

APR 29 2005

Risk Management
Insurance Authority

MUNICIPAL POOLING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

This Agreement is dated for convenience as of April 1, 2005, and entered into between certain Public Entities, hereafter referred to as "Members," as identified in the Bylaws.

RECITALS

This Agreement is predicated upon the following facts:

1. The Members are public entities organized and operating under the laws of the State of California;
2. The following state laws, among others, authorize the Members to enter into this Agreement:
 - a. Labor Code Section 3700(b) allowing a public entity to fund its own workers' compensation claims;
 - b. Government Code Section 990 permitting a public entity to insure itself against tort or inverse condemnation liability and to insure any employee of the public entity against all or any part of his liability for injury resulting from an act or omission in the scope of his employment;
 - c. Government Code Section 990.4 permitting a public entity to provide insurance and self-insurance in any desired combination;
 - d. Government Code Section 990.8 permitting two or more public entities to enter into an agreement to jointly fund such expenditures under the authority of Government Code Sections 6500-6515; and
 - e. Government Code Sections 6500-6515 permitting two or more public entities to jointly exercise under an agreement any power which is common to each of them.
3. Each of the Members desires to enter into an agreement with each of the others for the purpose of insuring against various risks jointly, rather than individually.
4. Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of this Authority shall not constitute debts, liabilities, or obligations of the Members.
5. The Authority was originally formed by a Joint Powers Agreement in 1977. Since that time the Agreement has been amended several times and Members have withdrawn from and new Members have been added to the Authority.

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants and agreements set forth herein, the parties agree as follows:

SECTION 1
Authority and Purpose

This Agreement is made under the authority of Government Code Sections 6500-6515 between the Members identified in the Bylaws. The purpose of this Agreement is to exercise jointly powers common to each Member by managing risks and pooling or purchasing coverage for losses.

SECTION 2
Definitions

Unless the context otherwise requires:

1. "Authority" means the Municipal Pooling Authority created by this Agreement;
2. "Board" is the governing body of the Authority;
3. "Chief Administrative Officer" is the person appointed by the Board to be its secretary and Risk Manager of the Authority.
4. "Claim" means a claim for personal injury, death, real or personal property damage, and workers' compensation benefits;
5. "Covered Losses" are those losses resulting from claims which are in excess of the Member's deductible and are covered by the Authority either under the Memorandum of Coverage or purchased insurance;
6. "Member" means a party to this Joint Powers Agreement;
7. "Memorandum of Coverage" is the document memorializing the terms, conditions, and limitations of the coverage for those risks which the Cities agree to self-insure.

SECTION 3
Creation of Authority

The Authority is created under Section 6500 of the Government Code as a public entity, separate and apart from the parties to this Agreement.

SECTION 4
Terms of Agreement

This Agreement becomes effective as of the date and year first above written and continues until terminated as hereafter provided. The prior Joint Powers Agreement is terminated upon the effective date hereof. The rights and obligations of the parties under the prior Joint Powers Agreement remain the same under this Agreement except to the extent of the amendments made hereby.

SECTION 5
Governing Board

The Authority shall be governed by a Board composed of one individual from each Member, each serving in an individual capacity as a member of the Board. Each Member's governing body shall appoint to the Board either its Manager or Director, or the department head or staff person responsible for its risk management function. Each Board member shall have one vote. Each Member shall appoint one Alternate to the Board. The Alternate shall have the same qualifications as the Board member. The Alternate may attend, participate in, and vote at any meeting of the Board at which the regular Board member is absent.

SECTION 6
Board Meetings and Records

- (a) Regular Meetings. The Board shall hold at least one regular meeting each year. The Board shall fix the date upon which and the hour and place at which each regular meeting is to be held, and the Chief Administrative Officer shall notify each Member of that action. All meetings shall be held in a manner consistent with the Bylaws and in compliance with the Ralph M. Brown Act.
- (b) By-Laws and Regulations. The Board may adopt by-laws and regulations, which are not inconsistent either with applicable law or with this Agreement. In the event the by-laws or regulations are inconsistent with this Agreement, this Agreement shall control. The Chief Administrative Officer shall send to each Member each by-law and regulation and amendment thereto promptly after its adoption by the Board.
- (c) Executive Committee. The Board may establish an Executive Committee and delegate to it functions not otherwise reserved to the entire Board.

SECTION 7
Officers

- (a) The Board shall elect a president and vice-president from among its members to perform the duties set forth in the Bylaws.
- (b) The Chief Administrative Officer shall be the Secretary of the Authority and shall be responsible for maintaining all records of the Authority.
- (c) The Board shall elect a Treasurer and Auditor with the qualifications and to perform the duties set forth in the Bylaws.
- (d) The Board may appoint such other officers and employees and may contract with consultants and other professional persons or firms, as it considers necessary to carry out the purposes of this Agreement.

SECTION 8
Powers

The Authority is authorized, in its own name, to do all acts necessary for the exercise of those powers referred to in the Recitals including, but not limited to, each of the following:

- (1) Make and enter into contracts;
- (2) Incur debts, liabilities and obligations but no debt, liability or obligation of the Authority is a debt, liability or obligation of any Member, pursuant to Government Code Section 6508.1;
- (3) Acquire, hold or dispose of real and personal property;
- (4) Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- (5) Sue and be sued in its own name;
- (6) Employ agents and employees;
- (7) Acquire, construct, manage and maintain buildings;
- (8) Lease real or personal property including that of a Member;
- (9) Receive, collect, invest, and disburse monies; and
- (10) Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement.

These powers shall be exercised in the manner provided by law and as expressly set forth in this Agreement, subject only to those restrictions upon the manner of exercising the powers which are imposed upon Members in the exercise of similar powers.

SECTION 9
Fiscal Year

The "fiscal year" of the Authority is the period from the first day of July of each year to and including the 30th day of June of the following year.

SECTION 10
Coverage Provided by the Authority

Pursuant to the payment of contributions by each Member, the Authority shall provide coverage under a Memorandum of Coverage and/or purchased insurance under the programs selected by the Member.

SECTION 11
Establishment and Administration of Funds

The Board shall establish such funds as it deems necessary to conduct the business of the Authority.

SECTION 12
Budget

The Authority shall adopt an annual budget no later than the first day of its fiscal year.

SECTION 13
Member Contributions

The Chief Administrative Officer shall calculate annually the amount of contributions to be charged for risk coverage required by Members. The Board shall approve each charge before it takes effect. Each Member by the act of paying its contribution accepts the coverage provided by the Authority.

SECTION 14
Accounts and Records

The CAO shall establish and maintain the funds and accounts in accordance with acceptable accounting practices and shall maintain such other records as the Board requires pursuant to the procedures set forth in the Bylaws. The CAO of the Authority shall have the custody of and disburse Authority funds as provided by accounting procedures developed in accordance with this Agreement and the Bylaws.

SECTION 15
Reserves

Separate reserves shall be maintained in the funds for each type of coverage.

SECTION 16
Authority Functions and Responsibilities

The Authority shall provide comprehensive risk management services to its members.

SECTION 17
Member Responsibilities

Each Member has the following responsibilities:

- (1) Appoint its representative and alternate to the Authority Board;
- (2) Cooperate fully with the Authority in determining the cause of losses and in the settlement of losses;

- (3) Comply with risk management requirements established by the Authority pursuant to this Agreement;
- (4) Pay contributions and assessments approved by the Board.

SECTION 18
New Members

With the approval of two-thirds of all members of the Board, any other public entity in Contra Costa County or in the general geographic area reasonably serviceable from Contra Costa County may become a party to this Agreement upon execution of this Agreement, and shall forthwith pay to the Authority its current contribution payment as determined by the Board.

SECTION 19
Cancellation of Coverage in a Program or Programs

If a Member fails to comply with this Agreement, the Bylaws, or any procedures or policies established by the Board, the Board may, by a two-thirds vote, refuse to provide coverage or may cancel any coverage being provided to that Member in any program(s).

SECTION 20
Termination of Agreement and Disposition of Assets
Upon Termination of Agreement

This Agreement may be terminated upon the unanimous consent of all parties to it. Upon complete termination of this Agreement by all Members and the settlement of all liabilities and claims, including incurred but not reported claims, all property of the Authority shall be divided among the Members in a ratio equal to that of the total amounts paid by the Members for the five (5) fiscal years preceding the year in which the Agreement is terminated.

SECTION 21
Withdrawal of a Member

A Member may withdraw as a party to the Agreement at the end of any fiscal year upon giving the Authority six (6) months prior written notice of its intent to withdraw.

SECTION 22
Expulsion

The Board by a three-fourths vote of all members may expel any member for the reasons and under the procedures set forth in the Bylaws.

SECTION 23
Effect of Withdrawal or Expulsion

The withdrawal or expulsion of any Member shall not terminate its responsibilities and obligations as set forth in the Bylaws. Upon withdrawal of a Member, that Member is entitled only to its pro rata share of the balance of the amount paid by it for the fiscal year in which withdrawal takes place. That Member shall not participate in or be entitled to any other funds, property, or other assets of the Authority. Coverages under all pool coverage programs for the coverage periods in which that Member participated will remain in effect and continue until the conclusion of their respective program years.

SECTION 24
Liability and Indemnification

The Authority shall defend and indemnify its directors, officers, and employees to the same extent as any other public entity of the State of California is obliged to defend and indemnify its public employees pursuant to California Government Code Section 825, et seq., or other applicable provisions of law.

The Authority may insure or self-insure itself to the extent deemed necessary by the Board against loss, liability and claims arising out of or connected to the conduct of the Authority's activities.

SECTION 25
Assessment

Upon a two-thirds vote of the entire Board, the Board shall have the authority to levy a cash assessment for any pooled coverage program if the Board finds that there are insufficient funds available to the Authority to meet its legal obligations.

Any cost, including attorneys' fees, incurred by the Authority in collecting any cash assessment shall be reimbursed by the Member against which such collection action has been taken.

SECTION 26
Dividends and Premium Rebates

Upon a two-thirds vote of the Board, the Board shall have the authority to declare a dividend, rebate of excess contributions, and/or reduction of future contributions for any pooled coverage program if the Board finds there are excess reserves in the retention fund.

SECTION 27
Severability

If any portion, term, condition or provision of this Agreement is determined by a court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

SECTION 28
Prohibition Against Assignment

No Member may assign a right, claim, or interest it may have under this Agreement. No creditor, assignee, or third party beneficiary of a Member has a right, claim, or title to any part, share, interest, fund, premium, or asset of the Authority.

SECTION 29
Amendment

This Agreement may be amended by Resolution of the governing bodies of two-thirds of the then-participating Members.

SECTION 30
Notices

Notices to Members under this Agreement shall be sufficient if delivered to the office of the Member. Notices to the Authority shall be sufficient if delivered to the office of the CAO.

agendas/municipal pooling authority joint powers agreement.doc

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

City of Antioch

City of Oakley

City of Brentwood

City of Orinda

City of Clayton

City of Pinole

Town of Danville

City of Pittsburg

City of El Cerrito

City of Pleasant Hill

City of Hercules

City of Richmond

City of Lafayette

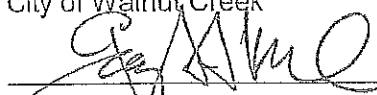
City of San Pablo

City of Manteca

City of San Ramon

City of Martinez

City of Walnut Creek



Mayor Gary Skreli

Town of Moraga
