

# CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY BYLAWS



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## **BYLAWS**

For the regulation of the California Joint Powers Risk Management Authority, except as otherwise provided by Statute or the Joint Powers Agreement Creating the California Joint Powers Risk Management Authority.

### **ARTICLE I**

#### **DEFINITIONS**

The terms in these Bylaws shall be as defined herein and in the Joint Powers Agreement Creating the California Joint Powers Risk Management Authority (hereinafter JPA Agreement), unless otherwise specified herein.

1. **Alternate Director** shall mean that individual appointed by a *member entity* to act in the absence of its duly appointed representative except the *alternate director* shall not exercise the powers of an officer of the *Authority* or serve on the *Executive Committee*.
2. **Authority** shall mean the California Joint Powers Risk Management Authority created by the JPA Agreement.
3. **Board** or **Board of Directors** shall mean the governing body of the *Authority* composed of one representative of each *member entity*.
4. **Cash Assessment** shall mean an amount determined by the *Board of Directors* to be paid by each member entity as necessary to meet the *Authority's* obligations.
5. **Cash Contribution** shall mean the annual dollar amount determined by the *Board of Directors* which is payable by each *member entity* as its established share of the funding required to cover the financial obligations of each *pooled coverage program* in which the *member entity* participates.
6. **Certificate of Coverage for Additional Covered Party** shall be the document issued by the *Authority* to third parties specifying the type and amount of *pooled coverage* provided to the *member entity* by the *Authority* and extended to the named third party for the specified purpose.
7. **Claims** shall mean demands made against the *member entities* or the *Authority* arising out of occurrences which may be within the *Authority's pooled coverage programs*.

8. **Covered Loss** shall mean any loss resulting from a *claim* or *claims* against a *member entity* or the *Authority* which is in excess of the member entity's respective *retained limit* and is covered by any *Memorandum of Coverage* issued by the *Authority* or any *purchased coverage programs* and shall include loss payments, defense costs and other charges directly attributable to the resolution of the matter including defense costs incurred by the *Authority*.
9. **Director** shall mean that individual appointed from that *member entity* to serve on the *Board of Directors*.
10. **Entire Board** shall consist of all *directors*, whether or not present at a *Board* meeting.
11. **Excess Insurance** shall mean that commercial insurance purchased by the *Authority* to cover losses in excess of the *Authority's* pooled limits and/or each *member entity's retained limit*.
12. **Executive Committee** shall mean that body composed of the President, Vice-President and five additional members of the *Board of Directors* elected in accordance with these Bylaws.
13. **General Manager/Secretary** shall mean an officer of the *Authority* appointed by a majority of the *entire Board* and who shall serve at the pleasure of the *Board*.
14. **Incurred Loss** shall mean the sum of monies paid or reserved by the *Authority* to investigate, defend and satisfy a *covered loss* sustained by a *member entity* or the *Authority*.
15. **Majority Vote** shall mean a number greater than one-half of the votes cast.
16. **Member Entity** shall mean each of the public entities which is a party to the JPA Agreement.
17. **Memorandum of Coverage** shall be the document issued by the *Authority* to *member entities* specifying the type, amount and conditions of *pooled coverage* provided to each participant by the *Authority*.
18. **Plurality Vote** shall mean the greatest number of votes when there are two or more competitors for the same office.
19. **Pooled Coverage Programs** shall consist of coverages provided directly by the *Authority* pursuant to a *Memorandum of Coverage* and/or provided by a *purchased coverage program*. These may include, but are not limited to, property, workers' compensation, and liability coverages as may be determined by the *Board*.

20. **Program Year** shall mean a period of time determined by the *Board*, usually 12 months, into which each *pooled coverage program* shall be segregated for purposes of accounting and record keeping.
21. **Purchased Coverage Program** shall mean any transfer of risk by the *Authority* through the purchase of commercial *excess insurance*, participation in a joint powers authority, risk retention group or similar mechanism.
22. **Retained Limit** shall mean the amount of a *claim* which the *member entity* must incur, or become liable for, before the *Authority*, or any applicable *purchased coverage program*, is obligated to pay.
23. **Treasurer** shall mean an officer of the *Authority* appointed by a majority of the *entire Board* who shall serve at the pleasure of the *Board*.

## ARTICLE II

### OFFICES

The principal executive office for the transaction of business of the *Authority* and receipt of all notices is hereby fixed and located as described in Appendix A attached hereto and incorporated herein by reference. The *Board* shall have the authority to change the location of the principal executive office.

Other business offices may be established by the *Board* at any time and at any place or places where the *Authority* is qualified to do business.



## ARTICLE III

### DIRECTORS & OFFICERS

#### Appointment of Board of Directors

The governing board or other duly designated official of each *member entity* of the *Authority* shall appoint a representative to the *Board of Directors*. Such representative shall be an employee or officer of the *member entity*, or in the case of a joint powers authority, may be an employee or officer of a *member entity* of such joint powers authority. The appointment shall be in writing, directed to the *Authority* at its designated principal executive office, and shall remain in effect until the receipt of a notice designating a replacement. Each *member entity* shall also designate an *alternate director*, in the manner described above, to act in the absence of its duly appointed representative except the *alternate director* shall not exercise the powers of an officer of the *Authority* or serve on the *Executive Committee*.

#### Election and Removal of Officers

The officers of the *Authority* shall be the President, Vice President, *Treasurer* and *General Manager/Secretary*. The President and Vice President shall be elected, as individuals, from among the members of the *Board of Directors*, not as the *member entities* they represent, in even numbered years and serve for a term of two years. The duties of the officers shall be assumed upon their election or appointment.

The *Treasurer* will be appointed, by most of the *entire Board*, and shall serve at the pleasure of the *Board*. The term of *Treasurer* shall be two years, with appointments being made in the even number years, subject to the pleasure of the *Board*. The *Treasurer* may vote on matters before the *Board*, *Executive* or other appointed committees only if he/she is also a *director* serving in the appropriate capacity.

The General Manager shall be the Secretary and Chief Administrative Officer of the *Authority* appointed by a majority of the *entire Board* and shall serve at the pleasure of the *Board*. Although the *General Manager/Secretary* is an officer of the *Authority*, he/she may not vote on matters before the *Board*, *Executive* or other appointed committees. The *General Manager/Secretary* may not be an employee or an officer of a *member entity*.

Nomination of candidates for the offices of President and Vice-President shall be made in writing to the *Authority* no later than May 1 of each even numbered year. The *General Manager/Secretary* shall verify with the nominees that they are willing to run. The slate of nominees will be provided to each *member entity* at least thirty (30) days before the August *Board of Directors* meeting.

Voting for officers will be conducted at the August Board meeting. A candidate may be nominated for more than one office. A candidate may withdraw at any time prior to the election by notifying the *General Manager/Secretary* either orally or in writing. Election for President will be held first, then election for Vice President, then election for membership on the *Executive Committee*. Each *director* present shall cast one vote for each office. The candidate receiving the greatest plurality of votes for the particular office will be elected and will assume the office upon his/her election. In the event of a tie vote, those not involved in the tie vote will be eliminated and the remaining candidates will be the subject of a runoff election as described above. If unsuccessful after the runoff, the election for that office shall start again with all the candidates eligible.

The President and Vice-President will serve for their elected term of office, until termination of employment or office with a *member entity*, or until removal from office by the affirmative vote of three-fourths of the members of the *entire Board of Directors* at any regular or special meeting of the *Board of Directors*. Vacancies in the offices of President or Vice-President will be filled by election of a replacement, at the next regular or special meeting of the Board, by a *majority vote* of the *Board*, to serve the remainder of the unexpired term.

## ARTICLE IV

### EXECUTIVE COMMITTEE

The President and Vice-President shall serve on the *Executive Committee* during their incumbency in those offices. The remaining five members shall be elected from among the *directors* to serve a term of two years under the procedures set forth below. A *member entity* cannot hold more than one (1) position on the *Executive Committee*. A non-officer *director* must have served on the *Board* for at least twelve (12) months preceding the date of the election for the office.

#### Powers

The powers of the *Executive Committee* shall be those powers delegated to it by the *Board of Directors* which may include but are not limited to:

- a. personnel matters concerning salary, benefits and working conditions of staff;
- b. approval of warrants;
- c. approval of Requests for *Certificates of Coverage for Additional Covered Parties*;
- d. *covered loss* settlement authority in an amount as determined by the *Board*;
- e. approval of contracts for routine services (*claims* audit, financial audit, actuarial study, etc.);
- f. other authority as delegated by the *Board*.

The *Board of Directors* may revoke any of the powers delegated to the *Executive Committee* by a *majority vote* of the *entire Board*.

#### Election and Removal of Executive Committee Members

Election of two non-officer members of the *Executive Committee* shall occur at the August *Board of Directors* meeting in each odd numbered year by election from an eligibility list prepared by staff. The eligibility list shall consist of all *Directors* meeting the eligibility requirements set forth in this Article.

Appointment of three *directors* shall be conducted in even numbered years, one from each of three lists, after the election of officers. Staff shall prepare, starting with the June 2009 election, three

lists of *directors*, randomly generated. One list shall consist of *Directors* from *Member Entities* that are themselves joint powers authorities; one list shall consist of *Directors* from *Member Entities* that are cities with a population of 100,000 or more; and one list shall consist of *Directors* from *Member Entities* that are cities with a population of less than 100,000. The eligibility list used in June 2009 will carry over from the rotation order previously generated. The *directors* at the top of each applicable list shall be considered elected to open positions on the *Executive Committee* for a single term of two years each. If a *director* reaches the top of the list but is ineligible by reason of not having served on the *Board* for at least twelve (12) months, that *Director* will be passed but remain at the top of the list for the next election. If a *Director* reaches the top of the list but wishes to decline election to the *Executive Committee*, the *Director* may do so on a one-time basis only but shall remain at the top of the list for the next following election.

The President and Vice President shall be limited to two consecutive two-year terms and will not be eligible to run for the same office after completing two terms, until being out of office for at least one term. Upon completion of a term as President, Vice President or as a member of the *Executive Committee*, a *Director* will move to the bottom of the eligibility list for election to the *Executive Committee*.

The immediate past President will serve one (1) two-year term on the Executive Committee. This will be a non-voting member of the committee.

Non-officer vacancies on the *Executive Committee* for rotation list positions will be filled by appointment of a replacement from the top of the applicable eligibility list, to fill the remainder of the unexpired term and the following two-year term. Non-officer vacancies on the Executive Committee for odd year election positions shall be filled by Board vote at the next meeting following the vacancy, to fill the remainder of the unexpired term.

New *Member Entities* shall be added at the bottom of the applicable eligibility list at the time of admission to membership in the Authority.

Non-officer members of the *Executive Committee* may be removed by the affirmative vote of three-fourths of the members of the *entire Board of Directors* at any regular or special meeting of the *Board of Directors*.

Any member of the *Executive Committee* who has failed to attend at least 50% of the regular meetings of the *Executive Committee* within any 12 consecutive month period shall be automatically removed from the *Executive Committee* and from office if he/she is the President or Vice President.

## ARTICLE V

### MEETINGS

#### Board of Directors Meetings

There shall be at least four regular meetings of the *Board of Directors* each year, one of which shall be designated as the Annual Membership Meeting. At the final *Board* meeting of each calendar year, the *Board* shall fix the date, hour and location at which each regular meeting in the succeeding year is to be held. The *General Manager/Secretary* may request special meetings of the *entire Board* as needs dictate. Special meetings may also be called by the President or one-third of the *Board*. Notice of such special meetings shall be delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meetings.

A regular or special meeting of the *Board* may be cancelled or postponed by the *General Manager/Secretary* or President by notice delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meeting. The Annual Membership Meeting may be postponed but not cancelled.

#### Executive Committee Meetings

The *Executive Committee* shall hold at least four regular meetings each year, some of which may coincide with meetings of the *Board of Directors*. The President, at the final *Executive Committee* meeting in each calendar year, shall fix the date, hour and location at which the regular meetings in the succeeding year are to be held and notify all *directors* of such dates, times and locations. The President or *General Manager/Secretary* may request special meetings as needs dictate. Notice of such special meetings shall be delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meetings.

A regular or special meeting of the *Executive Committee* may be cancelled or postponed by the President or *General Manager/Secretary* by notice delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meeting.

#### General Meetings

No business may be transacted by the *Board*, *Executive Committee*, or other appointed committees without a quorum of their respective members being present. A quorum of the *Board* shall consist of a majority of its number; a quorum of the *Executive Committee* shall number five members.

Quorums of other committees established by the *Board* shall be a majority of their members. A majority of the members present must vote in favor of a motion to approve it, except as otherwise provided in the JPA Agreement/Bylaws and except for the following:

1. Four votes are required to pass any *Executive Committee* motion except for votes to assume control of *claims* as outlined under Article IX.
2. A *majority vote* of the *entire Board* is required to amend the Bylaws provided that any amendment is compatible with the purposes of the *Authority*, is not in conflict with the JPA Agreement and has been submitted to the *Board* at least thirty (30) days in advance.
3. A two-thirds vote of the *entire Board* is required to levy a *cash assessment* for any *pooled coverage program*.
4. A three-fourths vote of the *entire Board* is required to remove an officer/non-officer of the *Authority* or a non-officer of the *Executive Committee*.
5. A three-fourths vote of the *entire Board* is required to expel any *member entity* from the *Authority*.

The *Board* and the *Executive Committee* shall conduct their business in accordance with Roberts Rules of Order.

An agenda of each *Board* or *Executive Committee* meeting shall be published and posted in the business office of the *Authority* in accordance with applicable state law.

Official minutes of the *Board* and *Executive Committee* meetings shall be kept by the *Authority* in a minute book at its principal executive office and shall be distributed to the *member entities* as soon after the meetings as practicable.

## ARTICLE VI

### DUTIES OF DIRECTORS AND OFFICERS

The *Board of Directors* shall be responsible for governing the *Authority* either directly or by delegation to other bodies or persons unless prohibited by law or by the JPA Agreement and shall exercise all those powers not specifically reserved to the *member entities* in the JPA Agreement. Each *director* shall have the authority to bind their *member entity* on all matters pertaining to the JPA Agreement, as provided in the JPA Agreement. Each *director* of a *member entity* shall be entitled to cast one vote in all matters requiring a vote, except in the case of an actual or potential conflict of interest.

Each *Member Entity* shall be required to be represented, by a properly appointed *Director/Alternate*, at a minimum of 50% of all *Board* meetings held during the course of a program year. Failure to meet this minimum standard of attendance shall result in a 5% surcharge being added to the *Member's* contribution calculation for the *program year* immediately following.

The duties of the President shall be to preside at all meetings of the *Board* and the *Executive Committee* and to perform such other duties as the *Board* may specify.

The duties of the Vice-President shall be to act as the President, in the absence of the President, and to perform such other duties as the *Board* may specify.

The duties of the Treasurer shall be those specified in sections 6505.5 or 6505.6 of the California Government Code, to receive and safekeep all money coming into the treasury, to comply with all laws governing the deposit and investment of funds, and to approve the monthly financial report to the *Board* summarizing receipts, disbursements, and fund balances, along with a listing of all investments and other duties as specified by the *Board*.

The duties of the *General Manager/Secretary* shall be to administer the operations of the *Authority*, to cause minutes to be kept as specified in the JPA Agreement, to maintain or cause to be maintained all accounting and other financial records of the *Authority*, to file all financial reports of the *Authority* and to perform such other duties as the *Board* may specify.

## ARTICLE VII

### BUDGET

An annual budget shall be presented by the *General Manager/Secretary* to the *Board* no later than thirty (30) days prior to the beginning of each fiscal year and shall be adopted no later than July 31 of each year. At the discretion of the *Board*, a multi-year budget may be adopted, thereby eliminating the requirements of annual presentation and adoption during the term of such multi-year budget.

The budget shall separately show the following:

- a. a general and administrative section;
- b. a revenue section; and,
- c. sections for each *pooled coverage program* specifying:
  - 1) the actuarially estimated *claims* and allocated *claims* adjustment costs;
  - 2) an equitable allocation of the general and administrative costs;
  - 3) an equitable allocation of the revenue.



## **ARTICLE VIII**

### **RECEIPT AND DISBURSEMENT OF FUNDS**

Revenues of the *Authority* shall be received at its principal executive office. The *Treasurer, General Manager/Secretary* or other designee of the *Board* shall safeguard and invest funds in accordance with the *Authority's* current Investment Policy.

The President, Vice-President, *Treasurer* and *General Manager/Secretary* shall be authorized signatories of the *Authority's* checking account. All checks disbursing funds of the *Authority* shall be signed by the appropriate number of officers as established by action of the *Board*.

A register of all checks, issued since the last *Board* or *Executive Committee* meeting, shall be provided at each subsequent *Board* or *Executive Committee* meeting for approval.

The *General Manager/Secretary* shall be authorized to make all expenditures for goods or services without specific approval, to the extent such funds have been included and approved by adoption of the budget, or as subsequently approved by the *Board*.

Authority to expend funds for goods or services, approved by the *Board* or provided for in the budget, may be granted by the *Executive Committee*. The *Executive Committee* shall be authorized to permit budget modifications in amounts up to \$25,000 for expenditures in excess of previously budgeted or approved amounts.

## ARTICLE IX

### SETTLEMENT OF CLAIMS

All *claims* settlement recommendations shall be presented by the *General Manager/Secretary*, or his designee, to, and be approved by, the *Board* prior to final settlement, except that the *Executive Committee* shall have the authority to approve settlements in an amount not to exceed \$750,000 of the *Authority's* funds. The General Manager shall have the authority to settle any claim up to \$250,000.

In accordance with the *Memorandum of Coverage*, the *Authority* may assume control of and defend or settle any *claim* determined to have a reasonable possibility of resulting in an ultimate net loss in excess of the *member entity's retained limit*.

The procedure for assuming control of a *claim* shall be as follows:

1. The *General Manager/Secretary* may submit the issue of assuming control of a *claim* directly to the *Board of Directors*, for decision, by presenting a written recommendation to that effect.
2. The General Manager and the covered party will have the right to submit written materials and present oral arguments to the *Board*, subject to reasonable time constraints.
3. The *Board* may determine to assume control of a *claim* by a *majority vote* of the *entire Board*.
4. The affected *Board* member (i.e. whose *member entity* is the defendant in the *claim*) shall be disqualified from the final discussion and vote on this issue.

## ARTICLE X

### POOLED COVERAGE PROGRAMS

The *Authority* shall provide a *pooled coverage program* for Automobile/General Liability. The *Authority* may also provide *pooled coverage programs* such as workers' compensation, property, and other risks as determined by the *Board of Directors*. All *member entities* must participate in the Automobile/General Liability program in order to maintain their membership in the *Authority*. The terms and conditions of each *pooled coverage program*, including participation commitment (if any), choices of *retained limits*, *cash contributions*, formulas and other relevant details shall be determined by the *Board*.

Any *pooled coverage program* in effect on the effective date of these Bylaws shall be continued in the absence of specific action by the *Board of Directors* to the contrary.

#### Automobile/General Liability Program

The Automobile/General Liability Program of the *Authority* shall provide coverage in accordance with the terms of the current *Memorandum of Coverage* and with limits and *retained limit* options as determined by the *Board of Directors*.

Coverage may be provided by a *pooled coverage program* and/or *purchased coverage programs* as determined by the *Board of Directors* and as described in the Automobile/General Liability Program Master Plan Document, attached hereto and incorporated herein by reference.

#### Automobile/General Liability Cash Contributions

The Automobile/General Liability Program shall be funded by the annual *cash contributions* of the participating *member entities* at a level which is actuarially determined to be sufficient to cover the predicted losses, loss adjustment expenses, defense costs, *excess insurance* premiums (if any), and a pro rata share of the general and administrative expenses of the *Authority*.

Cash contributions shall be calculated by taking into consideration the following factors:

1. The workers' compensation payroll of each *member entity*, as determined by each *member entity's* DE-9 reports for the four quarters ending March 31 prior to the commencement of the next *program year*.
2. There will be a minimum reported payroll, amounting to a percentage of the total workers' compensation payroll for all *member entities* participating in the program, as specified in the Master Plan Document.

3. A 5% surcharge shall be added to the contribution calculation of any *member* that failed to have a properly designated representative (*Director/Alternate*) attend at least 50% of the *Board* meetings held during the immediately preceding *program year*.

Funds on deposit for each pooled layer of each *program year* shall be accounted for separately. Borrowing between *program years*, collectively, to cover losses, will be permitted, provided that the California Joint Powers Risk Management Authority liability program, as a whole, is determined to be actuarially sound and the total outstanding borrowing does not exceed five million dollars (\$5,000,000.00).

The amount borrowed will be repaid either as a charge against future deposit premium refunds, as they become available, or by a supplemental assessment levied by the *Board of Directors*, if such supplemental assessment is determined to be necessary by the *Board*.

Interest will be charged on the borrowed funds based on the average monthly interest rate earned by the Authority, as determined by the *Treasurer*.

*Cash contributions* made to the Authority, and any investment income attributed to such funds, shall be held in trust by the Authority for the benefit of the *member entities*. After payment of all *claims*, *claims* expense and other expenses which are the obligation of a *program year*, any remaining assets shall be redistributed to the participating *member entities* in accordance with their pro rata share of contributions.

For Program Years 2008-2009 and following, the Authority will establish an Excess Loss Fund that will be used to provide funds in the event losses, loss adjustment expenses, and defense costs expended for any *program year* exceed the amount of cash contributions (and any interest earnings thereon) for loss funding for that *program year*. Payments from the Excess Loss Fund will not be charged back to the *program year* nor will the payments result in any assessment against *program year* members but will instead act as a form of “stop loss” for the loss fund for that *program year*.

The Excess Loss Fund shall be accounted for as a single fund applying to all *program years* for 2008-2009 and following. Members retain an equity interest in funds contributed to the Excess Loss Fund and will be credited with any interest income realized by the Excess Loss Fund in proportion to their pro rata share of total contributions to the fund at the time the investment income is earned. Should any *Member Entity* withdraw from the Authority, the *Board* will establish a plan for an orderly return of the withdrawing member’s equity over a period of time, so that the Excess Loss Fund remains actuarially sound. The withdrawing member’s equity interest in the Excess Loss

Fund shall be calculated on the basis of its pro rata share of equity balance at the time of withdrawal, but this figure shall be subject to subsequent adjustment because of any payments for losses and expenses by the Excess Loss Fund on account of occurrences taking place while the *Member Entity* participated, and the withdrawn member shall continue to be entitled to its pro rata share of interest earned on any balance it has remaining in the Excess Loss Fund. The Board shall be entitled to maintain reasonable reserves in the Excess Loss Fund, but after all *program years* during which the withdrawn member participated are closed out, the withdrawn member will be entitled to a return of any remaining equity it has in the Excess Loss Fund. A withdrawn member will be required to pay an assessment in the event its equity balance in the Excess Loss Fund becomes negative on account of losses paid from the Excess Loss Fund for occurrences taking place during the program years in which the withdrawn member participated.

The *cash contributions* of each *member entity* may be modified by the application of credits or charges as determined by the *Board of Directors* and in accordance with applicable policies and procedures adopted by the *Board*.

*Cash contribution* invoices are payable upon receipt and become in arrears thirty (30) days after the commencement of the *program year*. Interest and/or penalties for all such invoices in arrears shall be calculated in accordance with policies and procedures adopted by the *Board*.

### **Workers' Compensation Program**

The Workers' Compensation Program shall consist of the following:

- a. The *Authority* may purchase a policy of commercial *excess insurance* providing coverage with limits to be determined by the *Board of Directors*.
- b. The *Authority* may establish and maintain a *pooled coverage program* for *claims* below the commercial *excess insurance*, at the discretion of the *Board of Directors*, in an amount determined by the *Board*.
- c. *Member entities* desiring to become participants in this *pooled coverage program*, after July 1, 1990, may do so with the concurrence of at least two-thirds of the entities participating therein.
- d. *Member entities* may be expelled from this *pooled coverage program* by a vote of three-fourths of the remaining participants.
- e. If the Workers' Compensation Program is in effect, terms and conditions shall be as described in the Workers' Compensation Program Master Plan Document, attached hereto and incorporated herein by reference.

### **Workers' Compensation Cash Contributions**

The *cash contributions* shall be sufficient to pay the commercial *excess workers compensation insurance* premium, to fund the *Authority's pooled coverage program* (if any) and to pay a portion of the *Authority's* general and administrative expenses in an amount to be determined by the *Board of Directors*.

The cash contributions shall be based upon each *member entity's* DE-9 payroll for the four quarters ending March 31 prior to the commencement of the next *program year*.

*Cash contribution* invoices are payable upon receipt and become in arrears thirty (30) days after the commencement of the *program year*. Interest and/or penalties for all such invoices in arrears shall be calculated in accordance with policies and procedures adopted by the *Board*.

### **Property Program**

The Property Program shall consist of the following:

- a. The *Authority* may purchase a policy of *excess insurance* with limits to be determined by the *Board of Directors*. The coverage of such policy shall be as stated in the excess policy and as negotiated with the excess carrier(s).
- b. The *Authority* may establish a *pooled coverage program* for *claims* below the commercial *excess insurance*, at the discretion of the *Board of Directors*, in an amount determined by the *Board*.
- c. *Member entities* desiring to become participants in this *pooled coverage program*, after July 1, 1990, may do so with the concurrence of at least two-thirds of the entities participating therein.
- d. *Member entities* may be expelled from this *pooled coverage program* by a vote of three-fourths of the remaining participants.
- e. The terms and conditions of the Property Program shall be as described in the Property Program Master Plan Document attached hereto and incorporated herein by reference.

### **Property Program Cash Contributions**

The cash contributions shall be sufficient to pay the commercial excess property insurance premium, to fund the *Authority's pooled coverage program* (if any), and to pay a portion of the *Authority's* general and administrative expenses in an amount to be determined by the *Board of Directors*.

The *cash contribution* shall be based upon each *member entity's* stated property values and may be adjusted by the *Board* to take into account special or unusual risks.

*Cash contribution* invoices are payable upon receipt and become in arrears thirty (30) days after the commencement of the *program year*. Interest and/or penalties for all such invoices in arrears shall be calculated in accordance with policies and procedures adopted by the *Board*.

## ARTICLE XI

### MEMORANDUM OF COVERAGE FOR THE AUTOMOBILE/GENERAL LIABILITY POOLED COVERAGE PROGRAM

The following provisions shall apply with regard to the *Memorandum of Coverage* for the Automobile/General Liability *pooled coverage program*:

- a. No action shall lie against the *Authority* with respect to the coverages and related provisions defined in the *Memorandum of Coverage (Memorandum)* for the Automobile/General Liability *pooled coverage program* unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the *Memorandum*, nor until the amount of the covered party's obligation to pay shall have been finally determined either by judgment against the covered party, after actual trial, or by written agreement of the covered party, the claimant and the *Authority*. Any person or organization, or the representative thereof, who has secured such judgment or written agreement, shall thereafter be entitled to recover under said *Memorandum* to the extent of the coverage afforded therein. No person or entity shall have any right under said *Memorandum* to join the *Authority* as a party to any action against the covered party to determine the covered party's liability, nor shall the *Authority* be impleaded by the covered party or its legal representative. Bankruptcy or insolvency of the covered party or of the covered party's estate shall not relieve the *Authority* of any of its obligations under said *Memorandum*.
- b. The *Authority* shall be subrogated, to the extent of any payment hereunder, to all the covered party's rights of recovery, and the covered party shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:
  1. The *Authority* shall be reimbursed first to the extent of its actual payments. If any balance remains unpaid, it shall be applied to reimburse the covered party.
  2. The expenses of all such recovery proceedings shall be apportioned in the ratio of the respective recoveries. If there is no recovery in proceedings conducted by

the *Authority*, it shall bear the expenses thereof.

3. The Authority shall not be liable to any Covered Party for reimbursement of ultimate net loss covered under the Memorandum of Coverage unless the Covered Party has timely reported the claim and submitted, no later than two years after final judgment or settlement of the claim, a request for reimbursement, itemizing the amount sought and providing any necessary supporting details. This paragraph shall operate as a limitations period on any claims for reimbursement of covered ultimate net loss and operates in addition to the requirements set forth above of full compliance with all other terms of the Memorandum of Coverage.



## **ARTICLE XII**

### **ASSESSMENTS**

Upon a two-thirds vote of the *entire Board*, the *Board* shall have the authority to levy a *cash assessment* for any *pooled coverage program*. There must be a finding by the *Board* that there are insufficient funds available to the *Authority* to meet its legal obligations.

A *cash assessment* shall be directed only to those *member entities* or former *member entities* which participated in the *pooled coverage program* during the *program year* in which the *covered loss*, causing the assessment, was incurred.

Any costs, including attorney fees incurred by the *Authority* in collecting any *cash assessment*, shall be reimbursed in full by the *member entity* against which such collection action has been taken.

## ARTICLE XIII

### NEW MEMBERS

The *Board* has established the following criteria for considering new members:

**1. Pool Membership**

Applicants accepted for membership after April 28, 1992, must participate in at least Pool Layers C and D of the Automobile/General Liability *pooled coverage program*.

**2. Coverage**

JPAs accepted for membership after April 28, 1992, may not add new members for CJPRMA coverage purposes, for a period of three years following their admission to the new JPA member, without the specific approval of two-thirds of the CJPRMA *Board of Directors*.

**3. Application Process**

Any applicant desiring to be considered for membership by CJPRMA must adhere to the following procedure:

- a. Complete a CJPRMA application form which may include, but not be limited to, the following information:
  - 1) underwriting data for the current year;
  - 2) payrolls for the prior five years;
  - 3) loss history for the prior five years,
  - 4) a copy of the most recent *claims* audit and actuarial reports;
  - 5) a copy of the most recent audited Financial Statements;
  - 6) an indication as to the *pooled coverage programs* in which the prospective member wishes to participate and the anticipated *retained limit* for such programs; and
  - 7) descriptions of its risk management programs.

- b. Provide an actuarial study in a framework that is acceptable to CJPRMA.
- c. Provide a current accreditation or independent consultant's report from an organization that is acceptable to CJPRMA.
- d. Submit to a staff analysis of their qualifications for membership and provide whatever documentation is required.
- e. Comply with any other requests or considerations made by the *Board of Directors*.

Additionally, applicants may, at their option, request a non-binding vote regarding their membership application. Subsequent to that vote, it shall be the applicant's decision as to whether or not they wish to continue with the application process.

Upon review of a prospective *member entity's* application, and after necessary site visits by staff, a report, containing a staff recommendation, will be presented to the *Board of Directors*. The prospective *member entity* will be invited to attend a meeting of the *Board of Directors* to respond to questions concerning the application. The affirmative vote of two-thirds of the members of the *entire Board* is necessary for admission to the *Authority*.

## **ARTICLE XIV**

### **TERMINATION AND DISTRIBUTION**

Upon termination of the *Authority*, in accordance with Article XXIV of the JPA Agreement, the *Authority* shall take all necessary actions to properly dispose of all *claims* and other liabilities of the *Authority*. When all obligations have been satisfied, all remaining assets of the *Authority* shall be distributed as follows:

#### **Cash Contributions:**

All remaining *cash contributions* shall be distributed among only the parties which have been participants in its *pooled coverage program*, including any of those parties which previously withdrew, or were expelled, pursuant to Articles XXI and XXII of the JPA Agreement and in accordance with the terms and conditions of the Bylaws. Each qualifying participant's share shall be determined on the same basis as the redistributions for each Automobile/General Liability *program year*.

#### **Real and Personal Property (other than cash contributions):**

All real and personal property shall be liquidated. Each member entity of the *Authority*, at the time of the *Authority's* termination, and each expelled or withdrawn *member entity*, which participated in the Automobile/General Liability program within the five years immediately preceding the termination, shall qualify to receive a portion of the *Authority's* liquidated assets. The cash from the liquidated assets will be distributed in the same manner as the *cash contributions*. The *Board* shall determine and make such distribution within six months after the last pending *claim* or *covered loss*, subject to the JPA Agreement, has been finally resolved.

## ARTICLE XV

### AMENDMENTS

These Bylaws may be amended by a *majority vote* of the *entire Board* provided that any amendment is compatible with the purposes of the *Authority*, is not in conflict with the JPA Agreement, and has been submitted to the *Board* at least thirty (30) days in advance.

Any such amendment shall be effective immediately, unless otherwise designated.

**APPENDIX A**

**PRINCIPAL EXECUTIVE OFFICE**

The principal address of the California Joint Powers Risk Management Authority for the transaction of business and receipt of all notices shall be:

3201 Doolan Road, Suite 285  
Livermore, CA 94551