



**BOARD OF DIRECTORS**

**President**  
**Jeff Trader**  
**Newport-Mesa USD**  
**(714) 424-5003**

September 3, 2015

Glenda Sanders  
Presiding Judge of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

**Vice President**  
**Ann Kantor**  
**Orange County DOE**  
**(714) 966-4059**

Dear Judge Sanders:

**Secretary-Treasurer**  
**Barbara Ott**  
**Brea Olinda USD**  
**(714) 990-7827**

In reference to the Orange County Grand Jury report, *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*, the following is the Southern Orange County Property and Liability JPA (SOCPLJPA) response to the findings in accordance with California Penal Code section 933.05, subdivisions (a), (b), and (c).

**Michael Conroy**  
**Ocean View SD**  
**(714) 847-2551**

The Southern Orange County Property and Liability JPA (SOCPLJPA) disagrees wholly with Findings 4 and 5. Consistent with the Grand Jury's definitions of horizontal and vertical JPA's, the SOCPLJPA is a horizontal JPA. The SOCPLJPA meets the following criteria associated with a horizontally structured JPA:

**MEMBERS**

- The SOCPLJPA provides a service in the form of an insurance pool wherein homogeneous organizations, inclusive of school districts, combine to manage their common interest of mitigating risk.
- Each member of the JPA has delegated a function of their authority to the JPA in order to spread their individual risk which cannot be accomplished on their own.
- Each member of the JPA is motivated to serve their entity's best interest; JPA members can freely withdraw from the JPA at their own discretion.

**Pam Bridges**  
**Ocean View SD**  
**(714) 847-2551**

**David Giordano**  
**Brea Olinda USD**  
**(714) 990-7827**

For your information, I have included Exhibit A which displays SOCPLJPA's horizontal structure and a copy of SOCPLJPA's Bylaws.

**Paul Reed**  
**Newport-Mesa USD**  
**(714) 424-5001**

In response to Recommendation 3, the SOCPLJPA is compliant with exception to the posting of the audit on each member's website. The SOCPLJPA conducts an annual outside audit, sends the audit to the County Controller and the State Auditor, and files the required reports with the County and State.

**Orange County DOE**  
**(714) 966-4020**

We will notify you of compliance with website posting requirements within 120 days but in no case not later than March 31, 2016.

**ADMINISTRATION**

**Russell O'Donnell**  
**JPA Administrator**  
**Alliance of Schools for**  
**Cooperative Insurance**  
**Programs**  
**(562) 404-8029**

Sincerely,

Jeff Trader  
President of the Board

**Martha Espinoza**  
**JPA Assistant Administrator**  
**Alliance of Schools for**  
**Cooperative Insurance**  
**Programs**  
**(562) 404-8029**

cc: Ann Kantor, Vice President  
Orange County DOE

Barbara Ott, Secretary – Treasurer  
Brea Olinda USD

**Joan Weeks**  
**Claims Administrator**  
**CORVEL**  
**(562) 404-8372**

Michael Conroy, Member  
Ocean View SD

Pam Bridges, Member  
Ocean View SD

David Giordano  
Brea Olinda USD

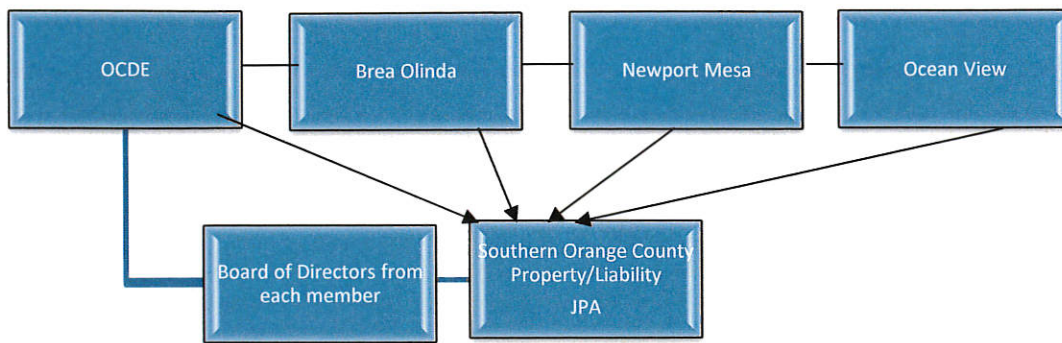
Paul Reed  
Newport Mesa USD

# Exhibit A

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## Southern Orange County Property Liability Joint Powers Authority(SOCPLJPA)

### Organizational Structure



#### Member Agencies:

Orange County Department of Education(OCDE)

Brea Olinda Unified School District (Brea Olinda)

Newport Mesa Unified School District (Newport Mesa)

Ocean View School District (Ocean View)

**JOINT EXERCISE OF POWERS AGREEMENT**

**SOUTHERN ORANGE COUNTY**

**PROPERTY/LIABILITY**

**JOINT POWERS AUTHORITY**

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**J O I N T E X E R C I S E O F P O W E R S A G R E E M E N T**

**T O E S T A B L I S H , O P E R A T E , A N D M A I N T A I N A**

**J O I N T P R O G R A M**

**F O R L I A B I L I T Y A N D P R O P E R T Y P R O T E C T I O N**

**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 public 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 "Southern Orange County Property/Liability Joint Powers Authority" (hereinafter referred to as "the Authority").

**W I T N E S S E T H :**

WHEREAS, it is to the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this Joint Exercise of Powers Agreement to accomplish the purposes hereinafter set forth; and

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

WHEREAS, the signatories hereto have determined that there is need, by public agencies, for a joint program for liability and property protection; and

WHEREAS, it has been determined by such signatories that a joint program for liability and property 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 public 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 liability and property 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 PUBLIC AGENCIES, each of the parties hereto does agree as follows:**

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

A joint powers entity, separate and apart from the public agencies signatory hereto, shall be and is hereby created and shall hereafter be designated as the Southern Orange County Property/Liability Joint Powers Authority (hereinafter referred to as "the Authority").

**2. FUNCTIONS OF THE AUTHORITY**

A. The Authority is established for the purposes of administering this Agreement, pursuant to the 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 program for liability and property protection for the public agencies who are members thereof, and to provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding other programs.

B. The functions of the Authority are:

- (1) To provide a joint program and system, as stated in the basis of contribution and given to each member, for liability and property claims against the members of the Authority and as such, to perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, safety engineering, and other services as necessary for the payment and handling of all liability and property claims against members.
- (2) To pursue the member's right of subrogation against a third party when in the discretion of the Board of Directors the same is appropriate. Any and all proceeds resulting from the assertion of such subrogation rights shall accrue to the benefit of the Authority.
- (3) To enter into contracts.
- (4) To obtain appropriate commercial or excess insurance coverage as determined by the Board of Directors.
- (5) 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 for liability and property 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.
- (6) To incur debts, liabilities, and obligations necessary to accomplish the purposes of this Agreement.
- (7) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, associations, and any governmental entity.
- (8) To invest funds as deemed appropriate by the Board of Directors, and as subject to law.
- (9) To provide a forum for discussion, study, development, and implementation of

recommendations of mutual interest regarding other joint programs.

- (10) To sue and be sued in the name of the Authority.
- (11) 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.
- (12) To join other joint powers authorities to provide services and coverages to the Authority.

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

The Authority shall have the power and authority to exercise any power common to the public 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 a public 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 public agencies participating in this Agreement, the successor or successors in interest to the assets and/or obligations of any such reorganized public agency shall succeed as a party or as parties to this Agreement.

### **5. BYLAWS**

- A. 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.
- B. Procedures for amending the Bylaws shall be as provided in the Bylaws so long as not inconsistent with this Agreement.

### **6. MEMBERSHIP IN THE AUTHORITY**

- A. Each party to this Agreement must be eligible for membership in the Authority as defined in the Bylaws and shall become a member of the Authority on the effective date of this Agreement, except as provided herein below. Each party which becomes a member of the Authority shall be entitled to the rights and privileges of, and shall be subject to the obligations of, membership as provided in this Agreement and in the Bylaws.
- B. Upon a majority vote of the members of the Authority, any public agency that is not a party hereto but that desires to join the Authority created hereby, may become a member hereof by executing a copy of this Agreement whereby said public agency agrees to comply with the terms of this Agreement and of the Bylaws effective as of the date of such execution.

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

- A. Any party to this Agreement which has completed the minimum term as described in the Bylaws as a member of the Authority 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 member may be involuntarily terminated from the Authority upon a majority vote of the members of the Authority, as provided for in the Bylaws. Such removal from membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.

## **8. TERMINATION OF AGREEMENT**

This Agreement may be terminated effective at the end of any fiscal year by a majority vote of the members, provided, however, that the Authority and this Agreement shall continue to exist for the purpose of disposing of all obligations, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

## **9. DISPOSITION OF PROPERTY, FUNDS AND OBLIGATIONS**

- A. In the event of the dissolution of the Authority, the complete rescission, or other final termination of this Agreement by the public agencies then a party hereto, any property interest remaining in the Authority following a discharge of all obligations shall be disposed of as provided for in the Bylaws.
- B. In the event a member withdraws from this Agreement, any property interest of that member remaining in the Authority following discharge of all obligations shall be disposed of as provided for in the Bylaws.

## **10. AMENDMENTS**

This Agreement may be amended at any time by a subsequent recommendation of the Board of Directors, and should then require that a majority of the parties to the Agreement tender a formal response to the proposed amendments, with approval by a majority of the respondents required for enactment of the amended written agreement signed by all the parties hereto. Any such amendment shall be effective upon the date of final execution thereof by all the parties hereto.

## **11. SEVERABILITY**

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the state of California, or any other applicable law, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

## **12. LIABILITY**

- A. Pursuant to Section 6508.1 of the California Government Code, the debts, liabilities and obligations of the Authority shall be debts, liabilities or obligations of the parties to this Agreement.
- B. Pursuant to the provisions of Sections 895, et seq., of the California Government Code, the members of the Authority are jointly and severally liable for any liability which is otherwise imposed by law upon any one of the members or upon the Authority for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement. If a member, or the Authority, is held liable upon any judgment for damages caused by such an act or omission 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 members that are 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.
- C. The Authority may insure itself, to the extent deemed necessary or appropriate by the Board of



Directors, against loss, liability, and claims arising out of or connected with this Agreement.

**13. ENFORCEMENT**

The Authority is hereby given authority to enforce this Agreement. In the event suit is brought upon this Agreement by the Authority and judgment is recovered against a member, the member shall pay all costs incurred by the Authority, including reasonable attorney's fees as fixed by the court.

**14. MULTIPLE COUNTERPARTS**

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

**15. DEFINITIONS**

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

- A. "The Authority" shall mean the Southern Orange County Property/Liability Joint Powers Authority created by this Agreement.
- B. "Basis of Contribution" shall mean the method by which the Board of Directors computes the members' share of the cost of each program year of the joint program.
- C. "Board of Directors" shall mean the governing board of the Authority established by the Bylaws to direct and control the Authority.
- D. "Capital Target" shall mean the excess by which the assets exceed the liabilities for all the program years measured at a point in time as determined by the Board of Directors.
- E. "Claim Liability" shall mean those liabilities established by the Authority which represents liability and property liabilities with respect to claims that have been incurred but unpaid and incurred but not reported.
- F. "Contribution" shall mean money paid by a member to the Authority, or monies assessed a member of the Authority.
- G. "Joint Program" shall mean the group purchasing of insurance or the setting aside of funds and reserves to pay for a self-insured retention or for losses not covered by insurance.
- H. "Liability and Property" shall mean coverage for liability and property claims as defined in the basis of contribution.
- I. "Member" shall mean an individual California school public agency, county office of education or joint powers authority comprised solely of California school public agencies which belongs to the Authority.
- J. "Memorandum of Coverage" shall mean the description of the scope of protection provided to the members for liability and property claims.
- K. "Net Contribution Available For Pool Operations" shall mean the contribution by each member for each program year less amounts paid for member's share of any excess insurance and individual risk management services.
- L. "Obligations" shall mean to include, but not limited to, all payments required by law together with all claim liabilities, any other legal obligations, and any unallocated loss adjustment expenses incurred by the Authority pursuant to this Agreement and Bylaws.

- M. "Program Year" shall mean one year of the joint program, separate from each and every other program year and shall operate on a fiscal year from July 1st through June 30th, or as otherwise determined by the Board of Directors.
- N. "Pro Rata Share" shall mean each member's net contribution available for pool operations in proportion to the total of all member's net contributions available for pool operations for each program year.
- O. "Quorum" shall mean a majority of the Board of Directors.
- P. "Subrogation" shall mean the recovery of payments which the Authority has made on behalf of a member. Subrogation monies received are the property of the Authority and for the basis of contribution are credited to the account of the member.

**16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Authority and the members, and as such, supersedes all prior agreements, understandings, negotiations and representations.

**17. CONTROLLING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state of California.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their authorized officers thereunto duly authorized as set forth herein below.

Member \_\_\_\_\_

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

**B Y L A W S**

**SOUTHERN ORANGE COUNTY**

**PROPERTY/LIABILITY**

**JOINT POWERS AUTHORITY**

**EXHIBIT A:**

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## BYLAWS

### SOUTHERN ORANGE COUNTY PROPERTY/LIABILITY JOINT POWERS AUTHORITY

#### PREAMBLE

The Southern Orange County Property/Liability Joint Powers Authority, hereafter referred to as "the Authority", is established for the purpose of providing the services and other items necessary and appropriate for the establishment, operation, and maintenance of a joint program for liability and property protection for the public agencies who are members hereof, and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding programs of liability and property coverage and related risk management products and services.

#### ARTICLE I

##### BOARD OF DIRECTORS

- A. A Board of Directors is hereby established to direct and control the Authority.
- B. Each member of the Authority shall be entitled to a seat on the Board of Directors and shall appoint to the Board of Directors one representative and one alternate who shall be designated in writing and submitted to the Board of Directors for official acknowledgement and filing. Said representative and said alternate must be managerial employees of the member agencies with the authority to make decisions on behalf of the member and shall serve at the pleasure of the member by whom appointed. Only the designated representative or designated alternate may represent a member. Consistent with State law governing the conduct of public meetings, the Authority's designated representative and designated alternate may invite member of their agency's staff or consultants to attend meetings of the Board of Directors in an advisory capacity.
- C. Each member District of the Authority shall have one vote, which may be cast only by the designated representative who is in physical attendance or the designated alternate who is in physical attendance if the designated representative is absent. No proxy or absentee votes shall be permitted. Except as otherwise provided by law, by the Joint Exercise of Powers Agreement, or in these Bylaws, a vote of the majority of the Board of Directors shall be sufficient to constitute action, provided that a quorum is present.
- D. The Board of Directors may conduct regular, adjourned regular, special, and adjourned special meetings, provided, however, that it will hold at least one meeting each fiscal year. The date, time, and place for each such meeting shall be fixed by the Board of Directors. All meetings of the Board of Directors shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act (Sections 54950, et seq. of the California Government Code), as said Act may be modified by subsequent legislation, and as the same may be augmented by rules of the Board of Directors not inconsistent therewith. Except as otherwise provided or permitted by law, all meetings of the Board of Directors shall be open and public. The Board of Directors shall cause minutes of its meetings to be kept, and shall promptly transmit to the members of the Authority true and correct copies of the minutes of such meetings. Upon written request, documents reflecting official Board business shall be made available to interested parties at a place designated by the Authority's Board of Directors or its designee during normal business hours.
- E. The Board of Directors shall designate a specific location at which it will receive notices, correspondence, and other communications and shall designate one of its members as an officer for the purpose of receiving service on behalf of the Board of Directors. The Board of Directors shall comply with the provisions of Sections 6503.5 and 53051 of the California Government Code requiring the filing of a statement with the Secretary of State and with the County Clerk.
- F. The Board of Directors shall determine contributions and the method by which contributions will be paid to the Authority. Contributions shall be based upon the method as defined in the basis of contribution for the program year for which the contribution was assessed. Final contributions will be adjusted based on the final costs for the

program year. The Board of Directors reserves the right to audit any or all members. The Board of Directors shall also provide for additional assessments during the year, if necessary or appropriate. The Board of Directors shall ensure that a complete and accurate system of accounting of the Authority shall be maintained at all times consistent with established generally accepted accounting principles and particularly those promulgated by the Governmental Accounting Standards Board as presently set forth or as subsequently expanded upon or modified.

- G. The Board of Directors may appoint and dissolve working committees from its active membership or contract for services of others in keeping with the Joint Exercise of Powers Agreement, these Bylaws and the laws of the state of California.
- H. The Board of Directors shall have the power, authority and duty to authorize the course and scope of investigation, defense, settlement and payment of liability and property claims against members of the Authority.
- I. The Board of Directors shall directly or by contract provide for services required to effectively implement all aspects of this joint program.

## **ARTICLE II**

### **RULES OF THE BOARD OF DIRECTORS**

- A. The Board of Directors may establish rules governing its own conduct and procedure and have such expressed or implied authority as is not inconsistent with or contrary to the laws of the state of California, or any other applicable law, these Bylaws, or the Joint Exercise of Powers Agreement.
- B. A quorum for the transaction of business by the Board of Directors shall consist of a majority of the Board of Directors. All actions of the Board of Directors require a majority vote of the Board, unless otherwise specified in the Agreement or these Bylaws.
- C. No one serving on the Board of Directors, other than the Secretary/Treasurer or Treasurer, shall receive any salary or compensation from the Authority.
- D. The Board of Directors may approve reimbursement for expenses incurred at its direction.
- E. All expenditures of funds shall be authorized by the Board of Directors.

## **ARTICLE III**

### **OFFICERS**

- A. The officers of the Authority shall be elected by a vote of the Board of Directors. The principal officers shall be a President, a Vice President, a Secretary/Treasurer, or a Secretary and a Treasurer, and each shall serve a term of office as may be established by the Board of Directors in its rules. Any person elected or appointed as an officer may be removed at any time, by a majority vote of the Board of Directors. All vacancies arising may be filled at any time by a majority vote of the Board of Directors.
- B. The President shall be the Chief Executive Officer and shall have general supervision and direction of the business of the Authority, shall see that all orders and resolutions of the Board of Directors are carried into effect, and shall 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.
- C. 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 the powers and authorized to perform all the duties of the President.

- D. The Secretary shall record, or cause to be recorded, all votes and the minutes of all proceedings; shall give, or cause to be given, notice of all meetings of the Board of Directors when notice is required by law or these Bylaws; and shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors or the President.
- E. The Treasurer shall be the Chief Financial Officer of the Authority and shall assume the duties described in Sections 6505.1, 6505.5 and 6505.6 of the California Government Code, as follows:
1. Receive and receipt for all money of the Authority and place it in the treasury so designated by the Board of Directors to the credit of the Authority.
  2. Be responsible upon his/her official bond for the safekeeping and disbursement of all money held by the Authority.
  3. Pay, when due, out of money of the Authority so held, all sums payable by the Authority.
  4. Verify and report in writing as of the first day of July, October, January and April of each year to the Board of Directors of the Authority, the amount of receipts since the last report, the amount paid out since the last report and the cash balance.
  5. Serve as custodian of the Authority property.
  6. 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 IV

### FINANCE

- A. The Authority shall operate on a fiscal year from July 1st through June 30th, or as otherwise determined and approved by the Board of Directors.
- B. The Board of Directors shall adopt, on or before July 1st, a preliminary budget estimating the amount of money that will be needed for the ensuing year. The preliminary budget shall be based upon a study of the financial needs of the programs provided by the Authority. On or before September 1st, the Authority shall adopt a final budget showing each of the purposes for which the Authority will need money for the current fiscal year. A copy of the budget shall be transmitted to each of the participating members.
- C. Each member shall pay to the Authority each fiscal year the annual contribution as adopted by the Board of Directors pursuant to Paragraph D of this Article. Contributions are due and payable on receipt of invoice and shall be considered past due 60 days from receipt of invoice. A penalty may be assessed on the unpaid amount at the current investment rate of the County Treasurer, or as otherwise determined by the Board of Directors.
- D. The annual contributions, as adopted by the Board of Directors for each member of the Authority, shall be determined not later than July 1st for each ensuing fiscal year as follows:
1. Member's share of the Authority's joint program as modified per member's basis of contribution.
  2. Member's share of all other costs as determined by the Board of Directors.
- E. Each program year of the Authority shall operate separately from every other program year in regard to its assets and obligations. Those assets and obligations are pooled assets and obligations of the members who participate in each distinct and separate program year. (see Exhibit A-1)
1. Should the total obligations for a program year of the Authority exceed the total assets of that year, that year's members may be assessed a pro rata share of the additional contribution required as determined by a financial study commissioned by and approved by the Board of Directors. Late payment of additional contributions are subject to late payment penalties as determined and approved by the Board of Directors.
  2. Should the total assets of a program year exceed the obligations of that year, that year's members may receive a pro rata share return of contribution as determined by a financial study commissioned by and approved by the Board of Directors.
  3. The Authority's capital target shall be reviewed annually by the Board of Directors no later than May 15 and must be met before any assets may be returned to the members, as in Paragraph E, 2 above. The amount of the capital target will be approved by the Board based upon the recommendation of a financial study commissioned by the Board.
  4. All contributions, obligations, expenditures and disbursements of the Authority that can be separately and distinctly identified by program year shall be accounted for separately by each program year.
  5. Joint program revenues, obligations and expenses (such as interest income, auditor fees, travel and meeting expenses, etc.) that cannot be separately and distinctly identified to a specific program year shall be allocated to each program year in a logical and consistent manner, as determined by the Board of Directors.
- F. Any Subrogation recoveries received by the Authority, or its members, shall be credited to the amounts paid by the Authority for the member, with the remainder, if any, remitted to the member and accounted for separately by each program year.
- G. A general fund shall be established and maintained to receive monies, pay operating expenses, hold reserves and pay claims of the Authority. The Authority shall accept and deposit in the general fund all monies received.

## ARTICLE V

### BASIS OF CONTRIBUTION

- A. The basis of contribution shall be adopted by the Board of Directors.
- B. By July 1 of each fiscal year, the Board of Directors shall review the basis of contribution for the following fiscal year.
- C. The basis of contribution shall appear in Exhibit B or a subsequent exhibit attached hereto and by reference hereto made an integral part of this document. The basis of contribution outlined therein shall be based upon criteria adopted by the Board including:
  - 1. An actuarial retrospective cost allocation and member prospective experience rating program adopted by the Board.
  - 2. The rate foundations for program contributions; e.g. ADA, TIV.
  - 3. The scope of protection, as stated in the Memorandum of Coverage, for liability and property claims and the member deductible and self-insured retention chosen.
  - 4. Other terms and conditions which the Board of Directors may consider necessary.

## ARTICLE VI

### ACCOUNTS AND RECORDS

- A. The Treasurer is designated the depository for the Authority in compliance with California Government Code 6505.5 and 6505.6.
- B. 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 principles, or by any provision of law or any resolution of the Authority. Books and records of the Authority in the hands of the Treasurer shall be open to inspection at all reasonable times by representatives of the members. The Authority as soon as practical after the close of each fiscal year shall give, or cause to be given, a complete written report of all financial activities for such fiscal year to each member of the Authority.
- C. The Authority shall contract with a Certified Public Accountant to make an annual audit of the accounts, records, and financial affairs of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under California Government Code 26909 and shall conform to generally accepted auditing standards and accounting principles.

When such an audit of accounts and reports is made by a Certified Public Accountant, a report thereof shall be filed as a public record with each of the members of the Authority.

Such reports shall be filed within twelve (12) 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) provided for herein, shall be appropriate administrative charges against the funds of the Authority.

## ARTICLE VII

### COVERAGE

Coverage for losses within the Authority's self-insured retention (SIR) for its property and liability programs shall follow form with the Memorandum of Coverage which has been adopted by the Authority's primary excess carrier, absent specific contrary action of the Board of Directors.

## ARTICLE VIII

### RISK MANAGEMENT

The Board of Directors of the Authority shall develop guidelines for risk management practices. Each of the members hereby agrees to implement in its agency the guidelines of risk management practices developed by the Board of Directors.

## ARTICLE IX

### WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

- A. Any member having completed a minimum of thirty six (36) consecutive months as a member of the Authority may withdraw from its status as a member at the end of any fiscal year by notifying the Board of Directors in writing no later than December 31st of the fiscal year at the end of which the withdrawal is to be effective.
- B. The incurred claims, incurred but not reported claims, and all contributions of the withdrawing member shall stay with the Authority. The withdrawing member shall continue to participate in each of the program years for which it was a member, per Article IV, Paragraph E, of these Bylaws. The formula for allocation of assets and obligations as per Article IV, Paragraph E, that was in effect for those years that the withdrawing member was a member shall continue to stay in effect until those years are closed and clear of assets and/or obligations including any unallocated loss adjustment expenses incurred as of the member's termination date. At the end of the fifth year after a member's termination, a study shall be conducted by the Authority for the purpose of determining if it is feasible to declare all of a former member's activities closed or to approximate future apportioned costs so that the equity or contribution due to/by the terminated member may be determined. Upon action by a majority of the Board of Directors, the terminated member(s) shall be apprised of composite amounts due or payable and shall be given a 60-day period to respond to the Authority in writing. Absent inquiry or dispute all such sums shall be due and payable 180 days after written notice is sent to the terminated member.
- C. A member may be involuntarily terminated from the Authority upon a majority vote of the Board of Directors. Involuntary termination shall have the effect of eliminating the party as a signatory of the Joint Exercise of Powers Agreement and as a member of the Authority, effective at the end of the fiscal year in which the action is taken or upon such other date as the Board of Directors may specify, but in no case less than sixty (60) days after written notice of involuntary termination is given. The responsibility and participation of an involuntarily terminated member shall be the same as stated in Paragraph B of this article.
- D. Grounds for involuntary termination include, but are not limited to, the following:
  - 1. Failure or refusal to abide by the Agreement or Bylaws.
  - 2. Failure or refusal of a member to abide by an amendment which has been adopted by the members of the Authority as provided in the Agreement or these Bylaws.
  - 3. Failure or refusal to pay contributions or assessments to the Authority as provided in the Agreement or Bylaws.
  - 4. Failure to comply with risk management or safety programs implemented by the Board of Directors.
  - 5. Failure to disclose a material fact to the Authority whereby said material fact constitutes fraud, misrepresentation or concealment for the purposes of obtaining coverage with the Authority.

## ARTICLE X

### DISPOSITION OF PROPERTY AND FUNDS

- A. In the event of the dissolution of the Authority, the complete rescission, or other final termination of the Joint

Exercise of Powers Agreement by all members or other public agencies then parties to the Agreement, any property interest remaining in the Authority following a discharge of all obligations shall be disposed of pursuant to a plan adopted by the Board of Directors, with the objective of returning to each member or other agency which is then or was theretofore a party preceding the termination of the Agreement, a pro rata share of each program year's equity to which each member was a participant. The plan adopted by the Board of Directors shall include, but not be limited to, the following:

1. Claims outstanding against, and incurred but not reported to, the Authority 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 bring these claims to a conclusion.
  2. The current fair market value of the Authority's properties shall be determined by the Board of Directors. If a member disagrees with the current fair value of the Authority's properties as determined by the Board of Directors, the current fair value of said properties shall be determined by an independent appraiser selected by the Board of Directors.
- B. If the Board of Directors determines a dividend or return of contributions is to be declared, such dividend or return of contributions shall be computed pursuant to Article IV, Paragraph E, of these Bylaws.
- C. Upon completion of a determination of all outstanding assets and obligations and determination of each member's pro rata share, each member shall be notified in writing of its financial position and shall be given a 60-day period to respond to the Authority in writing. Absent inquiry or dispute, disbursement/payment of funds shall become due and payable no less than 180-days after mailing of each member's notification.
- D. Should any dispute regarding final determination and apportionment of obligations and equity share or related matters arise between the Authority and one or more of its members, an attempt shall be made to resolve the dispute by referring it to a mutually acceptable third party. Should this procedure not result in resolution, said dispute shall be resolved through binding arbitration before the American Arbitration Association at the location nearest the Authority's regular meeting place. The binding arbitration shall be governed by the rules of AAA. A majority of the Authority's Board of Directors and the member may agree to another third party for binding arbitration. On a case by case basis, all members may agree in writing to waive binding arbitration.

## **ARTICLE XI**

### **INVESTMENT OF FUNDS**

- A. The Board of Directors shall have the power to invest or cause to be invested in compliance with Section 6509.5 of the California Government Code, such funds as are not necessary for the immediate operation of the Authority in such securities as allowed by Section 53601 of the California Government Code.
- B. The level of cash to be retained for the actual operation of the Authority shall be determined by the Board of Directors.
- C. The Treasurer shall prepare a quarterly investment activity report for the Board's approval.

## **ARTICLE XII**

### **AMENDMENT**

- A. Amendment to these Bylaws may be proposed by any member of the Authority.
- B. All amendments to these Bylaws must be approved, after a first reading, by a majority vote of the Board of Directors before the amendment shall become effective. Such amendments shall be binding upon all members of the Authority. The effective date of any amendment will be on the first day of the month following adoption, unless otherwise stated.

**ARTICLE XIII**

**SEVERABILITY**

Should any portion, term, condition, or provision of these Bylaws be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the state of California, or any other applicable law, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

**ARTICLE XIV**

**EFFECTIVE DATE**

These Bylaws shall become effective upon the execution of the Joint Exercise of Powers Agreement and any amendments thereto.

## **EXHIBIT "A-1"**

### **PROLOGUE**

The accounting of the assets, obligations, expenses, allocated investment income and the related contingent fund balance/(deficit) by program year is a lengthy and interdependent exercise that is not easily reduced to writing as to how it is calculated. It is, therefore, the intent of this Exhibit "A-1" to display the mechanics of how each program year's contingent fund balance/(deficit) is calculated and the interdependent relationship between all program years' contingent fund balances/(deficits) and the Authority's combined contingent fund balance/(deficit).

## **EXHIBIT "A-2"**

The method for calculating the Authority's assets, obligations unallocated expenses (ULAE) and allocated investment income for the 1996-97 program year, commencing on July 1, 1996, and terminating on June 30, 1997, is contained in Exhibit A-2.