

ORANGE COUNTY FRINGE BENEFITS JOINT POWERS AUTHORITY

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September 18, 2015

Honorable Glenda Sanders
Presiding Judge of the Superior Court
7099 Civic Center Drive West
Santa Ana, California 92701-3320

RE: 2014-15 Orange County Grand Jury Report
*Joint Powers Authorities: Issues of Viability,
Control, Transparency and Solvency*

Dear Judge Sanders:

Pursuant to California *Penal Code* §933.05(b)(3), enclosed herewith please find the response of the Orange County Fringe Benefits Joint Powers Authority (“OCFB”) with respect to the findings and recommendations of the above captioned Grand Jury Report (“Report.”) First, we would like to commend the Grand Jury for its thoughtful analysis of the status of joint powers authorities (“JPA’s”) operating in Orange County.

In its report, however, the Grand Jury notes that OCFB is subject to findings F4¹ and F5². OCFB respectfully disagrees with these findings. The JPA agreement and bylaws of OCFB clearly demonstrate that it is organized as a horizontal, not a vertical, JPA. OCFB is not subject to the control of a single entity. The governing body of OCFB is comprised of representatives from each of its member organizations. Furthermore all board members, like the member organizations, have equal voting rights. No individual board member or member organization wields more power than any other, and none is in a position to control or manipulate the others.

The diagram on Page 10 of the Report, which is used to describe a typical “horizontal” JPA, precisely illustrates the composition of OCFB and its board. Consequently, we believe that findings F4 and F5 were incorrectly applied to OCFB.

¹ F4. Vertical Joint Powers Authorities with a single controlling entity, such as a City council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.

² F5. Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint powers Authority for the purpose of obtaining additional funding, or signs a long term lease to a Joint Powers Authority to obtain assets are avoiding transparency and are not acting in the best interest of the taxpayers.

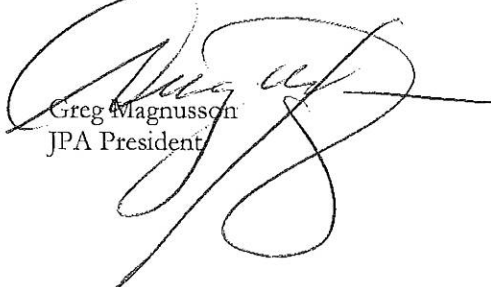
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The only recommendation made with respect to OCFB is recommendation R3³. OCFB is already in compliance with 3 of the 4 elements of this recommendation. The JPA has an annual audit conducted by an independent audit firm. The results of each audit are submitted to the County Controller and State Auditor, and it files all required reports with the County and state. With respect to posting audit results on its website or on the city's website, OCFB does not currently maintain a web presence, therefore it has no website on which to post the audit report. Moreover, as the JPA is made up of member organizations that are all school districts located in various parts of the County, there is no single city, or even school district, website that would be appropriate for the posting of the JPA's audit. Therefore, OCFB, respectfully request a waiver from compliance with item (2) of Recommendation R3 as meeting this requirement is not possible at this time.

While we believe that the Grand Jury has examined all relevant records as part of its investigation, we are enclosing, for further review, in support of our belief that Findings F4 and F5 are inapplicable to OCFB, a copy of the JPA agreement and its bylaws.

Please do not hesitate to contact me at [phone number] or [email address] if you have any questions about our response, or need additional documentation.

Yours truly,



Greg Magnusson
JPA President

³ R3. All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) have an annual outside audit, (2) post the complete audit on their city website as a separate Joint Powers Authority Entity (3) send the audit to the County Controller and the State Auditor, and (4) ensure that the required reports are filled annually to the County and state.

JOINT EXERCISE OF POWERS AGREEMENT

ORANGE COUNTY FRINGE BENEFITS

JOINT POWERS AUTHORITY

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JOINT EXERCISE OF POWERS AGREEMENT

TO OPERATE AND MAINTAIN A JOINT PROGRAM FOR DENTAL, VISION, AND OTHER EMPLOYEE BENEFITS

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 “Orange County Fringe Benefits Joint Powers Authority”, hereinafter designated as “The 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 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 dental, vision and other employee benefits; and

WHEREAS, it has been determined by such signatories that a Joint Program for dental, vision and other employee benefits 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 dental, vision and other employee benefits for their mutual advantage and concern; and

WHEREAS, it 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:

I. THE JOINT POWERS ENTITY

A joint powers entity, separate and apart from the public agencies signatory hereto, shall be and hereby designated as the Orange County Fringe Benefits Joint Powers Authority (hereinafter referred to as "The Authority")

II. 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 dental, vision and other employee benefits 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 dental, vision and other employee benefit 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, health education, and other services as necessary for the payment and handling of all dental, vision and other employee benefit 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 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 dental, vision and other employee benefits 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 power authorities to provide services and coverages to The Authority.

III. 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.

IV. 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.

V. 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.

VI. 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 two-thirds (2/3) vote of the entire Board of Directors, then in current status, 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.

VII. 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 two-thirds (2/3) vote of the entire Board of Directors, then in current status, as provided in the Bylaws. Such removal from membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.

VIII. TERMINATION OF AGREEMENT

This Agreement may be terminated effective at the end of any Program Year by a three-fourths (3/4) vote of the entire Board of Directors, then in current status, 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.

IX. 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.

X. AMENDMENTS

This Agreement may be amended at any time by a subsequent written agreement signed by all the parties hereto. Any such amendment shall be effective upon the date of final execution thereof by all parties hereto.

XI. 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.

XII. 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 in 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 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.

XIII. 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.

XIV. MULTIPLE COUNTERPARTS

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

XV. DEFINITIONS

The terms used herein and in the Bylaws shall have the meanings as defined in the Bylaws.

XVI. 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.

XVII. 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: _____

BYLAWS

ORANGE COUNTY FRINGE BENEFITS

JOINT POWERS AUTHORITY

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BYLAWS

ORANGE COUNTY FRINGE BENEFITS JOINT POWERS AUTHORITY

PREAMBLE

Orange County Fringe Benefits Joint Powers Authority (“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 benefit 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 other Joint Programs.

ARTICLE I

DEFINITIONS

The terms used herein and in the Joint Exercise of Powers Agreement shall have the following meanings:

- A. “Active Member” shall mean Member paying premiums in current plan year.
- B. “Advisory Committee” shall mean a committee comprised of those Members who are a participant in the program.
- C. “The Authority” shall mean the Orange County Fringe Benefits Joint Powers Authority created by this agreement.
- D. “Basis of Contribution” shall mean the method by which the Board of Directors computes the Members share of the cost of each Program by Program Year of the Joint Program.
- E. “Benefits” shall mean coverage for dental, vision and other employee benefit claims as defined in the Memorandum of Coverage.
- F. “Board of Directors” shall mean the governing board of The Authority established by the Bylaws to direct and control The Authority.
- G. “Capital Target” shall mean the excess by which the assets exceed the liabilities of a Program for all the Program Years measured at a point in time as determined by the Board of Directors.
- H. “Claim Liability” shall mean those liabilities established by The Authority which represents benefit liabilities as respect to claims that have been incurred but unpaid and incurred but not reported.
- I. “Contribution” shall mean money paid by a Member to The Authority, or monies assessed a Member of The Authority.

- J. "Joint Program" shall mean the group purchasing of insurance or the setting aside of funds and reserves to pay for a self-insured benefit not covered by insurance.
- K. "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 belong to The Authority.
- L. "Memorandum of Coverage" shall mean the description of the scope of protection provided to the Member for benefit claims.
- M. "Net Contribution Available for Pool Operations" shall mean the Contribution by each Member for each Program by Program Year, paid or assessed within the Program Year, less amounts paid for Member's share of such things as excess insurance, wellness programs, etc.
- N. "Obligations" shall mean to include, but not limited to, all payments required by law together with all Claim Liabilities and any other legal obligations incurred by The Authority pursuant to this Agreement and Bylaws.
- O. "Program" shall mean a separate and distinct risk and/or service by line of coverage (e.g., dental, vision and other employee benefits) administered by The Authority within the Joint Program.
- P. "Program Year" shall mean one year of a Program, separate from each and every other year of a Program and shall operate on a fiscal year as determined by the Board of Directors.
- Q. "Pro Rata Share" shall mean each Member's Net Contribution Available for Pool Operations in proportion to the total of all Members' Net Contributions Available for Pool Operations for each Program Year of a Program.
- R. "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.

ARTICLE II 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. All such representatives and said alternates must be employees or authorized agents of the Member and shall serve at the pleasure of the Member by whom appointed. Only the designated representatives or designated alternates may represent a Member. The designated representatives and designated alternates may invite members of their agencies' staff or consultants to attend meetings of the Board of Directors in an advisory capacity.

- C. Each Member's representative 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, The Joint Exercise of Power Agreement or in these Bylaws, a vote of the majority of the Board of Directors present 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 a least four meetings 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.
- 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 and program year for which the Contribution was assessed. Final Contributions will be adjusted based on the final costs for the Program and 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 Government Accounting Standards Board as presently set forth or as subsequently expanded upon or modified.
- G. The Board of Directors shall approve any Member joining the Program at the commencement of or during a Program Year. The Board of Directors shall approve any member withdrawal or termination from any Program within a Program Year, subject to written notice of intent in accordance with Article IX of the Bylaws.
- H. The Board of Directors may appoint and/or 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.

- I. The Board of Directors may establish an Advisory Committee for each Program of The Authority for the purpose of evaluating the issues that relate to that particular Program.
- J. The Board of Directors shall have the power, authority, and duty to authorize the course and scope of investigation, defense, settlement and payment of benefit claims against Members of The Authority.
- K. The Board of Directors shall directly or by contract provide for services required to effectively implement all aspects of this Joint Program.

ARTICLE III

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 consistent with or not 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 be the majority of the Board of Directors, in active member status. All actions of the Board of Directors require a majority vote of those present, unless otherwise specified in the Agreement or these Bylaws.
- C. No one serving on the Board of Directors, other than the 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 IV

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 of two years or as otherwise 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 vote of the Board of Directors. All vacancies arising may be filled at any time by a 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 a 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 as 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, at a minimum of four times each year, to the Board of Directors, and to the Members 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 the Custodian of The Authority property.
 - 6. Have such other powers and perform such other duties as may be prescribed from time to time by law, by the Board of Directors or the President.

ARTICLE V

FINANCE

- A. The Authority shall operate on a fiscal year from July 1st through June 30th.
- B. The Board of Directors shall adopt, on or before June 1st, a budget estimating the amount of money that will be needed for the ensuing fiscal year. The preliminary budget shall be based upon an actuarial study (or the advice of a consultant) of the Programs provided by The Authority. On or before October 1st, The Authority shall adopt a revised 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 month of each Program Year, the monthly contribution (for each Program which they have joined and for which they have issued a Memorandum of Coverage) as adopted by the Board of Directors pursuant to Paragraph D of this Article. Contributions are due and shall be payable in accordance with the Payment of Contributions Policy, as determined by the Board of Directors.
- D. The contributions by Program, as adopted by the Board of Directors for each Member of The Authority, shall be determined not later than July 1st for each ensuing Program Year as follows:
 - 1. Member's share of the 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 and Program Year of The Authority shall operate separately from every other Program and 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 and Program Year. (See Exhibit A-1).
 - 1. All Contributions, Obligations, expenditures and disbursements of The Authority, that can be separately and distinctly identified by Program and Program Year, shall be accounted for separately by each Program and each Program Year.
 - 2. 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 and Program Year, shall be allocated to each Program and Program Year in a logical and consistent manner, as determined by the Board of Directors.
 - 3. Should the total Obligations for Program Year of a Program of The Authority exceed the total assets of that year, that year's Members may be assessed a ProRata Share of the additional contribution required as determined by an actuary or consultant and approved by the Board of Directors. Additional contributions are due and payable in accordance with the Payment of Contributions Policy, as determined by the Board of Directors.
 - 4. Should the total assets of a Program Year of a Program exceed the Obligations of that year, that year's Members may receive a Pro Rata Share return of contributions as determined by an actuary or consultant and approved by the Board of Directors.
 - 5. The Authority's Capital Target, as adopted by the Board of Directors, for each Program must be met before any assets may be returned to the Members, as in Paragraph E, 4 above.
- 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 VI

BASIS OF CONTRIBUTION

- A. By July 1st of each year, The Board of Directors shall distribute to Members the Basis of Contribution for the following Program Year of each Program.
- B. The Basis of Contribution shall be adopted by the Board of Directors.
- C. The Basis of Contribution shall consist of:
 - 1. An actuarial retrospective cost allocation and member prospective experience rating program.
 - 2. The rate foundations for Program contributions.
 - 3. The scope of protection, as stated in the Memorandum of Coverage, for Benefit claims.
 - 4. Other terms and conditions which the Board of Directors may consider necessary.

ARTICLE VII

ACCOUNTS AND RECORDS

- A. The Treasurer will be designated a depository for The Authority as approved by The Authority in compliance with California Government Code 6505.6.
- B. The Authority is strictly accountable for all funds received and dispersed 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 Treasurer 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. When such an audit of accounts and reports is made by a Certified Public Accountant, a report thereof shall be filed, in accordance with state law, as a public record with each of the Members of The Authority.

- D. 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 VIII

RISK MANAGEMENT

- A. 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 twenty-four (24) months as a Member in a Program, may withdraw from its status as a Member effective at the end of their respective plan year by notifying the Board of Directors of its intent, in writing three (3) months prior to the end of their plan year. Further, should any member intend to bid any JPA coverage(s), a letter of Intent to Bid should be submitted six (6) months prior to their respective plan(s) year.
- B. The incurred claims, incurred but not reported claims, and all contributions of the withdrawing Member shall continue to participate in each of the Programs and Program Years for which they were a member, per Article V, Paragraph E, of these Bylaws. The allocation of assets and Obligations as per Article V, Paragraph E, that were in effect for those years the withdrawing Member was a Member shall continue to stay in effect until those years are closed and clear of assets and/or Obligations. (See Exhibit A-2 for certain specific provisions).
- C. A Member may be involuntarily terminated from the Authority upon a two thirds (2/3) vote of the entire Board of Directors, then in current status. 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 Program 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 involuntary 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 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 practices implemented by the Board of Directors.
5. Failure as a Member 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 Joint Exercise of Powers Agreement by all Members or other public agencies then a party to 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 contribution shall be computed pursuant to Article V, Paragraph E, of these Bylaws.

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.

ARTICLE XII

AMENDMENT

- A. Amendment to these Bylaws may be proposed by any Member of The Authority.
- B. All proposed amendments to the Bylaws shall be presented in writing at a regularly scheduled Board of Directors meeting as an agenda item for discussion and informational purposes. Such proposed amendments shall be acted upon no earlier than the next regularly scheduled Board of Directors meeting.

ARTICLE XIII

SEVERABILITY

- A. Should any portion, term, condition, or provision of these Bylaws be decided by 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

- A. These Bylaws shall become effective upon the execution of the Joint Exercise of Powers Agreement.
- B. Amended Bylaws shall become effective in accordance with Article XII of these Bylaws.