

# BY-LAWS AND INTERLOCAL COOPERATION AGREEMENT FOR THE KANSAS MUNICIPAL INSURANCE TRUST

*Amended – effective October 7, 2012\**

In consideration of the mutual covenants contained herein, this interlocal cooperation Agreement is made and entered into by and among Kansas municipalities which execute this Agreement and become members of the Kansas Municipal Insurance Trust (“KMIT” or “the Trust”), each of which hereby agrees to abide by the terms and conditions of this Agreement and all actions taken pursuant to this Agreement.

## **ARTICLE 1. Authority.**

1.1 The Kansas Municipal Group-Funded Pool Act, K.S.A. 12-2616, et seq., as amended and the Interlocal Cooperation Act, K.S.A. 12-2901, et seq., as amended, authorize this Agreement and the powers commonly held and to be jointly exercised by Kansas municipalities which become members of the Kansas Municipal Insurance Trust.

## **ARTICLE 2. Definitions.**

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

- 2.1 Act. The Kansas Municipal Group-Funded Pool Act, K.S.A. 12-2616, et seq., as amended from time to time.
- 2.2 Administrator. An individual designated by the KMIT Board of Trustees.
- 2.3 Agreement. The Bylaws and Interlocal Cooperation Agreement for the Kansas Municipal Insurance Trust.
- 2.4 Board of Trustees or Board. The Board of Trustees of the Trust.
- 2.5 Bylaws. The Bylaws and Interlocal Cooperation Agreement for the Kansas Municipal Insurance Trust.
- 2.6 Contributions. Amounts paid by members to receive the benefits of the Trust.
- 2.7 Member. A Kansas municipality which adopts this Agreement and becomes a member of the Trust.
- 2.8 Municipality. Any Kansas city and the League of Kansas Municipalities.

- 2.9 Pool. The Kansas Municipal Insurance Trust.
- 2.10 Representative. The person designated pursuant to Section 11.1b to be a member's official representative for the purposes of the Trust.
- 2.11 Trust. The Kansas Municipal Insurance Trust.
- 2.12 Trustee. A person serving on the Board.

### **ARTICLE 3. Purposes.**

- 3.1 The purposes of this Agreement are to:
- a. Form a group-funded Pool, known as the Kansas Municipal Insurance Trust, as permitted by the Act, to fund through joint self-insurance, excess insurance, reinsurance, or other lawful manner, obligations imposed upon employers under the workers' compensation Act as described in articles 5 and 5a of Chapter 44 of the Kansas Statutes Annotated, as from time to time amended, and to take any action authorized by law or as determined by the Board, with the powers set forth in this Agreement; and
  - b. Provide, through the Trust, certain claims and risk management services related to the workers' compensation liabilities so pooled, and assist members in reducing and preventing such workers' compensation liabilities.

### **ARTICLE 4. Creation of Trust.**

- 4.1 There is hereby created the Kansas Municipal Insurance Trust as a separate legal public entity, constituting an interlocal governmental agency as provided by law. The Trust shall continue in effect until dissolved in accordance with this Agreement.
- 4.2 The Trust is formed, financed, organized, and shall operate in accordance with the provisions of this Agreement. This Agreement constitutes the bylaws of the Trust.
- 4.3 The Trust may sue and be sued.
- 4.4 In accordance with the provisions of the Interlocal Cooperation Act, this Agreement shall be submitted to the Attorney General to determine whether it is in proper form and compatible with the laws of Kansas, and to such other state officers encompassed by this Agreement, as may be required by the Interlocal Cooperation Act or other laws of this state, and to the Commissioner of Insurance as part of the application and certification process to establish a group-

funded Pool under the Act. Any municipality which enters into this Agreement shall file a copy of the Agreement with its Register of Deeds and with the Secretary of State, in accordance with the provisions of K.S.A. 12-2905, and amendments thereto.

- 4.5 This Agreement shall take effect and may be amended and shall continue in effect until the Trust is dissolved, all as provided herein.
- 4.6 This Agreement does not establish an insurance company, nor shall the benefits or obligations of this public agency constitute a policy of insurance coverage.

#### **ARTICLE 5. Members.**

- 5.1 Membership in the Trust is limited to those municipalities which:(1) are members in good standing of the League of Kansas Municipalities; (2) meet the requirements established by the Board of Trustees; and (3) which properly adopt this Agreement.
- 5.2 Municipalities, including former members, may be admitted to the Trust after its formation only upon approval of the Board and subject to the conditions set out in this Agreement and such additional conditions as the Board may from time to time require.

#### **ARTICLE 6. Board of Trustees.**

- 6.1 The Board shall be composed of eleven persons elected by the members, each of whom shall be a representative of a different member.
- 6.2 The Administrator shall have the right to attend and participate fully in discussions during all meetings of the Board of Trustees in an ex-officio, non-voting capacity, and shall not be considered a Trustee.
- 6.3 Election of Trustees shall take place at the annual meeting of the members. Trustees shall assume office at the first Board meeting following their election.
- 6.4 Terms of the Trustees shall be two-year overlapping terms or until their successors are elected except that, of the Trustees first elected pursuant to Section 6.1, six will be elected to serve until the first Board meeting following the annual meeting of the members held during 1995; and five will be elected to serve until the first Board meeting following the annual meeting of the members held during 1996. No person shall serve as a Trustee more than three consecutive terms. However, this term limitation shall not include the initial term of office (January 1994 through October 1994).

- 6.5 A vacancy shall occur on the Board when a Trustee:
- a. Submits a written resignation to the Board.
  - b. Dies.
  - c. Ceases to be a Member Representative.
  - d. Fails to attend three consecutive regular meetings of the Board without the Board having entered upon its minutes an approval for an additional absence or absences, except that such additional absence or absences shall be excused for temporary mental or physical disability or illness.
  - e. Is removed by the members pursuant to Article 10.
  - f. Is convicted of a felony.
  - g. The Board shall have the power to suspend any trustee who fails to resign for cause as stipulated in Article 6.5 (c), (d) and (f) until such time as removal is approved by KMIT members pursuant to Article 10.
- 6.6 Any vacancy in the position of Trustee will be filled by majority vote of the remaining Trustees until the next annual meeting of the members, at which time the members shall elect a person to fill the vacancy for the unexpired term.
- 6.7 No Trustee may be an owner, officer, or employee of any service agent or representative, as provided in K.S.A. 12-2627, and amendments thereto. Each Trustee must be a resident of Kansas.

#### **ARTICLE 7. Officers, meetings, procedures.**

- 7.1 The officers of the Board shall be: president, vice-president, and treasurer. The Board shall establish the powers and duties of each officer, consistent with this Agreement. The vice-president may exercise the powers of the president in the absence of the president. Officers shall be elected by and from the Trustees, at the first Board meeting following each annual meeting of the members.
- 7.2 The Administrator shall designate a person to serve as Secretary of the Board.
- 7.3 The Board shall fix the date, time and place of regular meetings, which may be held without further notice. Special meetings may be called by the president, or by any six members of the Board, by written notice mailed at least ten days in advance to all Trustees or by unanimously executed waiver of notice.
- 7.4 Six Trustees shall constitute a quorum to do business. All acts of the Board shall

require a quorum and a majority vote of the Trustees present, except where a different vote is required by this Agreement.

- 7.5 The Board shall adopt such procedures as it deems necessary or desirable for the conduct of its business.
- 7.6 Any action of the Board may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all Trustees. Such consent shall have the same effect as a unanimous vote. The consent may be executed in counterparts.

#### **ARTICLE 8. Powers and duties of the Trust and the Board.**

- 8.1 The Trust shall have all powers necessary or desirable to achieve the purposes of the Trust. The Board may exercise all powers of the Trust except those powers reserved to the members, and all powers necessary and proper for the operation of the Trust and implementation of this Agreement, subject to the limits of this Agreement and the Act. The Board is responsible for all operations of the Trust.
- 8.2 Subject to the limits of the Act, the powers of the Board shall include, but not be limited to, the power to:
- a. Delegate, by resolution adopted at a meeting of the Trustees and specifically defined in the written minutes of the Trustees' meetings, authority for specific functions to the Administrator, but only to the extent permitted by the Act.
  - b. Establish member contributions, pursuant to guidelines adopted by the Board from time to time.
  - c. Serve as the policy-holder of any group policies or plans.
  - d. Determine the methods of claim administration and payment; provide for claim experience for the members collectively or separately; and establish claim procedures and conditions to be met prior to the payment or defense of a claim.
  - e. Jointly self-insure or obtain excess insurance (specific or aggregate) or reinsurance, or any combination thereof, or otherwise provide for the funding of coverage provided by or through the Trust, as the Board deems appropriate.
  - f. Designate and establish the duties of the Administrator.
  - g. Provide for the administration of the moneys of the Trust, for the manner of

payments to the Trust, and for payment of all expenses of the Trust; establish standards for the accountability of all receipts and disbursements of the Trust; and establish procedures for safekeeping, handling and investing such moneys received or paid.

- h. Acquire, lease, hold, and dispose of real and personal property.
- i. Exercise the full power and authority of any member of the Trust when requested to do so by the member's governing body.
- j. Provide for necessary activities to accomplish the purposes of this Agreement and of the Trust.
- k. Do any act permitted by law and not in conflict with this Agreement.
- l. Provide for an independent audit of claim handling procedures, payments, or overall operations of the Trust, at such times as the Board may determine.
- m. Establish loss reduction, prevention and risk management policies, procedures, and requirements for members of the Trust.
- n. Adopt and adjust the coverage provided through the Trust in concurrence with any affected excess insurers or reinsurers.
- o. Enter into contracts as necessary or appropriate for the operation of the Trust.
- p. Appoint committees from time to time, as the Board considers appropriate.
- q. Approve attorneys or firms of attorneys to represent members in claims covered by or through the Trust.
- r. Obtain the services of agents, attorneys, brokers, consultants, employees and service providers as necessary or appropriate for the operation of the Trust.
- s. Provide risk management services and educational and other programs related to risk management.
- t. Establish from time to time the address where the books and records of the Trust will be maintained.

8.3 Subject to the limits of the Act, the Board shall:

- a. Perform all duties required by the Act.
- b. Obtain and provide to members annually an audit of the finances of the Trust

performed by an independent certified public accountant.

- c. Provide for at least quarterly financial statements to account for income, expenses, assets and liabilities of the Trust.
- d. Provide at least annually for an actuarial review of the Trust.
- e. Adopt a budget annually and report the budget to the members.
- f. Require that fidelity bonds be in effect for the Administrator, claims service provider and its employees, and every other person having access to moneys of the Trust.
- g.

8.4 The Trustees shall not extend credit to individual members for any purpose.

#### **ARTICLE 9. Financing.**

- 9.1 All moneys contributed to the Trust, and earnings thereon, shall be held in the name of and for the benefit of the Trust.
- 9.2 The Board shall establish member contributions pursuant to guidelines established by the Board from time to time consistent with the Act. The contributions may include, as the Board determines, an annual contribution, contributions on a periodic basis more frequent than annually, and any additional contributions which the Board deems necessary or appropriate to protect the financial condition of the Trust. The contributions may be based upon experience modification factors, payroll audits, or any other bases the Board considers appropriate. Additional contributions may be imposed after the year in which coverage is provided.
- 9.3 A member shall only be responsible for additional contributions to the Trust which relate to claims arising out of occurrences during and expenses relating to years in which the municipality is a member of the Trust.
- 9.4 Any refund of surplus moneys shall be consistent with the Act and with policies adopted by the Board. No refund of surplus moneys shall be made to any member or former member which owes any amount to the Trust until the amount so owed is paid, and any amount so owed may be deducted from the refund to the member or former member. No refund of surplus moneys shall cause the Trust to become impaired or insolvent.
- 9.5 Investments of moneys of the Trust shall be limited to those investments permitted by the Act.

## **ARTICLE 10. Members' powers and meetings.**

10.1 The members shall have the power to:

- a. Elect Trustees pursuant to Article 6.
- b. Remove any Trustee from the Board by a two-thirds vote of the membership present at a meeting or by an affirmative vote of two-thirds vote of the membership by a mail ballot.
- c. Dissolve the Trust by a two-thirds vote of the membership present at a meeting or by an affirmative vote of two-thirds vote of the membership by a mail ballot.
- d. Amend the Agreement by an affirmative vote of two-thirds vote of the membership present at a meeting or by an affirmative vote of two-thirds vote of the membership by a mail ballot. Written notice of any proposed amendment shall be provided to each member at least thirty days in advance of the vote thereon.

10.2 Members shall meet at least once annually in conjunction with the annual meeting of the League of Kansas Municipalities. Special meetings may be called by the Board or pursuant to a procedure to be established by the Board. A special meeting shall be called upon written request executed by at least thirty percent (30%) of the membership.

- a. Notice of any member meeting shall be mailed by the Administrator to each member at least fifteen days in advance.
- b. The president of the Board shall preside at the meeting.
- c. Fifty-one percent of the membership or 15 members present at a meeting shall constitute a quorum to conduct business.
- d. Proxy voting shall not be allowed.
- e. Each member shall be entitled to one vote, to be cast by its representative.
- f. The location of meetings of members will be as determined from time to time by the Board.

## **ARTICLE 11. Obligations of Members.**

11.1 Members shall have the obligation to:

- a. Pay promptly all contributions and other payments to the Trust at such times and in such amounts as shall be established in accordance with this Agreement, including any interest and penalties for late payment as may be required by a policy adopted by the Board.
- b. Designate in writing a representative and one or more alternate representatives for the members' meetings. Each representative and alternate representative must be an elected officer, appointed officer, or employee of a member and must be appointed by majority vote of the governing body of the member to be the member's official representative for the purposes of the Trust. An alternate representative may exercise all the powers of a representative during a member meeting, in the absence of the representative.
- c. Allow the Trust and its Administrator, agents, contractors, employees and officers reasonable access to all facilities of the member and all records required for the administration of the Trust and implementation of this Agreement.
- d. Cooperate fully with the Trust's attorneys and Administrator, and any other agent, contractor, employee or officer of the Trust in activities relating to the purposes and powers of the Trust.
- e. Provide information requested by the Trust, its Administrator, and any other agent, contractor, employee or officer of the Trust, as reasonably required for the administration of the Trust.
- f. Allow the Trust, and attorneys and others designated by the Trust, to represent the member in the investigation, settlement and litigation of any claim within the scope of loss protection furnished by or through the Trust.
- g. Follow the claims, loss reduction and prevention, and risk management policies and procedures established by the Board. The Trust does not assume any duty the member may have to provide safe facilities, equipment, machinery, or operational procedures for its employees or the public.
- h. Report to the Trust, in the form and within the time required by the Board, all incidents or occurrences which could reasonably be expected to result in the Trust being required to consider a claim.
- i. Report to the Trust, in the form and within the time required by the Board, the addition of new programs and facilities or the significant reduction or expansion of existing programs and facilities or other acts.

- 11.2 It shall be the express obligation of every member of the Trust to comply with the workers' compensation laws of the State of Kansas and such laws shall govern the duties of employers and the liabilities to employees of the members of the Trust.

**ARTICLE 12. Withdrawal or non-renewal of members.**

- 12.1 Any member may withdraw from the Trust on any coverage renewal date by written notice of withdrawal provided to the Administrator no later than 60 days prior to the renewal date, unless the Board and any affected excess insurer or reinsurer agrees to a shorter notice period.
- a. In the event that a member chooses to withdraw at a point in the premium (calendar) year other than the renewal date, a "short-rate cancellation" schedule shall be applied. The "short-rate cancellation" amount will be determined by use of the National Council on Compensation Insurance, Inc. (NCCI) Basic Manual (most current edition), under "RULE 3 – RATING DEFINITIONS AND APPLICATION OF PREMIUM ELEMENTS" of that manual.
- 12.2 The Board may, at its option, non-renew any member with the Trust on any coverage renewal date by written notice of non-renewal provided by the Administrator no later than 60 days prior to the renewal date.
- 12.3 A withdrawn or non-renewed member shall lose all voting rights upon withdrawal or non-renewal. Any claim of title or interest to any asset of the Trust, and any continuing obligation of the Trust to the member or of the member to the Trust, after the member's withdrawal or non-renewal, shall be consistent with this Agreement, any policy adopted by the Board, any excess insurance or reinsurance policy of the Trust, and the Act.

**ARTICLE 13. Cancellation of membership.**

- 13.1 A member which terminates its membership in the League of Kansas Municipalities shall, on the date of such termination, have its membership in the Trust automatically canceled.
- 13.2 The membership in the Trust of a member which fails to make a contribution or any other payment due the Trust shall be automatically canceled on the sixtieth day following the due date, unless time for payment is extended by the Board and payment is made within any extended period. A notice of failure to make a contribution or other payment due the Trust shall be mailed to the member at least thirty (30) days prior to the date of automatic cancellation. A cancellation of membership under this paragraph 13.2 shall not be subject to the provisions of paragraph 13.3.

- 13.3 Membership in the Trust may be canceled for failure to carry out any other obligation of a member, subject to the following:
- a. The member shall receive notice from the Board of the alleged failure and not less than thirty (30) days in which to cure the alleged failure, along with notice that cancellation of membership could result if the failure is not so cured.
  - b. If the failure is not cured within the time required by the Board's notice or any extension of such time as the Board may grant, the Board may cancel the membership. The member may request a hearing before the Board on the proposed cancellation. The request shall be made in writing to the Administrator at least five days before the end of the period given by the Board to cure the alleged failure.
  - c. If a hearing is timely requested, the Board shall provide the member at least ten days' prior written notice of the time and place of the hearing, and the proposed cancellation may not take effect until such time after the conclusion of any hearing as the Board may set.
- 13.4 Cancellation of membership shall be in addition to any other remedy which may exist.
- 13.5 A member whose membership has been canceled shall lose all voting rights upon the effective date of the cancellation. Any claim of title or interest to any asset of the Trust, and any continuing obligation of the Trust to the member or of the member to the Trust, after cancellation of the membership, shall be as determined consistent with this Agreement, any policy adopted by the Board, and the Act.

#### **ARTICLE 14. Dissolution and disposition of property.**

- 14.1 The Trust may be dissolved by the members as provided in Article 10. In the event of dissolution of the Trust, the assets of the Trust not used or needed for the purposes of the Trust, as determined by the Board, shall be distributed exclusively to municipalities which are members of the Trust immediately prior to dissolution to be used for one or more public purposes.
- 14.2 Upon partial or complete dissolution of the Trust by the members in accordance with Article 10, the Trustees shall determine, consistent with this Agreement, all other matters relating to the disposition of property and dissolution of the Trust, by a two-thirds vote of all Trustees.
- 14.3 The Board shall serve as trustees for the disposition of property or funds, payment of obligations, dissolution and winding up of the affairs of the Trust.

**ARTICLE 15. Liability of Trustees, officers, Administrator, and employees.**

15.1 No Trustee, officer, Administrator, or employee of the Trust shall be personally liable for any acts performed or omitted in good faith nor for any debts or other liabilities, actual or contingent, of the Trust or upon contracts or engagements on its behalf. The Trust shall defend and indemnify the Trustees, officers, Administrator and employees against any and all expense, including attorney fees and liability expenses sustained by them or any of them in connection with any suit or suits which may be brought against them involving or pertaining to any of their acts or duties performed or omitted in good faith. The Trust may purchase public officials liability, errors and omissions or other insurance providing similar coverage for the Trustees, officers and employees of the Trust. Nothing herein shall be deemed to prevent compromises of any such litigation where the compromise is deemed advisable in order to prevent greater expense or cost in the defense or prosecution of such litigation.

**ARTICLE 16. General provisions.**

16.1 This document constitutes a contract among those municipalities which become members of the Trust. The terms of this contract may be enforced in court by the Trust or by any of its members.

16.2 Except as provided in this Agreement and to the extent of the financial contributions to the Trust agreed to herein or such additional obligations as may come about through amendments to this Agreement, no member agrees or contracts herein to be held responsible for any claims made against any other member. The contracting parties intend in the creation of the Trust to establish an organization to operate only within the scope herein set out and have not herein created as between member and member any relationship of partnership, surety, indemnification, or responsibility for the debts of or claims against any other member, except that, to the extent required by the Act, all members of the Trust shall be jointly liable for the payment of claims to the extent of the assets of the Trust.

16.3 The laws of Kansas shall govern the interpretation and performance of this Agreement.

16.4 In the event that any portion of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect other portions, and this Agreement is expressly declared to be severable.

16.5 This Agreement does not relieve any member of any obligation or responsibility imposed upon it by law except to the extent that actual and timely performance thereof by the Trust satisfies such obligation or responsibility.

- 16.6 All moneys received by the Trust are public funds, including earned interest, derived from its members which are municipalities within the State of Kansas.
- 16.7 Neither this Agreement nor any action adopting this Agreement is intended to nor does it waive, nor shall it be construed as waiving, any immunity or limitation on liability provided to the members or their officers or employees by any law, including but not limited to any such immunity or limitation appearing in the Kansas Tort Claims Act, and amendments thereto. The laws regarding workers' compensation and the benefits to the employer are reserved and shall not be deemed to have been waived by any action approving this Agreement or by membership in the Trust.
- 16.8 The provisions of this Agreement and of the other documents referred to herein, and the assets of the Trust, are for the benefit of the members of the Trust only, and no other persons or entities shall have any rights or interest in this Agreement or in any of the other documents referred to herein or in any such assets, as a third party beneficiary or otherwise. The assets of the Trust shall not be subject to attachment, garnishment, or any equitable proceeding.
- 16.9 It is the intention of the members that the Trust and any income of the Trust not be subject to taxation, and the members shall cooperate in such respects, including amending this Agreement, as reasonably necessary to establish and maintain the non-taxable status of the Trust.
- 16.9a Except as permitted in this Agreement, and amendments hereto, neither the Board nor any other person or entity is authorized to incur liabilities or obligations or enter into contracts on behalf of the members.
- 16.10 To the extent permitted by any applicable excess insurance or reinsurance, if the Board or its authorized representative and a member disagree on whether a loss is covered through the Trust or on the amount of a covered loss, the Board or its authorized representative or the member may request that the disagreement be submitted to binding arbitration as follows:
- a. Unless otherwise agreed by the Board or its authorized representative and the member, three persons shall be selected for the arbitration panel, one by the Board or its authorized representative, one by the member, and one by the two so selected to act as umpire to decide the items upon which the other two disagree. If the two so selected fail for fifteen days to agree upon the umpire, the dispute of coverage shall be submitted to the American Arbitration Association for arbitration pursuant to their standard rules and regulations.
  - b. The decision of the panel shall be binding on the Board or its authorized representative and the member.

- c. The Trust shall pay the fees and expenses of the panelist selected by the Board or its authorized representative, the member shall pay the fees and expenses of the panelist selected by it, and the fees and expenses of the umpire shall be shared equally by the Trust and the member.
- 16.11 In the event of the payment of any loss by the Trust under this Agreement, the Trust shall be subrogated to the extent of such payments to all the rights of the member against any other person or other entity legally responsible for damages for such loss, and in such event the member agrees to render all reasonable assistance to effect recovery.
- 16.12 The provisions of the Act are hereby adopted by reference as a part of this Agreement, and any provision of this Agreement in conflict with the Act shall be inapplicable.
- 16.13 This Agreement may be executed in counterparts. The original of each executed Agreement shall be filed with the Trust.
- 16.14 This executed Agreement replaces and supercedes all prior By-Laws for Kansas Municipal Insurance Trust.

In witness whereof, the parties hereto have entered into this Agreement by the execution of this signature page which shall be attached to and be a part of this Agreement.

This Agreement is executed by \_\_\_\_\_, Kansas, pursuant to Article 10, 10.1(d), as a result of certain changes to the By-Laws adopted at a Special Meeting of the Members on October 7, 2012.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

\*The original KMIT By-Laws were amended on October 7, 1996, October 8, 2001, and October 7, 2012.