



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Resolution authorizing participation in the Local Agency's Workers' Compensation Excess Joint Powers Authority.

MEETING DATE: May 20, 1992

PREPARED BY: City Manager

RECOMMENDED ACTION: Adopt the attached Resolution Authorizing Participation of the City of Lodi in the Local Agency Workers' Compensation Excess Joint Powers Authority.

BACKGROUND INFORMATION: The workers' compensation insurance market has been unstable during the last few years. Lodi has found workers' compensation excess insurance in the private market at competitive rates, but this has not been the case for many public agencies. When a similar problem arose in the municipal general liability insurance market several years ago, the City of Lodi became a member of the California Joint Powers Insurance Authority, a self-insurance "pool" consisting of about 100 cities throughout northern California.

In order to return stability to municipal workers' compensation excess insurance programs it is now proposed that a similar organization be created. The proposed joint powers authority would be called the Local Agencies Workers' Compensation Excess Joint Powers Authority (LAWCX). This proposed Joint Powers Authority for workers' compensation coverage is patterned after a similar successful authority developed by school districts in California about four years ago, commonly known as "SOX".

Participation requires an initial three-year commitment. The proposed rate for the City of Lodi is eighteen (\$0.18) per \$100.00 of payroll. This is 50.04 cents (50.04) less than our present rate on the open market. The self-insured retention of the City also would drop to \$150,000 from the \$300,000 self-insured retention we obtain on the open market. This latter point is quite important because workers' compensation excess insurance companies have maintained rates by raising self-insured retentions. Many cities in California are maintaining self-insured retentions of \$350,000 to \$500,000. In addition, LAWCX provides excess insurance to statutory limits while many insurance companies limit excess coverage to only \$10 million.

APPROVED _____

THOMAS A PETERSON
City Manager



recycled paper

Resolution authorizing participation in the Local Agency's Workers' Compensation Excess Joint Powers Authority.

May 20, 1992

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Finally, about three cents (\$0.03) of the eighteen (\$0.18) rate would form a "pool". Once fully funded (in 3-5 years), this would no longer be collected. Rates would then fall even more.

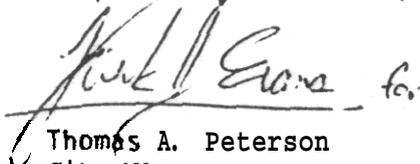
It is recommended that City Council authorize participation in LAWCX so long as other agencies with an aggregate total of \$400 million in payroll likewise agree to join and establish LAWCX by June 1, 1992 and that precommitments from other agencies equaling \$100 million in payroll to join by January 1, 1993 are also received by June 1, 1992. This is to meet the needs of agencies that buy insurance on a calendar year basis.

If that threshold number of cities and payroll is not met, then there is an insufficient "pool" of agencies and the Council should authorize staff to place our workers' compensation excess insurance with the open market under the quotes received from insurance brokers, which is our normal process.

The Memorandum of Coverage for LAWCX and the Joint Exercise of Powers Agreement for LAWCX are on file in the City Clerk's office if you are interested in gaining a greater understanding of the details of this organization.

FUNDING: Workers Compensation Insurance Fund

Respectfully submitted,



Thomas A. Peterson
City Manager

TAP :tp

Prepared by Kirk J. Evans
Administrative Assistant to the City Manager

CCCOM301/TXTA.TLP

MEMORANDUM OF COVERAGE

**LOCAL AGENCIES WORKERS COMPENSATION EXCESS
SELF-FUNDED JOINT POWERS AUTHORITY
(LAWCX)**

DECLARATIONS

Item 11. Covered Member Name & Address

Item 12. Coverage Period: From _____ To _____
(12:01 am PDT)

Item 13. Limit of Liability Per Occurrence

- a. Covered Members' Per Occurrence Retained Limit \$
- b. **LAWCX** Self-Insured
 - Workers' Compensation Coverage \$ 500,000
 - Employers Liability Coverage \$ 500,000
- c. Purchased Excess Insurance
 - Workers' Compensation Coverage Statutory
 - Employers Liability Coverage \$ 2,000,000
 - Per Occurrence SIR \$ 500,000

Scope of Coverage = American Home Assurance Company Fbrn No.48473 (3/89)

Item #4. Pool Deposit Contribution Item #3b. Estimated Payroll \$ _____
Pool Deposit Contribution \$ _____

Item #5. Premium Item #3c.
 Excess Insurance Deposit Premium \$ _____

Item #6. Program Total \$ _____

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LOCAL AGENCIES WORKERS' COMPENSATION **EXCESS**
SELF FUNDED JOINT POWERS AUTHORITY

Memorandum of Coverage
For Self-Insurance of
Excess Workers' Compensation and Employers' Liability

The Local Agencies Workers' Compensation Excess Self Funded Joint Powers Authority in consideration for the payment of the contribution and subject to all terms of this Memorandum, does hereby agree to provide coverage to the Covered Member named in Item 1 of the Declaration Page subject to the terms and conditions set forth in the Memorandum:

GENERAL SECTION

A. THE MEMORANDUM

This Memorandum includes the Declaration Page. This Memorandum is the coverage document between the Covered Member and the Authority. The terms of this Memorandum may not be changed or waived except by an amendment made a part of this Memorandum.

B. CONTINUOUS MEMORANDUM

This Memorandum is effective at 12:01 a.m. on the effective date stated in Item 2 of the Declaration Page. All of the provisions of this Memorandum apply beginning with the date shown in item 2 of the Declaration Page until June 30th of that fiscal year, and continues annually thereafter in the same manner as if a separate Memorandum had been written for each such consecutive period.

C. WHO IS COVERED

The Covered Member is named in Item 1 of the Declarations and is a "Member" as defined in the Authority's Agreement. If an entity named in item 1 of the Declarations loses its status as a "Member" of the Authority, the coverage under this Memorandum of Coverage shall terminate immediately upon such change in status.

D. WORKERS' COMPENSATION LAW

Workers' Compensation law means the workers' or workmen's compensation law and occupational disease law of the State of California and such other state laws as may be applicable under the provisions of part three hereof. It includes any amendments to that law which are in effect during the term of this Memorandum. It does not include provisions of any law that provides non-occupational disability benefits.

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E. QUALIFIED SELF-INSURED

The Covered Member represents that it is a duly qualified self-insured under the Workers' Compensation Law and will continue to maintain such qualifications during the term this Memorandum is in effect. If the Covered Member should fail to qualify or fail to maintain such qualifications, the coverage provided under this Memorandum shall automatically terminate the first date of such failure.

F. STATE

State means any state of the United States of America and the District of Columbia.

PART ONE - WORKERS COMPENSATION COVERAGE

- A.** The Authority will cover the Covered Member for loss as a qualified self-insured under the Workers' Compensation Law in excess of the Covered Member's retention stated in Item 3a on the Declaration Page but not for more than the limits of coverage stated in the Declaration Page.
- B.** Loss means amount actually paid by the Covered Member as a self-insured under the Workers' Compensation Law including claims expenses.
- C.** This coverage applies to losses paid by the Covered Member as a qualified self-insured under the Workers' Compensation Law for bodily injury by accident or bodily injury by disease including resulting death, provided:
1. the bodily injury by accident occurs during the period this Memorandum is in force; or
 2. the bodily injury by disease is caused or aggravated by the conditions of employment by the Covered Member and the employee's last day of last exposure to those conditions of that employment causing or aggravating such bodily injury by disease must occur during the period this Memorandum is in force.
- D.** The Authority will not cover the Covered Member for any payments made by the Covered Member in excess of benefit regularly required by the Workers' Compensation Law if such excess payments are required because:
1. of serious and wilful misconduct of the Covered Member.
 2. the Covered Member employed an employee in violation of law;
 3. the Covered Member failed to comply with a health or safety law or regulation;

4. in violation of the Workers' Compensation Law, the **Covered** Member discharged, coerced, or otherwise discriminated against any employee; or
5. any assessment made upon the Covered Member, whether imposed by statute, regulation or otherwise.

PART TWO - EMPLOYERS' LIABILITY COVERAGE

- A. The Authority will indemnify the Covered Member for **Employers'** Liability losses in excess of the Covered Member's retention stated in **Item 3a** of the Declaration Page but not for more than the limits of coverage stated in the Declaration Page.
- B. Coverage by the Authority will be made only if the original suit and any related legal actions fo: damages for bodily injury by accident or disease was brought in the United States of America, its territories or possessions or Canada.
- C. Loss means amounts which the Covered Member is legally liable to pay as damages, including claims expenses, because of bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.
- D. This coverage applies to losses incurred by the Covered Member for bodily injury which arises out of and in the course of the injured employee's employment by the Covered Member, provided:
 1. the bodily injury by accident occurs during the period this Memorandum is in force: or
 2. the bodily injury by disease is caused or aggravated by the conditions of employment by the Covered Member. The employee's last day of last exposure to those conditions of that employment causing or aggravating such bodily injury by disease must occur during the period this Memorandum is in force.
- E. Damages include:
 1. damages for which the Covered Member is liable to a **third** party by reason of a claim, suit or proceeding against the Covered Member to recover damages obtained by an injured employee of the Covered Member from the third party;
 2. damages for care and **loss** of services of an injured employee of the Covered Member;
 3. damages for consequential bodily injury to a spouse, child, parent, brother, or sister of the injured employee of the Covered Member; and provided such damages in 1, 2, and 3 above are the direct consequence of bodily

injury that arises out of and in the course of the injured **employee's** employment, by the Covered Member; and

4. damages because of bodily injury to an employee of the **Covered** Member arising out of and in the course of employment, claimed against the Covered Member in a capacity other than an employer.

F. Employers' Liability coverage excludes:

1. liability assumed under a contract;
2. punitive **or** exemplary damages;
3. bodily injury to an employee while employed in violation **of** law;
4. bodily injury intentionally caused or aggravated **by** or at the direction of the Covered Member;
5. bodily injury occurring outside the United States of America, its territories or possessions, or Canada to an employee who is temporarily working outside these countries for the Covered Member. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada;
6. damages arising out of the Covered Member's **violation** of law in the discharge of, coercion of, or discrimination against any employee;
7. any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, **or** disability benefits law, or any **similar** law; or

PART THREE - OTHER STATE COVERAGE

A. This Memorandum applies in states other than the state in **which** the Covered Member is domiciled if an employee of the Covered Member is injured in such a state and if the work of such injured employee of the Covered Member was within the scope of such employee's employment, at the direction of the Covered Member, and was temporary and transitory in such other state providea the Covered Member is not insured or self-insured in such other State, and

1. the work in the other state was incidental to the primary duties of the employee; and
2. the work of such injured employee was not at a **permanent** or fixed location of the Covered Member subject to the Workers' Compensation **Law** in such other state.

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- B. For any workers' compensation benefits awarded under the law of any other state, the Authority will cover the Covered Member only to the extent that the other state benefits does not exceed benefits which would have been paid to such injured employee ~~under~~ the Workers' Compensation Law of the State of California.
- C. For any workers' compensation benefits awarded under the **U.S.** Longshoremen's and Harbor Workers' Compensation Act, the Authority will **cover** the Covered Member only to the extent that those benefits do not exceed benefits which would have been paid to such injured employee under the Workers' Compensation Law of the State of California.

PART FOUR - COVERED MEMBER'S PER OCCURRENCE RETAINED LIMIT AND AUTHORITY'S LIMIT OF COVERAGE

A. RETENTION BY COVERED MEMBER

The Covered Member shall pay all **loss** up to the amount stated in Item 3a of the Declaration Page as Covered Member's Per Occurrence Retained Limit.

B. LIMIT ~~OF~~ COVERAGE BY AUTHORITY

The Authority will reimburse the Covered Member for **loss** over the amount stated as Covered Member's Per Occurrence Retained Limit for Workers' Compensation, but will not exceed the limit stated in Item 3b of the Declaration Page. The limit of coverage for Employers' Liability will not exceed the limit stated in Item 3b of the Declaration Page. Payments for Item **3c** shall be reimbursed by the Authority's excess insurance carrier.

C. ATTACHMENT OF COVERAGE BY AUTHORITY

The coverage provided by this memorandum shall not apply to ~~any~~ claim until the amount paid by or on behalf of the Covered Member shall have met or exceeded the per Occurrence retained limit of the Covered Member. Coverage provided by this memorandum shall then only be liable for the amount actually incurred that is in excess of the Covered Member's per occurrence retained limit, regardless of whether the Covered Member has other insurance, has other pooled coverage, or pays the per occurrence retained limit itself. Amounts to be paid on a claim otherwise covered under this memorandum shall not ~~be~~ paid until such time that the underlying per occurrence retained limit has been paid.

D. HOW RETENTION AND LIMIT ~~OF~~ COVERAGE APPLY

The Covered Member's Per Occurrence Retained Limit and Authority's Limit of Coverage stated on the Declaration Page apply to losses of the Covered Member as a qualified self-insured of Workers' Compensation or Employers' Liability **losses** as follows:

1. to one or more employees because of bodily injury or death in any one accident;
2. to any **one** employee for bodily injury or death by disease.

The inclusion of more than one legal entity as a Covered Member **in Item 1** of the Declaration Page will not increase the Covered Member's Per Occurrence Retained Limit nor the Authority's Limit of Coverage.

D. ACCIDENT

1. Accident means each accident or occurrence or **series** of accidents or occurrences arising out of any one event.
2. An accident is deemed to end seventy **two (72) hours** after the event commences. Each subsequent seventy two (**72**) hours is deemed to be a separate accident period.

E. DISEASE

Disease is an accident **only** if it results directly from bodily **injury** by accident.

PART FIVE - CLAIM EXPENSES

- A. Claim expenses of the Covered Member mean its litigation **costs**, interest as required by **law** on awards or judgments, and its claim investigation or legal expenses which can be directly allocated **to** a specific claim. Claim expenses exclude: salaries and travel expenses of employees of the Covered Member, annual retainers, overhead, and any fees it paid for claim administration.
- B. The Authority has **no** duty to investigate, handle, settle, or defend any claim, proceeding, or suit against the Covered Member.

PART SIX - CONDITIONS

A. NOTICE **OF** ACCIDENT

1. The Covered Member shall give prompt written notice **to** the Authority if a claim for an injury or disease **occurs** which appears to involve coverage by the Authority.
2. The Covered Member shall also give prompt written notice to the Authority if an injury of the following types occurs:
 - a) a fatality;
 - b) an amputation of a major extremity;

- c) any serious head injury (including skull fracture ~~or~~ loss of ~~sight~~ of either or both eyes);
 - d) any injury to the spinal cord;
 - e) any disability where it appears reasonably likely that there will be disability of ~~more~~ than one year;
 - f) any second or third degree burn of 25% or ~~more of~~ the body; or
 - g) any loss that exceeds 50% of the Covered Member's Per Occurrence Retained Limit.
3. Notice of accident given to the Authority shall contain **complete** details on the injury, disease, or death. If a suit, claim or other proceeding is commenced because of an injury listed in above Section 2 or ~~on~~ any injury which appears to involve coverage by the Authority, the Covered Member shall give the Authority:
- a) all notices and legal papers related to the claim, ~~proceeding~~ or suit, or copies of these notices and legal papers; and
 - b) copies of reports on **investigations** made by the Covered Member on such claims, proceedings or **suits**.

B. SETTLEMENT

Claims in excess of the Covered Members retention shall not ~~be~~ settled **without** the written consent of the Authority.

C. REIMBURSEMENT AND/OR PAYMENT OF LOSS TO COVERED MEMBER

The Authority will pay the Covered Member for any **loss** under this Memorandum as follows:

1. For Part One - Workers' Compensation Insurance - The Covered Member will pay all benefits required of the Covered Member by the Workers' Compensation Law, including claims expense. Reimbursement by the Authority will be made at monthly intervals after the Authority has received proof of payment by the Covered Member.
2. For Part Two - Employers' Liability Insurance - If **damages** are awarded which the Covered Member legally must pay, the Covered Member shall pay such damages up to its' per occurrence retained limit of the **loss**. The Authority will pay all sums for which it legally must pay in excess of the Covered Member's Per Occurrence Retained Limit.

D. SUBROGATION - RECOVERY FROM OTHERS

The Authority has the Covered Members rights, and the rights of persons entitled ~~to~~ compensation benefits from the Covered Member, to recover the Authority's

loss from any **third** party liable for the injury. The covered member will do everything necessary to protect those rights for the Authority and to assist in enforcing them. The recovered loss, after deducting the Authority's recovery expenses will first be used to reduce the Authority's **loss**. The balance, if any, will be returned to the Covered Member.

E. AUDIT

The Covered Member will keep records needed to compute the contribution and send copies of those records when the Authority asks for such records. The Covered Member will also send such records to the Authority at the end of each interim Memorandum adjustment period and upon termination of this Memorandum. The Authority has the right to examine and audit all records of the Covered Member which relate to this Memorandum, including ledgers, journals, registers, vouchers, contracts, tax reports, disbursement records and programs for storing and retrieving data. Information developed by audit will be used to determine earned and final contribution. The Authority has the right to conduct audits during regular business hours while this Memorandum is in force and within three years after the final settlement of all claims or payments made on account of bodily injury to employees through the term of this Memorandum.

F. SOLE REPRESENTATIVE

If more than one Covered Member is named in **Item 1** of this Memorandum, the Covered Member first named in **Item 1** of the Information Page will act on behalf of all Covered Members to give, receive return premium or coverage, or request change in this Memorandum.

G. MEMORANDUM CONFORMS TO LAW

If terms of this Memorandum are in conflict with any law **applicable** to this Memorandum, this statement amends this Memorandum to conform to such law.

FOR LOCAL AGENCIES WORKERS **COMPENSATION** EXCESS
JOINT POWERS AUTHORITY

BY: _____

Print Name: _____

JPA MANAGER

JOINT EXERCISE OF POWERS AGREEMENT

LOCAL AGENCY WORKERS COMPENSATION EXCESS

JOINT POWERS AUTHORITY

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JOINT POWERS AGREEMENT

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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 **Powm** 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 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** 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 a 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 representative and one 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. When 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>
\$0 - \$ 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~~ 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 ~~of~~ 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 that **"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 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 obligations 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, ~~mana,~~ 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 Pylaws. 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 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 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 years**. Such audit 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 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 893, 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, the joint powers authority and the participants of 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 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: _____

BYLAWS

PREAMBLE

- I. Interim Board of Directors**
- II. Board of Directors**
- III. Rules of the Board of Directors**
- IV. Executive Committee**
- V. Officers**
- VI. Manager**
- VII. Claims Administrator**
- VIII. Pools**
- IX. Finance**
- X. Memorandum of Coverage** ..
- XI. Accounts and Records**
- XII. Risk Management**
- XIII. Procedures for Prospective Members**
- XIV. ~~Withdrawal~~ from or Termination of Membership**
- XV. ~~Disposition~~ of Property and Funds**
- XVI. Investment of Funds**
- XVII. Amendment**
- XVIII. Severability**
- XIX. Effective Date**

EXHIBIT "A"

**BYLAWS OF THE
LOCAL AGENCY FOR WORKERS' COMPENSATION EXCESS**

JOINT POWERS AUTHORITY

PREAMBLE

Local Agency Workers' Compensation Excess Joint Powers Authority, ("Authority") is established for the purpose of providing the services and other items **necessary** and appropriate for the establishment, **operation, and maintenance** of a joint program of **"Workers' Compensation Excess"** 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 **"Workers' Compensation Excess"**.

ARTICLE I

INTERIM BOARD OF DIRECTORS

1. An **Interim** Board of Directors is **hereby appointed**, with all of the duties and responsibilities of the Board of **Directors**. The Interim Board of Directors shall **serve to**, but not beyond, July 1, 1992, by which time **the members of the full Board of Directors** shall be established.
2. The Interim Board **of** Directors shall **be** comprised of one **representative** from each of the following **entities** upon joining the **Authority**:

Edward C. Bickmore	CENTRAL SAN JOAQUIN VALLEY RMA
Patricia Caldow	CITY OF ALAMEDA
Kirk Evans	CITY OF LODI
Robert Hallock	COACHELLA VALLEY JOINT POWER INSURANCE AUTHORITY
Norton Hastings	CITY OF FREMONT
David Lindquist	CITY OF VALLEJO
Donald McMurchie	PARDEC/CSDA
Charlene M. Minnick	CITY OF LIVERMORE
Barry A. Mlinarcik	CITY OF REDDING
Oscar G. Reyes, Jr.	CITY OF FAIRFIELD
Michael Simmons	CCCSIF/NCCSIF/CSRMA
Jerry Stockett	ASSOCIATION OF CALIFORNIA WATER DISTRICTS JPIA
Michael Wilson	CITY OF DALY CITY
Jeanette Workman	VECTOR CONTROL JPA

3. **The Interim Board of Directors** shall operate pursuant to the Articles of these Bylaws.

ARTICLE 11

BOARD OF DIRECTORS

1. A Board of Directors is hereby established to direct and control the Authority.

A. Representation

- (1) Each 'party' to 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. 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. Only the designated representative or designated alternate who have filed a Statement of Economic Interest Form 730 with the State of California may represent a "Party". The designated representative and designated alternate may invite individuals from their agencies' staff or consultants to attend meetings of the Board of Directors in an advisory capacity.
- (2) Each "Party" shall be entitled to cast weighted votes as set forth in the Joint Powers Agreement.

2. **MEETINGS**

- A. The Board of Directors may conduct regular, adjourned regular, special, and adjourned special meetings, provided, however, that it will hold at least two regular meetings each fiscal year. The date, time, and place for each such regular 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.
- B. The Manager shall mail notices of any and all meetings of the Board of Directors stating the time and place of such meetings and the matters to be discussed. The Manager shall also keep minutes of each meeting and distribute to the "Parties" of the Authority true and accurate copies of such minutes within fifteen (15) days after the meeting.

3. **DUTIES AND RESPONSIBILITIES**

The Board of Directors has the authority and duty to manage the affairs of the Authority as is consistent with the laws of the State of California, the Agreement, and

these Bylaws. The Board ~~may~~ delegate any or all authority, ~~except~~ the following authorities and responsibilities.

- (1) ~~The~~ Board of Directors may amend these Bylaws with a two-thirds (2/3) weighted vote.
- (2) The Board ~~may create or~~ dissolve a risk management of self-insurance program with a two-thirds (2/3) weighted vote.
- (3) The Board of Directors shall directly or by contract provide for services required to effectively implement all aspects of the joint program established by the Authority.
- (4) ~~The~~ Board of Directors shall designate a specific location at which it will receive notices, correspondence, and other communications.
- (5) The Board of Directors shall comply with the provisions of Sections 6503.5 and 53051 of the Government Code requiring the filing of a statement with the Secretary of State and with the County Clerk.
- (6) The Board of Directors shall approve a budget for each fiscal year at least three (3) months prior to the inception of such fiscal year.
- (7) The Board of Directors shall approve contributions and the method by which Contributions will be paid to the Authority. Contributions shall be based upon the method as defined in Article IX of these Bylaws.
- (8) ~~The~~ Board of Director shall approve annually an investment policy.
- (9) ~~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 standards established by the Financial Accounting Standards Board and the Government Accounting Standards Board.

ARTICLE III

RULES OF THE BOARD OF DIRECTORS

1. 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, these Bylaws, or the Joint Powers Agreement.
 - A. A quorum for the transaction of business by the Board of Directors shall consist of the representatives or alternates of no fewer than seven "Parties" having no fewer than a cumulative weighted vote of no less than twelve (12).

- B. No one serving on the Board of Directors shall receive any salary or compensation from the Authority.
- C. The Board of Directors may approve reimbursement for expenses incurred by a director at its direction.

ARTICLE IV

EXECUTIVE COMMITTEE

The Board of Directors may establish an Executive Committee to assist in the management of the Authority. The Executive Committee, if established, shall have the authority, except such authority as is reserved exclusively to the Board of Directors, to administer the risk management programs in accordance with the Agreement and these Bylaws.

ARTICLE V

OFFICERS

1. OFFICERS OF THE AUTHORITY

The principal officers shall be a President, a Vice President, a Secretary, a Treasurer, and others as may be deemed appropriate by the Board of Directors. The President and Vice President shall be elected by the Board of Directors. The Secretary, Treasurer, and other officers shall be appointed by the President.

2. ELECTION OF OFFICERS AND TERM OF OFFICE

- A. The term of office for the President and Vice President shall be one year coincident with the fiscal year of the Authority. The term of all other offices shall continue until such time as the President appoints another to the office.
- B. Elections for the President and Vice President
 - (1) The President and Vice President of the Authority shall be elected by a majority weighted vote of the Directors present at the Board of Directors meeting.
 - (2) Elections shall take place at the last regularly scheduled Board of Directors' meeting of each fiscal year. Candidates for the offices shall be submitted at least thirty (30) days prior to the election by a Nominating Committee appointed by the Board of Directors. Representatives on the Board of Directors may make nominations of individuals who meet the requirements for the office at the time of election. If such nomination is seconded, the

nominated individual shall be a candidate for ~~that~~ office for which the candidate ~~was~~ nominated. The candidate with ~~the~~ greatest number of weighted votes shall assume the office.

- (3) Any ~~person elected or~~ appointed ~~as~~ an officer may be ~~removed~~ at any time. by a majority of the weighted votes of the ~~entire~~ Board of Directors.
- (4) All vacancies arising may be filled at any ~~time~~ by a majority of the weighted votes of the ~~raties~~ present at a Board of Directors' meeting.

3. DUTIES OF THE OFFICERS

- A. 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.
- B. ~~The Vice President~~ shall have such powers and ~~perform~~ such duties as may be prescribed from time to time by the Board of Directors ~~or~~ the President. In the absence of the President. the ~~Vice~~ President shall be vested with all the powers and authorized to ~~perform~~ all the duties of the President.
- C. The ~~Secretary~~ shall maintain records of all votes and the minutes of ~~all~~ meetings in a ~~book~~ to be kept for that purpose. shall ~~assure~~ that notice of all meetings of the Board of Directors is given 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.
- D. ~~The Treasurer~~ shall ~~be the~~ chief financial officer of the Authority and shall assume the duties ~~described~~ in Sections 6505.1 and 6505.5 of the California Government Code and the following duties:
 - 1. Receive all money of the Authority and place it in investments approved by the Board ~~of~~ Directors to the credit of the Authority.
 - 2. ~~Be~~ responsible 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. ~~Invest~~ the Authority funds according to the Investment policy adopted by the Board of Directors:

5. Verify and **report** quarterly **in** writing to ~~the~~ Board of **Directors**, and to the "Parties" ~~of~~ the Authority, the amount ~~of~~ receipts since the last **report**, and the amount paid **out** since the last **report**.
6. Act as **custodian** of the Authority's **property**.

The Treasurer shall have such **other powers** and perform such **other duties** as may be **prescribed** from time to time by **law** or by the Board ~~of~~ **Directors** or the **President**.

ARTICLE VI

MANAGER

1. **The Authority** may be administered by a **Manager**, who may be an **employee**, an independent consultant, or a **corporation**.

2. **DUTIES OF THE MANAGER**

A. **General Administration**

The Manager shall:

- (1) Monitor ~~the~~ **status** of the Authority's **programs** and **operations**, the development of **losses**, the program's **administrative** and **operational costs**, **service companies'** **performance**. and **brokers'** **performance**;
- (2) Provide **appropriate risk** management counseling and **information** to the **Board**;
- (3) Assist ~~the~~ **Board** is selecting **brokers**, **actuaries**. **claims auditors**, and other **service companies**;
- (4) Design and implement new **Risk Management** and **self-insurance** programs as directed by the **Board**;
- (5) **Promote** and **market** the programs to prospective new **"Parties"**;
- (6) Maintain ~~the~~ **records** of the Authority. including the **preparation** and distribution of ~~the~~ **Agreement**, the **Bylaws**, and ~~the~~ **Memorandums** of **Coverage**, as they may be revised, **to** all the "Parties";
- (7) Prepare **Certificates of Coverage** as may be required by ~~the~~ "Parties" of the Authority;

- (8) Prepare and distribute **notices** of Board and Committee **meetings** with **agendas**, make the **necessary arrangements** for meeting facilities. and prepare and distribute minutes of such meetings;
- (9) Prepare annual budgets for **approval** by the **Board**;
- (10) Obtain underwriting **data** from the **'Parties'** and **determine** the annual contributions of the **'Parties'** for **Board approval**;

B. Financial Administration

- (1) **Maintain the books of the Authority** in a manner **consistent** with the **generally accepted** accounting principles and the standards established by the Government Accounting Standards Board;
- (2) **Prepare** quarterly financial **statements**. and distribute such statements to the **'Parties'**;
- (3) **Prepare** monthly **warrants** for **approval** by the **Board** or **Executive** Committee, if such exists;
- (4) Assist the auditors in **collection** of financial information and the **operations** of the Authority;

ARTICLE VII

CLAIMS ADMINISTRATOR

1. **The** Authority claims shall be administered by a Claims Administrator, **who may be** an employee, an independent consultant, **or** a corporation.

2. **DUTIES OF THE CLAIM ADMINISTRATOR**

The Claims Administrator shall:

- A. **Receive** Claims **Notification** from the "Members";
- B. Establish and maintain claims files, whether such claims are **open or** closed;
- C. Coordinate settlement and defense policy with the "Member" and/or **'Party'** involved in the **loss** if such settlement may include pooled funds of the Authority;
- D. Appoint defense counsel to claims where appropriate;
- E. Monitor and control claims activities, including the activities **of** defense counsel;

- F. Establish and monitor claims **reserves**;
- G. **Monitor** settlement negotiations and request settlement authority where appropriate;
- H. Pursue **recovery** from third parties where appropriate;
- I. **Report** losses to excess insurers or reinsurers where appropriate;
- J. Provide monthly **loss** reports;
- K. **Monitor loss trends**;
- L. **Manage a trust account**, if established, and prepare monthly a list of **activities** in such account;
- M. **Prepare** 1099's in accordance with the requirements of the Internal Revenue Service;
- N. **Cooperate** with independent claims auditors.

ARTICLE VIII

POOLS

1. **POOL FOR AMOUNTS OF ANY CLAIM IN EXCESS OF \$250,000**
 - A. All "Parties" of the Authority shall participate in **the** pool from which the amount of any covered claim **exceeding \$250,000** any one occurrence shall be paid **and** every "party" shall have an interest in the **assets** and liabilities of that pool in proportion to the **deposit** contributions made by **the "Parties"**.
 - B. **The pool shall maintain** the accounts and records for each **program** year of the pool separate from any other program year.
2. **POOL FOR AMOUNTS OF ANY CLAIM IN EXCESS OF \$150,000 BUT LESS THAN OR EQUAL TO \$250,000**
 - A. "Parties" who choose a retention level of **\$150,000** shall participate **in** a pool, **separate and** distinct from the pool for claims in excess of \$250,000. Each "Party" shall be charged a deposit premium based in **part** by the actuarially determined anticipated **losses** affecting this pool.
 - B. Only those "Parties" participating in this pool shall have an interest in the assets and liabilities of the **pool** and such interest shall **be** in proportion to the deposit contributions of the participants **as** a whole.

- C. The pool shall maintain the accounts and records for each program year of the pool separate from any other program year.

ARTICLE IX

FINANCE

1. The Authority shall operate on a fiscal year from July 1st through June 30th.
2. The Board of Directors shall annually, on or before April 1st, adopt a budget showing each of the purposes for which the Authority will need money and the estimated amount of money that will be needed for each such purpose for the next fiscal year. A copy of the budget shall be transmitted to each of the "Parties".
3. Each "Party" shall pay to the Authority each fiscal year an annual contribution. Contributions are due and payable upon receipt of invoice and shall be considered past due if not received by the Authority after 30 days from the due date.
4. Each Party's annual "contributions" for each fiscal year shall be determined by the Manager and approved by the Board of Directors no later than May 1 immediately preceding the fiscal year. Each "Party" shall receive, as soon as practicable after adoption, a list of the contributions by "Party". Each "Party's" contribution shall be determined as follows:
 - A. The applicable share of the cost of the Authority's joint program, including the cost of actuarially expected claims for the pool or pools in which the "Party" participates.
 - B. The applicable share of the General Fund requirements of the Authority.
 - C. The applicable share of all other costs.
 - D. The applicable share shall be based on the "Party's" payroll and/or its claims experience as these factors relate to the total payroll and experience of all 'Members'.
5. Each Pool and each fiscal year shall operate separately from even, other pool and fiscal year in regard to its assets and obligations.
 - A. Should the total obligations, including actuarially expected claims costs, for any program year of a pool exceed the total assets of that year, the Board of Directors may assess the "Parties" participating in that pool's program year for any or all of such deficiency. If an assessment is made, it shall be borne by the "Parties" in the same relationship as their contributions for that pool's program year relates to the total of all the "Parties'" contributions for that pool's program year.

- B. Should the total assets of any pool's program year **exceed** the obligations, including actuarially expected claims **costs** of that year, the **Board** of Directors may return any **or** all of the **excess assets** to the "Parties" in the same relationship as each "Party's" contribution for that pool's program year relates to the total of **all the 'Parties'"** contributions for that pool's program year.
6. **All** amounts **not** paid **after 30 days past** the due date shall be considered delinquent. At the **Board of Directors** discretion, the Authority may establish interest charges and/or penalties for any and all delinquent amounts due **from its Parties**.
 7. The General Fund shall be established and maintained to receive monies of the Authority. **The Authority shall accept and deposit in the General Fund** all monies received.
 8. A **Claim Expense** Account shall be established. if necessary, and maintained out of monies received by and deposited in the General Fund for the purpose of paying investigation. defense. related claim cost. and losses for "Workers' Compensation **Excess'** claims.
 9. A Claims **Reserve** Account shall be established. if necessary. and maintained out of monies received by and deposited in the General Fund for the purpose of funding the **General Reserves**, i.e., monies for claims which have **been** incurred by the "Members" but remain unpaid, and the **Catastrophe Reserves**. i.e., monies for claims which have not been incurred.

ARTICLE X

MEMORANDUM OF COVERAGE

1. A Memorandum of Coverage for each program year shall be adopted by a majority of the weighted votes of the representatives present at the Board meeting prior to the inception of that program year.
 - A. As soon as practicable following the adoption of the Memorandum of Coverage, the **Manager** shall distribute to the "Parties" a Memorandum of Coverage.
 - B. The Memorandum of Coverage shall contain:
 - (1) **The scope of protection provided for "Workers' Compensation Excess"** claims.
 - (2) Other terms and conditions which the Board of Directors may consider necessary.
 - (3) The names of the "Members" which the Memorandum is intended to cover.
2. The Agreement and/or these Bylaws shall supersede any provisions in the Memorandum of Coverage which is in conflict with the Memorandum of Coverage.

ARTICLE XI

ACCOUNTS AND RECORDS

1. **The Treasurer** will be designated a **depository** for the Authority **as approved** by the Authority in compliance with California Government Code **6505.5**.
2. **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 practices 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 **Manager**, **as soon as practical** after the close of each **fiscal** quarter, shall give a **complete** written report of all financial **activities** for such **fiscal** quarter and **fiscal** year to **date** to each **'Member'** of the Authority.
3. **AUDITS**
 - A. The Board of **Directors** shall **contract** with a **Certified** Public **Accountant** to **make** an annual audit of the **accounts**, **records**, and financial affairs of the Authority and shall conform to generally **accepted** auditing standards and accounting principles.
 - B. **When** such an audit of **accounts**, **records**, and financial **affairs** is made **by** a **Certified** Public Accountant, a **report** thereof shall be filed **as** a public **record** with each of the **'Parties'** of the Authority, and also with the Auditor-Controller of the State of California.
 - C. Such **reports** shall be filed within six **(6)** months of the end of the **fiscal** year under examination. Any **costs** of the audit, including contracts with, or **employment** of, **Certified** Public Accountants in making the audit(s) provided for herein, shall be appropriate administrative charges against the funds of the Authority.

ARTICLE XII

RISK MANAGEMENT

The Board of Directors of the Authority shall adopt **procedures** for **risk** management practices. Each of the **"Members"** hereby agrees to implement in its agency the required **procedures** for **risk** management practices adopted by the Board of Directors.

ARTICLE XIII

PROCEDURES FOR PROSPECTIVE NEW PARTIES

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

- A. Prospective New 'party' will fully complete **the** Authority's **application** survey and return it to **the** Manager.
- B. The **Manager** will **review** the submission and make a **recommendation** to **the Board** of **Directors** for **approval or non-approval**.
- C. The **Manager** will **review**, in addition to any **otha** factors **pertinent** to **the decision** to accept **the prospective** new 'party', **the** following:
 - (1) Five (5) year loss **history**
 - (2) Loss problem **areas** and **corrections** taken
 - (3) Political**climate**
 - (4) Administration's attitude on commitment **to** good **Risk** Management
 - (5) Claims administrator
 - (6) Unusual **exposures**

2. **BOARD REVIEW AND APPROVAL OF M_____**

- A. New **"Parties"** must be reviewed and approved for membership at a regular or **special** meeting of **the** Authority's Board prior to binding coverage.
- B. After the **prospective new "Party"** has been reviewed and approved for membership **the** Authority will instruct **the** Manager to bind **the required coverage**, but coverage shall **not** commence **until the** date requested on the survey.
- C. New **'party's'** contribution will be prorated from date of binding of coverage to the end of **the** program **year** (June 30th).

ARTICLE XIV

WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

- 1. Any "Party" having met the requirements for withdrawal as defined in **the** Agreement may withdraw from its status as a member of the Joint Powers Agreement at the end of any **fiscal year** by notifying the Board of Directors of the Authority in writing at least sixty (60) days **prior** to withdrawal.
- 2. A "party" may be involuntarily terminated from the Authority upon a **two thirds (2/3)** weighted vote of the "Parties" to the Agreement. Involuntary termination shall have the effect of eliminating the "Party" as a signatory of the Joint 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, except for Clause (F) below, not less than sixty (60) days after notice of involuntary termination is given.

RESOLUTION NO. 92-92

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A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING PARTICIPATION IN THE LOCAL AGENCY'S
WORKERS' COMPENSATION EXCESS JOINT POWERS AUTHORITY

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WHEREAS, the City of Lodi is authorized, pursuant to Government Code Section 6500 et seq., to enter into a Joint Powers Authority with other public agencies; and

WHEREAS, it is proposed that cities and special districts throughout California join together to create the Local Agency Workers' Compensation Excess Joint Powers Authority to provide "pooled" funding of Workers' Compensation insurance benefits and costs, and said Joint Exercise of Powers Agreement and By-Laws and Memorandum of Coverage are on file in the Office of the City Clerk and incorporated herein by reference as though set forth in full; and

WHEREAS, actuarial studies have been undertaken that indicate that if cities and special districts with an aggregate annual payroll in excess of five hundred million dollars (\$500,000,000) were to join together in a Joint Powers Authority for excess workers' compensation coverage, that such an amount would be sufficient to initially fund the proposed Joint Powers Authority;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

1. That the City join and participate in the Local Agency Workers' Compensation Excess Joint Powers Authority so long as public agencies within the State of California having an aggregate annual payroll in excess of four hundred million dollars (\$400,000,000) also agree to join said Joint Powers Authority on or before June 1, 1992 and other agencies with annual payroll in excess of one hundred million dollars (\$100,000,000) precommit to join the Joint Powers Authority on or before January 1, 1993.

2. That the Mayor, City Manager and City Attorney are authorized to execute those documents necessary to enter into said Local Agency Workers' Compensation Excess Joint Powers Authority on behalf of the City of Lodi.

3. That, should sufficient public agencies not agree to create the Joint Powers Authority as set forth in Section 1 above, then the City Manager is authorized to place the City's workers compensation excess insurance with private insurers as is the normal and customary practice of the City.

Dated: May 20, 1992

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Resolution No. 92-92
Date: May 20, 1992
Page Two

I hereby certify that Resolution No. 92-92 was passed and adopted by the Lodi City Council in a regular meeting held May 20, 1992 by the following vote:

Ayes: Council Members " Hinchman, Pennino, Sieglock, Snider
and Pinkerton (Mayor)

Noes: Council Members " None

Absent: Council Members " None

Alice M. Reimche
Alice M. Reimche *City Clerk*
City Clerk

92-92

RES9292/TXTA.02J