



City Council Staff Report

DATE: JUNE 7, 2017 NEW BUSINESS

SUBJECT: APPROVE ANNUAL INSURANCE POLICY RENEWALS FOR THE CITY'S INSURANCE PORTFOLIO FOR FISCAL YEAR 2017-18

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

The City is self-insured and annually purchases various lines of insurance coverage to minimize the adverse effects of accidental losses and claims against the City. This action would authorize the purchase of various lines of insurance for FY 2017-18.

RECOMMENDATION:

Adopt Resolution No. ____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING KEENAN & ASSOCIATES AS THE CITY'S BROKER OF RECORD, TO PURCHASE PROPERTY LIABILITY, EXCESS EARTHQUAKE/FLOOD LIABILITY (DIFFERENCE IN CONDITION), EXCESS LIABILITY, EXCESS WORKERS COMPENSATION, AIRPORT OWNERS AND OPERATORS LIABILITY, VILLAGE FEST LIABILITY, MULTI MEDIA LIABILITY, AIRCRAFT HULL LIABILITY, CRIME/FIDELITY LIABILITY, AND CYBER LIABILITY INSURANCE POLICIES FROM VARIOUS CARRIERS FOR POLICY YEAR 2017-2018, EFFECTIVE JULY 1, 2017."

Adopt Resolution No. ____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, DECLARES ITS MEMBERSHIP IN THE MUNICIPAL INSURANCE COOPERATIVE JOINT POWERS AUTHORITY AND INSTRUCTS ITS DULY AUTHORIZED AGENT TO EXECUTE ON BEHALF OF THE CITY THE ATTACHED JOINT POWERS AGREEMENT AND APPOINTS THE CITY MANAGER, DAVID READY, AS ITS OFFICIAL REPRESENTATIVE TO THE MUNICIPAL INSURANCE COOPERATIVE JPA."

STAFF ANALYSIS:

The City is self insured for major risk programs such as property liability, excess earthquake/flood liability, general liability, auto liability, and workers' compensation. In order to protect the assets of the City from potential loss, the City purchases various lines of insurance coverage for these risks. To assist in the purchase of various lines of

ITEM NO. 5.C.

insurance, the City entered into an agreement with Keenan and Associates for professional insurance brokerage services.

Keenan and Associates has widely marketed the City's insurance portfolio to multiple carriers for the various policies required and has solicited pricing that, if approved, will result in an increase in total premium expense of \$284,938 (+30%) from the current year due to the difficulty in securing favorable excess General Liability coverage as a result of the City's recent claims experience, discussed below. The following is a summary of last year's premiums and staff's recommendation for the July 1 renewal for Fiscal Year 2017-18:

COVERAGE:	Premium FY 16-17	Premium FY 17-18
PROPERTY Premium Deductible	\$240,000 \$10,000 Terrorism and Runway coverage included	\$228,500 \$10,000 Terrorism and Runway coverage included
DIC (Earthquake/Flood) Premium Limit	\$120,976 (City+Airport) \$5,000,000(excess of \$5M)	\$129,000 (City+Airport) \$5,000,000(excess of \$5M)
Premium Limit Deductibles	\$153,046 dedicated WWTP \$25,000,000 5%ofTIV,\$50KminEQ,\$100K flood	\$131,580 dedicated WWTP \$25,000,000 5%ofTIV,\$50KminEQ,\$100K flood
COMPREHENSIVE EXCESS GENERAL & AUTO LIABILITY Premium SIR Limit	\$219,800 \$1M Law Enf & Auto, \$650K all others \$10,000,000	\$515,000 (via MIC*) \$1M Law Enf & Auto, \$650K all others \$10,000,000
EXCESS WORKERS' COMP Premium SIR Limit	\$146,961 \$1,000,000 \$50,000,000 per occurrence	\$162,615 \$1,000,000 \$50,000,000 per occurrence
AIRPORT LIABILITY Premium Deductible Limit	\$28,126 \$1,000 \$50,000,000 Terrorism coverage included	\$28,126 \$1,000 \$50,000,000 Terrorism coverage included
VILLAGE FEST Premium Deductible Limit	\$13,109 \$500 \$1,000,000 per occurrence	\$12,469 \$250 \$1,000,000 per occurrence
MULTI MEDIA Premium Deductible Limit	\$7,080 \$5,000 \$1,000,000 per occurrence	\$6,721 \$5,000 \$1,000,000 per occurrence
AIRCRAFT HULL Premium Deductible Limit	\$2,824 \$100 static/\$500 in motion \$5,000,000 per occurrence Terrorism coverage included	\$2,824 \$100 static/\$500 in motion \$5,000,000 per occurrence Terrorism coverage included
CRIME / FIDELITY		

Premium	\$2,808	\$3,533
Deductible	\$10,000	\$10,000
Limit	\$1,000,000	\$1,000,000
CYBER & DATA BREACH		
Premium	\$16,271	\$15,571
SIR	\$15,000	\$15,000
Limit	\$1,000,000	\$1,000,000
Total Premiums	\$951,001	\$ 1,235,939

PROPERTY PROGRAM:

The City's total insurable value (TIV) under property insurance is approximately \$529 million for FY 17-18. Under the All Risk Property insurance program, the coverage also includes wind and tree coverage, supplemental coverage for terrorism, builder's risk, all traffic signals, traffic poles, light poles, meters and other transmission systems, and coverage for the airport runways. Despite an increase in sustained losses due to catastrophic claims worldwide last year, it was not enough to harden the property insurance market, but did cause underwriters to focus on individual account loss experience when evaluating risk.

Last year the incumbent, Affiliated FM, offered the City a 2 year rate guarantee under the condition we achieved no more than \$134,000 in losses. We beat the goal with only \$80,000 in losses to date and therefore Affiliated is honoring the guarantee. In addition, Keenan was able to negotiate on behalf of the City for removal of the sublimit for bond payments, added a Communicable Disease limit for property damage and business interruption coverage, and eliminated the wholesaler's commission which resulted in an \$11,500 (-4.8%) premium reduction, for a total of \$228,500. Staff recommends renewing with Affiliated FM due to their very competitive pricing, rate guarantee, and their consistently responsive, professional and timely processing of claims.

DIFFERENCE IN CONDITION (DIC) PROGRAM:

The City is self-insured and purchases various lines of insurance each year for additional protection to the Property Program above. Difference in Condition (additional flood and earthquake coverage) is almost always excluded from commercial property policies and may be purchased separately to enhance coverage. The City has benefited from a slightly softer DIC market with fewer catastrophic insurable losses impacting the worldwide insurance market.

While it is highly unlikely that the City would have to replace every single facility in the event of an earthquake, facilities such as the Airport and Wastewater Treatment Plant are considered critical to the continued operations of the City. These two facilities alone have an estimated replacement cost of over \$150 million. Eight years ago Council authorized the purchase of Differences in Condition (DIC) insurance to augment its primary property insurance policy to cover the Wastewater Treatment Plant and all other City Buildings (including the Airport buildings). Staff recommends keeping the same separate dedicated stand-alone policy to cover the Wastewater Treatment Plant from the first dollar to \$25 million for a total premium cost of \$131,580, which is \$21,466 (-

12.5%) less than last year that would be paid in full by the Wastewater Enterprise account.

Also, staff recommends keeping the \$5 million excess of \$5 million per occurrence/annual aggregate in coverage for all other City Buildings (including the Airport buildings and runways) for a premium of \$129,000, which is \$8,024 (+6.6%) more than last year, and shared between the General Fund and the Airport Enterprise account.

The total DIC premium combined for the WWTP, City buildings and Airport is \$260,580, which is \$13,442 (-4.9%) less than last year.

COMPREHENSIVE EXCESS GENERAL & AUTO LIABILITY PROGRAM:

Litigation against public agencies due to the Joint & Several Liability law created by Prop 51 (aka "the deep pockets rule") makes this coverage critical for the City. Unfortunately, fewer carriers are offering this coverage in California due to public entity law enforcement exposure. Those that do offer it are restricting coverage and significantly increasing per claim retentions/deductibles. Most of the carriers declined to quote or indicated very unfavorable premiums (as high as \$880,545) due to the City's recent law enforcement and auto claims experience.

The City sustained \$7.7 million in total incurred liability claims during the last four policy years compared to only \$2.4 million in the four years prior. The claims also resulted in significant reserve increases during the past two years of over \$1.2 million. The incumbent carrier, Argonaut, offered only a quote that *excluded* law enforcement at a premium of \$202,458. Keenan secured a separate stand-alone law enforcement liability policy from QBE for \$464,986. The combined premium to achieve the same coverage as expiring would be \$667,444, or \$447,644 more (+204%) than last year's premium of \$219,800.

As an alternative, Keenan was able to obtain a quotation from Municipal Insurance Cooperative (MIC) in the amount of \$515,000 for the same expiring coverage with a \$10 million limit and the same Self Insured Retentions (SIR) of \$1 million for Law Enforcement and Auto claims, and \$650,000 for all others. While this is \$295,200 more (+134%) than last year's premium of \$219,800, it is \$152,444 less than our only other option for excess liability coverage at this time. MIC, formed in 2014, is a unique not-for-profit joint powers authority (JPA) that is non-risk sharing without any legacy issues that affords group purchasing power without the negative aspects of standard JPA's. MIC offers a claim adjudication process and control remains with the members, and their broad coverage is specific to California public agencies. Other member agencies are Cities of Commerce, Industry, Upland, Cudahay, Dublin, Larkspur, Walnut Creek, Yountville, as well as Placer County Water Agency and Sanbag. Furthermore, the City retains the capacity to continue to purchase all lines of insurance from the marketplace independently and there is no financial penalty to the City should it decide to leave the JPA prior to the three year term. We anticipate that the leverage of the economies of scale of the JPA will result in the most competitive GL premiums during the term, but will continue to market the coverage independently during each renewal.

Given the current excess liability market and the City's unfavorable claims experience, staff recommends that Council approve the coverage offered at the lower premium by MIC and approve the Resolution to become a member so that the City Manager may execute all necessary documents.

EXCESS WORKERS' COMPENSATION PROGRAM:

Maintenance of Excess Workers' Compensation insurance is important to protect the City from the negative financial consequences of potential catastrophes involving multiple employee injuries or deaths from occurrences, such as major fires, police activities, terrorist attacks, and earthquakes during working hours. The Workers' Compensation market has significantly hardened over the last few years due to SB863 (reform) not delivering the level of savings that were anticipated, rising medical costs, longer life expectancy, and adverse claims experience for full service cities with police and fire departments which has resulted in fewer carriers underwriting this coverage in the State of California.

Due to significant claims, the current FY 16/17 policy year is on pace to be the highest incurred in the City's history. As a result, none of the carriers approached were willing to provide a quote for coverage, except for the incumbent carrier, Safety National, despite the loss experience. As workers comp insurance is priced on estimated payroll, the combination of our negative claims experience and increased estimated payroll due to hiring of new employees resulted in a premium quote that is \$15,654 (+10.7%) more than expiring for the same level of coverage. Staff is recommending renewal with Safety National for this required coverage.

AIRPORT PROGRAM:

Airport Liability covers incidents such as injury to a person (e.g: passenger slip and fall in terminal) or damage to a plane (e.g: airport equipment hits a plane) that occur on the premises. Aircraft Hull Liability is specifically for the 1974 Cessna Aero Squadron plane, covering the property itself and the City's liability in the event of an accident. Only two primary carriers write this coverage and this year only the incumbent, ACE, provided a quote. The combined cost of these two policies from ACE is \$30,950, including terrorism and war coverage, which is the same as last year. Staff is recommending renewal with ACE for this coverage.

MISCELLANEOUS:

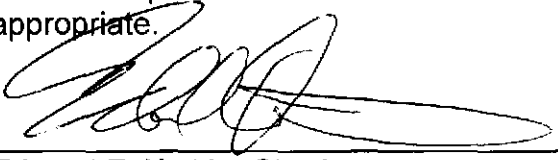
For the Village Fest, Multi Media, Cyber/Data Breach and Crime/Fidelity policies, Keenan's marketing efforts resulted in a combined premium of \$38,294, which is \$974 (-2.5%) less than last year for the same coverage. There are limited carriers writing these specialty policies and the incumbents offered the most competitive quotations and therefore staff recommends renewal of each.

However, Keenan did receive an alternate option for our Crime/Fidelity policy that would increase our limit from \$1 million to \$5 million, but with a \$50,000 deductible instead of

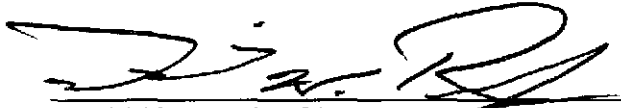
\$10,000 for a premium of \$5,931. This is \$2,398 more than the renewal would be for our expiring policy. Should Council choose this option, then our combined total premium for our four miscellaneous policies would be \$40,692, or \$1,424 (+3.6%) more than expiring.

FISCAL IMPACT:

The total cost of staff recommended insurance coverage to replace expiring coverage to all funds for the 17-18 fiscal year will be \$1,235,939. All premium costs will be allocated in the respective FY 17-18 Risk Management and enterprise fund accounts as appropriate.



Edward Z. Kotkin, City Attorney



David H. Ready, City Manager

Attachments:

- 1) Proposed Budget Resolution
- 2) Proposed Municipal Insurance Cooperative membership Resolution
- 3) MIC Joint Powers Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA AUTHORIZING KEENAN AND ASSOCIATES, AS THE CITY'S BROKER OF RECORD, TO PURCHASE PROPERTY LIABILITY, EXCESS EARTHQUAKE/FLOOD LIABILITY (DIFFERENCE IN CONDITION), EXCESS LIABILITY, EXCESS WORKERS COMPENSATION, AIRPORT OWNERS AND OPERATORS LIABILITY, VILLAGE FEST LIABILITY, MULTI MEDIA LIABILITY, AIRCRAFT HULL LIABILITY, CRIME/FIDELITY LIABILITY, AND CYBER LIABILITY INSURANCE POLICIES FROM VARIOUS CARRIERS FOR POLICY YEAR 2017-2018, EFFECTIVE JULY 1, 2017.

The City Council of the City of Palm Springs, California, finds:

- A. The City is self insured for major risk programs, such as property, general liability, auto liability and workers' compensation.
- B. The City annually purchases various lines of insurance coverage to minimize the adverse effects of accidental losses and claims against the City.
- C. The City is located in the vicinity of several known active and potentially active earthquake faults, including the San Andreas, the San Jacinto and the Elsinore faults.
- D. The topography of the City makes it prone to flooding, especially during times of heavy rainfall.
- E. The City purchases a primary earthquake and flood insurance policy.
- F. The City supplements its primary insurance policy with excess coverage to properly protect its public facilities from catastrophic loss from earthquake or flood.
- G. The City Council appoints a broker of record to purchase insurance policies for the City and the City's insurance broker has solicited proposals from various insurance companies for insurance coverage.

NOW, THEREFORE, the City Council resolves:

SECTION 1: The City Council of the City of Palm Springs, California authorizes Keenan & Associates, as the City's Broker of Record, to purchase the following insurance policies for Fiscal Year 2017-18:

COVERAGE:	Premium FY 17-18
PROPERTY Premium Deductible	\$228,500 \$10,000 Terrorism coverage included
DIC (Earthquake/Flood) Premium Limit Premium Limit Deductibles	\$129,000 (City+Airport) \$5,000,000 (excess of \$5.0M) \$131,580 (dedicated WWTP) \$25,000,000 5%ofTIV,\$50KminEQ,\$100K flood
COMPREHENSIVE EXCESS GENERAL & AUTO LIABILITY Premium SIR Limit	\$515,000 (via MIC*) \$1M Law Enf & Auto, \$650K all others \$10,000,000
EXCESS WORKERS' COMP Premium SIR Limit	\$162,615 \$1,000,000 \$50,000,000 per occurrence
AIRPORT LIABILITY Premium Deductible Limit	\$28,126 \$1,000 \$50,000,000 Terrorism coverage included
VILLAGE FEST Premium Deductibles Limit	\$12,469 \$1,000 \$1,000,000 per occurrence
MULTI MEDIA Premium Deductible Limit	\$6,721 \$5,000 \$1,000,000 per occurrence
AIRCRAFT HULL Premium Deductible Limit	\$2,824 \$100 static/\$500 in motion \$5,000,000 per occurrence Terrorism coverage included
CRIME/FIDELITY Premium Deductible Limit	\$3,533 \$10,000 \$1,000,000
CYBER/DATA BREACH Premium SIR Limit	\$15,571 \$15,000 \$1,000,000

Total Premiums	\$1,235,939
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SECTION 2. The City Manager is hereby authorized to accordingly adjust the budget and allocate the insurance expense to the appropriate enterprise and other funds and may authorize any changes that result in lower premium costs for the same or better coverage that the broker may present between now and June 30, 2017.

SECTION 3. The City Manager is hereby authorized to execute any documents to effectuate such actions.

ADOPTED THIS 7th DAY OF JUNE, 2017.

David H. Ready, City Manager

ATTEST:

Kathleen D. Hart, Interim City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, KATHLEEN HART, Interim City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy as was duly adopted at a regular meeting of the City Council of the City of Palm Springs on June 7, 2017 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Kathleen D. Hart, Interim City Clerk
City of Palm Springs, California

Resolution No. _____

CITY OF PALM SPRINGS, CA

**Resolution of the City Council of the
CITY OF PALM SPRINGS, CA Declaring Membership in the
Municipal Insurance Cooperative
Joint Powers Authority (JPA)**

ON MOTION of Council member _____,
seconded by Council member _____,
the following resolution is adopted:

WHEREAS, municipalities have determined there is a need for affordable Property, Liability and Workers' Compensation coverages by combining their respective efforts to establish, operate and maintain a Joint Power Agency for Property, Liability, and Workers' Compensation coverages; and

WHEREAS, Title I, Division 7, Chapter 5, Article I (Section 6500 et seq.) of the Government Code of the State of California authorizes joint exercise by two or more public agencies of any power common to them,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Palm Springs, CA declares its membership in the Municipal Insurance Cooperative Joint Powers Authority and instructs its duly authorized agent to execute on behalf of the City of Palm Springs, CA the attached Joint Powers Agreement and appoints David Ready, City Manager, as its official representative to the Municipal Insurance Cooperative JPA.

PASSED AND ADOPTED by the City Council of Palm Springs CA this 7th day of June, 2017, by the following vote:

AYES:

NOES:

ABSENT:

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

I, Kathleen D. Hart, Interim City Clerk of Palm Springs, CA, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the City Council at a regularly called and conducted meeting held on said date.

Interim City Clerk, City of Palm Springs,

CA

Municipal Insurance Cooperative (MIC)

Joint Powers Authority

In an effort to provide California public entities with an alternative way to aggregate their buying power in the marketplace and achieve more comprehensive property, liability, and workers' compensation insurance coverage at a more reasonable cost, Keenan has formed the Municipal Insurance Cooperative JPA (MIC). Features available to members of MIC include:

- A joint purchase JPA without risk sharing, which uses collective buying power to achieve lower costs for transferred coverage without some members unfairly subsidizing the risks of others. MIC takes maximum advantage of market conditions rather than blindly adhering to any particular risk funding ideology.
- Broad coverage that may not be available on an individual basis. Examples are injunctive relief, employment practice liability including damages related to wage loss, breach of contract, and coverage for member approved volunteers.
- A member driven Memorandum of Coverage supported by reinsurance and excess coverage that follows the form of the Memorandum. MIC members, not insurance carriers, determine what coverage should be provided to them.
- Individual member self-insured retentions at appropriate, affordable levels without any pooling of risks. Each member determines their own level of risk.
- Insulation from potentially adverse liability of other members. Each member knows each year's program costs with a very high degree of financial certainty subject only to estimating losses within their selected deductible or self-insured retention.
- No historic program "legacy" funding issues to consider at present or in the future.
- Uniform handling and/or oversight of claims for all members.

MIC was formed in 2014 as a joint purchase JPA open to all California public entities, including other JPAs. MIC has quickly grown to include seven public agency members.

Keenan & Associates manages MIC at the direction of the members. Keenan currently manages more than 60 other California public agency JPAs and has formed or managed more California JPAs than any other entity. Keenan JPA management often includes administration of claims. Which provides a consistent approach to this extremely important aspect of all insurance programs.

By using a uniform claims approach on most of the JPAs that it manages, Keenan has gained an excellent reputation in the carrier marketplace, allowing insurers and reinsurers to place a higher degree of credibility on loss information. This in turn results in superior marketing results for JPA members - better coverage terms and cost of risk.

To find out more about the
Municipal Insurance Cooperative JPA,
please contact:

Doug McKibbin
Senior Vice President
dmckibbin@keenan.com
949.940.1760 ext. 5120



Municipal
Insurance
Cooperative ¹²



**MUNICIPAL INSURANCE COOPERATIVE
2016/2017 Membership**

- I. City of Commerce (Joined July 1, 2016)**
- II. City of Cudahy (Joined July 1, 2015)**
- III. City of Industry (Joined July 1, 2016)**
- IV. City of Upland (Founding Member)**
- V. Municipal Services Authority (Founding Member)**
 - A. Local Government Services Authority**
 - 1) City of Dublin
 - 2) City of Larkspur
 - 3) City of Walnut Creek
 - 4) Town of Yountville
 - B. Regional Government Services Authority**
 - 1) City of Dublin
 - 2) City of Larkspur
 - 3) City of Walnut Creek
 - 4) Town of Yountville

VI. Placer County Water Agency (Joined July 1, 2016)

VII. Sanbag (Joined July 1, 2016)

MIC was formed July 1, 2014



Municipal Insurance Cooperative

MUNICIPAL INSURANCE COOPERATIVE JOINT EXERCISE OF POWERS AGREEMENT

Supersedes any prior agreement

**MUNICIPAL INSURANCE COOPERATIVE (MIC)
JOINT EXERCISE OF POWERS AGREEMENT**

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**MUNICIPAL INSURANCE COOPERATIVE (MIC)
JOINT EXERCISE OF POWERS AGREEMENT**

**TO ESTABLISH, OPERATE, AND MAINTAIN A
JOINT PROGRAM**

THIS AGREEMENT is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500, et seq.) of the California Government Code, relating to the joint exercise of powers, between the public agencies signatory hereto, and also those which may hereafter become signatory hereto, for the purpose of operating an agency to be known and designated as Municipal Insurance Cooperative (MIC) (hereinafter referred to as the Authority).

WITNESSETH:

WHEREAS, it is to the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this Joint Exercise of Powers Agreement to accomplish the purposes hereinafter set forth; and

WHEREAS, the signatories hereto have determined that there is a need, by public agencies, for a Joint Purchasing Program for Workers' Compensation, General Liability, Property, Employment Liability and optional Crime insurance; and

WHEREAS, it has been determined by such signatories that a Joint Purchasing Program for Workers' Compensation, General Liability, Property, Employment Liability and optional Crime insurance is of value on an individual and mutual basis; and

WHEREAS, Title 1, Division 7, Chapter 5, Article 1, of the California Government Code authorizes joint exercise by two or more public agencies of any power common to them; and

WHEREAS, it is the desire of the signatories hereto to jointly provide for a Joint Purchasing Program for Workers' Compensation, General Liability, Property, Employment Liability and optional Crime insurance for their mutual advantage and concern; and

WHEREAS, it is the desire of the signatories hereto to study and from time to time to incorporate other forms of property, casualty or employee benefit health and welfare programs into a Joint Purchasing Program such as that described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL ADVANTAGES TO BE DERIVED THEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY OTHER PUBLIC AGENCIES, EACH OF THE PARTIES HERETO DOES AGREE AS FOLLOWS:

1. CREATION OF THE JOINT POWERS ENTITY

A joint powers entity, separate and apart from the public agencies signatory hereto, shall be and is hereby created and shall hereafter be designated as the Municipal Insurance Cooperative (MIC) (hereinafter referred to as the Authority).

2. FUNCTIONS OF THE AUTHORITY

A. The Authority is established for the purposes of administering this Agreement, pursuant to the provisions of the California Government Code, and of providing the services and other items necessary and appropriate for the establishment, operation and maintenance of a Joint Purchasing Program for Workers' Compensation, General Liability, Property, Employment Liability, and optional Crime Insurance Program protection for the public agencies who are Members thereof, and to provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding other programs.

B. The functions of the Authority are:

- (1) To provide a Joint Purchase Program and system for Workers' Compensation, General Liability (including Employment Liability), Property, optional Crime insurance, and such other optional individual coverages as are required by a Member, and as such, to perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, safety engineering, and other services as necessary for the payment and handling of all Workers' Compensation, General Liability, Property, Employment Liability, and Crime insurance claims, and such other optional individual coverages as are required by Members.
- (2) To pursue the Member's right of Subrogation against a third party when in the discretion of the Authority the same is appropriate. Any and all proceeds resulting from the assertion of such Subrogation rights shall accrue to the benefit of the Member.

3. POWERS OF THE AUTHORITY

The Authority shall have the power and authority to exercise any power common to the public agencies which are parties to this Agreement, provided that the same are in furtherance of the functions and objectives of this Agreement as herein set forth. Pursuant to Section 6509 of the California Government Code, the exercise of the aforesaid powers of the Authority shall be subject to the restrictions upon the manner of exercising such powers by a public agency having the same status as a member agency or joint powers authority except as otherwise provided in this Agreement.

In specific, the Authority shall have the following powers:

- (1) To enter into contracts.
- (2) To obtain appropriate other coverage as determined by the Authority.
- (3) To acquire, hold, and dispose of property, real and personal, all for the purpose of providing the membership with the necessary administration, education, study, development, and implementation of a Joint Program including, but not limited to, the acquisition of facilities and equipment, the employment of personnel, and the operation and maintenance of a system for the handling of the Joint Program.
- (4) To incur debts, liabilities, and obligations necessary to accomplish the purposes of this Agreement.
- (5) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, associations, and any governmental entity.
- (6) To invest funds as deemed appropriate by the Authority, and as subject to law.
- (7) To provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other Joint Programs.
- (8) To sue and be sued in the name of the Authority.
- (9) To perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions so performed are not prohibited by any provision of law.
- (10) To join other joint powers authorities to provide services and coverages to the Authority.

4. TERM OF THE AGREEMENT

This Agreement shall be effective and binding on any signatory thereto upon execution. This Agreement shall continue in effect until lawfully terminated as provided herein and in the Bylaws. In the event of a reorganization of one or more of the public agencies participating in this Agreement, the successor or successors in interest to the assets and/or obligations of any such reorganized public agency shall succeed as a party or as parties to this Agreement. However if the reorganization creates a material change in the risk profile of the public agency as determined by the Authority's Board of Directors, then continuing membership by such reorganized agency will be subject to Board approval.

5. BYLAWS

- A. The Authority shall be governed pursuant to certain Bylaws, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, and by such amendments to the Bylaws as may from time to time be adopted. Wherever in this Agreement "Bylaws" are referred to, said Bylaws shall be those set forth in Exhibit "A", as may be amended. Each party to this Agreement agrees to comply with and be bound by the provisions of said Bylaws and further agrees that the Authority shall be operated pursuant to this Agreement and said Bylaws.
- B. Procedures for amending the Bylaws shall be as provided in the Bylaws so long as not inconsistent with this Agreement.

6. MEMBERSHIP IN THE AUTHORITY

- A. Each party to this Agreement must be eligible for membership in the Authority as defined in this Agreement and shall become a Member of the Authority on the effective date of this Agreement, except as provided herein below. Each party which becomes a Member of the Authority shall be entitled to the rights and privileges of, and shall be subject to the obligations of, membership as provided in this Agreement and in the Bylaws.
- B. Upon two-thirds (2/3) vote of the Members present at a Board of Directors' meeting, any public agency that is not a party hereto but that desires to join the Authority created hereby, may become a Member hereof by executing a copy of this Agreement whereby said public agency agrees to comply with the terms of this Agreement and of the Bylaws effective as of the date of such execution.

7. WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

- A. Any party to this Agreement which has completed a three year term as described in the Bylaws as a Member of the Authority may voluntarily terminate this Agreement as to itself and withdraw from membership in the Authority. Such termination and withdrawal of membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.
- B. Termination by any party to the Agreement shall not be construed as a completion of the purpose of the Agreement and shall not require the repayment or return to the parties of all or any part of any contributions, payments, or advances made by the parties until the Agreement is terminated as to all parties.
- C. A Member may be involuntarily terminated from the Authority upon two-thirds (2/3) vote of the Members present at a Board of Directors' meeting, as provided in the Bylaws. Such removal from membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.

8. TERMINATION OF AGREEMENT

This Agreement may be terminated effective at the end of any fiscal year by a two thirds (2/3) vote of the Members present at a Board of Directors' meeting, provided, however, that the Authority and this Agreement shall continue to exist for the purpose of disposing of all obligations, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

9. DISPOSITION OF PROPERTY, FUNDS AND OBLIGATIONS

- A. In the event of the dissolution of the Authority or other final termination of this Agreement by the public agencies then a party hereto, any property interest remaining in the Authority following a discharge of all obligations shall be disposed of as provided for in the Bylaws.
- B. In the event a Member withdraws from this Agreement, any property interest of that Member remaining in the Authority following discharge of all obligations shall be disposed of as provided for in the Bylaws.
- C. After the completion of the Authority's purpose, any surplus money remaining shall be returned to the current members hereto in proportion to the contributions made.

10. AMENDMENTS

This Agreement may be amended at any time by a subsequent written agreement signed by two thirds (2/3) of the parties hereto. Any such amendment shall be binding upon all parties hereto upon the date of final execution of the subsequent written agreement by two thirds (2/3) of the parties thereto.

11. SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or any other applicable law, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

12. LIABILITY

- A. Pursuant to Section 6508.1 of the California Government Code, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the parties to this Agreement. However, the Members remain liable to the Authority for contributions assessed by the Authority to pay its debts, liabilities or obligations.
- B. The Authority may insure/reinsure itself, to the extent deemed necessary or appropriate by the Board of Directors, against loss, liability, and claims arising out of or connected with this Agreement.

13. ENFORCEMENT

The Authority is hereby given authority to enforce this Agreement.

14. MULTIPLE COUNTERPARTS

The Agreement may be executed in multiple counterparts, each of which shall be considered an original.

15. DEFINITIONS

The terms used herein and in the Bylaws shall have the following meanings:

- A. the Authority shall mean the Municipal Insurance Cooperative, a joint powers authority created by this Agreement.
- B. "Board of Directors" shall mean the governing board of the Authority established by the Bylaws to direct and control the Authority.
- C. "Claim Liability" shall mean those liabilities established by the Authority which represent Joint Program liabilities as respects to claims that have been incurred but unpaid and incurred but not reported.
- D. "Contribution" shall mean money paid by a Member to the Authority, or monies assessed a Member of the Authority.
- E. "Joint Program" shall mean the group purchasing of insurance/reinsurance or the setting aside of funds and reserves to pay for a self-insured retention or for losses not covered by insurance/reinsurance.

- F. "Member" shall mean an individual California public agency, or joint powers authority comprised solely of California public agencies, that has executed this agreement.
- G. "Memorandum of Coverage" shall mean the description of the scope of protection provided to the Members for Program claims.
- H. "Obligations" shall mean, but not be limited to, all payments required by law together with all Claim Liabilities and any other legal obligations incurred by the Authority pursuant to this Agreement and Bylaws.
- J. "Program Year" shall mean one year of the Joint Program, separate from each and every other Program Year and shall operate on a fiscal year from July 1st through June 30th, or as otherwise determined by the Board of Directors.
- L. "Subrogation" shall mean the recovery of payments which the Authority has made on behalf of a Member. Subrogation monies received are the properties of the Authority and for the Basis of Contribution are credited to the account of the Member.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Authority and the Members, and as such, supersedes all prior agreements, understandings, negotiations and representations. All section headings in this Agreement are for convenience only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

17. CONTROLLING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers thereunto duly authorized as set forth herein below.

Member: _____

Date: _____

Print Name: _____

By: _____

Title: _____



Municipal Insurance Cooperative

Exhibit A

BYLAWS

BYLAWS
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BYLAWS

MUNICIPAL INSURANCE COOPERATIVE

PREAMBLE

Municipal Insurance Cooperative (MIC) ("Authority") is established for the purpose of providing the services and other items necessary and appropriate for the establishment, operation, and maintenance of a Joint Purchasing Program for Workers' Compensation, General Liability, Property, and Employment Liability and an optional Crime Insurance Program protection for the public agencies who are Members hereof, and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other programs of insurance and self insurance.

ARTICLE I BOARD OF DIRECTORS

- A. A Board of Directors is hereby established to direct and control the Authority.
- B. Each Member of the Authority shall be entitled to appoint one representative and one alternate to the Board of Directors. The Board representative and the alternate must be employees or authorized agents of the Member and shall serve at the pleasure of the member by whom appointed. Only the designated Board representative or designated alternate may represent a Member, and the alternate may act as Director only in the absence of the representative. The designated representative and designated alternate may invite members of their agencies' staffs or consultants to attend meetings of the Board of Directors in an advisory capacity only.
- C. The Board of Directors will conduct meetings consistent with the Ralph M. Brown Act, provided, however, that it will hold at least one regular meeting each fiscal year. The date, time, and place for each such regular meeting shall be fixed by the Board of Directors, which shall be publicly posted prior to the meeting on a public bulletin board to be designated by the Board of Directors and filed with each Member of the Authority. All meetings of the Board of Directors shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act (Sections 54950, et seq., of the California Government Code), as said Act may be modified by subsequent legislation, and as the same may be augmented by rules of the Board of Directors not inconsistent therewith. The Board of Directors will cause minutes of its meetings to be kept, and post the true and correct copies of the minutes of such meetings after Board approval.
- D. The Board of Directors, by resolution, shall designate a specific location at which it will receive notices, correspondence, and other communications. All notices shall be in writing and shall be sufficient if delivered to the notice address of each party, as previously designated or as otherwise designated by a party in writing to each of the other parties.

- E. The Board of Directors may establish and dissolve operating committees and establish the authority granted to such committees and their operating policies. The Board Chair shall appoint the Chairperson and members of committees from the Authority's active membership.
- F. The Board of Directors may establish, revise and discontinue policies related to the operation of the Authority and such approved policies are binding upon the Members unless otherwise specified by policy by the Board of Directors.
- G. The Board of Directors shall determine contributions and the method by which contributions will be paid to a General Fund. The Board of Directors shall also provide for additional assessments during the year, if necessary or appropriate, to allow for increased costs and expenses that may occur. The Board of Directors shall insure that a complete and accurate system of accounting of the General Fund shall be maintained at all times consistent with established auditing standards and accounting procedures.
- H. The Board of Directors shall review coverages that are provided to Members through the Memorandum of Coverage, established policies and procedures for claims administration.
- I. The Board of Directors shall approve the terms of all related insurance, excess insurance, reinsurance and other agreements, including the terms of coverage, claims services, cost and compensation.
- J. The Board of Directors shall directly or by contract provide for services required to effectively implement all aspects of this Joint Program.

ARTICLE II RULES OF THE BOARD OF DIRECTORS

- A. The Board of Directors may establish rules governing its own conduct and procedure and have such expressed or implied authority as is not inconsistent with, or contrary to, the laws of the State of California, these Bylaws, or the Joint Powers Agreement.
- B. A quorum for the transaction of business by the Board of Directors shall consist of a majority of the Board of Directors.
- C. No one serving on the Board of Directors shall receive any salary or compensation from the Authority.
- D. The Board of Directors may approve reimbursement for expenses incurred at its direction.
- E. Each Member shall have one vote.

ARTICLE III OFFICERS

- A. Principal Officers shall be a Chair, a Vice Chair, Secretary, and a Treasurer. The Officers of the Authority shall serve a term of two years, beginning July 1 of even-numbered years, except in the formation year the initial term will run from the date of formation until July 1.
- B. Election of Officers:
1. The Board shall elect a Chair and Vice-Chair, Secretary, and Treasurer from among the Directors.
 2. Officer elections shall take place at the last regularly scheduled Board of Directors meeting in even-numbered Program Years. Directors may make nominations of individuals who meet the requirements for the office at the time of election. If such nomination is seconded, the nominated individual shall be a candidate for that office for which the candidate was nominated. The candidate with the greatest number of votes shall assume the office.
 3. Any person elected as an officer may be removed at any time, with or without cause, by a majority vote of the Board of Directors.
 4. All vacancies arising may be filled at any time by a two-thirds vote of the Directors present at that Board of Directors meeting using the same procedures as specified above. Officers elected by such procedure shall serve the remaining term of the vacant position.
- C. The Chair shall sign all contracts on behalf of the Authority and shall perform the duties normal to such office, and shall perform such other duties as may be imposed by the Board. The Vice-Chair shall perform all of the Chair's duties in the absence of the Chair.
- D. The Secretary shall be the chief administrative officer of the Authority. The Secretary's duties include recording all votes and the minutes of all proceedings. As soon as possible after each meeting, the Secretary shall cause a draft copy of the minutes to be forwarded to each Director and to the Authority. The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors when notice is required by law or these Bylaws, and shall cause a copy of this Agreement and any amendments thereto to be filed with the Secretary of State within 30 days of the effective date thereof pursuant to Government Code Section 6503.5. The Secretary shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors or the Chair.
- E. The Treasurer shall serve as the chief financial officer of the Authority, without the need to post an official bond, and fulfill the requirements of the California Government Code. The Treasurer shall oversee third party professionals, approved by the Board of Directors, in connection with the following:
1. Receipt of all money of the Authority and place it in the designated depository to the credit of the Authority.

2. Be responsible for the safekeeping and disbursement of all money of the Authority.
3. Pay, when due, out of money of the Authority all legitimate and verifiable sums payable by the Authority.
4. Verify and report in writing at least annually to the Board of Directors the amount of money held for the Authority, the amount of receipts since the last Treasurer's Report, and the amount paid out since the last Treasurer's Report.
5. Cause to be established suitable funds and accounting procedures to carry out the purposes of the Authority.
6. Act as custodian of the Authority's property.
7. Cause the books and records of the Authority in the hands of the Treasurer to be open for inspection at reasonable times by all Members of the Authority.

The Treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by law or by the Board of Directors or the Chair.

ARTICLE IV MANAGER

All decisions related to the Authority and the Joint Program shall be made by the Board of Directors and/or Officers. The Authority may contract with a company with demonstrated expertise and experience to assist the Authority with the management and operation of the Authority (the "Manager"). The services to be provided by the Manager and the compensation to be earned shall be as determined and approved by the Board of Directors.

ARTICLE V FINANCE

- A. The Authority shall operate on a fiscal year from July 1 through June 30.
- B. The Board of Directors shall adopt, on or before June 1st, a preliminary budget estimating the amount of money that will be needed for the ensuing year. On or before June 30, the Authority shall adopt a final budget showing each of the purposes for which the Authority will need money and the estimated amount of money that will be needed for each purpose for the ensuing fiscal year. A copy of the budget shall be provided to each of the Directors.
- C. Each Member that actually purchases coverage from the Authority shall pay to the Authority a Contribution as calculated and adopted by the Board of Directors pursuant to the following:
 1. Member's premium based upon each Member's Payroll, Total Insurable Values, Loss History, Unusual Exposures and other information relative to providing coverage purchased by the Member as determined by the reinsurers. This shall be considered the Base Contribution Rate.

2. A share of all other costs as determined by the Authority based on each Member's percentage of premium paid as defined in C.1 to the total premium of all Members purchasing products.
 3. Contributions are due and payable on receipt of invoice unless payment terms defined differently on invoice. Late Payment of Contributions are subject to late payment penalties as determined and approved by the Board of Directors.
- D. Each Program Year of the Authority shall be accounted for separately from every other Program Year in regard to its assets and Obligations.
 - E. A General Fund if necessary shall be established and maintained to receive monies, pay operating expenses, hold reserves and pay claims of the Authority. The Authority shall accept and deposit in the General Fund all monies received.
 - F. An Operating Account if necessary shall be established and maintained out of monies received and deposited in the General Fund for:
 1. Insurance/reinsurance premiums;
 2. Claims management expenses;
 3. Safety engineering;
 4. Data processing costs;
 5. Administration and Professional Services, and Miscellaneous operating expenses;
 6. Loss Control.

ARTICLE VI MEMORANDUM OF COVERAGE

- A. As soon as practicable following the effective date of each Program Year, the Board of Directors shall issue to each Member a Memorandum of Coverage.
- B. The Memorandum of Coverage shall contain:
 1. Declarations of coverage and Member Contributions;
 2. The scope of protection provided; and
 3. Other terms and conditions determined by the Board of Directors.

ARTICLE VII ACCOUNTS AND RECORDS

- A. The Authority shall designate a depository in accordance with California Government Code 6505.5 and 6505.6.
- B. The Authority is strictly accountable for all funds received and disbursed by it and, to that end, the Authority shall establish and maintain such funds and accounts as may be required by the Governmental Accounting Standards Board or by any provision of law or any resolution of the Authority. Books and financial records of the Authority shall be open to inspection at all reasonable times by representatives of the Members. The Authority, as soon as practical after

the close of each fiscal year, shall give, or cause to be given, a complete written report of all financial activities for such fiscal year to each Member of the Authority.

- C. The Board of Directors shall make, or contract with a Certified Public Accountant to make, an annual audit of the accounts, records, and financial affairs of the Authority. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for Special Districts under Section 26909 of the California Government Code and shall conform to Generally Accepted Auditing Standards and accounting principles. When such an audit of accounts and reports is made by a Certified Public Accountant, a report thereof shall be filed within twelve (12) months of the end of the fiscal year under examination with the State Controller and county auditor. Any costs of the audit, including contracts with, or employment of Certified Public Accountants in making the audit(s) provided for herein, shall be appropriate administrative charges against the funds of the Authority.

ARTICLE VIII RISK MANAGEMENT

The Board of Directors of the Authority may adopt recommended minimum standards for risk management/loss control practices. These standards and best practices shall be reviewed by each Member as part of each Member's risk management practices.

ARTICLE IX WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

- A. Any Member having completed three complete program years as a Member of the Authority may withdraw from its status as a Member and party to the Joint Powers Agreement at the end of the fiscal year subject to the following terms and conditions. Provisional notice must first be submitted by notifying the Board of Directors of the Authority of its intention, in writing, prior to December 31 of the fiscal year.
- B. The Member filing the provisional notice of withdrawal may then effectuate its withdrawal by giving the Authority final written notice, together with a copy of the Member's Board resolution or meeting minutes authorizing such action, at least three (3) months prior to the start of the new Program year.
- C. The incurred claims, incurred but not reported claims, and all unearned contributions of the withdrawing Member shall leave with the Member.
- D. A Member may be involuntarily terminated from the Authority upon a vote of two-thirds (2/3) of the Directors representing the remaining Members. Involuntary termination shall become effective at the end of the Program year in which the action is taken or upon such other date as the Board of Directors may specify, but in no case less than sixty (60) days after notice of involuntary termination is given. The responsibility and participation of an involuntarily terminated Member shall be the same as stated in Paragraph C of this Article.
- E. Grounds for involuntary termination include, but are not limited to, the following:
 - 1. Failure or refusal to abide by the Agreement or Bylaws;

2. Failure or refusal to fulfill the Member's responsibility to participate in Authority governance.
3. Failure or refusal of a Member to abide by an amendment which has been adopted by the Board of Directors or by the Members of the Authority as provided in the Agreement or these Bylaws;
4. Failure or refusal to pay Contributions or assessments to the Authority as provided in the Agreement or Bylaws;
5. Failure to comply with risk management or safety standards implemented by the Authority
6. Failure of a Member to disclose a material fact to the Authority or its Manager.

ARTICLE X DISPOSITION OF PROPERTY AND FUNDS

- A. In the event of the dissolution of the Authority or other final termination of the Joint Powers Agreement, any funds or property interest remaining in the Authority following a discharge of all Obligations shall be distributed to current Members in proportion to contributions made.
- B. If the Authority determines a return of contributions is to be declared, such return of contributions shall be computed in proportion to contributions made.

ARTICLE XI INVESTMENT OF SURPLUS FUNDS

- A. The Authority shall have the power to invest or cause to be invested, in compliance with Section 6509.5 of the California Government Code, such funds as are not necessary for the immediate operation of the Authority as allowed by Section 53600 et seq of the California Government Code.
- B. The level of cash to be retained for the actual operation of the Authority shall be determined by the Authority.

ARTICLE XII AMENDMENT

- A. Amendment to these Bylaws may be proposed by any Member of the Authority.
- B. All amendments to these Bylaws must be approved by a two-thirds (2/3) vote of the Directors present at a Board of Directors meeting before the amendment shall become effective. Such amendments shall be binding upon all Members of the Authority. The effective date of any amendment will be on the first day of the next month following adoption, unless otherwise stated.

ARTICLE XIII
SEVERABILITY

Should any portion, term, condition, or provision of these Bylaws be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

ARTICLE XIV
EFFECTIVE DATE

These Bylaws, as they may be amended from time to time, shall become effective immediately upon the effective date of the Joint Powers Agreement. Amendments to these Bylaws become effective as stated in Article XI.

The Agreement may be executed in multiple counterparts, each of which shall be considered an original.

ARTICLE XV
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Funds of the Authority may be used to defend, indemnify, and hold harmless any Officer or Director of the Authority for any liability arising from their actions on behalf of the Authority, except that liability arising from willful misconduct may not be indemnified. Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage.

ARTICLE XVI
SEPARATION OF ENTITIES

No officer, agent, or employee of the Authority shall be deemed, by reason of such position, to be an officer, agent or employee of a Member or be subject to any of the requirements of a Member.