

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Executive to execute a General Indemnity Agreement with Zurich American Insurance Company, in support of surety bonds for the use and benefit of the Public Administrator in the performance of his statutory duties.

RESOLUTION NO. 19072, February 8, 2016

INTRODUCED BY Scott Burnett, County Legislator

WHEREAS, on January 29, 2016, the Sixteenth Circuit Court of Jackson County announced the appointment of a new Public Administrator, John P. Killian, to serve for a four-year term; and,

WHEREAS, section 473.730.2, RSMo, provides that the County shall defend and indemnify the Public Administrator against any alleged breach of duty, within the scope of his fiduciary duties under the supervision of the Probate Court; and,

WHEREAS, the Public Administrator is required to obtain bonds for the assets of estates for which the Public Administrator serves as fiduciary as ordered by the Probate Court; and,

WHEREAS, due to the large volume of bonds requested, one of the bond issuers has required that Jackson County execute an Indemnity Agreement; and,

WHEREAS, execution of the attached General Indemnity Agreement with Zurich American Insurance Company is in the best interests, health, safety, and welfare of the citizens of

Jackson County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Executive is hereby authorized to execute the attached General Indemnity Agreement with Zurich American Insurance Company.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

Jay D. Harden
Chief Deputy County Counselor

W. Stephen Rife
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 19072 of February 8, 2016, was duly passed on February 8, 2016 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

Abstaining 0

Absent 0

Excused 1

2.8.16
Date

Mary Jo Spino
Mary Jo Spino, Clerk of Legislature



ZURICH

GENERAL INDEMNITY AGREEMENT

Res. 19072

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Upon the request made by the Indemnitors, as hereinafter defined, the ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates including, but not limited to, the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY (hereinafter called Surety), has executed, or procured the execution of, and may, from time to time hereafter execute or procure the execution of bonds, undertakings, and/or obligations of suretyship or guarantee (herein called Bond or Bonds) on behalf of John Pruitt Killian, II ("Mr. Killian") in his official capacity as Jackson County Public Administrator; and

WHEREAS Indemnitors, as herein used, shall mean the County of Jackson County, Missouri ("County"), with a principal office located at 415 East 12th Street Kansas City, Missouri 64106 on behalf of itself and all present or future, directly or indirectly owned subsidiaries or affiliates, and

WHEREAS Indemnitors hereby represent that it has the full and present authority to execute this document, act on behalf of and bind all Indemnitors to the agreement, terms and conditions as set forth in this Agreement of Indemnity, and

WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the obtaining of the Bond or Bonds or in the Surety's refraining from cancelling said Bond or Bonds.

AND NOW, THEREFORE, in consideration of the execution of any Bond or Bonds by the Surety or the Surety refraining from canceling said Bond or Bonds, the Indemnitors, and each of them, for themselves, each of their heirs, executors, administrators, successors and assigns, jointly and severally, do hereby covenant and agree with the Surety as follows:

FIRST: To pay, or cause to be paid, to the Surety, in advance, the premium or premiums for any such Bond or Bonds, in accordance with the schedule of rates attached to or to be attached hereto, as long as liability thereunder shall continue, and until evidence, satisfactory to the Surety, of the termination of such liability shall be furnished to it at its home office:

SECOND: To indemnify the Surety from and against any and all liability, loss, costs, damages, attorneys' fees and expenses, of whatever kind or nature, heretofore or hereafter sustained or incurred by the Surety by reason, or in consequence of its executing any such Bond or Bonds as surety or co-surety, or procuring the execution thereof, in making any investigation on account of any such Bond or Bonds, in defending or prosecuting any action, suit or other proceeding which may be brought in connection therewith, in enforcing any of the agreements herein contained, and in obtaining a release from liability under any such Bond or Bonds; and to indemnify the Surety to the full amount of liability, loss, costs, damages, attorneys' fees and expenses as aforesaid, regardless of any reinsurance that may be carried on any such Bond or Bonds;

THIRD: That the Surety shall have the right and is hereby authorized, but not required: (a) to adjust, settle or compromise any claims, demands, suits or judgments upon any such Bond or Bonds; (b) to assent to any change whatsoever in any such Bond or Bonds, and/or any contract or contracts referred to in any such Bond or Bonds and/or in the general conditions, warranties, plans and/or specifications accompanying said contract or contracts and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions or renewals of any such Bond or Bonds and to execute any substitute or substitutes therefore, with the same or different conditions, provision and obligees and with the same or larger or smaller penalties, all of the aforesaid without notice to or knowledge of the Indemnitors, it being expressly understood and agreed that the Indemnitors shall remain bound under the terms of this instrument even though any such assent by the Surety does or might substantially increase the liability of said Indemnitors; (c) to attach hereto a schedule of rates and copy or copies of any such Bond or Bonds, to fill up any blanks left herein, and to correct any errors in filling up any blanks herein, or in the schedule of rates, it being hereby agreed that such schedule and such copy or copies, when so attached, and that such insertions or connections, when so made, shall be *prima facie* correct;

FOURTH: This section intentionally left blank.

FIFTH: This section intentionally left blank.

SIXTH: To pay to the Surety upon demand an amount sufficient to discharge any claim made against the Surety on any Bond or Bonds. This sum may be used by the Surety to pay such claim or be held by the Surety as collateral against any loss on any Bond or Bonds.

SEVENTH: That liability hereunder shall extend to, and include, the full amount of any and all moneys paid by the Surety in the settlement or compromise of any claims, suits and judgments thereupon, in good faith, under the belief that it was liable therefore, whether liable or not, as well as of any and all disbursements on account of costs, attorneys' fees and expenses as aforesaid, which may be made under the belief that such were necessary, whether necessary or not;

EIGHTH: That, in the event of payment, settlement or compromise of liability, loss, costs, damages, attorneys' fees, expenses, claims, demands, suits or judgments as aforesaid, in connection with any such Bond or Bonds, an itemized statement thereof, sworn to by any officer or officers

of the Surety, or the voucher or vouchers, or other evidence of such payment, settlement or compromise, shall be *prima facie* evidence of the fact and extent of the liability of the Indemnitors in any and all claims or suits hereunder;

NINETH: That the rights, powers and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all rights, powers, and remedies which the Surety may have or acquire against the Indemnitors or others whether by operation of law or otherwise.

TENTH: This section intentionally left blank;

ELEVENTH: That, in case any of the Indemnitors shall fail to execute this instrument, or in case any of the Indemnitors, who execute this instrument, shall not be bound for any reason, the other Indemnitors shall nevertheless be bound hereunder for the full amount of liability, loss, costs, damages, attorneys' fees and expenses as aforesaid;

TWELVETH: To waive, and do hereby waive, notice of any breach or breaches of any such Bond or Bonds, or of any act or default that may give rise to claim hereunder;

THIRTHEENTH: That this instrument shall be liberally construed so as to fully protect the Surety;

FOURTEENTH: That suits may be brought hereunder as causes of action may accrue, and the bringing of one or more suits, or the recovery of judgment or judgments therein shall not prejudice or bar the bringing of suits upon other causes of action, whether theretofore or thereafter arising;

FIFTEENTH: That the Surety does not guarantee the prompt issuance of any such Bond or Bonds, or the acceptance thereof by the obligee or obligees therein named, and that the Surety shall have the absolute right to decline to execute any such Bond or Bonds;

SIXTEENTH: That in the event the Surety procures the execution of any such Bond or Bonds by some other surety or sureties, or executes such Bond or Bonds with other surety or sureties as co-sureties, or reinsures any portion of such Bond or Bonds with other surety or sureties as reinsurers, then all the terms and condition of this instrument shall inure to the benefit of any such surety or sureties, including the right to bring action hereunder;

SEVENTEENTH: That the Indemnitors shall continue to remain bound under the terms of this instrument on account of any such Bond or Bonds even though the Surety may from time to time hereafter, with or without notice to or knowledge of the Indemnitors, accept other or additional agreements of indemnity on similar or other forms to indemnify it in connection with the execution or procurement of any such Bond or Bonds, it being hereby expressly understood and agreed by the Indemnitors that any and all other rights which the Surety may have or acquire against the Indemnitors and/or others under any such other or additional agreements of indemnity shall be in addition to, and not in lieu of, the rights afforded by the Surety under this instrument.

EIGHTEENTH: The Indemnitors will on request of Surety procure the discharge of Surety from any Bond and all liability by reason thereof. If such discharge is unattainable, the Indemnitors will if required by Surety, either deposit collateral with Surety, acceptable to Surety, sufficient to cover all exposure under such Bond or Bonds, or make provisions acceptable to Surety for the funding of the bonded obligation(s).

NINETEETH: If any provision contained in this Agreement is found to be contrary to an Applicant's or Indemnitor's state law, or is otherwise found to be void or unenforceable, the remainder of this Agreement shall nevertheless be deemed enforceable and of full force and effect.

TWENTIETH: This Agreement may be executed in any number of counterparts with separate signature pages, all of which taken together shall constitute the agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective as to each Indemnitor when each Indemnitor has executed it. The Indemnitors hereby acknowledge that the failure of any one of them to execute this Agreement shall not in any way affect the validity or enforceability of this Agreement as to those Indemnitors who have executed the Agreement.

TWENTY-FIRST: As authorized by the Jackson County Legislature, the County is executing this Agreement indemnifying Zurich for the Bonds. As further authorized by the Jackson County Legislature, the County expressly waives its sovereign immunity for the limited purpose of determining and enforcing the County's obligations to Surety under this Agreement. The persons executing this Agreement on behalf of the County possesses full and complete authority from the Jackson County Legislature, as well as under any applicable laws of the State of Missouri, to execute this Agreement and bind the County to its terms. A copy of the Jackson County Legislature's Authorizing Document is attached as Exhibit A to this Agreement.

Signed, sealed and dated this ____ day of _____, _____.

SIGNATURE PAGE(S) TO FOLLOW

(The remainder of this page is intentionally left blank.)

I/WE HAVE CAREFULLY READ THIS AGREEMENT OF INDEMNITY (OF WHICH THIS SIGNATURE PAGE IS A PART) AND FULLY UNDERSTAND MY/OUR OBLIGATIONS AS AN INDEMNITOR HEREUNDER. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS, EITHER WRITTEN OR ORAL, THAT IN ANYWAY LESSEN OR ALTER MY/OUR OBLIGATIONS AS ABOVE SET FORTH. IN WITNESS WHEREOF I/we have signed and sealed the day and year first above written.

Sign below if entity is a Corporation, Limited Liability Company, Partnership or Trust:

Instructions: If the entity is: 1) a corporation, the secretary and an authorized officer should sign on behalf of the corporation, 2) a limited liability corporation, the manager or member(s) should sign on behalf of the LLC, 3) a trust, the trustee(s) should sign on behalf of the trust, or 4) a partnership, the partner(s) should sign on behalf of the partnership. Two signatures are required for all entities and all signatures must be notarized and dated.

Each of the undersigned hereby affirms to the Surety that he or she is a secretary or a duly authorized officer, manager, trustee or official of the business entity for which he or she executes the foregoing Agreement as an Indemnitor. In such capacity the undersigned is familiar with all of the documents which establish the rights which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) corporate resolutions, (4) trust agreements and (5) partnership, and operating or limited liability agreements of such business entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned hereby affirms that such entity has the power and authority to enter into such Agreement and that he or she is duly authorized to do so.

ATTESTOR WITNESS:

Jackson County, Missouri
415 East 12th Street
Kansas City, MO 64106

SEAL

Name:
Title:

Name:
Title:

ACKNOWLEDGEMENT

State of Missouri
County of Jackson

On this ____ day of _____ before me, personally appeared _____ known or proven to me to be the _____ of the Entity and they acknowledge said instrument to be the free and voluntary act and deed of said Entity, for the uses and purposes therein mentioned and on oath stated that the seal affixed is the seal of said Entity and that it was affixed and that they executed said instrument by authority of the Entity IN WITNESS WHEREOF, I have hereunto set my hand and affixed the OFFICIAL SEAL the day and year first above

APPROVED AS TO FORM:

BY: _____
Name: _____
County Counselor

Notary Public: _____

My Commission Expires: _____

Notary Registration No.: _____

John Pruitt Killian, II

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Schedule A