

**ORDINANCE NO. 03-2019**

**AN ORDINANCE REAFFIRMING AND RATIFYING THE COUNTY OF BERKS' PARTICIPATION IN THE PENNSYLVANIA COUNTIES RISK POOL AND THE EXECUTION OF THE INTERGOVERNMENTAL AGREEMENT PURSUANT TO THE PENNSYLVANIA INTERGOVERNMENTAL COOPERATION LAW, AS AMENDED.**

WHEREAS, the Intergovernmental Cooperation Law, Act No. 177 of December 19, 1996, P. L. 1158, as amended, 53 Pa. C. S. § 2301 *et. seq.* (the "Law"), authorizes local governments, including counties, to jointly cooperate and enter into joint agreements with other counties in the performance of their governmental functions, powers or responsibilities; and

WHEREAS, certain counties established the Pennsylvania Counties Risk Pool ("PCoRP") pursuant to the Law for the purpose of, *inter alia*: (a) providing a joint risk management pool to assist members in preventing and reducing losses and injuries to county property and to persons or property which might result in claims being made against members of PCoRP, or their employees and officers; (b) creating an entity in perpetuity which will administer a joint risk management pool and using funds contributed by members to defend and indemnify, in accordance with the Bylaws and Intergovernmental Agreement of PCoRP, any member of PCoRP against stated liability or loss, to the limit of the financial resources of PCoRP; and providing continuing stability and availability of needed coverages at reasonable costs, as is more fully set forth in the Bylaws and Intergovernmental Agreement; and

WHEREAS, the County of Berks (the “County”) is a member of PCoRP, as the Board of Commissioners previously determined that it was in the best interests of the County to enter into an intergovernmental cooperation agreement and become a member of PCoRP; and

WHEREAS, through this Ordinance, the Board of Commissioners has determined to reaffirm that determination and to ratify all action previously taken by the County with respect to its membership and participation in PCoRP.

NOW, THEREFORE, the Board of Commissioners does hereby enact and ordain as follows:

Section 1. The Board of Commissioners hereby reaffirms and ratifies its membership in PCoRP. The Bylaws and Intergovernmental Agreement of PCoRP, which is attached hereto as Exhibit “A,” is ratified, affirmed and approved substantially in the form attached hereto, the terms of which are incorporated herein by reference. The Board of Commissioners hereby authorizes and directs its officers to execute the Bylaws and Intergovernmental Agreement of the PCoRP. The Board of County Commissioners also ratifies the execution of any other agreement that was necessary for its participation in PCoRP, and is authorized to execute any other agreement necessary for its continued participation in PCoRP.

Section 2. This Ordinance and the Bylaws and Intergovernmental Agreement approved and adopted constitute a binding agreement and shall be sufficient warrant and authority for the officials and agents as appointed by the County to participate and represent the County’s interests in PCoRP.

Section 3. As a condition of participating in PCoRP, the County agreed to comply with all the terms and conditions in the Bylaws and Intergovernmental Agreement, and that agreement is reaffirmed and ratified.

Section 4. The duration of the Bylaws and Intergovernmental Agreement is indefinite, but is subject to the right of any member county to terminate its participation as set forth therein and subject to its provisions.

Section 5. The purpose and object of the Bylaws and Intergovernmental Agreement is as set forth therein.

Section 6. The organizational structure of PCoRP consists of a Board of Directors, all as is set forth in the Bylaws and Intergovernmental Agreement.

Section 7. The County reaffirms and ratifies its delegation to the Board of Directors of PCoRP the powers enumerated in the Bylaws and Intergovernmental Agreement.

Section 8. Any contributions required to be paid pursuant to the Bylaws and Intergovernmental Agreement shall be made with funds appropriated by the County for that purpose, and the County ratifies any such sums previously paid.

Section 9. On behalf of the County, PCoRP is empowered to enter into any contract necessary to effectuate its purposes, and any contract entered into by PCoRP to date is hereby ratified and affirmed.

Section 10. Any real or personal property to be owned, or owned, by PCoRP shall be acquired, managed, licensed or disposed of as determined by the Board of Directors of PCoRP.

Section 11. The Bylaws and Intergovernmental Agreement may be modified or amended, as set forth therein.

Section 12. This Ordinance is being enacted pursuant to the provisions of the Intergovernmental Cooperation Law, Act No. 177 of December 19, 1996, P. L. 1158, as amended, 53 Pa. C. S. § 2301, et seq.

Section 13. This Ordinance shall take effect immediately.

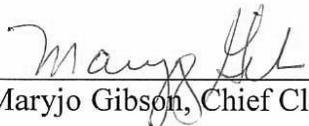
ENACTED AND ORDAINED this 7<sup>th</sup> day of November, 2019.

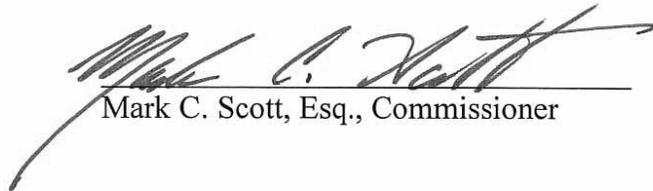
COUNTY OF BERKS

  
\_\_\_\_\_  
Christian Y. Leinbach, Chair

  
\_\_\_\_\_  
Kevin S. Barnhardt, Commissioner

Attest:

  
\_\_\_\_\_  
Maryjo Gibson, Chief Clerk

  
\_\_\_\_\_  
Mark C. Scott, Esq., Commissioner

# EXHIBIT A



## **BYLAWS AND INTERGOVERNMENTAL AGREEMENT**

**PO Box 60769  
Harrisburg, PA 17106-0769  
800-895-9039  
FAX 717-526-1020  
jsallade@pacounties.org  
www.pacounties.org**

As amended:

June 1994

November 2002

November 2011

## **ARTICLE I. DEFINITIONS**

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

**(1) AGGREGATE STOP LOSS INSURANCE**

Insurance purchased by providing certain coverage up to a contracted amount for otherwise uninsured losses to be borne by the Joint Risk Management Pool, which in any one year accumulate to a pre-set maximum amount of coverage.

**(2) BOARD OF DIRECTORS**

The governing body of the Pennsylvania Counties Risk Pool whose Members are selected in accordance with this Intergovernmental Agreement.

**(3) BOARD OF DELEGATES**

The body of voting representatives who are duly appointed by the Members of this Intergovernmental Agreement.

**(4) CATASTROPHE EXCESS INSURANCE**

Insurance purchased by PCoRP from an insurance company providing certain coverage for losses over a prudent amount up to a pre-set maximum amount of coverage.

**(5) COUNTY RELATED ENTITY**

An organization or entity created and funded by a county or counties, which has met the criteria established by the PCoRP Board to purchase coverage from PCoRP. County Related Entities which purchase coverage from PCoRP are considered to be Members of PCoRP for all matters related to these Bylaws and the PCoRP Coverage Document, except that County Related Entities do not have a vote at Board of Delegates' and Board of Directors' meetings.

**(6) COVERAGE DOCUMENT**

A detailed explanation of the financial and risk management protection provided by PCoRP to its Members. The PCoRP Coverage Document is provided to each PCoRP Member as part of the annual program renewal.

**(7) MANAGING DIRECTOR**

The Managing Director of CCAP, or his designee.

(8) FISCAL YEAR

PCoRP's Fiscal Year, as determined by the PCoRP Board of Directors, which shall coincide with the PCoRP policy year as defined in the PCoRP Coverage Document.

(9) JOINT RISK MANAGEMENT POOL

A fund of public monies established by PCoRP to self-insure certain risks jointly within a defined scope and to purchase catastrophe excess and/or aggregate stop loss insurance when deemed prudent. Also referred to as the Loss Fund.

(10) JOINT SELF INSURANCE

A program in which counties agree to contribute annual, and where required supplementary, payments to support a risk management program and a Joint Risk Management Pool.

(11) MEMBERS

The Counties and County Related Entities which enter into this Intergovernmental Agreement.

(12) PCoRP

The Pennsylvania Counties Risk Pool established pursuant to the Constitution and the statutes of this state by this Intergovernmental Agreement.

(13) CCAP

The County Commissioners Association of Pennsylvania.

(14) RISK MANAGEMENT

A program of identification of exposures to accidental loss, reduction or limitation of losses to municipal properties and from injuries to persons or property caused by the operations of counties, and prudent funding of these risks. Where claims arise, PCoRP will process such claims, investigate their validity, settle or defend against such claims within the financial limits of the Joint Risk Management Pool, tabulate such claims, costs and losses and carry out other assigned duties.

(15) SELF-INSURANCE

The decision by a county not to purchase insurance coverage for risks below certain limits; to seek all immunities provided by law for any local government and the officers and employees thereof; to rely upon its financial capabilities to pay any losses which occur for which it is liable; and to purchase some insurance to protect against catastrophic or aggregate losses.

(16) SUBPOOL

A group of Member counties, by population, geographic, or other consideration, within PCoRP which shall have a distinct and separate entity within PCoRP for all purposes except governance.

**ARTICLE II. CREATION OF PCoRP**

PCoRP, a separate and independent governmental and legal entity is hereby formed by Intergovernmental Agreement by Member counties, pursuant to the provisions of the Act of July 12, 1972, P.L. 762, No. 180.

Solely for the purpose complying with the self insurance requirements of the Pennsylvania Department of Transportation, and pursuant to 15 Pa. C.S.A. section 9501, PCoRP is considered a "business trust" with the express understanding that such designation will not have any effect upon the tax exempt status of PCoRP under federal and state law.

**ARTICLE III. PURPOSES**

(1) The purposes of PCoRP are to provide a Joint Risk Management Pool and to assist Members to prevent and reduce losses and injuries to county property and to persons or property which might result in claims being made against Members of PCoRP, or their employees or officers.

(2) It is the intent of the Members of PCoRP to create an entity in perpetuity which will administer a Joint Risk Management Pool and use funds contributed by the Members to defend and indemnify, in accordance with these Bylaws, any Member of PCoRP against stated liability or loss, to the limit of the financial resources of PCoRP. It is also the intent of the Members to have PCoRP provide continuing stability and availability of needed coverages at reasonable costs. All income and assets of PCoRP shall be at all times dedicated to the exclusive benefit of its Members. These Bylaws shall constitute the substance of the intergovernmental contract among the Members.

(3) The financial protection provided by PCoRP to its Members shall be outlined in the PCoRP Coverage Document, and in the certificates of reinsurance and other insurance policies as purchased by the PCoRP Board of Directors for the protection of the PCoRP Members.

#### **ARTICLE IV. NON-WAIVER OF GOVERNMENTAL OR OTHER IMMUNITY**

All funds contained within PCoRP are funds plus earned interest derived from its Members which are counties within the Commonwealth of Pennsylvania. It is the intent of the Members that, by entering into this agreement, they do not waive and are not waiving any immunity provided to the Members or their employees by any law.

#### **ARTICLE V. PCoRP POWERS AND DUTIES**

The powers of PCoRP to perform and accomplish the purposes set forth above shall, within the budgetary limits and procedures set forth in these Bylaws, be the following:

- (1) To employ agents, employees and independent contractors.
- (2) To purchase, sell, encumber and lease real property and to purchase, sell, or lease equipment, machinery, and personal property.
- (3) To invest funds as allowed by Pennsylvania statutes.
- (4) To carry out educational and other programs relating to risk management.
- (5) To create, collect funds for, and administer the Joint Risk Management Pool(s).
- (6) To purchase excess insurance and/or stop loss insurance to supplement the Joint Risk Management Pool(s).
- (7) To establish reasonable and necessary loss reduction and prevention procedures to be followed by the Members.
- (8) To provide risk management and claim adjustment or to contract for such services, including the defense and settlement of claims.
- (9) To carry out such other activities as are necessarily implied or required to carry out the purposes of PCoRP specified in Article III or the specific powers enumerated in this Article.
- (10) To sue and be sued.
- (11) To enter into contracts.

(12) To reimburse Directors for reasonable and approved expenses, including expenses incurred in attending Board meetings.

(13) To purchase fidelity bonds for all officers, Directors, and employees of PCoRP.

## **ARTICLE VI. PARTICIPATION**

The membership of PCoRP shall be limited to counties which are members of the County Commissioners Association of Pennsylvania and which properly enter into and adopt this Intergovernmental Agreement and Bylaws, and to County Related Entities as defined by these Bylaws, and according to underwriting guidelines established by the PCoRP Board of Directors.

Counties and County Related Entities applying for membership after December 31, 1987 shall be admitted only by a majority vote of the Board of Directors, or by other means established by the Board, subject to the payment of such sums and under conditions as the Members shall in each case or from time-to-time establish. Any Member admitted on or after January 1, 1986, unless non-renewed or cancelled pursuant to ARTICLE XV, shall remain a Member of PCoRP for a period of at least three (3) years.

A Member which breaches said initial three year commitment shall be subject to an administrative charge equal to 50% of the prior annualized payment to PCoRP. This charge is to recompense PCoRP for expenses related to the enrollment and provision of services to the new Member.

A Member which leaves PCoRP membership and subsequently seeks to return to membership, upon Board approval of the renewed membership, shall remain a Member of PCoRP for a period of at least three (3) years, and is subject to the same administrative charge should this three year period be breached by the Member.

## **ARTICLE VII. MEMBERS' POWERS; MEETINGS**

(1) Each Member shall appoint one (1) representative to the Board of Delegates. There shall be no limitation as to the appointment or selection of members of the Board of Delegates. Board of Delegate members may serve until replaced by their respective county. Notification of the identity of the selected Delegate must be sent to the Managing Director within thirty (30) days of the execution of this Intergovernmental Agreement. Similarly, the

identity of all succeeding Delegates must be communicated to the Managing Director within thirty (30) days of such declared vacancy or replacement.

- (2) The Board of Delegates at a meeting thereof shall have the power to:
  - (a) Adopt and adjust the types of losses covered, limits of liability on excess insurance policies, and the types of deductibles which PCoRP provides by a two-thirds (2/3) vote of the Delegates present at a meeting.
  - (b) Elect a Board of Directors by majority vote of the Delegates present at the Annual Meeting of the Delegates.
  - (c) Amend these Bylaws by a two-thirds (2/3) vote of the Delegates present at a meeting, but no amendment shall take effect sooner than thirty (30) days after adoption of the amendment.
  - (d) Remove an elected member of the Board of Directors by two-thirds (2/3) vote of the Delegates present at a meeting.
- (3) Meetings of the Board of Delegates shall be held as follows:
  - (a) Meetings shall be held at least annually at a time and place to be set by the Board, with notice mailed to each Member at least fifteen (15) days in advance.
  - (b) Special meetings may be called by the Directors or by petition of one-third (1/3) of the Delegates. Notice of special meetings shall be mailed to each Member at least fifteen (15) days in advance.
  - (c) The Chairman of the Board of Directors will preside at the meetings.
  - (d) Fifty percent (50%) of the Delegates shall constitute a quorum to do business.
  - (e) No absentee voting shall be allowed. Members may designate an alternate to represent the Member. Alternates shall have the same rights and duties as the Delegate they replace.
  - (f) Each Member shall be entitled to one vote on each issue, to be cast by the Delegate or the alternate.

(4) The Board of Delegates shall meet once a year unless additional meetings are requested by the Board of Directors. In addition to the election of six (6) members of the Board as set forth herein, the Board of Delegates shall vote on all substantive amendments to the Bylaws. The adoption of such amendments shall require a two-thirds (2/3) majority vote of the members of the Board of Delegates present. The Board of Delegates shall be provided with an annual report from the Board of Directors.

(5) Delegates representing a County Related Entity may attend all meetings of the Board of Delegates but shall not have a vote.

### **ARTICLE VIII. OBLIGATION OF MEMBERS**

The obligation of Members of PCoRP shall be as follows:

(1) To pay promptly all annual and supplementary contributions or other payments to PCoRP at such time and in such amounts as shall be established by the Board of Directors pursuant to these Bylaws. Any delinquent payments shall be paid with interest, with the interest charge established by the PCoRP Board of Directors. Payments will be considered delinquent forty-five (45) days following the due date.

(2) To appoint one (1) representative to the Board of Delegates. A Member's Delegate must be either an elected or appointed official of the participant county or County Related Entity or an employee of the participant County or County Related Entity with expertise in finance or risk management.

(3) To allow PCoRP and its agents, officers and employees reasonable access to all facilities of the Member and all Member records, including but not limited to financial records, as required for the administration of PCoRP.

(4) To allow attorneys designated by PCoRP to represent the Member in the investigation, settlement and litigation of any claim made against the Member within the scope of loss protection furnished by PCoRP.

(5) To cooperate fully with PCoRP's attorneys, claims adjusters and any other agent, employee, or officer of PCoRP in activities relating to the purposes and powers of PCoRP.

(6) To follow the loss reduction and prevention procedures established by PCoRP.

- (7) To report to PCoRP as promptly as possible all incidents or occurrences which could reasonably be expected to result in PCoRP being required to consider a claim against the county, its agents, officers, or employees, or for losses to county property within the scope of coverages undertaken by PCoRP.
- (8) To adopt a risk management statement approved by the Board.
- (9) To maintain an active safety committee or safety coordinator.
- (10) To report to PCoRP as soon as reasonably possible the addition of new programs and facilities or the significant reduction or expansion of existing programs and facilities or other acts which will cause material changes in the Members' exposures.
- (11) To provide PCoRP periodically, as requested, with information on the value of buildings and contents and other real and personal properties.
- (12) To participate in coverage of losses and to pay contributions as established and in the manner set forth by the Board.

#### **ARTICLE IX. BOARD OF DIRECTORS**

- (1) PCoRP shall be governed by the Board of Directors, which shall be comprised of thirteen (13) members:
  - (a) Seven (7) Directors shall be appointed by the President of the County Commissioners Association of Pennsylvania (CCAP).
  - (b) Six (6) Directors shall be elected by the Board of Delegates. The Directors elected by the Board of Delegates shall meet the following requirements:
    - (i) One Director shall be from a 2A or 3<sup>rd</sup> class county, or if neither of these class counties participate in PCoRP, the Director shall be a member at large;
    - (ii) One Director shall be from a 4<sup>th</sup> class or 5<sup>th</sup> class county, or if neither of these class counties participate in PCoRP, the Director shall be a member at large;
    - (iii) One Director shall be from a 6<sup>th</sup> class county, or if none

of this class counties participate, the Director shall be a member at large;

- (iv) One Director shall be from a 7<sup>th</sup> or 8<sup>th</sup> class county, or if none of these class counties participate, the Director shall be a member at large;
- (v) One Director shall represent each subpool, or if there are no participating subpools, the Director shall be a member at large; and
- (vi) One Director shall be a member at large.

(2) The Directors appointed by the President of CCAP shall constitute a Nominating Committee and shall nominate the candidates for election by the Board of Delegates.

- (a) The Nominating Committee shall advance one candidate satisfying each of the requirements set forth for elected Directors above. Notice of the persons nominated by the Nominating Committee shall be given contemporaneously with notice to the Board of Delegates of the meeting at which the Directors are to be elected.
- (b) Additional nominations for elected Directors may be made by any Delegate, provided that the nominations shall be made in accordance with the following procedures:
  - (i) Any Delegate who intends to nominate or cause to have nominated any candidate for election to the Board of Directors shall so notify the Secretary/Treasurer of PCoRP in writing not less than sixty (60) days prior to the date of any meeting of the Board of Delegates called for election of Directors. Such nomination shall have the written support of not less than four (4) Delegates. Notification shall contain the following information to the extent known by the notifying Delegate:

The name, address and county of residence of each nominee. The principal occupation of each proposed nominee.

- (ii) Any nomination for Director not made in accordance with this Bylaw shall be disregarded, and votes cast for each such nominee shall be disregarded.
  - (c) The Nominating Committee shall not nominate for the position of Director more than one person from each county unless it is statistically impossible for the Nominating Committee to avoid such a nomination.
- (3) Each Director shall serve a two-year term. Terms shall be staggered so that the term of Directors appointed by CCAP shall expire in one year, and the term of Directors elected by the Board of Delegates shall expire in the subsequent year.
- (4) Vacancies on the Board will be filled by vote of the remaining Directors, based upon nominations received from the Nominating Committee. Directors appointed by the remaining Directors shall serve for the remainder of the unexpired term. Directors filling a vacancy shall be from the same class of county as the withdrawing, retiring, removed, or deceased Director.
- (5) Directors must be from a Member county.
- (6) The Board of Directors shall annually select one non-voting representative to the PCoRP Board of Directors to represent the County Related Entity Members of PCoRP. The Board shall establish the manner of the selection of this representative.

## **ARTICLE X. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

The Board shall have the following powers and duties:

- (1) To elect during the first Board meeting following each annual meeting a chairman, vice-chairman, secretary/treasurer and other officers as appropriate. Each officer shall serve until his or her successor is elected, but there shall be no limit on the number of terms served by any person.
- (2) To establish criteria for new Members.
- (3) To establish contributions by the Members.

- (4) To recommend to the Members the types of losses to be covered, limits of liability on excess insurance policies, and the types of deductions which PCoRP provides.
- (5) To select all service providers necessary for the administration of PCoRP.
- (6) To set the dates and places, and to provide an agenda for Board and Members' meetings.
- (7) To fill vacancies on the Board by majority vote of the remaining Directors for the unexpired term.
- (8) To exercise all powers of PCoRP except powers reserved to the Members and Board of Delegates.
- (9) To prepare, adopt and report PCoRP's budget to the Members.
- (10) To hire and discharge personnel or to delegate such authority.
- (11) To make reports to the Members at their meetings.
- (12) To provide for claims and loss control procedures, to establish conditions which must be met prior to the payment or defense of a claim, and to deny a claim or the defense of a claim if the conditions are not met.
- (13) To provide for the investment and disbursement of funds.
- (14) To establish rules governing its own conduct and procedure and powers and duties of its officers, not inconsistent with these Bylaws.
- (15) The Board will provide to Members annually:
  - (a) An audit of the financial affairs of PCoRP to be made by a certified public accountant at the end of each fiscal year in accordance with generally accepted auditing principles and state law; and
  - (b) An annual report of operations.
- (16) To form committees and provide other services as needed by PCoRP. The Board shall determine the method of appointment and terms of committee members.

(17) To do all acts necessary and proper for the operation of PCoRP and implementation of these Bylaws subject to the limits of the Bylaws and not in conflict with these Bylaws.

(18) To dissolve PCoRP and disburse its assets by a two-thirds vote of the Board of Delegates provided that a notice of intent to dissolve PCoRP shall be given to the Members at least one-hundred-twenty (120) days prior to the effective date. No such plan to dissolve PCoRP shall be effective until approved by the Board of Delegates.

#### **ARTICLE XI. MEETINGS OF THE BOARD OF DIRECTORS**

(1) The Board may set a time and place for regular meetings which may be held without further notice, and shall establish procedures for notice of special meetings.

(2) A majority of Directors then in office shall constitute a quorum to do business. All acts of the Board shall require a majority vote of the Directors present.

(3) Board members may attend a meeting through conference call or speakerphone or other audio or audiovisual method which permits the members to hear each other. Members attending in this manner shall be recorded as present and entitled to vote on all matters brought before the Board.

(4) All PCoRP Members are permitted to attend meetings of the Board. The Board may establish procedures for the attendance and participation by Members to ensure adequate meeting logistics.

#### **ARTICLE XII. LIABILITY OF BOARD OF DIRECTORS OR OFFICERS**

The Directors and officers of PCoRP should use ordinary care and reasonable diligence in the exercise of their power, and in the performance of their duties hereunder; they shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care. No Director shall be liable for any action taken or omitted by another Director. PCoRP shall obtain a bond or other security to guarantee the faithful performance of each Director's, officer's and employee's duties hereunder. The Joint Risk Management Pool shall be used to defend and indemnify any Director, officer, or employee for actions

taken by each such person in good faith within the scope of his or her authority for PCoRP. PCoRP may purchase insurance providing similar coverage for such Directors, officers, and employees.

### **ARTICLE XIII. PCoRP COVERAGE DOCUMENT**

(1) Details of the financial and risk management protection provided by PCoRP to the Members shall be contained in the PCoRP Coverage Document. Copies of the Document shall be provided to each Member at least annually, in conjunction with the renewal mailing to the membership.

(2) The PCoRP Coverage Document shall include a Memorandum of Coverage which lists specific coverage limits, deductibles, retro dates and other coverage information pertaining to the individual Member.

(3) The details of the financial and risk management protection provided by PCoRP to the Members are those found solely in the PCoRP Coverage Document, any policies of insurance or reinsurance purchased by the Board for the Members, and in these Bylaws.

(4) Amendments to the PCoRP Coverage Document may be made at any time by a two thirds (2/3) vote of the PCoRP Board of Directors. Notice of the potential change shall be made to all PCoRP Members at least thirty (30) days prior to the vote on the proposed amendment. A copy of the newly amended PCoRP Coverage Document will be provided to each Member within thirty (30) days of each substantive amendment.

(5) Corrective amendments to the PCoRP Coverage Document, made to correct typographic errors, to comply with regulatory or legislative changes or as a result of a court order, may be made at any time by the PCoRP Board without prior notice to the Members. A copy of the newly amended PCoRP Coverage Document will be provided to each Member within thirty (30) days of each substantive amendment.

(6) Disputes about any matter relating to the financial and risk management protections provided by PCoRP and contained or alleged to be contained in the PCoRP Coverage Document shall be resolved in the following manner:

- (a) It is the intent of PCoRP to resolve all disputes in a professional and amicable manner. The initial step shall consist of a meeting or meetings between the Member and PCoRP representatives. At

least one such meeting must be held prior to the Member seeking a hearing before the PCoRP Board of Directors.

- (b) Upon a written request from a Member the matter under dispute shall be brought to the PCoRP Board of Directors for their action. The Board of Directors shall meet and take action upon the matter within thirty (30) days of the receipt of the written request. The meeting shall be in the form of an administrative hearing, with presentations made by PCoRP representatives and representatives of the Member. An official transcription of the hearing shall be made by an independent court reporter selected and paid for by PCoRP, and copies of the transcript shall be provided to PCoRP and the Member. If the Member is not satisfied with the ruling of the Board of Directors, the matter may be appealed to the PCoRP Board of Delegates within 30 days of the date of the Board of Directors' decision. The appeal must be made in writing to the PCoRP Chairman.
- (c) Decisions of the Board of Directors appealed to the PCoRP Board of Delegates shall result in a special meeting of the PCoRP Board of Delegates within forty-five (45) days of PCoRP's receipt of the written request for an appeal. The meeting shall be conducted by the PCoRP Chairman, with presentations made by PCoRP representatives and representatives of the Member. The length of the presentations by each side shall be limited to one hour and shall be a summary of the side's position. The official transcription of the prior hearings shall be made available to each Delegate. Delegates may ask questions of either side after their presentations are completed. Reasonable expenses for the Delegates to attend the meeting, which shall not last more than one business day, shall be shared equally between PCoRP and the Member requesting the special meeting. The decision of the majority of the Delegates present at the meeting shall be final.
- d) If the Member is not satisfied with the final decision of the Board of Delegates, the matter can only be pursued through binding arbitration. If the Member wishes to submit the decision to binding arbitration, it must notify PCoRP within 30 calendar days of the final decision of the Board of Delegates. The binding arbitration shall be exclusive, final, binding and conducted in accordance with the rules of the American Arbitration Association ("AAA") applicable to commercial arbitrations and shall be nonappealable except in accordance with such rules. Each party shall select an arbitrator and they shall select a third arbitrator,

or if they cannot agree, then the AAA shall make the selection. If any party does not select its arbitrator within 30 days after service of the notice of demand for arbitration, then the AAA shall select such arbitrator(s). The decision of a majority of the arbitrators shall be final and in writing setting forth their award, the reasons therefore and any dissenting opinion of the panel. All hearings in the arbitration shall be held in Harrisburg, Pennsylvania. The third arbitrator shall be neutral and unbiased and shall serve as chairman of the panel. Each party shall bear the fees and expenses of its counsel, witnesses and arbitrator, or of the arbitrator appointed for it by the AAA as set forth above, and the fees and expenses of the third arbitrator and the cost of the arbitration shall be borne as set forth in the award, or in the absence of an award or a specific determination by the arbitrators or agreement of the parties, shall be borne equally by the parties. At any time before the arbitrators have served upon the parties a written award, the parties may resolve the dispute by settlement, whereupon they shall direct the arbitration panel to cease its deliberations and render a final accounting of fees and expenses to be paid by the parties in accordance with the foregoing. Any decision of the arbitrators may be entered as a judgment in any court of competent jurisdiction and may be enforced as such in accordance with the provisions of the award. This agreement to arbitrate shall be specifically enforceable by the parties, and they confirm that they intend that all disputes, controversies or claims of any kind shall be arbitrated.

#### **ARTICLE XIV. WITHDRAWAL FROM MEMBERSHIP**

Any Member may withdraw from PCoRP after the Member's initial or subsequent three (3) year term effective at the end of a policy year by giving notice in writing, no later than one-hundred-twenty (120) days prior to the end of a policy year, to the Board of its desire to withdraw. Any Member may withdraw from PCoRP within thirty (30) days after the adoption of an amendment to these Bylaws by giving notice in writing to the Board of its intent to withdraw. The withdrawn Member shall not be entitled to any reimbursement of contributions that are to be paid or that shall become payable in the future, and shall continue to be obligated to make any payment for which such obligation arose prior to such withdrawal.

## **ARTICLE XV. NON-RENEWAL OR CANCELLATION OF MEMBERS**

(1) By a two-thirds (2/3) vote of the Board of Directors any Member may have their coverage cancelled mid term or be non-renewed. Such cancellation or non-renewal shall take effect no less than sixty (60) days after such meeting or upon renewal, subject to the Member's right to appeal, as set forth in subsection 2 below. The cancellation or non-renewal may be carried out for one or more of the following reasons, to the extent such reasons are consistent with current Pennsylvania statutes or regulations:

- (a) Failure to make any payments due to PCoRP.
- (b) Failure to undertake or continue loss reduction and prevention procedures adopted by PCoRP.
- (c) Failure to allow PCoRP reasonable access to all facilities and records of the Member necessary for proper administration of PCoRP.
- (d) Failure to fully cooperate with PCoRP's attorneys, claims adjusters or other agent, employee, or officer of PCoRP.
- (e) Failure to carry out any obligation of a Member which impairs the ability of PCoRP to carry out its purpose or powers.
- (f) Consistent incurred claims costs in excess of the Member's Loss Fund contributions in a majority of the years the Member has participated in PCoRP.
- (g) Any other reason permitted by Pennsylvania statute or regulation.

(2) Action by the Board of Directors to cancel or non-renew a Member's coverage must be preceded by a report from the PCoRP Managing Director outlining the status of the Member and the suggested reasons for cancellation or non-renewal. In addition the Managing Director or his designee shall meet with the Member to review the reason(s) for the potential cancellation or non-renewal prior to the matter being brought to the Board of Directors for action. After the Board of Directors acts to cancel or non-renew coverage for a Member, the Member shall be notified in writing or by email, and shall be advised of its right of appeal. To appeal the Member must request, within 30 calendar days of the date of the notice letter or email, a hearing before the Board of Delegates. If no request for a hearing is made by the deadline, the cancellation or non-renewal becomes

effective on the date set by the Board of Director's action, but no sooner than the end of the 30 day period for the Member to appeal. If the Member requests an appeal, a hearing shall be scheduled at a date mutually agreeable to the Member and PCoRP. The Chairman of the PCoRP Board of Directors shall preside at the hearing. The Board of Directors shall present the case for cancellation or non-renewal to the Delegates. The Member affected may present its case. The Board of Delegates shall make its decision at the end of the hearing. A majority vote of those Delegates present is required in support of a decision. A decision by the Board of Delegates shall be final and if the decision is to uphold the cancellation or non-renewal, shall take effect 15 calendars days after the decision to uphold the cancellation or nonrenewal is made by the Delegates. All the costs for the hearing, including travel reimbursement for the Delegates, meals and hotel location costs, shall be equally shared by PCoRP and the Member who has requested the hearing.

After cancellation or non-renewal, the former Member shall be liable for any unpaid contributions or other charges pro rata to the effective date of cancellation or non-renewal, and shall not be entitled to reimbursement of contributions that are to be paid or that shall become payable in the future.

#### **ARTICLE XVI. CONTRACTUAL OBLIGATION**

This document shall constitute an intergovernmental contract among those counties and County Related entities which become Members of PCoRP. The terms of this contract may be enforced in court by PCoRP itself or by any of its Members. The consideration for the duties herewith imposed upon Members to take certain actions and to refrain from certain other actions shall be based upon the mutual promises and agreements of the Members set forth herein. These Bylaws when properly approved by the proper authority of the Member shall be the intergovernmental contract. Provided, however, that except to the extent of the limited financial contributions to PCoRP agreed to herein or such additional obligations as may come about through amendments to these Bylaws, no Member agrees or contracts herein to be held responsible for any claims in tort or contract made against any other Member. The contracting parties intend in the creation of PCoRP to establish an organization for joint risk management only within the scope herein set out, and have not herein created as between Member and Member any relationship of surety, indemnification or responsibility for the debts of or claims against any other Member.

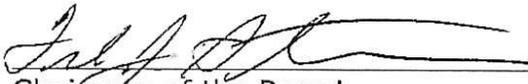
## **ARTICLE XVII. CONTRIBUTIONS**

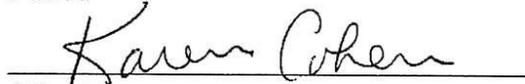
It is the intention of PCoRP to levy Member contributions as established by the Board. The Board may increase contributions charged to any Member to reflect increased risk resulting from a refusal to participate in or willful violation of safety or loss prevention programs or for other reasons established by the Board. Conversely, the Board may reduce contributions or allow a performance bonus or dividend for any Member that faithfully participates in loss prevention and safety programs or for other reasons established by the Board.

## **ARTICLE XVIII. SEVERABILITY**

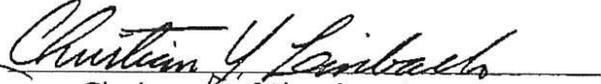
In the event that any article, provision, clause or other part of these Bylaws be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability with respect to other articles, provisions, clauses, applications or occurrences, and these Bylaws are expressly declared to be severable.

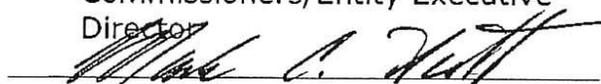
THESE BYLAWS AND INTERGOVERNMENTAL AGREEMENT entered into on this 1<sup>st</sup> day of, July, 2013, between PCoRP and Berks County.

  
Chairman of the Board,  
PCoRP

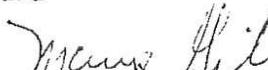
  
Attest

\_\_\_\_\_  
Attest

  
Chairman of the County  
Commissioners/Entity Executive  
Director

  
Commissioner/Chairman of Entity  
Board

  
Commissioner/Vice Chairman of  
Entity Board

Attest:   
Chief Clerk

**END OF BYLAWS AND INTERGOVERNMENTAL AGREEMENT**