

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 4/14/04
Department Name: General Services
Department No.: 063
Agenda Date: 4/27/04
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Ronald S. Cortez, Director
General Services

STAFF CONTACT: John A. Forner, Risk Program Manager
805.884.6865

SUBJECT: Amendment to the CSAC Excess Insurance Authority Joint Powers Agreement

Recommendation(s):

That the Board of Supervisors:

Approve an Amendment to the CSAC Excess Insurance Authority Joint Powers Agreement to allow a member county to extend their insurance coverage(s) through the EIA to a nonprofit entity whose main purpose is for the benefit of the member or for the benefit of the member in combination with other public agencies.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 3., A Strong, Professionally Managed County Organization, and with actions required by law or by routine business necessity.

Executive Summary and Discussion:

At the March 5, 2004 meeting, the Board of Directors of the CSAC Excess Insurance Authority (EIA) approved the circulation of a proposed amendment to Article 3(b) of the Joint Exercise of Powers Agreement (JPA) for a vote of the members' Board of Supervisors. This amendment is being proposed to allow a member county to extend their insurance coverage(s) through the EIA to a nonprofit entity whose main purpose is for the benefit of the member or for the benefit of the member in combination with other public agencies. Attached is Article 3 of the JPA with the proposed amendments in redline and strikeout text, as well as a Policy Statement developed by the EIA's Executive Committee to define parameters in which nonprofit entities could be added to a member's coverage.

The EIA has requested that General Services/Risk Management present the proposed amendment to your Board. The amendment to the JPA will become effective upon approval of two-thirds of the Boards of Supervisors (36 boards). It is hoped this will occur well in advance of the July 1st renewals as this could affect coverage for the nonprofits that are currently covered. If not approved, it will be necessary for currently covered nonprofits to secure insurance coverage(s) elsewhere.

Over the years, several entities classified as nonprofits have been added to member counties' coverage documents as provided by Article 3(b) of the JPA. Recently, the EIA has received numerous additional requests from members to add coverage for nonprofits. The EIA's Legal Counsel [Chief Assistant County Counsel Stephen D. Underwood] has advised that Government Code § 811.2 referenced in Article 3 does not allow for the addition of nonprofits. Government Code § 811.2 reads:

§ 811.2 Public Entity

“Public entity” includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State.

At the meeting on May 5, 2002, the EIA Board of Directors discussed some concerns with regard to allowing members to add nonprofits without proper scrutiny. Notwithstanding, because there are certain entities where it does make sense to allow coverage to be provided through the member, the EIA Executive Committee developed a Policy Statement to define the parameters in which nonprofits could be added if the JPA amendment is ultimately approved. The members, however, will still maintain first line of control in making the determination whether the nonprofit exists, as its main purpose, for the benefit of the member.

As noted above, the EIA has previously approved certain nonprofits and those have been added to the members' coverage documents. At the October 2, 2003 meeting, the EIA Board of Directors recognized these and approved the continuation of coverage while the JPA amendment is in progress (Article 3(f) provides that the coverage document overrules the JPA Agreement in this conflict circumstance). If the JPA amendment is approved, then these entities would not require any additional approvals. If the JPA amendment fails, then the approval granted to these entities would “sunset”, and they would be removed from coverage at the first renewal after the point in time it is determined that the JPA amendment has failed, subject to a minimum of 60 days advance written notice from the EIA. Pending requests from members to add nonprofits are being held in suspense pending the outcome of the JPA amendment.

Mandates and Service Levels:

No change in program or service levels.

Fiscal and Facilities Impacts:

Currently, the Santa Barbara County Finance Corporation is covered under the County of Santa Barbara's Excess Workers' Compensation and Excess General Liability Programs; therefore, should the JPA amendment fail, it would be necessary for the County to secure separate coverage as set forth above.

Special Instructions:

Upon approval by your Board, please return the enclosed certified signature pages to Risk Management. Upon receipt, Risk Management will then transmit the certified signature page to the CSAC Excess Insurance Authority office.

Concurrence:

Auditor-Controller
County Counsel
Risk Management



Adopted: October 5, 1979
Amended: May 12, 1980
Amended: January 23, 1987
Amended: October 7, 1988
Amended: March 1993
Amended: November 18, 1996
Amended: _____, 2004

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

This Agreement is executed in the State of California by and among those counties 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, 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 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 county arising out of an occurrence which is covered by an excess insurance program of the Authority in which the member county 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 counties are protected against designated losses, either through joint purchase of 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 county, including litigation expenses, attorneys' fees and other costs, which is covered by an insurance program of the Authority in which the member county 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 (b).

"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 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.

"Self-insured retention" shall mean that portion of a loss resulting from an occurrence experienced by a member county which is retained as a liability or potential liability of the county 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 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 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) Each member county, as a party to this Agreement, certifies that it intends to and does contract with all other member counties as parties to this Agreement and, with such other counties as may later be added as parties to this Agreement pursuant to Article 19 as to all programs of which it is a participating county. Each member county 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 county's obligations hereunder.

(b) A member county 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 county 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 county requests to be added and from the time that such request is approved by the Executive Committee.

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

(d) 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 county's representation on the Board of Directors and shall be considered part of and represented by the member county for all purposes under this Agreement.

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

(f) 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 become effective when executed and returned to the Authority by at least two-thirds (2/3) of the member counties. The Authority shall promptly notify all member counties in writing of such effective date. 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 counties in California 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 member counties 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 of 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.

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

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 member counties, action of the Board shall require the affirmative vote of a majority of the members present and voting; provided, that any action which is restricted in effect to one of the Authority's insurance programs, shall only require the affirmative vote of a majority of those members present and voting who represent counties participating in that program.

At any meeting at which a quorum is initially present the Board may continue to transact business notwithstanding the withdrawal of enough members to leave less than a quorum, provided that each action is approved by at least a majority of the number required to constitute a quorum, and is taken subject to the above stated proviso concerning actions restricted to one program and to special voting requirements stated elsewhere in this Agreement.

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 member counties 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 member counties, 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 General Manager/Secretary.

(j) The Board shall receive and act upon reports of the committees and the General Manager/Secretary.

(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 county, insofar as those functions affect the liability or potential liability of the Authority. The Board may forward any or all such recommendations to the county 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 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 General Manager/Secretary 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 nine members: the President and Vice President of the Board, and seven members elected by the Board from its membership.

The terms of office of the seven 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) **General Manager/Secretary.** The General Manager/Secretary 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 General Manager/Secretary 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 county 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 member counties 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 member counties 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 member counties which are not developing or participating in any program, and require those counties 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 member counties 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 county shall include that county'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 county's share of Authority general expense allocated to the program by the Board.

Annual premiums shall be billed by the Authority at the beginning of each policy year and shall be payable in accordance with the Authority's invoice and payment policy. At the end of each policy year, program costs shall be audited by the Authority. Any deficiency or surplus in the premium paid by a participating county, as shown by such audit, shall be adjusted by a corresponding increase or decrease in the premium charge to that county for the next succeeding year, unless the county withdraws or is canceled from the program, in which case the provisions of Article 22 shall control.

(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 counties; 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 counties.

(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 county shall not exceed an amount equal to three (3) times the county'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 county'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 Board of Supervisors of each participating county in writing of its recommendations regarding its intent to assess a premium surcharge and the amount recommended to be assessed each county. The Authority shall, concurrently with the written notification, provide each participating county with a copy of the actuarial study upon which the recommended premium surcharge is based.

(iv) A member county which is no longer a participating county at the time the premium surcharge is assessed, but which was a participating county 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 member counties 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 county which does not elect to enter an insurance program upon its implementation, pursuant to (c) above, or a county 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 vote of two-thirds of all members present and voting, plus a vote of two-thirds of those members present and voting who represent counties participating in the program.

As a condition of late entry, the county 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 county's loss data and determining its annual premium as of the time of entry.

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 member counties.

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 county.

(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 the county auditor of each member county within six months of the end of the fiscal year 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 member counties, 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 General Manager/Secretary, 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 MEMBER COUNTIES

Member counties shall have the following responsibilities under this Agreement.

(a) The board of supervisors of each county shall appoint a representative and one alternate representative to the Board of Directors, pursuant to Article 7.

(b) Each county shall appoint an officer or employee of the county to be responsible for the risk management function within that county and to serve as a liaison between the county and the Authority for all matters relating to risk management.

(c) Each county 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 county shall maintain its own claims and loss records in each category of liability covered by an insurance program of the Authority in which the county 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 county 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 county 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 county 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 county 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 county shall maintain membership in CSAC.

(i) Each county 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 county shall be responsible for the investigation, settlement or defense, and appeal of any claim made, suit brought, or proceeding instituted against the county 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 member counties.

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

(d) A member county 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 county 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 non-member county maintaining its membership in CSAC 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 vote of two-thirds of the members present and voting.

ARTICLE 20 WITHDRAWAL

(a) A member county 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 county 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 county from this Agreement and membership in the Authority, on a vote of two-thirds of the Board members present and voting. Such action shall have the effect of canceling the county's participation in all insurance programs of the Authority as of the date that all membership is canceled.

(2) Cancel any county's participation in an insurance program of the Authority, without canceling the county'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 counties participating 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 county 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 county that does not enter one or more of the insurance programs developed and implemented by the Authority within the member county'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 county 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 county'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 county the amount of any unearned premium payment from the county 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 county 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 county may share in the distribution of assets of the Authority to the extent provided in Article 23 provided; however, that any withdrawn or canceled county which has been assessed a premium surcharge pursuant to Article 14 (b) (3) (ii) shall be entitled to return of said county'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 county shall pay any premium charges which the Board of Directors determines are due from the county for losses and costs incurred during the entire coverage year in which the county 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 county, as determined by audit under Article 14 (b) (2); any premium surcharge assessed to the county under Article

14 (b) (3); and any additional amount of premium which the Board determines to be due from the county upon final disposition of all claims arising from losses under the program during the entire coverage year in which the county was a participant regardless of date of entry into such program. Any such premium charges shall be payable by the county in accordance with the Authority's invoice and payment policy.

(d) Those counties 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 counties for losses and costs which were incurred during the county's participation in any program.

ARTICLE 23 TERMINATION AND DISTRIBUTION OF ASSETS

(a) This Agreement may be terminated by three-fourths of the member counties, acting through their boards of supervisors; 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 counties 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 county 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 county 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 county as directed by the county. Each member county shall provide the Authority with the address to which communications are to be sent. Member counties shall address notices and other communications to the Authority to the General Manager/Secretary of the Authority, at the office address of the Authority as set forth in the Bylaws.

ARTICLE 27 AMENDMENT

This Agreement may be amended at any time by a vote of two-thirds of the member counties, acting through their boards of supervisors.

ARTICLE 28
PROHIBITION AGAINST ASSIGNMENT

No member county may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any county 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 approval of any Amended Agreement by the board of supervisors of two-thirds of the member counties.

ARTICLE 31
DISPUTE RESOLUTION

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

(a) Request for Reconsideration. The member county will make a written request to the Authority for the appropriate Committee to reconsider their position, citing the arguments in favor of the member county and any applicable case law that applies. The member county 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 county 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 county 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 county. If the member county 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 county 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 county 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 General Manager/Secretary 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.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:
JOHN A. FORNER,
RISK PROGRAM ADMINISTRATOR

By: _____
Risk Program Administrator

APPENDIX A
JOINT POWERS AGREEMENT
CREATING THE CSAC EXCESS INSURANCE AUTHORITY

MEMBER COUNTIES (AS OF JULY 1999)

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
YOLO
YUBA

**CSAC Excess Insurance Authority
Policy Statement on Covering Non-profit Entities
Pursuant to JPA Article 3(b)**

1. **Purpose.** The purpose of this policy statement is to define parameters in which nonprofit entities may be added to a member's coverage pursuant to Article 3(b) of the Joint Powers Agreement.
2. **Delegation of Authority.** The Underwriting Committee is delegated authority to add nonprofit entities pursuant to the conditions contained herein as it relates to the Excess W.C. and Excess Liability Programs. As respects Primary Workers' Compensation, Primary Liability, General Liability 2, Medical Malpractice, and Property programs, the corresponding governing committee is delegated authority to add nonprofit entities pursuant to the conditions contained herein. This authority shall not be further delegated to staff.
3. **Benefit of the Member Condition.** For all programs except Property, the non-profit must exist, as its main purpose, for the benefit of the member or for the benefit of the member in combination with other public agencies. For Property, the "benefit of the member" condition may be satisfied, or the member need only show that the member has an insurable interest.
4. **General Conditions.** For all programs, the following criteria must also be satisfied:
 - There must be a completed application with signature including a member's Governing Board Resolution or Minute Order.
 - There must be a determination that this is an acceptable risk (no unique or unusual exposure).
 - The Member must be aware and willing to accept the responsibility for the SIR/deductible, the premium payment, and to act as a liaison between the Member and the non-profit regarding risk management and loss prevention problems/questions.
 - The Member must gather the renewal information and provide/include that information with the EIA application.
 - The Member will accept responsibility for providing appropriate loss prevention services for the non-profit, either in-house or by contract.
 - A written agreement is required between the Member and the non-profit.
5. **Effective Date.** This policy statement will become effective upon adoption by the Executive Committee and amendment of Article 3 of the EIA Joint Powers Agreement allowing nonprofit entities to be covered.

ARTICLE 3
PARTIES TO AGREEMENT

(a) Each member county, as a party to this Agreement, certifies that it intends to and does contract with all other member counties as parties to this Agreement and, with such other counties as may later be added as parties to this Agreement pursuant to Article 19 as to all programs of which it is a participating county. Each member county 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 county's obligations hereunder.

(b) A member county 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 county 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 county requests to be added and from the time that such request is approved by the Executive Committee.

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

(d) 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 county's representation on the Board of Directors and shall be considered part of and represented by the member county for all purposes under this Agreement.

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

(f) 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.