

# MUNICIPAL SERVICES AUTHORITY

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## MUNICIPAL SERVICES AUTHORITY (MSA) AGENDA

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**REGULAR MEETING**  
**January 12, 2012**  
**2:00 p.m.**

**Yountville Community Center**  
Board Room  
6516 Washington Street  
Yountville, CA 94599

1. **CALL TO ORDER**
2. **ROLL CALL**  
**Members:** Regional Government Services  
Local Government Services
3. **APPOINTMENT OF INTERIM CHAIR TO CONDUCT MEETING** Action
4. **APPROVAL OF AGENDA**  
Items to be deleted or added according to Government Code Section 54954.2.2 Action
5. **ADOPTION OF AGREEMENT & BYLAWS**  
Approve Agreement & Bylaws that govern and operate the Joint Powers Authority. Action
6. **ACCEPT FOUNDING MEMBERSHIP ACTIONS**  
Review and accept founding member agencies decisions with respect to MSA creation and appointment of representatives and alternate representatives. Action
7. **ELECTION OF OFFICERS**  
Elect a Board of Directors Chair and Vice Chair. Action
8. **APPROVAL OF COOPERATION AGREEMENT**  
Approve a Cooperation Agreement with LGS and RGS. Action
9. **APPROVAL OF INTERIM BUDGET AND RGS ADMINISTRATIVE SERVICES AND POLICIES**  
Approve an interim FY2012 budget. Approve use of RGS Administrative services, including staffing, postal and mailing addresses, investment and all other policies, procedures and services as the Authority's staff and official agents, addresses, policies and procedures, as appropriate. Action
10. **APPROVE JPA BROKERAGE/RISK MANAGEMENT CONSULTING AGREEMENT**  
Review and approve the Agreement with Keenan & Associates for brokerage/risk management services. Action
11. **ESTABLISH 2012/2013 MEETING DATES, TIMES & LOCATIONS**  
Approve a minimum of annual Board meetings, in conjunction with RGS annual Board meetings. Action
12. **ADOPT CONFLICT OF INTEREST CODE**  
Adopt a conflict of interest code. Action
13. **PUBLIC COMMENT**  
Each speaker is limited to two minutes. If you are addressing the Executive Committee (EC) on a non-agenda item, the EC may briefly respond to statements made or questions posed as allowed by the Brown Act (Government Code Section 54954.2). However, the EC's general policy is to refer items to staff for attention, or have a matter placed on a future EC agenda for a more comprehensive action or report.
14. **NEXT MEETING: June 14<sup>th</sup> 2012, time and location to be determined**

### ***Americans with Disabilities Act***

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Richard Averett at (650) 587-7301. Notification in advance of the meeting will enable Agency to make reasonable arrangements to ensure accessibility.

*Administrative Offices:*  
*Human Resources:*

P.O. Box 1350 · Carmel Valley, CA 93924  
P.O. Box 1077 · Camarillo, CA 93011

*ph:* 831/308-1508  
*ph:* 650/587-7316

*fax:* 831/308-1509  
*fax:* 650/587-7317



**TO:** BOARD OF DIRECTORS  
**FROM:** RICHARD H. AVERETT, EXECUTIVE DIRECTOR  
**SUBJECT:** ADOPTION OF AGREEMENT & BYLAWS

**BOD Meeting: 1-12-2012**  
**Item: 5**

**RECOMMENDATION**

Approve the agreement and bylaws that will govern and operate the Municipal Services Authority JPA.

**BACKGROUND**

RGS and LGS joined the California Joint Powers Insurance Authority in August, 2008 for the purpose of obtaining General Liability, Workers Compensation and Crime insurance coverage. Over the past three years, insurance costs have increased dramatically, despite RGS and LGS having the lowest loss experience of the 121 CJPIA members. For over a year, RGS and LGS have attempted to reconcile with CJPIA the variance in expected versus actual experience. By their own admission, CJPIA has difficulty costing and servicing the unique JPA business model into their service and pricing model for cities and special districts.

**ANALYSIS AND ACTIONS TAKEN**

JPA management has undertaken a thorough review of other insurance alternatives. Coverage options considered were: joining another existing JPA; forming an insurance JPA; and self-insuring to a greater or lesser degree (i.e. higher or lower deductibles). One action that positively impacts all insurance options (except staying with CJPIA) is the pooling of RGS and LGS employee headcounts and risk exposure into one new JPA for the purpose of improving purchasing power. JPA management concluded that forming a new JPA for the purpose of buying insurance would be the optimal decision. This new JPA would be called Municipal Services Authority (MSA).

As part of obtaining and administering the new insurance policies, MSA would need to engage an experienced insurance broker. Another agenda item for Board action is the award of a contract for these services. Staff is recommending award to Keenan and Associates because of their extensive municipal experience, market knowledge, risk management and training resources, and client contract support services.

The new insurance program MSA would implement on behalf of its members RGS and LGS will likely be high deductible insurance contracts. High deductible plans should result in significant cost savings, taking advantage of the JPAs' low risk profiles and reserves capacity to cover deductible expenses, thus keeping these reserves working for the JPAs rather than spending them on purchased policies. While it is still too early to get July 1<sup>st</sup> pricing from insurance carriers, it is reasonable to expect that premium costs will be approximately one third of current CJPIA annual costs. In addition to premiums, the MSA will need to fund a reserve to cover the deductibles. These reserves will stay within control of MSA and can be invested to accrue to its benefit. An important note to consider is the fact that RGS and LGS will no longer be sharing risks (and partial costs of claims) of agencies with much high loss history than either JPA.

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MUNICIPAL SERVICES AUTHORITY (MSA)  
JOINT EXERCISE OF POWERS AGREEMENT

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January 12, 2011

**MUNICIPAL SERVICES AUTHORITY (MSA)  
JOINT EXERCISE OF POWERS AGREEMENT**

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**JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE MUNICIPAL SERVICES AUTHORITY  
(MSA)**

**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, by and between the Local Government Services Authority and the Regional Government Services Authority for the purpose of creating an agency to be known and designated as Municipal Services Authority (MSA) (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**, Title 1, Division 7, Chapter 5, Article 1, of the California Government Code authorizes two or more public agencies to create a separate entity to administer the joint exercise of any power common to them; and

**WHEREAS**, the signatories hereto have determined that there is a need by the Members for a Joint Program for Workers' Compensation, Liability and Crime Insurance Protection Program ("the Program"); 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 Program such as that described herein.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET OUT HEREIN, THE PARTIES DO AGREE AS FOLLOWS:**

**1. CREATION OF THE JOINT POWERS ENTITY**

A joint powers entity, separate and apart from the public agencies signatory hereto, is hereby created and shall hereafter be designated as the Municipal Services Authority (MSA).

## **2. FUNCTIONS OF THE AUTHORITY**

- A. The Authority is established for the purposes of providing the services necessary and appropriate for the establishment, operation and maintenance of the Program for the benefit of its Members.
- B. The functions of the Authority are:
  - (1) To provide a Joint Program and system for Workers' Compensation, Liability and Crime Insurance Programs to each Member, for Workers' Compensation, Liability and Crime Program claims against the Members of the Authority 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, Liability and Crime Insurance Program claims against Members.
  - (2) To pursue the Member's right of Subrogation against a third party when in the discretion of the Authority the same is deemed appropriate. Any and all proceeds resulting from the assertion of such Subrogation rights shall accrue to the benefit of the Authority.

### **3. POWERS OF THE AUTHORITY**

Pursuant to and to the extent required by Government Code Section 6509, the Authority shall be restricted in the exercise of its powers in the same manner as a general law city. MSA shall have the power to do any of the following in its own name:

- (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 Members with the necessary administration, education, study and development services need to implement the 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 administration 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 the purposes of 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.
- (11) To adopt rules, regulations, policies, bylaws and procedures governing its operation.

#### **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 Members, the successor or successors in interest to the assets and/or obligations of that Member shall succeed as a party or as parties to this Agreement. However if said reorganization creates a material change in the risk profile of the Member as determined by the Authority's Board, then continuing membership by such reorganized Member shall be subject to Board approval.

#### **5. BYLAWS**

- A. The Authority shall be governed pursuant to those certain Bylaws attached hereto as Exhibit "A" and incorporated herein by this reference, and by such amendments to the Bylaws as may from time to time be adopted ("the Bylaws").
- B. Procedures for amending the Bylaws shall be as provided in the Bylaws so long as said procedures are 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 that 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 desires to join the Authority created hereby, may become a Member hereof by executing a copy of this Agreement.

#### **7. WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP**

- A. Any Member that has completed a one year term as a Member of the Authority may voluntarily withdraw from this Agreement. Such withdrawal of membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.
- B. Withdrawal 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 Members of all or any part of any contributions, payments, or advances made by the Members unless and until the Agreement is terminated.
- C. A Member may be involuntarily removed from the Authority upon a 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, 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 by the Members, 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 its purpose, any surplus money remaining in the Authority's self-funded pool shall be returned to the Members in proportion to the contributions made and the claims or losses paid.

## **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 effective upon the date of final execution thereof by all the parties hereto.

## **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. The Members of the Authority shall not be jointly or severally liable for the debts, liabilities or obligations of the Authority.

- 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. In the event suit is brought by the Authority to enforce this agreement and judgment is recovered against a Member, the losing party shall pay all costs reasonably incurred by the prevailing party, including reasonable attorney's fees as fixed by the court.

### **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 Services 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 represents Excess Property & Liability 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 the original parties to this Agreement (which have not withdrawn from the Authority) and such other California public entities as may join MSA after execution of this Agreement.
- G. "Memorandum of Coverage" shall mean the description of the scope of protection provided to the Members for Program claims.

- H. "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.
- I. "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.

**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.

Members:	RGS	LGS
Date:	_____	_____
By:	_____	_____
Title:	_____	_____

Exhibit A

# **BYLAWS**

**BYLAWS**  
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**BYLAWS**  
**AUTHORITY**

**PREAMBLE**

Municipal Services Authority (MSA) ("the 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 program for Workers' Compensation, Liability and 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 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 representative 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 representative may represent a member. 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. If a Member Agency's representative and alternate are not available for a regularly scheduled MSA meeting, the MSA Board may accept interim appointment by the Member Agency's Board Chair of an interim representative to the MSA meeting. The interim representative shall have full representative rights for that upcoming meeting.
  
- C. The Board of Directors shall 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 Chair of Board of Directors, which shall be publicly posted prior to the meeting on a public bulletin board to be designated by the Chair of 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 shall cause minutes of its meetings to be kept, and shall promptly transmit to the Members of the Authority true and correct copies of the minutes of such meetings.
  
- D. The Board of Directors, by resolution, shall designate a specific location at which it will receive notices, correspondence, and other communications, and shall designate a Secretary who may, but does not have to be a Member, for the purpose of receiving service on behalf of the Authority. The Authority shall comply with the provisions of Sections 6503.5 and 53051 of the Government Code requiring the filing of a statement with the Secretary of State.

- E. The Board of Directors may establish and dissolve working committees. The Board Chair shall appoint the Chairperson and Members of committees from the Authority's active Membership.
- F. 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. The Board of Directors shall determine the manner in which Workers' Compensation, Liability and Crime Insurance Program claims shall be processed. Such processing shall conform to all provisions of law now in effect or later enacted.
- H. The Board of Directors shall have the power, authority and duty to handle all aspects of Workers' Compensation, Liability and Crime Program claims against Members of the Authority.
- I. 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. The Officers of the Authority shall serve a term of two years, beginning July 1 of even-numbered years, except that in the formation year the initial term will run from the date of formation until the succeeding July 1.

## ARTICLE III

### OFFICERS

- A. Principal Officers shall be a Chair, a Vice Chair, and an Executive Director.
- B. Election of Officers:

1. The Board shall elect a Chair and Vice-Chair from among the Directors, for a term of two (2) years.
2. Officer elections shall take place at a regularly scheduled Board of Directors meeting every other fiscal year. Representatives to the Board of 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  $\frac{2}{3}$  vote of the Directors present at that Board of Directors meeting.



- C. The Chair and Vice Chair shall perform the duties normal to such offices, 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. The Executive Director shall be appointed by the Board and shall be the chief executive officer and shall have general supervision and direction of the business of the Authority, shall see that all orders and resolutions of the Board of Directors are carried into effect, and shall have other powers and perform such other duties as may be prescribed from time to time by the Board of Directors. Pursuant to Government Code Section 6505.6, the Executive Director shall serve as or be responsible for the provision of Treasurer duties, including serving as the JPA Auditor, Controller and Treasurer. The Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of MSA from whatever source, shall have the duties and obligations set forth in Government Code Sections 6505 and 6505.5 and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of MSA. The Executive Director shall serve as or be responsible for the provision of Secretary duties, including recording all votes and the minutes of all proceedings. 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. 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.
- D. The Treasurer shall be the chief financial officer of the Authority and shall assume the duties described in Sections 6505.1 and 6505.5 of the California Government Code, as follows:
1. Receive 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 held by the Treasurer;
  3. Pay, when due, out of money of the Authority all legitimate and verifiable sums payable by the Authority only upon checks authorized by the Treasurer from a commercial account in a financial institution designated by the Board of Directors;
  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. Custodian of the Authority's property.

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

### FINANCE

- A. The Authority shall operate on a fiscal year from July 1st through June 30th.
- B. Authority staff shall develop, on or before June 1<sup>st</sup> of each year, a budget estimating the amount of money that will be needed for the ensuing year. On or before June 30<sup>th</sup> of each year, the Authority shall adopt a final budget showing each of the purposes for which the Authority will need money for the ensuing fiscal year. A copy of the budget shall be transmitted to each of the participating Members.
- C. Each Member shall pay to the Authority the Contribution as calculated and adopted by the Board of Directors pursuant to the following:
1. Member's share shall be based upon each Member's Total Insurable Values, Loss History, Unusual Exposures and other information relative to providing coverage for the Member as determined by the Board. This shall be considered the Base Contribution Rate.
  2. The Base Contribution Rate may be subject to modification based upon a Member's claim experience and weighted against the relative size of the Member. The methodology for modification will be calculated by the Authority.
  3. A share of all other costs as determined by the Authority.
  4. Contributions are due and payable on receipt of invoice and shall be considered past due 30 days from receipt of invoice and a penalty assessed on the unpaid amount as determined by the Board of Directors.
- D. Each fiscal year of the Authority shall operate separately from every other fiscal year in regard to its assets and Obligations and in accordance with GASB rules and regulations. Those assets and Obligations are pooled assets and Obligations of the Members who participate in each distinct and separate Program Year.
- 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 V EVIDENCE OF COVERAGE

- A. By June 1<sup>st</sup> of each year preceding the July 1<sup>st</sup> inception date of new or renewal programs, the Authority shall distribute to Members Insurance Certificates, Memorandum of Coverage or other documents summarizing the coverage that will be implemented July 1<sup>st</sup>. Within 60 days of the effective date of each new or renewing program formal policies or other documents will be provided to each member detailing the price, terms and conditions of each program.
- B. The documents described in item A shall include at a minimum:
  - 1. The basis of premium contributions;
  - 2. The scope of protection provided for the Program;
  - 3. Other terms and conditions which the Board of Directors may consider necessary.

## ARTICLE VI ACCOUNTS AND RECORDS

- A. The Authority shall designate a depository in accordance with California Government Code sections 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 Generally Accepted Accounting Principles or by any provision of law or any resolution of the Authority. Books and records of the Authority in the hands of the Treasurer 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 as a public record with each of the Members of the Authority. Such reports shall be filed with the State within twelve (12) months of the end of the fiscal year under examination.
- D. Controller's Office. 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 VII

### RISK MANAGEMENT

The Authority may adopt minimum standards for risk management/loss control practices. Each of the Members hereby agrees to implement in its agency the minimum standards of risk management practices developed by the Authority.

## ARTICLE VIII

### WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

- A. Any Member may withdraw from its status as a Member and party to the Joint Powers Agreement at the end of a fiscal year by notifying the Authority of its intention, in writing, with provisional notice of withdrawal within nine months of the new Program year.
- B. The Member filing the notice of withdrawal shall notify the Authority in writing, together with a copy of the Member's Board resolution or meeting minutes authorizing such action, six (6) months prior to the start of the new Program year as to its final decision to leave the Authority.
- C. The incurred claims, incurred but not reported claims, and all contributions of the withdrawing Member shall stay with the Authority. The withdrawing Member shall continue to participate in each of the Program Years for which the agency was a Member. The allocation of assets and obligations that were in effect for those years the withdrawing Member was a Member shall continue to stay in effect until those years are closed and cleared of assets and/or obligations.
- D. A Member may be involuntarily terminated from the Authority upon a vote of two-thirds (2/3) of all the remaining Members of the Board of Directors. Involuntary termination shall have the effect of eliminating the party as a signatory of the Joint Powers Agreement and as a Member of the Authority, effective at the end of the fiscal 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 Subparagraph C. of this ARTICLE.
- E. Grounds for involuntary termination:
  - 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, whereby said material fact constitutes fraud, misrepresentation or concealment for the purposes of obtaining coverage with the Authority.

## ARTICLE IX

### DISPOSITION OF PROPERTY AND FUNDS

- A. In the event of the dissolution of the Authority, the complete rescission, or other final termination of the Joint Powers Agreement by all Members or other public agencies then a party to the Agreement, any property interest remaining in the Authority following a discharge of all Obligations shall be disposed of pursuant to a plan adopted by the Board of Directors with the objective of returning to each Member or other agency which is then or was therefore a party preceding the termination of the agreement, a Pro Rata Share of each Program Year's equity to which each Member was a participant. The plan adopted by the Board of Directors shall include, but not be limited to, the following:
  1. Claims outstanding, and incurred but not reported to, the Authority shall be audited and calculated by an independent claims auditor and actuary selected by the Board of Directors for determination of future liabilities for expenses and costs to bring these claims to a conclusion.
  2. The current fair value of the Authority's properties shall be determined by the Board of Directors. If a Member disagrees with the current fair value of the Authority's properties as determined by the Board of Directors, the current fair value of said properties shall be determined by an independent appraiser selected by the Board of Directors.
- B. If the Authority determines a return of contributions is to be declared, such return of contribution shall be computed as determined by the Board of the Authority

## ARTICLE X

### 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 53601 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 Executive Director.

## ARTICLE XI

### 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 members of the Board of Directors 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 XII

### 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 XIII

### EFFECTIVE DATE

These Bylaws shall become effective immediately upon the effective date of the Joint Powers Agreement.

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

## ARTICLE XIV

### DEFINITIONS

- A. "Contribution" shall mean the method by which the Authority computes the Members share of the cost of each Program Year of the Joint Program.
- B. "Joint Program" shall mean the group purchasing of insurance or reinsurance or the setting aside of funds and reserves to pay for a self-insured retention or for losses not covered by insurance.
- C. "Net Contribution Available for Pool Operations" shall mean the Contribution by each Member for each Program Year less amounts paid for Member's share of any excess insurance and individual risk management services.
- D. "Obligations" shall mean to include, but not 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.

- E. “Program Year” shall mean one year of the “Joint Program” separate from each and every other Program Year and shall operate on fiscal year from July 1<sup>st</sup> through June 30<sup>th</sup>, or as otherwise determined by the Board of Directors.
- F. “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.



**TO:** BOARD OF DIRECTORS  
**FROM:** RICHARD H. AVERETT, EXECUTIVE DIRECTOR  
**SUBJECT:** ADOPTION OF COOPERATION AGREEMENT

**BOD Meeting: 1-12-2012**  
**Item: 8**

**RECOMMENDATION**

Approve the cooperation agreement with RGS and LGS.

**BACKGROUND**

The JPAs, Regional Government Services and Local Government Services, have entered a cooperation agreement to facilitate the provision of services to clients of Regional Government Services Authority and Local Government Services Authority. The cooperation agreement has been updated to more specifically address sharing administrative services, including management, staffing, vendor goods and services, banking and co-mingled investment funds and other services between RGS and LGS. In addition to these clarifications, Boards of RGS and LGS approved allowing Municipal Services Authority to be a party to and full utilization of the cooperation agreement. Adoption of this agreement by MSA would enable the Authority the existing RGS administrative team to administer and management the new Authority.

The attached draft cooperation agreement is being reviewed by JPA counsel at the time of report distribution. Any substantive edits by counsel will be presented to the Board as soon as available.



**AGREEMENT BETWEEN  
REGIONAL GOVERNMENT SERVICES AUTHORITY,  
LOCAL GOVERNMENT SERVICES AUTHORITY AND MUNICIPAL SERVICES AUTHORITY  
FOR COOPERATION IN PERFORMANCE OF SERVICES FOR  
CLIENTS OF THESE AUTHORITIES AND FOR ONE ANOTHER**

This Agreement is made and is effective this 12<sup>th</sup> day of January 2012, by and between the Regional Government Services Authority, a joint powers authority (RGS), Local Government Services Authority, a joint powers authority (LGS) and Municipal Services Authority, a joint powers authority (MSA). RGS, LGS and MSA shall be referred to as the parties to this agreement.

**RECITALS**

WHEREAS, RGS is a joint powers authority formed to provide service delivery for regional programs benefiting the regional public interest, including management, financial, and professional services. LGS is a joint powers authority formed to maximize the efficiency and effectiveness of service delivery at the local and sub regional level, including management, financial, and professional services. MSA is a joint powers authority formed to pool the insurance resources of RGS and LGS to maximize the purchasing power and shared risks of these agencies.

WHEREAS, both RGS and LGS desire to perform work for other public agencies. However, neither RGS nor LGS may have the ability to provide all of the services desired by clients of either JPA.

WHEREAS, in order to maximize the ability of both RGS and LGS to obtain contracts with clients to provide the services needed, RGS and LGS enter into this Agreement for the purpose of cooperating in the provision of services should both RGS and LGS be retained by the same client or should either RGS or LGS be retained by a client and need services offered by the other joint powers authority.

WHEREAS, both RGS and LGS desire to perform work for other entities which need the services which RGS and LGS can, respectively, provide. Both RGS and LGS anticipate there will be opportunities to provide services to current clients and wish, in this agreement, to provide for cooperation in the future in obtaining other contracts to perform work for other entities.

WHEREAS, RGS, LGS and MSA desire to share administrative resources, including staff and vendor services, to most cost-effectively achieve and coordinate the operational needs of these entities.

NOW, THEREFORE, in consideration of the mutual promises set out above, RGS, LGS and MSA agree as follows:

**AGREEMENT**

**Section 1. Cooperation in Provision of Client Services.** RGS and LGS agree they will cooperate in the performance of services in order to assure that clients will receive the services which they seek. Such cooperation may include RGS and LGS employees working together jointly to perform services for the client. Such cooperation may also include the supervision and/or direction by a RGS employee of a LGS employee or the supervision and/or direction by a LGS employee of a RGS employee. Similarly, such cooperation

may include a RGS employee being directed or supervised by a LGS employee or an employee of LGS being directed or supervised by a RGS employee. RGS and LGS agree that the supervision or direction of their employees by employees of the other party to this agreement shall not be deemed to make any employee of one party the employee of the other party.

**Section 2. Cooperation in Provision of Administrative Services.** RGS, LGS and MSA agree they will cooperate in the performance of services to support the administration of RGS, LGS and MSA in order to assure that the parties to this agreement will receive the services which they seek, in the most cost-effective and coordinated manner. Such cooperation may include RGS, LGS and/or MSA employees working together jointly to perform administrative and support services for the parties to this agreement, so that efficiency is maximized, costs and minimized and programs and services of the parties are coordinated for the benefit of each entity. Such cooperation may also include the supervision and/or direction by an employee of one entity by an employee of another entity. RGS, LGS and MSA agree that the supervision or direction of their employees by employees of the another party to this agreement shall not be deemed to make any employee of one party the employee of the other party.

To facilitate provision of services to current clients and any other future clients of both RGS and LGS, the parties agree that RGS will bill all clients of both RGS and LGS for services rendered by both RGS and LGS.

The parties may also cooperate in other administrative matters, such as sharing office supplies, office equipment, post office boxes, investment of surplus funds, use of vendor services for banking, financial services, insurance, payroll, employee benefits, financial audits and all other services that may be more effectively managed by a shared administrative function. In the event that any expenses or costs which are the responsibility of one joint powers authority are paid by another entity, RGS, LGS and MSA agree they will reimburse the appropriate entity when and in the manner so requested. This provision includes the cost of administrative services provided by a party to the other party(ies), as well as the costs for client services staffing and externally provided goods and services.

**Insurance Provisions.** For purposes of Unemployment Insurance Code §606.5(b), RGS will be the "temporary services employer" or "leasing employer" of the workers that RGS provides to perform services to any client of both RGS and LGS and LGS will be the "temporary services employer" or "leasing employer" of the workers that LGS provides to perform services to any client of both RGS and LGS.

MSA will provide Workers' Compensation Insurance for those persons who have a written employment agreement with RGS, LGS or MSA.

**Section 3. Effective Date.** This Agreement shall be effective upon approval by the Boards of Directors of RGS, LGS and MSA and shall remain in effect until terminated by one of the parties hereto by 30 days' advance written notice of termination to the other parties.

**Section 4. No Joint Venture.** By entering into this Agreement, the parties do not intend to create a joint venture among them. The purpose of this agreement is as indicated in the Recitals, to provide cooperation for the performance of services to current clients and other potential clients of both RGS and LGS which RGS and LGS are qualified to perform and to provide cooperation for the performance of services to the parties for the administration and management of the JPAs.

REGIONAL GOVERNMENT SERVICES AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_ Chair, Board of Directors \_\_\_\_\_

LOCAL GOVERNMENT SERVICES AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_ Chair, Board of Directors \_\_\_\_

MUNICIPAL SERVICES AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_ Chair, Board of Directors \_\_\_\_



**TO:** BOARD OF DIRECTORS  
**FROM:** RICHARD H. AVERETT, Executive Director  
**SUBJECT:** APPROVAL OF FY2012 BUDGET FOR MSA

**BOD Meeting: 1-12-2012**  
**Item: 9**

**RECOMMENDATION**

Approval the Interim FY2012 Budget for Municipal Services Authority.

**BACKGROUND**

Approval and formation of Municipal Service Authority are agendized for January 12, 2012. If approved and formed, the new entity will have until June 30, 2012 to develop insurance programs for MSA Member Agencies for the fiscal year starting July 1, 2012. This proposed budget is for that interim period prior to operational status, and was prepared using estimates of start-up costs. A full FY2013 budget will be prepared for consideration prior to June 30, 2012.

**FY2012 PROPOSED BUDGET**

The proposed FY2012 budget would be funded by Member contributions. These contributions are available in current year Member savings from prior period insurance cost adjustments. Interim period expenses are estimated to total \$57,000 composed of: \$38,000 for insurance broker (annual cost to be prorated for mid-year start-up); \$10,000 for administration; \$10,000 other expenses; \$10,000 for accounting set-up and bookkeeping; and \$8,000 for the annual audit.

The FY2013 budget will include premium costs and reserves for deductible coverage capacity. Funding will be from Member contributions assessed by MSA, and are expected to be approximately the same or less than insurance costs currently born by the Member Agencies.

Administrative support services are provided by the RGS Administrative staff.

**PROPERTY AND CASUALTY BROKER AND CONSULTING SERVICES  
AGREEMENT**

This **Property and Casualty Broker and Consulting Services Agreement** (“Agreement”) is made and entered into by and between **Municipal Services Authority** (“Client”) and **Keenan & Associates** (“Keenan”), as of **January 12, 2012** (“Effective Date”).

**RECITALS**

- A. **WHEREAS**, Client maintains a program of insurance coverages to insure against various losses and claims arising out of its day to day business activities;
- B. **WHEREAS**, Keenan is a specialty insurance services provider and, as such, is qualified to provide such insurance broker and consulting services; and
- C. **WHEREAS**, Client desires Keenan to provide, and Keenan desires to provide, the services described in this Agreement for the insurance coverages selected in Exhibit A (“Program”) attached to and made a part of this Agreement.

The parties agree as follows:

**AGREEMENT**

1. **TERM**

The term of this Agreement is from the Effective Date through **December 31, 2012** (“Termination Date”) and shall automatically renew for subsequent one (1) year periods unless either party gives the other at least sixty (60) days written notice of its intent not to renew.

2. **KEENAN SERVICES AND RELATIONSHIP OF THE PARTIES**

- A. Client elects and Keenan shall provide the services indicated below (“Services”) with respect to the Program. A full description of the available services is provided in Exhibits B-1 through B-2 attached hereto and incorporated herein.

	Accept	Decline
Exhibit B-1: Broker Services	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit B-2: Consulting Services	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- B. The relationship of Keenan and Client shall be that of an independent contractor and Keenan shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers’ compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.



- C. In providing the Services, Keenan shall act in an advisory and consultative capacity. Client shall retain the right to determine whether to act on or implement the information, recommendations, and suggestions provided by Keenan, and the manner by which any such action or implementation shall be undertaken. Except for Keenan's responsibilities with respect to funds obtained from or on behalf of Client, Keenan shall not be a fiduciary of Client.
- D. Keenan does not provide any legal, tax, or accounting service, advice, or opinion, and the Services shall not be interpreted as representing any such service, advice or opinion. Client shall consult its own tax and accounting experts on all tax, accounting, and financial matters and its own attorney on all legal issues and the application of any statute and/or regulation to its operations, including without limitation, the establishment and/or operation of the Programs.
- E. In providing its Services, Keenan shall comply with all applicable state and federal laws and regulations, and obtain and maintain all necessary licenses, registrations, and/or permits necessary for the performance of its duties under this Agreement.
- F. Keenan reserves the right to engage independent contractors and/or subcontractors to assist it in performing the Services. The use of such individuals shall not relieve either party of any of its duties under this Agreement.

3. **CLIENT'S DUTIES AND RESPONSIBILITIES**

- A. Client shall retain decision-making authority for its Programs, and shall manage the day-to-day activities of the Programs, except for those duties and/or functions expressly assigned to Keenan under this Agreement
- B. Client shall timely provide Keenan with information and access to such individuals, including its outside advisors and consultants, as may be necessary for Keenan to perform the Services. Keenan shall not be responsible for any delay in its performance that results from the failure of Client, or any person acting on behalf of Client, to make available any information or individual in a timely manner.
- C. All information provided to Keenan by Client, either in anticipation of or during the term of this Agreement, shall be complete and accurate, and Keenan may rely upon such information.
- D. If Client has selected brokerage services in Section 2 above, Client hereby appoints Keenan as its exclusive Broker of Record to secure quotes for the insurance required by the Program and for such additional coverages or insurance as Client may later designate in writing during the Term of this Agreement. To that end, Client shall, contemporaneously with the execution of this Agreement, execute the Broker of Record Designation attached hereto as Exhibit C, and hereby authorizes Keenan to present it to prospective insurers. With respect to those lines of insurance covered by this Agreement, and such additional lines of insurance as may later be designated by Client, Keenan shall have the exclusive authority and right to negotiate with insurance carriers and other



coverage providers on Client's behalf, and Client shall not seek or acquire quotes directly from any insurance carrier or other coverage provider during the term of this Agreement. Client authorizes Keenan to provide representatives of prospective insurers and other coverage providers with all information regarding Client, its operations, employees, and financial status as may be necessary for such insurer or coverage provider to evaluate Client's suitability for coverage and to prepare a quote.

4. **COMPENSATION**

- A. Keenan's fees for the Services rendered pursuant to this Agreement shall be as described in the attached Exhibit D. Any Services provided to Client that are outside of or in addition to those described in Exhibit B-1 and B-2 shall be subject to additional fees.
- B. Consistent with industry practices, insurers may pay insurance brokers, such as Keenan, indirect compensation based upon volume efficiencies, client renewals, marketing services, product development, technology investments and other additional services. Keenan seeks written assurances from insurers that any such indirect compensation that it may receive will not adversely impact the pricing or coverage terms that Keenan is able to obtain for its clients. The parties agree that any indirect compensation described in this paragraph shall not be considered part of Keenan's "commission or fees" as such term may be used elsewhere in this Agreement. Keenan will disclose to Client any and all compensation received directly or indirectly from other parties as a result of Keenan's representation of the Client or Keenan's representation of clients in general. The purpose of this disclosure is to inform the Client of inducements that may affect Keenan's representation of the Client.

5. **INSURANCE**

Keenan shall procure and maintain during the term of this Agreement the following insurance coverages, and shall provide certificates of insurance to Client upon Client's request.

- A. Workers' Compensation: Coverage in conformance with the laws of the State of California and applicable federal laws;
- B. General Liability: Coverage (including motor vehicle operation) with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability; and
- C. Errors and Omissions: Coverage with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

6. **INDEMNIFICATION**

If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a



claim, demand, action or liability brought or asserted by any individual or entity other than the Client (“Third-Party Demand”) relating to or arising out of the Services and such Third-Party Demand is not a direct result of Keenan’s negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand. [and if the claim is not the direct result of Client’s negligence or willful misconduct, why should we defend Keenan? Isn’t that what insurance is for?]

7. **LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for any punitive damages, fines, penalties, taxes or any indirect, incidental, or special damages incurred by the other party, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort claims or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage. Keenan’s liability under this Agreement shall further be limited to, and shall not exceed, the amount of its available insurance coverage, but not exceeding the limits of coverage outlined in Section 5. [would this hold up if tested?]

8. **DISPUTE RESOLUTION**

A. Disputes arising out of or relating to this Agreement, other agreements between the parties, or any other relationship involving Client and Keenan (whether occurring prior to, as part of, or after the signing of this Agreement) shall first be resolved by good faith negotiations between representatives of the parties with decision-making authority. If either party determines that the dispute cannot be resolved through informal negotiation then the dispute shall be submitted to non-binding mediation. The site of the mediation and the selection of a mediator shall be determined by mutual agreement of the parties. If the dispute is not resolved through mediation within sixty (60) days following the first notification of a request to mediate, then either party shall have the right to require the matter to be resolved by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, or such other arbitration procedures as may be agreed to in writing by the Parties. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between Client and Keenan and their respective members, agents, employees and officers.

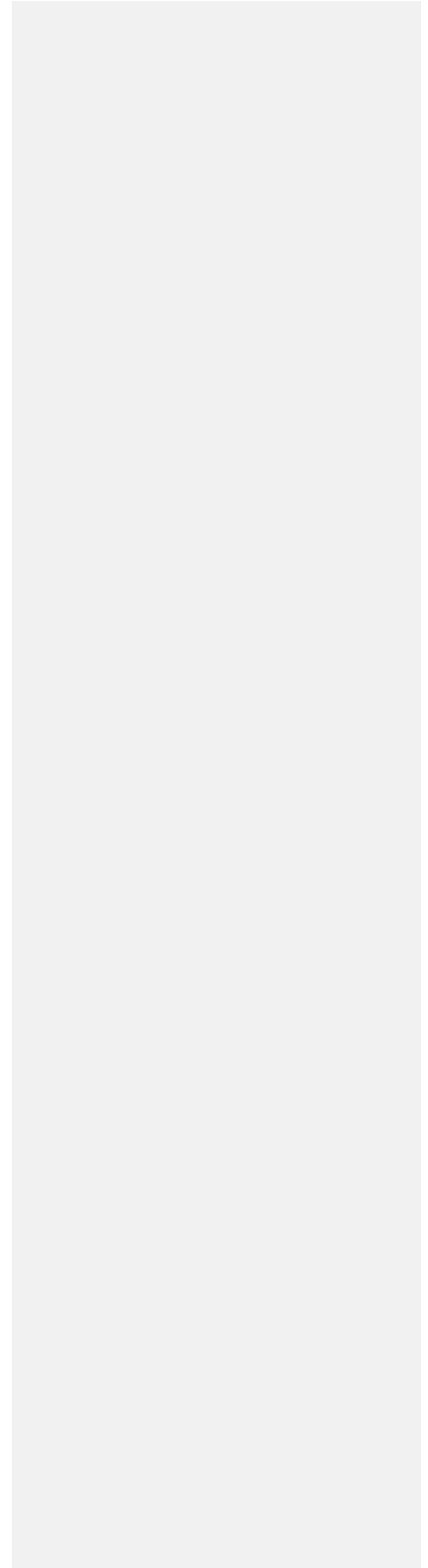
B. Arbitration shall be before a single arbitrator in the County of Los Angeles, [Keenan has an office in SF, so let’s use the County of San Francisco] California. The Arbitrator shall apply the Federal Arbitration Act and California substantive law, and shall accompany the award with a reasoned opinion. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party’s actual damages. The prevailing party shall be entitled to an award of reasonable attorneys’ fees. A judgment of any court having jurisdiction may be entered upon the award.

C. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or





property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).



9. **TERMINATION**

A. This Agreement may be terminated upon the occurrence of any of the following events:

- i. By either party upon the dissolution or insolvency of either party;
- ii. By either party following the filing of a bankruptcy petition by or against either party (if the petition is not dismissed within sixty (60) days in the case of an involuntary bankruptcy petition);
- iii. If the application of any law, rule, regulation, or court or administrative decision prohibits the continuation of this Agreement or would cause a penalty to either party if the Agreement is continued, and if the Agreement cannot be amended to conform to such law, rule, regulation, or court or administrative decision in a manner that would preserve the original intent of the parties with respect to their rights and duties under this Agreement; or
- iv. By the non-breaching party if a breach of this Agreement is not cured within thirty (30) days following receipt of written notice of the breach from the non-breaching party.

B. In the event of termination pursuant to Section 9A above, Keenan shall be paid for the full value of all services rendered through the date of termination.

10. **SOLICITATION OF EMPLOYEES**

Throughout the term of this Agreement and for one year following the termination date, ~~neither~~ Client ~~nor Keenan~~ shall ~~not~~, without ~~Keenan~~ ~~the other~~'s prior written approval, solicit or employ directly or indirectly (whether as an employee, consultant or otherwise, or for itself or a third party) any then-current ~~Keenan~~-employee, contractor or consultant who performed work for ~~Client~~ ~~the other party~~ under this Agreement.

11. **PROPRIETARY INTERESTS**

Keenan shall retain the copyright and the sole right of ownership to the form and format of any report, tool, schedule, exhibit, assessment, analysis, or other deliverable, that is created or developed by Keenan in performing the Services and provided to Client by Keenan in any media whatsoever. Client shall, however, remain the owner of the content of any such deliverable and any Client data or information that was provided to Keenan for the performance of the Services. Any deliverable created by Keenan for Client shall be used for Client's internal purposes and shall not be used, without the written consent of Keenan, for Client's commercial gain, nor shall it be distributed to or shared by Client with any third person, except as may be necessary to accomplish the intent and purpose of this Agreement.

12. **MARKETING**

Keenan may use Client's name in its representative client list. Keenan shall obtain Client's written consent before using Client's name for any other purpose.



13. **OTHER RELATIONSHIPS**

The Services provided to Client are non-exclusive and Keenan reserves the right to provide the same or similar services to other clients who may be in the same industry, business, or service as Client.

14. **CONFIDENTIALITY**

- A. As a result of their relationship under this Agreement each party may gain access to confidential information concerning the other. For purposes of this Agreement, the term “Confidential Information” includes, without limitation, i) any information or data about a party’s business operations, clients, employees, marketing plans, method of operation, trade secrets, and financial performance; ii) information about any individual participating in the Programs, such as name, address, social security number, compensation, and medical history, and iii) any other information about a party that is not available to the general public. Neither party shall, without the written consent of the other release, disclose, or disseminate the other party’s Confidential Information except as is necessary for the performance of the Services.
- B. In the event that either party becomes the subject of a subpoena or court order compelling the disclosure of the other party’s Confidential information, that party shall immediately notify the other so that the party whose Confidential Information is being sought can take such action as may be necessary to prevent or limit the release of its Confidential Information.
- C. Neither party shall be deemed to be in breach of this Section 14 if it has notified the other before it releases the Confidential Information pursuant to a subpoena or court order, and the party whose Confidential Information was requested fails to provide, before the deadline for disclosure, a copy of court order quashing the subpoena or otherwise limiting the original demand for the Confidential Information.
- D. If, as a result of the Services, Keenan becomes the recipient of any information designated as Protected Health Information (“PHI”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Keenan shall execute a Business Associate Agreement (as defined by HIPAA) which shall govern Keenan’s obligations with respect to such PHI.

15. **GENERAL**

- A. This Agreement, its recitals and all attached exhibits constitute the entire understanding of the parties related to the subject matter of the Agreement, and supersede all prior and collateral statements, presentations, communications, reports, agreements or understandings, if any, related to such matter(s).
- B. The obligations of this Agreement (other than Keenan’s obligation to perform services and Client’s obligation to pay for such services, if any, except as provided under Section 9B applies) shall survive the expiration or termination of this Agreement.
- C. This Agreement is made for the benefit of the parties and is not intended to confer any third party benefit or right. The enforcement of any remedy for a breach of this



Agreement or claim related to the Services may only be pursued by the parties to this Agreement.

- D. No modification or amendment to this Agreement shall be binding unless in writing and signed by authorized representatives of both parties. Any waiver or delay by a party in enforcing this Agreement shall not deprive that party of the right to take appropriate action at a later time or due to another breach. This Agreement shall be interpreted as if written jointly by the parties.
- E. Any provision determined by a court of competent jurisdiction to be partially or wholly invalid or unenforceable shall be severed from this Agreement and replaced by a valid and enforceable provision that most closely expresses the intention of the invalid or unenforceable provision. The severance of any such provision shall not affect the validity of the remaining provisions of this Agreement.
- F. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make a good faith effort to perform under this Agreement in the event of any such circumstances, and shall resume full performance of its contract duties once the cause of the delay has abated.
- G. All notices hereunder shall be in writing and shall be sent to the parties at the addresses as set forth below, or to such other individual or address as a party may later designate. Notices shall be sent via personal delivery, courier service, United States mail (postage pre-paid, return receipt requested), express mail service, electronic mail, or fax. Notice shall be effective when delivered, or if refused, when delivery is attempted. Notices delivered during non-working hours shall be deemed to be effective as of the next business day.

If the notice relates to a legal matter or dispute, a copy shall be sent to:

Keenan and Associates  
2355 Crenshaw Blvd., Ste. 200  
Torrance, CA 90501  
Attn: Legal Department  
Fax: (310) 533-0573

- H. This Agreement may be executed in counterparts and by fax signatures and each shall be deemed to be an original.



- I. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

<u>Municipal Services Authority</u>		<u>Keenan &amp; Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>	Richard Averett	<u>By:</u>	David DeWenter
<u>Title:</u>	Executive Director	<u>Title:</u>	Chief Operating Officer
<u>Address:</u>	P.O. Box 1350	<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
	Carmel Valley, CA 93924		Torrance, CA 90501
<u>Telephone:</u>	831/308-1508	<u>Telephone:</u>	310-212-0363
<u>Fax:</u>	831/308-1509	<u>Fax:</u>	310 212-0354
<u>Attention:</u>	Richard Averett	<u>Attention:</u>	David DeWenter



**EXHIBIT A  
LINES OF COVERAGE**

Keenan shall perform the services described in Exhibits B-1 and/or B-2 for the lines of coverage as indicated below, and for such other lines as Client may later designate:

	B1	B2	Neither
Workers' Compensation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Liability Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Directors and Officers Liability Insurance (Primary and Side A DIC forms)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commercial Property Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boiler and Machinery Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Automobile Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crime Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fiduciary Responsibility Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employed Lawyers Professional Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kidnap and Ransom Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Travel Accident Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pollution Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Underground Storage Tank Pollution Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Miscellaneous Liability Insurance			
Security Guard General Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Airport Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
International General Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special Events Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Miscellaneous Facility Bonds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment [jbk1]: ?

Comment [jbk2]: Presumably the second box intends to strike the X in the first box. Auto coverage is not part of the agreement.



**EXHIBIT B-1  
BROKERAGE SERVICES**

**Keenan shall perform the following Brokerage Services for those lines of coverage indicated in Exhibit A and for such other lines as Client may later designate:**

1. Plan Review – Keenan shall review Client’s current insurance program(s) and provide information and recommendations regarding insured and/or self-insured options, as requested by Client.
2. Insurance Needs Assessment – Keenan shall work with client to determine Client’s insurance needs.
3. Insurance Marketing Plan – Keenan shall prepare and present to Client its plan for marketing Client to various carriers and/or Coverage providers. In furtherance of its plan, Keenan shall contact those markets that it has determined most likely to meet Client’s needs, as made known to Keenan, but shall not necessarily contact every available market for the particular Coverage being sought. In so far as practical, Keenan shall honor Client’s timely and reasonable requests to contact specific markets, but Keenan shall not be obligated to present Client to any carrier or Coverage provider which Keenan has determined would not be willing to quote Client’s business or would not give a competitive quote.
4. Insurance Marketing Results – Keenan shall present to the client in summary format information concerning all markets and carriers approached. The summary shall include, as applicable: name of carrier and Coverage providers approached, limits, premium, and deductible, as well as the compensation from carrier to Keenan. The summary shall also include the names of any carriers or Coverage providers who declined to provide a quote.
5. Review of Insurance Options – Keenan shall present along with the Marketing Results a comparison summary highlighting the significant terms and/or differences among the various Coverages quoted. This summary is provided for Client’s convenience only, and will reflect Keenan’s expertise, experience and professional judgment as to the Client’s best interest. It is Client’s responsibility to ask questions and to request any additional information that it deems necessary for it to make an informed decision regarding its insurance or self-insurance program.
6. Obtain Coverage – Once the Client has made its decision, Keenan shall take all steps necessary to communicate Client’s decision to the carrier selected and to have the carrier or other Coverage provider bind Coverage on behalf of the Client.
7. Implementation – Keenan shall assist Client in the preparation and distribution of materials relating to the implementation of its insurance program(s).
8. Ongoing Service – Keenan shall act as a liaison between the Client and its insurance carrier or coverage provider.



**EXHIBIT B-2  
CONSULTING SERVICES**

Keenan shall perform the following services for those lines of coverage selected Exhibit A and for such other lines of coverage as Client may later select:

**1. Claim Analyst Advocacy**

- Claim file reviews will consist of carrier oversight to ensure aggressive claim resolution and reserve integrity. Claim file reviews will be no more frequent than quarterly and can be via telephonic/video conference or in-person.
- Training sessions ~~no more than twice per year~~ on topics such as basic/advanced workers' compensation, claim reporting, employer level investigation, FEHA/Interactive process, etc.
- Informational support such as distribution of Client Briefings, legislative updates, self-insured assessments, etc.

**2. Loss Control Advocacy**

- ~~Liaison between the client and the carrier to ensure client questions are being answered and issues are being resolved.~~
- Trend Analysis annually (if workers' compensation loss data is provided by carrier) to determine loss drivers and provide recommendations to reduce frequency and severity.
- Training to include but not limited to in person and online training as outlined in memorandum from Jefferson Kise dated September 30, 2011.

**3. Account Administration**

- Contract review and tracking
- Certificate of insurance issuance and tracking
- Processing of additional insured endorsements
- Liaison between the client and the carrier to ensure client questions are being answered and issues are being resolved.
- Annual coordination of renewal process

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Comment [jbk3]: We want the contract review process to include consulting to MSA when client requirements may negatively impact our risk and/or premium.

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**EXHIBIT C  
BROKER OF RECORD DESIGNATION**

This letter confirms that as of **January 12, 2012**, the organization listed below (“Client”) has appointed Keenan & Associates (“Keenan”) as the Broker of Record in connection with the following coverages:

**Workers' Compensation, Crime, General Liability**

and such additional coverages (the “Coverage”) or insurance as Client may from time-to-time request from Keenan. Keenan is authorized to provide a copy of this letter to any insurer to demonstrate Keenan’s authority to obtain the Coverage. This appointment rescinds any previous appointment Client may have made with respect to the Coverage and shall remain in full force and effect until cancelled in writing.

**Comment [jbk4]:** This sounds too broad. We should execute a BOR for health insurance (for ex) if we decide to engage them for that line of coverage.

Keenan is an insurance services provider with special expertise in the insurance and services needs of California school districts, municipalities, health care providers and their related entities. As such, Keenan will present to Client those products and services that Keenan believes will be most likely to meet the needs of Client. Keenan shall perform its duties as an independent contractor and shall not be treated as an officer, employee, agent or fiduciary of Client.

Client authorizes Keenan to provide representatives of identified insurance companies and other entities which may offer coverage with such Client information as may be requested. Keenan shall be entitled to receive all commissions and other compensation that may be paid in conjunction with the placement, implementation and servicing of the Coverage.

Acknowledged and agreed to by:

<b>Municipal Services Authority</b>		<b>Keenan &amp; Associates</b>	
<b>Signature:</b>		<b>Signature:</b>	
<b>By:</b>	<b>Richard Averett</b>	<b>By:</b>	<b>David DeWenter</b>
<b>Title:</b>	<b>Executive Director</b>	<b>Title:</b>	<b>Chief Operating Officer</b>
<b>Address:</b>	<b>P.O. Box 1350</b>	<b>Address:</b>	<b>2355 Crenshaw Blvd., Ste. 200</b>
	<b>Carmel Valley, CA 93924</b>		<b>Torrance, CA 90501</b>
<b>Telephone:</b>	<b>831-308-1508</b>	<b>Telephone:</b>	<b>310-212-0363</b>
<b>Fax:</b>	<b>831-308-1509</b>	<b>Fax:</b>	<b>310-212-0354</b>
<b>Attention:</b>	<b>Richard Averett</b>	<b>Attention:</b>	<b>David DeWenter</b>



**EXHIBIT D  
COMPENSATION**

1. As compensation for its provision of the Services, Keenan shall receive a fee of \$38,000.00, due and payable in quarterly installment of \$9,500.00 each, payable in advance, commencing January 12, 2012 and thereafter on April 1, 2012, July 1, 2012 and October 1, 2012.
2. Any balance not paid within thirty (30) days following the date on the invoice shall be deemed late. Interest on any late payment shall accrue as of the date of Keenan's original invoice at the rate of (a) 1½ percent per month, or (b) the maximum interest rate permitted by applicable law, whichever is lower. Keenan shall have the right to suspend its Services if any balance owed by Client is more than sixty (60) days late.





# MUNICIPAL SERVICES AUTHORITY

*Providing Insurance Solutions for California Public Agencies*

[www.lgs.ca.gov](http://www.lgs.ca.gov)

[www.rgs.ca.gov](http://www.rgs.ca.gov)

**TO:** BOARD OF DIRECTORS  
**FROM:** RICHARD H. AVERETT, EXECUTIVE DIRECTOR  
**SUBJECT:** APPROVAL OF CONFLICT OF INTEREST CODE

**BOD Meeting:** 1-12-2012  
**Item:** 12

## **RECOMMENDATION**

Approval of the conflict of interest code.

## **BACKGROUND**

Government Code Section 87300 et seq. requires every local agency to adopt and promulgate a Conflict of Interest Code. Thereafter, every agency shall review their conflict of interest code and to either amend the code if necessary or report that no amendment is necessary every even-numbered year. Adoption of the code on this date, would mean the next review would be scheduled prior to July 1, 2014.

## **ANAYLSIS**

The JPA positions listed on the attached resolution will be required to submit the Form 700 disclosure report. The JPA will continue compliance as changes occur in Board Members, staff and key consultants.

## **FISCAL IMPACT**

There is no fiscal impact to the JPA by approving the Conflict of Interest Code.

# **MUNICIPAL SERVICES AUTHORITY**

## **CONFLICT OF INTEREST CODE**

Adopted January 12, 2012  
(see Board Meeting item 12)

### **MUNICIPAL SERVICES AUTHORITY, A JOINT POWERS AUTHORITY**

The Political Reform Act of 1974 (Government Code Sections 81000 et seq.) requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Section 18730), which contains the terms of a standard Conflict of Interest Code and can be incorporated by reference in an agency's code. After public notice and hearing, it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act.

Therefore, the terms of 2 California Code Regulations Section 18730 and any amendments duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. These regulations and the attached appendix, designating officials and employees and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Municipal Services Authority.

Designated officials and employees shall file statements of economic interests with the Municipal Services Authority, who will make the statements available for public inspection and reproduction (Gov. Code Section 81008.) The Secretary will retain statements for all designated officials and employees.

## APPENDIX

### DESIGNATED OFFICERS AND EMPLOYEES

<b>Position:</b>	<b>Disclosure Category</b>
Board of Directors and Alternates	1
Executive Director/Chief Financial Officer	1
General Counsel	1
Auditor/Treasurer/Controller	1
Secretary	1
Consultants*	1

\*Consultants shall be included in the list of designated officials and employees and shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The Chief Executive Officer, or his or designee, may determine in writing on a case by case basis that a particular consultant, although a designed position, is hired to perform a range of duties that is limited in scope and thus does not require compliance, or full compliance with disclosure requirements. Any such written determination shall include a description of the consultant's duties and a statement as to the extent of disclosure requirements. The Chief Executive Officer may determine whether a contract consultant constitutes a "consultant" as defined in the Political Reform Act. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

### DISCLOSURE CATEGORIES

Category 1: Persons in this category must disclose all investments and business positions in business entities, doing business in, and sources of income and interests in real property, in the state in which the Municipal Services Authority operates.

Category 2: Persons in this category must disclose all investments and business positions in business entities in or doing business in the state in which the Municipal Services Authority operates.

Category 3: Persons in this category must disclose all investments and business positions in business entities and sources of income which provide, manufacture or supply services, supplies, materials, machinery or equipment of the type utilized by or subject to review or approval by the Municipal Services Authority.