

CENTRAL SAN JOAQUIN VALLEY
RISK MANAGEMENT AUTHORITY
JOINT POWERS AGREEMENT
AS AMENDED JULY 1, 2002

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

JOINT POWERS AGREEMENT
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AMENDED JOINT EXERCISE OF POWERS AGREEMENT
FOR INSURANCE AND RISK MANAGEMENT PURPOSES

THIS AMENDED AGREEMENT, dated for convenience this 1st day of July, 1994, made and entered into by, between, and among those **Member Cities** which become parties to this Agreement by action of their governing boards adopting a resolution agreeing to participate in the joint powers entity created by the terms and conditions of this Agreement;

RECITALS:

WHEREAS, California Government Code Section 6500, et. seq. provides that two or more public agencies may, by agreement, exercise any power common to the contracting parties; and

WHEREAS, California Government Code Sections 990 and 990.4 provide that a local entity may self-insure, purchase **insurance** through an authorized insurer, purchase **insurance** through a surplus line **broker**, or any combination thereof; and

WHEREAS, California Government Code Section 990.8 provides that two or more local public entities, by a joint powers agreement, may provide **insurance** for any authorized purpose by any one or more of the methods specified in Section 990.4; and

WHEREAS, Article XVI, Section 6, of the California Constitution provides that **insurance** pooling arrangements under joint exercise of powers agreements shall not be considered the giving or lending of credit as prohibited therein; and

WHEREAS, each of the cities which are parties to this Agreement desires to join together with other cities in order to collectively self-insure or pool their losses and to jointly purchase **insurance** and administrative services in connection with **Joint Protection Programs** for said cities; and

WHEREAS, the Tulare-Kings Municipal Risk Management Authority, a public entity, was created by an initial Agreement dated April 1, 1979, among various cities within the Counties of Tulare and Kings; and

WHEREAS, the name of the organization was changed to the Central San Joaquin Valley Risk Management Authority on July 1, 1981; and

WHEREAS, the initial Agreement was amended on January 1, 1985 by a two-thirds vote of the **Member Cities'** city councils; and

WHEREAS, said **Member Cities** have determined that it is again appropriate and in the public interest to make certain technical corrections and additions to this Agreement which will provide clarification and will permit the governing body to meet a minimum of two times a year to conduct that business which only the governing body may act upon; and

WHEREAS, it is therefore necessary to amend said Joint Powers Agreement; and

WHEREAS, said Agreement provides that amendments to the Agreement may be made by a vote of two-thirds (2/3rds) of the **Member Cities** by resolution of the City Councils of said Cities:

NOW, THEREFORE, for and in consideration of the execution of this Agreement by two-thirds (2/3rds) of the **Member Cities**, each of the **Member Cities** which are parties hereto does hereby adopt this amended Agreement, dated July 1, 1994, which concurrently supersedes that certain Agreement creating the **Authority**, dated April 1, 1979, and all amendments thereto.

ARTICLE I DEFINITIONS

The following words, when typed in bold print within the provisions of this Agreement, shall have the following definitions:

"**Administrator**" shall mean that person or group appointed by the Executive Committee and given responsibility for the management, administration, and operation of the **Authority**.

"**Authority**" shall mean the Central San Joaquin Valley Risk Management Authority, aka the RMA.

"**Board of Directors**" or "**Board**" shall mean the governing body of the **Authority**.

"**Broker**" shall mean the insurance broker hired by the **Executive Committee** to acquire insurance coverage.

"**Claims**" shall mean demands made against the **Authority** arising out of occurrences which are claimed to be within one of the **Authority's Joint Protection Programs** as developed by the **Board**.

"**Deposit Premium**" shall mean those funds charged for the purpose of self-insured coverage.

"**Executive Committee**" shall mean the elected officers and the representatives appointed by each region to represent that region.

"Fiscal Year" shall mean the period July 1 to June 30 of each year.

"Insurance" shall mean any commercial insurance coverage.

"Insurance Premium" shall mean those funds charged for the payment of group purchased insurance.

"Joint Protection Programs" shall mean any program to provide risk sharing or insurance coverage under this Agreement and shall include a determination as to the amount of initial Insurance Premiums and/or Deposit Premiums, a precise allocation plan and formula, and a determination of the amount and type, if any, of excess insurance to be purchased. Included within the term Joint Protection Program is the identification of exposures to accidental loss, the reduction or limitation of losses to Member City properties and from injuries to persons or property caused by the operations of Member Cities and the funding of those risks, together with any other functions appropriate or necessary to the functioning of the Joint Protection Program.

"Master Plan Document" shall mean the document, formally adopted by the participating Member Cities, containing the provisions of a self-insured or pooled program which shall include, but not be limited to, the following:

1. The scope of the program;
2. The procedures to be followed;
3. Who may participate;
4. Any limits or restrictions;
5. How Deposit Premiums are determined;
6. How refunds, if any, are determined;
7. Commitments required by participants; and
8. How the document may be amended.

"Member City" shall mean a city which is an incorporated municipality organized with a council, City Manager/Administrator form of government, which has been approved for participation in the Authority by the Executive Committee in accordance with applicable provisions of the Agreement and the Bylaws, and has signed the Agreement.

"Operating Fund" shall mean the fund established by the Authority for the purpose of paying just demands submitted to the Authority;

"Representative" shall mean the person, normally the City Manager/Administrator of the Member City, who has been designated in writing by the Member City to represent and act for and on behalf of the Member City regarding any matter before the Authority's Board or Executive Committee.

"Self-Insurance" shall mean the process whereby the **Authority** maintains sufficient reserves to pay all **claims** and associated expenses of a risk area without purchasing **insurance** to cover the risk or a portion of the risk.

ARTICLE II PURPOSES

The purpose of this Agreement is to provide joint powers common to each **Member City** for **insurance** purposes; to pool and share risks; to implement risk management principles; and to provide for the future inclusion of additional incorporated municipalities desiring to become parties to the Agreement.

ARTICLE III CREATION OF JOINT POWERS AUTHORITY

- A. Pursuant to Section 6500, et. seq. of the California Government Code, the **Authority** is a public entity separate and apart from the parties to this Agreement. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of this joint powers authority shall not constitute debts, liabilities, or obligations of any party to this Agreement.
- B. It is the express understanding of all parties that the **Authority** created originally on or about April 1, 1979, is the same **Authority** continued under this Agreement, even though some powers and procedures may be changed by this Agreement.
- C. The **Authority**, its **Board**, officers, membership, and staff shall be governed by this Agreement, the Bylaws, **Master Plan Documents**, Memoranda of Coverage, and other documents duly adopted by the **Authority**.

ARTICLE IV PARTIES TO AGREEMENT

- A. Each city which has applied to and been accepted as a member of the **Authority** is a party to the Joint Exercise of Powers Agreement. Each party to the Agreement shall be bound by this Agreement when two-thirds (2/3rds) of the city councils of the **Member Cities** have adopted this amended Agreement. A party to this Agreement certifies that it intends to and does contract with the **Authority** and with all other **Member Cities** which have signed this Agreement and, in addition, with each city which may hereafter be added as a party to and may sign this Agreement. Each city which has or may hereafter sign this Agreement also certifies that the deletion of any city from the **Authority** by voluntary withdrawal, involuntary termination, or otherwise, shall not affect this Agreement nor each **Member City's** intent to contract as described above with the then remaining **Member Cities**.

- B. Each city which is a member of the **Authority** at the time this amended Agreement is adopted by two-thirds (2/3rds) of the **Member Cities**, certifies that it intends to and does hereby contract with the **Authority** and with all other current **Member Cities**, and in addition, with each city which may hereafter be added as a party to and may sign this Agreement.

ARTICLE V MEMBERSHIP

A. ELIGIBILITY

To be a member of this **Authority**, a city must be an incorporated municipality which is characterized by having professional management as typified by a bona fide Council Manager/Administrator form of government and must be approved for participation in the **Authority** in the manner provided by the Bylaws.

B. NEW MEMBERS

Eligible incorporated municipalities may become a party to this Agreement pursuant to the Bylaws of the **Authority**.

ARTICLE VI TERM OF AGREEMENT

This Agreement, as amended, shall become effective when approved by two thirds (2/3rds) of the respective City Councils of the **Member Cities**. When effective, this Agreement, as may be amended from time to time, shall continue thereafter until terminated as herein provided. This Agreement shall become effective as to any new **Member City** in accordance with the Bylaws and Master Plan Documents of the **Authority**.

ARTICLE VII POWERS OF THE AUTHORITY

- A. The **Authority** shall have all of the powers common to **Member Cities** and all additional powers set forth in Section 6500, et. seq. and Section 989, et. seq. of the Government Code and other applicable law. The **Authority** shall have all of the rights, immunities, privileges, and defenses afforded each **Member City** and peculiar to the particular **Member City** being sued or against which there has been a claim.

The **Authority** is hereby authorized to do all acts necessary or appropriate for the exercise of said powers, including, but not limited to any or all of the following:

1. to make and enter into contracts;
2. to incur debts, liabilities, and obligations, but no debt, liability, or obligation of the **Authority** is a debt, liability, or obligation of a **Member City** which is a part of this Agreement;
3. to assess **Member Cities** for good cause as determined by the **Executive Committee**;
4. to acquire, hold, or dispose of real and personal property;
5. to receive contributions and donations of property, funds, services, and other forms of assistance from any sources;
6. to sue and be sued in its own name;
7. to employ agents and employees;
8. to acquire, construct, manage, and maintain buildings;
9. to lease real or personal property, including that of a **Member City**; and
10. to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or otherwise authorized by law.

- B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

ARTICLE VIII BOARD OF DIRECTORS

A. STRUCTURE

The **Authority** shall be governed by a **Board** composed of one **Representative** from each **Member City**, each serving in an individual capacity as a member of the **Board**. Each **Member City** shall appoint one **Representative**. Appointments shall be limited to the City Manager/Administrator of each **Member City** or his/her authorized delegate. Each **Member City** shall also appoint one alternate **Representative**. The alternate **Representative** may attend and may participate in any meeting of the **Board**. When the regular **Representative** for whom he/she is an alternate is absent from the meeting, the alternate **Representative** may vote. Each **Representative** serves at the pleasure of the **Member City** being represented. Each **Representative** has one vote as the member of the **Board**. **Representatives** are not entitled to compensation. However, the **Executive Committee** may authorize reimbursement for expense incurred by a **Representative** in connection with his/her duties for the **Authority**.

B. MEETINGS OF THE BOARD

The **Board** shall hold at least two meetings each year. The **Executive Committee** shall fix by resolution the date upon which and the hour and place at which each regular meeting is to be held.

The President may call for a special meeting of the **Board** in compliance with open meeting laws in the State of California or a majority of the **Representatives** may call for a special meeting by filing a written request with the Secretary. The President must then set a date, time, and place for the meeting to be held within 30 days and must make provision for notice of the special meeting being given.

Each meeting of the **Board**, and each meeting of the **Executive Committee**, including, without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Section 54950 et. seq. of the Government Code).

The **Authority** shall have minutes of regular and special meetings kept. As soon as possible after each meeting, copies of the minutes shall be forwarded to each **Member City**.

A majority of the members of the **Board** is a quorum for the transaction of business. However, less than a quorum may adjourn from time to time. A vote of the majority of a quorum at a meeting is sufficient to take action, unless otherwise specified.

C. POWERS OF THE BOARD OF DIRECTORS

The **Board** shall provide policy direction for the **Executive Committee**, the officers, and the **Administrator**. The **Board** may delegate any and all of its authority to the **Executive Committee** except the following:

1. To change the Bylaws, which requires at least a two-thirds (2/3rds) vote of the **Board**;
2. To create any new **Joint Protection Program**;
3. To terminate any **Joint Protection Program**;
4. To expel a **Member City**;
5. To adopt an operating budget for the **Authority**;
6. To change or revise the **Authority's** Conflict of Interest Code;
7. To authorize the issuance, modification, or defeasance of bonds; and
8. To annually review and approve the Investment Policy.

ARTICLE IX
BYLAWS AND REGULATIONS

The **Board** shall adopt Bylaws and general regulations not inconsistent with State law and this Agreement.

ARTICLE X
EXECUTIVE COMMITTEE

The **Board** shall establish an **Executive Committee** and delegate functions not otherwise reserved to the entire **Board**. The **Executive Committee** shall be appointed, have the powers, and hold meetings as set forth in the Bylaws.

ARTICLE XI
OFFICERS

The officers of the **Authority** shall consist of an elected President, First Vice President, and Second Vice President, and an appointed **Administrator**, Secretary, and Treasurer. Other offices may be created by the Bylaws, **Master Plan Documents**, or the **Administrator**, subject to the approval of the **Board** or the **Executive Committee**, as applicable. All offices shall be filled and have the powers and responsibilities as prescribed in the Bylaws or **Master Plan Documents**.

The president shall appoint someone other than the treasurer to perform the functions of auditor/controller of the **Authority**, or the president may assume these functions as a collateral duty of the presidency. The treasurer and auditor/controller have the powers, duties, and responsibilities specified in Government Code Section 6505.6.

The **Board** shall require the treasurer and auditor/controller to file with the **Authority** an official bond in the amount to be fixed by the **Board**. The **Authority** shall pay the cost of bond premiums required by this section.

ARTICLE XII
JOINT PROTECTION PROGRAMS

- A. The **Executive Committee** may at any time, and from time to time, offer to the **Board** for adoption such **Joint Protection Programs** as may be deemed desirable. All **Member Cities** shall participate in those mandatory **Joint Protection Programs** as set forth in the Bylaws. All other **Joint Protection Programs** shall be optional. The **Board** shall establish the amount of **Deposit Premium**, determine the amount of loss reserve contribution, provide for the handling of **claims**, and otherwise establish the policies and procedures necessary to provide a particular **Joint Protection Program** for **Member Cities**.

- B. Each **Joint Protection Program** shall remain separate and distinct from every other **Joint Protection Program** and the liability and obligations of each program and its participating **Member Cities** shall not be a liability or obligation of another program or participating **Member City** of another program. A **Member City's** participation in one program shall not obligate it or its funds on deposit with the **Authority**, to the debts, obligations, or liabilities of any other program. Separate accounting shall be maintained for each **Joint Protection Program**.

ARTICLE XIII RESERVE FUNDS

The **Authority** may establish a fund for the purpose of paying the losses and establishing a reserve to cover the retained portion of losses that may be insured against by the **Authority** or the **Member Cities**. The treasurer shall invest and reinvest the funds in compliance with the **Authority's** Investment Policy and State laws and in the same manner as if they were **Member City** funds.

Refunds shall be made in accordance with the **Master Plan Document** for each program.

ARTICLE XIV OPERATING FUND

The **Authority** shall establish an **Operating Fund**. The **Operating Fund** is for the purpose of paying **insurance premiums, broker's fees, adjusting fees, consultant and legal fees, and such other items as are appropriate**. Just demands for payment shall be made by warrants in compliance with the adopted budget. The warrants shall be paid as directed by the **Executive Committee**. The **Board** may establish such other funds as it considers appropriate which shall be maintained and invested in the same manner as the **Operating Fund**.

ARTICLE XV BUDGET

The **Board** shall adopt a budget annually.

ARTICLE XVI

FUNDING AND PROCEDURES FOR CALCULATING ANNUAL CONTRIBUTIONS

The provisions for funding and calculating annual contributions shall be as set forth in the Bylaws and the Master Plan Documents for each program.

ARTICLE XVII RESPONSIBILITIES OF AUTHORITY

The **Authority** may perform or have performed the following functions in discharging its responsibilities under this Agreement:

1. assist **Member Cities** in developing their risk management programs ;
2. participate in risk management advisory committees formed by **Member Cities**;
3. provide loss prevention, safety, and security services;
4. provide all program services as required by program **Master Plan Documents** ;
5. provide loss analysis control by use of statistical analysis, data processing, and record and file keeping services. The purpose of this information is to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
6. conduct risk management audits to review the participation of each **Member City** in the program; and
7. perform other functions as required by the **Board** for the purpose of accomplishing the goals of this Agreement.

ARTICLE XVIII RESPONSIBILITIES OF MEMBER CITIES

The **Member Cities** have the following responsibilities:

1. pay all financial obligations to the **Authority** within the time prescribed;
2. appoint an individual to be responsible for coordinating the risk management activities of his/her **Member City** with the **Authority**;
3. conduct its operations in a manner which enhances safety and loss control;
4. adopt a risk management program ;
5. establish a risk management advisory committee to work with the risk manager of the **Authority**;
6. maintain an active safety committee;
7. report to the risk manager during the development stages the addition of new programs or the significant reduction or expansion of existing programs;
8. permit and assist the **Authority** in conducting on-site safety and loss control inspections and/or safety or risk management audits as required by the **Board**;
9. submit DE3-DPs to the **Authority** concurrent with the submission dates established by the State of California;

10. submit underwriting information requested by the **Authority** on a timely basis;
11. provide accurate statistical data concerning the **Member City** to the **Authority** when requested;
12. cooperate fully with the **Authority** in determining the cause of losses and in the settlement of losses;
13. cooperate to the fullest extent with the **Authority's** Litigation Manager on matters of **claims** and the conduct of defense of **claims**; and
14. comply with risk management requirements established under the authority of this Agreement.

ARTICLE XIX WITHDRAWAL

Any **Member City**, at their sole discretion, may voluntarily withdraw from membership in the **Authority** only at the end of any **fiscal year** by notifying the **Authority** in writing six (6) months prior to the end of any **fiscal year**, or at any other time which is agreed to by the **Board**, unless otherwise prohibited in the **Master Plan Document** of any program. A notice of withdrawal shall be final and irreversible upon its receipt by the **Authority** unless the **Board** authorizes it to be rescinded by the **Member City**.

ARTICLE XX INVOLUNTARY TERMINATION

A **Member City** may be removed from this Agreement by a two-thirds (2/3rds) vote of the **Board** for non-compliance with any provision of the governing documents. Such involuntary termination shall proceed in accordance with the provisions set forth in the Bylaws.

ARTICLE XXI CONTINUED LIABILITY

Upon any withdrawal or involuntary termination of a **Member City**, the said **Member City** shall continue to be responsible for any unpaid **insurance premiums**, **deposit premiums**, **surcharges**, **administration costs**, and **claims** and for any debts and assessments in accordance with the provisions of this Agreement, the Bylaws, Resolutions, and the **Master Plan Documents of Joint Protection Programs** in which the **Member City** has participated.

ARTICLE XXII
REFUNDS UPON WITHDRAWAL OR INVOLUNTARY TERMINATION

- A. In the event a **Member City** withdraws from the **Authority** or its membership is involuntarily terminated, said **Member City** shall thereafter be entitled to receive its unobligated share of monies held by the **Authority**, less any and all amounts owed the **Authority** whether contingent or not, by the said withdrawing or terminated **Member City**. The remainder of any funds held by the **Authority** for the withdrawing or terminating **Member City** subject to any retention amount as provided below, shall be the unobligated share and shall be refunded to the **Member City** and shall be accepted in full settlement and satisfaction against any **claims** the **Member City** may have against the **Authority**. The **Authority** shall require that sufficient funds are retained on deposit with the **Authority** to completely pay any and all unpaid **insurance premiums, deposit premiums, surcharges, administration costs, or claims**, including any amounts for unreported **claims** and maturity of **claims** against said withdrawing or terminating **Member City**, and the amount to be retained on deposit shall be determined by the **Authority**. Any and all rights, entitlements, benefits, and obligations after withdrawal or termination shall be subject to ongoing obligations and responsibilities agreed to by a **Member City** by agreeing to participate in any pooled **Joint Protection Programs**.

ARTICLE XXIII
TERMINATION OF AUTHORITY

The **Authority** may be terminated at any time if two-thirds (2/3rds) of the respective city councils of the then-**Member Cities** adopt a resolution requesting termination of the **Authority**; provided, however, that this Joint Powers Agreement and the **Authority** shall continue to exist for the purpose of disposing of all **claims**, concluding any pending litigations, for the liquidation and distribution of assets, and for all other functions necessary to conclude the affairs of the **Authority**. The **Board** shall take whatever action is necessary or appropriate to cause these ongoing responsibilities to be discharged and to effectively close out the affairs of the **Authority**. Upon completion of the liquidation and dissolution of the **Authority**, the **Authority** shall pay to each city which was a member of the **Authority** at the time of termination its pro rata share based on a city's contribution to the **Authority**, as determined by an independent Certified Public Accountant which has audited the financial records of the **Authority**, of the remaining assets of the **Authority** and shall pay to each **Member City** all monies held by the **Authority** in the reserve funds of that **Member City**.

ARTICLE XXIV AUDIT

The **Authority** shall obtain an annual certified audit of its accounts and financial records which shall be made by a Certified Public Accountant and shall conform to generally accepted auditing standards.

ARTICLE XXV ARBITRATION

Any controversy between the parties hereto arising out of this Agreement shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

ARTICLE XXVI BINDING EFFECT OF BYLAWS, **MASTER PLAN DOCUMENTS**, AND MEMORANDA OF COVERAGE

Each party to this Agreement by the execution hereof agrees to be bound by and to comply with all of the terms and conditions of this Agreement, the Bylaws, the **Master Plan Documents**, Memoranda of Coverage, and any resolution adopted by the **Authority**, the **Board of Directors**, or the **Executive Committee** as they now exist or may hereafter be adopted or amended.

ARTICLE XXVII ENFORCEMENT

The **Authority** is hereby granted authority to enforce this Agreement. In the event action is instituted by the **Authority** to enforce any term of this Agreement, the Bylaws, or the **Master Plan Document** of any program against any **Member City**, the prevailing party shall be entitled to reasonable attorney fees and costs incurred because of said action, in addition to other appropriate relief.

ARTICLE XXVIII AMENDMENTS

This Agreement may be amended by written resolution approved and signed by two-thirds (2/3rds) of the respective city councils of the **Member Cities** that are parties to this Agreement. Upon signature of any amendment by two-thirds (2/3rds) of the **Member Cities**, any **Member City** failing or refusing to abide by such amendment may be involuntarily terminated as a party to this Agreement as provided herein.

ARTICLE XXIX
NOTICES

Notices under this Agreement shall be sufficient if delivered to the office of the Clerk or Secretary of the respective jurisdictions.

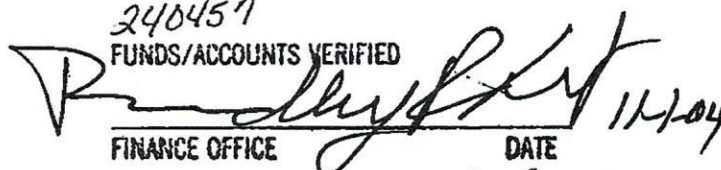
ARTICLE XXX
COUNTERPARTS

This Agreement may be executed in one or more counterparts and shall be as fully effective as though executed in one document.

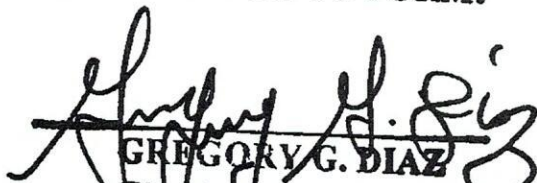
Dated: 11-4-04

BY: MEMBER CITY - MERCED



240457
FUNDS/ACCOUNTS VERIFIED

FINANCE OFFICE DATE 11-4-04
no funds required
10/29/04 per

APPROVED AS TO FORM:


GREGORY G. DIAZ
City Attorney