

MUNICIPAL POOLING AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

This Amended and Restated Joint Exercise of Powers Agreement (hereafter "Agreement") is entered into by and among the public entities listed in Appendix A (hereafter referred to as "Members").

RECITALS

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, allowing a public entity to fund its own workers' compensation claims;
 - b. Government Code Sections 989 and 990, permitting a local public entity to insure itself against liability and other losses;
 - c. Government Code Section 990.4, permitting a public entity to provide insurance and self-insurance in any desired combination;
 - d. Government Code Section 990.6, providing that the cost of insurance authorized under the related sections is a proper charge against the local public entity;
 - e. Government Code Section 990.8, permitting two or more local public entities to enter into an agreement to jointly fund such expenditures under the authority of Government Code Sections 6500, *et seq.*; and
 - f. Government Code Sections 6500, *et seq.*, permitting two or more local 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 MPA shall not constitute debts, liabilities, or obligations of the Members.
5. MPA 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 Since that time the Agreement has been amended several times and Members have withdrawn from and new Members have been added to MPA.

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

SECTION 1 Authority and Purpose

This Agreement is made under the authority of California Government Code Sections 6500, *et seq.* between the Members. 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. "MPA" shall mean the public entity known as the Municipal Pooling Authority created by this Agreement.
2. "Board" shall mean the governing body of MPA.
3. "Chief Administrative Officer" shall mean the person appointed by the Board as the Chief Administrative Officer of MPA.
4. "Claim" shall mean a claim or demand made against a Member arising out of an occurrence that is covered or alleged to be covered by any Memoranda of Coverage issued by MPA or by a purchased policy of insurance.
5. "Member" shall mean any public entity listed in Appendix A to this Agreement.
6. "Memoranda of Coverage" shall mean documents issued by MPA specifying the type, terms, conditions, and limitations of coverage provided by MPA to each Member that participates in the program.

SECTION 3 Creation of MPA

~~Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6500), the parties hereto create a~~ public entity, separate and apart from the parties hereto ~~and ; to be known as the Municipal Pooling Authority, was previously created and is continued pursuant to Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6500).~~

SECTION 4 Terms of Agreement

This Agreement is effective as of [REDACTED] and continues until terminated as hereafter provided. The prior Joint Exercise of Powers Agreement is terminated upon the effective date hereof.

SECTION 5
Governing Board

MPA shall be governed by a Board composed of one individual representative 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 vote at any meeting of the Board at which the regular Board member is absent.

SECTION 6
Meetings and Committees

- (a) Committees. The Board may establish an Executive Committee comprised of members of the Board and delegate to it any powers or functions not reserved to the entire Board or otherwise nondelegable. Other regular committees may be created by, or in accordance with, the procedures set forth in Bylaws adopted by the Board. Ad hoc committees may from time to time be established by the President of the Board to serve as temporary committees for a limited purpose.
- (b) 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. Other meetings of the Board and meetings of any duly established committees may be held in accordance with applicable law. All meetings of the Board and regular committees shall be held in a manner consistent with the Bylaws and in compliance with the Ralph M. Brown Act (California Government Sections 54950, *et seq.*).
- (c) Bylaws and Regulations. The Board may adopt Bylaws and regulations that are not inconsistent either with applicable law or with this Agreement. In the event the Bylaws or regulations are inconsistent with this Agreement, this Agreement shall control. The Chief Administrative Officer shall send to each Member all such Bylaws and regulations, and any amendments thereto, promptly after adoption by the 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 MPA and shall be responsible for maintaining all records of MPA.
- (c) The Board shall elect a Treasurer with the qualifications and to perform the duties set forth in the Bylaws.

- (d) The Board may appoint such other officers, employ individuals, and contract with consultants and other professional persons or firms as it considers necessary to carry out the purposes of this Agreement.

SECTION 8 Powers of MPA

MPA ~~shall have the powers and authority to exercise any powers common to its Members~~ and is hereby authorized, in its own name, to do all acts necessary for the exercise of ~~those~~ such common 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 MPA 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. Pursuant to Section 6509 of the California Government Code, the exercise of such powers shall be, subject only to those restrictions upon the manner of exercising the powers which are imposed upon Members such as the City of Pleasant Hill, in the exercise of similar powers.

SECTION 9 Fiscal Year

The "fiscal year" of MPA 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 MPA

Pursuant to the payment of contributions by each Member, MPA shall provide coverage pursuant to one or more Memoranda of Coverage and/or purchased policies of 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 MPA.

SECTION 12
Budget

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

SECTION 13
Member Contributions

The Chief Administrative Officer shall be responsible for calculating annually the amount of contributions to be charged for coverage selected 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 MPA.

SECTION 14
Accounts and Records

The Chief Administrative Officer shall be responsible for establishing and maintaining the funds and accounts in accordance with acceptable accounting practices and maintaining such other records as the Board requires pursuant to the procedures set forth in the Bylaws. The Chief Administrative Officer shall have the custody of and be responsible for the disbursement of MPA 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
MPA Functions and Responsibilities

MPA shall provide comprehensive risk management services to its Members.

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SECTION 17
Member Responsibilities

Each Member has responsibilities, including the following:

- (1) Appoint its representative and alternate to the MPA Board in accordance with the ~~procedures set forth in the Bylaws~~ applicable practices and procedures;
- (2) Cooperate fully with MPA in the investigation, defense, and settlement of Claims, including compliance with any applicable Memoranda of Coverage;
- (3) Comply with risk management recommendations, guidelines, and requirements established by MPA;
- (4) Pay contributions and assessments approved by the Board when due;
- (5) Provide MPA with ~~statistical and loss experience~~ data and other information requested; and
- (6) Cooperate with and assist MPA and any insurer, adjuster, or legal counsel retained by MPA in matters related to this Agreement, any Bylaws adopted by the Board, and any other governing documents, policies, or procedures adopted by the Board.

SECTION 18
New Members

Upon the vote 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 MPA its current contribution payment as determined in accordance herewith, as well as any fees and expenses set by the Board.

SECTION 19
Cancellation of Coverage in a Program or Programs

If a Member fails to comply with this Agreement, any Bylaws adopted by the Board, or any procedures or policies established by the Board, the Board may, by a two-thirds vote of all members of the Board, 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 MPA 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 Member and party to the Agreement, effective at the end of any fiscal year upon giving MPA six (6) months prior written notice of its intent to withdraw.

SECTION 22
Expulsion

The Board, by a three-fourths vote of all members of the Board, 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 MPA's governing documents.

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 MPA. 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

MPA shall defend and indemnify its Board members, 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.

MPA 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 MPA's activities.

SECTION 25
Assessment

Upon a two-thirds vote of all members of the 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 MPA to meet its legal obligations.

Any cost, including attorneys' fees, incurred by MPA 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 all members 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 MPA.

SECTION 29
Amendment

This Agreement may be amended by Resolution of the governing bodies of two-thirds of the then-participating Members. Appendix A to this Agreement may be amended to correctly list current Members without separate action by the governing bodies of the Members or the Board, and provided any additional members execute the Agreement.

SECTION 30
Notices

Notices to Members under this Agreement shall be sufficient if delivered to the office of the Member. Notices to MPA shall be sufficient if delivered to the office of the Chief Administrative Officer.

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 Brentwood

City of Clayton

Town of Danville

City of El Cerrito

City of Gilroy

City of Hercules

City of Lafayette

City of Manteca

City of Martinez

Town of Moraga

City of Mountain House

City of Oakley

City of Orinda

City of Pacifica

City of Pinole

City of Pittsburg

City of Pleasant Hill

City of San Pablo

City of San Ramon

City of Walnut Creek
