

RESOLUTION NO. 5-2011  
COUNTY OF Cherokee, STATE OF KANSAS

WHEREAS, the Board of County Commissioners, (Board) of Cherokee COUNTY, KANSAS (County) has authority under the Kansas Municipal Group-Funded Pool Act, K.S.A. 12-2616, et seq., as amended, the Interlocal Cooperation Act, K.S.A. 12-2901, et seq., as amended, the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., as amended, to participate in and form a county self-insurance pool for workers compensation coverage; and

WHEREAS, the Board has reviewed an agreement to cooperate with other counties for the operation of such a self-insurance pool entitled "Amended and Restated, Effective November 15, 2010 BYLAWS AND INTERLOCAL COOPERATIVE AGREEMENT FOR THE KANSAS WORKERS RISK COOPERATIVE FOR COUNTIES" (Agreement), a copy of which is attached hereto and incorporated by reference into this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE ABOVE STATED COUNTY THAT:

1. The Agreement, a copy of which is attached hereto and incorporated by this reference into this Resolution, is hereby approved.
2. The Chairman of the Board is hereby authorized and directed to sign the Agreement on behalf of the County.
3. Neither this Resolution nor the Agreement approved hereby is intended to nor does it waive, nor shall it be construed as waiving, any immunity or limitation on liability proved to the County, its officers or employees, by any law, including but not limited to any such immunity or limitation appearing in the Kansas Tort Claims Act or amendments thereto. Furthermore, neither this Resolution nor the Agreement is intended to, nor does it provide for coverage in excess of the limitation on liability within the Workers Compensation Act, K.S.A. 44-501 et seq, or amendments thereto.
4. The County understands and further by execution of this Resolution and the Agreement agrees that it will comply with the requirements of the Workers Compensation Act and amendments thereto and furthermore understands that in accordance with the BYLAWS AND INTERLOCAL COOPERATION AGREEMENT THAT THE INDIVIDUAL MEMBERS OF THE COOPERATIVE MAY BE SUBJECT TO ASSESSMENT.
5. One copy of this signed Agreement shall be mailed to the Administrator of Kansas Workers Risk Cooperative for Counties, along with a copy of this Resolution, one copy of the signed Agreement shall be filed with the County Register of Deeds, and one copy of the signed Agreement shall be filed with the Secretary of State of the State of Kansas.

The foregoing Resolution was adopted by a majority vote of the Board of County Commissioners of the above named County, State of Kansas on this 28 day of MARCH, 2011.

  
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CHAIRMAN  
Board of County Commissioners

ATTEST:

  
\_\_\_\_\_  
County Clerk

NOTICE

PURSUANT TO K.S.A. 12-2626

Be advised that the proposed cooperative is a group funded pool. The group funded pool is not an insurance company subject to the general laws and rules and regulations relating to insurance companies; however, the group funded pool is subject to separate regulation by the Kansas Insurance Department as authorized by state statute and cannot commence or continue operations without a certificate of authority. Such authorization does not constitute an endorsement or recommendation of the coverage provided. KWORCC is in full compliance with its certificate of authority which was obtained from the Kansas Insurance Department.

ACKNOWLEDGMENT AND RECEIPT OF NOTICE



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CHAIRMAN, Board of County Commissioners

Date: 3/28/11

**Amended and Restated, Effective November 15, 2010**  
**BYLAWS AND INTERLOCAL COOPERATION AGREEMENT**  
**FOR THE**  
**KANSAS WORKERS RISK COOPERATIVE FOR COUNTIES**

In consideration of the mutual covenants contained herein, this Interlocal Cooperation Agreement is made and entered into by and among Kansas counties which execute this Agreement and become members of the Kansas Workers Risk Cooperative for Counties (“KWORCC”), 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, the Interlocal Cooperation Act, K.S.A. 12-2901, et seq., as amended, and the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., as amended, authorized this Agreement and the powers commonly held and to be jointly exercised by Kansas counties which become members of the Cooperative.

**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.
- 2.2 Administrator. Administrator of the Cooperative, who shall serve as its chief operating officer.
- 2.3 Agreement. The Bylaws and Interlocal Cooperation Agreement for KWORCC.
- 2.4 Board of Trustees or Board. The Board of Trustees of the Cooperative.
- 2.5 Bylaws. The Bylaws and Interlocal Cooperation Agreement for KWORCC.
- 2.6 Contributions. Amounts paid by members to receive the benefits of the Cooperative.
- 2.7 Member. Any Kansas county or Agency, authority, institution or other instrumentality thereof which enters into this Agreement and becomes a Member of the Cooperative.
- 2.8 Cooperative. The Kansas Workers Risk Cooperative for Counties sometimes referred to as and intended to be a pool.
- 2.9 Representative. The person designated pursuant to Section 11.1.b. to be a Member’s official representative for the purposes of the Cooperative, who is an elected county official of a Member county designated by that County’s Board of Commissioners, provided that regardless of the number of Members from a County, only one elected official may represent all Members from that County.

- 2.10 Trustee. A person serving on the Board of Trustees who is an elected county official and whose county is a Member of the Cooperative.
- 2.11 Deficit Fund Year. A policy year in which the benefits to injured workers and claims and administrative expenses exceed the premiums paid.

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

- 3.1 The purposes of this agreement are to:
- a. Maintain a group-funded Cooperative to fund through joint self-insurance, excess insurance, or other lawful manner, obligations imposed upon employers under the Workers' Compensation Act as set forth by K.S.A. 44-574 and any of the acts contained in article 5 or 5a of Chapter 44 of the Kansas Statutes Annotated and amendments thereto, and to do any act authorized by law or as determined by the Board, with the powers set forth in this Agreement; and
  - b. Provide, through the Cooperative, certain claims and risk management services related to the liabilities for workers compensation, and assist Members in reducing and preventing such losses due to workers compensation claims and injuries.

### **ARTICLE 4. Existence of Cooperative.**

- 4.1 KWORCC is a separate legal public entity, constituting an interlocal governmental agency as provided by law. The Cooperative shall continue in effect until dissolved in accordance with this Agreement.
- 4.2 The Cooperative is formed, financed, organized, and shall operate in accordance with the provisions of this Agreement. This Agreement constitutes the bylaws of the Cooperative or pool.
- 4.3 The Cooperative 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 county which enters into this Agreement shall cause to be filed a copy of this Agreement with the Register of Deeds for the Member county and with the Secretary of State, in accordance with the provisions of K.S.A. 12-2905, and amendments thereto.

- 4.5 This Agreement may be amended and shall continue in effect until the Cooperative is dissolved, as provided herein.
- 4.6 This Agreement does not establish an insurance company, nor shall the benefits or obligations of KWORCC constitute a policy of insurance coverage.
- 4.7 This Agreement shall constitute a qualified group-funded pool under the Kansas Municipal Group-Funded Pool Act, K.S.A. 12-2616, et seq., as amended, thereto which shall be subrogated to the rights and duties under the Workers' Compensation Act of the Employer so far as appropriate, including the immunities provided by K.S.A. 44-501 and amendments thereto.

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

- 5.1 Membership in the Cooperative is limited to Members which properly enter into this Agreement and which meet qualifying insurance standards as established by the Board of Trustees.
- 5.2 Counties, including counties which have previously withdrawn or been expelled by the Cooperative, may be admitted to the Cooperative only upon approval by the Board of Trustees and subject to the conditions set out in this Agreement and such additional conditions as the Board of Trustees may from time to time require.

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

- 6.1 The Board of Trustees shall be composed of seven persons, each of whom shall be an elected county official of a different Member county it being understood that regardless of how many Members are in a Kansas County, only one elected official designated by that County's Board of Commissioners may sit on the Board of Trustees to represent that County. In order to achieve geographic balance throughout the state, one Trustee shall be elected from each of the following regional districts and one Trustee shall be elected at large. Trustees on the Board shall be elected by all voting representatives at the annual meeting except when the Board of Trustees fills a vacancy as provided at Section 6.5. Only nominees who reside in a regional district shall be eligible to fill the Trustee position for that regional district, and nominees for the at large position may reside in any of the regional districts. Trustees shall be elected by a plurality of the votes of the Members present in person at the annual meeting of the Members.

Northeast District: Atchison, Brown, Doniphan, Douglas, Jackson, Jefferson, Johnson, Leavenworth, Lyon, Marshall, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Wabaunsee, Wyandotte;

Southeast District: Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Elk, Franklin, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, Woodson;

North Central District: Chase, Clay, Cloud, Dickinson, Ellsworth, Geary, Jewell, Lincoln, Marion, McPherson, Mitchell, Morris, Ottawa, Republic, Saline, Washington;

South Central District: Barber, Barton, Butler, Comanche, Cowley, Edwards, Harper, Harvey, Kingman, Kiowa, Pawnee, Pratt, Reno, Rice, Rush, Sedgwick, Stafford, Sumner;

Northwest District: Cheyenne, Decatur, Ellis, Gove, Graham, Logan, Norton, Osborne, Phillips, Rawlins, Rooks, Russell, Sheridan, Sherman, Smith, Thomas, Trego, Wallace; and

Southwest District: Clark, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearny, Lane, Meade, Morton, Ness, Scott, Seward, Stanton, Stevens, Wichita

- 6.2 Elected Trustees shall assume office on January 1 of the next calendar year following their election. Appointed Trustees, which will be appointed to fill a vacancy only, shall assume office at the first Board meeting held following their appointment.
- 6.3 Terms of the Trustees shall be two-year overlapping terms or until their successors are elected.
- 6.4 A vacancy shall occur on the Board when a Trustee:
  - a. Submits a written resignation to the Board.
  - b. Dies.
  - c. Ceases to be an elected official of a Member county.
  - d. Fails to attend three consecutive regularly scheduled meetings of the Board by telephone or in person.
  - e. Is removed by the Members pursuant to Article 10.
  - f. Is convicted of any felony or any Class A misdemeanor or Class B misdemeanor.
- 6.5 Any vacancy in the position of an elected Trustee will be filled by a majority vote of the Board's remaining Trustees until the next annual meeting of the Membership, at which time the Membership shall elect a person to fill the vacancy for the unexpired term.
- 6.6 To the extent permitted by law, Trustees may be reimbursed for expenses incurred in the performance of their duties, as authorized by the Board.
- 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 and be an elected county official of a Member county.

**ARTICLE 7. Board of Trustees Officers, Meetings and Procedures.**

- 7.1 The officers of the Board shall be: president, vice-president, secretary and controller. 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 among the Trustees, at the first Board meeting of each calendar year.
- 7.2 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 four (4) members of the Board, by written notice mailed at least ten days in advance to all Trustees or by waiver of notice executed by all Trustees.
- 7.3 Four (4) 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 when a different vote is required by this Agreement.
- 7.4 The Board shall adopt all such procedures as it deems necessary or desirable for the conduct of its business.
- 7.5 One or more or all Trustees may participate in any meeting of the Board by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence at the meeting.

**ARTICLE 8. Powers and Duties of the Cooperative and the Board.**

- 8.1 The Cooperative shall have all powers necessary or desirable to achieve its purposes. The Board may exercise all powers of the Cooperative except those powers reserved to the Members, and all powers necessary and proper for its operation and implementation of this Agreement, subject to the limits of this Agreement and the Workers' Compensation Act. The Board is responsible for all operations of the Cooperative.
- 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 policyholder 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 as provided by law; and establish claim procedures and conditions to be met prior to the payment or defense of a claim all as permitted and subject to law.
- e. Jointly self-insure or obtain excess insurance (specific or aggregate), or any combination thereof, or otherwise provide for the funding of coverage provided by or through the Cooperative as the Board deems appropriate.
- f. Establish the duties of the Administrator.
- g. Provide for the administration of the monies received, for the manner of payments to be received, and for payment of all expense of the Cooperative; establish standards for the accountability of all receipts and disbursements of the Cooperative; and establish procedures for safekeeping, handling and investing such monies received or paid.
- h. Make investments in accordance with K.S.A. 12-2622 and amendments thereto.
- i. Acquire, lease, hold and dispose of personal property as provided by law.
- j. Acquire, hold and dispose of real property, including but not limited to leases and rental, only upon a majority of the membership obtained by ballot, election, polling or otherwise, which approval may be solicited and/or obtained by mail or at the annual meeting; provided, however, the Board may lease office facilities as are reasonable and necessary for the conduct of business without membership approval.
- k. Exercise the full power and authority of any Member of the Cooperative when requested, in writing, to do so by the Member's governing body.
- l. Provide for necessary activities to accomplish the purposes of this Agreement and of the Cooperative.
- m. Do any act permitted by law and not in conflict with this Agreement.
- n. Provide for an independent audit of claim handling procedures, payments and overall operations of the Cooperative, at such time as the Board may determine.
- o. Establish loss reduction, prevention and risk management policies, procedures, educational programs and requirements for Members of the Cooperative.



- p. Adopt and adjust the coverage provided through the Cooperative in concurrence with any affected excess insurers.
- q. Enter into contracts as necessary or appropriate for the operation of the Cooperative.
- r. Appoint committees from time to time, as the Board considers appropriate. Each committee shall consist of one or more designated Trustees. Any such committee so appointed shall have the authority only to investigate and report its findings and recommendations to the Board, unless otherwise specifically provided in a resolution of the Board, but no such committee shall have the power or authority to (I) amend the Bylaws, (ii) declare a dividend or refund to the Members, or (iii) recommend the dissolution of KWORCC to the Members.
- s. Approve attorneys or firms of attorneys to represent Members in claims covered by or through the Cooperative.
- t. Obtain the services of agents, attorneys, brokers, consultants, employees and service providers as necessary or appropriate for the operation for the Cooperative.

8.3 Subject to 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 Cooperative performed by an independent Certified Public Accountant.
- c. Provide to Members quarterly financial statements to account for income, expenses, assets and liabilities of the Cooperative.
- d. Provide for an annual actuarial review of the Cooperative.
- 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 monies of the Cooperative.

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8.4 The Trustees shall not borrow from or extend credit to any individual or entity.

- 8.5 The Trustees shall be subject to the provisions of K.S.A. 1994 Supp. 75-4301a, et seq., as may be amended, which require the filing of statements of substantial interest and other ethical compliance.

**ARTICLE 9. Financing.**

- 9.1 All monies contributed to the Cooperative, and earnings thereon, shall be held in the name of and for the benefit of the Cooperative.
- 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 an annual contribution and any additional contributions which the Board deems necessary or appropriate to protect the financial condition of the Cooperative.
- 9.3 A member shall only be responsible for additional contributions to the Cooperative which relate to claims arising out of occurrences during and expenses relating to years in which the county is a member of the Cooperative.
- 9.4 Any refund of surplus monies shall be consistent with the Act and with policies adopted by the Board of Trustees.
- 9.5 The Board may determine supplemental contributions to be made by members of the Cooperative based upon experience modification factors, payroll audits or other similar consideration as needed to protect the financial condition of the Cooperative.
- 9.6 In lieu of determining that supplemental contributions be made by Members, the Board may establish special reserve funds, reduce or eliminate a Deficit Fund Year or pay certain administrative expenses by doing any of the following:
- a. Transfer authorized surplus funds from another policy year;
  - b. Transfer funds from a special reserve fund; or,
  - c. Any alternate option approved by the Kansas Insurance Department.

**ARTICLE 10. Members' Powers and Meetings.**

- 10.1 At any meeting held pursuant to Section 10.2, the Members shall have the power to:
- a. Elect Trustees pursuant to Article 6.
  - b. Remove any elected or appointed Trustee from the Board by a two-thirds vote of the Members present at a meeting.
  - c. Dissolve the Cooperative by a two-thirds vote of the Members present at a meeting. Written notice of any proposed dissolution of the Cooperative shall be provided to each Member at least thirty days in advance of the vote thereon.

- d. Amend this Agreement by a two-thirds vote of the Members present at a meeting. Written notice of any proposed amendment shall be provided to each Member at least thirty days in advance of the vote thereon. If Members have received advance written notice of the proposed amendment in accordance with this paragraph, Members may revise the proposed amendment during the meeting as long as the revision does not materially change the purpose and intent of the proposed amendment and a minimum of two-thirds of all Member Counties votes in favor of the proposed revision at the meeting. However, if less than two-thirds of the Member Counties vote to revise the published amendment, the revision nevertheless may be passed if: (i) two-thirds of the Members present at the meeting approves the revision; (ii) such amendment, as revised, is sent to the Member Counties with opportunity to object within 30 days after such meeting and (iii) within thirty (30) days from said mailing, less than 35% of the Membership provides written objection (by majority vote of Commissioners) to the said revised amendment.
- 10.2 Members shall meet at least once annually at such time and place, within the State of Kansas, as shall be designated from time to time by the Board and stated in the Notice of meeting. Special meetings may be called by the Board or pursuant to a procedure to be established by the Board, and shall be called upon written request executed by at least thirty percent (30%) of the Members.
- a. Notice of any Membership meeting shall be mailed by the Administrator to each Member at least fifteen days in advance, which notice shall state the place, date and hour of the meeting, and in the case of a special meeting, the purpose(s) thereof. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Member at the Member's address as it appears on the records of KWORCC. Attendance by a Member at a meeting shall constitute a waiver of notice of such meeting, except where the Member attends a meeting for the express purpose of objecting, at the beginning at the meeting, to the transaction of any business because the meeting is not lawfully called or convened.
  - b. The president of the Board shall preside at the meeting.
  - c. Fifty percent (50%) of the Members shall constitute a quorum to do business.
  - d. Proxy voting shall not be allowed.
  - e. Each Member shall be entitled to one vote, to be cast by its representative, or, in the absence of its representative, by an alternate representative approved by the Member in writing, and whose credentials are satisfactory to the Board pursuant to guidelines established by the Board and published to the Members.

- f. In the event a meeting is called with proper notice and a quorum is not present, but at least twenty-five percent (25%) of the Members are present, the Members present may conduct the meeting and take action to elect Trustees pursuant to Article 6 and other such action necessary for the conduct of business by the Pool, but not actions listed in Article 10 that require a two-thirds vote. Any action at said meeting will require approval by 75% of Members present at the meeting and such action will be subject to ratification, as follows: (i) Notification of such action will be sent to all Members by certified mail within 30 days after such meeting and (ii) No more than 35% of such Members file a written objection to action taken. In order for an objection to be valid, it must be received by the Cooperative's administrative staff within 45 calendar days from the date the notice is mailed, and each objection must be certified by the Member County's clerk as having been approved by majority vote of Commissioners.

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

##### 11.1 Members shall have the obligation to:

- a. Pay promptly all contributions and other payments to the Cooperative 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 County official and must be appointed as a KWORCC representative or alternate representative for a term of not less than one (1) year by majority vote of the county commissioners of the Member to be the Member's official representative for the purposes of the Cooperative. An alternate representative may exercise all the powers of a representative during a Member meeting, in the absence of the representative.
- c. Allow the Cooperative 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 Cooperative and implementation of this Agreement.
- d. Cooperate fully with the Cooperative's attorneys and Administrator, and any other agent, contractor, employee or officer of the Cooperative, in activities relating to its purposes and powers.

- e. Provide information requested by the Cooperative, its Administrator and any other agent, contractor, employee or officer of the Cooperative, as reasonably required for administration and operation of the Cooperative.
  - f. Notwithstanding the provisions of K.S.A. 19-247, 19-702 and 19-723, and amendments thereto, allow the Cooperative, and attorneys and other designated by it, to represent the Member in the investigation, settlement and litigation of any claim within the scope of loss protection furnished by or through the Cooperative.
  - g. Follow the claims, loss reduction and prevention, and risk management policies and procedures established by the Board.
  - h. Report to the Cooperative, in the form and within the time required by the Board, all incidents or occurrences which could reasonably be expected to result in the Cooperative being required to consider a claim.
  - i. Report to the Cooperative, 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 Cooperative 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 Cooperative.

#### **ARTICLE 12. Withdrawal of Members.**

- 12.1 Any Member may withdraw from the Cooperative, effective on the anniversary date subsequent to written notice of withdrawal provided to the Board, by resolution of the Member's governing body. The written notice of such withdrawal must be provided to the Board no later than sixty (60) days prior to the anniversary date of the Cooperative.
- 12.2 A withdrawn Member shall lose all voting rights upon withdrawal. Any claim of title or interest to any asset of the Cooperative, and any continuing obligation of the Cooperative to the Member or of the Member to the Cooperative, after the Member's withdrawal, shall be consistent with this agreement, any policy adopted by the Board and the Act.
- 12.3 In accordance with K.S.A. 12-2626(c) and amendments thereto, individual Members of the Cooperative may elect to terminate their participation in the Cooperative or be subject to cancellation of membership in the Cooperative in accordance with the Bylaws of the Cooperative. On termination or cancellation of Member of the Cooperative, the Cooperative shall notify the Division of Workers' Compensation within ten (10) days and shall maintain coverage of each canceled or terminating

Member for thirty (30) days after notice to the division or until the division gives notice that the canceled or terminating Member has procured Workers' compensation and employer's liability insurance, whichever occurs first.

### **ARTICLE 13. Expulsion of Members.**

- 13.1 A Member that fails to make a contribution or any other payment due the Cooperative shall be automatically expelled from the Cooperative on the sixtieth day following the due date, unless otherwise determined by the Board.
- 13.2 A Member may be expelled for failure to carry out any other obligation of the Member, subject to the following:
- a. The Member shall receive notice from the Board of the alleged failure and shall receive a demand from the Board to cure the alleged failure, within thirty (30) days of receipt of said notice and demand along with notice that expulsion could result if the failure is not so cured.
  - b. The Member may request a hearing before and decision by the Members on the expulsion. The request shall be made in writing to the Board at least five days before the end of the period given by the Board to cure the alleged failure. At such hearing, the Board shall present the case for expulsion and the affected Member may present its case. The Member proposed to be expelled shall not be counted in determining the number of votes required, nor shall the representative of such Member be entitled to vote on the expulsion.
  - c. If no request is received pursuant to subparagraph b. of this paragraph 13.2, and 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 expel the Member. The Member may request a hearing before the Board on the proposed expulsion in lieu of a hearing before the Members. The request shall be made in writing and received by the Board at least five days before the end of the period given by the Board to cure the alleged failure, and shall be granted if so made.
  - d. The Board shall provide the Member at least ten days prior written notice of the time and place of any requested hearing as the Board or Members, as applicable, may set.
- 13.3 Expulsion shall be in addition to any other remedy which may exist.
- 13.4 An expelled Member shall lose all voting rights upon expulsion. Any claim of title or interest to any asset of the Cooperative, and any continuing obligation of the Cooperative to the Member or of the Member to the Cooperative, after the Member's expulsion, shall be as determined consistent with the Agreement, any policy adopted by the Board and the Act.

- 13.5 Expulsion does not relieve the expelled Member of the contribution obligations incurred and due and owing prior to or at the time of expulsion.

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

- 14.1 The Cooperative may be dissolved by the Members as provided in Article 10. In the event of dissolution of the Cooperative, the assets of the Cooperative not used or needed for the purposes of the Cooperative, as determined by the Board, shall be distributed exclusively to counties which are Members of the Cooperative prior to dissolution to be used for one or more public purposes.
- 14.2 Upon partial or complete dissolution of the Cooperative 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 Cooperative, 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 Cooperative.

**ARTICLE 15. Liability of the Board, officers and employees.**

- 15.1 No Trustee, officer or employee of the Cooperative 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 Cooperative or upon contracts or engagements on its behalf. The Cooperative shall defend and indemnify the Trustees, officers 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 threatened or brought against them involving or pertaining to any of their acts or duties performed or omitted in good faith. The Cooperative may purchase public official's liability, errors or omissions or other insurance providing similar coverage for the Trustees, officers and employees of the Cooperative. 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.
- 15.2 No amendment to or repeal of this Article 15 shall apply to or have any effect on the liability or alleged liability of any Trustee, officer or employee of the Cooperative for or with respect to any acts or omissions of such Trustee, officer or employee occurring prior to the date when such provision becomes effective.

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**ARTICLE 16. General provisions.**

- 16.1 This document constitutes a contract among those counties which become Members of the Cooperative. The terms of this contract may be enforced in court by the Cooperative or by any of its Members.

- 16.2 Except as provided in this Agreement and to the extent of the financial contributions to the Cooperative 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 Cooperative 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 Cooperative shall be jointly liable for the payment of claims to the extent of the assets of the Cooperative.
- 16.3 The withdrawal or expulsion of a Member does not relieve it from liability for additional contributions determined by the Board in accordance with Article 9.
- 16.4 The laws of Kansas shall govern the interpretation and performance of this Agreement.
- 16.5 In the event that any portion of this Agreement is held invalid or unenforceable, such invalidity and unenforceability shall not affect other portions, and this Agreement is expressly declared to be severable.
- 16.6 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 Cooperative satisfies such obligation or responsibility.
- 16.7 All monies received by the Cooperative are public funds, including earned interest, derived from its Members which are counties within the State of Kansas.
- 16.8 Neither this agreement nor any action of the Board of County Commissioners in adopting this Agreement is intended to nor do they waive, nor shall they 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. In particular, neither this Agreement nor any action of any board of county commissioners in adopting this agreement is intended to nor do they provide for coverage in excess of the limitation on liability within the meaning of K.S.A. 75-6111, and amendments thereto. In addition, the laws regarding Workers' Compensation and the benefits to the employer are reserved and shall not be deemed to have been waived by the entry of the board of county commissioners of any county in entering into this agreement
- 16.9 The provisions of this Agreement and of the other documents referred to herein, and the assets of the Cooperative, are for the benefit of the Members of the Cooperative only, and no other person 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 Cooperative shall not be subject to attachment, garnishment or any equitable proceedings.

- 16.10 It is the intention of the Members that the Cooperative that any income of the Cooperative 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 nontaxable status of the Cooperative.
- 16.11 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.
- 16.12 To the extent permitted by any applicable excess insurance, if the Board or its authorized representative and a Member disagree on whether a loss is covered through the Cooperative 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 15 days to agree upon the umpire, the entire 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, or the American Arbitration Association, as the case may be, shall be binding on the Board or its authorized representative and the Member, and may be filed and otherwise acted upon pursuant to the Kansas Uniform Arbitration Act, as may be amended.
  - c. The Cooperative shall pay the fees and expenses of the panelist selected by the Board or its authorized representative, the Member shall pay the fee and expenses of the panelist selected by it and the fees and expenses of the umpire shall be shared equally by the Cooperative and the Member.
- 16.13 In the event of the payment of any loss by the Cooperative under this Agreement, the Cooperative shall be subrogated to the extent of such payments to all the rights for the Member against any other person or entity legally responsible for damages for such loss as allowed by law, and in such event the Member agrees to render all reasonable assistance to affect recovery.
- 16.14 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.

16.15 This agreement may be executed in counterparts. The original of each executed Agreement shall be filed with the Cooperative.

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.

Executed by Cherokee County, Kansas, pursuant to Resolution No. 5-2011, said Resolution having been adopted on the 28<sup>th</sup> day of March, 20 11.

By: Jack Garner

Print Name: Jack Garner

Title: Cherokee County Commission Chair

Date: March 28<sup>th</sup> 2011

ATTEST

By: Cherokee County Clerk Crystal L. Catwood

Print Name: Crystal L. Catwood

Title: County Clerk

Date: March 28, 2011