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RESOLUTION NO. 20-19

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION AMENDING THE EL PASO COUNTY SELF INSURANCE FUND –
RISK MANAGEMENT AND WORKERS' COMPENSATION COST CENTERS**

WHEREAS, pursuant to C.R.S. §§ 30-11-103 and 30-11-107(e), the Board of County Commissioners of El Paso County, Colorado ("Board" or "County"), has the legislative authority to manage the business and concerns of the County to ensure the welfare and interests of the County and its inhabitants; and

WHEREAS, pursuant to C.R.S. § 24-10-115 and Resolution No. 77-282, Budget-13, the County established a self-insurance fund to protect El Paso County and its employees from claims brought forth pursuant to the Colorado Governmental Immunity Act or claims arising under federal law; and

WHEREAS, the Board has implemented policies and procedures for the effective management of the County's Risk Management and Workers' Compensation Cost Centers, including but not limited to, the County's ability to pay meritorious claims or judgments, to defend against any and all claims deemed not meritorious, and to authorize settlements or authorize payment of claims or judgments rendered against the County; and

WHEREAS, the Human Resources and Risk Management Department has identified sections of the County's Risk Management policies and procedures that need to be revised and updated to provide for effective and efficient management of the Risk Management and Workers' Compensation Cost Centers.

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves and adopts the revised policies and procedures, attached hereto as Exhibit 1, and hereby identified as Policy Concerning the El Paso County Self Insurance Fund – Risk Management and Workers' Compensation Cost Centers, which hereby supersedes the previous policy approved by the Board.

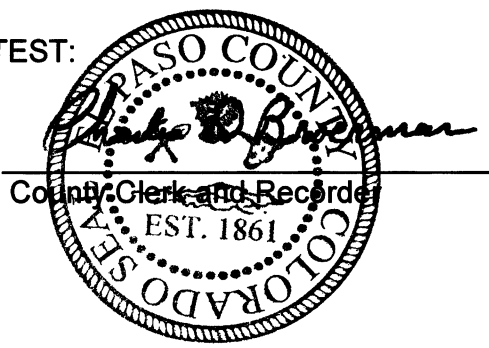
BE IT FURTHER RESOLVED, that the Chair, duly elected and qualified member of the Board of County Commissioners, or the Vice Chair, duly elected and qualified member, be and is hereby appointed and authorized to execute any necessary documents on behalf of the Board in order to complete implementation of the policy described herein.

DONE THIS 14th day of January, 2020 at Colorado Springs, Colorado.


ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By:



By:


Chair

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El Paso County, CO



I. POLICY CONCERNING THE EL PASO COUNTY SELF INSURANCE FUND - RISK MANAGEMENT AND WORKERS COMPENSATION COST CENTERS

The Board of County Commissioners has established the Self Insurance Fund containing several cost centers for the County to pay Employee Benefits, Workers Compensation, and Risk related claims in a timely fashion. This policy is specifically related to the Risk Management and Workers Compensation cost centers of the Self Insurance Fund and enables the County to pay necessary meritorious claims or judgements in a timely fashion, and to defend itself against any and all claims which, in their professional judgement, are not meritorious and authorize the settlement and payment of claims and payments of judgements rendered against the County.

II. SCOPE

The Risk Management Cost Center of the Self Insurance Fund will be used for all general liability and property insurance coverage. It will also cover legal and administrative costs related to Risk Management. The Workers Compensation Cost Center will be used for personal injuries or death sustained by any employee while they are conducting County business plus legal and administrative costs related to Workers Compensation.

III. RESPONSIBILITIES

A. Self Insurance Fund

1. At the end of any fiscal year, all unexpended and unencumbered money in the Self Insurance budget shall remain in, and become a part of, the Self Insurance Fund balance.
2. The Board shall continue to maintain the Self Insurance Fund ensuring that adequate funds are appropriated annually to protect the County to the greatest extent possible. Amounts for the annual budget for the Risk Management and Workers Compensation Cost Centers shall be recommended by the Executive Director Human Resources and Risk Management Department to the Budget Officer after examination of the annual actuarial report.
3. Expenditures from the Risk Management Cost Center will only be made for expenses regarding general liability claims, public official claims, and automobile liability claims resulting in judgments against the County, its employees or officials pursuant to the Colorado Government Immunity Act ("CGIA") C.R.S. § 24-10-101, *et. seq.*, Colorado Peace Officer Act ("CPOA") C.R.S. § 29-5-101, or other federal claims and claims which the County is legally obligated to pay pursuant to a compromise, settlement or final monetary judgment entered against the County as authorized by the El Paso County Board of County Commissioners.

4. Expenditures for property damage claims and automobile liability claims shall only be made when the impacted County department completes a Standard County Incident Report and requests a specific dollar amount of reimbursement from the Risk Management Cost Center of the Self Insurance Fund. Each claim shall be subject to the applicable deductible amount as set by the County Administrator. The expenditures for property damage and automobile liability claims must be approved by the Executive Director Human Resources and Risk Management and the County Budget Officer.
5. Expenditures shall be made for the costs of defense, including expert witness fees, outside counsel legal fees and investigation, and other related defense costs in connection with claims brought pursuant to the directives contained within this policy and any applicable law. Expenditures shall be made in conjunction with the County Attorney, the Executive Director Human Resources and Risk Management, and the County Budget Officer for the costs of defense, including expert witness fees, outside counsel legal fees, investigation, and other related defense costs in connection with claims brought pursuant to the directives contained within this Resolution and any applicable law.

The County Attorney, or their designee, the Executive Director Human Resources and Risk Management, and the County Budget Officer, or their designee(s), shall coordinate with each other recording the costs of defense.

6. The Executive Director Human Resources and Risk Management and the County Budget Officer must sign off on all payments made by the Risk Management Cost Center of the Self Insurance Fund following the appropriate level of approval by the Executive Director Human Resources and Risk Management, the County Attorney, the Claims Review Board or the Board of County Commissioners as discussed in the subsequent paragraphs.
7. The following are authorized to make compromises and settlements on behalf of the County for meritorious claims:
 - a. The Executive Director Human Resources and Risk Management or their designee is authorized to settle claims arising under federal law or the applicable provisions of the CGIA or CPOA, as well as pursuant to the provisions of the Colorado Auto Accident Reparations Act ("CAARA"), C.R.S. § 10-4-7, in an amount not to exceed ten thousand dollars (\$10,000.00). Executive Director Human Resources and Risk Management or their designee may consult with the County Attorney, or their designee, prior to settling any such claim.
 - b. The County Attorney, or their designee, is authorized to settle claims arising under federal law or applicable provisions of the CGIA or CPOA in an amount not to exceed ten thousand dollars (\$10,000.00), as well as pursuant to the provisions of the CAARA.

The County Attorney should keep the Executive Director Human Resources and Risk Management apprised of such settlements.

- c. There is hereby created a Claims Review Board which shall consist of the Chair of the Board of County Commissioners, the County Administrator, the County Attorney, the County Budget Officer, and the affected Department Director, or their designated representatives, or the affected Elected Official, or their designated representatives. The Claims Review Board may meet or communicate electronically only when required to settle a claim as provided herein.

1) The Executive Director - Human Resources and Risk Management or their designee shall act as the secretary to the Claims Review Board and shall provide all applicable reports, documentation and assessment necessary to properly assess claims brought before it.

2) The Claims Review Board is authorized to settle claims for an amount not to exceed twenty-five thousand dollars (\$25,000.00). A majority vote can authorize settlement.

Any claims to be settled in excess of \$25,000 shall be brought to the Board of County Commissioners for a public vote.

3) If the Claims Review Board is unable to meet within a reasonable time, not to exceed 48 hours, the Chair or Vice Chair of the Board of County Commissioners may authorize settlement.

- d. A decision to eliminate a employment position within the County or to offer an employee a severance package it not considered a Claim.

- e. The Board of County Commissioners is authorized to settle claims which lie or could lie in tort regardless of the nature of the action which is brought by the claimant, and for such other amounts the Board of County Commissioners deems appropriate with respect to claims arising under state or federal law. The Board of County Commissioners will comply with any existing Excess Carrier liability policy.

- f. No claim shall be settled unless supported by a claims settlement report, which shall give a concise statement of the nature of the claim, the history of the proceedings, and a recommendation from the person assigned to investigate the claim on behalf of the County. All settled claims shall contain a release of liability signed by the County and the perceived injured party. The County Attorney, or their designee, will review and approve all releases.

8. Money from the fund shall not be used to pay claims in excess of

\$1,000.00 for liabilities or losses which are covered under commercial insurance policies purchased by the County for claims not compensable under federal law or which lie, or could lie in tort regardless of whether that may be the type of action chosen by the claimant, except for money designated in Item 9 below.

9. Within the Risk Management Cost Center, an expenditure line will exist to pay for County property losses to include capital and capital equipment losses. Such compensation to County departments or agencies, shall be subject to a deductible as outlined in the claims procedures from the Human Resources and Risk Management Department. This includes damage to County owned vehicles and motor equipment. The Risk Management Cost Center will pay for the value of the County damaged vehicle, minus the appropriate deductible and not full replacement costs. Any vehicle or equipment deemed a total loss will be sold and the proceeds from that sale will be deposited in the General Fund.

Any funds collected by any County Office or Department from county employees for damaged to county property or fines collected from county employees for damages to county property shall be deposited by the County Office or Department in the General Fund.

10. The Risk Management Cost Center will have a third party prepare an annual actuarial report for the Board of County Commissioners to review.
11. The County shall comply with the Excess Carrier's notice of claim requirements described in the Excess Carrier contracts. The Human Resources and Risk Management Department, in consultation with the County Attorney's Office, shall be responsible for timely notification to the Excess Carrier. The Human Resources and Risk Management Department shall be responsible to notify and inform all County Offices or County Departments of the nature of the claims that require Excess Carrier notification.

All County Offices and County Departments will be notified in writing of the types of claims that require notification to the Excess Carrier.

All County Offices and County Departments shall notify the Human Resources and Risk Management Department in writing within 24 hours after an event has occurred that mandates notification to the Excess Carrier.

12. The Self Insurance Fund balance shall not be construed to be created as an insurance company nor shall the fund be subject to the provisions of the laws of the State of Colorado regarding insurance or insurance companies.

B. Worker's Compensation Cost Center of the Self Insurance Fund

1. At the end of any fiscal year, all unexpended and unencumbered money in the Worker's Compensation Cost Center shall remain in, and become a part of, the Self Insurance fund balance.

2. The Board shall continue to maintain the Worker's Compensation Cost Center with adequate funds to protect the County to the greatest extent possible by appropriation of adequate funds. Amounts for the annual budget shall be recommended by the Executive Director Human Resources and Risk Management and the County Budget Officer after examination of the annual actuarial report.
3. Expenditures from this cost center will only be used to meet the County's statutory Worker's Compensation obligations to its employees and the Department of Labor and Employment under rules governing the issuance of Self-insurance permits, Code of Colorado Regulations 1101-4. (The terms and conditions of the employer's coverage and benefits are specifically described in the Colorado Revised Statutes, Title 8, Articles 40 to 54).
4. Expenditures shall be made for costs of defense, including expert witness fees, outside counsel legal fees and investigation and other related costs in connection with claims brought pursuant to the directives contained within this policy and applicable law.
5. The Self Insurance fund balance shall not be construed to be created as an insurance company nor shall the fund be subject to the provisions of the laws of the State of Colorado regarding insurance or insurance companies.

C. Risk Management Cost Center of the Self Insurance Fund

1. The Human Resources and Risk Management Department staff will continue to explore the availability of commercial liability insurance policies of all types with the goal of reducing wherever possible, the costs of protecting the County from liability.
2. The Human Resources and Risk Management Department staff will examine existing policies regarding protection of El Paso County and, where appropriate, recommend necessary changes as they occur.
3. It will be the responsibility of the Human Resources and Risk Management Department to perform risk management functions for El Paso County and to investigate and process claims brought against the County, its Officials and employees pursuant to the CGIA and CPOA or arising under federal law, pursuant to the directives contained within this policy and directives which may be issued by the Board of County Commissioners.
4. The Human Resources and Risk Management Department will oversee individuals and businesses that are contracted with the County to provide the County with claims investigation, claims adjustment and associated support services.
5. The Human Resources and Risk Management Department will coordinate and administer a comprehensive risk management program. The program shall include, but not be limited to, the responsibility for

creating and implementing programs that reduce injury, liability and property losses while coordinating such programs with supervisors, managers, directors, elected officials and the Board of County Commissioners. Coordinate claims with County Attorney's office.

6. Any person assigned the responsibility of investigating claims brought against the County, its Officials or employees shall have authority to seek the advice and cooperation of all county departments with respect to establishment of facts, determination of liability and assistance in utilization of the professional expertise of various employees within the County in connection with the claims. Such advice and assistance shall be provided on a timely basis.
7. No claim shall be settled unless the claimant has executed and presented a full release or discharge of liability to the County and its officers and employees arising out of the facts under the claim unless otherwise authorized by the Board of County Commissioners.
8. The Human Resources and Risk Management Department will perform other duties and functions as may be assigned or thought necessary by the Board of County Commissioners.
9. The Office of the County Attorney shall have the responsibility to represent the County, its officers and employees as applicable, in connection with all litigation arising under claims brought pursuant to this policy and applicable law.

County employees, County Offices, County Departments and Elected County Officials are prohibited from independently retaining, hiring or paying for legal services for any County matter with any County funds. Only the Board of County Commissioners can authorize the expenditure of County funds for outside counsel.

10. The County Attorney in conjunction with the Executive Director Human Resources and Risk Management and the County Budget Officer shall have the power to authorize requests for disbursement from the Risk Management Cost Center of the Self Insurance Fund in connection with litigation expenses, including, but not limited to, defense costs, expert witness fee, associated trial expenses and preparation of such demonstrative evidence which is necessary to properly and reasonably defend the County, its Officers and employees in connection with said litigation.
11. The County Attorney shall have the authority to recommend contracting for outside counsel in connection with litigation arising out of claims brought pursuant to this policy and applicable law. The County Attorney shall have the power to authorize requests to the Human Resources and Risk Management Department for disbursement from the Risk Management Cost Center or other appropriate fund for the payment of outside counsel. Such contract shall receive the prior approval of the Board of County Commissioners. The County Attorney, or their designee, shall coordinate said costs with the Executive Director Human

IV. PROCEDURES

The County Budget Officer may promulgate reasonable rules and regulations as necessary for administration of the Risk Management and Workers Compensation cost centers of the Self Insurance Fund.

1. The Human Resources and Risk Management Department will establish written claims procedures and specific authority levels for individuals settling claims. Liability claims will be carefully coordinated with the County Attorney.
2. Upon request by the Board of County Commissioners, the Human Resources and Risk Management Department will provide summary information on losses for any claim which exceeds \$10,000.00.
3. All claims, "in-house" and third party, will be separated into standard insurance coverage type, ie. property, auto, general liability, public official liability, etc. and will also be kept separate.
4. All property and liability claims will be adjusted by standard insurance company policies which have exclusions which are customary and acceptable for business use. Only losses arising out of "accidents" should be paid from the risk management funds.
5. The Human Resources and Risk Management Department will manage all litigation for the County whether a lawsuit is handled by the County Attorney or outside counsel. Claims adjuster and legal counsel will coordinate to help mitigate costs from losses. The Human Resources and Risk Management Department will control the claims and all expenses associated with them.
6. The Executive Director of Human Resources and Risk Management will work closely with the County Budget Officer on all financial issues that will or could affect the County in order to avoid any misconceptions or problems. Finance and Budget should be involved in all decisions regarding self-insured retentions, limits purchased, as well as where no coverage is purchased at all. A copy of all actuarial studies will be forwarded to the County Budget Officer.