

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE
CALIFORNIA RISK MANAGEMENT AUTHORITY**

This amended and restated Agreement replaces the original Agreement made and entered into as of the 24th day of June 2003, by and between the Agencies that were then parties to the Agreement.

RECITALS

A. Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (section 6500 et seq.) permits two or more public agencies by Agreement to exercise jointly powers common to the contracting parties.

B. The public agencies executing this Agreement desire to join together for the purpose of jointly funding, purchasing and/or establishing insurance and risk management programs as determined.

C. Article 16, Section 6 of the California Constitution provides that insurance pooling arrangements under joint exercise of power Agreements shall not be considered the giving or lending of credit as prohibited therein.

D. California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these.

E. California Government Code Section 990.6 provides that the cost of insurance is a proper charge against the local public entity.

F. California Government Code Section 990.8 provides that two or more local public entities by a joint powers Agreement may provide insurance by any one or more of the methods specified in Government Code Section 990.4, and the pooling of self-insured claims losses is not considered insurance nor subject to regulation under the Insurance Code.

G. California Government Code Section 990.8 also provides that a joint powers Agreement may provide that if any peril insured or covered under a contract has existed and the joint powers authority or other parties participating in the pool have been liable for any period, the Agreement may provide that the insured or covered agency is not entitled to the return of premiums, contributions, payments, or advances so far as the particular risk insured or covered is concerned.

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

PURPOSE AND POWERS

1. Authority Created and Effective Date of Agreement.

This Authority was created pursuant to Government Code section 6502 on June 24, 2003. This This amended and restated Agreement is effective as soon as executed by all current member Agencies. The primary officer of the Authority shall promptly notify all member Agencies in writing of the effective date of this amended and restated Agreement. This Agreement shall remain in effect until terminated as provided herein. This Agreement does not create a separate entity (as permitted by Government Code section 6503.5).

2. Authority Name.

The Authority shall be known as the Exclusive Risk Management Authority of California.

3. Purpose of the Agreement: Common Exercise of Powers.

The Agencies enter into this Agreement in order to jointly develop and fund insurance and other related programs as determined by the Agencies wishing to participate in such programs or obtain services. Programs may include, but are not limited to, the creation of joint insurance funds, including excess insurance funds, the pooling of self-insured claims and losses, purchase of insurance, including reinsurance, and the provision of necessary administrative and other services. Such services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting and legal defense services. New members may be admitted to the Authority upon approval by a two-thirds or higher vote of the Board of Directors. Eligibility is limited to California public agencies.

4. Powers.

The Authority has, and the Agencies delegate to the Authority, all powers reasonably necessary or prudent to perform and provide the services as generally described in Section 3 of this Agreement. In the exercise of the powers as provided in this agreement, the Authority shall conduct its business and perform its services in the same manner as a general law city. The agencies acknowledge that the powers delegated to the Authority are common to the Agencies. This delegation of powers includes, but is not limited to, the following:

(A) To make and enter into contracts.

(B) To employ agents and employees.

(C). To incur debts, liabilities, and obligations.

(D). To acquire, hold, or dispose of property, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and public agencies.

(E). To receive and use contributions and advances from members as provided in Government Code Section 6504, including contributions or advances of personnel, equipment or property.

(F). To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5.

(G). To carry out all provisions of this Agreement.

(H). To appoint a Treasurer and an Auditor (which may be a consultant retained for that purpose) pursuant to Government Code section 6505.6. Per that section, the Treasurer shall cause an annual audit to be conducted.

The delegated powers shall be exercised pursuant to the terms of this Agreement and in the manner provided by law.

5. Withdrawal.

Each Agency can terminate its participation under this Agreement upon the giving of written notice to the primary officer of the Authority of provisional termination by December 31 and final notice of termination by March 31 prior to the renewal date of the Agency's Memorandum of Coverage. An Agency's withdrawal from the liability program of the Authority shall terminate the Agency's participation under this Agreement.

6. Board of Directors.

The governing body of each Agency shall appoint one person to serve as a member of the Board of Directors of the Authority. The Board of Directors shall have the authority to act on behalf of the Authority and all actions shall be approved by a majority of the members of the Board of Directors. The Board of Directors shall conduct meetings and operate in accordance with bylaws it shall create. At least one regular meeting shall be held each program year.

7. Limitations on Returns of Premiums.

Consistent with the provisions of California Government Code Section 990.8, each Agency shall not be entitled to the return of premiums, contributions, payments, or advances if any peril insured or covered under a contract has existed and the Authority or other parties participating in this

Authority have been liable for any period, so far as the particular risk insured or covered is concerned.

8. Notices.

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any party to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid to each party to this Agreement at the primary business location of that agency.

9. Severability.

Should any provision of this Agreement be held by a court of competent jurisdiction or by a legislative or rule making act to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding, legislation or rule.

10. Sole and Entire Agreement.

Once effective, this amended and restated Agreement constitutes the sole and entire Agreement between the agencies with respect to the subject matter hereof. This Agreement correctly set forth the obligations of the parties hereto to each other as of the date of this Agreement. All agreements or representations respecting the subject matter of this Agreement not expressly set forth or referred to in this Agreement are null and void.

11. Due Authority.

The agencies hereby represent that the individuals executing this Agreement are expressly authorized to do so on and in behalf of the agencies.

12. Construction.

The agencies agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

13. Amendments.

Amendments to this Agreement shall be made only with the mutual written consent of all Agencies that are parties to this Agreement.

14. Indemnification and Hold Harmless.

Each agency herein agrees to save free and hold harmless the other agencies, their elected officers, employees, volunteers and agents for any claim, damage, or liability in connection the joint exercise of common powers described herein.

15. Contractual Liability of Agencies.

Pursuant to California Government Code §6508.1, the Agencies agree that the Authority is not one or more of the parties to this Agreement but is a public entity constituted pursuant to the Agreement, and the debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of the individual Agencies that are parties to this Agreement.

Furthermore, neither the Authority nor the Authority's Board of Directors shall have the power or the authority to bind the Agencies to any debt, liability, contract, or obligation, or to employ any person on behalf of the Agencies; no debt, liability, contract, obligation, employee, or agent of the Authority or the Board of Directors of the Authority shall be or constitute thereby a debt, liability, contract, obligation, employee, or agent of the Agencies or any of them.

16. Member Agency Responsibilities.

The member Agencies shall have the following responsibilities:

- A. to cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the Memorandum of Coverage;
- B. to pay cash contributions, cash assessments and other charges, promptly to the Authority when due;
- C. to provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement;
- D. to establish and maintain risk management programs including but not limited to loss control, risk transfer and employee safety programs;
- E. to cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement;
- F. to comply with the bylaws and all policies and procedures adopted by the Board; and,
- G. to appoint a representative and alternate to the Board of Directors.

17. Assessments and Surplus Distributions.

The Board by two-thirds vote shall have the authority to levy an assessment on member Agencies upon a determination that it is necessary to meet the Authority's obligations. The assessment shall be *pro rata* in accordance with the respective initial premiums paid by members for the program year(s) giving rise to the deficit position. The Board by two-thirds vote shall have the authority to declare a distribution of surplus funds to current members upon a determination that surplus funds are available for distribution. Such distribution shall be *pro rata* in accordance with the respective initial premiums paid by current member Agencies for the program year(s) giving rise to the surplus position. Withdrawn members are not eligible for surplus distributions.

18. Expulsion.

The Board, by a two-thirds vote, may expel any member Agency from membership, effective at the end of the program year in which notice is given; such Agency shall have all the duties of a member that had voluntarily withdrawn.

19. Effect of Withdrawal.

Withdrawal of any member Agency under Section 5 shall not terminate its responsibility:

A. to cooperate fully with the Authority in determining the cause of losses and in the defense of covered claims;

B. to pay assessments, contributions, and any other amounts due and payable for program years in which the member Agency participated;

C. to provide such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement; and

D. to cooperate and assist the Authority and any insurer, claims adjustor, or legal counsel retained by the Authority, in all matters relating to this Agreement. Coverage in all program years in which the member Agency participated will remain in effect and continue unless and until their respective program year(s) are closed to further claims by a two-thirds vote of the Board.

20. Termination and Distribution. This Agreement may be terminated at any time by the written consent of all member Agencies, or when due to withdrawals or expulsions, less than two member Agencies remain. Provided, however, that this Agreement shall continue in force for the purpose of disposing of all claims and all other functions necessary to wind up the affairs of the Authority. Upon termination of this Agreement, after resolution of claims, all assets of the Authority shall be distributed among past or present members of the Authority *pro rata* in proportion to the contributions made.

21. This Agreement may be executed in counterparts.

Executed pursuant to X City Council Resolution No. 03-098 this ___ day
of ____ at City, California.

By:

Attest: