

RESOLUTION NO. 2007-202

Adopted by the Sacramento City Council

April 10, 2007

AUTHORIZING OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES EXCESS INSURANCE AUTHORITY JOINT POWERS AGREEMENT AND THE EXCESS WORKERS' COMPENSATION INSURANCE PROGRAM MEMORANDUM OF UNDERSTANDING

BACKGROUND

- A. Excess workers' compensation coverage benefits the City in situations involving severe injuries or illnesses, catastrophes such as multiple employees involved in one automobile accident, or an attack on a facility to which City safety personnel must respond. The rising cost of medical care also creates an increased risk of exceeding the City's \$2,000,000 self insured retention for workers' compensation injuries.
- B. The City purchased excess workers' compensation insurance through California Public Entity Insurance Authority (CPEIA) in FY 2006. By joining CPEIA, the City was able to access the CSAC Excess Insurance Authority (EIA) excess workers' compensation program. CPEIA is being terminated as an entity requiring the City to join EIA directly to enable the City to continue purchasing excess workers' compensation insurance through the JPA.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1: The City Manager is authorized to execute the CSAC Excess Insurance Authority Joint Powers Agreement and amended Excess Workers' Compensation Insurance Program Memorandum of Understanding.

Table of Contents:

- Exhibit A: CSAC Excess Insurance Authority, Joint Powers Agreement, 22 pages
- Exhibit B: CSAC Excess Insurance Authority, Memorandum of Understanding, Excess Workers' Compensation Program, 4 pages

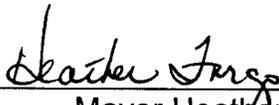
Adopted by the City of Sacramento City Council on April 10, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Mayor Fargo.

Noes: None.

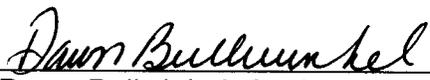
Abstain: None.

Absent: None.



Mayor Heather Fargo

Attest:



Dawn Bullwinkel, Assistant City Clerk



Adopted: October 5, 1979
Amended: May 12, 1980
Amended: January 23, 1987
Amended: October 7, 1988
Amended: March 1993
Amended: November 18, 1996
Amended: October 4, 2005
Amended: February 28, 2006

**JOINT POWERS AGREEMENT
CREATING THE CSAC EXCESS INSURANCE AUTHORITY**

This Agreement is executed in the State of California by and among those counties and public entities organized and existing under the Constitution of the State of California which are parties signatory to this Agreement. The CSAC Excess Insurance Authority was formed under the sponsorship of CSAC. All such counties, hereinafter called member counties, and public entities, hereinafter called member public entities, [collectively "members"] shall be listed in Appendix A, which shall be attached hereto and made a part hereof.

RECITALS

WHEREAS, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et seq.) permits two or more public agencies by agreement to exercise jointly powers common to the contracting parties; and

WHEREAS, Article 16, Section 6 of the California Constitution provides that insurance pooling arrangements under joint exercise of power agreements shall not be considered the giving or lending of credit as prohibited therein; and

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, pursuant to California Government Code Section 990.6, the cost of insurance provided by a local public entity is a proper charge against the local public entity; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4 and such pooling of self-insured claims or losses is not considered insurance nor subject to regulation under the Insurance Code; and

WHEREAS, the counties and public entities executing this Agreement desire to join together for the purpose of jointly funding and/or establishing excess and other insurance programs as determined;

NOW THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS

"CSAC" shall mean the County Supervisors Association of California, dba California State Association of Counties.

"Authority" shall mean the CSAC Excess Insurance Authority created by this Agreement.

"Board of Directors" or **"Board"** shall mean the governing body of the Authority.

"Claim" shall mean a claim made against a member arising out of an occurrence which is covered by an excess or primary insurance program of the Authority in which the member is a participant.

"Executive Committee" shall mean the Executive Committee of the Board of Directors of the Authority.

"Fiscal year" shall mean that period of twelve months which is established by the Board of Directors as the fiscal year of the Authority.

"Government Code" shall mean the California Government Code.

"Insurance program" or **"program"** shall mean a program of the Authority under which participating members are protected against designated losses, either through joint purchase of primary or excess insurance, pooling of self-insured claims or losses, purchased insurance or any other combination as determined by the Board. The Board of Directors or the Executive Committee may determine applicable criteria for determining eligibility in any insurance program, as well as establishing program policies and procedures.

"Joint powers law" shall mean Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code.

"Loss" shall mean a liability or potential liability of a member, including litigation expenses, attorneys' fees and other costs, which is covered by an insurance program of the Authority in which the member is a participant.

"Member county" shall mean any county which, through the membership of its supervisors in CSAC, has executed this Agreement and become a member of the Authority. "Member county" shall also include those entities or other bodies set forth in Article 3 (c).

"Member Public Entity" shall mean any California public entity which does not maintain a membership in CSAC, has executed this Agreement and become a member of the Authority, "Member Public Entity" shall also include those entities or other bodies set forth in Article 3(c).

"Occurrence" shall mean an event which is more fully defined in the memorandums of coverage and/or policies of an insurance program in which the participating county or participating public entity is a member.

"Participating county" shall mean any member county which has entered into a program offered by the Authority pursuant to Article 14 of this Agreement and has not withdrawn or been canceled therefrom pursuant to Articles 20 or 21.

"Participating public entity" shall mean any member public entity which has entered into a program offered by the Authority pursuant to Article 14 of this Agreement and has not withdrawn or been canceled therefrom pursuant to Articles 20 or 21.

"Self-insured retention" shall mean that portion of a loss resulting from an occurrence experienced by a member which is retained as a liability or potential liability of the member and is not subject to payment by the Authority.

"Reinsurance" shall mean insurance purchased by the Authority as part of an insurance program to cover that portion of any loss which exceeds the joint funding capacity of that program.

ARTICLE 2 PURPOSES

This Agreement is entered into by the member counties and member public entities in order to jointly develop and fund insurance programs as determined. Such programs may include, but are not limited to, the creation of joint insurance funds, including primary and excess insurance funds, the pooling of self-insured claims and losses, purchased insurance, including reinsurance, and the provision of necessary administrative services. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services.

ARTICLE 3 PARTIES TO AGREEMENT

(a) There shall be two classes of membership of the parties pursuant to this Agreement consisting of one class designated as Member Counties and another class designated as Member Public Entities.

(b) Each member county and member public entity, as a party to this Agreement, certifies that it intends to and does contract with all other members as parties to this Agreement and, with such other members as may later be added as parties to this Agreement pursuant to Article 19 as to all programs of which it is a participating member. Each member also certifies that the removal of any party from this Agreement, pursuant to Articles 20 or 21, shall not affect this Agreement or the member's obligations hereunder.

(c) A member for purposes of providing insurance coverage under any program of the Authority, may contract on behalf of, and shall be deemed to include:

Any public entity as defined in Government Code § 811.2 which the member requests to be added and from the time that such request is approved by the Executive Committee of the Authority.

Any nonprofit entity, including a nonprofit public benefit corporation formed pursuant to Corporations Code §§ 5111, 5120 and, 5065, which the member requests to be added and from the time that such request is approved by the Executive Committee.

(d) Any public entity or nonprofit so added shall be subject to and included under the member's SIR or deductible, and when so added, may be subject to such other terms and conditions as determined by the Executive Committee.

(e) Such public entity or nonprofit shall not be considered a separate party to this Agreement. Any public entity or nonprofit so added, shall not affect the member's representation on the Board of Directors and shall be considered part of and represented by the member for all purposes under this Agreement.

(f) The Executive Committee shall establish guidelines for approval of any public entity or nonprofit so added in accordance with Article 3(c) and (d).

(g) Should any conflict arise between the provisions of this Article and any applicable Memorandum of Coverage or other document evidencing coverage, such Memorandum of Coverage or other document evidencing coverage shall prevail.

ARTICLE 4

TERM

This Agreement shall continue in effect until terminated as provided herein.

ARTICLE 5

CREATION OF THE AUTHORITY

Pursuant to the joint powers law, there is hereby created a public entity separate and apart from the parties hereto, to be known as the CSAC Excess Insurance Authority, with such powers as are hereinafter set forth.

ARTICLE 6

POWERS OF THE AUTHORITY

The Authority shall have all of the powers common to General Law counties in California, such as Alpine County and all additional powers set forth in the joint powers law, and is hereby authorized to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following:

- (a) To make and enter into contracts.

- (b) To incur debts, liabilities, and obligations.
- (c) To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.
- (d) To sue and be sued in its own name, and to settle any claim against it.
- (e) To receive and use contributions and advances from members as provided in Government Code Section 6504, including contributions or advances of personnel, equipment, or property.
- (f) To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5.
- (g) To carry out all provisions of this Agreement.

Said powers shall be exercised pursuant to the terms hereof and in the manner provided by law.

ARTICLE 7 BOARD OF DIRECTORS

The Authority shall be governed by the Board of Directors, which shall be composed as follows:

a) One director from each member county, appointed by the member county board of supervisors and serving at the pleasure of that body. Each member county board of supervisors shall also appoint an alternate director who shall have the authority to attend, participate in and vote at any meeting of the Board when the director is absent. A director or alternate director shall be a county supervisor, other county official, or staff person of the member county, and upon termination of office or employment with the county, shall automatically terminate membership or alternate membership on the Board.

b) Ten directors consisting of seven directors and three alternate directors chosen in the manner specified in the Bylaws from those participating as public entity members. A director or alternate public entity director shall be an official, or staff person of the public entity member, and upon termination of office or employment with the public entity, shall automatically terminate membership or alternate membership on the Board.

c) Member county directors shall consist of a minimum of 80% of the eligible voting members on the Board. The public entity member directors shall be reduced accordingly to ensure at least 80% of the Board consists of county director members (By way of example, if the number of county members is reduced from the current 54 by member withdrawals to a level of 28, then county members would be at the 80% level, 28/35. If the county members go to 27, then the public entity members would lose one seat and would only have 6 votes).

Any vacancy in a county director or alternate director position shall be filled by the appointing county's board of supervisors, subject to the Provisions of this Article. Any vacancy in a public entity director position shall be filled by vote of the public entity members:

A majority of the membership of the Board shall constitute a quorum for the transaction of business. Each member of the Board shall have one vote. Except as otherwise provided in this Agreement or any other duly executed agreement of the members, all actions of the Board shall require the affirmative vote of a majority of the members; provided, that any action which is restricted in effect to one of the Authority's insurance programs, shall require the affirmative vote of a majority of those Board members who represent counties and public entities participating in that program. For purposes of an insurance program vote, to the extent there are public entity members participating in a program, the public entity Board members as a whole shall have a minimum of one vote. The public entity Board members may in no event cast more votes than would constitute 20% of the number of total county members in that program (subject to the one vote minimum). Should the number of public entity Board votes authorized herein be less than the number of public entity Board members at a duly noticed meeting, the public entity Board members shall decide among themselves which Board member shall vote. Should they be unable to decide, the President of the Authority shall determine which director(s) shall vote.

ARTICLE 8 POWERS OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and functions:

(a) The Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation to other bodies or persons unless otherwise prohibited by this Agreement, or any other duly executed agreement of the members or by law.

(b) The Board of Directors may adopt such resolutions as deemed necessary in the exercise of those powers and duties set forth herein.

(c) The Board shall form an Executive Committee, as provided in Article 11. The Board may delegate to the Executive Committee and the Executive Committee may discharge any powers or duties of the Board except adoption of the Authority's annual budget. The powers and duties so delegated shall be specified in resolutions adopted by the Board.

(d) The Board may form, as provided in Article 12, such other committees as it deems appropriate to conduct the business of the Authority. The membership of any such other committee may consist in whole or in part of persons who are not members of the Board; provided that the Board may delegate its powers and duties only to a committee of the Board composed of a majority of Board members and/or alternate members. Any committee which is not composed of a majority of Board members and/or alternate members may function only in an advisory capacity.

(e) The Board shall elect the officers of the Authority and shall appoint or employ necessary staff in accordance with Article 13.

(f) The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated.

(g) The Board shall develop, or cause to be developed, and shall review, modify as necessary, and adopt each insurance program of the Authority, including all provisions for reinsurance and administrative services necessary to carry out such program.

(h) The Board, directly or through the Executive Committee, shall provide for necessary services to the Authority and to members, by contract or otherwise, which may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal services.

(i) The Board shall provide general supervision and policy direction to the Chief Executive Officer.

(j) The Board shall receive and act upon reports of the committees and the Chief Executive Officer.

(k) The Board shall act upon each claim involving liability of the Authority, directly or by delegation of authority to the Executive Committee or other committee, body or person, provided, that the Board shall establish monetary limits upon any delegation of claims settlement authority, beyond which a proposed settlement must be referred to the Board for approval.

(l) The Board may require that the Authority review, audit, report upon, and make recommendations with regard to the safety or claims administration functions of any member, insofar as those functions affect the liability or potential liability of the Authority. The Board may forward any or all such recommendations to the member with a request for compliance and a statement of potential consequences for noncompliance.

(m) The Board shall receive, review and act upon periodic reports and audits of the funds of the Authority, as required under Articles 15 and 16 of this Agreement.

(n) The Board may, upon consultation with a casualty actuary, declare that any funds established for any program has a surplus of funds and determine a formula to return such surplus to the participating counties and participating public entities which have contributed to such fund.

(o) The Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

ARTICLE 9 MEETINGS OF THE BOARD OF DIRECTORS

(a) The Board shall hold at least one regular meeting each year and shall provide for such other regular meetings and for such special meetings as it deems necessary.

(b) The Chief Executive Officer of the Authority shall provide for the keeping of minutes of regular and special meetings of the Board, and shall provide a copy of the minutes to each member of the Board at the next scheduled meeting.

(c) All meetings of the Board, the Executive Committee and such committees as established by the Board pursuant to Article 12 herein, shall be called, noticed, held and conducted in accordance with the provisions of Government Code Section 54950 et seq.

ARTICLE 10 OFFICERS

The Board of Directors shall elect from its membership a President and Vice President of the Board, to serve for one-year terms.

The President, or in his or her absence, the Vice President, shall preside at and conduct all meetings of the Board and shall chair the Executive Committee.

ARTICLE 11 EXECUTIVE COMMITTEE

The Board of Directors shall establish an Executive Committee of the Board which shall consist of eleven members: the President and Vice President of the Board, and nine members elected by the Board from its membership.

The terms of office of the nine non-officer members shall be as provided in the Bylaws of the Authority.

The Executive Committee shall conduct the business of the Authority between meetings of the Board, exercising all those powers as provided for in Article 8, or as otherwise delegated to it by the Board.

ARTICLE 12 COMMITTEES

The Board of Directors may establish committees, as it deems appropriate to conduct the business of the Authority. Members of the committees shall be appointed by the Board, to serve two year terms, subject to reappointment by the Board. The members of each committee shall annually select one of their members to chair the Committee.

Each committee shall be composed of at least five members and shall have those duties as determined by the Board, or as otherwise set forth in the Bylaws.

Each committee shall meet on the call of its chair, and shall report to the Executive Committee and the Board as directed by the Board.

**ARTICLE 13
STAFF**

(a) **Principal Staff.** The following staff members shall be appointed by and serve at the pleasure of the Board of Directors:

(1) **Chief Executive Officer.** The Chief Executive Officer shall administer the business and activities of the Authority, subject to the general supervision and policy direction of the Board of Directors and Executive Committee; shall be responsible for all minutes, notices and records of the Authority and shall perform such other duties as are assigned by the Board and Executive Committee.

(2) **Treasurer.** The duties of the Treasurer are set forth in Article 16 of this Agreement. Pursuant to Government Code Section 6505.5, the Treasurer shall be the county treasurer of a member county of the Authority, or, pursuant to Government Code Section 6505.6, the Board may appoint one of its officers or employees to the position of Treasurer, who shall comply with the provisions of Government Code Section 6505.5 (a-d).

(3) **Auditor.** The Auditor shall draw warrants to pay demands against the Authority when approved by the Treasurer. Pursuant to Government Code Section 6505.5, the Auditor shall be the Auditor of the county from which the Treasurer is appointed by the Board under (2) above, or, pursuant to Government Code Section 6505.6, the Board may appoint one of its officers or employees to the position of Auditor, who shall comply with the provisions of Government Code Section 6505.5 (a-d).

(b) **Charges for Treasurer and Auditor Services.** Pursuant to Government Code Section 6505, the charges to the Authority for the services of Treasurer and Auditor shall be determined by the board of supervisors of the member county from which such staff members are appointed.

(c) **Other Staff.** The Board, Executive Committee or Chief Executive Officer shall provide for the appointment of such other staff as may be necessary for the administration of the Authority.

**ARTICLE 14
DEVELOPMENT, FUNDING AND IMPLEMENTATION
OF INSURANCE PROGRAMS**

(a) **Program Coverage.** Insurance programs of the Authority may provide coverage, including excess insurance coverage for:

- (1) Workers' compensation;
- (2) Comprehensive liability, including but not limited to general, personal injury, contractual, public officials errors and omissions, and incidental malpractice liability;
- (3) Comprehensive automobile liability;
- (4) Hospital malpractice liability;
- (5) Property and related programs;

and may provide any other coverages authorized by the Board of Directors. The Board shall determine, for each such program, a minimum number of participants required for program implementation and may develop specific program coverages requiring detailed agreements for implementation of the above programs.

(b) **Program and Authority Funding.** The members developing or participating in an insurance program shall fund all costs of that program, including administrative costs, as hereinafter provided. Costs of staffing and supporting the Authority, hereinafter called Authority general expenses, shall be equitably allocated among the various programs by the Board, and shall be funded by the members developing or participating in such programs in accordance with such allocations, as hereinafter provided. In addition, the Board may, in its discretion, allocate a share of such Authority general expense to those members which are not developing or participating in any program, and require those counties and public entities to fund such share through a prescribed charge.

(1) **Development Charge.** Development costs of an insurance program shall be funded by a development charge, as established by the Board of Directors. The development charge shall be paid by each participant in the program following the program's adoption by the Board. Development costs are those costs actually incurred by the Authority in developing a program for review and adoption by the Board of Directors, including but not limited to: research, feasibility studies, information and liaison work among participants, preparation and review of documents, and actuarial and risk management consulting services. The development charge may also include a share of Authority general expenses, as allocated to the program development function.

The development charge shall be billed by the Authority to all participants in the program upon establishment of the program and shall be payable in accordance with the Authority's invoice and payment policy.

Upon the conclusion of program development: any deficiency in development funds shall be billed to all participants which have paid the development charge, on a pro-rata or other equitable basis, as determined by the Board; any surplus in such funds shall be transferred into the Authority's general expense funds.

(2) **Annual Premium.** Except as provided in (3) below, all post-development costs of an insurance program shall be funded by annual premiums charged to the members participating in the program each policy year, and by interest earnings on the funds so accumulated. Such premiums shall be determined by the Board of Directors upon the basis of a cost allocation plan and rating formula developed by the Authority with the assistance of a casualty actuary, risk management consultant, or other qualified person. The premium for each participating member shall include that participant's share of expected program losses including a margin for contingencies as determined by the Board, program reinsurance costs, and program administrative costs for the year, plus that participant's share of Authority general expense allocated to the program by the Board.

(3) **Premium Surcharge**

(i) If the Authority experiences an unusually large number of losses under a program during a policy year, such that notwithstanding reinsurance coverage for large individual losses,

the joint insurance funds for the program may be exhausted before the next annual premiums are due, the Board of Directors may, upon consultation with a casualty actuary, impose premium surcharges on all participating members; or

(ii) If it is determined by the Board of Directors, upon consultation with a casualty actuary, that the joint insurance funds for a program are insufficient to pay losses, fund known estimated losses, and fund estimated losses which have been incurred but not reported, the Board of Directors may impose a surcharge on all participating members.

(iii) Premium surcharges imposed pursuant to (i) and/or (ii) above shall be in an amount which will assure adequate funds for the program to be actuarially sound; provided that the surcharge to any participating member shall not exceed an amount equal to three (3) times the member's annual premium for that year, unless otherwise determined by the Board of Directors.

Provided, however, that no premium surcharge in excess of three times the member's annual premium for that year may be assessed unless, ninety days prior to the Board of Directors taking action to determine the amount of the surcharge, the Authority notifies the governing body of each participating member in writing of its recommendations regarding its intent to assess a premium surcharge and the amount recommended to be assessed each member. The Authority shall, concurrently with the written notification, provide each participating member with a copy of the actuarial study upon which the recommended premium surcharge is based.

(iv) A member which is no longer a participating member at the time the premium surcharge is assessed, but which was a participating member during the policy year(s) for which the premium surcharge was assessed, shall pay such premium surcharges as it would have otherwise been assessed in accordance with the provisions of (i), (ii), and (iii) above.

(c) **Program Implementation and Effective Date.** Upon establishment of an insurance program by the Board of Directors, the Authority shall determine the manner of program implementation and shall give written notice to all members of such program, which shall include, but not be limited to: program participation levels, coverages and terms of coverage of the program, estimates of first year premium charges, program development costs, effective date of the program (or estimated effective date) and such other program provisions as deemed appropriate.

(d) **Late Entry Into Program.** A member which does not elect to enter an insurance program upon its implementation, pursuant to (c) above, or a county or public entity which becomes a party to this Agreement following implementation of the program, may petition the Board of Directors for late entry into the program. Such request may be granted upon a majority vote of the Board members, plus a majority vote of those board members who represent participants in the program. Alternatively, a county or public entity may petition the Executive Committee for late entry into the program, or a program committee, when authorized by an MOU governing that specific program, may approve late entry into that program. Such request may be granted upon a majority vote of the Executive Committee or program committee.

As a condition of late entry, the member shall pay the development charge for the program, as adjusted at the conclusion of the development period, but not subject to further adjustment,

and also any costs incurred by the Authority in analyzing the member's loss data and determining its annual premium as of the time of entry.

(e) **Reentry into A Program.** Any county or public entity that is a member of an insurance program of the Authority who withdraws or is cancelled from an insurance program under Articles 21 and 22, may not reenter such insurance program for a period of three years from the effective date of withdrawal or cancellation.

ARTICLE 15 ACCOUNTS AND RECORDS

(a) **Annual Budget.** The Authority shall annually adopt an operating budget pursuant to Article 8 of this Agreement, which shall include a separate budget for each insurance program under development or adopted and implemented by the Authority.

(b) **Funds and Accounts.** The Auditor of the Authority shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board of Directors. Separate accounts shall be established and maintained for each insurance program under development or adopted and implemented by the Authority. Books and records of the Authority in the hands of the Auditor shall be open to inspection at all reasonable times by authorized representatives of members.

The Authority shall adhere to the standard of strict accountability for funds set forth in Government Code Section 6505.

(c) **Auditor's Report.** The Auditor, within one hundred and twenty (120) days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Board and to each member.

(d) **Annual Audit.** Pursuant to Government Code Section 6505, the Authority shall either make or contract with a certified public accountant to make an annual fiscal year audit of all accounts and records of the Authority, conforming in all respects with the requirements of that section. A report of the audit shall be filed as a public record with each of the members and also with the county auditor of the county where the home office of the Authority is located and shall be sent to any public agency or person in California that submits a written request to the Authority. The report shall be filed within six months of the end of the fiscal year or years under examination. Costs of the audit shall be considered a general expense of the Authority.

ARTICLE 16 RESPONSIBILITIES FOR FUNDS AND PROPERTY

(a) The Treasurer shall have the custody of and disburse the Authority's funds. He or she may delegate disbursing authority to such persons as may be authorized by the Board of Directors to perform that function, subject to the requirements of (b) below.

(b) Pursuant to Government Code Section 6505.5, the Treasurer shall:

- (1) Receive and acknowledge receipt for all funds of the Authority and place them in the treasury of the Treasurer to the credit of the Authority.
 - (2) Be responsible upon his or her official bond for the safekeeping and disbursements of all Authority funds so held by him or her.
 - (3) Pay any sums due from the Authority, as approved for payment by the Board of Directors or by any body or person to whom the Board has delegated approval authority, making such payments from Authority funds upon warrants drawn by the Auditor.
 - (4) Verify and report in writing to the Authority and to members, as of the first day of each quarter of the fiscal year, the amount of money then held for the Authority, the amount of receipts since the last report, and the amount paid out since the last report.
- (c) Pursuant to Government Code Section 6505.1, the Chief Executive Officer, the Treasurer, and such other persons as the Board of Directors may designate shall have charge of, handle, and have access to the property of the Authority.
- (d) The Authority shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in the form specified by the Board of Directors, covering all officers and staff of the Authority, and all officers and staff who are authorized to have charge of, handle, and have access to property of the Authority.

ARTICLE 17 RESPONSIBILITIES OF MEMBERS

Members shall have the following responsibilities under this Agreement.

- (a) The board of supervisors of each member county shall appoint a representative and one alternate representative to the Board of Directors, pursuant to Article 7.
- (b) Each member shall appoint an officer or employee of the member to be responsible for the risk management function for that member and to serve as a liaison between the member and the Authority for all matters relating to risk management.
- (c) Each member shall maintain an active safety program, and shall consider and act upon all recommendations of the Authority concerning the reduction of unsafe practices.
- (d) Each member shall maintain its own claims and loss records in each category of liability covered by an insurance program of the Authority in which the member is a participant, and shall provide copies of such records to the Authority as directed by the Board of Directors or Executive Committee, or to such other committee as directed by the Board or Executive Committee.
- (e) Each member shall pay development charges, premiums, and premium surcharges due to the Authority as required under Article 14. Penalties for late payment of such charges, premiums and/or premium surcharges shall be as determined and assessed by the Board of Directors. After withdrawal, cancellation, or termination action under Articles 20, 21, or 23, each member shall pay promptly to the Authority any additional premiums due, as determined and assessed by the Board of

Directors under Articles 22 or 23. Any costs incurred by the Authority associated with the collection of such premiums or other charges, shall be recoverable by the Authority.

(f) Each member shall provide the Authority such other information or assistance as may be necessary for the Authority to develop and implement insurance programs under this Agreement.

(g) Each member shall cooperate with and assist the Authority, and any insurer of the Authority, in all matters relating to this Agreement, and shall comply with all Bylaws, and other rules by the Board of Directors.

(h) Each member county shall maintain membership in CSAC.

(i) Each member shall have such other responsibilities as are provided elsewhere in this Agreement, and as are established by the Board of Directors in order to carry out the purposes of this Agreement.

ARTICLE 18 ADMINISTRATION OF CLAIMS

(a) Subject to subparagraph (e), each member shall be responsible for the investigation, settlement or defense, and appeal of any claim made, suit brought, or proceeding instituted against the member arising out of a loss.

(b) The Authority may develop standards for the administration of claims for each insurance program of the Authority so as to permit oversight of the administration of claims by the members.

(c) Each participating member shall give the Authority timely written notice of claims in accordance with the provisions of the Bylaws.

(d) A member shall not enter into any settlement involving liability of the Authority without the advance written consent of the Authority.

(e) The Authority, at its own election and expense, shall have the right to participate with a member in the settlement, defense, or appeal of any claim, suit or proceeding which, in the judgment of the Authority, may involve liability of the Authority.

ARTICLE 19 NEW MEMBERS

Any California public entity may become a party to this Agreement and participate in any insurance program in which it is not presently participating upon approval of the Board of Directors, by a majority vote of the members, or by majority vote of the Executive Committee.

**ARTICLE 20
WITHDRAWAL**

(a) A member may withdraw as a party to this Agreement upon thirty (30) days advance written notice to the Authority if it has never become a participant in any insurance program pursuant to Article 14, or if it has previously withdrawn from all insurance programs in which it was a participant.

(b) After becoming a participant in an insurance program, a member may withdraw from that program only at the end of a policy year for the program, and only if it gives the Authority at least sixty (60) days advance written notice of such action.

**ARTICLE 21
CANCELLATION**

(a) Notwithstanding the provisions of Article 20, the Board of Directors may:

(1) Cancel any member from this Agreement and membership in the Authority, on a majority vote of the Board members. Such action shall have the effect of canceling the member's participation in all insurance programs of the Authority as of the date that all membership is canceled.

(2) Cancel any member's participation in an insurance program of the Authority, without canceling the member's membership in the Authority or participation in other programs, on a vote of two-thirds of the Board members present and voting who represent participants in the program.

The Board shall give sixty (60) days advance written notice of the effective date of any cancellation under the foregoing provisions. Upon such effective date, the member shall be treated the same as if it had voluntarily withdrawn from this Agreement, or from the insurance program, as the case may be.

(b) A member that does not enter one or more of the insurance programs developed and implemented by the Authority within the member's first year as a member of the Authority shall be considered to have withdrawn as a party to this Agreement at the end of such period, and its membership in the Authority shall be automatically canceled as of that time, without action of the Board of Directors.

(c) A member which withdraws from all insurance programs of the Authority in which it was a participant and does not enter any program for a period of six (6) months thereafter shall be considered to have withdrawn as a party to the Agreement at the end of such period, and its membership in the Authority shall be automatically canceled as of that time, without action of the Board of Directors.

(d) A member county that terminates its membership in CSAC shall be considered to have thereby withdrawn as a party to this Agreement, and its membership in the Authority and participation in any insurance program of the Authority shall be automatically canceled as of that time, without the action of the Board of Directors.

ARTICLE 22
EFFECT OF WITHDRAWAL OR CANCELLATION

(a) If a member's participation in an insurance program of the Authority is canceled under Article 21, with or without cancellation of membership in the Authority, and such cancellation is effective before the end of the policy year for that program, the Authority shall promptly determine and return to that member the amount of any unearned premium payment from the member for the policy year, such amount to be computed on a pro-rata basis from the effective date of cancellation.

(b) Except as provided in (a) above, a member which withdraws or is canceled from this Agreement and membership in the Authority, or from any program of the Authority, shall not be entitled to the return of any premium or other payment to the Authority, or of any property contributed to the Authority. However, in the event of termination of this Agreement, such member may share in the distribution of assets of the Authority to the extent provided in Article 23 provided; however, that any withdrawn or canceled member which has been assessed a premium surcharge pursuant to Article 14 (b) (3) (ii) shall be entitled to return of said member's unused surcharge, plus interest accrued thereon, at such time as the Board of Directors declares that a surplus exists in any insurance fund for which a premium surcharge was assessed.

(c) Except as provided in (d) below, a member shall pay any premium charges which the Board of Directors determines are due from the member for losses and costs incurred during the entire coverage year in which the member was a participant in such program regardless of the date of entry into such program. Such charges may include any deficiency in a premium previously paid by the member, as determined by audit under Article 14 (b) (2); any premium surcharge assessed to the member under Article 14 (b) (3); and any additional amount of premium which the Board determines to be due from the member upon final disposition of all claims arising from losses under the program during the entire coverage year in which the member was a participant regardless of date of entry into such program. Any such premium charges shall be payable by the member in accordance with the Authority's invoice and payment policy.

(d) Those members which who have withdrawn or been canceled pursuant to Articles 20 and 21 from any program of the Authority during a coverage year shall pay any premium charges which the Board of Directors determines are due from the members for losses and costs which were incurred during the county's participation in any program.

ARTICLE 23
TERMINATION AND DISTRIBUTION OF ASSETS

(a) A three-fourths vote of the total voting membership of the Authority, consisting of member counties, acting through their boards of supervisors, and the voting Board members from the member public entities, is required to terminate this Agreement; provided, however, that this Agreement and the

Authority shall continue to exist after such election for the purpose of disposing of all claims, distributing all assets, and performing all other functions necessary to conclude the affairs of the Authority.

(b) Upon termination of this Agreement, all assets of the Authority in each insurance program shall be distributed among those members which participated in that program in proportion to their cash contributions, including premiums paid and property contributed (at market value when contributed). The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending claim or other liability covered by the program.

(c) Following termination of this Agreement, any member which was a participant in an insurance program of the Authority shall pay any additional amount of premium, determined by the Board of Directors in accordance with a loss allocation formula, which may be necessary to enable final disposition of all claims arising from losses under that program during the entire coverage year in which the member was a participant regardless of the date of entry into such program.

ARTICLE 24
LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS
AND LEGAL ADVISORS

The members of the Board of Directors, Officers, committee members and legal advisors to any Board or committees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest.

No Director, Officer, committee member, or legal advisor to any Board or committee shall be responsible for any action taken or omitted by any other Director, Officer, committee member, or legal advisor to any committee. No Director, Officer, committee member or legal advisor to any committee shall be required to give a bond or other security to guarantee the faithful performance of their duties pursuant to this Agreement.

The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority and any Director, Officer, committee member or legal advisor to any committee for their actions taken within the scope of the authority of the Authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage as is hereinabove set forth.

**ARTICLE 25
BYLAWS**

The Board may adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Authority.

**ARTICLE 26
NOTICES**

The Authority shall address notices, billings and other communications to a member as directed by the member. Each member shall provide the Authority with the address to which communications are to be sent. Members shall address notices and other communications to the Authority to the Chief Executive Officer of the Authority, at the office address of the Authority as set forth in the Bylaws.

**ARTICLE 27
AMENDMENT**

A two-thirds vote of the total voting membership of the Authority, consisting of member counties, acting through their boards of supervisors, and the voting Board members from member public entities, is required to amend this Agreement.

**ARTICLE 28
PROHIBITION AGAINST ASSIGNMENT**

No member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any member shall have any right, claim or title to any part, share, interest, fund, premium or asset of the Authority.

**ARTICLE 29
AGREEMENT COMPLETE**

This Agreement constitutes the full and complete Agreement of the parties.

ARTICLE 30
EFFECTIVE DATE OF AMENDMENTS

Any amendment of this Agreement shall become effective upon the date specified by the Board and upon approval of any Amended Agreement as required in Article 27. Approval of any amendment by the voting boards of supervisors and public entity board member's must take place no later than 30 days from the effective date specified by the Board.

ARTICLE 31
DISPUTE RESOLUTION

When a dispute arises between the Authority and a member, the following procedures are to be followed:

(a) Request for Reconsideration. The member will make a written request to the Authority for the appropriate Committee to reconsider their position, citing the arguments in favor of the member and any applicable case law that applies. The member can also, request a personal presentation to that Committee, if it so desires.

(b) Committee Appeal. The committee responsible for the program or having jurisdiction over the decision in question will review the matter and reconsider the Authority's position. This committee appeal process is an opportunity for both sides to discuss and substantiate their positions based upon legal arguments and the most complete information available. If the member requesting reconsideration is represented on the committee having jurisdiction, that committee member shall be deemed to have a conflict and shall be excluded from any vote.

(c) Executive Committee Appeal. If the member is not satisfied with the outcome of the committee appeal, the matter will be brought to the Executive Committee for reconsideration upon request of the member. If the member requesting reconsideration is represented on the Executive Committee, that Executive Committee member shall be deemed to have a conflict and shall be excluded from any vote.

(d) Arbitration. If the member is not satisfied with the outcome of the Executive Committee appeal, the next step in the appeal process is arbitration. The arbitration, whether binding or non-binding, is to be mutually agreed upon by the parties. The matter will be submitted to a mutually agreed arbitrator or panel of arbitrators for a determination. If Binding Arbitration is selected, then of course the decision of the arbitrator is final. Both sides agree to abide by the decision of the arbitrator. The cost of arbitration will be shared equally by the involved member and the Authority.

(e) Litigation. If, after following the dispute resolution procedure paragraphs a-d, either party is not satisfied with the outcome of the non-binding arbitration process, either party may consider litigation as a possible remedy to the dispute.

ARTICLE 32
FILING WITH SECRETARY OF STATE

The Chief Executive Officer of the Authority shall file a notice of this Agreement with the office of California Secretary of State within 30 days of its effective date, as required by Government Code Section 6503.5 and within 70 days of its effective date as required by Government Code Section 53051.

APPENDIX A
JOINT POWERS AGREEMENT
CREATING THE CSAC EXCESS INSURANCE AUTHORITY

MEMBER COUNTIES (AS OF MARCH 2005)

ALAMEDA
ALPINE
AMADOR
BUTTE
CALAVERAS
COLUSA
CONTRA COSTA
DEL NORTE
EL DORADO
FRESNO
GLENN
HUMBOLDT
IMPERIAL
INYO
KERN
KINGS
LAKE
LASSEN
MADERA
MARIN
MARIPOSA
MENDOCINO
MERCED
MODOC
MONO
MONTEREY
NAPA
NEVADA
PLACER
PLUMAS
RIVERSIDE
SACRAMENTO
SAN BENITO
SAN BERNARDINO
SAN DIEGO
SAN JOAQUIN
SAN LUIS OBISPO
SANTA BARBARA
SANTA CLARA
SANTA CRUZ
SHASTA
SIERRA
SISKIYOU
SOLANO
SONOMA
STANISLAUS
SUTTER
TEHAMA
TRINITY
TULARE
TUOLUMNE
VENTURA
YOLO
YUBA

IN WITNESS WHEREOF, the undersigned party hereto has executed this Agreement on the date indicated below.

DATE: _____

MEMBER: _____

(Print Name of Member)

BY: _____

(Authorized signature of Member)

Seal:

APPROVED AS TO FORM:



ASST CITY ATTORNEY

IN WITNESS WHEREOF, the undersigned party hereto has executed this Agreement on the date indicated below.

DATE: _____

MEMBER: _____

(Print Name of Member)

BY: _____

(Authorized signature of Member)

Seal:

APPROVED AS TO FORM:

Shandra G. Falbott

ASST CITY ATTORNEY



ACTION REQUIRED

RECEIVED

December 22, 2006

DEC 27 2006

TO: Barbara Brenner, City of Sacramento
FROM: Michael Fleming, CEO
SUBJECT: Execution of CSAC EIA Joint Powers Agreement

RISK MGMT.

Last spring, we sent you a letter announcing that the first phase of the EIA/CPEIA restructure concluded with the amendment of the EIA Joint Powers Agreement by the counties. The Agreement was amended to allow public entity members to join the EIA directly. Along with membership rights, public entity members have been granted limited voting rights on the EIA Board of Directors and the Executive Committee.

Over the past nine months, we have been in the second phase of the restructure which involves transitioning the CPEIA members into the CSAC EIA. The membership and governance restructure will replace the need for the existing CPEIA structure on June 30, 2007. Therefore, CPEIA members are required to join the EIA directly before the next renewal date in order to maintain participation in the EIA's programs. For City of Sacramento, this means that we need to receive an executed EIA Joint Powers Agreement by July 1, 2007 in order for City of Sacramento to remain in the Excess Workers' Compensation Program. To date, we have not received the executed Joint Powers Agreement. If City of Sacramento does not execute the Joint Powers Agreement by May 1, 2007, City of Sacramento will effectively give the EIA notice of its intent to withdraw from the Program on July 1, 2007. However, such notice can be rescinded at any time by providing the executed Joint Powers Agreement prior to July 1, 2007.

In order to assure there is no interruption of coverage or services, please present the EIA Joint Powers Agreement to your governing body as soon as possible. To reference the documents related to the Joint Powers Agreement and the EIA/CPEIA restructure, please visit our website at www.csac-eia.org. If you have further questions regarding the restructure, please contact me or Gina Dean at the EIA or your broker at Alliant Insurance Services.

cc: Alliant Insurance Services

3017 Gold Canal Drive, Rancho Cordova, CA 95670 • (916)631-7363 • FAX (916)631-7112 • www.csac-eia.org

EXECUTIVE COMMITTEE:

Peggy Boroggin
President
Colusa County

Marcia Chadbourne
Vice President
Sonoma County

Ron Harvey
Contra Costa
County

Kimberly Kerr
Humboldt
County

Kristin McMenomy
Mendocino
County

James Brown
Merced
County

Van Maddox
Sierra
County

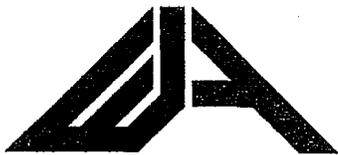
David L. Dolener
Stanislaus
County

Connie Conway
Tulare
County

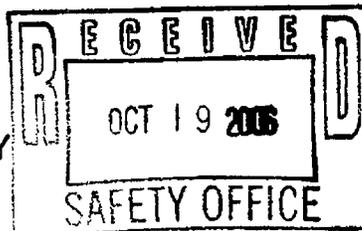
Chief Executive Officer: Michael Fleming

Stephen Underwood, Legal Counsel, Santa Barbara County

Chief Operating Officer: Gina Dean



**CSAC EXCESS
INSURANCE AUTHORITY**
A Public Agency



California Association of
Workers' Compensation
Administrators
Accredited with EAC 01/07

October 16, 2006

ACTION REQUIRED BY JUNE 30, 2007

To: Members, Excess Workers' Compensation (EWC) Program
 From: Gina Dean, Chief Operating Officer *[Signature]*
 Subject: Amendment to EWC Program MOU

At the meeting on October 6, 2006, the EIA Board of Directors approved amendments to the EWC Program Memorandum of Understanding (MOU). These amendments were primarily a result of the EIA restructure to incorporate the public entity membership, but also to clean up the document and create uniformity with other EIA documents. The amendments to the MOU were circulated to all members of the Program for review and comment prior to the Board's action, with no further changes or issues raised by the members. For your reference, the MOU amendments in redline and strikeout text are posted on the EIA's website at www.csac-eia.org.

Enclosed is a clean version of the amended MOU along with two signature pages, for execution by the members. From the EIA's standpoint, the designated representative to the EIA has authority to sign the amended MOU on behalf of the member. However, you may have internal procedures which require approval by your governing board even though the amendments approved by the Board are non-controversial in nature.

Members must execute the amended MOU by June 30, 2007. Failure to execute the amended MOU by June 30th will be tantamount to withdrawal from the Program effective July 1, 2007.

Upon execution of the amended MOU, please return one of the signed original signature pages to our office. Please let us know if you have any questions or need additional assistance.

Enclosures

3017 Gold Canal Drive, Rancho Cordova, CA 95670 • (916)631-7363 • FAX (916)631-7112 • www.csac-eia.org

EXECUTIVE COMMITTEE:

Peggy Scroggins President Colusa County	Marcia Chadbourne Vice President Sonoma County	Ron Harvey Contra Costa County	Kimberly Kerr Humboldt County	Kristin McMenomey Mendocino County	James Brown Merced County	Van Moddcox Sierra County	David L. Dolanar Stanislaus County	Connie Conway Tulare County
Chief Executive Officer: Michael Fleming		Stephen Underwood, Legal Counsel, Santa Barbara County			Chief Operating Officer: Gina Dean			



Adopted: March 5, 1993
Amended: October 4, 1996
Amended: October 6, 2006

MEMORANDUM OF UNDERSTANDING EXCESS WORKERS' COMPENSATION PROGRAM

This Memorandum of Understanding is entered into by and between the CSAC Excess Insurance Authority (hereinafter referred to as the "Authority") and the participating members who are signatories to this Memorandum.

1. **Joint Powers Agreement.** Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating the CSAC Excess Insurance Authority (hereinafter referred to as "Agreement"), and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. **Annual Premium.** The participating members, in accordance with the provisions of Article 14(b)(2) of the Agreement, shall be assessed an annual premium for the purpose of funding the Excess Workers' Compensation Program (hereinafter referred to as the "Program"). Annual premiums shall include expected losses for the policy period, including incurred but not reported losses (IBNR), as well as a margin for contingencies based upon a confidence level as determined by the Board of Directors of the Authority (hereinafter Board), and adjustments, if any, for a surplus or deficit from all program policy periods. In addition, the premium shall include program reinsurance costs and program administrative costs, plus the Authority's general expense allocated to the Program by the Board for the next policy period.

3. **Cost Allocation.** Each participating member's share of annual premium shall be determined pursuant to a cost allocation plan as described in Article 14(b)(2) of the Agreement. The Board approved cost allocation plan is attached hereto as Exhibit A and may be amended from time to time by an affirmative vote of the majority of the Board representing the members participating in the Program.

4. **Dividends and Assessments.** The Program shall be funded in accordance with paragraph 2 above. In general, the annual premium, as determined by the Board, will be established at a level which will provide adequate overall funding without the need for adjustments to past policy period(s) in the form of dividends and assessments. However, should the Program for any reason not be adequately funded, except as otherwise provided herein, pro-rata assessments to the participating members may be utilized to ensure the approved funding level for those policy periods individually or for a block of

policy periods, in accordance with the provisions of Article 14(b)(3) of the Agreement. Pro-rata dividends will be declared as provided herein. Dividends may also be declared as deemed appropriate by the Board.

5. Closure of Policy Periods. Notwithstanding any other provision of this Memorandum, the following provisions are applicable:

- (a) Upon reaching ten (10) years of maturity after the end of a program period, that period shall be "closed" and there shall be no further dividends declared or assessments made with respect to those program periods except as set forth in paragraphs 6(a) and 6(b), below;
- (b) Notwithstanding sub-paragraph (a) above, the Board may take action to leave a policy period "open" even though it may otherwise qualify for closure. In addition, the last ten (10) policy periods shall always remain "open" unless the Board takes specific action to declare any of the last ten (10) policy periods closed.
- (c) Dividends and assessments (other than as outlined in paragraphs 6(a) and 6(b), below) shall be administered to the participating members based upon the proportion of premiums paid to the Program in "open" periods only. For purposes of administering dividends and assessments pursuant to this sub-paragraph, all "open" policy periods shall be considered as one block.

6. Declaration of Dividends. Dividends shall be payable from the Program to a participating member in accordance with its proportionate funding to the Program during the applicable program period as follows:

- (a) A dividend shall be declared at the time a program period is closed on all amounts over the 90% confidence level;
- (b) A dividend shall be declared at the time a program period is closed on all amounts which represent premium surcharge amounts assessed pursuant to Article 14(b)(3) of the Agreement where the funding exceeds the 80% confidence level.

7. Memorandum of Coverage. A Memorandum of Coverage will be issued by the Authority evidencing membership in the Program and setting forth terms and conditions of coverage.

8. **Claims Administration.** Each participating member is required to comply with the Authority's Underwriting and Claims Administration Standards (including Addendum A - W.C. Claims Administration Guidelines) as amended from time to time, and which are attached hereto as Exhibit B and incorporated herein.
9. **Late Payments.** Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a Program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.
10. **Disputes.** Any question or dispute with respect to the rights and obligations of the parties to this Memorandum regarding coverage shall be determined in accordance with the Joint Powers Agreement Article 31, Dispute Resolution.
11. **Amendment.** This Memorandum may be amended by two-thirds of the CSAC Excess Insurance Authority's Board of Directors and signature on the Memorandum by the member's designated representative who shall have authority to execute this Memorandum. Should a member of the Program fail to execute any amendment to this Memorandum within the time provided by the Board, the member will be deemed to have withdrawn as of the end of the policy period.
12. **Complete Agreement.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.
13. **Severability.** Should any provision of this Memorandum be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.
14. **Effective Date.** This Memorandum shall become effective on the effective date of coverage for the member and upon approval by the Board of any amendment, whichever is later.
15. **Execution in Counterparts.** This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date set forth below.

Dated: _____

CSAC Excess Insurance Authority

Dated: _____

Member Entity: _____

APPROVED AS TO FORM:

Sandra J. Yalbot

ASST CITY ATTORNEY

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date set forth below.

Dated: _____

CSAC Excess Insurance Authority

Dated: _____

Member Entity: _____

APPROVED AS TO FORM:

Sandra G. Galbott

ASS. CITY ATTORNEY



EXHIBIT A

EXCESS WORKERS' COMPENSATION PROGRAM COST ALLOCATION PLAN

As delegated by the Board of Directors, the Executive Committee will determine the specific allocation of all costs among the members subject to the following parameters:

Actuarial Analysis

An annual actuarial analysis will be performed using loss data and payroll collected from the members. The analysis will determine the necessary funding rates at various confidence levels and using various discount assumptions. Different rates may be developed for different groups or classes of business as is deemed necessary or appropriate by the Executive Committee. At the March Board meeting, the Board of Directors will select the funding level rates and discount factors to be used based upon the actuarial analysis and recommendations from the actuary, the Underwriting Committee and the Executive Committee.

Pool Contributions

The total needed deposit pool contribution will be determined by multiplying the rates described above by the payroll for all of the members participating in the pool. Estimated payroll for the year being funded will be used. The Executive Committee may break the pool into different layers for allocation purposes, and may apply a different loss experience modification for each layer as is deemed appropriate based on loss frequency. In general, the lower layers will be subject to greater experience modification and the higher layers will be subject to lower experience modification or no experience modification. Within the layers, the larger members will be subject to greater experience modification than the smaller members. After the experience modification has been applied for each layer, there will be a pro-rata adjustment back to the total needed deposit pool contribution. This amount will be collected from the members at the beginning of the policy period. The actual payroll for the period will be determined after the completion of the policy period and an adjustment to each member's pool contribution will be made to account for the difference between the estimated and actual payroll. Additional contributions will be collected or return contributions will be refunded as appropriate.

Reinsurance Premiums

The reinsurance premium will be determined through negotiations with the reinsurer(s) and approved by the Board upon recommendation of the

Underwriting and Executive Committees. This premium will then be allocated among the members based upon their estimated payroll. Adjustments will be made based on the actual payroll upon completion of the policy period in the same manner as described in the Pool Contribution section above.

EIA Administration Fees

The total EIA Administration Fees will be determined through the annual budgeting process with an appropriate amount allocated to the Excess Workers' Compensation Program. These fees will be allocated among the members as determined by the Executive Committee. In general, the basis for this allocation will be each member's percentage of the total pool contributions and reinsurance premium.

Deviation From the Standard

The Executive Committee may establish policies to deviate from the standard allocation methodology selected for each year on a case-by-case basis, if necessary. They may also elect to further delegate some or all of the decision-making authority described herein to the Underwriting Committee.



EXHIBIT B

Adopted: December 6, 1985
Amended: January 23, 1987
Amended: October 6, 1995
Amended: October 1, 1999
Amended: October 3, 2003
Amended: October 1, 2004

CSAC EXCESS INSURANCE AUTHORITY

UNDERWRITING AND CLAIMS ADMINISTRATION STANDARDS

I. GENERAL

- A. Each Member shall appoint an official or employee of the Member to be responsible for the risk management function and to serve as a liaison between the Member and the Authority for all matters relating to risk management.
- B. Each Member shall maintain a loss prevention program and shall consider and act upon all recommendations of the Authority concerning the reduction of unsafe conditions.
- C. Each Member shall maintain records of claims in each category of insurance covered by a program of the Authority and shall provide copies of such records to the Authority as directed by the Executive, Underwriting or Claims Review Committees.

Such records shall provide the following information by fiscal year: number of claims (open and closed); amounts paid, amounts reserved and total incurred. Allocated expenses shall be included. If losses are capped, the excess amount shall be indicated.

II. EXCESS WORKERS' COMPENSATION PROGRAM

- A. The Member shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
 1. The Member shall use only qualified personnel to administer its workers' compensation claims. At least one person in the claims office (whether in-house or outside administrator) shall be certified by the State of California as a qualified administrator of self-insured workers' compensation plans.
 2. Qualified defense counsel experienced in workers' compensation law and practice shall handle litigated claims. Members are

encouraged to utilize attorneys who have the designation "Certified Workers' Compensation Specialist, the State Bar of California, Board of Legal Specialization".

3. The Member shall use the Authority's Workers' Compensation Claims Administration Guidelines (Addendum A) and shall advise its claims administrator that these guidelines are utilized in the Authority's workers' compensation claims audits.
- B. The Member shall provide the Authority written notice of any potential excess workers' compensation claims in accordance with the requirements of the Authority's bylaws. Updates on such claims shall be provided as requested by the Authority and/or the Authority's excess carrier.
- C. A claims administration audit utilizing the Authority's Workers' Compensation Claims Administration Guidelines (Addendum A) shall be performed once every two (2) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claim experience or number of large claims or
 2. There is a change of workers' compensation claims administration firms or
 3. The Member is a new member of the Excess Insurance Authority.

The claims audit shall be performed by a firm selected by the Authority. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to the Authority within sixty (60) days of receipt of the audit.

- D. The Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

III. EXCESS LIABILITY PROGRAMS

- A. The Member shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
1. The Member shall use only qualified personnel to administer its liability claims.

2. Qualified defense counsel experienced in tort liability law shall handle litigated claims. Members are encouraged to utilize defense counsel experienced in the subject at issue in the litigation.
 3. The Member shall use the Liability Claims Administration Guidelines (Addendum B) and shall advise its claims administrator that these guidelines be utilized in the Authority's liability claims audits.
- B. The Member shall provide the Authority written notice of any potential excess liability claim in accordance with the requirements of the Authority's Bylaws. Updates on such claims shall be provided as requested by the Authority and/or the Authority's excess carrier.
- C. A claims administration audit utilizing the Authority's Liability Claims Administration Guidelines (Addendum B) shall be performed once every three (3) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claims experience or number of large claims or
 2. There is a change of liability claims administration firms or
 3. The Member is a new member of the Excess Insurance Authority.

The claims audit shall be performed by a firm selected by the Authority. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to the Authority within sixty (60) days of receipt of the audit.

- D. The Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

IV. PROPERTY PROGRAMS

- A. The Member shall maintain appropriate records including a complete list of insured locations and schedule of values pertaining to all real property. Copies of such records shall be provided to the Authority or its brokers as requested by the Executive or Property Committees.
- B. Each Member shall perform a real property replacement valuation for all locations over one million dollars. Valuations shall be equivalent to the Marshall Swift system and shall be performed at least once every five (5)

years. New members shall have an appraisal or valuation performed within one year from entry into the Program.

V. MEDICAL MALPRACTICE PROGRAM

- A. The Member, if a member of Medical Malpractice Program I (hereinafter Program I), or Mid Mal Program; or the third party administrator for Medical Malpractice Program II (hereinafter Program II); shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
1. The Member (Program I and Mid Mal Program) or third party administrator (Program II) shall use only qualified personnel to administer its health facility claims.
 2. Qualified defense counsel experienced in health facility law shall handle litigated claims.
 3. The Member (Program I and Mid Mal Program) or third party administrator (Program II) shall use the "Claims Reporting And Handling Guidelines" in the CSAC Excess Insurance Authority Medical Malpractice Excess Insurance Program Operating And Guidelines Manual (hereinafter OPERATING AND GUIDELINES MANUAL), and shall advise its claims administrator that these claims handling guidelines are utilized in the Authority's medical malpractice claims audits.
- B. The Member (Program I and Mid Mal Program) or third party administrator (Program II) shall provide the Authority and its excess carrier written notice of any potential excess claim or "major incident" in accordance with the requirements of the Authority and of the excess carrier as stated in the OPERATING AND GUIDELINES MANUAL. Updates on such claims or major incidents shall be provided as requested by the Authority and/or the Authority's excess carrier.
- C. A claims administration audit utilizing the Authority's Claims Reporting and Handling Guidelines in the OPERATING AND GUIDELINES MANUAL shall be performed once every three (3) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claims experience or number of large claims or
 2. There is a change of health facility claims administration firms or
 3. The Member is a new member of the Excess Insurance Authority or

4. The Medical Malpractice Committee requests an audit.

The claims audit shall be performed by a firm selected by the Authority. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to the Authority within sixty (60) days of receipt of the audit.

- D. If a Member of Program I or the Mid Mal Program, the Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.
- E. The Member shall have an effective risk management program in accordance with the "Risk Management Guidelines" as states in the OPERATING AND GUIDELINES MANUAL.

VI. SANCTIONS

- A. The Authority shall provide the Member written notification of the Member's failure to meet any of the above-mentioned standards or of other concerns, which affect or could affect the Authority.
- B. The Member shall provide a written response outlining a program for corrective action within sixty (60) days of receipt of the Authority's notification.
- C. After approval by the Executive Committee of the Member's corrective program, the Member shall implement the approved program within ninety (90) days. The Member may request an additional sixty (60) days from the Executive Committee. Further requests for extensions shall be referred to the Board of Directors.
- D. Failure to comply with subsections B or C may result in cancellation of the Member from the affected Authority insurance program in accordance with the provisions in the Joint Powers Agreement.
- E. Notwithstanding any other provision herein, any Member may be canceled pursuant to the provision of the Joint Powers Agreement.

ADDENDUM TO EXHIBIT B



Adopted: December 6, 1985
Amended: March 4, 1988
Amended: October 7, 1988
Amended: October 6, 1995
Amended: October 1, 1999
Amended: June 6, 2003

ADDENDUM A WORKERS' COMPENSATION CLAIMS ADMINISTRATION GUIDELINES

The following Guidelines have been adopted by the CSAC Excess Insurance Authority in accordance with Article 18(b) of the March 1993 Amended Joint Powers Agreement Creating the CSAC Excess Insurance Authority.

I. CASE LOAD

- A. On or after 07/01/2004, the claims examiner assigned to the Member shall handle a caseload not to exceed 175 indemnity claims. This caseload will include future medical cases with every 4 future medical cases counted as 1 indemnity case.
- B. Supervisory personnel should not handle a caseload, although they may handle specific issues.

II. CASE REVIEW AND DOCUMENTATION

- A. Documentation should reflect any significant developments in the file and include a plan of action. The examiner should review the file every 45 days. The supervisor shall monitor any significant activity on the file every 120 days. An accomplishment level of 95% shall be considered acceptable.

III. COMPENSABILITY

- A. The initial compensability determination (accept claim, deny claim or delay acceptance pending the results of additional investigation) and the reasons for such a determination will be made and documented in the file within fourteen (14) calendar days of the filing of the claim with the employer. An accomplishment level of 100% shall be considered acceptable.
- B. Delay of benefit letters shall be mailed in compliance with Department of Industrial Relations' guidelines. An accomplishment level of 100% shall be considered acceptable.
- C. The final compensability determination shall be made by the claims examiner or supervisor within 90 days of employer receipt of the claim form. An accomplishment level of 100% shall be considered acceptable.

IV. THREE POINT CONTACT

- A. The claims examiner shall conduct the three (3) point contact with the injured worker, employer representative and treating physician within five (5) working days of receipt of the notice of the claim. An accomplishment level of 95% shall be considered acceptable.

V. INITIAL INDEMNITY PAYMENT

- A. The initial indemnity payment will be issued and mailed to the injured employee within fourteen (14) days of the first day of disability. This shall not apply with salary continuation. An accomplishment level of 100% shall be considered acceptable.
- B. The properly completed DWC Benefit Notice shall be mailed to the employee within fourteen (14) days. An accomplishment level of 100% shall be considered acceptable.
- C. Late payments due directly to the injured worker must include the self imposed 10% penalty in accordance with Labor Code Section 4650. An accomplishment level of 100% shall be considered acceptable.

VI. SUBSEQUENT INDEMNITY PAYMENTS

- A. All indemnity payments subsequent to the first payment will be verified, except for obvious long-term disability, and issued in compliance with Labor Code Section 4651. An accomplishment level of 100% shall be considered acceptable.
- B. Late payments must include the self-imposed 10% penalty in accordance with Labor Code Section 4650. An accomplishment level of 100% shall be considered acceptable.

VII. FINAL INDEMNITY PAYMENTS

- A. All final payments will be issued with the appropriate DWC benefit notices.

VIII. TRANSPORTATION EXPENSE

- A. Transportation reimbursement will be mailed within fifteen (15) working days of the receipt of the claim for reimbursement. Advance travel expense payments will be mailed to the injured employee ten (10) days prior to the anticipated date of travel. An accomplishment level of 100% shall be considered acceptable.

IX. MEDICAL PAYMENTS

- A. Medical treatment billings (physician, pharmacy, hospital, physiotherapist, etc.) will be matched to the file, reviewed for correctness, approved for

payment and paid within sixty (60) calendar days of receipt. An accomplishment level of 100% shall be considered acceptable.

- B. The medical provider must be notified in writing within 30 working days if a medical bill is contested, denied or incomplete.
- C. A bill review process should be utilized wherever possible. There should be participation in a PPO whenever possible.

X. PHYSICIAN CONTACT

- A. In cases involving loss of time from work, the attending physician's office will be contacted within five (5) working days of notice of claim. Such contact will continue as needed during the continuation of temporary disability to assure that treatment is related to a compensable injury or illness.

XI. LITIGATED CASES

The claims administrator and Member shall establish written guidelines for the handling of litigated cases. The guidelines should, at a minimum, include the points below, which may be adopted and incorporated by reference as "the guidelines".

A. Defense of Litigated Claims

1. The claims administrator shall promptly initiate investigation of issues identified as material to potential litigation. The Member shall be alerted to the need for in-house investigation, or the need for a contract investigator who is acceptable to the Member. The Member shall be kept informed on the scope and results of investigations.
2. The claims administrator shall, in consultation with the Member, assign defense counsel from a list approved by the Member. (Note: To comply with Government Code Section 25203, the Member's list should be approved by a two-thirds vote of the board of supervisors.)
3. Settlement proposals directed to the Member shall be forwarded by the claims administrator or defense counsel in a concise and clear written form with a reasoned recommendation. Settlement proposals shall be presented to the Member as directed so as to insure receipt in sufficient time to process the proposal.
4. Knowledgeable Member personnel shall be involved in the preparation for medical examinations and trial, when appropriate or deemed necessary by the Member so that all material evidence and witnesses are utilized to obtain a favorable result for the defense.
5. The claims administrator shall comply with any reporting requirement of the Member.

B. Subrogation

1. In all cases where a third party (other than a Member employee or agent) is responsible for the injury to the employee, the third party shall be contacted within 10 days with notification of the Member's right to subrogation and the recovery of certain claim expenses. If the third party is a governmental entity, a claim shall be filed with the governing board (or State Board of Control as to State entities) within 6 months of the injury or notice of the injury.
2. Periodic contact shall be made with the responsible party and/or insurer to provide notification of the amount of the estimated recovery to which the Member will be entitled.
3. The file will be monitored to determine the need to file a complaint in civil court in order to preserve the statute of limitations.
4. If the injured worker brings a civil action against the party responsible for the injury, the claims administrator shall consult with the Member about the value of the subrogation claim and other considerations. Upon Member authorization, subrogation counsel shall be assigned to file a Lien or a Complaint in Intervention in the civil action.
5. Whenever practical, the claims administrator will aggressively pursue recovery in any subrogation claim. They should attempt to maximize the recovery for benefits paid, and assert a credit against the injured workers' net recovery for future benefit payments.

XII. VOCATIONAL REHABILITATION

- A. Adjusting personnel will notify the injured worker of their potential rights to rehabilitation benefits per Labor Code Section 4636 after 90 days of aggregate temporary disability and get the treating doctor to determine if injured worker is a Qualified Injured Worker.
- B. Determination of the Qualified Injured Worker/Non-Qualified Injured Worker status shall be made in accordance with Labor Code Section 4637. The adjusting personnel shall advise the injured worker of his/her rehabilitation benefits in accordance with the Rules of the Division of Workers' Compensation, within ten (10) days of knowledge of medical eligibility. The claims administrator will:
 1. Notify the employer of the employee's permanent work restrictions so that the employer can determine the availability of permanent modified or alternate work.
 2. Make timely referral to a Qualified Rehabilitation Representative in accordance with Labor Code Section 4637

3. Control rehabilitation costs.
4. Attempt to secure the prompt conclusion of vocational rehabilitation benefits, and settle rehabilitation where appropriate.

XIII. FISCAL HANDLING

- A. Active indemnity cases will be balanced with appropriate file documentation on a semi-annual basis to verify that statutory benefits are paid, and medical, legal and vocational rehabilitation charges are appropriate. An accomplishment level of 100% shall be considered acceptable.

XIV. EXCESS INSURANCE

- A. Potential Workers' Compensation excess cases shall be reported in accordance with the reporting criteria established by The Bylaws of the CSAC Excess Insurance Authority.

All cases which meet the established reporting criteria are to be reported within five (5) working days of the day on which it is known the criterion is met. An accomplishment level of 100% shall be considered acceptable.

XV. AWARD PAYMENT

- A. Payments on undisputed Awards, Commutations, or Compromise and Releases will be issued within ten (10) days following receipt of the appropriate document. An accomplishment level of 100% shall be considered acceptable.

XVI. PENALTIES

- A. If the Member utilizes a third party administrator, the Member will be advised of the assessment of any penalty for delayed payment and the reason thereof, and the administrators plans for payment of such penalty within five (5) days of assessment. An accomplishment level of 100% shall be considered acceptable.
- B. If the Member utilizes a third party administrator, the Member, in their contract with the administrator, shall specify who is responsible for specific penalties.

XVII. RESERVES

- A. Using the information available at the time, an initial reserve will be established at the most probable case value. Claim reserves shall be reviewed on a regular basis and updated as case values increase or decrease.

XVIII. RESOLUTION OF CLAIM

- A. Within ten (10) days of receiving medical information indicating that a claim be finalized, the claims examiner shall take appropriate action to finalize the claim. An accomplishment level of 95% shall be considered acceptable.

XIX. CASE CLOSURE

- A. All indemnity cases will be closed within sixty (60) days of the final financial transaction or final correspondence to the injured worker as required by law. An accomplishment level of 95% shall be considered acceptable.
- B. All medical only cases will be closed or transferred to an indemnity status by the ninetieth (90) day following incurral. An accomplishment level of 95% shall be considered acceptable.

XX. TELEPHONE INQUIRIES

- A. Return calls will be made within one working day of the original telephone inquiry. An accomplishment level of 90% shall be considered acceptable.

XXI. INCOMING CORRESPONDENCE

- A. All correspondence received will have the date of receipt clearly stamped on the front side. An accomplishment level of 100% shall be considered acceptable.

XXII. RETURN CORRESPONDENCE

- A. All correspondence requiring a written answer will have such answer completed and transmitted within five (5) working days of receipt. An accomplishment level of 95% is acceptable.

XXIII. SETTLEMENTS

- A. The third party administrator shall obtain the Member's authorization on all settlements or stipulations in excess of the settlement authority provided in any provision of the individual contract between the Member and the claims administrator.
- B. No agreement shall be authorized involving liability, or potential liability, of the Authority without the advance written consent of the Authority.