

MARIPOSA COUNTY RESOLUTION NO. 87-70

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF MARIPOSA AUTHORIZING THE EXECUTION
AND DELIVERY OF A LIABILITY RISK COVERAGE
AGREEMENT, A TRUST AGREEMENT, AND THE FILING
OF A VALIDATION PROCEEDING AND CERTAIN OTHER
ACTIONS IN CONNECTION THEREWITH

WHEREAS, the County of Mariposa (the "County") is a political subdivision duly organized and existing under the Constitution and laws of the State of California (the "State");

WHEREAS, the County is authorized by Part 6 of Division 3.6 of Title 1, Section 990 et seq., of the California Government Code (the "Act") to insure itself against tort or inverse condemnation liability, to insure its employees against injury resulting from an act or omission in the scope of his employment and to insure against the costs of defending such claims;

WHEREAS, pursuant to Section 990.4 of the Act the County is authorized to provide insurance by self-insurance which may be funded by appropriations and to establish or maintain reserves for such purposes;

WHEREAS, pursuant to Section 990.6 of the Act, the cost to the County of such self-insurance is a proper charge against the County and therefore the Board of Supervisors of the County is authorized to make premium payments for such

coverage in an amount such Board of Supervisors determines to be necessary to provide such coverage;

WHEREAS, pursuant to Section 990.8 of the Act, the County is empowered to obtain insurance coverage through a joint powers agreement with other local public entities, and such pooling of self-insured claims and the risk sharing of losses is not considered insurance subject to regulation under the California Insurance Code;

WHEREAS, the CSAC Excess Insurance Authority (the "Provider") is a joint exercise of powers agency of which the County is a member;

WHEREAS, the Provider is authorized to exercise necessary powers to implement the purposes of the Provider through the Provider's Board of Directors;

WHEREAS, the Provider has determined to assist the County and certain other Counties which are members of the Provider to obtain self-insurance for liability risks (the "Coverage") through and on the terms set forth in the Liability Risk Coverage Agreement dated as of June 1, 1987 by and among the Provider, and the Counties named therein (each of the County and such Counties set forth in this paragraph being referred to herein individually as a "Providee" and collectively as the "Providees");

WHEREAS, this Board of Supervisors proposes to authorize the execution of the Agreement for the purpose of

providing Coverage for the County for the benefit of the County's residents and taxpayers and for the health and safety of the public;

WHEREAS, the County proposes to authorize the sale and delivery pursuant to the Trust Agreement described below of Certificates of Participation (the "Certificates") evidencing undivided and proportionate interests in Basic Premium to be paid by the County and the other Providees under the Agreement in order to fund reserves initially in an amount determined sufficient to pay Settlements (as defined in the Agreement) when due and to provide the Coverage described in the terms set forth in the Agreement and in the Memorandum of Liability Coverage attached thereto in Exhibit B (the "Memorandum");

WHEREAS, the County has conclusively determined following investigation that either public entity liability insurance coverage is not available to the County from commercial insurers or from any other source or that such insurance is not available at a reasonable cost;

WHEREAS, the County has further determined, based upon the advice of independent professional insurance consultants familiar with the cyclical nature of the reasonable availability of coverage in the commercial insurance market, that it is uncertain when such liability insurance is expected to become available at a reasonable cost, thereby

in the interim exposing the County to self-insuring from available revenues on a year by year basis with the attendant risks of fiscal instability and ruinous burdens on its citizens in the event of large liability claims recoveries;

WHEREAS, this Board of Supervisors hereby further determines that the periodic unwillingness of the commercial insurance market to provide primary or excess public entity liability insurance to local governments at reasonable rates or, in certain cases as at present, at any rate, mandates that the County seek not only an immediate solution but also a long-term permanent solution to this problem which will in future years free them from exposure to the vagaries of commercial insurance cycles;

WHEREAS, the County, the Provider and the other Providees, in consultation with independent professional insurance consultants, have formulated a joint risk-sharing insurance program to be administered by the Provider to meet the public entity liability insurance coverage needs of the Providees which will provide the following advantages, among others, to the Providees:

(a) immediate funding of a claims payment fund (the "Claims Payment Fund") through an initial deposit from the proceeds of the sale of the Certificates for the dual purpose of providing immediate protection from

large claims loss and facilitating eventual access to the commercial reinsurance market,

(b) mutual agreement by the Providees to pay annual premium amounts on both a prospective and a retrospective basis calculated actuarially to spread and moderate the cost of claims loss to each Providee,

(c) relief from the burden of paying premiums to commercial insurers at levels reflecting the insurers' high costs of underwriting, administration and brokerage fees since the Provider's costs will be limited to reasonable administrative costs,

(d) relief from the commercial insurers' rights under excess liability policies to force claim settlements which are payable primarily in each case from the Providee's self-insurance funds,

(e) access to the commercial reinsurance market in future years when commercial reinsurance is available at rates deemed favorable by the Providees, and

(f) actuarially-determined premium payments calculated to provide amounts in each year necessary to maintain the Claims Payment Fund at an actuarially sound level and therefore sufficient to reserve against the incurred losses of the Providees.

WHEREAS, this Board of Supervisors hereby further determines that the Participation Premium (as defined in the Agreement) to be paid in each year by each Providee including the County as provided for and upon the conditions set forth in the Agreement will be payable only upon the condition of the receipt of the consideration represented by the insurance protection to be provided in such year under this Agreement, but in the event that such protection is so provided in any year such Participation Premium will be a binding obligation of the County payable from legally available moneys;

WHEREAS, this Board of Supervisors hereby further determines that the obtaining of the insurance protection and services provided for under the Agreement is essential in the preservation and fostering of the health, safety and property rights of the citizens of the County;

WHEREAS, it is necessary and in the interest of the citizens of the County to establish, through the sale of the Certificates, and maintain through pro rata contributions of each Providee, including the County, a debt service reserve fund therefor, in order to establish adequate reserves to permit the Certificates to be marketed at the lowest possible interest rates;

WHEREAS, this Board of Supervisors hereby determines that it is reasonably expected that the cost of funding and

maintaining such reserve fund will be more than offset by the anticipated benefits and economies to be realized by the pooling of risks and losses pursuant to the Agreement;

WHEREAS, Article 16, Section 6 of the Constitution of the State, regarding lending of public credit or funds, provides, in relevant part, that such Section "shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature";

WHEREAS, Premium shall be paid by the County in consideration of the Coverage offered by the Agreement and by the Memorandum and the sharing of the risk of liability for claims associated with the pooled self-insurance program during each Coverage Period (as defined in the Agreement); this Board of Supervisors hereby agrees and determines that such Premium payments represent the fair market value of the Coverage; in making such determination, consideration has been given to the initial costs of establishing the pooled insurance program, the unavailability of affordable

commercial liability insurance to the County and to other Providees, the anticipated costs of commercial liability insurance in the future, the obligations of the Providees under the Agreement (including the other Providees' agreement to share the risk of costs imposed by liability claims to the County), the obligation of the Provider to provide insurance services, the benefits resulting from capitalization of a pooled insurance program (including the prospect of access to the commercial liability reinsurance market) and the other benefits therefrom which will accrue to the County and the health and safety of the general public;

WHEREAS, the County receives benefit from the sharing of risk of costs imposed by liability claims under the terms of the Agreement during each Coverage Period; the assessment of Risk Premium and Risk Premium Adjustments is the means by which such risk-sharing is implemented; and the procedure established in the Agreement for the calculation, adjustment and assessment of Risk Premium and Risk Premium Adjustments is hereby determined to be fair, just and reasonable as a means of such risk-sharing;

WHEREAS, Section 52511 of the California Government Code provides that "[a] local agency may bring an action to determine the validity of its bonds, warrants, contracts, obligations or evidences of indebtedness pursuant to

Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure" and the County proposes to bring such an action together with the other Providees to validate the Providees' obligations under the Agreement and the Trust Agreement, and proposes to authorize legal counsel to conduct such proceedings; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the County is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN LUIS OBISPO AS FOLLOWS:

SECTION 1. Declaration of Board of Supervisors. This Board of Supervisors hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the County, and that the statements, findings and determinations of the County set forth in the preambles above and of the documents approved herein are true and correct.

SECTION 2. Liability Risk Coverage Agreement. The form of Liability Risk Coverage Agreement, dated as of June 1, 1987 with an effective date of its date of execution, between the County and the other counties named therein as Providees and the CSAC Excess Insurance Authority (the "Provider"), as Provider, presented to this meeting and on file with the Clerk of the Board of Supervisors is hereby approved. The Chairman of the Board of Supervisors and any other County officer or official of the County authorized by the Chairman of the Board of Supervisors are hereby authorized and directed, for and in the name and on behalf of the County, to execute, acknowledge and deliver to the Provider, or after the date on which the judgment of validation referred to in Section 4 hereof becomes final, said Liability Risk Coverage Agreement in substantially said form, with such changes therein as such officer may require to approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. Trust Agreement. The form of Trust Agreement, dated as of June 1, 1987 with an effective date of the date of execution thereof, among the County and the other Providees, the Provider and the trustee named therein (the "Trustee"), presented to this meeting and on file with the Clerk of the Board of Supervisors, is hereby approved. The Chairman of the Board of Supervisors and any other

officer or official of the County authorized by the Chairman of the Board of Supervisors are hereby authorized and directed, for and in the name and on behalf of the County, to execute and deliver to the Provider and the Trustee, or or after the date on which the judgment of validation referred to in Section 4 hereof becomes final, said Trust Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. Validation Proceedings. The Chairman of the Board of Supervisors and any other officer or official of the County authorized by the Chairman of the Board of Supervisors are hereby authorized and directed to participate and cooperate to the fullest extent practicable with the Provider, the other Providees and representatives of Brown & Wood ("Special Counsel"), which firm has heretofore been retained by the Provider as legal counsel with respect to the Certificates and validation proceedings and which retention is hereby ratified by this Board of Supervisors, in the conduct of validation proceedings regarding the Agreement and the Trust Agreement and to do any and all things and to execute and deliver any documents which such officers and staff may deem necessary or advisable in connection therewith.

SECTION 5. Attestation and Seal. The Clerk of the Board of Supervisors is hereby authorized and directed to attest the signature of the authorized signatory, and to affix and attest the seal of the County, as may be required or appropriate in connection with the execution and delivery of said Liability Risk Coverage Agreement and Trust Agreement.

SECTION 6. Further Actions. Officers of the Board of Supervisors and the Chairman of the Board of Supervisors and any other officer or official of the County authorized by the Chairman of the Board of Supervisors, are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the sale, execution and delivery of the Certificates by the Trustee and otherwise to carry out, give effect to and comply with the terms and intent of this resolution, the Certificates, Liability Risk Coverage Agreement and Trust Agreement. Such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

SECTION 8. Effective Date. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 24th day of February, 1987, by
the following vote:

AYES: BAGGETT, ERICKSON, RADANOVICH, TABER
NOES: NONE
ABSENT: DALTON



CHAIRMAN, Mariposa County
Board of Supervisors

(SEAL)

Attest:


Clerk

MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


JEFFREY G. GREEN, County Counsel