# BYLAWS

**LOCAL AGENCY WORKERS' COMPENSATION EXCESS**

**JOINT POWERS AUTHORITY**

**(LAWCX)**

**ADOPTED**

**MAY 12, 1998**

**AMENDED**

**Amended effective July 1, 2014**

**LAWCX BYLAWS**
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# BYLAWS

# OF THE

# LOCAL AGENCY WORKERS' COMPENSATION EXCESS JOINT POWERS AUTHORITY

## PREAMBLE

The Local Agency Workers' Compensation Excess Joint Powers Authority (**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 of excess workers' compensation protection for the public agencies which are members hereof, and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding programs of excess workers' compensation coverage. These Bylaws are adopted and amended from time to time pursuant to **Agreement** section 5(B). If there is an irreconcilable conflict between the Bylaws and the **Agreement**, the provision in the **Agreement** shall govern.

## ARTICLE I

## DEFINITIONS

The terms herein shall have the following meaning:

1. **Agreement** shall mean the Joint Exercise of Powers Agreement Local Agency Workers' Compensation Excess Joint Powers Authority dated June 18, 1992, as the same may be amended from time to time.

2. **Authority** shall mean the Local Agency Workers' Compensation Excess Joint Powers Authority.

3. **Board of Directors** shall mean the Board of Directors of the **Authority** as established by the **Agreement**.

4. **Capital Contribution** shall mean the funds collected to provide a contingency margin in excess of expected losses.

5. **Deposit Premium** shall mean the total of all charges billed to the Parties by the **Authority** for each **Program Year**. The **Deposit Premium** shall consist of **Pool Contributions**, administrative expenses, excess insurance costs, any **Capital Contribution**, and any other charges or expenses authorized by the **Governing Documents**.

6. **Excess Workers' Compensation** shall mean coverage for workers' compensation and employer's liability claims in excess of a **Party's** retained limit as further described in the Memorandum of Coverage.

7. **General Fund** shall mean the fund established for the distribution of administrative expenses.

8. **Governing Documents** shall mean the **Agreement**, these Bylaws, the Memorandum or Coverage and the Program Document, as each may be amended from time to time.

9. **Executive Director** shall mean the Executive Director office as established by these Bylaws.

10. **New Party Applicant** shall mean any prospective new **Party** making application to join LAWCX in accordance with these Bylaws.

11. **New Party JPA Applicant** shall mean a member agency of an existing joint powers authority **Party** making application to join LAWCX in accordance with these Bylaws.

12. **Party** shall mean a party to the **Agreement**. If a public agency receives **Excess Workers' Compensation** coverage through a joint powers authority that is a **Party** of the **Authority**, the joint powers authority **Party** shall be the **Party** and a member agency of the joint powers authority shall not be considered a **Party** for purposes of the Bylaws.

13. **Pool Contribution** shall mean the amount charged to a Party by the **Authority** to cover claims and related claims costs of each pool.

14. **Program Year** shall mean that period of time, normally July 1 to the following June 30, designated by the **Board of Directors** as one coverage period.

## ARTICLE II

## BOARD OF DIRECTORS

1. The **Agreement** establishes a **Board of Directors** to direct and control and set policy for the **Authority**.

A. REPRESENTATION

(1) Each **Party** shall be entitled to one seat on the **Board of Directors**. Each **Party** shall appoint to the **Board of Directors** one representative and one alternate, designate the appointments in writing, and provide the designation to the **Authority**. The representative and alternate must be an employee or officer of the **Party.** The representative and alternate shall serve at the pleasure of the appointing **Party** and may be changed by the **Party** at any time by providing written notice of the changed designation to the **Authority**. Each appointed representative and alternate must file Statements of Economic Interest (FPPC Form 700) in accordance with the **Authority's** Conflict of Interest Code and state law. The appointed representative and alternate may invite individuals of their agency's staff or consultants to attend open meetings of the **Board of Directors** in an advisory capacity.

(2) Each director shall be entitled to cast one, two, three or four votes, depending upon the payroll of its appointing **Party** as determined in accordance with the weighted voting provisions of the **Agreement**, and all **Board of Directors** votes shall be weighted vote.

(3) A representative or alternate from each **Party** shall attend a regularly scheduled **Board of Directors** meeting at least once per fiscal year.

(4) If the **Party** is determined not to be in compliance with this requirement, a penalty will be assessed in the amount of $500 for the first year of non-compliance, and $1,000 for the second year of non-compliance. This amount shall be due and payable to the **Authority** upon receipt of the bill. The **Party** may appeal the penalty to the Executive Committee by filing a written notice of appeal with the Manager within 30 days after receipt of the bill. The **Party** also may appeal the Executive Committee's decision to the **Board of Directors** by filing a written notice of appeal with the **Executive Director** within 30 days after the Executive Committee decision. Payment of the bill shall be held in abeyance pending any appeal.

B. MEETINGS

(1) The **Board of Directors** and President may notice and conduct regular, adjourned regular, special, adjourned special and emergency meetings. The **Board of Directors** will hold at least two regular meetings each fiscal year, on the first Tuesday of November and June or such other date as may be determined by the Executive Committee. The precise meeting times and locations of regular Board meetings will be determined by the Executive Committee and the Executive Director from time to time will notify the Parties about the regular meeting dates, times and locations. All meetings of the **Board of Directors** shall be called, held, and conducted in accordance with the Ralph M. Brown Act (Government Code section 54950 et seq.), these Bylaws, Roberts Rules of Order, and any rules of proceedings that may be adopted by the **Board of Directors**. Except as otherwise provided or permitted by law, all meetings of the **Board of Directors** shall be open and public.

At least 72 hours before each regular Board meeting, the Executive Director, in coordination with the President, shall prepare a written agenda specifying the date, time and location of the regular meeting and containing a brief general description of each item of business to be transacted or discussed at the meeting. At least 72 hours before the meeting commences, the agenda shall be (1) posted at the Authority office, or a place noticed in the agenda, in a location that is freely accessible to members of the public, (2) posted on the Authority website, and (3) distributed to each member of the Board and each interested member of the public or representative of the media who has provided written request for notice of Authority meetings.

(2) The **Executive Director** shall cause notice of any meeting of the **Board of Directors** stating the time and place of such meetings and the matters to be discussed to be noticed in accordance with the Ralph M. Brown Act and distributed to each director. The **Executive Director** shall cause minutes of each meeting to be kept and distribute a true and accurate copy of the draft minutes to each **Party** of the **Authority** within 10 business days after the meeting.

C. DUTIES AND RESPONSIBILITIES

The **Board of Directors** has the authority and duty to manage the affairs of the **Authority** and set **Authority** policy consistent with applicable law and the **Governing Documents**. The **Board of Directors** may delegate any authority to the Executive Committee or **Executive Director**, except that the **Board of Directors** shall not delegate the following authorities and responsibilities:

(1) Approval of a new **Party**.

(2) Approval of a change of a **Party's** retained limit.

(3) Approval of any new program implementation manual (see **Agreement** section 5(D)).

(4) Creation of an **Authority** office and removal of an officer.

(5) Involuntary termination of a **Party**.

(6) Amendment of these Bylaws (which requires a two-thirds vote of the **Board of Directors**).

(7) Creation or dissolution of a risk management or self-insurance program (which requires a two-thirds vote of the **Board of Directors**).

(8) Approval of a contract or contract amendment exceeding $25,000.

(9) Designation of a principal office location at which the **Authority** will receive notices, correspondence, and other communications.

(10) Approval and amendment of the **Authority** budget.

(11) Approval of **Deposit Premiums** and the method by which **Deposit Premiums** will be paid to the **Authority**.

(12) Approval and amendment of the **Authority** investment policy.

(13) Oversight of the **Authority** accounting to ensure that a complete and accurate system of accounting is maintained at all times consistent with standards established by the Financial Accounting Standards Board and the Government Accounting Standards Board.

(14) Approval of audited financial statements.

(15) Approval and amendment of Memoranda of Coverage and the Program Document.

D. In accordance with Government Code section 54956.96, the **Authority** authorizes the following:

(1) All information received by the directors in a closed session **Board of Directors** meeting shall be confidential. However, a Board director or alternate may disclose information obtained in an **Authority Board of Directors** closed session that has direct financial or liability implications for director's or alternate's **Party** to the following individuals: (a) legal counsel of that **Party** for purposes of obtaining advice on whether the matter has direct financial or liability implications for that **Party**; and (b) governing board members of that **Party** present in a closed session meeting of that **Party's** governing board.

(2) Any designated alternate member of the **Board of Directors** (who is also a member of the governing board of his or her appointing **Party**) who attends a meeting of the **Board of Directors** in lieu of the **Party's** regular representative may attend closed sessions of the **Board of Directors**.

## ARTICLE III

## RULES OF THE BOARD OF DIRECTORS

1. A majority of the members of the **Board of Directors** constitutes a quorum for the transaction of **Authority** business. However, less than a quorum may adjourn from time to time. A vote of a majority of those directors present and voting (based on weighted votes) at a meeting is required to take action, unless a super-majority vote is otherwise specified by the **Governing Documents**.

2. No one serving on the **Board of Directors** shall receive any salary or compensation from the **Authority**.

3. Board members and alternate Board members may be reimbursed for actual and necessary expenses incurred on authorized **Authority** business if the Board member and/or alternate Board member does not receive reimbursement through its appointed **Party**. Expense reimbursement shall be paid in accordance with an expense reimbursement policy to be adopted (and amended from time to time) by the **Board of Directors**.

4. The **Board of Directors** may establish such other rules governing its own conduct and procedure so long as consistent with applicable laws, the **Agreement** and these Bylaws.

5. The **Agreement** sometimes provides for action by weighted vote of the **Parties** present at a meeting of the **Board of Directors**. Because each **Party** is represented by a director on the **Board of Directors**, a vote of the **Parties** under the **Agreement** shall mean a vote of the **Board of Directors** in accordance with these Bylaws.

## ARTICLE IV

## COMMITTEES

1. EXECUTIVE COMMITTEE

There is established an Executive Committee that shall have the authority to administer the **Authority** business and risk management programs in accordance with the **Governing Documents**, except such authority as is reserved exclusively to the **Board of Directors**.

All persons serving on the Executive Committee must be the duly appointed delegate or alternate of a **Party** serving on the **Board of Directors** at the time of election and throughout his or her term of office. Should an Executive Committee member no longer meet the eligibility requirements, the vacated seat shall be filled according to the procedures set below.

A. COMPOSITION

The Executive Committee shall consist of seven members, comprised of the persons holding the office of President, Vice President and Treasurer, the immediate Past President, and three other Executive Committee members elected pursuant to this article.

B. ELECTION OF EXECUTIVE COMMITTEE MEMBERS, PRESIDENT AND VICE PRESIDENT

(1) At the last regular **Board of Directors** meeting of each fiscal year, elections for the elected Board officers and Executive Committee members shall be held. In even-numbered years the **Board of Directors** shall elect two members and a vice president, and in odd numbered years the **Board of Directors** shall elect one member and a president. The election shall be decided by majority vote of the **Board of Directors**. The persons elected shall be the individual persons elected for those positions and not the **Party** that employs or that is affiliated with the person.

(2) Candidates for the President, Vice President and three Executive Committee members shall be submitted by a Nominating Committee as determined and appointed by the President and shall be submitted at least 30 days prior to the election. Additional qualified candidates may be made by a nomination and second from the floor at the **Board of Directors** meeting at the time of the election.

(3) The top candidates with the greatest number of weighted votes shall assume the office effective July 1 of that year. In the event there is a tie vote between two of the top candidates, the two candidates that are tied will be subject to a new vote. The voting will continue until the tie is broken.

(4) The three other Executive Committee members will serve for a two year term of office or until resignation or termination of office or employment with the member's appointing **Party**. However, Executive Committee members serve at the pleasure of the **Board of Directors** and may be removed from office at any time by three-fourths vote of the **Board of Directors**.

(5) A vacancy in any position on the Executive Committee (including the Board officers), because of death, resignation, removal, disqualification, or any other cause, may be filled at any time by vote of the Board of Directors, for the duration of the unexpired term of the vacated seat. The person serving in the Past President seat shall serve until the election of a new President. A vacancy shall not be filled automatically by the alternate representative of a Party.

C. MEETINGS

The date, time and location of regular Executive Committee meetings shall be determined by the Executive Committee in consultation with the **Executive Director** and noticed in the same manner as provided for regular Board meetings. At least 72 hours before each regular meeting, the **Executive Director**, in coordination with the President, shall prepare a written agenda specifying the date, time and location of the regular meeting and containing a brief general description of each item of business to be transacted or discussed at the meeting. At least 72 hours before the meeting commences, the agenda shall be (1) posted at the **Authority** office, or a place noticed in the agenda, in a location that is freely accessible to members of the public, (2) posted on the Authority website, and (3) distributed to each member of the Executive Committee, each director, and each interested member of the public or representative of the media who has provided written request for notice of **Authority** meetings. All meetings of the Executive Committee shall be conducted in accordance with the Ralph M. Brown Act. The Executive Committee shall cause minutes of each meeting to be prepared setting forth a summary of the matters discussed, expenditures approved, actions taken, and decisions made. The minutes shall be distributed to the members of the Executive Committee and each director.

A majority of the members of the Executive Committee constitutes a quorum for the transaction of Executive Committee business. A vote of a majority of the members of the Executive Committee present and voting at a meeting is required to take action. Each Executive Committee member shall be entitled to cast one vote.

D. DUTIES AND RESPONSIBILITIES

The Executive Committee shall have the authority to do the following on behalf of the **Authority**:

(1) To provide advice, consultation, and guidance to the **Executive Director** and other staff regarding implementation and administration of the **Governing Documents**, **Authority** business and risk management programs, and other policies and programs established by the **Board of Directors**.

(2) To assist and advise the **Executive Director** regarding the setting of the agenda for the **Board of Directors** meetings and to provide recommendations to the **Board of Directors**.

(3) To review and approve **Authority** expenditures, contracts and contract amendments provided that (a) the expenditure (including the expenditure related to a contract or contract amendment) is included in the approved budget, and (b) there are unappropriated funds available for the expenditure, and (c) for contracts and contract amendments, the contract or amendment amount is $25,000 or less. All other expenditures, contracts and contract amendments must be approved by the **Board of Directors**.

(4) To make minor line item augmentations to the approved budget, provided that (a) any single increase may not exceed 25% of the originally approved amount or $5,000, whichever is less, (b) all augmentations made by the Executive Committee in accordance with this section shall be reported to the **Board of Directors** at its next meeting, and (c) in making augmentations to the budget, the Executive Committee shall not exceed, in the aggregate, the amount established by the **Board of Directors** as the contingency reserve.

(5) To take other actions and make other decisions on behalf of the **Authority** as delegated by the **Board of Directors**.

2. UNDERWRITING COMMITTEE

A. There is established an Underwriting Committee. The qualifications for eligibility to be appointed as an Underwriting Committee member will be the same as that of Executive Committee members. When necessary, the President shall determine the size of and appoint the members of the Underwriting Committee. Underwriting Committee members serve at the pleasure of the **Board of Directors** and may be removed from office at any time by majority vote of the **Board of Directors**. The Underwriting Committee shall have the authority to:

(1) Review and make a recommendation to the **Board of Directors** regarding new **Party** applications for membership. A new **Party** application includes an entity applying to the **Authority** as a separate **Party** that was previously covered by the **Authority** through a joint powers authority **Party**;

(2) Approve or disapprove a new underlying member of a joint powers authority **Party** in situations beyond the authority of the **Executive Director** as outlined in Article XII; and

(3) Review and make a recommendation to the **Board of Directors** regarding a **Party's** request to increase or decrease its retained limit utilizing the same underwriting criteria that apply when reviewing a new **Party** application.

## ARTICLE V

## OFFICERS

1. OFFICERS OF THE **AUTHORITY**

The **Authority** officers shall be the President, Vice President, **Executive Director**, Treasurer, and other officers as may be appointed by resolution of the **Board of Directors**. The President, Vice President and Treasurer must be regular or alternate representatives serving on the **Board of Directors**. The President and Vice President shall be elected by the **Board of Directors**. The **Executive Director** shall be appointed by the **Board of Directors**. The Treasurer and other officers shall be appointed by the President (unless otherwise provided by resolution of the **Board of Directors**). All officers serve at the pleasure of the **Board of Directors** and may be removed from office at any time by the **Board of Directors** in accordance with these Bylaws.

2. ELECTION OF OFFICERS AND TERM OF OFFICE

The term of office for the President and Vice President shall be two years coincident with the fiscal years of the Authority. The term of all other offices shall continue until such time as the President appoints another to the office. Elections will be held in accordance with Article IV 1. B.

3. DUTIES OF THE OFFICERS

A. The President shall preside over Board and Executive Committee meetings, determine questions of order, and, when appropriate, call special meetings. The President may establish committees, and appoint the members of committees, as provided in these Bylaws. The President shall execute documents on behalf of the Authority as authorized by the **Board of Directors** and shall serve as the primary liaison between the Agency and the other organizations. The President shall be a member of all committees appointed by the **Board of Directors**. The President shall have other powers and perform such other duties as may be prescribed from time to time by the **Board of Directors**.

B. The Vice President shall have such powers and perform such duties as may be prescribed from time to time by the **Board of Directors** or the President. In the absence of the President, the Vice President shall be vested with all powers and authorized to perform all the duties of the President.

C. The Treasurer shall be the chief financial officer of the **Authority,** have charge of and handle the funds and property of the **Authority**, and perform the combined duties of treasurer and auditor as described in Sections 6505.1 and 6505.6 of the California Government Code. The Treasurer also shall perform the following duties:

(1) Place all funds received by the **Authority** in investments authorized by the **Board of Directors**-approved investment policy;

(2) Be responsible for the safekeeping and disbursement of all funds held by the **Authority**;

(3) Pay, when approved by the President, out of funds of the **Authority** so held, all sums payable by the **Authority**;

(4) Invest the **Authority's** funds according to the Investment Policy adopted by the **Board of Directors**;

(5) Verify and report quarterly in writing to the **Board of Directors**, and to the **Parties** of the **Authority**, the amount of receipts since the last report, and the amount paid out since the last report; and

(6) Act as custodian of the **Authority's** funds and 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 President.

## ARTICLE VI

## ADMINISTRATION

The **Authority** shall be administered by an individual appointed as **Executive Director**, who may be an **Authority** employee, independent contractor or employee of an independent contractor. The **Executive Director** serves at the pleasure of the **Board of Directors** and may be removed at any time by vote of the **Board of Directors**.

A. GENERAL ADMINISTRATION

The **Executive Director** shall:

(1) Monitor the status of the **Authority's** programs and operations, the development of losses, the program's administrative and operational costs, service companies' performance, and brokers' performance;

(2) Provide appropriate risk management counseling and information to the **Board of Directors**;

(3) Assist the **Board of Directors** in selecting brokers, actuaries, auditors, and other service companies;

(4) Design and implement new risk management and self-insurance programs as directed by the **Board of Directors**;

(5) Promote the programs to prospective new **Parties**;

(6) Maintain the records of the **Authority** and **Governing Documents**; prepare appropriate revisions to the **Governing Documents**; and distribute revised **Governing Documents** to the **Parties**;

(7) Prepare certificates of coverage and waivers of subrogation as may be requested by the **Parties**;

(8) Cause the preparation and distribution of notices of **Board of Directors** and Committee meetings with agendas, make the necessary arrangements for meeting facilities, and cause the preparation and distribution of minutes of such meetings;

(9) Prepare annual budgets for approval by the **Board of Directors**;

(10) Obtain underwriting data from the **Parties** and determine the annual **Deposit Premium** and other contributions of the **Parties** for the **Board of Directors**' approval;

(11) Review and approve or disapprove **New Party Applicants** as authorized by Article XII;

(12) Cause the records of all votes and the minutes of all meetings to be kept, assure that a notice of all meetings of the **Board of Directors** is given when notice is required by law or these Bylaws; and

(13) Have such other powers and perform such other duties as may be prescribed from time to time by the **Board of Directors** or the President.

B. FINANCIAL ADMINISTRATION

The **Executive Director** shall designate an Accounting Manager who shall:

(1) Maintain the books of the **Authority** in a manner consistent with the generally accepted accounting principles and the standards established by the Government Accounting Standards Board and the **Governing Documents**;

(2) Prepare quarterly financial statements, and distribute such statements to the **Parties**;

(3) Prepare and submit warrants as necessary for approval by the **Authority** pursuant to applicable **Board of Directors** resolution;

(4) Prepare IRS Form 1099s in accordance with the requirements of the IRS;

(5) Assist the independent auditors in the collection of financial and other information concerning the **Authority** and otherwise assist with the auditors' preparation of the audited financial statements; and

(6) Prepare and file the State Controllers Annual Report of Financial Transactions

C. CLAIMS ADMINISTRATION

The **Executive Director** shall designate a Claims Manager (subject to **Board of Directors** approval) who shall:

(1) Receive claims notifications from the **Parties**;

(2) Establish and maintain claims files, whether such claims are open or closed;

(3) Coordinate settlement and defense policy with the **Party** involved in the loss if such settlement may include pooled funds of the **Authority**;

(4) Appoint defense counsel to claims where appropriate;

(5) Monitor and control claims activities, including the activities of defense counsel;

(6) Establish and monitor claims reserves;

(7) Monitor settlement negotiations and approve the settlement of any claim with a total incurred amount in excess of the **Party's** retained limit;

(8) Pursue recovery from third parties where appropriate;

(9) Report losses to excess insurers or reinsurers where appropriate;

(10) Provide quarterly loss reports;

(11) Monitor loss trends; and

(12) Cooperate with independent claims auditors.

## ARTICLE VII

## POOLS

1. $150,000 POOL

This pool shall cover losses in excess of $150,000 to $250,000 per occurrence.

A **Party** that selects a retained limit of $150,000 per occurrence shall participate in this pool, separate and distinct from all other pools. Each **Party** shall be charged a **Pool Contribution** based on the actuarially determined anticipated losses affecting this pool. Only those **Parties** participating in this pool shall have an interest in the assets and liabilities of this pool in proportion to the **Pool Contributions** made by the **Parties** to this pool.

2. $250,000 POOL

This pool shall cover losses in excess of $250,000 to $2,000,000 per occurrence.

A **Party** that selects a retained limit of $250,000, $350,000, $500,000, or $1,000,000 per occurrence shall participate in this pool, which is separate and distinct from all other pools. Each **Party** shall be charged a **Pool Contribution** based in part by the actuarially determined anticipated losses affecting this pool. Only those **Parties** participating in this pool shall have an interest in the assets and liabilities of this pool in proportion to the **Pool Contributions** made by the **Parties** to this pool.

3. MID-LAYER POOL

This pool shall cover losses in excess of $2,000,000 to $5,000,000 per occurrence for P**rogram Years** 2006/07 and forward.

All **Parties** shall participate in this pool, which is separate and distinct from all other pools. Each **Party** shall be charged a **Pool Contribution** based in part by the actuarially determined anticipated losses affecting this pool until funding reaches a level designated by the **Board of Directors**. Additional **Pool Contributions** may be established if the funding is reduced or exhausted. All **Parties** shall have an interest in the assets and liabilities of this pool in proportion to the **Pool Contributions** made by the **Parties** to this pool.

4. RETAINED LIMITS

A. **Retained Limit** shall mean the amount per occurrence selected by a **Party** and as stated on the applicable declarations or certificate of coverage, which retained limit amount must be paid by the **Party** before the **Authority** is obligated to make any payment from the pooled funds.

B. The **Authority** offers a **retained limit** of $150,000, $250,000, $350,000, $500,000, and $1,000,000 per occurrence, or other limits as modified by resolution of the **Board of Directors**. Each **Party** may annually select its **retained limit** subject to approval of the **Board of Directors**. The amount of the loss on each occurrence, including expenses, which is less than the **retained limit** selected by the applicable **Party**, shall be paid by the **Party**.

C. A **Party** may change its retained limit by submitting a Notice of Intent to Amend Retained Limit to the **Authority**. A Notice of Intent for a proposed decrease or increase must be submitted by March 1 for the upcoming **Program Year**. The **Party** has until May 15 to confirm or retract its decision to change its retained limit for the upcoming **Program Year** by notifying the **Authority** in writing.

5. ACCOUNTS AND RECORDS

The accounts and records of each pool and each **Program Year** shall be maintained separate and apart from each other and all other **Program Years**.

6. DISTRIBUTIONS

Interest income, losses, excess insurance, and administrative expenses shall be allocated based on the individual **Party's Pool Contribution** as it relates to the total **Pool Contribution** of all **Parties** which participate in each respective pool.

## ARTICLE VIII

## FINANCE

1. The **Authority** shall operate on a fiscal year from July 1st through June 30th.

2. The **Board of Directors** shall annually, on or before June 30, adopt a budget showing each of the purposes for which the **Authority** will need funds, the estimated expenses, and the estimated revenue that will be needed for each such purpose for the next fiscal year. A copy of the budget shall be transmitted to each of the **Parties**.

3. Each **Party** shall pay to the **Authority** each fiscal year an annual **Deposit Premium**. **Deposit Premiums** are due and payable upon receipt of invoice and shall be considered past due if not received by the **Authority** on or before forty-five (45) days from the date invoices are issued. Payment shall be considered received by the **Authority** based on the date postmarked. Electronic payment shall be considered received by the **Authority** based on the date posted by **Authority's** financial institution.

4. Each **Party's** annual **Deposit Premium** for each fiscal year shall be determined by the **Executive Director** and approved by the **Board of Directors** no later than June 30th immediately preceding the fiscal year. Each **Party** shall receive, as soon as practicable after adoption, a list of the **Deposit Premium** by **Party**. Each **Party's Deposit Premium** shall be determined as follows:

   A. The **Party's** applicable **Pool Contributions**; and
   B. The **Party's** applicable share of administrative expenses, excess insurance, any **Capital Contribution**, and any other charges or expenses authorized by the **Governing Documents**.

5. <u>$150,000 and $250,000 Pool</u>

   Each pool year shall operate separately from every other pool in regard to its assets, liabilities and obligations.

   A. Should the total liabilities and obligations, including actuarially expected claims costs, for any **Program Year** of a pool exceed the total assets of that year, the **Board of Directors** may assess the **Parties** participating in that pool's **Program Year** for any or all such deficiency. If an assessment is made, it shall be borne by the **Parties** in the same relationship as their **Pool Contributions** for each pool's **Program Year** as it relates to the total of all the **Parties' Pool Contributions** for that pool's **Program Year**.

   B. Should the total assets of any pool's **Program Year** exceed the liabilities and obligations of that year, including actuarially expected claims costs of that year, the **Board of Directors** may return any or all of the excess assets to the **Parties** in the same relationship as each **Party's Pool Contribution** for the **Program Year** as it relates to the total of all the **Parties**' **Pool Contributions** for that **Program Year** provided that the reserves of the pooled program as a whole have an actuarially determined confidence level of at least ninety percent (90%) after such return of assets.

6. MID-LAYER POOL

   This pool shall operate separately from every other pool in regard to its assets, liabilities and obligations.
   A. The **Board of Directors** initially determined to fund this pool up to $5,000,000 over a five year period. Additional **Deposit Premiums** may be established at any time by the **Board of Directors** and based on the **Party's** annual payroll for that year in which the Mid-layer Pool funds have been reduced or exhausted.

B. Should the total assets of this pool exceed the liabilities and obligations of this pool, including actuarially expected claims costs, the **Board of Directors** may return any or all of the excess assets to the **Parties** in the same relationship as each **Party's Pool Contribution** as it relates to the total of all the **Parties' Pool Contributions**, provided that the reserves of this pool have an actuarially determined confidence level of at least ninety percent (90%) after such return of assets.

7. All amounts not paid in accordance with Section 3 above, shall be considered delinquent. At the **Board of Directors'** discretion, the **Board of Directors** by resolution may impose and authorize the collection of interest charges and/or penalties for delinquent amounts due from its **Parties**.

8. The **General Fund** shall be established and maintained to receive funds of the **Authority**. The **Authority** shall accept and deposit in the **General Fund** all funds received.

9. A Claims Expense Account shall be established, if necessary, and maintained out of funds received by and deposited in the **General Fund** for the purpose of paying for investigations, legal defense, related claims costs, and losses for **excess workers' compensation** claims.

10. A Reserve Account shall be established, if necessary, and maintained out of funds received by and deposited in the **General Fund** for the purpose of funding the General Reserves, i.e., funds for claims which have been incurred by the **Parties** but remain unpaid, and the funds for claims which have not been incurred.

## ARTICLE IX

## MEMORANDUM OF COVERAGE

1. A Memorandum of Coverage for each **Program Year** shall be adopted by a vote of the **Board of Directors** prior to the beginning of the **Program Year**.

   A. As soon as practicable following the adoption of the Memorandum of Coverage, the **Executive Director** shall distribute it to the **Parties**.

   B. The Memorandum of Coverage shall contain:

      (1) The scope of protection provided for **Excess Workers' Compensation** claims;

      (2) Other terms and conditions which the **Board of Directors** may consider necessary;

      (3) The names of the covered **Parties**.

2. If there is an irreconcilable conflict between any provision in the Memorandum of Coverage and the **Agreement** or Bylaws, the provision in the **Agreement** or Bylaws shall govern.

## ARTICLE X

## ACCOUNTS AND RECORDS

1. The Treasurer will designate a depository for the **Authority** as approved by the **Board of Directors** in compliance with California Government Code Section 6505.6.

2. The **Authority** is strictly accountable for all funds received and disbursed by it and, to that end, shall establish

and maintain such funds and accounts as may be required by generally accepted accounting practices, the **Governing Documents**, applicable law, or any resolution of the **Authority**. Books and records of the **Authority** shall be open to inspection at all reasonable times by representatives of the **Parties** and members of the public. The Accounting Manager, as soon as practical after the close of each fiscal quarter, shall give a complete written report of all financial activities for such fiscal quarter and fiscal year to date to each **Party**.

3. AUDITS

A. The **Board of Directors** shall contract with a certified public accountant to make an annual audit of the accounts, records, and financial affairs of the **Authority** and shall conform to generally accepted auditing standards and accounting principles.

B. The audited financial statements shall be filed as a public record with each of the **Parties** of the **Authority**, the State Controller, and the auditor-controller of the county where the **Authority** conducts its principal operations.

C. Such reports shall be filed within six (6) months of the end of the fiscal year under examination. Any costs of the audit, including contracts with, or employment of, certified public accountants in making the audit(s), shall be appropriate administrative charges against the funds of the **Authority.**

## ARTICLE XI

## RISK MANAGEMENT

The **Board of Directors** of the **Authority** may adopt procedures for risk management practices. Each **Party** shall implement in its agency any mandatory procedures for risk management practices adopted by the **Board of Directors**.

## ARTICLE XII

## MEMBERSHIP

Any California public agency permitted to self insure for workers' compensation coverage, except for school districts, is eligible to apply for membership in the **Authority** in accordance with this article. If approved for membership, the new **Party** must agree to be bound by and comply with the **Governing Documents** and comply with all of the requirements as provided by this article.

1. PROSPECTIVE **NEW PARTY APPLICANT** APPLICATION PROCEDURE

A. Each prospective new **Party** will fully complete the **Authority's** Prospective New **Party** Application and return it to the **Executive Director**.

B. Upon receipt of a completed application and a $1,000 application fee, the underwriting information shall be processed for review by the Underwriting Committee.

C. All applicants, including **New Party Applicants** and **New Party JPA Applicants**, shall go through the full underwriting process; however, the application fee shall not be charged for any **New Party JPA Applicant**.

D. The **Executive Director** will forward the submission to the Underwriting Committee along with a recommendation to the Underwriting Committee.

E. The Underwriting Committee will review, in addition to any other appropriate factors pertinent to review of the application, the following:

(1) The average loss history of the applicant per $100 of payroll over the then immediate past five-year history as compared to the average loss history of the **Authority** per $100 of payroll over the same period of time.

(2) The severity of claims during this same five-year history.

(3) The frequency of claims during this same five-year history.

(4) The types of claims and whether there have been new programs, policies, management, and/or education implemented to ameliorate the losses or elimination of exposures.

(5) The political climate and stability of the applicant**.**

(6) The attitude, perspective and experience of the applicant's administration on commitment to good risk management.

(7) The claims administrator on the applicant's account.

(8) Any unusual exposures.

2. APPROVAL OF PROSPECTIVE **NEW PARTY APPLICANT**

A. The **Board of Directors** shall have the authority to approve or disapprove the application of a **New Party Applicant**.

B. After the **New Party Applicant's** application has been reviewed and approved for membership, the **Board of Directors** will instruct the **Executive Director** to bind the required coverage, but coverage shall not commence until the date requested on the application or such other date as determined by the **Board of Directors**. Additionally, the **New Party Applicant must** comply with the following requirements:

(1) Submit applicant's signed resolution memorializing its approval of the **Agreement**, commitment to become a **Party** of the **Authority** and comply with the **Governing Documents**, as the same may be amended from time to time, and agreement to participate as a **Party** for at least three full consecutive fiscal years after commencement of membership;

(2) Execute the **Agreement** then in effect and agree to be bound by any subsequent duly approved amendments to the **Agreement**;

(3) The new **Party** must appoint a representative and one alternate to the **Board of Directors** as provided in Article II; and

(4) Ensure all representatives (delegate, alternate) file with the **Executive Director** the required Fair Political Practices Commission (FPPC) forms upon assuming office, during office, and upon termination of office.

C. Each new **Party's Deposit Premium** will be pro-rated from date of binding of coverage to the end of the **Program Year**.

3. PROSPECTIVE **NEW PARTY JPA APPLICANT** APPLICATION PROCEDURE

A. A joint powers authority **Party** shall not add a new underlying member agency unless that **New Party JPA Applicant** is approved for membership pursuant to this section. Each **New Party JPA Applicant** will fully complete the **Authority's** Prospective New **Party** Application and return it to the **Executive Director**. The **Executive Director** is authorized to approve or disapprove the application within the limits prescribed in subsection D below. Otherwise, the Underwriting Committee shall approve or disapprove the application after considering the recommendation of the **Executive Director**.

B. Upon receipt of a completed application, the underwriting information shall be processed for review by the **Executive Director**.

C. The **Executive Director** will review the application and apply the same criteria as for a **New Party Applicant**.

D. The **Executive Director** may approve or disapprove the **New Party JPA Applicant** if all of the following conditions are satisfied:

(1) With the inclusion of the **New Party JPA Applicant**, the five year loss rate for the **Authority** is increased less than five percent.

(2) With the inclusion of the **New Party JPA Applicant**, the five year loss rate for the joint powers authority **Party** is increased less than ten percent.

(3) The experience modifier for the **New Party JPA Applicant** is less than the joint powers authority **Party** or the five year loss rate for the **JPA Party Applicant** is zero.

(4) The payroll for the **New Party JPA Applicant** is less than 25 percent of the joint powers authority **Party**.

E. If the application is outside the conditions set forth in subsection D or the **Executive Director** otherwise decides to forward the application to the Underwriting Committee, the **Executive Director** will forward the submission to the Underwriting Committee along with a recommendation to the Underwriting Committee, and the Underwriting Committee shall approve or disapprove the application applying the criteria in subsection D.

F. The Underwriting Committee annually shall review the applications from **New Party JPA Applicants** that were approved or disapproved by the **Executive Director** in the prior year and report to the Executive Committee concerning the action on those applications and the operation and effectiveness of this Article XII(3).

## ARTICLE XIII

## WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

1. Any **Party** that has been a **Party** for at least three full **Program Years** may voluntarily terminate this **Agreement** as to itself and withdraw from membership in the **Authority** at the end of any **Program Year** pursuant to this article. A **Party** desiring to terminate and withdraw must provide written notice of termination to the **Board of Directors** (i) on or before December 31 preceding the date of termination and withdrawal, or (ii) within 30 days after a post-December 31 **Authority** decision to substantially change an **Authority** program

or coverage that adversely impacts the **Party**, whichever is later. If a **Party** provides notice of termination after December 31 because of a post-December 31 **Authority** decision to substantially change an **Authority** program or coverage, then the **Authority** may impose and the terminating **Party** shall pay a late termination charge to cover the **Authority's** actual and reasonable expenses to administer and implement the late-notice termination, revise the budget and financial analyses and documents for the next **Program Year**, and modify the coverage and related documents for the next **Program Year**.

2. Any **Party** submitting a timely withdrawal notice shall be eliminated from the annual budget, including the preliminary annual budget issued in February.

3. Any **Party** may rescind its notice of withdrawal by providing written notice of rescission to the **Authority**. A rescinding **Party** shall strive to provide notice by May 1 preceding the date of withdrawal; however a notice of rescission will be accepted by the **Authority** up to June 30. A **Party** that timely submits a notice of rescission will be added back into the proposed annual budget for the next fiscal year.

4. Any **Party** that submits a notice of rescission after May 1 and before June 30 will not be included in the annual budget to be approved by the **Board of Directors** in June; however, such **Party** will be billed separately and the **Deposit Premium** charged will be determined by the **Executive Director** based on the rate calculated in the adopted annual budget.

5. A **Party** may be involuntarily terminated from the **Authority** upon a two-thirds (2/3rds) vote of the **Board of Directors**. Termination may be with or without cause. Termination shall be effective at the end of the fiscal year in which the termination is approved or upon such other date as the **Board of Directors** may specify, but not less than 60 days after notice of termination is given.

6. Cause for termination includes, but is not limited to, the following:

   A. Failure or refusal to comply with the **Governing Documents**;

   B. Failure or refusal to comply with a resolution adopted by the **Board of Directors**;

   C. Failure or refusal to pay any **Deposit Premium** or assessment to the **Authority** as provided in the **Governing Documents**;

   D. Failure to comply with mandatory risk management or safety programs adopted by the **Board of Directors**;

   E. Failure to disclose a material fact to the **Authority Executive Director**, which constitutes fraud, misrepresentation or concealment for the purposes of obtaining coverage with the **Authority**; or

   F. Failure to maintain certification for workers' compensation self-insurance, unless it is due to purchasing primary insurance.

7. If any **Party** withdraws and terminates its membership or is involuntarily terminated by the **Board of Directors**, then following the effective date of the termination (a) the **Party** shall not have **Excess Workers' Compensation** coverage with the **Authority**, (b) the **Party** shall continue to be liable for any costs, including administrative costs, liabilities, assessments or contingencies arising out of those **Program Years** in which such **Party** participated, as may be charged by the **Authority** through the retrospective adjustment for those **Program Years**; and (c) the **Party** shall be entitled to refunds approved by the **Authority** through the retrospective adjustment for those **Program Years** in which the **Party** participated.

## ARTICLE XIV

## DISPOSITION OF PROPERTY AND FUNDS

1. In the event of the dissolution of the **Authority** or other final termination of the **Agreement** by all **Parties** or by three-fourths vote of the **Board of Directors**, any property interest or assets remaining in the **Authority** following a discharge of all obligations and liabilities shall be disposed of pursuant to a plan to be adopted by three-fourths vote of the **Board of Directors**, with the objective of returning to each **Party** which is, then, or was theretofore a **Party** during the six-month period immediately preceding the termination of the **Agreement** (collectively the "Remaining Parties"), a proportionate return on the contributions made by the **Parties**. The plan adopted by the **Board of Directors** shall include, but not be limited to, the following concepts:

   A. Claims outstanding against and incurred but not reported to the **Authority** and other outstanding obligations and liabilities shall be audited and calculated by an independent auditor and actuary selected by the **Board of Directors** for a determination of future liabilities for expenses and costs to discharge or otherwise resolve the outstanding claims, obligations and liabilities, and funds and/or assets shall be set aside for those costs.

   B. The current fair market value of the **Authority's** remaining property interests and assets shall be determined by the **Board of Directors**. If a **Party** disagrees with the current fair market value of the **Authority's** property interests or assets as determined by the **Board of Directors**, the current fair market value of the property interest or assets shall be determined by an independent appraiser selected by the **Board of Directors**.

   C. After making the determinations in subsections A and B, the **Board of Directors** shall determine whether there are any remaining or excess **Authority** property interests or assets. Any remaining or excess **Authority** property interests or assets as determined by the **Board of Directors** shall be distributed to the Remaining Parties in the same relationship as a Remaining **Party's** total contributions over all **Program Years** as compared to the total contributions of all Remaining Parties over all **Program Years**.

## ARTICLE XV

## AMENDMENT

Amendment to these Bylaws may be proposed by **Authority** staff, any director or any **Party**. Any proposed Bylaws amendment shall be provided in draft form to the Parties at least 30 days prior to approval in order to allow the **Parties** to review the proposal. Any amendment to these Bylaws must be approved by a two-thirds vote of the **Board of Directors**. The final approved Bylaws amendment may vary from the draft form provided to the **Parties** so long as the general subject matter of the amendment has not changed. Any approved amendment shall bind all **Parties**. The effective date of any amendment will be the first day of the month following adoption, unless otherwise provided by the **Board of Directors**.

## ARTICLE XVI

## SEVERABILITY

Should any portion, term, condition, or provision of these Bylaws be decided by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining portions, terms, conditions, and provisions shall be unaffected by the decision.

## ARTICLE XVII

## INDEMNIFICATION AND RIGHT OF CONTRIBUTON

1. Indemnification by **Authority**. The directors, officers and employees of the **Authority** (but excluding officers who are independent contractors or employees of independent contractors) shall be entitled to defense and indemnification by the **Authority** as provided under Government Code title 1, division 3.6, part 2, chapter 1, article 4 (commencing with Section 825) and title 1, division 3.6, part 7 (commencing with section 995). The **Authority** shall indemnify, defend, protect, and hold harmless each **Party**, and its officers and employees, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with the **Authority**'s negligent or wrongful act or omission occurring in the performance of this Agreement. The **Authority's** insurance, defense and indemnity-related costs will be **Authority** administrative expenses for which the Parties will be charged through the **Deposit Premium** and retrospective adjustment process.

2. Right of Contribution Among Parties. If a **Party** is held liable upon any judgment pursuant to California Government Code Sections 895 to 895.8 for an injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement and makes payment on the judgment in excess of its pro rata share of the judgment, the **Party** shall be entitled to contribution from each of the other Parties. The contribution amount and each **Party's** pro rata share of the judgment shall be determined by the **Authority** in the same manner as for the distribution of refunds and allocation of expenses in the administration of the pools under the **Governing Documents**.

3. The indemnification and right of contribution provisions of this section shall apply in lieu of the right of contribution provision at Government Code Section 895.6.