

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION  
For Inclusion on Board Agenda

  X   Resolution or Ordinance (Blue)   x   *Waiver of First Requested*  
\_\_\_\_ Recommendations of Boards, Commissions & Committees (Green)  
\_\_\_\_ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: Scott Niehaus, Village Manager  
DATE: March 13, 2019 (B of T) Date: March 21, 2019  
TITLE: A Resolution Authorizing Signature of the Village President on a Restated Intergovernmental Agreement for Claims Services (MCSA) - REVISED

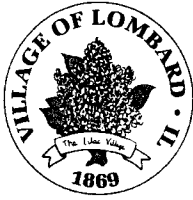
BACKGROUND/POLICY IMPLICATIONS:


Attached please find information regarding a restated agreement and amendment to an existing intergovernmental agreement for municipal claims. The restated agreement was recently approved at the March 7, 2019 Village Board meeting and subsequently amended by a cooperative member. The amendments, while not substantive, require the Village Board to formally approve the newly revised agreement.

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X   SN   \_\_\_\_\_ Date   3/14/19  

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

MEMORANDUM

**TO:** Scott Niehaus, Village Manager  
**FROM:** Nicole Aranas, Assistant Village Manager   
**DATE:** March 13, 2019  
**SUBJECT:** **APPROVAL OF A RESTATED INTERGOVERNMENTAL AGREEMENT FOR CLAIMS SERVICES (MCSA)  
(REVISED AGREEMENT)**

Attached please find information pertaining to a revised amended and restated intergovernmental agreement for claims services through Municipal Claims and Safety Agreement (MCSA). **The restated agreement was recently approved at the March 7, 2019 Village Board meeting and subsequently amended by a cooperative member. The amendments, while not substantive, require the Village Board to formally approve the newly revised agreement.** The proposed amendments add language to include coverage and service for organizational volunteers, in addition to organization employees. The original intergovernmental agreement through MCSA was entered into by the Village of Lombard, Village of Wheeling, Village of Mount Prospect and the Metro Risk Management Agency in 2012 for a multi-year period and amended three times previously.

The proposed restated intergovernmental agreement provides for the consolidation of all previous amendments to a single restated agreement for the sake of continuity and clarity. The agreement reaffirms member participation in the cooperative and reflects the voluntary withdrawal of Mount Prospect for 2019 subject to the contract termination and “true-up” provisions of the agreement.

The requested amendments and continued participation in the claims cooperative will allow the Village to continue services with the dedicated claims adjuster and loss prevention services contracted through cooperative on a shared cost basis. Village staff previously undertook analysis to compare claims management and claims costs under the MCSA cooperative against the leading competitive municipal claims administration pool and determined the cost allocations under the MCSA model were notably less than all other plans offered through the alternate pool.

The restated agreement is recommended by Village staff and the intergovernmental cooperative and is anticipated to be approved by the other individual municipal member agencies. Please let me know if you have any questions or concerns.

**RESOLUTION**  
**R \_\_\_\_\_19**

**A RESOLUTION AUTHORIZING SIGNATURE OF THE VILLAGE PRESIDENT ON AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT IN REGARDS TO MUNICIPAL CLAIMS**

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution and 5 ILCS 220/1 through 220/9 provide authority for intergovernmental cooperation; and,

**WHEREAS**, the Village of Lombard, the Village of Mount Prospect, the Village of Wheeling and the Metro Risk Management Agency (the "Members") entered into an Intergovernmental Agreement in Regard to Claims Adjuster and Safety Consultant Services, effective January 1, 2013 for a multi-year term; and,

**WHEREAS**, the Members entered agreed to three prior amendments to the Intergovernmental Agreement and desire to amend and restate the terms of said agreement; and,

**WHEREAS**, it is in the collective best interests of the Members to enter into this amended and restated contact,

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1:** That the Village President and Village Clerk be and hereby are authorized to sign on behalf of the Village of Lombard said amended and restated Intergovernmental Agreement as attached hereto.

**SECTION 2:** That this Resolution shall be in full force and effect from and after its passage and approval as provided by law.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Ayes: \_\_\_\_\_

Nayes: \_\_\_\_\_

Absent: \_\_\_\_\_

Resolution No. \_\_\_\_\_  
Page 2

Approved this \_\_\_\_\_, day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Keith Giagnorio, Village President

ATTEST:

\_\_\_\_\_  
Sharon Kuderna, Village Clerk

**AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT  
IN REGARD TO CLAIMS ADJUSTER AND SAFETY CONSULTANT SERVICES**

This Amended and Restated Intergovernmental Agreement in Regard to Claims Adjuster and Safety Consultant Services (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2019, to be in full force and effect as of January 1, 2019, by and between the Village of Lombard, an Illinois municipal corporation ("Lombard"), the Village of Wheeling, an Illinois municipal corporation ("Wheeling"), and the Metro Risk Management Agency, a joint self-insured intergovernmental risk pool, whose current membership consists of the Schaumburg Park District, the Mount Prospect Park District and the Palatine Park District, ("MRMA"). Lombard, Wheeling and MRMA are sometimes referred to hereinafter individually as a "Member" and collectively as the "Members."

**WITNESSETH**

**WHEREAS**, Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Illinois Intergovernmental Cooperation Act (5 ILCS Section 220/1 *et seq.*) (the "Act") provide that public agencies, including, but not limited to, units of local government, may jointly perform any activity which may, by law, be exercised by such local governments individually; and

**WHEREAS**, the Members, along with the Village of Mount Prospect, an Illinois municipal corporation ("Mt. Prospect"), entered into "An Intergovernmental Agreement in Regard to Claims Adjuster and Safety Consultant Services," effective January 1, 2013 (the "Original Agreement"); and

**WHEREAS**, said Original Agreement was amended three (3) times, in 2014, 2015 and 2018 (the Original Agreement, as amended by the 2014, 2015 and 2018 amendments thereto, being hereinafter referred to as the "Amended Original Agreement"); and

**WHEREAS**, Mt. Prospect gave notice, pursuant to the Amended Original Agreement, that it was terminating its participation in the Amended Original Agreement, effective January 1, 2019, subject to the "true-up" provisions of Section 8.A.vi. of the Amended Original Agreement; and

**WHEREAS**, pursuant to Section 8.A.vii. of the Amended Original Agreement, with the termination of Mt. Prospect's participation in the Amended Original Agreement, the Amended Original Agreement is to be further amended to take into account the reduction in the number of participants in the Amended Original Agreement; and

**WHEREAS**, the Members have determined that, rather than entering into an additional amendment to the Amended Original Agreement, to take into account Mt. Prospect's termination of its participation in the Amended Original Agreement, it is better to enter into this Agreement, so that all provisions applicable to the Members are in one (1), rather than five (5), documents; and

**WHEREAS**, pursuant to this Agreement, the Members desire to continue an intergovernmental cooperative body to administer the safety training for, and the claims processing of the various types of liability claims (automobile, general liability, public officials' liability, law enforcement liability and employment practices liability) of, the Members; and

**WHEREAS**, the Members have determined that it is in their individual and collective best interests to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Members, the Members agree as follows:

### **1. Continuation and Purpose of the Intergovernmental Cooperative**

- A. The Members hereby continue the intergovernmental claims adjuster and safety consultant services cooperative, as established by the Amended Original Agreement, consistent with the scope of authority granted by the Act (the "Cooperative").
- B. The purpose of the Cooperative is to hire a third party administrator (the "Administrator") that will provide claims adjuster and safety consultant services to the Members (the "Services").
- C. The creation of the Account (as defined below), as established by this Agreement, is not intended by the Members to constitute the transaction of an insurance business within the State of Illinois but, rather, is intended to reduce the cost of the Services for the Members.

### **2. Definitions**

In addition to the terms defined elsewhere in this Agreement, each of the following terms shall have the meaning set forth below:

- A. "Account" – An account of moneys established by the Members to pay the administrative expenses of the Cooperative, and the cost of the Services.
- B. "Fiscal Year" – The twelve (12) month period commencing January 1<sup>st</sup> and concluding December 31<sup>st</sup> of any respective year.
- C. "Board" – The Board established pursuant to Section 5. of this Agreement.
- D. "Chairperson" – The Chairperson of the Board.
- E. "Claim or Claims" – A liability incident in relation to which a claims adjuster has opened a claim file and assigned a claim number. In the case of MRMA, MRMA's claims shall be limited to only those relating to workers' compensation actions.

### **3. Authority and Duties of the Cooperative**

The Cooperative shall have the authority and duty to accomplish the purposes set forth in Section 1. above and, in furtherance of such authority and duty, shall, through its Board:

- A. Select the Administrator to accomplish the purposes of the Cooperative;

- B. Direct the collection and payment of funds to be used for the administration of the Cooperative and the approved expenditures of the Cooperative, including the cost of the Services;
- C. Prepare and approve an annual budget for the Cooperative, and a quarterly report of the financial affairs of the Cooperative;
- D. Comply with all local, state and federal laws, rules and regulations; and
- E. Carry out such other activities as are necessarily implied or required to carry out the purposes of the Cooperative, as set forth herein.

#### **4. Continuation and Term of the Cooperative**

- A. The Cooperative, as established by the Amended Original Agreement, shall continue, and the Services shall continue to be provided to the Members indefinitely, subject to each Member's ability to terminate said Member's participation in the Agreement upon twelve (12) months prior notice as referenced in subsection C. below, and subject to the "true-up" referenced in Section 8.A.vi. below.
- B. The Fiscal Year of the Cooperative shall be from January 1<sup>st</sup> to December 31<sup>st</sup> of each year.
- C. Each Member shall have the ability to terminate said Member's participation in this Agreement upon no less than twelve (12) months prior written notice; provided, however, any such termination shall take place and be effective on either March 31st, June 30th, September 30th or December 31st, so that said termination occurs upon the end of a quarterly portion of the Fiscal Year covered by one (1) of the four (4) payments referenced in Section 8.A.v. below.

#### **5. Cooperative Board of Directors**

- A. The Cooperative shall be managed by a Board of Directors ("Board") pursuant to the terms of this Agreement. The Board shall consist of one representative from each Member ("Representative"), to be designated by each Member. Each Member shall also designate an alternate representative ("Alternate Representative") to serve on behalf of the Member when the designated Representative is unable to carry out the designated Representative's duties, with each Member's Alternate Representative to be considered as a Representative whenever in attendance at a meeting of the Board, at which the Representative of the Member is absent. The Representative and Alternate Representative of each Member shall serve until a new Representative and/or Alternate Representative is selected by the Member, and the Board is so notified, in writing, of such new appointment.
- B. The Board shall carry out the purposes and duties of the Cooperative including, but not limited to, the following:

- i. Selecting the Administrator.
  - ii. Reviewing the Services as provided by the Administrator.
  - iii. Preparing and approving an annual budget for the Cooperative and any amendments to that budget.
  - iv. Establishing the annual fee to be paid by each Member into the Account.
  - v. Obtaining and submitting to the Members the financial reports and other reports as deemed relevant and necessary by the Board.
  - vi. Such other activities as are necessarily implied or required to carry out the purposes of the Cooperative.
- C. The Board shall elect, from among the Representatives, the Chairperson, Secretary and Treasurer of the Board to each serve for a term of one (1) year, and the last Chairperson, Secretary and Treasurer shall serve through the final "true-up" as provided for in Section 8.A.vi. below. The Chairperson, Secretary and Treasurer of the Board for the 2019 Fiscal Year shall be as elected at the last Board meeting held in 2018, under the Amended Original Agreement. The election of the Chairperson, Secretary and Treasurer for each subsequent Fiscal Year shall occur at the last Board meeting of the previous Fiscal Year. Every Chairperson, Secretary and Treasurer shall continue to serve in office until the beginning of the next Fiscal Year or until their respective successors have been elected, whichever occurs later.

## **6. Meetings of the Cooperative**

- A. Regular meetings of the Board shall be held as often as necessary to carry out the purposes of the Cooperative, but no less than two (2) times during each Fiscal Year.
- B. Special meetings of the Board may be called by its Chairperson or by any two (2) Representatives.
- C. At least seven (7) days prior written notice of regular or special meetings of the Board shall be given to each Representative, and an agenda specifying the time, date, location and subject matters to be considered at any regular or special meeting shall accompany such notice. Business conducted at special meetings shall be limited to those items specified in the agenda.
- D. The time, date and location of regular meetings of the Board shall be determined by the Board.
- E. Each Member shall be entitled to one (1) vote on the Board through its Representative/Alternate Representative. No proxy votes or absentee votes shall be permitted. The failure of a Member to select a Representative and/or Alternate Representative, or the failure of that person to participate at a meeting, shall not affect the responsibilities or duties of a Member under this Agreement.



- F. A quorum shall consist of two (2) of the three (3) Representatives (or Alternate Representative, in the absence of a Representative).
- G. All matters coming before the Board must be approved by two (2) of the three (3) Representatives (or Alternate Representative, in the absence of a Representative).
- H. The Board may establish rules governing its own conduct and procedure, consistent with this Agreement. Voting shall be conducted by voice vote, except that all questions pertaining to monetary matters shall require a roll call vote, and one (1) or more of the Representatives/Alternate Representatives may request a roll call vote on any matter. Any disputes as to procedure shall be resolved pursuant to *Robert's Rules of Order*, latest edition.
- I. Minutes of all regular and special meetings of the Board shall be taken by the Secretary, or the Secretary's designee, and shall be sent to all Representatives and to each Member after approval by the Board.
- J. All meetings of the Board shall be conducted in accordance with the Illinois Open Meetings Act (5 ILCS 120/.01 *et seq.*). In the event of any conflict between any provision of this Agreement and any provision of any applicable law, this Agreement shall be deemed modified to the extent necessary to comply with such law.

## **7. Cooperative Officers**

- A. Officers of the Cooperative shall consist of the Chairperson, Secretary and Treasurer.
- B. The Chairperson shall be the principal operating officer of the Cooperative, shall oversee the day-to-day operations of the Cooperative, and shall carry out the purposes of the Cooperative as directed by the Board. Among the duties and authority of the Chairperson shall be the following:
  - i. To sign, on behalf of the Cooperative, any instrument which the Board or the Members have authorized to be executed and, in general, to perform all duties incident to the office of Chairperson and such other duties as may be prescribed by the Board consistent with this Agreement from time to time.
  - ii. To prepare a proposed annual budget for the Cooperative, and, for each Member, a proposed quarterly payment into the Account, and to submit such proposals to the Board.
  - iii. To make recommendations regarding policy decisions.

The Chairperson shall preside at all meetings of the Board at which the Chairperson is present. The Chairperson may request information from any officer of the Board. The Chairperson shall vote on all matters that come before

the Board. The Chairperson shall have such other powers as are set forth in this Agreement and such other powers as he/she may be given from time to time by action of the Board. In the absence of the Chairperson or the Alternate Representative for the Chairperson, or in the event of the inability or refusal of the Chairperson or the Alternate Representative for the Chairperson to act, the Treasurer shall perform the duties of the Chairperson and, when so acting, shall have all of the powers of, and be subject to all the restrictions upon, the Chairperson.

C. The Secretary shall:

- i. Record all proceedings of the Board and supply minutes to all Representatives and Members.
- ii. Keep and maintain all permanent records of the Cooperative.
- iii. In general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned.

D. The Treasurer shall:

- i. Have charge and custody of and be responsible for all funds of the Cooperative; receive and give all receipts for moneys due and payable to the Cooperative from any source whatsoever; deposit all such moneys in the name of the Cooperative in such banks, savings and loan associations, or other depositories as shall be selected by the Board; keep the financial records of the Cooperative and invest the funds of the Cooperative as are not immediately required in such investments as the Board shall specifically or generally select from time to time; provided, however, that all investments of Cooperative funds shall be made only in those securities which may be allowed by the Illinois Compiled Statutes, applicable to the Members.
- ii. At each regular meeting of the Board, and at such other times, as requested to do so by the Board, to present a full report of the fiscal condition of the Cooperative, and the status of the Account.
- iii. In the absence of the Treasurer, or in the event of the inability or refusal of the Treasurer to act, the Chairperson shall perform the duties of the Treasurer, and, when so acting, shall have all of the powers of and be subject to all of the restrictions upon the Treasurer.
- iv. The Treasurer will have check signing authority up to an amount approved by the Board. Dual signatures will be required above this amount. In this regard, the Board shall appoint check signers and co-signers.

E. Except as provided elsewhere in this Agreement, the Board shall fill any vacancies which may occur in the aforementioned offices for the remainder of each Fiscal Year. The Board may remove the Chairperson, Secretary or

Treasurer for failure or refusal to comply with this Agreement or the lawful directions of the Board, or for any action detrimental to the interests of the Cooperative, by a majority vote of the Board in favor of removal.

- F. The Cooperative may purchase a blanket fidelity bond in an amount to be established by the Board, to assure the fidelity of all officers and employees of the Cooperative, who shall have the authority to receive, or authorize by their signature or order, the payment, transfer or investment of Cooperative funds. Additional fidelity and similar coverages, including, but not limited to, errors and omissions coverage, may be procured by the Cooperative from time to time, if necessary.

**8. Account**

- A. The Cost of administering the Cooperative and paying for the Services through the Administrator shall be borne by all the Members. Payments into the Account shall be made as follows:

The Board, at least thirty (30) days prior to the start of each Fiscal Year, will approve the total anticipated costs and expenses of administering the Cooperative (the "Administration Services") and providing the Services through the Administrator (said costs and expenses being collectively the "Account Amount"). In this regard, the Account Amount for the 2019 Fiscal Year shall be as determined by the Board under the Amended Original Agreement. Each Member shall, thereafter, pay its share of the Account Amount, as follows:

- i. Administration Services. Members shall each pay an equal share of the cost of the Administration Services, based on the number of active Members. For example, if there are three (3) Members, each Member shall pay one-third (1/3rd) of the cost of the Administration Services.
- ii. Safety Consultant Services. Members shall be invoiced for their projected safety consultant services usage for each Fiscal Year.
- iii. Claims Adjusting Services. Claims adjusting charges shall be paid by the Members, based on the average number of Claims per year that each Member has had during the previous three (3) Fiscal Year periods under the Amended Original Agreement, the Amended Original Agreement in conjunction with this Agreement, or this Agreement, as the case may be based upon the time of the calculation (the "Average Claims Amount"), based on the following formula:

$\frac{\text{The Average Claims Amount for the Member}}{\text{The Total of the Average Claims Amount for Each Member}}$	X	Anticipated Costs and Expenses of Providing Claims Adjusting Services	=	The Individual Member's Payment
-------------------------------------------------------------------------------------------------------------------------	---	-----------------------------------------------------------------------	---	---------------------------------

- iv. As MRMA is only participating in regard to the claims adjuster portion of the Services relative to workers' compensation claims, only MRMA's workers' compensation claims shall be used relative to calculating the number of MRMA Claims under this Section 8.
  - v. The share of the Account Amount due from each Member, for each Fiscal Year, shall be paid to the Cooperative in four (4) equal payments, with twenty-five percent (25%) of the share of the Account Amount due from each Member for the Fiscal Year being due on or before the 15th day of January, April, July and October each Fiscal Year.
  - vi. Within ninety (90) days of the end of each Fiscal Year of this Agreement, or the termination of a Member's participation in this Agreement if the termination occurs prior to the end of a Fiscal Year period, there shall be a recalculation of each Member's share of the Account Amount, based on the actual amount spent for the Services and the Administration Services during said Fiscal Year, and the average number of Claims of each Member during the said Fiscal Year period and the two (2) Fiscal Years prior thereto, regardless of whether said Fiscal Year periods were under the Amended Original Agreement or this Agreement, or during such shorter period if a Member terminates said Member's participation in this Agreement prior to the end of a Fiscal Year period, with additional payments being made by the Members, or refunds issued to the Members, as the case may be, within thirty (30) days thereafter, so that each Member pays its actual share of the Account Amount for each Fiscal Year period, based on the formula set forth in this subsection. If a Member's participation in this Agreement terminates prior to the end of a Fiscal Year, the calculation under this subsection shall be based on the actual amount spent for the Services and Administration Services during said portion of the Fiscal Year that said terminated Member was a participant, and the average number of Claims of each Member during said portion of the Fiscal Year and the two (2) full Fiscal Years prior thereto, regardless of whether said Fiscal Year periods were under the Amended Original Agreement or this Agreement. This subsection shall remain applicable to a Member who terminates its participation in this Agreement, or to all Members if this Agreement is terminated in its entirety, until such time as the additional payments and/or refunds, as required by this subsection, have been made by the Member/Members.
  - vii. In the event that a Member terminates said Member's participation in this Agreement, the Members remaining as participants in this Agreement shall enter into an amendment to this Agreement, so as to amend the provisions of this Agreement to take into account the reduction in the number of Members participating in this Agreement, or shall terminate this Agreement.
- B. Supplementary Payments. If, during any Fiscal Year, the funds on hand in the Account are not sufficient to pay the Cooperative's costs and expenses, the Board shall require supplementary payments. The amounts of such payments

due from each Member for the Fiscal Year shall be computed utilizing the same method under which payments were made for the Account Amount for the Fiscal Year in question. Supplementary payments shall be in amounts sufficient, in the aggregate, to pay all the remaining estimated costs and expenses of the Cooperative for the year in question. Supplementary payments may be sought in more than one payment and calls for supplementary payments may be made more than once in a Fiscal Year.

## **9. Obligations of Members**

The obligations of each Member shall be as follows:

- A. To pay promptly all payments to the Account at such times and in such amounts as are established by the Board within the scope of this Agreement. The Board may assess a penalty against any amounts not paid promptly. Such penalty shall be to charge interest on all delinquent amounts at an annual rate from the date the payment was due. The rate will be determined by the Board, but in no event shall it exceed the maximum rate permitted by law.
- B. To select promptly a Representative and Alternate Representative to serve on the Board, and any successors to such Representative/Alternate Representative.
- C. To cooperate fully with the Board and the Administrator.
- D. In the event that the Cooperative shall be required to expend funds for administrative, legal or other costs brought about by the failure of a Member to pay sums owed the Cooperative, such amounts expended shall be added to the sums due the Cooperative and shall be payable by the Member which has failed to pay said sums no less than thirty (30) days after such services/costs are incurred by the Cooperative.

## **10. Liability of Board and Officers**

The Representatives/Alternate Representatives and the officers of the Cooperative Board shall use ordinary care and reasonable diligence in the exercise of their authority and in the performance of their duties. They shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action made, taken or omitted by the Administrator; nor for loss incurred through investment of Cooperative funds, or failure to invest. No Representative, Alternate Representative or officer shall be liable for any action taken or omitted by any other Representative, Alternate Representative or officer. No Representative or Alternate Representative shall be required to give a bond or other security to guarantee the faithful performance of his/her duties hereunder except as required by this Agreement or by law. The Account shall be used to defend and hold harmless any Representative, Alternate Representative or officer of the Cooperative for actions taken by the Board or performed by the Representative, Alternate Representative or officer within the scope of his/her authority; the Cooperative may purchase insurance providing similar coverage for Representatives, Alternate Representatives and/or officers.

## 11. Contractual Obligation

The obligations and responsibilities of the Members set forth in this Agreement, including the obligation to take no action inconsistent with this Agreement as originally written or validly amended, shall remain a continuing obligation and responsibility of each Member. This Agreement may be enforced in law or equity either by the Cooperative itself or by any Member. If the Cooperative is ever required to pursue enforcement of this Agreement against any Member and, to any extent, is successful in said enforcement action, then the Member or Members against whom enforcement has been sought shall be liable, jointly and severally, for all fees, costs and other expenses, including, but not limited to, attorneys' fees incurred by the Cooperative in said enforcement action. The consideration for the duties imposed upon the Members by this Agreement is based upon the mutual promises and agreements of the Members set forth herein and the advantages gained by the Members through participation in the Cooperative. Except to the extent of the limited financial contributions to the Cooperative each Member has agreed to make pursuant to this Agreement, no Member agrees by this Agreement to be responsible for any claims of any kind against any other Member. The Members intend in the creation of the Cooperative to establish an organization solely within the scope set forth in this Agreement and do not intend to create between the Members any relationship of partnership, surety, indemnification or liability for the debts of or Claims against another.

## 12. Indemnification

- A. To the extent permitted by law, Lombard shall indemnify and hold harmless Wheeling and MRMA, and their respective elected officials, officers, agents, volunteers and employees, with respect to any claim or loss, including, but not limited to, attorney's fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which may arise, either directly or indirectly, out of the acts or omissions of Lombard, or its elected officials, officers, agents, employees, volunteers, consultants or contractors, pursuant to, or in furtherance of, this Agreement.
- B. To the extent permitted by law, Wheeling shall indemnify and hold harmless Lombard and MRMA, and their respective elected officials, officers, agents, volunteers and employees, with respect to any claim or loss, including, but not limited to, attorney's fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which may arise, either directly or indirectly, out of the acts or omissions of Wheeling, or its elected officials, officers, agents, employees, volunteers, consultants or contractors, pursuant to, or in furtherance of, this Agreement.
- C. To the extent permitted by law, MRMA shall indemnify and hold harmless Lombard and Wheeling, and their respective elected officials, officers, agents, volunteers and employees, with respect to any claim or loss, including, but not limited to, attorney's fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which may arise, either directly or indirectly, out of the acts or omissions of MRMA, or its elected officials, officers, agents, employees, volunteers, consultants or contractors, pursuant to, or in furtherance of, this Agreement.

### 13. No Waiver of Tort Immunity Defenses

Nothing contained in Section 12. above, or in any other provision of this Agreement, is intended to constitute, nor shall constitute, a waiver of the rights, privileges or defenses available to any of the Members under statutory or common law, including, but not limited to, the Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.*) with respect to claims by third parties.

### 14. Miscellaneous

A. Notice. All notices, other than notices of meetings, required by this Agreement, shall be in writing, and shall be given by personal service or by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

- i. If to Lombard: Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148-3931
- ii. If to Wheeling: Village Manager  
Village of Wheeling  
2 Community Boulevard  
Wheeling, Illinois 60090
- iii. If to MRMA: Metro Risk Management Agency  
c/o Michael D. Nugent  
Nugent Consulting Group, LLC  
2409 Peachtree Lane  
Northbrook, Illinois 60062

or to such other address as any Member may, from time to time, designate in a written notice to the other Members. Service by registered or certified mail shall be deemed given on the third day following the mailing of said notice, and service by personal delivery shall be deemed given upon actual delivery.

- B. Section Headings. The section headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof.
- C. Validity and Savings Clause. In the event any provision of this Agreement shall be declared by a final judgment of a court of competent jurisdiction to be unlawful or unconstitutional or invalid as applied to any Member, the lawfulness, constitutionality or validity of the remainder of this Agreement shall not be deemed affected thereby.
- D. Counterparts. This Agreement, and any amendments thereto, may be executed in any number of counterparts which, taken together, shall constitute a single instrument.

- E. Governing Law. This Agreement shall be governed in accordance with the laws of the State of Illinois.
- F. Entire Agreement. This Agreement contains the entire understanding between the Members and supersedes any prior understanding or written or oral agreements between them regarding the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Members hereto relating to the subject matter of this Agreement which are not fully expressed herein.
- G. Effective Date. This Agreement shall be dated as of the date on which the last of the Members executes this Agreement, as set forth below, but shall be effective as of January 1, 2019, once executed by all of the Members.
- H. Continuation of Certain Terms of the Amended Original Agreement. This Agreement shall supersede the Amended Original Agreement as it relates to the Members. Notwithstanding the foregoing, for purposes of providing for the "true-up" of the Account amount of each Member and Mt. Prospect, for the 2018 Fiscal Year (January 1, 2018 to December 31, 2018), under Section 8.A.vi. of the Amended Original Agreement, said Section 8.A.vi., and Section 11, of the Amended Original Agreement shall remain in full force and effect until such time as all additional payments and/or refunds are made pursuant to said Section 8.A.vi., at which time said Sections 8.A.vi. and 11 of the Amended Original Agreement shall no longer be in full force and effect.

**THE REMAINDER OF THIS PAGE  
HAS INTENTIONALLY BEEN LEFT BLANK.**



**IN WITNESS WHEREOF**, the Members, pursuant to authority granted by the appropriate action of each respective corporate authority/governing board, have caused this Agreement to be executed by their respective authorized representatives.

**VILLAGE OF LOMBARD**

By: \_\_\_\_\_  
Keith Giagnorio  
Village President

**ATTEST:**

\_\_\_\_\_  
Sharon Kuderna  
Village Clerk

Dated: \_\_\_\_\_

**VILLAGE OF WHEELING**

By: \_\_\_\_\_  
Patrick Horcher  
Village President

**ATTEST:**

\_\_\_\_\_  
Elaine Simpson  
Village Clerk

Dated: \_\_\_\_\_

**METRO RISK MANAGEMENT AGENCY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF ILLINOIS            )  
                                          ) SS  
COUNTY OF DuPAGE         )

**ACKNOWLEDGMENT**

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Keith Giagnorio and Sharon Kuderna, personally known to me to be the Village President and Village Clerk of the Village of Lombard, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Village Clerk, respectively, appeared before me this day in person and severally acknowledged that, as such Village President and Village Clerk, they signed and delivered the signed instrument, pursuant to authority given by the Village of Lombard, as their free and voluntary act, and as the free and voluntary act and deed of said Village of Lombard, for the uses and purposes therein set forth, and that said Village Clerk, as custodian of the corporate seal of said Village of Lombard, caused said seal to be affixed to said instrument as said Village Clerk's own free and voluntary act and as the free and voluntary act of said Village of Lombard, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS                    )  
                                                  ) SS  
COUNTIES OF COOK AND LAKE    )

**ACKNOWLEDGMENT**

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Patrick Horcher and Elaine Simpson, personally known to me to be the Village President and Village Clerk of the Village of Wheeling, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Village Clerk, respectively, appeared before me this day in person and severally acknowledged that, as such Village President and Village Clerk, they signed and delivered the signed instrument, pursuant to authority given by the Village of Wheeling, as their free and voluntary act, and as the free and voluntary act and deed of said Village of Wheeling, for the uses and purposes therein set forth, and that said Village Clerk, as custodian of the corporate seal of said Village of Wheeling, caused said seal to be affixed to said instrument as said Village Clerk's own free and voluntary act and as the free and voluntary act of said Village of Wheeling, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

**ACKNOWLEDGMENT**

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that the above-named \_\_\_\_\_ and  
\_\_\_\_\_, personally known to me to be the \_\_\_\_\_ and  
\_\_\_\_\_ of the Metro Risk Management Agency ("MRMA"), and also  
known to me to be the same persons whose names are subscribed to the foregoing instrument  
as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared  
before me this day in person and severally acknowledged that, as such  
\_\_\_\_\_ and \_\_\_\_\_, they signed and delivered the signed  
instrument, pursuant to authority given by MRMA, as their free and voluntary act, and as the  
free and voluntary act and deed of said MRMA, for the uses and purposes therein set forth, and  
that said \_\_\_\_\_, as custodian of the corporate seal of said MRMA, caused said  
seal to be affixed to said instrument as said \_\_\_\_\_'s own free and voluntary act and  
as the free and voluntary act of said MRMA, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public