy of the recording, LARM will regard the meeting recording as a public record and provide it to the requester.

Approved on: _____

ATTEST:

Secretary

February 23, 2018

Michael Nolan
League Association of Risk Management
Executive Director, LARM
mike.nolan@larmpool.org

Mr. Gerald Sulko
League Association of Risk Management
LARM Chair
gsolko@yahoo.com

Re: Confidential: Organizational Issues. League Ass'n of Risk Management

Mr. Sulko, Mr. Nolan:

1. The League Association of Risk Management ("LARM") Board of Directors requested our analysis and consideration of allegations that the LARM Board is not qualified to serve because of alleged irregularities in the manner of its election, and that LARM is not functioning lawfully. I was asked to consider correspondence written by a lawyer for the League of Nebraska Municipalities' ("LONM") Executive Director concerning this subject.

2. Several other lawyers have offered opinions affecting this subject matter at least indirectly for LARM in the past. It would be inappropriate for me to overlook their views. Generally these lawyers concluded that:

- a) LARM functions autonomously and is not an organization subordinate to LONM or its Executive Director, and
- b) LARM is a product of an agreement among Nebraska public agencies and, accordingly, is an entity independently governed by the *Nebraska Open Meetings Act*, *Neb Rev Stat* § 84-1407 et seq, and
- c) LARM is subject to audit by the State Auditor of Public Accounts, and is regulated by the Nebraska Department of Insurance as a statutorily authorized Risk Management Pool under *Neb Rev Stat* § 44-4304 and the enabling agreement creating LARM.

Some or all these lawyers have also opined, either directly or indirectly, that:

- d) LARM is not required to hold annual meetings of its members, and
- e) LARM may use a methodology for rotating its directorate positions to assure limitations on durations of service and broad-based opportunity for board membership from communities who use the Risk Pool for municipal risk management services, and
- f) LARM is served by a current Board with responsibility to comply with the *Open Meetings Act*, the ability to correct errors in compliance with it, and authority to regulate, with reasonable rules, participation in Board Meetings.

3. I am aware of no opinion suggesting that LARM presently lacks the authority to “operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to protect members against losses arising from...” authorized types of risks specified at *Neb Rev Stat* § 44-4304. All opinions of lawyers who have reviewed aspects of LARM’s governing documents, operations and history affirm that LARM has, and exercises this authority lawfully. The Department of Insurance, State Auditor, and commercial reinsurance companies doing business with LARM appear to share, and affirm this position.

4. My focus, in this correspondence, is on these specific questions:

- a. Does LARM exist as a matter of law and is it operating lawfully?
- b. Does LARM’s current Board have lawful authority to conduct LARM’s Board Level responsibilities?

5. These are my conclusions:

- a. LARM does exist as a matter of law and is operating lawfully.
- b. LARM’s current Board does have lawful authority to perform its responsibilities and is doing so.

6. Brief analysis follows.

I. LARM Exists as a Matter of Law and Is Operating Lawfully.

***Neb Rev Stat §§ 13-801 et seq; and Neb Rev Stat §§ 44-4301 et seq;
and Interlocal Cooperation Act Agreement.***

7. On at least three (3) occasions - June 17, 1988; October 1, 2003; and September 24, 2014 - a group of Nebraska municipalities agreed to form the League Association of Risk Management. On each occasion, the municipalities founded their efforts on two distinct Nebraska statutes. The obvious overarching objective was to create an intergovernmental risk management pool to function under the regulation of the Nebraska Department of Insurance pursuant to the *Intergovernmental Risk Management Act, Neb Rev Stat §44-4301 et seq.* This was done.

8. Presently, 166 Nebraska public bodies pay “premiums” or assessments as contributions to the Risk Pool. When the need arises, they submit claims, work to adjust those claims, and provide for the legally mandated Workers’ Compensation coverage, and other necessary general liability and permissible insurance needs of their constituencies. Through the organization they created, LARM, member public bodies provide for reinsurance, budget municipal funds, make calculations upon which they levy taxes, contract under the law, meet the obligations to their employees, and otherwise fulfill numerous municipal functions. In each of these instances, LARM is instrumental to basic government operations, and fulfillment of legal obligations owed by members to the public.

9. On a daily basis, LARM maintains reserves, deals with claims, underwrites risks, and administers coverages for the benefit of its public members. Each of these activities is regulated and overseen by the Nebraska Department of Insurance. The Department recognizes LARM as a lawful Risk Management Pool. LARM employees are licensed insurance agents and insurance consultants who are also regulated by the Department of Insurance. These regulated persons sell and service LARM products. They also deal with claims.

10. The Auditor of Public Accounts is entitled to examine the books and records of LARM. *Neb Rev Stat § 13-513.* LARM makes mandatory submissions to the Auditor’s office and complies with this statute. It also complies with the *Open Meetings Act, Neb Rev Stat § 84-1401 et seq.* (This has been recognized by LONM personnel with legal training in recent days. I also think LARM is required to do so.) The *Open Meetings Act* applies, of course, to meetings of the LARM governing body, i.e., its Board of Directors and their meetings.

11. No information has been provided suggesting that any State or Federal Agency or Authority with regulatory authority over LARM has ever taken the position that the Risk Management Pool does not exist as a matter of law, or exists in functions

unlawfully. The *Nebraska Insurance Code* does not authorize or permit a Risk Management Pool to operate as a controlled subsidiary of another entity or organization.

12. For all these reasons, and others alluded to below, we respectfully conclude that LARM is a public body that exists as a matter of law, and is operating lawfully to fulfill its function as a regulated Risk Management Pool. Since LARM is so operating, its governance structure is also functioning and acting within its lawful authority. This includes LARM's Board of Directors.

II. LARM's Current Board Has Lawful Authority to Perform its Responsibilities and Is Doing So.

***Neb Rev Stat* §§ 13-801 et seq; and *Neb Rev Stat* §§ 44-4301 et seq;
and Interlocal Cooperation Act Agreement.**

13. The second question under consideration focuses on the lawfulness of actions by LARM's current Board. We conclude that the current Board and its members have lawful authority to govern LARM.

14. *Neb Rev Stat* § 13-804 provides a checklist for evaluating the organizational existence, structure and powers of LARM. In its pertinent sections, this statute provides:

Statutory Provision	Comment vis. The ICA
(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the <i>Interlocal Cooperation Act</i> . Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.	Accomplished under the ICA.
(3) Any such agreement shall specify the following:	
(a) Its duration;	a) Of Concern
(b) The general organization, composition, and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to the entity;	b) Does not permit private entity to rule the ICA entity
(c) Its purpose or purposes;	c) Accomplished
(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;	d) Accomplished

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|--|---|
| <p>(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;</p> <p>(f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816; and</p> <p>(g) Any other necessary and proper matters.</p> | <p>e) Somewhat done</p> <p>f) Accomplished</p> <p>g) Somewhat done. Overall, the ICA is too much like a set of bylaws and not structural enough.</p> |
| <p>(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:</p> <p>(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall be represented; and</p> <p>(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.</p> | <p>4) I do not think this authorizes joint operations or control between a private, non-public lobbying organization like LONM, and a public body, LARM. Private cannot control public.</p> |
| <p>(5) No agreement made pursuant to the <i>Interlocal Cooperation Act</i> shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.</p> | <p>5) Same as #4.</p> |
| <p>(6) In the event that an agreement made pursuant to this section creates a joint entity, such joint entity shall be subject to control by its members in accordance with the terms of the agreement; shall constitute a separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement; and shall have power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with its necessity, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and</p> <p>(d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Interlocal Cooperation Act and the agreement providing for its creation, to carry out and effectuate its powers and purposes.</p> | <p>6) This control by members section does not require member elections or meetings.</p> <p>d) Accomplished.</p> |

Neb Rev Stat § 13-804.

Section 13-803 of the State statutes make it clear that “public agency” includes counties, cities, villages, school districts or agencies of state government, drainage districts,... and other municipal corporations are political subdivisions. A “joint entity” as used in §13-804 means “... an entity created by agreement pursuant to section 13-804.” See, §13-803 (1).

Under § 13-804(2), two or more public agencies may enter into agreements with one another for joint or cooperative action under the ICA. See *City of Falls City v. Nebraska Mun. Power Pool*, 279 Neb 238, 777 NW2d 327 (2010). The ICA authorizes the creation of a joint entity whose express authority is limited to executing the enumerated powers of the agencies which created it. Section 13-803(1) of the ICA provides that for purposes of the ICA, “[j]oint entity shall mean an entity **868 created by agreement pursuant to section 13-804.”

Estermann v. Bose, 296 Neb 228, 241, 892 NW2d 857, 867–68, (2017).

15. The *Interlocal Cooperation Agreement Act* permits the public agencies organizing the joint entity to give the created entity supplemental powers, but not powers in derogation of those imposed upon political subdivisions creating it. *Neb Rev Stat* §13-825 provides:

The provisions of the [ICA] shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized by the act and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon political subdivisions, agencies, and others by law. Insofar as the provisions of the [ICA] are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of the [ICA] shall be controlling.

See, *Estermann v. Bose*, above; *Kubicek v. City of Lincoln*, 265 Neb 521, 658 NW2d 291 (2003). In LARM’s case, however, its authority to operate is greatly expanded by the statute in Nebraska’s Insurance Code that enables LARM’s existence, i.e., the *Intergovernmental Risk Management Act*, *Neb Rev Stat* §44-4301 et seq.

16. It is true that Section 13-825 of the ICA does not authorize creation of new governmental functions. The objective of an Interlocal Agreement is to accomplish something that is an existing governmental function to be completed by using an alternative method. The ICA allows for an “additional, alternative, and complete method” to do things authorized by the ICA. Section 13-804 permits public agencies to enter into multiple agreements for joint or cooperative action within their individual authority. None of LARMs members are authorized to act as Risk Management Pools. This is permissible only under the *Intergovernmental Risk Management Act*, *Neb Rev Stat* §44-4301 et seq. Accordingly, LARM functions must be measured against both the ICA

and the Risk Management Act. It is a creature of both statutes and regulated under the second as an insurer of risks.

17. One essential governmental function of a political subdivision is to insure risks against claims for torts, or casualty losses, or civil rights claims, etc. *Neb Rev Stat* §13-916. This can be done with a risk management pool or in one of several other ways. *Id.* A local government may insure risks accepted from coverage by §13-910. The governing board of a political subdivision may provide members and employees of the political subdivision with personal liability insurance coverage. *Neb Rev Stat* §13-401. Local governments can also take advantage of the *Political Subdivisions Self-Funding Benefits Act*, *Neb Rev Stat* §13-1602 et seq. A political subdivision can be a Plan Sponsor of an employee benefit plan. *Neb Rev Stat* §13-1611.

18. In the case of insurance, local governmental units can use the *Joint Public Agency Act*, *Neb Rev Stat* § 13-2501 et seq. and may provide insurance coverage through it. Section 13-2522. Where this occurs, representatives and alternative representatives must be chosen by members of the governing body of the participating public agency. *Neb Rev Stat* §13-2509. This law was not used to establish LARM. It is not available to use for an organization like LONM.

19. Instead, LARM is created pursuant to *Neb Rev Stat* § 44-4304. This statute permits “[a]ny 2 or more public agencies to make and execute an agreement provided for joint and cooperative action in accordance with the Intergovernmental Risk Management Act form, become members of, and operate a risk management pool for the purpose of providing to members risk management services in insurance coverages in the form of group self-insurance or standard insurance....” in select ways. The statute does not appear to allow two or more public agencies to form such a pool, but for fewer than all organizing for the formation pool to use it.

20. The entire statutory framework for LARM must be considered to evaluate the conduct of the LARM Board as it goes about to accomplish actions required by law. It is well-established that:

...[o]ne who exercises the duties of councilperson under color of an appointment or election to that office is a de facto member of the governing body, and his or her votes and official acts as a de facto member are valid and binding and not open to collateral attack. However, the fact that a person appointed to the Council to fill a vacancy through an invalid appointment had assumed the office-so as to be a de facto officer does not entitle the appointee to retain possession of the seat against the protest of the municipality. Appointments made by the vote of de facto members of a council have been held to be de jure appointments, but other authority has held such appointments to be only de facto.

66 CJS *Municipal Corporation* § 278 (Westlaw Updated Feb 2018), citing decisions from a dozen State doctrinal courts.

21. An interlocal agency like LARM has the powers conferred by the creating agreement, and laws authorizing creation of the local agency. *City of Falls city v. Nebraska Muni Power Pool*, 279 Neb 238, 777 NW2d 327 (2010). As a creature of statute, and interlocal agency is bound by the statute creating it and has only the rights and remedies granted to it under the statute. *Id.*

A distinguishing feature of a municipal or quasi-municipal corporation, or interlocal agency, is that “it is not only a body corporate but also a body politic, the components of which, the corporators, are endowed with the right to exercise in their collective capacity a portion of the political power of the state.”

City of Falls City v. Nebraska Muni Power Pool, 279 Neb at 250, 777 NW2d 327, citing Eugene McQuillin, *The Law of Municipal Corporations* § 2.07.10 at 145 (John H. Silvestri & Mark S. Nelson eds., rev. 3d ed. 1999).

22. The Interlocal Cooperation Agreement creating LARM does not prohibit functions conducted by a de facto governing Board. Like the statutes under which LARM functions, the ICA does require a Board. A governing board of accountable citizens is necessary for LARM to function. Its current Board is discharging the responsibilities imposed by law. We respectfully conclude that this conduct is lawful, and the actions of the current Board are lawful binding actions of officials who are functioning under the enabling statutes and the ICA creating LARM, as a valid Board.

23. What is a “municipal corporation” under particular provisions of a statute or interlocal agreement is often difficult to determine, and there is considerable conflict in the decisions. No general rule can be stated. The term is sometimes construed broadly as including not only municipal corporations proper but also certain quasi-municipal corporations, so far as the particular provision of the constitution or of the statute is concerned. While the more attributes of a municipal corporation a governmental agency or commission has the more likely it is to be treated as a municipal corporation, the final decision rests on the specific issue in each case. A port district has been held a municipal corporation within the meaning of a constitutional provision prohibiting the creation of corporations by special law “except for municipal purposes.” 1 McQuillin, *Law of Municipal Corporations*, § 2.34 (3d Ed Westlaw 2018).

24. A sanitation district has been ruled to be a municipal corporation within the meaning of a statute granting appellate jurisdiction in cases involving the right of a municipal corporation to levy tolls or taxes. *Id.* But it has also been held that a sanitary district constituted an improvement district which was not a municipal corporation within the provision of the state constitution prohibiting the creations of such corporations by

special law, interdicting the imposition of taxes for municipal purposes by the legislature, and imposing a debt limit on municipal corporations. *Id.* The view has been expressed that there is more likelihood of holding an agency or commission to be a municipal corporation when the pivotal point is one of procedure than when the question of substantive law is involved. See, 1 *Law of Municipal Corporations*, § 2:31. See also, *Nelson-Johnston & Doudna v. Metro. Util. Dist.*, 137 Neb 871, 291 NW 558 (1940).

25. These comments are especially appropriate for analysis of the lawfulness of current actions by the LARM Board. The Board has adopted Bylaws and governed itself, appointed its new members, complied with requirements of the *Open Meetings Law*, the demands of the State Auditor, and the responsibilities it has under the laws and regulations of the Department of Insurance. LARM assists its members in fulfilling significant statutory functions, and is relied upon by its municipal members.

26. All the factors confirm that LARM's Board is clearly functioning as Board of Directors, doing so in good faith and acting lawfully. Just as LARM is a lawful organization, we conclude that its Board Members, regardless of the manner of their selection to this point, constitute a valid functioning Board with authority to act and continue to act for the current term.

27. We are not persuaded that any provision of the ICA creating LARM contains election requirements that invalidate the positions or responsibilities of current LARM Board Members. There are simply too many indicia of validity, reliance, necessity, and public purpose to ignore the obvious fact that LARM is functioning and its Board is governing it.

Question Not Addressed

28. We were not asked to address whether or when existing LARM Board Members must stand for re-election. We have not studied this question. But, we suggest that LARM's Board schedule this topic for consideration, and give itself time, if needed, to conduct an election of some or all Board Members during the current calendar year.

Respectfully,



David A. Domina
ddomina@dominalaw.com

DAD/nlc

**BYLAWS OF THE
LEAGUE ASSOCIATION OF RISK MANAGEMENT (LARM)**

**ARTICLE I -
NUMBER AND SELECTION OF BOARD OF DIRECTORS MEMBERS**

Section 1. Board of Directors.

The pool shall be operated by a Board of Directors consisting of elected or appointed officials of members. The initial Board shall consist of nine persons, but the number may be increased by the Board up to any number above nine but not to exceed fifteen members to maintain appropriate size and geographical representation as the number of members increase. A vacancy on the Board shall be filled by a majority vote of the Board upon a recommendation made by the nominating committee or the Administrator. The person appointed to fill a vacancy shall serve for the remainder of the term of the vacant Board member. There shall be two ex-officio members of the Board of Directors: the President and Executive Director (also called Administrator) of the League of Nebraska Municipalities. The President and the Executive Director of the League shall be ex-officio, non-voting members of the Board of Directors. The ex officio members shall be in addition to the nine elected members of the Board (or the number up to fifteen designated by the Board).

Section 2. Board of Directors Selection Procedures.

- 2.1 Nominating Committee.** A nominating committee shall recommend candidates for the Board to the members. The initial nominating committee shall be the Board of Directors of the League of Nebraska Municipalities. The nominating committee of the initial Board shall nominate at least one person for each of the nine elected positions and designate nominations by the three staggered terms of years in office. For subsequent elections, the nominating committee shall consist of three persons; the chairperson of the Board of Directors of the Pool, an individual from a member municipality selected by the Board and the Executive Director of the League. Additional nominations shall be requested from the floor of the meeting from participating municipalities.

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- 2.2 Term.** The Board of Directors shall serve staggered years to promote stability and continuity. The terms of years of office of the initial Board shall be as follows:

Three Board members with terms of 3 years; and

Three Board members with terms of 2 years; and

Three Board members with terms of 1 year.

All subsequent Directors shall be elected for a three year term of office.

The term of office of the initial Board of Directors shall commence August 1, 1995, and conclude on the next December 31st following the completion of the year or years of the initial term. All subsequent terms of office shall commence on January 1st and conclude on December 31st.

- 2.3 Composition.** The Board of Directors shall endeavor to comprise its membership of five elected Municipal officials and five appointed Municipal officials, plus three Board members as recommended by the nominating committee and approved by the Board of Directors. These numbers shall apply at any time the number of Board members is set at thirteen. If the number of Board members is adjusted above or below thirteen, the composition number set forth in this section shall be adjusted accordingly. If the number of Board members is set at fifteen (15), the Board of Directors shall endeavor to comprise its membership of six (6) elected Municipal officials and six (6) appointed Municipal officials plus three (3) Board members as recommended by the nominating committee and approved by the Board of Directors, provided that two (2) of such additional three (3) Board members shall be reserved for non-municipality members of LARM. No member may be represented by more than one (1) representative on the Board.

- 2.4 Term Limit.** The Board of Directors service shall be restricted to two consecutive three-year terms to assure that all LARM members have opportunity for representation as Board members. Any LARM member that has previously been represented on the LARM Board of Directors may be eligible again for future service following at least one three-year interval of non-Board service following the term limit restriction when the member is not represented on the Board.

- 2.5 Vacancies.** If a member of the Board of Directors at any time during his or her term of office no longer meets the requirements set forth for the initial appointment of the member, or resigns or no longer is able to serve as a member of the Board of Directors, the office of such Board member

shall be deemed to be vacant as of the date such Board member no longer meets such requirements or resigns or is no longer able to serve as a member of the LARM Board of Directors.

- 2.6 Eligibility.** In addition to any other eligibility requirements, a Board candidate must be a LARM member representative.
- 2.7 Alignment of Current Board Composition with Amended Bylaws.** Upon approval of these amended Bylaws, the current composition of the Board regarding elected and appointed officials shall remain until the designated expiration date of terms for the affected Board members.

Section 3. LARM Executive Director.

- 3.1 Purpose.** The purpose of the office of LARM Executive Director is to provide for the centralization of the administrative responsibilities of all affairs of LARM that are under the direction of the League Executive Director and the LARM Board. The LARM Executive Director shall be appointed and dismissed by the League Executive Director, with the approval of the LARM Board of Directors. The performance of the Executive Director shall be evaluated at least annually by the League Executive Director and the LARM Board.
- 3.2 Duties.** The Executive Director shall be the administrative head of LARM and shall be responsible to the League Executive Director and the LARM Board of Directors for the efficient conduct of his or her office. In addition to the general authority as administrative head, and not as a limitation thereof, the Executive Director shall have the following duties:
 - A.1 To attend all meetings of the LARM Board and report any matter concerning LARM affairs under his or her supervision and direction.
 - A.2 To make investigations into all the affairs of LARM and to make recommendations regarding the same to the League Executive Director and the LARM Board.
 - A.3 To supervise and analyze the functions, duties and activities and services of LARM and of all the employees thereof; to appoint, dismiss and supervise the performance of LARM employees, including the preparation of LARM personnel rules, LARM employee evaluations and current job descriptions of LARM employees. Job

descriptions of the LARM Executive Director and employees shall be reviewed annually, updated as required and approved by the LARM Board in public session.

- A.4 To develop and prepare the LARM annual operating budget; to prepare and develop Board meeting agenda(s); to prepare and manage strategic and other planning activities of LARM. The Executive Director shall be responsible for any public records requests directed to LARM. The Pool Consultant may be asked to participate in any or all of these activities at the request of the Board or the Executive Director. The Executive Director is to be the primary contact with the Department of Insurance. The Pool Consultant shall only contact the Department of Insurance with prior approval from the Executive Director.

ARTICLE II – MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Open Meetings.

The Board shall hold meetings within the State of Nebraska. All meetings shall be held in accordance with the Open Meetings Act (Chapter 84, Article 14 of the Nebraska Revised Statutes).

Section 2. Number.

Meetings of the Board shall be held no less than four (4) times each year. Meetings of the Board may be called by the Chairperson or the Board and shall be called by the Chairperson upon request of three members of the Board. Notice of meetings of the Board, other than emergency or special meetings, shall be given to each Director at least five calendar days, if possible, prior to the meeting stating the time, place, and agenda. Notice of special meetings of the Board shall be given to each Director at least two calendar days, if possible, prior to the meeting, stating the time, place, and agenda. Regular and special meetings may be held by means of electronic, video, or telecommunication equipment as allowed by the Open Meetings Act. The Board shall adopt a policy establishing the method and time for giving advanced reasonable notice of regular and special Board meetings to members of LARM and to the public.

Section 3. Emergency Meetings.

When it is necessary to hold an emergency meeting without notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such meetings may be held by means of electronic or telecommunication equipment.

Section 4. Quorum.

At all meetings of the Board, a majority of the total numbers of Directors shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statutes or by the Agreement or these Bylaws. If a quorum is not present at any scheduled meeting of the Board, the Directors present may, consistent with Nebraska law, recess the meeting from time to time until a quorum shall be present. At such resumed meeting at which a quorum is eventually present, any business may be transacted that might have been transacted at the meeting originally noticed.

Section 5. Reimbursement.

By resolution of the Board, a Director shall be reimbursed for his or her direct expenses incurred in attending meetings of the Board and performing other authorized services as a Director.

Section 6. Rules.

Robert's Rules of Order, latest edition, shall govern all meetings of the Board of Directors.

Section 7. Notices.

- A. Board of Directors. Except as otherwise provided herein, notices to the Directors may be by telephone, e-mail, facsimile or telegram, or in writing and delivered personally or mailed to the Directors at their addresses appearing on the records of LARM.
- B. Members. Notices of all meetings of the Board of Directors shall be provided to all members of LARM by telephone, e-mail, facsimile or telegram or in writing and delivered personally or mailed to the members at their addresses appearing on the records of LARM. Members wishing to attend a meeting of the Board of Directors, but unable to attend in person, may request that the LARM staff

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establish a telephone or other electronic connection allowing the member to listen to the meeting of the Board of Directors in question.

Section 8. Waiver.

Any individual notice required to be given under the provisions of the applicable law or of this Agreement or of these Bylaws may be waived in writing either before or after the event requiring such notice, provided such waiver is signed by the person or persons entitled to said notice.

**ARTICLE III-
COMMITTEES**

Section 1. Executive Committee.

The Board of Directors may, by Resolution adopted by a majority of the whole Board, designate three or more of the members of LARM's Board of Directors to constitute an Executive Committee which, to the extent provided in such Resolution, shall have and exercise the authority of the Board of Directors in the management of the business of LARM. Vacancies in the membership of the committee shall be filled by the Board of Directors at a regular or special meeting of the Board of Directors. The Executive Committee shall keep regular minutes of its proceedings, comply with the Open Meetings Act, and report the same to the Board when required. In the absence of any member of the Executive Committee, the Committee members present at any Executive Committee meeting may unanimously appoint another LARM Board Director to serve at the Committee meeting in the place of such absent member. The duties of the Executive Committee will be to review LARM's routine policy matters when the LARM staff seeks feedback from Board members on reports and proposals prepared for the Board's consideration. Additionally the Executive Committee may exercise policy making authority in those instances when the LARM Board of Directors, per the Open Meetings Act, delegates duties to the Committee that include "holding hearings, making policy, or taking formal action..." on the LARM Board's behalf.

Section 2. Other Committees.

The Board may, by resolution passed by a majority of the whole Board, designate one or more committees. Each such committee shall consist of one or more Directors, but otherwise include other elected and appointed officials and employees of LARM members not currently represented on the LARM Board of Directors, to assure active participation in LARM by a broad base of members. To the extent provided in the resolution and subject to the LARM Bylaws and applicable law, a committee shall have and may exercise the powers of the Board in the management of the business and affairs of LARM in those instances when the LARM Board of Directors, per the Open Meetings Act, delegates duties to the Committee that include "holding hearings, making policy, or taking formal action..." on the LARM Board's behalf.. Such committees shall have such names and duties as may be determined from time to time by authorization of the Board.

Section 3. Minutes.

Committees shall keep regular minutes of their proceedings and shall report their proceedings to the Board.

Section 4. Reimbursement.

Members of the committees established by the Board may be reimbursed for expenses incurred in serving on such committees and attending committee meetings if those expenses are not reimbursed to them by another public agency.

**ARTICLE IV-
OFFICERS**

Section 1. Officers.

The LARM Board of Directors shall choose from among the elected Directors, a Chairperson and a Vice Chairperson for a one (1) year term at a LARM Board of Directors meeting during the 4th calendar quarter of each year. The Executive Director of the League, or his or her designee, shall be the Clerk.

Section 2. Other Officers.

The Board may appoint such other officers and agents as it shall deem necessary that shall hold office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 3. Vacancies.

Any officer elected or appointed to the LARM Board of Directors or a committee by the Board may be removed whenever, in the judgment of the Board, the best interests of LARM will be served by the person's removal. However, such removal shall be without prejudice to the contract or employment rights, if any, of the person removed. Any vacancy occurring in any office of the LARM by death, resignation, removal or otherwise shall be filled by the Board.

Section 4. Chairperson Duties.

The Chairperson shall preside at all meetings of the LARM Board of Directors and annual meeting of all members of LARM, sign all membership certificates, and perform such other duties as are assigned by these Bylaws or as may be assigned by the Board of Directors or assigned by the majority of members or proxy designees attending the annual meeting of LARM.

Section 5. Vice Chairperson Duties.

The Vice Chairperson shall be chosen in the same manner and for the same term as the Chairperson and shall exercise all the powers of the Chairperson during the absence or disability of the Chairperson, in addition to such other duties as the Board of Directors may from time to time prescribe.

Section 6. Clerk Duties.

The Clerk or his or her designee shall attend all meetings of the Board of Directors and LARM and annual meeting of all members of LARM and record or the proceedings thereof. The Clerk or his or her designee shall be the custodian of LARM's records. The Clerk or his or her designee shall notify or provide for the notification of the members and directors of their meetings, in accordance with the Bylaws, and shall perform such other duties as assigned by the Board of Directors or as assigned by the majority of members or proxy designees attending the annual meeting of LARM.

**ARTICLE V-
MEMBERSHIP**

Section 1. General.

Unless otherwise approved by the League of Nebraska Municipalities Executive Board, LARM membership shall be restricted to municipalities maintaining membership in the League of Nebraska Municipalities, and, subject to approval by the League of Nebraska Municipalities Executive Board, sanitary and improvement districts, public power agencies, and such other public agencies of the State of Nebraska that the Board shall, from time to time, approve, subject to adopted underwriting standards.

Section 2. Obligations.

The obligations of members of LARM shall be as follows:

- 2.1 Payments.** To appropriate for and to promptly pay all annual and supplementary or other payments to LARM at such times and in such amounts as shall be established by the Board of Directors within the scope of this Agreement.
- 2.2 Representative.** To select a person to serve as member representative and to select a proxy representative to attend the annual LARM meeting.
- 2.3 Access.** To allow the LARM Board, staff and agents reasonable access to all facilities of the member and all public records, including but not limited to financial records, which relate to the purposes or powers of LARM.
- 2.4 Litigation.** To allow attorneys employed by LARM to represent the member in investigation, settlement discussions and all levels of litigation arising from any claims made against the member within the scope of loss protection furnished by the LARM.
- 2.5 Cooperation.** To cooperate fully with LARM's attorneys, claims adjusters, the pool consultant and any agent, employee, officer or independent contractor of LARM relating to the purposes and powers of LARM.
- 2.6 Risk Management.** To follow in its operations all risk management, loss control and prevention procedures established by the LARM within its purposes and powers.

- 2.7 Information.** To furnish to LARM budget information and an audit prepared by a certified public accountant of all revenues and expenditures of the member for any fiscal year of the member for which figures are requested by LARM. A village that has not had an audit prepared for a fiscal year may furnish an unaudited statement of cash receipts and disbursements in lieu of an audit. The unaudited statement shall be on the form prescribed by the Auditor of Public Accounts for such statements.
- 2.8 Report.** To report as promptly as possible all incidents that could result in LARM receiving a claim for loss or injuries to member property or injuries to persons or property within the scope of loss protection undertaken by the LARM Board, in accordance with such rules as the LARM Board shall prescribe.
- 2.9 Notice of Termination.** LARM members deciding to voluntarily terminate participation in LARM must provide written notice to the Director of the Nebraska Department of Insurance and all other LARM members at least ninety (90) days prior to the desired termination date. The decision to terminate participation in LARM is subject to the approval of the Director of the Nebraska Department of Insurance.

Section 3. Settlement.

The LARM Board of Directors may allow members a reasonable opportunity in liability cases or claims to participate in their own defense or prevent the settlement of such cases or claims by LARM in a manner contrary to the wishes of the member. When the Board authorizes the member the privilege to prevent settlement of the case or claim, the member shall be responsible for any cost in excess of the proposed settlement.

Section 4. Late Fee.

Failure by a member to pay the member's annual contribution to LARM by November 1 of any year shall result in the member being delinquent. A delinquent member shall be charged a late fee starting on October 1 of any year in which the member is delinquent. The late fee shall be equal to five percent (5%) of the member's annual contribution to LARM. The late fee shall be assessed against any delinquent member on a monthly basis equaling one-twelfth (1/12) of the annual late fee. A delinquent member shall be charged the full monthly late fee assessment for all months in which the member is delinquent, including the month in which the delinquent payment is made.

**ARTICLE VI-
CONFLICTS OF INTERESTS AND ETHICS STANDARDS**

Section 1. Definition of Conflict of Interest.

A conflict of interest exists when the personal interests of a LARM Board member, staff member, municipal official, contractor or agent representing LARM may affect the ability of the Board member, staff member, public official, contractor or agent to act in the best interest of LARM and its members. A conflict of interest can be considered to exist when the actions or activities of a Board member, staff member, public official, contractor or representing LARM involve:

- 1.1 Gain.** The obtaining of direct or indirect personal gain or advantage for the Board member, staff member, public official or contractor. Any Board member faced with taking an action or making a decision which could have a financial benefit or detriment to the Board member, an immediate family member or a business with which he or she is associated is required to: a) prepare a written statement describing the conflict of interest, b) abstain from participating or voting on the matter at issue, and c) file a copy of the written statement with the Board secretary. For purposes of this subsection, "business" shall have the meaning provided in Neb. Rev. Stat. § 49-1407, "business with which the individual is associated or business association" shall have the meaning provided in Neb. Rev. Stat. § 49-1408, and "immediate family" or "immediate family member" shall have the meaning provided in Neb. Rev. Stat. § 49-1425.
- 1.2 Adverse Interest.** An adverse or potentially adverse effect on the fiduciary, underwriting, coverage, claims management, client defense and service interests of LARM and its members.
- 1.3 Disclosure.** The disclosure of non-public proprietary personnel evaluations, personnel files, pricing, underwriting calculations, legal opinions affecting client defense, claims investigations and other non-public records enumerated in Chapter 84, Article 7 of the Revised Nebraska Statutes that authorizes LARM to withhold providing such information during a public records request.
- 1.4 Gift.** The acceptance by any Board member, staff member, public official, contractor or agent representing LARM (or an immediate family member of any of these) of gifts, excessive entertainment, unsecured loans, or other favors from any outside concern that does, or is seeking to do, business with LARM, or is a competitor of LARM or any of its contractors from which

an inference could be made that the action was intended to influence or could influence the Board member, staff member, public official, contractor or agent representing LARM in the performance of his or her duties.

1.5 Favoritism. Any circumstance that may give rise to reasonable questions of possible favoritism, self-dealing or undue influence for insurance coverages, benefits or premiums may be a conflict of interest. All such conflicts should be avoided, if possible. The Board member, staff member, public official, contractor or agent representing LARM should be sensitive to the appearance of conflicts of interest, even if no actual conflict exists. If an actual or possible conflict cannot be avoided, the actual or possible conflict should be disclosed as soon as possible to the Board.

1.6 Conflicts of Interest Questionnaire: At the initial Board of Directors meeting of each fiscal year, every Board member, staff member, public official, contractor or agent representing LARM shall be requested to complete and sign a conflict of interest questionnaire that meets the requirements of the Nebraska Department of Insurance. The responses to the questionnaire will disclose any conflicts of interest that the Board member, staff member, public official or contractor representing LARM may have. The signed conflict of interest questionnaires will be reviewed by the Board of Directors during a board meeting and shall become part of the minutes of that meeting. If a Board member, staff member, public official, contractor or agent representing LARM develops a potential conflict of interest after the initial Board of Directors meeting of the fiscal year, he or she shall, as soon as practicable, prepare an updated questionnaire and deliver a copy to the Executive Director. The updated questionnaire shall be reviewed by the Board of Directors during its next meeting and shall become a part of the minutes of that meeting. The minutes of the meetings will be the permanent record of the completion, update, and review of the conflict of interest questionnaires. The Board member, staff member, public official, contractor or agent shall take such action as the Board shall prescribe to remove himself or herself from influence over the matter.

Section 2. Standards of Conduct between LARM Board Members, Staff Members, Public Officials or Contractor Representing LARM.

2.1 Personal Interest. No LARM Board member, staff member, public official, contractor or agent representing LARM shall transact any business in his official LARM capacity with any entity in which he has a personal business

interest, without prior approval of the LARM Board in public session.

- 2.2 Compensation.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall represent, for compensation, any other private person, group or entity that has a business relationship with LARM, without prior approval of the LARM Board in public session.
- 2.3 Gift.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall accept or solicit any gift or favor, that might reasonably tend to influence that individual in the discharge of official duties or that the Board member, staff member, public official or contractor knows or should know has been offered with the intent to influence or reward official conduct.
- 2.4 Employment.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall solicit or accept other employment to be performed or compensation to be received while still a LARM Board member, staff member, public official, contractor or agent representing LARM if the employment or compensation could reasonably be expected to impair independence in judgment or performance of municipal duties.
- 2.5 Disclosure.** If a LARM Board member, staff member, public official, contractor or agent representing LARM accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the LARM Board member, staff member, public official, contractor or agent representing LARM might reasonably be expected to act, investigate, advise, or make a recommendation, the LARM Board member, staff member, public official, contractor or agent representing LARM shall disclose that fact to the Executive Director and LARM Board and shall take no further action on LARM policy or service matters regarding the potential future employer.
- 2.6 Privilege.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall use his or her official position to secure a special privilege or exemption for himself, herself or others, or to secure confidential information for any purpose other than official responsibilities.

Section 3. Communication Between Board Members, Staff Members, Public Officials or Contractor Representing LARM.

- 3.1 Inquiries.** The LARM Board of Directors reserves the right to make inquiries of any officer, Board member, contractor, agent and LARM personnel relative to LARM activities. Except for purposes of inquiry, the LARM Board shall deal with LARM's administrative services through the Executive Director and neither the LARM Board or any officer thereof shall give orders directly to any subordinate of the Executive Director.
- 3.2 Lobby Prohibition.** The LARM pool consultant, other contractors or agents shall not entertain or lobby the Executive Board members of the League of Nebraska Municipalities, LARM Board members or LARM committee members. The pool consultant, other contractors or agents of LARM may contact League and LARM Board members for normal pool servicing activities associated within the scope of their services or authority with prior approval by the Executive Director.
- 3.3 Notification.** The LARM personnel, pool consultant and other contractors or agents have no control over inquiries and contacts initiated by a League or LARM Board member and such contact shall not be deemed a violation of LARM's bylaws. When such contact or inquiries occur, the LARM personnel, pool consultant, contractors or agents shall notify the Executive Director within a reasonable time.
- 3.4 Reports.** All information and reports affecting decisions or governance that the Board may consider in public session, which are requested by LARM Board members from LARM staff, the pool consultant, other contractors or agents shall be disclosed to the Executive Director, and duplicated and disseminated simultaneously to the other LARM Board members.
- 3.5 Ex Parte Communication.** LARM Board members, LARM staff members, public officials, contractors or agents representing LARM shall not participate in ex parte conversations and meetings with each other that are intended to create favoritism, self-dealing or undue influence regarding insurance underwriting and pricing, coverage or other LARM services.

**ARTICLE VII-
GENERAL PROVISIONS**

Section 1. Checks.

All checks or demands for money and notes of LARM and contracts of LARM shall be signed by a designated representative of the LARM Board.

Section 2. Books.

The books, records and papers of LARM shall be available at the principal offices of LARM for inspection at reasonable times by any participant or other person as may be required by Nebraska law. This Agreement and Bylaws of LARM shall likewise be available for inspection by any person at the principal offices of LARM.

Section 3. Loss Control.

Within the first six months of operation, the Board shall develop a loss control program for adoption by participants. It is recognized that effective loss control programs are essential to reducing costs.

Section 4. Warranty and Indemnification.

4.1 Warranty. LARM Board members, staff members, public officials, contractors or agents representing LARM expressly agree, covenant, and warrant that they shall make a good faith effort to ensure that all action that they take in their LARM capacities or on behalf of LARM shall be in accordance with any applicable state or federal law or regulation, any applicable municipal ordinance, Agreement for the Establishment and Operation of the League Association of Risk Management, and these Bylaws and in a manner which he or she reasonably believes to be in or not opposed to the best interests of LARM.

4.2 Indemnification. LARM may indemnify or defend any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of LARM, by reason of the fact that such person is or was a LARM Board member, staff member, public official, contractor or agent representing LARM, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if such person: (1)

acted in good faith and in compliance with subsection 4.1; (2) acted in a manner which he or she reasonably believed to be in or not opposed to the best interests of LARM; and (3) with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

- 4.3 Mandatory Indemnification.** To the extent that a LARM Board member, staff member, public official, contractor or agent representing LARM has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection 4.2 of this section or in defense of any claim, issue, or matter in such action, suit, or proceeding, he or she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with such defense.
- 4.4 Board Determination.** Any indemnification under this article shall be made by LARM only as authorized in the specific case upon a determination by the Board that indemnification of the LARM Board member, staff member, public official, contractor or agent representing LARM is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this Article. Such determination shall be made by LARM Board members by a majority vote of a quorum consisting of LARM Board members who were not parties to such action, suit, or proceeding or, if such a quorum is not obtainable or even if obtainable a quorum of disinterested Board members so directs, by independent legal counsel in a written opinion.
- 4.5 Payment of Expenses.** Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by LARM in advance of the final disposition of such action, suit, or proceeding as authorized in the manner provided in subsection 4.4 of this section upon receipt of an undertaking by or on behalf of the LARM Board member, staff member, public official, contractor or agent representing LARM to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by LARM as authorized in this section.
- 4.6 Non-exclusive Indemnification and Continuation.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the person indemnified may be entitled under any agreement, either as to action in his or her official capacity or as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a LARM Board member, staff member, public official,

contractor or agent representing LARM and shall inure to the benefit of the heirs, executors, and administrators of such person.

- 4.7 Duty of Loyalty.** Any officer, agent or employee of any member municipality or other public agency appointed to the LARM Board of Directors shall have a duty of loyalty to LARM. Directors shall act in good faith, be faithful to LARM and its goals and missions, and pursue LARM's best interests in all matters. It shall be the agreement and representation of each officer, director, agent or employee of LARM who is also an officer, agent or employee of a municipality that he or she is acting as a part of his or her duties on behalf of the municipality when performing functions for LARM. Therefore, all privileges and immunities from liability that may be available to such individual in his or her municipal capacity shall also be applicable to his or her conduct on behalf of LARM. Nothing herein shall compel LARM to provide any benefits to an officer, agent or employee of LARM who is also an officer, agent or employee of a municipality.

Section 5. Acknowledgment and Receipt.

Each LARM Board member, staff member, public official, contractor, agent and committee member representing LARM is to receive and read the Bylaws of the League Association of Risk Management, sign an Acknowledgment of Receipt and Understanding, including his or her understanding and agreement to abide by the "Conflicts of Interest and Ethics Standards" and "Duty of Loyalty" provisions of the LARM Bylaws and return the Acknowledgment of Receipt and Understanding to the Executive Director within seven (7) calendar days of initial appointment or employment and within seven (7) calendar days of any amendment of these Bylaws.

Section 6. Amendments.

These Bylaws may be altered, amended or repealed, and new Bylaws may be adopted by a majority of the directors present at any regular or special meeting, if at least five (5) calendar days written notice has been given of the intention to alter, amend or repeal or to adopt new Bylaws at such meeting of the Board of Directors.

Section 7. Gender and Number.

To the extent permitted by the context in which used, words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter vice versa.

December 17 , 2013

Section 8. Captions.

Captions used herein are for convenience only and are not a part of these Bylaws and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing these Bylaws.

Adopted September 6, 1995.
Amended October 12, 1995
Amended September 21, 2005
Amended February 26, 2008
Amended December 21, 2012
Amended February 26, 2013
Amended April 30, 2013
Amended December __, 2013

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Mike Nolan

From: Mike Nolan
Sent: Friday, January 26, 2018 4:42 PM
To: 'Ledvina Garcia, Krystle'
Subject: RE: Draft Bylaws

Krystle --

Thanks for stating DOI's position. I really appreciate your comments. Unless you indicate otherwise, I'll forward the Bylaw changes to you when the Board has approved them.

Best regards,
Mike Nolan

From: Ledvina Garcia, Krystle [mailto:Krystle.Ledvina.Garcia@nebraska.gov]
Sent: Friday, January 26, 2018 3:19 PM
To: Mike Nolan <Mike.Nolan@larmpool.org>
Subject: RE: Draft Bylaws

Mike-

No, I actually do not have time today for a meeting regarding LARM's bylaw changes.

I do not have the recent audit recommendations in front of me but my understanding was that the only recommendation was that LARM amend its agreement to reflect its current relationship with the League. As we discussed at the meeting, the Department will not be getting into specifics regarding the relationship between LARM and the League.

Amended Bylaws may be filed with our Department in the same manner that you file notice for withdrawal of pool members.

Thanks-

Krystle

From: Mike Nolan [mailto:Mike.Nolan@larmpool.org]
Sent: Friday, January 26, 2018 9:32 AM
To: Ledvina Garcia, Krystle <Krystle.Ledvina.Garcia@nebraska.gov>
Subject: Draft Bylaws

Krystle,

D-4
3-14-2018

Do you have time for a brief meeting today on the draft of changes to several LARM Bylaws related to NDOI's recent audit recommendation? We'd need 30 minutes or less for the discussion.

Mike

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February 12, 2018

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**BYLAWS OF THE
LEAGUE ASSOCIATION OF RISK MANAGEMENT (LARM)**

**ARTICLE I -
NUMBER AND SELECTION OF BOARD OF DIRECTORS MEMBERS**

Section 1. Board of Directors.

The pool shall be operated by a Board of Directors consisting of elected or appointed officials of members. The ~~initial~~ Board shall consist of nine persons, ~~but the number may be increased by the Board up to any number above nine but not to exceed fifteen members to maintain appropriate size and geographical representation as the number of members increase.~~ A vacancy on the Board shall be filled by a majority vote of the Board upon a recommendation made by the nominating committee ~~or the Administrator.~~ The person appointed to fill a vacancy shall serve for the remainder of the term of the vacant Board member. There shall additionally be two ex-officio members of the Board of Directors: the President and Executive Director (also called Administrator) of the League of Nebraska Municipalities. The President and the Executive Director of the League shall be ex-officio, non-voting members of the Board of Directors and shall have no administrative or policy authority over the League Association of Risk Management. ~~The ex-officio members shall be in addition to the nine elected members of the Board (or the number up to fifteen designated by the Board).~~ The role of ex-officio members shall be limited to attendance at Board meetings. Ex-officio members shall be excluded from closed sessions unless expressly invited to participate by majority of the LARM Board in public session.

Section 2. Board of Directors Selection Procedures.

- 2.1 Nominating Committee.** A nominating committee shall recommend candidates for the Board, ~~to the members. The initial nominating committee shall be the Board of Directors of the League of Nebraska Municipalities. The nominating committee of the initial Board shall nominate at least one person for each of the nine elected positions and designate nominations by the three staggered terms of years in office. For subsequent elections, The~~ nominating committee shall consist of three persons; the chairperson of the Board of Directors of the Pool, an individual from a member municipality selected by the Board and the Executive Director of ~~the League~~ LARM. Additional nominations shall be requested from the floor of the meeting from participating municipalities.

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~~2.2~~ **Term.** The Board of Directors shall serve staggered years to promote stability and continuity. ~~The terms of years of office of the initial Board shall be as follows:~~

~~Three Board members with terms of 3 years; and
Three Board members with terms of 2 years; and~~

~~2.2~~ ~~Three Board members with terms of 1 year.~~

~~All subsequent Directors~~ Board members shall be elected for a three ~~year~~ three-year term of office.

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~~The term of office of the initial Board of Directors shall commence August 1, 1995, and conclude on the next December 31st following the completion of the year or years of the initial term. All subsequent terms of office shall commence on January 1st and conclude on December 31st.~~

2.3 Composition. ~~The Board of Directors shall endeavor to comprise its membership of five elected Municipal officials and five appointed Municipal officials, plus three Board members as recommended by the nominating committee and approved by the~~ In making nominations for the Board, the nominating committee shall prefer, but shall not be required, to select an approximately equal number of elected and appointed officials, all of whom must be elected to serve, or appointed to serve, an organization that is a current member in good standing of LARM Board of Directors. These numbers shall apply at any time the number of Board members is set at thirteen. If the number of Board members is adjusted above or below thirteen, the composition number set forth in this section shall be adjusted accordingly. If the number of Board members is set at fifteen (15), the Board of Directors shall endeavor to comprise its membership of six (6) elected Municipal officials and six (6) appointed Municipal officials plus three (3) Board members as recommended by the nominating committee and approved by the Board of Directors, provided that two (2) of such additional three (3) Board members shall be reserved for non-municipality members of LARM. No member may be represented by more than one (1) representative on the Board.

2.4 Term Limit. The Board of Directors service shall be restricted to two consecutive three-year terms to assure that all LARM members have opportunity for representation as Board members. Any LARM member that has previously been represented on the LARM Board of Directors may be eligible again for future service following at least one three-year interval of non-Board service following the term limit restriction when the member is not represented on the Board.

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- 2.5 Vacancies.** If a member of the Board of Directors at any time during his or her term of office no longer meets the requirements set forth for the initial appointment of the member, or resigns or no longer is able to serve as a member of the Board of Directors, the office of such Board member shall be deemed to be vacant as of the date such Board member no longer meets such requirements or resigns or is no longer able to serve as a member of the LARM Board of Directors.
- 2.6 Eligibility.** ~~In addition to any other eligibility requirements, a Board candidate must be a LARM member representative~~All Board member candidates shall be elected or appointed representatives of an organization that is a current member in good standing of LARM.
- 2.7 Alignment of Current Board Composition with Amended Bylaws.** Upon approval of these amended Bylaws, the current composition of the Board regarding elected and appointed officials shall remain until the designated expiration date of terms for the affected Board members.

Section 3. LARM Executive Director.

- 3.1 Purpose.** The purpose of the office of LARM Executive Director is to provide for the centralization of the administrative responsibilities of all affairs of LARM that are under the direction of ~~the League Executive Director and the~~ LARM Board. The LARM Executive Director shall be appointed and dismissed by ~~the League Executive Director, with the approval of the~~ LARM Board of Directors. The performance of the Executive Director shall be evaluated at least annually by ~~the League Executive Director and the~~ LARM Board.
- 3.2 Duties.** The Executive Director shall be the administrative head of LARM and shall be responsible to ~~the League Executive Director and the~~ LARM Board of Directors for the efficient conduct of his or her office. In addition to the general authority as administrative head, and not as a limitation thereof, the Executive Director shall have the following duties:
- A.1 To attend all meetings of the LARM Board and report any matter concerning LARM affairs under his or her supervision and direction.
- A.2 To make investigations into all the affairs of LARM and to make recommendations regarding the same to ~~the League Executive~~

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~~Director~~ and the LARM Board.

- A.3 To supervise and analyze the functions, duties and activities and services of LARM and of all the employees thereof; to appoint, dismiss and supervise the performance of LARM employees, including the preparation of LARM personnel rules, LARM employee evaluations and current job descriptions of LARM employees. Job descriptions of the LARM Executive Director and employees shall be reviewed annually, updated as required and approved by the LARM Board in public session.
- A.4 To develop and prepare the LARM annual operating budget; to prepare and develop Board meeting agenda(s); to prepare and manage strategic and other planning activities of LARM. The Executive Director shall be responsible for any public records requests directed to LARM. The Pool Consultant may be asked to participate in any or all of these activities at the request of the Board or the Executive Director. The Executive Director is to be the primary contact with the Department of Insurance. The Pool Consultant shall only contact the Department of Insurance with prior approval from the Executive Director.

**ARTICLE II -
MEETINGS OF THE BOARD OF DIRECTORS**

Section 1. Open Meetings.

The Board shall hold meetings within the State of Nebraska. All meetings shall be held in accordance with the Open Meetings Act (Chapter 84, Article 14 of the Nebraska Revised Statutes).

Section 2. Number.

Meetings of the Board shall be held no less than four (4) times each year. Meetings of the Board may be called by the Chairperson or the Board and shall be called by the Chairperson upon request of three members of the Board. Notice of meetings of the Board, other than emergency or special meetings, shall be given to each Director at least five calendar days, if possible, prior to the meeting stating the time, place, and agenda. Notice of special meetings of the Board shall be given to each Director at least two calendar days, if possible, prior to the meeting, stating the time, place, and agenda. Regular and special meetings may be held by means of electronic, video, or telecommunication equipment as allowed by the Open Meetings Act. The Board shall

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adopt a policy establishing the method and time for giving advanced reasonable notice of regular and special Board meetings to members of LARM and to the public.

Section 3. Emergency Meetings.

When it is necessary to hold an emergency meeting without notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such meetings may be held by means of electronic or telecommunication equipment.

Section 4. Quorum.

At all meetings of the Board, a majority of the total numbers of Directors shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statutes or by the Agreement or these Bylaws. If a quorum is not present at any scheduled meeting of the Board, the Directors present may, consistent with Nebraska law, recess the meeting from time to time until a quorum shall be present. At such resumed meeting at which a quorum is eventually present, any business may be transacted that might have been transacted at the meeting originally noticed.

Section 5. Reimbursement.

By resolution of the Board, a Director shall be reimbursed for his or her direct expenses incurred in attending meetings of the Board and performing other authorized services as a Director.

Section 6. Rules.

Robert's Rules of Order, latest edition, shall govern all meetings of the Board of Directors.

Section 7. Notices.

- A. Board of Directors. Except as otherwise provided herein, notices to the Directors may be by telephone, e-mail, facsimile or telegram, or in writing and delivered personally or mailed to the Directors at their addresses appearing on the records of LARM.
- B. Members. Notices of all meetings of the Board of Directors shall be provided to all members of LARM by telephone, e-mail, facsimile or telegram or in writing

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and delivered personally or mailed to the members at their addresses appearing on the records of LARM. Members wishing to attend a meeting of the Board of Directors, but unable to attend in person, may request that the LARM staff establish a telephone or other electronic connection allowing the member to listen to the meeting of the Board of Directors in question.

Section 8. Waiver.

Any individual notice required to be given under the provisions of the applicable law or of this Agreement or of these Bylaws may be waived in writing either before or after the event requiring such notice, provided such waiver is signed by the person or persons entitled to said notice.

**ARTICLE III-
COMMITTEES**

Section 1. Executive Committee.

The Board of Directors may, by Resolution adopted by a majority of the whole Board, designate three or more of the members of LARM's Board of Directors to constitute an Executive Committee which, to the extent provided in such Resolution, shall have and exercise the authority of the Board of Directors in the management of the business of LARM. Vacancies in the membership of the committee shall be filled by the Board of Directors at a regular or special meeting of the Board of Directors. The Executive Committee shall keep regular minutes of its proceedings, comply with the Open Meetings Act, and report the same to the Board when required. In the absence of any member of the Executive Committee, the Committee members present at any Executive Committee meeting may unanimously appoint another LARM Board Director to serve at the Committee meeting in the place of such absent member. The duties of the Executive Committee will be to review LARM's routine policy matters when the LARM staff seeks feedback from Board members on reports and proposals prepared for the Board's consideration. Additionally the Executive Committee may exercise policy making authority in those instances when the LARM Board of Directors, per the Open Meetings Act, delegates duties to the Committee that include "holding hearings, making policy, or taking formal action..." on the LARM Board's behalf.

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Section 2. Other Committees.

The Board may, by resolution passed by a majority of the whole Board, designate one or more committees. Each such committee shall consist of one or more Directors, but otherwise include other elected and appointed officials and employees of LARM members not currently represented on the LARM Board of Directors, to assure active participation in LARM by a broad base of members. To the extent provided in the resolution and subject to the LARM Bylaws and applicable law, a committee shall have and may exercise the powers of the Board in the management of the business and affairs of LARM in those instances when the LARM Board of Directors, per the Open Meetings Act, delegates duties to the Committee that include "holding hearings, making policy, or taking formal action..." on the LARM Board's behalf. Such committees shall have such names and duties as may be determined from time to time by authorization of the Board.

Section 3. Minutes.

Committees shall keep regular minutes of their proceedings and shall report their proceedings to the Board.

Section 4. Reimbursement.

Members of the committees established by the Board may be reimbursed for expenses incurred in serving on such committees and attending committee meetings if those expenses are not reimbursed to them by another public agency.

ARTICLE IV- OFFICERS

Section 1. Officers.

The LARM Board of Directors shall choose from among the elected Directors, a Chairperson and a Vice Chairperson for a one (1) year term at a LARM Board of Directors meeting during the 4th calendar quarter of each year. ~~The Executive Director of the League, or his or her designee, shall be the Clerk.~~

Section 2. Other Officers.

The Board may appoint such other officers and agents as it shall deem necessary that shall hold office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

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Section 3. Vacancies.

Any officer elected or appointed to the LARM Board of Directors or a committee by the Board may be removed whenever, in the judgment of the Board, the best interests of LARM will be served by the person's removal. However, such removal shall be without prejudice to the contract or employment rights, if any, of the person removed. Any vacancy occurring in any office of the LARM by death, resignation, removal or otherwise shall be filled by the Board.

Section 4. Chairperson Duties.

The Chairperson shall preside at all meetings of the LARM Board of Directors ~~and annual meeting of all members of LARM~~, sign all membership certificates, and perform such other duties as are assigned by these Bylaws or as may be assigned by the Board of Directors ~~or assigned by the majority of members or proxy designees attending the annual meeting of LARM.~~

Section 5. Vice Chairperson Duties.

The Vice Chairperson shall be chosen in the same manner and for the same term as the Chairperson and shall exercise all the powers of the Chairperson during the absence or disability of the Chairperson, in addition to such other duties as the Board of Directors may from time to time prescribe.

Section 6. Clerk Duties.

~~The Clerk or his or her designee shall attend all meetings of the Board of Directors and LARM and annual meeting of all members of LARM and record or the proceedings thereof. The Clerk or his or her designee shall be the custodian of LARM's records. The Clerk or his or her designee shall notify or provide for the notification of the members and directors of their meetings, in accordance with the Bylaws, and shall perform such other duties as assigned by the Board of Directors or as assigned by the majority of members or proxy designees attending the annual meeting of LARM.~~

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ARTICLE V- MEMBERSHIP

Section 1. General.

~~Unless otherwise approved by the League of Nebraska Municipalities Executive Board, LARM membership shall be restricted to municipalities maintaining membership in the League of Nebraska Municipalities, and, subject to approval by the League of Nebraska Municipalities Executive Board, sanitary and improvement districts, public power agencies, and such other public agencies of the State of Nebraska that the Board shall, from time to time, approve, subject to adopted underwriting standards~~Unless prohibited by the Interlocal Governmental Agreement creating LARM, any political subdivision of the State of Nebraska, or other public agency of the state or any of its political subdivisions, or any public organization created by an Interlocal Governmental Cooperation agreement shall be eligible to become a LARM member. However, no such organization shall become a LARM member unless and until approved by majority vote of the Board of Directors.

Section 2. Obligations.

The obligations of members of LARM shall be as follows:

- 2.1 **Payments.** To appropriate for and to promptly pay all annual and supplementary or other payments to LARM at such times and in such amounts as shall be established by the Board of Directors within the scope of this Agreement.
- 2.2 **Representative.** To select a person to serve as member representative ~~and to select a proxy representative to attend the annual LARM meeting.~~
- 2.3 **Access.** To allow the LARM Board, staff and agents reasonable access to all facilities of the member and all public records, including but not limited to financial records, which relate to the purposes or powers of LARM.
- 2.4 **Litigation.** To allow attorneys employed by LARM to represent the member in investigation, settlement discussions and all levels of litigation arising from any claims made against the member within the scope of loss protection furnished by the LARM.
- 2.5 **Cooperation.** To cooperate fully with LARM's attorneys, claims adjusters, the pool consultant and any agent, employee, officer or independent contractor of LARM relating to the purposes and powers of LARM.

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- 2.6 Risk Management.** To follow in its operations all risk management, loss control and prevention procedures established by the LARM within its purposes and powers.
- 2.7 Information.** To furnish to LARM budget information and an audit prepared by a certified public accountant of all revenues and expenditures of the member for any fiscal year of the member for which figures are requested by LARM. A village that has not had an audit prepared for a fiscal year may furnish an unaudited statement of cash receipts and disbursements in lieu of an audit. The unaudited statement shall be on the form prescribed by the Auditor of Public Accounts for such statements.
- 2.8 Report.** To report as promptly as possible all incidents that could result in LARM receiving a claim for loss or injuries to member property or injuries to persons or property within the scope of loss protection undertaken by the LARM Board, in accordance with such rules as the LARM Board shall prescribe.
- 2.9 Notice of Termination.** LARM members deciding to voluntarily terminate participation in LARM must provide written notice to the Director of the Nebraska Department of Insurance and all other LARM members at least ninety (90) days prior to the desired termination date. The decision to terminate participation in LARM is subject to the approval of the Director of the Nebraska Department of Insurance.

Section 3. Settlement.

The LARM Board of Directors may allow members a reasonable opportunity in liability cases or claims to participate in their own defense or prevent the settlement of such cases or claims by LARM in a manner contrary to the wishes of the member. When the Board authorizes the member the privilege to prevent settlement of the case or claim, the member shall be responsible for any cost in excess of the proposed settlement.

Section 4. Late Fee.

Failure by a member to pay the member's annual contribution to LARM by November 1 of any year shall result in the member being delinquent. A delinquent member shall be charged a late fee starting on October 1 of any year in which the member is delinquent. The late fee shall be equal to five percent (5%) of the member's annual contribution to LARM. The late fee shall be assessed against any delinquent member on a monthly basis equaling one-twelfth (1/12) of the annual late fee. A delinquent member shall be

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charged the full monthly late fee assessment for all months in which the member is delinquent, including the month in which the delinquent payment is made.

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**ARTICLE VI-
CONFLICTS OF INTERESTS AND ETHICS STANDARDS**

Section 1. Definition of Conflict of Interest.

A conflict of interest exists when the personal interests of a LARM Board member, staff member, municipal official, contractor or agent representing LARM may affect the ability of the Board member, staff member, public official, contractor or agent to act in the best interest of LARM and its members. A conflict of interest can be considered to exist when the actions or activities of a Board member, staff member, public official, contractor or representing LARM involve:

- 1.1 Gain.** The obtaining of direct or indirect personal gain or advantage for the Board member, staff member, public official or contractor. Any Board member faced with taking an action or making a decision which could have a financial benefit or detriment to the Board member, an immediate family member or a business with which he or she is associated is required to: a) prepare a written statement describing the conflict of interest, b) abstain from participating or voting on the matter at issue, and c) file a copy of the written statement with the Board secretary. For purposes of this subsection, "business" shall have the meaning provided in Neb. Rev. Stat. § 49-1407, "business with which the individual is associated or business association" shall have the meaning provided in Neb. Rev. Stat. § 49-1408, and "immediate family" or "immediate family member" shall have the meaning provided in Neb. Rev. Stat. § 49-1425.
- 1.2 Adverse Interest.** An adverse or potentially adverse effect on the fiduciary, underwriting, coverage, claims management, client defense and service interests of LARM and its members.
- 1.3 Disclosure.** The disclosure of non-public proprietary personnel evaluations, personnel files, pricing, underwriting calculations, legal opinions affecting client defense, claims investigations and other non-public records enumerated in Chapter 84, Article 7 of the Revised Nebraska Statutes that authorizes LARM to withhold providing such information during a public records request.
- 1.4 Gift.** The acceptance by any Board member, staff member, public official, contractor or agent representing LARM (or an immediate family member of any of these) of gifts, excessive entertainment, unsecured loans, or other favors from any outside concern that does, or is seeking to do, business with LARM, or is a competitor of LARM or any of its contractors from which

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an inference could be made that the action was intended to influence or could influence the Board member, staff member, public official, contractor or agent representing LARM in the performance of his or her duties.

- 1.5 Favoritism.** Any circumstance that may give rise to reasonable questions of possible favoritism, self-dealing or undue influence for insurance coverages, benefits or premiums may be a conflict of interest. All such conflicts should be avoided, if possible. The Board member, staff member, public official, contractor or agent representing LARM should be sensitive to the appearance of conflicts of interest, even if no actual conflict exists. If an actual or possible conflict cannot be avoided, the actual or possible conflict should be disclosed as soon as possible to the Board.
- 1.6 Conflicts of Interest Questionnaire:** At the initial Board of Directors meeting of each fiscal year, every Board member, staff member, public official, contractor or agent representing LARM shall be requested to complete and sign a conflict of interest questionnaire that meets the requirements of the Nebraska Department of Insurance. The responses to the questionnaire will disclose any conflicts of interest that the Board member, staff member, public official or contractor representing LARM may have. The signed conflict of interest questionnaires will be reviewed by the Board of Directors during a board meeting and shall become part of the minutes of that meeting. If a Board member, staff member, public official, contractor or agent representing LARM develops a potential conflict of interest after the initial Board of Directors meeting of the fiscal year, he or she shall, as soon as practicable, prepare an updated questionnaire and deliver a copy to the Executive Director. The updated questionnaire shall be reviewed by the Board of Directors during its next meeting and shall become a part of the minutes of that meeting. The minutes of the meetings will be the permanent record of the completion, update, and review of the conflict of interest questionnaires. The Board member, staff member, public official, contractor or agent shall take such action as the Board shall prescribe to remove himself or herself from influence over the matter.

Section 2. Standards of Conduct between LARM Board Members, Staff Members, Public Officials or Contractor Representing LARM.

- 2.1 Personal Interest.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall transact any business in his official LARM capacity with any entity in which he has a personal business

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interest, without prior approval of the LARM Board in public session.

- 2.2 Compensation.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall represent, for compensation, any other private person, group or entity that has a business relationship with LARM, without prior approval of the LARM Board in public session.
- 2.3 Gift.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall accept or solicit any gift or favor, that might reasonably tend to influence that individual in the discharge of official duties or that the Board member, staff member, public official or contractor knows or should know has been offered with the intent to influence or reward official conduct.
- 2.4 Employment.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall solicit or accept other employment to be performed or compensation to be received while still a LARM Board member, staff member, public official, contractor or agent representing LARM if the employment or compensation could reasonably be expected to impair independence in judgment or performance of municipal duties.
- 2.5 Disclosure.** If a LARM Board member, staff member, public official, contractor or agent representing LARM accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the LARM Board member, staff member, public official, contractor or agent representing LARM might reasonably be expected to act, investigate, advise, or make a recommendation, the LARM Board member, staff member, public official, contractor or agent representing LARM shall disclose that fact to the Executive Director and LARM Board and shall take no further action on LARM policy or service matters regarding the potential future employer.
- 2.6 Privilege.** No LARM Board member, staff member, public official, contractor or agent representing LARM shall use his or her official position to secure a special privilege or exemption for himself, herself or others, or to secure confidential information for any purpose other than official responsibilities.

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Section 3. Communication Between Board Members, Staff Members, Public Officials or Contractor Representing LARM.

- 3.1 Inquiries.** The LARM Board of Directors reserves the right to make inquiries of any officer, Board member, contractor, agent and LARM personnel relative to LARM activities. Except for purposes of inquiry, the LARM Board shall deal with LARM's administrative services through the Executive Director and neither the LARM Board or any officer thereof shall give orders directly to any subordinate of the Executive Director.
- 3.2 Lobby Prohibition.** The LARM pool consultant, other contractors or agents shall not entertain or lobby ~~the Executive Board members of the League of Nebraska Municipalities,~~ LARM Board members or LARM committee members. The pool consultant, other contractors or agents of LARM may contact ~~League and~~ LARM Board members for normal pool servicing activities associated within the scope of their services or authority with prior approval by the Executive Director.
- 3.3 Notification.** The LARM personnel, pool consultant and other contractors or agents have no control over inquiries and contacts initiated by ~~a League or~~ LARM Board member and such contact shall not be deemed a violation of LARM's bylaws. When such contact or inquiries occur, the LARM personnel, pool consultant, contractors or agents shall notify the Executive Director within a reasonable time.
- 3.4 Reports.** All information and reports affecting decisions or governance that the Board may consider in public session, which are requested by LARM Board members from LARM staff, the pool consultant, other contractors or agents shall be disclosed to the Executive Director, and duplicated and disseminated simultaneously to the other LARM Board members.
- 3.5 Ex Parte Communication.** LARM Board members, LARM staff members, public officials, contractors or agents representing LARM shall not participate in ex parte conversations and meetings with each other that are intended to create favoritism, self-dealing or undue influence regarding insurance underwriting and pricing, coverage or other LARM services.

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**ARTICLE VII-
GENERAL PROVISIONS**

Section 1. Checks.

All checks or demands for money and notes of LARM and contracts of LARM shall be signed by a designated representative of the LARM Board.

Section 2. Books.

The books, records and papers of LARM shall be available at the principal offices of LARM for inspection at reasonable times by any participant or other person as may be required by Nebraska law. This Agreement and Bylaws of LARM shall likewise be available for inspection by any person at the principal offices of LARM.

Section 3. Loss Control.

Within the first six months of operation, the Board shall develop a loss control program for adoption by participants. It is recognized that effective loss control programs are essential to reducing costs.

Section 4. Warranty and Indemnification.

- 4.1 Warranty.** LARM Board members, staff members, public officials, contractors or agents representing LARM expressly agree, covenant, and warrant that they shall make a good faith effort to ensure that all action that they take in their LARM capacities or on behalf of LARM shall be in accordance with any applicable state or federal law or regulation, any applicable municipal ordinance, Agreement for the Establishment and Operation of the League Association of Risk Management, and these Bylaws and in a manner which he or she reasonably believes to be in or not opposed to the best interests of LARM.
- 4.2 Indemnification.** LARM may indemnify or defend any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of LARM, by reason of the fact that such person is or was a LARM Board member, staff member, public official, contractor or agent representing LARM, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if such person: (1)

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acted in good faith and in compliance with subsection 4.1; (2) acted in a manner which he or she reasonably believed to be in or not opposed to the best interests of LARM; and (3) with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

- 4.3 Mandatory Indemnification.** To the extent that a LARM Board member, staff member, public official, contractor or agent representing LARM has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection 4.2 of this section or in defense of any claim, issue, or matter in such action, suit, or proceeding, he or she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with such defense.
- 4.4 Board Determination.** Any indemnification under this article shall be made by LARM only as authorized in the specific case upon a determination by the Board that indemnification of the LARM Board member, staff member, public official, contractor or agent representing LARM is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this Article. Such determination shall be made by LARM Board members by a majority vote of a quorum consisting of LARM Board members who were not parties to such action, suit, or proceeding or, if such a quorum is not obtainable or even if obtainable a quorum of disinterested Board members so directs, by independent legal counsel in a written opinion.
- 4.5 Payment of Expenses.** Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by LARM in advance of the final disposition of such action, suit, or proceeding as authorized in the manner provided in subsection 4.4 of this section upon receipt of an undertaking by or on behalf of the LARM Board member, staff member, public official, contractor or agent representing LARM to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by LARM as authorized in this section.
- 4.6 Non-exclusive Indemnification and Continuation.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the person indemnified may be entitled under any agreement, either as to action in his or her official capacity or as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a LARM Board member, staff member, public official,

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contractor or agent representing LARM and shall inure to the benefit of the heirs, executors, and administrators of such person.

- 4.7 Duty of Loyalty.** ~~Any officer, agent or employee of any member municipality or other public agency appointed to the LARM Board of Directors shall have a duty of loyalty to LARM. Directors shall act in good faith, be faithful to LARM and its goals and missions, and pursue LARM's best interests in all matters. It shall be the agreement and representation of each officer, director, agent or employee of LARM who is also an officer, agent or employee of a municipality that he or she is acting as a part of his or her duties on behalf of the municipality when performing functions for LARM. Therefore, all privileges and immunities from liability that may be available to such individual in his or her municipal capacity shall also be applicable to his or her conduct on behalf of LARM. Nothing herein shall compel LARM to provide any benefits to an officer, agent or employee of LARM who is also an officer, agent or employee of a municipality.~~ Each officer, agent, Director or employee of LARM shall owe a duty of loyalty to LARM consistent with the fiduciary responsibilities of an agent, as required by Nebraska law. Except to the extent of a direct conflict of interest between LARM and the member of LARM by whom a Board member is employed, or engaged or engaged as an elected official, the duty owed to LARM shall govern over all other duties recognized by the law which directly or indirectly involve LARM. Where such a conflict exists, the member shall so inform the Executive Director and LARM Board, in writing, as soon as reasonably possible and the Board member shall recuse himself or herself from Board or other LARM action or discussion concerning the subject giving rise to the conflict.

- 4.8 Duty to Resist Legal and Ethical Encroachments.** LARM shall at all times create, charge premiums, share risks, incur administrative expenses, and contract for services with attorneys, adjusters, investigators, and others, for the purposes of maximizing efficiency, minimizing risk management costs, and providing risk avoidance services to members. LARM shall not permit itself to be controlled, directed, or influenced by organizations other than its Board of Directors, the Nebraska Department of Insurance, and other organizations with statutory authority to exert influence or impose requirements upon it. It shall be the duty of the Board of Directors to take all actions necessary to achieve these objectives as stated in this Section of these Bylaws.

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Section 5. Acknowledgment and Receipt.

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Each LARM Board member, staff member, public official, contractor, agent and committee member representing LARM is to receive and read the Bylaws of the League Association of Risk Management, sign an Acknowledgment of Receipt and Understanding, including his or her understanding and agreement to abide by the "Conflicts of Interest and Ethics Standards" and "Duty of Loyalty" provisions of the LARM Bylaws and return the Acknowledgment of Receipt and Understanding to the Executive Director within seven (7) calendar days of initial appointment or employment and within seven (7) calendar days of any amendment of these Bylaws.

Section 6. Amendments.

These Bylaws may be altered, amended or repealed, and new Bylaws may be adopted by a majority of the directors present at any regular or special meeting, if at least five (5) calendar days written notice has been given of the intention to alter, amend or repeal or to adopt new Bylaws at such meeting of the Board of Directors.

Section 7. Gender and Number.

To the extent permitted by the context in which used, words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter vice versa.

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**BYLAWS OF THE
LEAGUE ASSOCIATION OF RISK MANAGEMENT (LARM)**

**ARTICLE I -
NUMBER AND SELECTION OF BOARD OF DIRECTORS MEMBERS**

Section 1. Board of Directors.

The pool shall be operated by a Board of Directors consisting of elected or appointed officials of members. The Board shall consist of nine persons. A vacancy on the Board shall be filled by a majority vote of the Board upon a recommendation made by the nominating committee. The person appointed to fill a vacancy shall serve for the remainder of the term of the vacant Board member. There shall additionally be two ex-officio members of the Board of Directors: the President and Executive Director (also called Administrator) of the League of Nebraska Municipalities. The President and the Executive Director of the League shall be ex-officio, non-voting members of the Board of Directors and shall have no administrative or policy authority over the League Association of Risk Management. The role of ex-officio members shall be limited to attendance at Board meetings. Ex-officio members shall be excluded from closed sessions unless expressly invited to participate by majority of the LARM Board in public session.

Section 2. Board of Directors Selection Procedures.

2.1 Nominating Committee. A nominating committee shall recommend candidates for the Board. The nominating committee shall consist of three persons; the chairperson of the Board of Directors of the Pool, an individual from a member municipality selected by the Board and the Executive Director of LARM. Additional nominations shall be requested from the floor of the meeting from participating municipalities.

2.2 Term. The Board of Directors shall serve staggered years to promote stability and continuity. Board members shall be elected for a three-year term of office.

All terms of office shall commence on January 1st and conclude on December 31st.

2.3 Composition. In making nominations for the Board, the nominating committee shall prefer, but shall not be required, to select an approximately equal number of elected and appointed officials, all of whom must be elected to serve, or appointed to serve, an organization that is a

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current member in good standing of LARM, provided that three (3) of such Board members shall be reserved for non-municipality members of LARM. No member may be represented by more than one (1) representative on the Board.

- 2.4 Term Limit.** The Board of Directors service shall be restricted to two consecutive three-year terms to assure that all LARM members have opportunity for representation as Board members. Any LARM member that has previously been represented on the LARM Board of Directors may be eligible again for future service following at least one three-year interval of non-Board service following the term limit restriction when the member is not represented on the Board.
- 2.5 Vacancies.** If a member of the Board of Directors at any time during his or her term of office no longer meets the requirements set forth for the initial appointment of the member, or resigns or no longer is able to serve as a member of the Board of Directors, the office of such Board member shall be deemed to be vacant as of the date such Board member no longer meets such requirements or resigns or is no longer able to serve as a member of the LARM Board of Directors.
- 2.6 Eligibility.** All Board member candidates shall be elected or appointed representatives of an organization that is a current member in good standing of LARM.
- 2.7 Alignment of Current Board Composition with Amended Bylaws.** Upon approval of these amended Bylaws, the current composition of the Board regarding elected and appointed officials shall remain until the designated expiration date of terms for the affected Board members.

Section 3. LARM Executive Director.

- 3.1 Purpose.** The purpose of the office of LARM Executive Director is to provide for the centralization of the administrative responsibilities of all affairs of LARM that are under the direction of the LARM Board. The LARM Executive Director shall be appointed and dismissed by the LARM Board of Directors. The performance of the Executive Director shall be evaluated at least annually by the LARM Board.
- 3.2 Duties.** The Executive Director shall be the administrative head of LARM and shall be responsible to the LARM Board of Directors for the efficient

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conduct of his or her office. In addition to the general authority as administrative head, and not as a limitation thereof, the Executive Director shall have the following duties:

- A.1 To attend all meetings of the LARM Board and report any matter concerning LARM affairs under his or her supervision and direction.
- A.2 To make investigations into all the affairs of LARM and to make recommendations regarding the same to and the LARM Board.
- A.3 To supervise and analyze the functions, duties and activities and services of LARM and of all the employees thereof; to appoint, dismiss and supervise the performance of LARM employees, including the preparation of LARM personnel rules, LARM employee evaluations and current job descriptions of LARM employees. Job descriptions of the LARM Executive Director and employees shall be reviewed annually, updated as required and approved by the LARM Board in public session.
- A.4 To develop and prepare the LARM annual operating budget; to prepare and develop Board meeting agenda(s); to prepare and manage strategic and other planning activities of LARM. The Executive Director shall be responsible for any public records requests directed to LARM. The Pool Consultant may be asked to participate in any or all of these activities at the request of the Board or the Executive Director. The Executive Director is to be the primary contact with the Department of Insurance. The Pool Consultant shall only contact the Department of Insurance with prior approval from the Executive Director.

ARTICLE II – MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Open Meetings.

The Board shall hold meetings within the State of Nebraska. All meetings shall be held in accordance with the Open Meetings Act (Chapter 84, Article 14 of the Nebraska Revised Statutes).

Section 2. Number.

Meetings of the Board shall be held no less than four (4) times each year. Meetings of

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the Board may be called by the Chairperson or the Board and shall be called by the Chairperson upon request of three members of the Board. Notice of meetings of the Board, other than emergency or special meetings, shall be given to each Director at least five calendar days, if possible, prior to the meeting stating the time, place, and agenda. Notice of special meetings of the Board shall be given to each Director at least two calendar days, if possible, prior to the meeting, stating the time, place, and agenda. Regular and special meetings may be held by means of electronic, video, or telecommunication equipment as allowed by the Open Meetings Act. The Board shall adopt a policy establishing the method and time for giving advanced reasonable notice of regular and special Board meetings to members of LARM and to the public.

Section 3. Emergency Meetings.

When it is necessary to hold an emergency meeting without notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such meetings may be held by means of electronic or telecommunication equipment.

Section 4. Quorum.

At all meetings of the Board, a majority of the total numbers of Directors shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statutes or by the Agreement or these By-laws. If a quorum is not present at any scheduled meeting of the Board, the Directors present may, consistent with Nebraska law, recess the meeting from time to time until a quorum shall be present. At such resumed meeting at which a quorum is eventually present, any business may be transacted that might have been transacted at the meeting originally noticed.

Section 5. Reimbursement.

By resolution of the Board, a Director shall be reimbursed for his or her direct expenses incurred in attending meetings of the Board and performing other authorized services as a Director.

Section 6. Rules.

Robert's Rules of Order, latest edition, shall govern all meetings of the Board of Directors.

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Section 7. Notices.

- A. Board of Directors. Except as otherwise provided herein, notices to the Directors may be by telephone, e-mail, facsimile or telegram, or in writing and delivered personally or mailed to the Directors at their addresses appearing on the records of LARM.
- B. Members. Notices of all meetings of the Board of Directors shall be provided to all members of LARM by telephone, e-mail, facsimile or telegram or in writing and delivered personally or mailed to the members at their addresses appearing on the records of LARM. Members wishing to attend a meeting of the Board of Directors, but unable to attend in person, may request that the LARM staff establish a telephone or other electronic connection allowing the member to listen to the meeting of the Board of Directors in question.

Section 8. Waiver.

Any individual notice required to be given under the provisions of the applicable law or of this Agreement or of these Bylaws may be waived in writing either before or after the event requiring such notice, provided such waiver is signed by the person or persons entitled to said notice.

**ARTICLE III-
COMMITTEES**

Section 1. Executive Committee.

The Board of Directors may, by Resolution adopted by a majority of the whole Board, designate three or more of the members of LARM's Board of Directors to constitute an Executive Committee which, to the extent provided in such Resolution, shall have and exercise the authority of the Board of Directors in the management of the business of LARM. Vacancies in the membership of the committee shall be filled by the Board of Directors at a regular or special meeting of the Board of Directors. The Executive Committee shall keep regular minutes of its proceedings, comply with the Open Meetings Act, and report the same to the Board when required. In the absence of any member of the Executive Committee, the Committee members present at any Executive Committee meeting may unanimously appoint another LARM Board Director to serve at the Committee meeting in the place of such absent member. The duties of the Executive Committee will be to review LARM's routine policy matters when the LARM staff seeks feedback from Board members on reports and proposals prepared for the Board's consideration. Additionally the Executive Committee may exercise policy making authority in those instances when the LARM Board of Directors, per the Open Meetings

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Act, delegates duties to the Committee that include "holding hearings, making policy, or taking formal action..." on the LARM Board's behalf.

Section 2. Other Committees.

The Board may, by resolution passed by a majority of the whole Board, designate one or more committees. Each such committee shall consist of one or more Directors, but otherwise include other elected and appointed officials and employees of LARM members not currently represented on the LARM Board of Directors, to assure active participation in LARM by a broad base of members. To the extent provided in the resolution and subject to the LARM Bylaws and applicable law, a committee shall have and may exercise the powers of the Board in the management of the business and affairs of LARM in those instances when the LARM Board of Directors, per the Open Meetings Act, delegates duties to the Committee that include "holding hearings, making policy, or taking formal action..." on the LARM Board's behalf.. Such committees shall have such names and duties as may be determined from time to time by authorization of the Board.

Section 3. Minutes.

Committees shall keep regular minutes of their proceedings and shall report their proceedings to the Board.

Section 4. Reimbursement.

Members of the committees established by the Board may be reimbursed for expenses incurred in serving on such committees and attending committee meetings if those expenses are not reimbursed to them by another public agency.

**ARTICLE IV-
OFFICERS**

Section 1. Officers.

The LARM Board of Directors shall choose from among the elected Directors, a Chairperson and a Vice Chairperson for a one (1) year term at a LARM Board of Directors meeting during the 4th calendar quarter of each year. -

Section 2. Other Officers.

The Board may appoint such other officers and agents as it shall deem necessary that shall hold office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

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Section 3. Vacancies.

Any officer elected or appointed to the LARM Board of Directors or a committee by the Board may be removed whenever, in the judgment of the Board, the best interests of LARM will be served by the person's removal. However, such removal shall be without prejudice to the contract or employment rights, if any, of the person removed. Any vacancy occurring in any office of the LARM by death, resignation, removal or otherwise shall be filled by the Board.

Section 4. Chairperson Duties.

The Chairperson shall preside at all meetings of the LARM Board of Directors, sign all membership certificates, and perform such other duties as are assigned by these By-laws or as may be assigned by the Board of Directors.

Section 5. Vice Chairperson Duties.

The Vice Chairperson shall be chosen in the same manner and for the same term as the Chairperson and shall exercise all the powers of the Chairperson during the absence or disability of the Chairperson, in addition to such other duties as the Board of Directors may from time to time prescribe.

**ARTICLE V-
MEMBERSHIP**

Section 1. General.

Unless prohibited by the Interlocal Governmental Agreement creating LARM, any political subdivision of the State of Nebraska, or other public agency of the state or any of its political subdivisions, or any public organization created by an Interlocal Governmental Cooperation agreement shall be eligible to become a LARM member. However, no such organization shall become a LARM member unless and until approved by majority vote of the Board of Directors.

Section 2. Obligations.

The obligations of members of LARM shall be as follows:

- 2.1 Payments.** To appropriate for and to promptly pay all annual and supplementary or other payments to LARM at such times and in such amounts

**Meeting Minutes
LARM Board Meeting
February 12, 2018**

TO BE
VOIDED

The League Association of Risk Management (LARM) Board of Directors meeting was held February 12, 2018 at 9:30 a.m. CT via phone conference.

For the roll call, the following members were present by phone: David Hunter, Auburn Board of Public Works office, 1600 O St, Auburn NE; Michael Werner, LARM Office, 1919 S. 40th, Lincoln NE; Beth Bonderson, Village office, Hoskins; Vince Knight, SID #1 Stanton County Office, 99 Market PL, Norfolk; Shannon Stuchlik, Mayors Office, 106 S 1st, Pierce NE; Lane Danielzuk joined at 9:38 am, Gering City Administration, 1025 P St., Gering and Gerald Solko, LARM office, 1919 S. 40th, Lincoln, NE; Andrew Ward, Valentine, NE.

Staff members present at 1919 S 40th, Ste 212, Lincoln NE: Tracy Juranek, Diane Becker, Michael Nolan and Elizabeth Becker.

Staff members present by phone: Fred Wiebelhaus, Randy Peters, Paige Buffington and Dave Bos.

Guests present by phone: LONM Executive Director, ex-officio, non-voting LARM Board Member, Lynn Rex; Mark Nestor, ICRMS; Chris Cadwell, York; Jo Leyland, Imperial; Lyle Lutt, Norfolk; Shane Weidner, Norfolk; Randy Gates, Norfolk; Nate Fox, Lanette Doane, Ansley; Nancy Bryan, Stromsburg; Jim Ellison, Gering; Janine Schmidt, Morrill; Clint Simmons, Jan Rise, Fremont; Jim Gibney, Wahoo; Sandra Schmidt, Nelson; Jerry Wilcox, Crete and numerous others not announced.

Guests present in LARM office: LONM's attorney, Andre Barry (Cline Williams); Lash Chaffin and Christy Abraham.

Notice of the meeting was emailed to members on February 6, 2018. The notice was posted on the LARM website as well as the LARM Facebook page on February 7, 2018. The agenda was emailed to the Board on February 8, 2018.

Gerald Solko called the meeting to order at 9:33 am and announced consent agenda item B-2 was the approval of the minutes from the January 16, 2018

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LARM Board meeting and item E-1, the report on the Lean on LARM Safety Grant.

Vince Knight made a motion to approve the consent agenda, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced the next item on the agenda was item C-1, presentation by LARM Executive Director, Mike Nolan of information concerning pools in America.

Andrew Ward made a motion to accept the report, seconded by Shannon Stuchlik. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced the next item on the agenda was item C-2, presentation by LARM Executive Director Mike Nolan of chronology of important events since December 14, 2017 in the working relationship between LARM and LONM.

Andrew Ward made a motion to accept the report, seconded by Beth Bonderson. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced the next item on the agenda was item D-1, consideration of Board motion to reapprove the LARM Bylaws that were initially approved by the LARM Board on December 17, 2013.

Andrew Ward made a motion to reapprove the LARM Bylaws that were initially approved by the LARM Board on December 17, 2013, seconded by Vince Knight. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced item D-2 was the consideration of a motion to affirm election of LARM Board members currently serving.

Vince Knight made a motion to affirm election of LARM Board members currently serving, seconded by David Hunter. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced item D-3 was the consideration to reaffirm election of Gerald Solko as LARM Board Chair and Lane Danielzuk as LARM Board Vice Chair.

Shannon Stuchlik made a motion to reaffirm election of Gerald Solko as LARM Board Chair and Lane Danielzuk as LARM Board Vice Chair, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced item D-4 was consideration of Bylaw changes to provide that LARM will be represented by nine Board members; to establish that the LONM Executive Board and LONM Executive Director have no policy or administrative authority concerning LARM; to delete any remaining language conflicting with the December 17, 2013 Board decision to eliminate annual meeting and delegation of member proxies to LONM Executive Director.

Vince Knight made a motion to approve Bylaw changes to provide that LARM will be represented by nine Board members; to establish that the LONM Executive Board and LONM Executive Director have no policy or administrative authority concerning LARM; to delete any remaining language conflicting with the December 17, 2013 Board decision to eliminate annual meeting and delegation of member proxies to LONM Executive Director, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko advised the next item on the agenda was item D-5, consideration of a motion to authorize reimbursement to LARM Members of their proportional share of the 2% of LARM gross revenues collected in FY 2017-18 that will no longer be paid to the League of Nebraska Municipalities.

Andrew Ward made a motion to approve reimbursement to LARM Members, seconded by Beth Bonderson. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced the next item was D-6, consideration of a motion to oppose LR293CA concerning a Nebraska ballot proposal on medical marijuana and authorization for Board Chair Gerald Solko to sign a letter to Speaker of the Legislature Jim Scheer, copied to other Senators, indicating LARM's opposition.

Andrew Ward made a motion for Board Chair Gerald Solko to sign a letter to Speaker of the Legislature Jim Scheer, copied to other Senators, indicating LARM's opposition if it makes it out of committee, seconded by Shannon

Stuchlik. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced item D-7 was consideration of motion to approve reestablish procedural elements of the LARM Investment Policy for a standard report by US Bank provided to the Investment Committee on a quarterly basis, and ultimately to the LARM Board at each quarterly meeting.

Shannon Stuchlik made a motion to reestablish procedural elements of the LARM Investment Policy for a standard report by US Bank provided to the Investment Committee on a quarterly basis, and ultimately to the LARM Board at each quarterly meeting, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko said item D-8 was consideration of a motion to approve settlement of July 5, 2016, City of Columbus property claim from severe wind damage in amount of \$293,950.

Lane Danielzuk made a motion to approve settlement of July 5, 2016, City of Columbus property claim from severe wind damage in amount of \$293,950, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko announced item D-9 was the consideration of action concerning deleterious statements and conduct of persons with fiduciary duties to LARM.

Vince Knight made a motion to table this item for future consideration, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

Solko said the next item, D-10, was consideration by Board of requesting legal opinion from Domina Law Firm concerning validity of LARM Board service by current members.

Vince Knight made a motion to seek a legal opinion from Domina Law Firm concerning validity of LARM Board service by current members, seconded by Andrew Ward. Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik, Ward and Werner. Nays: none. Motion carried.

The motion to adjourn was made by Vince Knight, seconded by Andrew Ward.
Roll Call: Bonderson, Danielzuk, Hunter, Knight, Solko, Stuchlik and Werner.
Nays: none. The meeting was adjourned at 10:52.

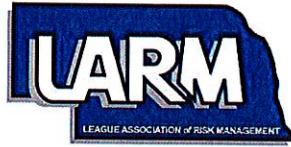
NOTE: Should any citizen of Nebraska request a copy of the recording, LARM will regard the meeting recording as a public record and provide it to the requester.

Approved on: _____

ATTEST:

Secretary

DRAFT



League Association of Risk Management Voting Protocol

RESOLVED that the League Association of Risk Management ("LARM"), by action of its Board of Directors, hereby adopts the following system for the conduct of elections of members of its Board of Directors. This system shall be effective immediately after its adoption.

Elections; Number of Seats; Nominations; Time of Elections

1. **Procedure.** The procedure for conducting elections of LARM Board members shall be controlled by the LARM Board.

- 1.1. No more than one-third (1/3) of the members of the Board shall be elected in any single year.
- 1.2. In the event there are vacancies on more than one-third (1/3) of the positions on the Board, then one-third (1/3) of the total Board shall be elected.
- 1.3. All additional vacancies shall be filled by appointment until the term of office for the vacant seat is a seat for election in the ordinary rotation.

2. **Seats.** Each seat on the Board of Directors shall be numbered sequentially bearing the numbers 1 through 9. In the first year of voting after adoption of this system, seats 1, 2, and 3 shall be elected. In the second year, seats 4, 5, and 6 shall be elected. In the third year, seats 7, 8, and 9 will be elected. This sequence shall continue thereafter until changed by the Board of Directors.

3. **Nominating Committee.** Candidates shall be nominated through a Nominating Committee process only. Nominating Committee Report. The Nominating Committee membership shall be a) as provided in the Interlocal Governmental Agreement as amended from time to time, or b) if there is no provision for a Nominating Committee in the Agreement as a result of future amendments, then the Committee shall consist of two incumbent directors who are not candidates for re-election, and one other person chosen by majority vote of the LARM Board who must be a Nebraska resident of voting age and an employee of LARM or an elected official of a member.

D-12
3-14-2018

- 3.1. The Nominating Committee shall be constituted annually on or before June 1.
- 3.2. The Report of the Nominating Committee identifying candidates shall be due not later than a) a date determined by the Board of Directors when the Nominating Committee is constituted, or b) if not otherwise designated by the Board, on or before September 1 of the year in which the election is to be held.

4. **Time of Elections.** Elections shall be held during a period not exceeding three (3) weeks in duration, commencing with the date when ballots are mailed or otherwise delivered to LARM members and concluding with the date when signed ballots are required to be returned. The Board of Directors shall fix the election period annually. Each election shall be held during the fourth (4th) calendar quarter of each year. Special elections shall not be held.

Voting System

5. A voting system shall be used. "Voting system" means the process of creating, casting, and counting ballots.¹

6. Paper ballots shall be used. Voting shall not be electronic.

7. Ballots shall be on a form approved by the Board of Directors. Each ballot shall be numbered, and the number of each ballot shall correspond with the name of a participating League of Association of Risk Management member.

8. Each ballot shall be mailed or otherwise delivered to the Mayor, Chairman or other Chief Executive of each LARM member.

9. Each League Association of Risk Management participating member shall be entitled to one vote. The vote shall be cast on the paper ballot and shall be returned, completed in the manner desired by the member, and be accompanied by a certification of the member's governing body that the ballot has been cast by the person authorized to cast it by official action of the governing body of the member.

10. Ballots shall be distributed no more than _____ days prior to their return date and shall be returned no later than by a specific return date. A ballot shall be deemed "returned" when it is placed in the United States mail, or in the hands of a

¹ Compare *Neb Rev Stat* § 32-119.01.

recognized courier authorized under federal law as a courier for the purposes of 18 USC § 1341, defining the crime of mail fraud.

11. The ballot shall identify the Board seat, by number, for which the ballot is cast and shall provide the name of each nominee, and the name of the LARM member with which each nominee is associated, and the position of the nominee with the LARM member.

12. The ballot shall state that each member may cast only one vote for each Board seat for election with the notation "Vote for One for Each Seat".

13. Ballots shall be returned in sealed envelopes directed to the League Association of Risk Management, Attn: Elections Officer, at the principal office of LARM. The Elections Officer shall be designated by the Board of Directors when the Nominating Committee is constituted. The Board may, in its discretion, designate an Elections Officer to serve in that position for a term of not more than three (3) years.

14. A ballot shall be deemed signed when an authorized Signature of a voting member has been affixed to it, and returned with the resolution of the Governing body of the LARM Member authorizing the person to sign the ballot.

15. "Signature" shall mean the executed name, in the handwriting or mark of the person who is authorized to cast the ballot of the LARM member in the election.

Enacted by the Board of Directors of the League Association of Risk Management on _____, 2018.

Approved: (signature line for each director)

Chairman, Board of Directors

