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RESOLUTION NO. 2009-01

RESOLUTION AUTHORIZING AGREEMENT OF WITHDRAWAL AND FORMATION OF KANSAS GROUP FUNDED POOL

WHEREAS, the City of Basehor (the "City"), desires to promote, stimulate and develop the general economic welfare and prosperity of the City and its environs, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, the Kansas Municipal Group Funded Pool Act, K.S.A. 12-2616 through 12-2630, as amended (the "Group Funded Pool Act") authorizes municipalities located in Kansas to enter into agreements to pool liabilities for various categories of risk, including, but not limited to health and dental coverage of municipal employees; and

WHEREAS, the Kansas Interlocal Cooperation Act, K.S.A. 12-2901 *et seq.,* as amended (the "Interlocal Cooperation Act"), permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other public and private agencies to cooperatively provide services and facilities; and

WHEREAS, MARCIT is a Missouri nonprofit public benefit corporation formed in 1983 in order to allow local governmental units to procure various benefit programs and risk coverages which were then either unavailable or prohibitively expensive in the commercial marketplace; and

WHEREAS, MARCIT Member Entities are located primarily in the greater Kansas City metropolitan area, and pursuant to K.S.A. 12-2630, only Kansas municipalities located in the counties of Douglas, Johnson, Leavenworth, Miami and Wyandotte may directly pool their health and dental benefit programs as Members of MARCIT; and

WHEREAS, effective July 1, 2009, MARCIT shall be known by the new corporate name "Midwest Public Risk of Missouri" ("MPR Missouri"), and shall be hereafter referred to as "MPR Missouri" for purposes of this resolution; and

WHEREAS, it is determination of the City that, by the founding of a Kansas nonprofit corporation to create a pool of Kansas municipalities, to be named Midwest Public Risk of Kansas, Inc. ("MPR Kansas") pursuant to the Group Funded Pool Act, and formation of an Interlocal Risk Sharing Agreement ("RSA") between MPR Kansas and MPR Missouri, and their respective members, pursuant to the Interlocal Cooperation Act, municipalities throughout the State of Kansas will have the opportunity to share risk for health and dental coverage as Members of MPR Kansas and will benefit from increased risk sharing and reduced administrative cost due to cooperation between MPR Kansas and MPR Missouri through the RSA; and

WHEREAS, the Board of Directors of MPR Missouri have authorized an Agreement of Withdrawal by which the City would agree to withdraw from membership in MPR Missouri and ratify the formation of MPR Kansas, and by which the City would retain rights to future

dividends and distributions of MPR Missouri assets to the extent of the City's prior contributions to MPR Missouri; and

WHEREAS, the City's withdrawal from MPR Missouri and membership in MPR Kansas is contingent upon the agreement of the Members and Board of Directors of MPR Missouri to amend the MPR Missouri Bylaws, the successful commencement of operations by MPR Kansas as a Kansas municipal group funded pool in accordance with Kansas law, and the execution of the RSA between MPR Kansas and MPR Missouri;

NOW, THEREFORE BE IT RESOLVED, BY THE GOVERNING BODY OF BASEHOR, KANSAS, AS FOLLOWS:

Section 1. The City, in accordance with Section 8.4 of the MPR Missouri Bylaws, and in accordance with the Agreement of Withdrawal authorized herein, hereby authorizes the City's withdrawal from, and the ceasing of the City's participation in the MPR Missouri Health and Dental Program, effective upon the close of business on June 30, 2009.

Section 2. The City hereby approves and authorizes the execution of the Agreement of Withdrawal and Interlocal Cooperation Agreement for Formation of Kansas Group Funded Pool ("Agreement of Withdrawal") which is attached hereto; and

Section 3. Chris Garcia, Mayor, is hereby authorized and directed to execute the Agreement of Withdrawal and to thereby bind the City to comply with the terms and conditions of the Agreement of Withdrawal as a contract between the City and MPR Missouri; and

Section 4. The City acknowledges that such Agreement of Withdrawal shall be final and binding upon it, and that it shall continue to be responsible for all obligations after the date of withdrawal that relate to the prior coverage under the withdrawn Program, including, but not limited to, the obligation to satisfy any special assessments and to remain subject to all MPR Missouri rules pertaining to any obligation, claim or lawsuit which has been covered by MPR Missouri; and

Section 5. The City agrees to perform all obligations set forth in the attached Agreement of Withdrawal, including, but not limited to authorization and ratification of the formation of MPR Kansas as a Kansas nonprofit corporation.

Section 6. The City hereby authorizes and ratifies the application of MPR Kansas to the Kansas Insurance Department for a certificate of authority to operate MPR Kansas as a group funded pool.

Section 7. These Resolutions shall be in full force and effect after their adoption by the City Council.

AGREEMENT OF WITHDRAWAL AND INTERLOCAL COOPERATION AGREEMENT FOR FORMATION OF KANSAS GROUP FUNDED POOL

THIS AGREEMENT ("Agreement"), made and entered into pursuant to K.S.A. § 12-2901 et seq. (the "Kansas Interlocal Cooperation Act"), as of June 30, 2009, by and between **MARCIT**, soon to be known as **Midwest Public Risk of Missouri**, a Missouri not for profit corporation ("MARCIT" or "MPR Missouri") having its principal place of business at 600 Broadway, Suite 300, Kansas City, Missouri 64105; the Kansas municipalities of **BASEHOR, BONNER SPRINGS, EDWARDSVILLE, FAIRWAY, GARDNER, MISSION HILLS, SPRING HILL, TONGANOXIE and DE SOTO**; and the Kansas county of **MIAMI** (collectively, the "Kansas Members").

WITNESSETH:

WHEREAS, MARCIT has been organized and operates under RSMo Chapter 537.620, as amended, and under K.S.A. § 12-2630, as amended, to provide programs and services to its membership which is comprised of the Kansas Members and certain governmental entities in the State of Missouri; and

WHEREAS, the Kansas Members have participated only in the employee health and dental benefits program ("Employee Benefits Program") of MARCIT and are members of MARCIT for the Employee Benefits Program year commencing July 1, 2008; and

WHEREAS, the Kansas Members desire to withdraw from MARCIT and form a separate Kansas group funded pool ("Kansas Pool") under the provisions of K.S.A. § 12-2616 through § 12-2629 (the "Kansas Municipal Group Funded Pool Act") and amendments thereto, effective upon the close of business on June 30, 2009; and

WHEREAS, MARCIT consents and agrees to such withdrawal and creation of the Kansas Pool; and

WHEREAS, the Kansas Pool and MARCIT desire to enter into an agreement which will permit them and their local governmental units to make the most efficient use of their powers by cooperating on a basis of mutual advantage to provide services in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and developments of local communities in the states of Kansas and Missouri; and

WHEREAS, effective on or about July 1, 2009, MARCIT shall be known as Midwest Public Risk of Missouri ("MPR Missouri"), and shall hereafter be referred to as such for purposes of this Agreement;

NOW THEREFORE, in consideration of the agreements set forth herein, pursuant to the Kansas Interlocal Cooperation Act, MPR Missouri and each of the Kansas Members hereby agree as follows:

ADOPTED AND APPROVED by the Governing Body of the City of Basehor, Kansas, this 17th day of February, 2009.

CITY OF BASEHOR, KANSAS

By: _____
Chris Garcia, Mayor

ATTEST:

_____
Mary Ann Mogle, City Clerk
(Seal)

1. **Withdrawal of Kansas Members; Contingent Upon Kansas Pool**. The Kansas Members hereby withdraw from membership in MPR Missouri effective the close of business on June 30, 2009 ("Withdrawal Date"), and MPR Missouri hereby accepts such withdrawal and agrees that such withdrawal shall be accomplished in accordance with the terms and provisions of this Agreement. The Kansas Members and MPR Missouri hereby agree that the withdrawal of the Kansas Members from MPR Missouri shall be contingent upon the Kansas Members' successful formation of the Kansas Pool in accordance with the provisions of Kansas law and the implementation of a Risk Sharing Agreement between MPR Missouri and the Kansas Pool on or before June 30, 2009. The parties further agree that, in the event that the Kansas Pool fails to commence operations or to implement a Risk Sharing Agreement with MPR Missouri on or before June 30, 2009, this Agreement shall be null and void. The Kansas Members acknowledge and agree that, subsequent to the Withdrawal Date, and upon the timely satisfaction of the contingency described herein, they shall have no further rights to vote on MPR Missouri matters, elect MPR Missouri directors, or receive Programs or Services as defined in MPR Missouri Bylaws except as to the continuing obligations of MPR Missouri to the Kansas Members in connection with their participation in the MPR Missouri Employee Benefits Program prior to the Withdrawal Date and except as otherwise set forth in this Agreement.

2. **Administration of Prior Coverage**. Midwest Public Risk, a Missouri not for profit corporation ("MPR"), shall assume the management and administration of past year contributions, expenses, and claims for the Kansas Members in connection with the Kansas Members' prior coverage ("Prior Coverage") rights. MPR shall maintain separate accounting for the Employee Benefits Program for the period of Prior Coverage and for all separate coverage years.

3. **Excess or Surplus Distributions**. Notwithstanding anything to the contrary contained in prior MPR Missouri Bylaws, membership agreements or other documents or policies and procedures, each of the Kansas Members shall remain entitled to its share of any excess or surplus funds distributions which may be determined by the Board of Directors of MPR Missouri for any year of Prior Coverage.

4. **MPR Missouri Dissolution**. Notwithstanding anything to the contrary in prior MPR Missouri Bylaws, membership agreements, or other documents or policies and procedures, in the event that MPR Missouri may be liquidated and dissolved in accordance with MPR Missouri Bylaws, and in the event that there exist net assets or residue for distribution to MPR Missouri Members, each of the Kansas Members shall be entitled to a distribution of such net assets or residue on a pro rata basis as determined by taking into account the Kansas Members' respective years of participation in the MPR Missouri Employee Benefits Program from the commencement of MPR Missouri relative to the years of participation of all MPR Missouri Members.

5. **Special Assessments**. Notwithstanding anything to the contrary in this or any other agreement, each of the Kansas Members shall remain liable for its portion of any special assessment which may be declared by the MPR Missouri Board of Directors for any year of Prior Coverage in the Employee Benefits Program in which the Kansas Member was a MPR Missouri Member. Each of such Kansas Members shall be assessed its pro rata share of any insufficiency

for such year in accordance with the percentage which each Kansas Member's covered lives bears to the total covered lives in the Employee Benefits Program for such year.

6. **Other Obligations**. Notwithstanding anything to the contrary contained in this Agreement or previous documents, the Kansas Members shall continue to remain liable for, and shall be under a continuing duty to satisfy, any liabilities, costs, expenses, or other obligations which they owe to MPR Missouri and which are unsatisfied as of the Withdrawal Date.

7. **Resignation of Kansas Members from MPR Missouri Board of Directors**. By separate action of resignation, representatives of any of the Kansas Members who were serving on the MPR Missouri Board of Directors prior to the Withdrawal Date shall resign their positions as members of the Board of Directors effective upon the Withdrawal Date.

8. **Continuing Indemnification**. In accordance with MPR Missouri Bylaws and any written Indemnification Agreements between MPR Missouri and any representatives of the Kansas Members or of any other former Kansas MPR Missouri member entity, MPR Missouri shall continue to indemnify and hold harmless such individuals for any indemnifiable liability which is attributable to their prior service on the MPR Missouri Board of Directors.

9. **Continuing Kansas Member Obligations**. Notwithstanding anything to the contrary in this Agreement, the Kansas Members shall remain obligated in connection with MPR Missouri Bylaws Sections 5.3 (c), relating to payment of contributions which are due and unpaid as of the Withdrawal Date; (d), relating to MPR Missouri permission to access Kansas Members facilities and records as they relate to the Kansas Members' participation in MPR Missouri prior to the Withdrawal Date; (e), relating to reporting of claims or losses; and (f), relating to cooperation with MPR Missouri claims adjusters, agents, employees and attorneys.

10. **Continuing Limitation on Kansas Members' Liability**. Notwithstanding anything to the contrary in this Agreement, the Kansas Members shall remain entitled to the benefit of the limitations on member liability which are specified in Section 5.4 of the MPR Missouri Bylaws.

11. **Formation of Kansas Pool**. The Kansas Members agree among themselves and with such assistance as they may reasonably request from MPR Missouri, to cause the formation of a Kansas not for profit corporation which shall seek to obtain a Certificate of Authority from the Kansas Insurance Department for the establishment of the Kansas Pool in accordance with the Kansas Municipal Group-Funded Act effective as of the close of business on June 30, 2009.

a. **Duration**. Subject to the limitations and contingencies set forth in this document, the duration of the Kansas Pool shall be perpetual.

b. **Corporation Created**. The Kansas municipalities shall establish the Kansas Pool as a Kansas not for profit corporation. Membership in such corporation shall be limited to Kansas municipalities, as defined by K.S.A. § 75-6102, and as authorized by law, that have applied for and been accepted for membership by the Board of Directors and have signed the corporation's Bylaws.

c. **Purpose**. Pursuant to the authorization found in the Kansas Municipal Group-Funded Pool Act, as amended, the Kansas Pool is to be formed for the purpose of allowing Kansas Municipalities to join together to establish and to operate a cooperative program of loss control, risk management, risk financing and risk coverages designed to meet the unique needs of such municipalities.

d. **Financing of Programs and Services**. Programs and services provided by the Kansas Pool shall be funded by contributions from its members and member employees for those programs and services in which members desire to participate. The Board of Directors of the Kansas Pool shall determine when contributions are due and may impose charges for late payments. Each Member's account shall be reviewed on an annual basis. Contributions to be paid by Members shall be determined in accordance with underwriting guidelines approved by the Board of Directors, which incorporate any factor or combination of factors which relate to potential losses and which are intended to produce sufficient revenue to pay losses and related administrative expenses.

e. **Termination of Agreement and Disposal of Property**. The Kansas Pool may be dissolved as of the last day of any fiscal year upon a vote of two-thirds (2/3) of all members. Upon the dissolution of the Kansas Pool, the then current Board of Directors shall take all actions which shall be necessary for the orderly winding down of programs and services and for the completion of the corporation's dissolution and liquidation subject to Kansas law. All net assets shall be distributed pro rata to the members, in good standing, of the respective programs as of the last day of the last full fiscal year prior to the decision to dissolve and to any members which may have retained the right to distribution of assets pursuant to a written agreement of withdrawal prior to the date of the decision to dissolve. Such net assets shall be distributed, separately by program by calculating the relative percentage of the total program premium contributions for each program paid by each member during the last full fiscal year prior to dissolution and multiplying the net assets by that percentage.

   In the event of the termination of the Kansas Pool, the provisions of paragraph 12 of this Agreement shall also apply.

f. **Intention to Enter Into Risk Sharing Agreement**. It is the intention of the Kansas Members to utilize the Kansas Pool for the provision of such programs and services as may be authorized and allowed under the Kansas Municipal Group-Funded Pool Act and to do so, to the extent determined by the Board of Directors of the Kansas Pool, by cooperative agreement with MPR Missouri in the areas of risk sharing and reduction of costs of administration. This Agreement is contingent upon the Kansas Pool's commencement of operations and the implementation of a Risk Sharing Agreement between MPR Missouri and the Kansas Pool. If the Kansas Pool fails to commence operations on or before June 30, 2009, this Agreement, including, but not limited to, the withdrawal of the Kansas Members from MPR Missouri, shall be null and void.

12. **Termination of Kansas Pool**. In the event that the Kansas Pool ceases operations subsequent to July 1, 2009, MPR Missouri hereby agrees that any former Kansas Member which had continuously participated in the Kansas Pool from July 1, 2009 to the last day of operation of the Kansas Pool shall be entitled to acceptance into the MPR Missouri Employee Benefits Program upon submission of an application. The parties agree that the dissolution of the Kansas Pool and dissolution of the assets of the Kansas Pool shall be conducted in accordance with the governing documents of the Kansas Pool.

13. **Entire Agreement**. This Agreement constitutes the sole agreement of MPR Missouri and the Kansas Members with respect to the subject matter described herein, and any prior understandings or written or oral agreements other than those referenced herein are void and of no further force and effect. This Agreement may only be amended by a writing executed by all parties hereto.

14. **Binding Effect/Survival**. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Each of the parties hereto binds itself and its successors and assigns to execute any additional documents which may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MARCIT/MPR MISSOURI:

By:_____
Alexa Barton, Chair

KANSAS MEMBERS:

CITY OF BASEHOR

By:_____

CITY OF BONNER SPRINGS

By:_____

CITY OF EDWARDSVILLE

By:_____

CITY OF FAIRWAY

By:_____

CITY OF GARDNER

By:_____

CITY OF MISSION HILLS

By:_____

CITY OF SPRING HILL

By:_____

CITY OF TONGANOXIE

By:_____

CITY OF DE SOTO

By:_____

COUNTY OF MIAMI

By:_____

APPROVED PURSUANT TO K.S.A. 12-2904.

_____

Office of the Attorney General