

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING AMENDMENTS TO THE EXCLUSIVE RISK
MANAGEMENT AUTHORITY OF CALIFORNIA JOINT POWERS AGREEMENT

WHEREAS, the City is a member of the Exclusive Risk Management Authority of California (ERMAC), a self-insured joint powers authority created for the purpose of providing liability protection to California Governmental Agencies;

WHEREAS, the Board of Directors and the member agencies of ERMAC have adopted and approved a Joint Powers Agreement dated June 27, 2003; subsequently amended by Resolution 2004-01 to change the name of the Authority; and subsequently amended by Resolution 2004-02 to add Section 15 relating to contractual liability of agencies;

WHEREAS, the ERMAC Board of Directors have deemed it to be in the best interests of ERMAC that the Joint Powers Agreement be further amended;

WHEREAS, amendments to the Joint Powers Agreement require consent of member agencies; and

WHEREAS, the City has reviewed the amendments and agrees upon adoption of this Resolution to be bound by the terms of the Amended Joint Powers Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the City Council does hereby approve the following Amendments to the Joint Powers Agreement (a copy of said amendments being attached hereto as an "Exhibit" and by this reference made a part hereof):

1. Add to Section 3, Purpose of the Agreement: Common Exercise of Powers the following sentence as a new paragraph at the end: "New members may be admitted to the Authority upon approval by a two-thirds or higher vote of the Board of Directors. Eligibility is limited to California public agencies."
2. Add to Section 4, Powers, "(H) To appoint a Treasurer pursuant to Government Code section 6505.6. Per that section, the Treasurer shall cause an annual audit to be conducted."
3. Replace Section 5, Termination, "giving of thirty (30) days written notice to the primary officer of the authority" with "giving of written notice to the primary officer of the Authority of provisional termination by December 31 and final notice of termination by March 31."

4. Add to Section 6, Board of Directors the following sentence as a new paragraph at the end: "At least one regular meeting shall be held each program year."
5. Add as a new Section 16: "Member Agency Responsibilities. The member Agencies shall have the following responsibilities:
 - A. to cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the Memorandum of Coverage;
 - B. to pay cash contributions, cash assessments and other charges, promptly to the Authority when due;
 - C. to provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement;
 - D. to establish and maintain risk management programs including but not limited to loss control, risk transfer and employee safety programs;
 - E. to cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement;
 - F. to comply with the Bylaws and all policies and procedures adopted by the Board; and,
 - G. to appoint a representative and alternate to the Board of Directors."
6. Add as a new Section 17: "Assessments and Surplus Distributions. The Board by two-thirds vote shall have the authority to levy an assessment on member Agencies upon a determination that it is necessary to meet the Authority's obligations. The assessment shall be *pro rata* in accordance with the respective initial premiums paid by members for the program year(s) giving rise to the deficit position. The Board by two-thirds vote shall have the authority to declare a distribution of surplus funds to current members upon a determination that surplus funds are available for distribution. Such distribution shall be *pro rata* in accordance with the respective initial premiums paid by current member Agencies for the program year(s) giving rise to the surplus position."
7. Add as a new Section 18: "Expulsion. The Board, by a two-thirds vote, may expel any member Agency from membership, effective at the end of the program year in which notice is given; such Agency shall have all the duties of a member that had voluntarily withdrawn."
8. Add as new Section 19: "Withdrawal. Withdrawal of any member Agency under Section 5 shall not terminate its responsibility:
 - A. to cooperate fully with the Authority in determining the cause of losses and in the defense of covered claims;

- B. to pay assessments due and payable for program years in which the member Agency participated;
 - C. to provide such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement; and
 - D. to cooperate and assist the Authority and any insurer, claims adjustor, or legal counsel retained by the Authority, in all matters relating to this Agreement. Coverage in all program years which the member Agency participated will remain in effect and continue until the conclusion of their respective program years.”
9. Add as a new Section 20: “Termination and Distribution. This Agreement may be terminated at any time by the written consent of all member Agencies, or when due to withdrawals or expulsions, less than two member Agencies remain. Provided, however, that this Agreement shall continue in force for the purpose of disposing of all claims and all other functions necessary to wind up the affairs of the Authority. Upon termination of this Agreement, after resolution of claims, all assets of the Authority shall be distributed among past or present members of the Authority *pro rata* in proportion to the contributions made.”

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward