

**CALIFORNIA HOUSING WORKERS' COMPENSATION AUTHORITY
EXECUTIVE COMMITTEE MEETING**

November 15, 2018

Agenda Item 9.A.

JPA ADMINISTRATION

SUBJECT: Review of the CHWCA JPA Agreement – Ric Burwell, Executive Director

ISSUE:

At its August 2018 meeting, the Executive Committee approved updated Underwriting Guidelines. While this action was initiated largely to meet a requirement for triennial *Accreditation with Excellence* by California Association of Joint Powers Authorities (CAJPA), the Committee agreed with staff's suggested undertaking of a more comprehensive review of the JPA's governing documents. Accordingly, staff and counsel reviewed CHWCA's Joint Powers Agreement, Bylaws, Financial Stability Plan and Underwriting Guidelines and jointly bring forward proposed updates at this time.

Since the governing body's approval process varies throughout the documents, they are being brought forward as separate action items in this agenda.

EXECUTIVE DIRECTOR'S COMMENTS AND OBSERVATIONS:

A thorough review of an agency's governing documents is not a glamorous job, but I strongly believe in its importance. Documents can become stale and sometimes even noncompliant with current laws and regulations. More commonly, amendments or updates to one document do not automatically get replicated in its companions.

Occasionally, the tone and temperament of the agency itself can change over time. Its governing documents, while seeking to preserve its core values, should also reflect the evolution of those values.

With that in mind, below are the objectives staff sought to achieve in this review:

The documents should define, shape and uphold over time the core values and strategic goals of the organization. Simultaneously, they should allow for institutional changes to come about in a reasonable and intentional manner.

The documents should allow and encourage effective, timely and responsive operations of the organization's business, in CHWCA's case, by clear and broad delegation to its Executive Committee.

The documents should be kept congruent with one another.

Language should be clear, concise and direct. Language should be contemporary, inclusive and gender-neutral. As much as possible, language should be unburdened by jargon or overly bureaucratic usage.

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In particular, language should reflect that CHWCA is not an insurer, but rather a shared-risk pooling of resources and efforts. CHWCA's member agencies are just that: members. They are not just customers; they are also owners and are jointly responsible and accountable to one another. In that sense, the member agencies do not pay *premiums* to a for-profit company; they make *contributions* to their own mutual protection and welfare. This specific distinction in usage – which generated many of the proposed edits – is practical as well as philosophical or symbolic. Many risk-sharing pools seek to remove terminology that closely mirrors insurance, favoring instead language based on the JPA's legal status as a government agency. Under many circumstances, it is more favorable to the JPA that its Memoranda of Coverage and other key documents be interpreted as contracts among equals, not as insurance policies.

I am pleased to report back to the EC that I found CHWCA's governing documents to be robust, well-crafted and closely aligned to the objectives outlined above.

BACKGROUND AND HISTORY:

CHWCA's Joint Powers Agreement was most recently updated in 2005.

The proposed changes to the Agreement are shown in redline format. One proposed change is a revision of the requirement to maintain a quorum throughout the course of a meeting. The other substantive change is to update replace "premium(s)" with "contributions(s)" throughout the document.

Amendment of the JPA Agreement requires a two-thirds approval by the member agencies, acting through their governing bodies.

STAFF RECOMMENDATION:

Staff recommends the Executive Committee recommend to the Board approval of attached updates to the Joint Powers Authority Agreement.

REFERENCE MATERIALS ATTACHED:

A. Draft JPA Agreement Draft (In redline)

JOINT POWERS AGREEMENT CREATING THE CALIFORNIA HOUSING WORKERS' COMPENSATION AUTHORITY (CHWCA)

This Agreement is executed in the State of California by and among those public housing authorities, housing authorities and redevelopment agencies, or housing commissions, organized and existing under the Constitution of the State of California, which are parties signatory to this Agreement. All such agencies hereinafter called Members, shall be listed in Exhibit 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 (§ 6500 et seq.) permits two or more public agencies by Agreement to exercise jointly powers common to the contracting parties; and

WHEREAS, Article 16, § 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 § 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a broker, or any combination of these; and

—WHEREAS, pursuant to California Government Code § 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 § 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 § 990.4 and such joint pooling of self-insured claims or losses is not considered insurance nor subject to regulation under the Insurance Code; and

WHEREAS, the Member executing this Agreement desires to join with other Members for the purpose of jointly funding a program of workers' compensation coverage;

NOW THEREFORE, the parties agree as follows:

ARTICLE I

PURPOSES

This Agreement is entered into by the Members in order that they may jointly develop and fund a self-insurance program for workers' compensation and employers' liability, which provides for the pooling of self-insured claims or losses among the members. Such program may include, but shall not be limited to: the creation of a joint self-insurance fund, the purchase of reinsurance, and/or excess insurance coverage, 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 2

PARTIES TO AGREEMENT

A. Each Member 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 public housing authorities as may later be added as parties to this Agreement pursuant to provisions in the Bylaws. Each Member also certifies that the removal of any party from this Agreement pursuant to Section P of the Bylaws shall not affect this Agreement or the Member's obligations hereunder.

B. A Member may contract on behalf of and provide coverage to any additional entity from the time that the Member provides the Authority written notice of the named inclusion of such entity and the additional entity is approved by a majority of the Executive Committee. Such additional entities shall not be considered a separate party to this Agreement, shall not affect the Member's representation on the Board of Directors, and shall be part of and represented by the Member for all purposes under this Agreement.

ARTICLE 3

TERM

This Agreement shall become effective when executed and returned to this Authority by at least three Members. The Authority shall promptly notify all Members in writing of such effective date. This Agreement shall continue in effect until terminated as provided herein and in the Bylaws.

ARTICLE 4

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 California Housing Workers' Compensation Authority, with such powers as are hereinafter set forth.

ARTICLE 5

POWERS OF THE AUTHORITY

The Authority shall have all of the powers common to public housing authorities 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 Members as provided in Government Code § 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 § 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 6

BOARD OF DIRECTORS

The Authority shall be governed by the Board of Directors, composed of one representative from each Member. The Board representative shall be the Executive Director or his or her designee. Each Member Executive Director shall also appoint an alternate representative who shall have the authority to attend, participate in, and vote at any meeting of the Board when the representative is absent. The representative and alternate shall be an official or staff person of the Member, and upon termination of

office or employment with the Member, shall automatically terminate membership or alternate membership on the Board.

Any vacancy in a representative or alternate representative position shall be filled by the appointing Member's Executive Director, subject to the provisions of this Section.

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 the Bylaws or any other duly executed agreement of the Members, action of the Board shall require the affirmative vote of a majority of the Members present and voting.

At any meeting at which a quorum no longer present, the Board may ~~not continue to transact business~~ take action on any item of 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.

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ARTICLE 7

POWERS OF BOARD OF DIRECTORS

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

1. 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 these Bylaws, or any other duly executed agreement of the Members or by law.
2. The Board shall elect an Executive Committee, as provided in Section D of the Bylaws. The Board may delegate to the Executive Committee and the Executive Committee may discharge any powers or duties of the Board.
3. The Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

ARTICLE 8

MINIMUM PARTICIPATION PERIOD

The Member shall participate in the Authority's coverage program for a minimum period of three years. During the initial three year period, this Agreement may be terminated only by the Authority in accordance with the provisions of Section Q of the Bylaws. The minimum three year period shall begin the first date of coverage and expire at the end of three consecutive years.

ARTICLE 9

PREMIUMCONTRIBUTION ASSESSMENTS

If aggregate premiumcontributions are insufficient to pay losses and administrative expenses for a fiscal year, the Executive Committee may assess and collect premiumcontribution assessments, in addition to premiumcontributions, pursuant to Bylaw sections ~~I.2.e (1) and/or (2)~~J. 2. c and in accordance with ~~Resolution 2003-03—the~~ Financial Stability Plan.

The Member's share of any premiumcontribution assessment shall bear the same relation to the total premiumcontribution assessments charged all members as the Member's premiumcontribution bears to the aggregate premiumcontributions collected from all Members during that fiscal year. Any premiumcontribution assessment shall be due and payable at such time and in such manner as the Executive Committee determines.

The voluntary withdrawal or involuntary expulsion of the Member from the Authority shall not discharge or affect the Member's obligation to pay premiumcontribution assessments for all coverage periods in which the Member participated.

ARTICLE 10

BYLAWS

A. The Authority shall be governed pursuant to the Bylaws, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference, and by such amendments to the Bylaws as may from time to time be adopted. Wherever in this Agreement "Bylaws" are referred to, said Bylaws shall be those set forth in Exhibit B, as may be amended. Each party to this agreement agrees to comply with and be bound by the provisions of said Bylaws and further agrees that the Authority shall be operated pursuant to the Agreement and said Bylaws.

B. The Bylaws may be amended by two-thirds (2/3) vote of the members of the Executive Committee.

ARTICLE 11

DISPOSITION OF PROPERTY AND FUNDS

A. In the event of the dissolution of the Authority, the complete recession, or other final termination of this Agreement by all public housing authorities then parties hereto, any property interest or surplus that is remaining in the Authority following a discharge of all obligations shall be disposed of as provided for by the Bylaws.

B. "Obligations", as referred to herein, shall include, but are not limited to, all payments required by law, together with all reserves established for the purpose of paying workers' compensation claims and related claim costs, together with any other legal obligations incurred by the Authority pursuant to this Agreement.

C. In the event a Member withdraws from or terminates membership in this Agreement, that Members' interest in the property and funds of the Authority shall be determined as set forth in the Bylaws.

ARTICLE 12 SEVERABILITY

Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any laws of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

A. Pursuant to the provisions of Section 895, et seq. of the California Government Code, each member (the indemnitor) hereto agrees to defend, indemnify, and hold harmless each other member (the indemnitees) from any liability, claim, or judgment for injury or damages caused by a negligent or wrongful act or omission of an agent, officer and/or employee of a member the indemnitor which occurs or arises out of performance of this Agreement, provided that, pursuant to Government Code Section 6512.2, Section 895.2 is specifically not applicable to the Members for purposes of this Agreement.

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B. The tort liability of the Authority, all members of the Board of Directors or Executive Committee appointed thereby, and all officers and employees of the Authority, shall be controlled by the provisions of Division 3.6 of Title I of the California Government Code.

C. The Authority may insure itself to the extent deemed necessary by the Board of Directors against loss, liability, and claims arising out of or connected with this Agreement.

D. The debts, liabilities, and obligations of the Authority do not constitute the debts, liabilities, and/or obligations of any Member.

ARTICLE 14 ENFORCEMENT

The Authority is hereby given the power to enforce this Agreement. In the event suit is brought under this Agreement, the prevailing party shall pay all costs incurred in bringing such action, including reasonable attorney's fees as fixed by the court.

ARTICLE 15

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 Program Administrator of the Authority at the office address of the Authority as set forth in the Bylaws.

ARTICLE 16

AMENDMENT

This Agreement may be amended at any time by vote of two-thirds of the Members, acting through their governing bodies.

ARTICLE 17

EFFECTIVE DATE OF AMENDMENTS

Any amendment of this Agreement shall become effective upon the Authority receiving notice of the approval of any Amended Agreement by the governing bodies of two-thirds of the Members.

ARTICLE 18

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 public housing authorities shall have any right, claim or title to any part, share, interest, fund, premiumcontribution, or asset of the Authority.

ARTICLE 19

FILING WITH SECRETARY OF STATE

The Program Administrator 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 § 6503.5 and within 70 days of its effective date as required as required by Government Code § 54051 53051.

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

Dated:

PUBLIC HOUSING AUTHORITY

By:

(Type Name)

(Housing Authority)

EXHIBIT A

CHWCA MEMBERS

**ALAMEDA CITY HOUSING AUTHORITY
ALAMEDA COUNTY HOUSING AUTHORITY
BENICIA CITY HOUSING AUTHORITY
BUTTE COUNTY HOUSING AUTHORITY
CONTRA COSTA COUNTY HOUSING AUTHORITY
EUREKA CITY/HUMBOLDT COUNTY HOUSING AUTHORITY
FRESNO HOUSING AUTHORITY
KERN COUNTY HOUSING AUTHORITY
KINGS COUNTY HOUSING AUTHORITY
MADERA CITY HOUSING AUTHORITY
MARIN COUNTY HOUSING AUTHORITY
MENDOCINO COUNTY COMMUNITY DEVELOPMENT COMMISSION
MERCED COUNTY HOUSING AUTHORITY
MONTEREY COUNTY HOUSING AUTHORITY
PASO ROBLES CITY HOUSING AUTHORITY
PLUMAS COUNTY COMMUNITY DEVELOPMENT COMMISSION
RIVERBANK CITY HOUSING AUTHORITY
RIVERSIDE COUNTY HOUSING AUTHORITY
SACRAMENTO HOUSING & REDEVELOPMENT AGENCY
SAN BERNARDINO COUNTY HOUSING AUTHORITY
SAN DIEGO HOUSING COMMISSION
SAN JOAQUIN COUNTY HOUSING AUTHORITY
SAN LUIS OBISPO CITY HOUSING AUTHORITY
SAN MATEO COUNTY HOUSING AUTHORITY
SANTA BARBARA CITY HOUSING AUTHORITY
SANTA CLARA COUNTY HOUSING AUTHORITY
STANISLAUS COUNTY HOUSING AUTHORITY
SUTTER COUNTY HOUSING AUTHORITY
TULARE COUNTY HOUSING AUTHORITY
UPLAND CITY HOUSING AUTHORITY
VENTURA AREA HOUSING AUTHORITY
WASCO CITY HOUSING AUTHORITY
YOLO COUNTY HOUSING AUTHORITY**