

City of Scottsbluff, Nebraska

Monday, December 15, 2014

Regular Meeting

Item Reports⁷

Council to consider the LARM Interlocal Agreement and authorize the Mayor to execute the agreement.

Staff Contact: Rick Kuckkahn, City Manager

MEMORANDUM

To: Cindy Dickinson, City Clerk
From: Kent Hadenfeldt
Date: December 3, 2014
Subject: League Association of Risk Management ("LARM") Agreement

I have reviewed the Agreement for the Establishment and Operation of the League Association of Risk Management under the Interlocal Risk Management Act and the Interlocal Cooperation Act of the State of Nebraska. There are three minor changes to this document. The first is found at 8.17.2 where the phrase "and exercise fiduciary duties concerning those assets and the overall operations of LARM" has been added. The second is an addition to paragraph 8.17.6 to include the phrase "and the LARM Bylaws". The third change was to revise the use of the term "Memorandum of Coverage" to "Coverage Document" in the agreement. However, there were two places in the agreement in which they did not make that change. I called Tracy at LARM to discuss that matter and she said she would have to go through the board to make that change and, therefore, we will see an additional document in the future.

With that being said, there are no major concerns with those revisions in the agreement. However, I would point out a few paragraphs that should be observed:

1. 8.2.3. talks of the annual contribution which the city is required to make upon 30 days of notification. There is no time reference in the agreement. Past experience is that the notification is before budget hearings. It would be preferable if there would be language that the annual contribution notification would come some time before required budget hearings. Right now, there is no reference to when that annual contribution notification will be made.
2. At paragraph 8.5, it is important to remember that there is a deficiency clause in this agreement. If there is a deficiency for payment of claims or expenses, LARM can ask for an additional contribution above the annual contribution set forth in 8.2.3.

3. Paragraph 8.11 deals with termination issues. Specifically it sets forth when the city could be terminated as a member of LARM and the reasons for termination. The involuntary termination of a member must be done after due notice and a hearing. However, there is no date set for the notice.

4. Finally, paragraph 13 requires members to keep all records available for examination by LARM for audit upon their request. This includes a three year term after a member is no longer participating in LARM.

With that being said, I see no objections to the City of Scottsbluff continuing their relationship with LARM because of the revisions in this agreement.

**AGREEMENT FOR THE ESTABLISHMENT AND OPERATION
OF THE
LEAGUE ASSOCIATION OF RISK MANAGEMENT**

**UNDER THE
INTERGOVERNMENTAL RISK MANAGEMENT ACT
AND THE INTERLOCAL COOPERATION ACT
STATE OF NEBRASKA**

1. Parties. The parties to this Agreement are the Nebraska public agencies that are signatories hereto.
2. Recitals. This Agreement is based upon certain understandings and in furtherance of certain purposes, as follows:
 - 2.1. Nebraska law permits two or more public agencies to make and execute an agreement providing for joint and cooperative action in accordance with the Intergovernmental Risk Management Act to form, become members of, and 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 any of the following:
 - a. General liability
 - b. Damage, destruction, or loss of real or personal property, including, but not limited to, loss of use or occupancy, and loss of income or extra expense resulting from loss of use or occupancy;
 - c. Errors and omissions liability; and
 - d. Workers' compensation liability.
 - 2.2. The signatories hereto have determined that there is a need to establish and operate a risk management pool to provide some or all the types of service and coverages identified in Section 2.1.
3. Definitions.
 - 3.1. Act shall mean the Intergovernmental Risk Management Act, *Neb. Rev. Stat.* Sections 44-4301 et seq., and all amendments thereto.
 - 3.2. Administrator shall mean the Executive Director of the League of Nebraska Municipalities.
 - 3.3. Agreement shall mean this agreement for the establishment and operation of LARM and any addenda, extensions or amendments hereto.
 - 3.4. Board shall mean the Board of Directors of the League Association of Risk Management.
 - 3.5. Bylaws shall mean the bylaws established and approved under this agreement governing the operation of LARM.
 - 3.6. Director shall mean the State of Nebraska Director of Insurance.
 - 3.7. Errors and omissions liability shall mean liability to which a member of a governing body of a public agency may be subject in an individual capacity by reason of any error, misstatement,

Amended 6/17/1998; 10/1/2003, 9/24/14

misleading statement, act, omission, neglect of duty, or breach of duty, including misfeasance or nonfeasance in the performance of duties of the public agency.

- 3.8. Former member shall mean a member of LARM after its participation has terminated either voluntarily or involuntarily. A member is only a former member with regard to any terminated period of participation. A member may be a participating member for one period of participation, and a former member for a previous or subsequent period of participation.
- 3.9. General liability shall mean any liability other than workers' compensation liability, to which a public agency may be subject (a) directly, (b) by reason of liability arising out of an act or omission of its employee, agent or officer in the course and scope of employment, (c) by reason of liability arising out of an act or omission of its student in the course and scope of education or training, or (d) by reason of liability it has assumed by contract. It includes, but is not limited to, liability commonly protected against by casualty insurance, general liability insurance, professional liability insurance, automobile insurance, motor vehicle insurance, and surety and fidelity insurance.
- 3.10. Group self-insurance shall mean the pooling of public money by a risk management pool from contributions by its members for the purpose of payment of losses incurred by members which are protected against by the pool.
- 3.11. League shall mean the League of Nebraska Municipalities.
- 3.12. League Association of Risk Management or LARM shall mean the risk management pool established and operated under this agreement
- 3.13. Member, in the context of a member of LARM, shall mean any municipality or other public agency whose application for membership has been approved by the Board and that has lawfully entered into this agreement.
- 3.14. Coverage Document shall mean the extension to this agreement, provided for in Section 7.1.
- 3.15. Participating member or participant shall mean a member of LARM for that period of time from its admittance into this agreement until that member's participation is terminated either voluntarily or involuntarily.
- 3.16. Public agency shall mean any county, city, village, school district, public power district, rural fire district, or other political subdivision of the State of Nebraska, the State of Nebraska, the University of Nebraska, and any corporation whose primary function is to act as an instrumentality or agency of the State of Nebraska.
- 3.17. Risk management pool shall mean an association formed by two or more public agencies by an agreement pursuant to the Intergovernmental Risk Management Act providing for joint and cooperative action in the use of their financial or administrative resources in order to accomplish any of the public and governmental purposes authorized by the Act.

Amended 6/17/1998; 10/1/2003, 9/24/14

- 3.18. Standard insurance shall mean any policy of insurance issued by a company licensed to transact insurance business in the State of Nebraska for any policy of insurance issued in accordance with the requirements for a lawful surplus lines insurance transaction.
- 3.19. Workers' compensation liability shall mean liability to which a public agency may be subject as an employer under the Nebraska Workers' Compensation Act.
4. Establishment. The undersigned public agencies hereby jointly and cooperatively establish a risk management pool under the provisions of the Act with all the rights, powers and privileges vested in and conferred upon such a pool under the laws of the State of Nebraska. The name of the pool shall be the League Association of Risk Management.
5. Purpose. The purpose of this agreement is to establish and operate a pool as provided in Section 2.1.
6. Powers. In order to carry out this purpose, LARM shall exercise and enjoy all the powers, privileges and authority exercised or capable of exercise by a pool created pursuant to the Act, including, but not limited to, the power to issue bonds or other obligations on behalf of public agencies or to otherwise assist in the issuance by such public agencies of such obligations; provided, however, that nothing herein shall prevent any of the parties hereto from separately exercising any such powers, privileges or authority.
7. Financial Plan. The Board shall establish and maintain a Financial Plan in accordance with the Act, including each of the following.
- 7.1. Coverage Document. The Board shall establish and maintain a Coverage Document which shall set forth:
- 7.1.1. the types of coverage to be offered by LARM in the form of group self-insurance;
 - 7.1.2. applicable deductible levels;
 - 7.1.3. maximum levels of claims which LARM will self-insure; and
 - 7.1.4. guidelines to assist members in identifying what losses are covered, what losses are excluded from coverage, and any other terms and conditions under which group self-insurance coverage is provided, limited or excluded.
- Any change to the Coverage Document shall be adopted by a majority vote of the Board and such change shall be filed with the Director at least thirty (30) days in advance of the effective date of change.
- 7.2. Cash Reserves. The Board shall review appropriate actuarial analyses and shall establish and maintain an amount of cash reserves to be set aside for the payment of claims.
- 7.3. Standard Insurance. The Board shall establish and approve the amount of standard insurance to be purchased by LARM to provide coverage over and above the claims which are not to be satisfied directly from LARM's resources.
- 7.4. Excess Insurance. The Board shall establish and approve the amount of aggregate excess insurance coverage and specific excess insurance coverage to be purchased in a given fiscal period.

Amended 6/17/1998; 10/1/2003, 9/24/14

8. Plan of Management. The Board shall establish and maintain a Plan of Management in accordance with the Act, including each of the following.
- 8.1. Board of Directors. The governing authority of LARM shall be a Board of Directors consisting of elected or appointed officials or employees of participating members. The initial Board shall consist of nine persons, but the number may be increased by the Board up to fifteen persons to maintain appropriate size and geographic representation as the number of LARM members increases. A vacancy on the Board shall be filled by a majority vote of the Board upon recommendation made by the Administrator. The person appointed to fill a vacancy shall serve for the remainder of the term of the vacating director.
- 8.1.1. The President of the League and the Administrator shall be non-voting ex officio members of the Board of Directors.
- 8.1.2. The ex officio members of the Board shall be in addition to the elected and appointed members of the Board, and shall not be counted for purposes of a quorum.
- 8.1.3. Each elected or appointed Board member shall be entitled to one vote in all matters that come before the Board.
- 8.1.4. Board election procedures shall be as follows;
- 8.1.4.1. A nominating committee shall recommend candidates for the Board to the members. The nominating committee shall consist of the chairperson of the Board, an individual from a participating member selected by the Board and the Administrator. Additional nominations shall be requested from participating members at the meeting.
- 8.1.4.2. Each participating member may cast one vote for each of the open Board positions.
- 8.1.5. Members of the Board of Directors shall serve staggered terms of three years to promote stability and continuity.
- 8.1.6. The terms of office of the members of the Board of Directors shall commence January 1st of the first year of the term and conclude on December 31st of the last year of the term.
- 8.1.7. 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.
- 8.2. Group Self-Insurance Funding. Costs associated with the group self-insurance operations of LARM shall be financed through the annual and supplementary contributions paid by the participating members, through the income earned from the investment of LARM funds by the Board, and through any other monies which may be lawfully received by LARM and made part of LARM's assets.
- 8.2.1. All annual contributions shall be computed and established by the Board based on actuarial evaluations, rating plans, and other analyses of the amounts necessary for the payment of

Amended 6/17/1998; 10/1/2003, 9/24/14

claims and losses, the payment of premiums for insurance and excess insurance or reinsurance, the establishment and maintenance of reasonable reserves and the payment of any and all expenses of LARM reasonably and lawfully incurred.

- 8.2.2. The amount of the annual contribution to be paid by each participating member shall be established by the Board to ensure the equitable distribution of costs among participating members based on each member's proportionate risk of loss, limit of coverage, loss experience and loss control efforts. Participating members may elect, by resolution: a) a 3 year commitment, to provide written notice of termination at least 180 days prior to the desired termination date for a 5% discount; b) a 2 year commitment, to provide written notice of termination at least 180 days prior to the desired termination date for a 4% discount; c) to provide written notice of termination at least 180 days prior to the desired termination date for a 2% discount; d) a 3 year commitment, to provide written notice of termination at least 90 days prior to the desired termination date for a 2% discount; e) a 2 year commitment, to provide written notice of termination at least 90 days prior to the desired termination date for a 1% discount; f) to provide written notice of termination at least 90 days prior to the desired termination date.
- 8.2.3. The Board shall file with the Director and certify to each participating member the amount of any annual contribution at least thirty (30) days in advance of the due date. Each participating member shall timely pay all annual and supplementary contributions established by the Board.
- 8.2.4. Supplemental contributions based on changes to a member's exposure during a fiscal year for which such member's annual contribution has already been calculated shall be charged at the same rate used to calculate the annual contribution for that fiscal year.
- 8.2.5. All contributions paid by the participating members shall be deemed earned by LARM when received, and any refund or return of contributions shall be subject to minimum contribution amounts, penalties, fees or other limitations established by the Board.
- 8.3. Loss Reserves. LARM shall maintain funds adequate to pay claims, establish cash reserves and establish reserves for claims that have been incurred but not yet reported.
- 8.4. Surplus. LARM shall also maintain surplus deemed appropriate by the Board, which shall meet any minimum surplus level required under the Act or regulations adopted thereunder.
- 8.5. Assessments for Deficiencies. If in the opinion of the Board or the Director the assets of LARM are at any time insufficient to enable LARM to discharge its liabilities and other obligations and to maintain adequate reserves and surpluses in accordance with reasonable determinations by the Director, LARM shall make up the deficiency or the Director shall order LARM to levy an assessment upon its members in an amount necessary to make up the deficiency to be paid by each member which participated in LARM during any part of the fiscal year to which the deficit is assignable.

Amended 6/17/1998; 10/1/2003, 9/24/14

- 8.5.1. Assessments shall be computed and established by the Board in the same proportion that the annual contribution of the individual member bears to the total annual contributions of all members in the year in which such deficit occurs.
- 8.5.2. All assessments shall be due and payable by each member when notice of the assessment is received and shall be delinquent thirty (30) days thereafter.
- 8.6. Calculation and Distribution of LARM Surplus Assets. Subject to the limitations imposed in this section and elsewhere in this Agreement, the Board may make periodic distributions of surplus assets.
- 8.6.1. The Board shall have the authority to decide when the distribution of surplus assets is to be made, the fiscal year(s) to which the distribution is applicable, the amount to be distributed, and the basis for the distribution.
- 8.6.2. Participating members shall be eligible to receive distributions of surplus assets during the period(s) for which they were participating members, but only in accordance with the provisions of the Agreement and the formula for the distribution of surplus assets adopted by the Board.
- 8.6.3. No distribution of surplus assets shall be made sooner than three (3) years from the inception of LARM. No surplus assets attributable to any fiscal year shall be distributed sooner than twelve (12) months after the end of that fiscal year. No distribution of surplus assets shall be distributed without prior approval of the Director, as set forth in the Act.
- 8.6.4. The distributable surplus assets for any fiscal year shall be those assets remaining after:
- a. Payment has been made for all claims, losses and expenses due and payable;
 - b. Reasonable reserves have been established for claims previously occurring and reported and expenses associated therewith;
 - c. Reasonable reserves have been established for claims incurred, but not reported, and expenses associated therewith; and
 - d. Reasonable reserves have been established for future adverse loss deviation and expenses associated therewith.
- 8.6.5. The Board shall calculate each participating member's proportionate share of surplus assets in accordance with a formula adopted by the Board. The formula shall be structured so as to support and foster the purposes and objectives for which LARM was created, including, but not limited to: individual loss experiences; individual member contributions relative to total contributions; the duration of LARM participation; and the overall loss experience of LARM. The formula adopted by the Board may provide that a failure to comply with risk management standards or recommendations, or that the existence of a specified loss-to-contributions ratio, shall disqualify a member from receiving all or a specified portion of the member's proportionate share of surplus assets.

Amended 6/17/1998; 10/1/2003, 9/24/14

- 8.6.6. A former member may be entitled to receive a share of a distribution of surplus assets calculated for the period for which they were a participating member under the formula and criteria adopted by the Board.
- 8.6.7. Any participating member may elect to have the distribution of its proportionate share of surplus assets applied as a credit against future annual or supplementary contributions or assessments.
- 8.7. Dissolution of LARM. LARM shall be dissolved upon the first to occur of the following;
- a. When less than two public agencies are participating in LARM; or
 - b. such time as the Board determines that the number of participating members and/or the size of the annual contribution is too small to adequately indemnify against the risks specified in the Memorandum of Coverage.
- 8.7.1. Any dissolution pursuant to Section 8.7(b) shall not be effective until the Board has given each participating member at least ninety (90) days written notice of such dissolution.
- 8.7.2. Upon dissolution of LARM, adequate provision shall be made for all pending and anticipated claims.
- 8.7.3. The Board shall submit a written request to the Director for approval of the plan to dissolve LARM as provided by the Act. After the Director approves the application for voluntary dissolution, LARM shall, within thirty (30) days after such approval, place the matter before the members for a vote.
- 8.8. Distribution of Surplus at Dissolution. At the dissolution of LARM's existence, any surplus funds over and above those necessary to pay or reserve against the expenses and liabilities of LARM shall vest in and be distributed among the participating and former members. Such distribution shall be allocated among participating and former members in proportion to the contributions made by each member.
- 8.9. New Members. All public agencies are eligible to make application and become members of LARM in the following manner:
- 8.9.1. The applicant public agency must provide such loss history, exposure information, and other information as is required by the Board;
 - 8.9.2. Public agencies making application after the initial effective date of this Agreement may be required by the Board to pay an application fee;
 - 8.9.3. The public agency must enter into this Agreement by resolution passed by its governing body;
 - 8.9.4. An applicant that is a municipality, sanitary and improvement districts, public power agencies, and such other public agencies of the State of Nebraska must be approved by the League; and
 - 8.9.5. The Board, in its sole discretion, shall accept or reject each application. The Board may authorize the Administrator to accept applications.

Amended 6/17/1998; 10/1/2003, 9/24/14

8.9.6. A public agency shall become a member of LARM on the later to occur of the following:

- a) The approval of the application of the such public agency by the Board; and
- b) The due execution of this Agreement.

8.10. Voluntary Termination of a Member. A member may voluntarily terminate its participation in LARM by written notice of termination given to LARM and to the Director at least ninety (90) days prior to the desired termination date. Members may agree to extend the required termination notice beyond ninety (90) days in order to realize reduced excess coverage costs, stability of contribution rates and efficiency in operation of LARM. The Board may approve of a plan to provide contribution credits for members extending their required termination notice beyond ninety (90) days. Such termination shall not be effective until approved by the Director as provided by the Act.

8.11. Involuntary Termination of a Member. A member may be involuntarily terminated as a participating member of LARM if the Director finds, after due notice and hearing, that:

- a) The member has failed to pay any contribution or assessment to LARM;
- b) The member has failed to discharge any other obligation it owes to LARM; or
- c) The member has failed to comply with the laws of the state, rules of the Department of Insurance or bylaws of LARM.

Such hearing may be initiated by the Director on his or her own initiative, or at the request of the Board.

8.12. Effect of Termination on Obligations to LARM. A former member shall remain liable for any costs and obligations incurred by LARM while the public agency was a participant, and for any contractual obligation the public agency has entered into with LARM on or before the date of termination, as provided by the Act.

8.13. Funds and Reserves by Exposure Area. The Board shall review appropriate actuarial analyses to identify appropriate funds and reserves by exposure area.

8.14. Payment of Claims. The Board shall ensure that all claims covered by the Memorandum of Coverage are paid promptly.

8.15. No Private Benefit. No part of the net earnings or assets of LARM shall inure to the benefit of any private person.

8.16. Loss Control Program. The Board shall approve a system or program of controlling member losses.

8.17. Powers of the Board. In addition to other powers granted under this agreement, the Board shall have the power to:

- 8.17.1. Sit as a quasi-judicial body to hear and make determinations regarding any members dispute regarding the interpretation, intent, coverage, limitations, or exclusions of the Memorandum of Coverage;

Amended 6/17/1998; 10/1/2003, 9/24/14

- 8.17.2. Take all necessary precautions to safeguard the assets of LARM; and exercise fiduciary duties concerning those assets and the overall operations of LARM
- 8.17.3. Make and enter into any and all contracts, leases, and agreements necessary or desirable to carry out any of the powers granted or duties imposed under this Agreement or any applicable law or regulation;
- 8.17.4. Establish the duties and responsibilities of the Administrator;
- 8.17.5. Sue and be sued, make contracts, hold and dispose of real and personal property, borrow money, contract debt, and pledge LARM assets in the name of LARM; and
- 8.17.6. Exercise such other powers as are necessary for the proper operation of LARM to carry out the terms of this Agreement and to comply with the Act, rules and regulations adopted under the Act, and any other State or Federal laws, rules or regulations, and the LARM Bylaws.
- 8.18. Bylaws and Rules of Operation. The Board may make bylaws pertaining to the exercise of its purpose and powers. The Board may, from time to time, revise the bylaws. The Board may also from time to time adopt policies, rules and procedures for the administration and operation of LARM, by majority vote of the Board, so long as such policies, rules, and procedures are not inconsistent with this Agreement or the bylaws. No provisions of the bylaws, policies, rules or procedures shall be inconsistent with the Agreement or the Act.
- 9. Financial Reports. Financial reports shall be prepared on a statutory basis as required by the Department of Insurance.
- 10. Banking Relationships. LARM shall establish bank accounts necessary to carry out the terms and meet the operational needs of this Agreement. Controls shall be established and funds shall be invested so that LARM is managed in a conservative and prudent manner.
- 11. Financial Records. The Board shall maintain complete financial records for each type of coverage as required by the Act.
- 12. Inspections. LARM and its representatives shall be permitted, but shall not be obligated, to inspect a member's properties and operations at any time. Neither LARM's right to make inspections nor the making thereof shall constitute an undertaking on behalf of or for the benefit of a public agency or others to determine or warrant that such property or operations are safe or are in compliance with any law, rule or regulation.
- 13. Member Examinations and Audits. LARM may examine and audit the member's records at any time during the period this Agreement is in effect, and during any extensions hereof, and within three years after such member is no longer a participating member of LARM, insofar as the records may relate to the subject matter of this Agreement.
- 14. LARM Financial Audit. LARM shall be audited periodically at the expense of LARM by a certified public accountant. A copy of the report shall be submitted to the governing body of each participating member for the period audited.

Amended 6/17/1998; 10/1/2003, 9/24/14

15. Professional Services. The Administrator may retain the services of such legal counsel, actuaries, auditors, engineers, service providers, consultants and other advisors as it deems necessary to carry out the business and purpose of LARM.
16. Place of Business. The principal place of business for LARM shall be 1335 L Street, Lincoln, Nebraska 68508. Notice provided via United States Postal Service by a member to LARM at this address shall be considered proper notice to LARM and all participating members of LARM. The Administrator may employ necessary staff and may purchase, lease, or rent real or personal property in order to carry out the business and purpose of LARM.
17. Conformity with Law. In the event any term or provision of this Agreement is in conflict with the laws and statutes of the State of Nebraska as they now exist or are hereafter amended, this Agreement shall be automatically deemed amended to conform to such laws and statutes.
18. Fiscal Year. LARM's fiscal year shall begin on October 1 of each year and end on September 30 of the following year.
19. Liability. No member in LARM shall, by reason of this Agreement, have any liability for claims brought by third parties against any other member other than the obligation to contribute certain funds to LARM as expressly provided herein. The liability for any claim against a member shall remain the sole and exclusive liability of the member. The obligation of LARM is to indemnify the member against such loss as provided in the Coverage Document to the extent and under the conditions contained therein.
20. Termination of the Agreement. This Agreement shall terminate upon the occurrence of all of the following events:
 - a. LARM has dissolved pursuant to Section 8.7;
 - b. All amounts owed by the members have been paid in full; and
 - c. All amounts owed for claims and other expenses have been paid in full.
21. Execution in Counterpart. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth in the attached Resolutions and acknowledged below.

Signature: _____

Title: _____

Name of Public Agency: _____

Date: _____

Amended 6/17/1998; 10/1/2003, 9/24/14