



# Municipal Insurance Cooperative

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## **MUNICIPAL INSURANCE COOPERATIVE JOINT EXERCISE OF POWERS AGREEMENT**

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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

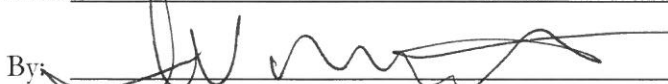
This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**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: City of Commerce

Date: 5-17-2016

Print Name: Ivan Altamirano

By: 

Title: Mayor

