

**JOINT EXERCISE OF POWERS AGREEMENT**

**LOCAL AGENCY WORKERS' COMPENSATION EXCESS**

**JOINT POWERS AUTHORITY**

## TABLE OF CONTENTS

### JOINT POWERS AGREEMENT

1. Creation of the Joint Powers Entity
2. Functions of the Authority
3. Powers of the Authority
4. Term of the Agreement
5. Governing Documents
6. Organization
7. Membership in the Authority
8. Withdrawal From or Termination of Membership
9. Termination of Agreement
10. Disposition of Property and Funds
11. Amendments
12. Audits and Actuarial Analysis
13. Severability
14. Liability
15. Enforcement
16. Definitions

**JOINT EXERCISE OF POWERS AGREEMENT**

**TO ESTABLISH, OPERATE, AND MAINTAIN A**

**JOINT PROGRAM**

**FOR WORKERS COMPENSATION EXCESS PROTECTION**

THIS AGREEMENT is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500, et seq.) of the California Government Code, relating to the joint exercise of powers, between the agencies signatory hereto, and also those which may hereafter become signatory hereto, for the purpose of operating an agency to be known and designated as Local Agency Workers' Compensation Excess Joint Powers Authority ("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 Powers Agreement to accomplish the purposes hereinafter set forth; and

WHEREAS, the development, organization, and implementation of such an Authority is of such magnitude that it is desirable for aforesaid parties to join together in this Joint Powers Agreement in order to accomplish the purposes hereinafter set forth; and

WHEREAS, the signatories hereto have determined that there is a need, by agencies, for a joint program for "Workers' Compensation Excess" protection; and

WHEREAS, it has been determined by such signatories that a joint program for "Workers' Compensation Excess" protection is of value on an individual and mutual basis; and

WHEREAS, Title 1, Division 7, Chapter 5, Article 1, of the California Government Code authorizes joint exercise by two or more agencies of any power common to them; and

WHEREAS, it is the desire of the signatories hereto to jointly provide for a joint program for "Workers' Compensation Excess" protection for their mutual advantage and concern; and

WHEREAS, it is the desire of the signatories hereto to study and from time to time to incorporate other forms of risk management into a joint program such as that described herein.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL ADVANTAGES TO BE DERIVED THEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY OTHER AGENCIES, each of the parties hereto does agree with each of the other parties as follows:**

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

A Joint Powers Entity, separate and apart from the agencies signatory hereto, shall be and is hereby created and shall hereafter be designated as the Local Agency Workers' Compensation Excess Joint Powers Authority ("Authority").

2. **FUNCTIONS OF THE AUTHORITY**

A. The Authority is established for the purposes of administering this Agreement, pursuant to the Joint Powers provisions of the California Government Code, and of providing the services and other items necessary and appropriate for the establishment, operation, and maintenance of a joint group program for "Workers' Compensation Excess" to benefit the "Members", and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other joint programs.

B. **THE FUNCTIONS OF THE AUTHORITY ARE:**

- (1) To provide a joint program and system, as described in this Agreement, the Bylaws, and the Memorandum of Coverage and give to each "Member", of the Authority, "Workers' Compensation Excess".
- (2) To perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, safety engineering, and other development as necessary for the payment and handling of all claims against "Members" reimbursable under the "Workers' Compensation Excess".
- (3) To pursue "Member's" right of subrogation against a third party when the Authority decides such action is appropriate.
- (4) To enter into contracts.
- (5) To obtain insurance coverage for the "Members" and/or the Authority as determined appropriate by the Board of Directors.
- (6) To acquire, hold, and dispose of property, real and personal, all for the purpose of providing the membership with the necessary education, study, development, and implementation of a joint program of the "Workers' Compensation Excess" including, but not limited to, the acquisition of facilities and equipment, the employment of personnel, and the operation and maintenance of a system for the handling of the joint program.
- (7) To incur debts, liabilities, and obligations necessary to accomplish the purposes of this agreement.
- (8) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, associations, and any governmental entity.
- (9) To invest surplus reserve funds as deemed appropriate by the Board of Directors and as subject to law.

- (10) To provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other joint programs.
- (11) To establish new programs as deemed appropriate by the Board of Directors.
- (12) To sue and be sued in the name of the Authority.
- (13) To perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions so performed are not prohibited by any provision of law.

3. **POWERS OF THE AUTHORITY**

The Authority shall have the power and authority to exercise any power common to the agencies which are "Parties" to this Agreement, provided that the same are in furtherance of the functions and objectives of this Agreement as herein set forth. Pursuant to Section 6509 of the California Government Code, the exercise of the aforesaid powers of the Authority shall be subject to the restrictions upon the manner of exercising such powers by an agency having the same status as a Member Agency or Joint Powers Authority except as otherwise provided in this Agreement.

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 agencies participating in this Agreement, the successor in interest or successors in interest to the obligations of any such reorganized agency may be substituted as a "Party" or as "Parties" to this Agreement, subject to approval by a two-thirds (2/3) weighted vote of the "Parties" to this Agreement.

5. **GOVERNING DOCUMENTS**

A. **THE AGREEMENT**

If there is a conflict between this Agreement and any other document of the Authority, this Agreement shall control over such other document. Such other document shall have the effect as if the provisions in conflict with this Agreement were null and void.

B. **BYLAWS**

The Authority shall be governed pursuant to certain Bylaws, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, and by such amendments to the Bylaws as may from time to time be adopted. Wherever in this Agreement "Bylaws" are referred to, said Bylaws shall be those set forth in Exhibit A, as may be amended. Each "Party" to this Agreement agrees to comply with and be bound by the provisions of said Bylaws and further agrees that the Authority shall be operated pursuant to this Agreement and said Bylaws.

Procedures for amending the Bylaws shall be as provided in the Bylaws so long as they are not inconsistent with this Agreement.

C. **MEMORANDUM OF COVERAGE**

The Authority shall provide coverage according to a Memorandum of Coverage. The Authority and each "Member" shall be bound by the terms and conditions of such Memorandum of Coverage.

Each Memorandum of Coverage shall have an effective date and apply as if a new Memorandum were adopted annually, unless otherwise expressly stated. The Memorandum of Coverage may be amended by endorsement. The procedure for such amendment shall be described in the Bylaws.

D. **OTHER DOCUMENTS**

The Authority may adopt any other document, such as claims procedures manual, risk management manual, etc., as may be necessary and proper for the establishment, operation, and maintenance of a joint program of "Workers' Compensation Excess". Such documents shall be adopted by a two-thirds (2/3) weighted vote of the "Parties" present at a meeting of the Board of Directors.

6. **ORGANIZATION**

A. **BOARD OF DIRECTORS**

- (1) A Board of Directors is hereby established to direct and control the Authority.
- (2) Each "Party" of the Authority shall be entitled to a seat on the Board of Directors and shall appoint to the Board of Directors one (1) representative and one (1) alternate who shall be designated in writing. Said representative and said alternate must be an employee or authorized agent of the "Party" and shall serve at the pleasure of the "Party" by whom appointed.
- (3) Each "Party" shall be entitled to cast weighted votes allocated by the Authority based upon the total payroll of the members represented. Total payroll shall be the actual ending payroll of the previous fiscal year. Where the "Party" is a Joint Powers Authority, the total payroll shall be the payroll of the participants in the Workers' Compensation program of that Joint Powers Authority. All weighted votes allocated to each "Party" shall be cast together and cannot be split. Weighted votes shall be allocated as follows:

<u>PAYROLL (.000)</u>	<u>VOTES ALLOCATED</u>
\$1 - \$ 35,000	1
\$35,001 - \$ 75,000	2
\$75,001 - \$125,000	3
OVER \$125,000	4

Weighted votes may be cast only by a representative or, if the representative is absent, by an alternate designated in writing per paragraph B.

- (4) Meetings
  - a. The Board of Directors shall hold regular meetings as prescribed in the Bylaws, but in no event shall hold less than two (2) regular meetings a year.
  - b. Other meetings may be held as described in the Bylaws with proper notice given as described in the Bylaws.
  - c. All Board meetings shall be conducted in accordance with the Ralph M. Brown Act (Sections 54950, et. seq.) of the California Government Code and the Roberts Rules of Order.

- (5) The Board of Directors may delegate any authority which is not reserved exclusively for the Board by this Agreement or the Bylaws.

**B. EXECUTIVE COMMITTEE**

An Executive Committee may be formed by the Board of Directors to administer and operate the risk management programs of the Authority. The Committee shall have such authority, except those exclusively reserved to the Board, as necessary and proper for the administration of the programs of the Authority within the policies established by the Board of Directors.

**C. OTHER COMMITTEES**

The Board of Directors or the Executive Committee may establish other committees as may be deemed expedient in the establishment or implementation of a program.

**D. OFFICERS**

- (1) President and Vice President

At the first Board of Directors meeting, the Directors shall elect a President and Vice President from among its members as prescribed in the Bylaws. Such President and Vice President shall serve such terms as stated in the Bylaws. Subsequent Presidents and Vice Presidents shall be elected as described in the Bylaws.

- (2) Other Officers

The President shall appoint a Secretary and a Treasurer who shall serve as described in the Bylaws.

The Board may create an office as deemed appropriate for the operations of the Authority and the President shall appoint one to serve in such office.

- (3) Any person elected or appointed as an officer may be removed from such office by a majority of the weighted votes of the Board of Directors.

**7. MEMBERSHIP IN THE AUTHORITY**

- A. Each "Party" to this Agreement and any "Members" represented by the "Party" must be an agency permitted to self-insure in the State of California and eligible for membership in the Authority as defined in the Bylaws. Each "Party" becomes a "Member" of the Authority and shall be entitled to the rights and privileges of membership, and shall be subject to the obligations of membership, as provided in this Agreement and in the Bylaws.
- B. Each "Party" to this Agreement shall participate and continue to participate in the "Workers' Compensation Excess" program for a period of not less than three (3) full program years.
- C. This Agreement shall be binding upon the original "Parties" to this Agreement on the effective date of this Agreement.
- D. Upon two-thirds (2/3) weighted vote of the "Parties", any agency, that is eligible for membership as defined in the Bylaws and is not a "Party" hereto, that desires to join the Authority created hereby,

may become a "Member" hereof by executing a copy of this Agreement whereby said agency agrees to comply with the terms of this Agreement, the Bylaws, and the Memorandum of Coverage. This Agreement shall be binding upon the agency effective as of the date of such execution.

- E. Each "Member" shall be subject to a retained limit per occurrence for "Workers' Compensation Excess" as selected by the "Party" and approved by the Board of Directors.
- F. Each "Member" participating in a program year with funds in excess of its obligation shall have a right to a portion of such funds pursuant to the Bylaws. Each "Member" participating in a program year with obligations in excess of the funds for that program year shall be obligated to pay any assessments charged by the Authority pursuant to the Bylaws.

8. **WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP**

- A. Any "Party" to this Agreement which has been a "Party" of the Authority for at least three (3) full program years may voluntarily terminate this Agreement as to itself and withdraw from membership in the Authority. Such termination and withdrawal of membership shall become effective subject and according to the conditions, manner, and means set forth in the Bylaws.
- B. A "Party" may be involuntarily terminated from the Authority upon a two-thirds (2/3) weighted vote of the other "Parties" to this Agreement.
- C. Withdrawal or termination of a "Party" shall not absolve such "Party" of liabilities arising out of participation in a program.

9. **TERMINATION OF AGREEMENT**

This Agreement may be terminated effective at the end of any fiscal year by a three-fourths (3/4) weighted vote of the "Parties" present at a Board of Directors meeting, provided, however, that the Authority and this Agreement shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

10. **DISPOSITION OF PROPERTY AND FUNDS**

- A. In the event of the dissolution of the Authority, the complete rescission, or other final termination of this Agreement by the agencies then a "Party" hereto, any property interest remaining in the Authority following a discharge of all obligations shall be distributed to the "Parties" in the same relationship as their total contributions over all program years to the total contributions of all "Parties" over all program years.
- B. In the event a "Party" withdraws from this Agreement, any property interest of that "Party" remaining in the Authority following discharge of all obligations shall be disposed of as provided for in the Bylaws. Obligations, as referred to herein, shall include, but not be limited to, all payments required by law together with all "Reserves" which have been established for the purpose of paying incurred claims together with any other legal obligations incurred by the Authority pursuant to this Agreement.

11. **AMENDMENTS**

This Agreement may be amended, after sixty (60) days notice to the "Parties", by a two-thirds (2/3) weighted vote of the "Parties". However, this Agreement may not be amended without a unanimous vote until three (3) years after its effective date. For purposes of this paragraph, amendment shall not include termination of the Agreement. Any such amendment shall be effective upon the date of final execution thereof, unless otherwise provided in the amendment.



12. **AUDITS AND ACTUARIAL ANALYSIS**

At the end of each fiscal year, the Authority shall have a financial audit by a qualified, independent Certified Accountant. A report from the Accountant shall be distributed to each and every "Party" to this Agreement.

The Authority shall have an audit of its claims performed at least once every two (2) years. Such audits shall be performed by an independent individual or company qualified to perform such audits. A report of the findings of such audit shall be distributed to each and every "Party" to this Agreement.

The Authority shall have an actuarial study performed at least once every two (2) years. Such actuarial study shall be performed by a qualified actuary and the findings of such a study shall be distributed to each and every "Party" to this Agreement.

13. **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 be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

14. **LIABILITY**

A. If a "Member" or the Authority is held liable upon any judgment for damages caused by an act or omission that is subject to Sections 895, et. seq., of the California Government Code and makes payments in excess of its "Pro Rata Share" on such judgment, such "Member" of the Authority is entitled to contribution from each of the other "Parties" to the Agreement. A "Member's" "Pro Rata Share" shall be determined in the same manner as for the disposition of property and funds as provided in the Agreement and the Bylaws.

B. The Authority may insure itself, its directors, officers, and employees, 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.

15. **ENFORCEMENT**

The Authority is hereby given authority to enforce this Agreement. In the event the Authority brings suit against a "Member" for breach of this Agreement and a judgment is rendered for the Authority, the "Member" shall pay all costs incurred by the Authority as a result of such suit, including reasonable attorney's fees as fixed by the court.

16. **DEFINITIONS**

The terms used herein and in the Bylaws shall have the following meanings:

A. "Claims Service" shall mean a claim adjuster or claims adjusting company as may be engaged by the Board of Directors for the purpose of determining losses and payments with respect to the Claims Fund.

B. "Contribution" shall mean money payable by a "Party" to the Authority for the purpose of funding for losses and administrative expenses of the Authority.

C. "Workers' Compensation Excess" shall mean coverage for Workers' Compensation and Employers'

Liability claims in excess of "Parties" retained limit as further defined in the Memorandum of Coverage.

- D. "Loss Reports" shall mean a report showing claims under a "Member's" "Workers' Compensation Excess" including current status.
- E. "Member" shall mean any "Party" to this Agreement, and if such "Party" is a joint powers authority and the participants if its Workers' Compensation program.
- F. "Memorandum of Coverage" shall mean the document stating the scope of the "Workers' Compensation Excess" as adopted by the Board of Directors.
- G. "Party" shall mean a signatory to the Agreement.
- H. "Program Year" shall mean that period of time, normally July 1 to the following June 30, designated by the Board of Directors as one (1) coverage period.
- I. "Agency" shall mean a special district, city, county, or joint powers Authority comprised largely of the above agencies.
- J. "Reserves" shall mean those parts of the "member's" "Contributions" held by the Authority to make expected future payments on "Workers' Compensation Excess" claims, whether known or unknown.
- K. "Joint Program" shall mean the group purchasing of insurance or the funding of loss to be paid by the group.
- L. "Pro-Rata Share" shall mean each "Member's" financial "Contribution" in proportion to the total of all "Member's" "Contributions" for each fiscal year.

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.

Party: \_\_\_\_\_  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_