

**MUNICIPAL POOLING AUTHORITY  
JOINT EXERCISE OF POWERS AGREEMENT**

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

**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, 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 this Authority shall not constitute debts, liabilities, or obligations of the Members.
5. The Authority was originally formed by a Joint Exercise of 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 Since that time the agreement has been amended several times and Members have withdrawn from and new Members have been added to the Authority.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 Members agree as follows:

**SECTION 1  
AUTHORITY AND PURPOSE**

This Agreement is made under the authority of California Government Code Sections Section 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. 269

**SECTION 2**  
**DEFINITIONS**

Unless the context otherwise requires:

1. "Authority" means the public entity known as the "Municipal Pooling Authority" created by this Agreement;
2. "Board" is the governing body of the Authority, constituted as set forth in Section 5 of this Agreement;
3. "Chief Administrative Officer" is the person appointed by the Board to be its Secretary and the Risk Manager of the Authority.
4. "Claim" means a demand made against a Member arising out of occurrences or losses that are covered or alleged to be covered by a Memorandum of Coverage issued by the Authority or by a purchased policy of insurance;
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 applicable memorandum of coverage or purchased policy of insurance;
6. "Member" includes each public entity listed in Appendix A;
7. "Memorandum of Coverage" is a document memorializing the terms, conditions, and limitations of the coverage for those risks the Members agree to self-insure.

**SECTION 3**  
**CREATION OF AUTHORITY**

The Authority is created under Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6500) as a public entity, separate and apart from the Members.

**SECTION 4**  
**TERMS OF AGREEMENT**

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

**SECTION 5**  
**GOVERNING BODY**

The Authority shall be governed by a Board composed of one individual director 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 director shall have one vote. Each Member shall appoint one alternate director to the Board. The alternate director shall have the same qualifications as the director. The alternate director may attend, participate in, and vote at any meeting of the Board at which the director is absent.

**SECTION 6**  
**MEETINGS AND COMMITTEES**

1. 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 committees may be created by, or in accordance with, the procedures set forth in Bylaws adopted by the Board.
2. 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 Authority 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 shall be held in a manner consistent with the Bylaws and in compliance with the Ralph M. Brown Act (California Government Section 54950, *et seq.*).
3. Bylaws and Regulations. The Board may adopt Bylaws and regulations, which 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**

1. The Board shall elect a President and Vice-President from among its members to perform the duties set forth in the Bylaws.
2. The Chief Administrative Officer shall be the Secretary of the Authority and shall be responsible for maintaining all records of the Authority.
3. The Board shall elect a Treasurer and Auditor with the qualifications and to perform the duties set forth in the Bylaws.
4. 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**

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. Pursuant to and to the extent required by Government Code Section 6509, the Authority shall be restricted in the exercise of its powers in the same manner as the Member designated by Resolution of the Board is restricted in its 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 pursuant to one or more Memorandum of Coverage and/or purchased policy 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 the Authority.

**SECTION 12**  
**BUDGET**

The Board 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 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 the Authority.

**SECTION 14**  
**ACCOUNTS AND RECORDS**

The Chief Administrative Officer of the Authority 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 Chief Administrative Officer 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 responsibilities including the following:

1. Appoint its director and alternate director to the Board;
2. Cooperate fully with the Authority in determining the cause of losses and in the settlement of Claims and losses;
3. Comply with risk management requirements established by the Authority;
4. Pay contributions and assessments approved by the Board when due;
5. Provide the Authority with statistical and loss experience, data, and other information requested; and
6. Cooperate with and assist the Authority and any insurer, adjuster, or legal counsel retained by the Authority 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 the Authority 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 Members. 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 OF A MEMBER**

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 OF A MEMBER**

The withdrawal or expulsion of a Member shall not terminate the Authority nor alter any of the terms or conditions of this Agreement, the Bylaws, or any policy or procedure adopted by the Board.

The withdrawal of any Member shall not terminate its responsibility to contribute its share of contributions, premiums (including insurance or excess premiums), surcharges, administration costs, claims (including unreported claims), or other funds to the Authority until all claims, or other unpaid liabilities covering the period of participation by the Member in the coverage program have been finally resolved, those program years have been closed, and a determination of the final amount of payments due by the Member has been made by the Board. After withdrawal, the withdrawing Member shall continue to be responsible for and to pay any assessments made for any years of membership.

In addition, the withdrawal or expulsion of any Member shall not terminate its responsibility:

1. To cooperate fully with the Authority in determining the cause of losses and in the defense and settlement of claims, as defined in the applicable Memorandum of Coverage, for the coverage period(s) in which the Member participated.
2. To pay any cash assessments or other amounts determined by the Board to be due and payable for each program year of each program in which it participated until all claims or other unpaid liabilities covering such periods have been finally resolved.
3. To provide the Authority with statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement.
4. To cooperate with and assist the Authority in all matters relating to this Agreement.

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.

Upon withdrawal or expulsion 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 or expulsion takes place, if any. Past Members shall not participate in or be entitled to any other funds, property, or other assets

of the Authority except that the distribution of dividends for past Members will be considered based on the continued cooperation of the past Member as required and may be authorized by 2/3 vote of all members of the Board.

**SECTION 24**  
**LIABILITY AND INDEMNIFICATION**

The Authority 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.

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 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 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 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 the Authority.

**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.

**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 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

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City of Brentwood

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City of Clayton

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Town of Danville

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City of El Cerrito

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City of Gilroy

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City of Hercules

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City of Lafayette

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City of Manteca

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City of Martinez

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Town of Moraga

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City of Oakley

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City of Orinda

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City of Pacifica

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City of Pinole

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City of Pittsburg

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City of Pleasant Hill

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City of San Pablo

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City of San Ramon

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City of Walnut Creek

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