



Good Neighbors

San Diego  
Housing Commission

## REPORT

**DATE ISSUED:** April 1, 2005 **ITEM 101**

**REPORT NO:** HCR05-23  
For the Agenda of April 8, 2005

**SUBJECT:** California Housing Worker's Compensation Authority  
Joint Powers Agreement

### SUMMARY

**Issue:** Should the Housing Commission take action to approve the proposed amendment to the California Housing Worker's Compensation Authority (CHWCA) Joint Powers Authority (JPA) Agreement (Agreement) approved by the CHWCA Board of Directors?

**Recommendation:** That the Housing Commission approve the proposed amendment to CHWCA's Agreement to clarify CHWCA's position on premium assessments and to align Article 13 relating to the indemnification of CHWCA's Board of Directors (Attachment 1).

**Fiscal Impact:** None

### BACKGROUND

On August 6, 1990, the Housing Commission authorized the Executive Director to execute a Joint Powers Authority Agreement, relative to the California Housing Workers' Compensation Authority, to participate in a pooled Workers' Compensation insurance program CHWCA came into existence when the Housing Commission, and two other Housing Authorities, obtained Board approval to form the first statewide Workers' Compensation self-insurance pool for Public Housing Authorities (PHA) in the United States. The Housing Commission received a Certificate of Consent to Self-Insure by the State Department of Industrial Relations, in accordance with the Labor Code and California Administration Code, to establish self-insurance reserve funds, and jointly purchase excess insurance, risk management and administrative services. On September 10, 1999, the Housing Commission approved the proposed amendment to the Agreement to include the pooling of claims or losses among PHA members to be in agreement with language of new amendments to Government Code Sections §990.8 and §6512.2 relating to the right of terminated members.



A state agency authorized by the City of San Diego

## DISCUSSION

Based upon recommendation from CHWCA's Legal Counsel (Attachment 2), several changes to the JPA Agreement were approved by CHWCA Executive Committee at the November 19, 2004 Executive Committee meeting for adoption by the Board of Directors, acting through their governing bodies.

The first proposed change is a technical one relating to Article 9, PREMIUM ASSESSMENTS. This proposed change is to make the Agreement consistent with the By Laws that were changed to allow for periodic special premium assessments when and where necessary, to be consistent with the Financial Stability Plan.

The second proposed change is also a technical one and one that is legally significant as described by CHWCA Legal Counsel. Article 13, LIABILITY AND INDEMNIFICATION is proposed to clarify the intention of the member entities to limit and minimize their potential joint and several liability (any and all parties are liable) under the Agreement. The language of existing Article 13 provides that all members agree, pursuant to Government Code Sections §895 et.seq., to defend, indemnify and hold harmless all other members from liability resulting from negligence or wrongful acts arising under the JPA Agreement. By this reference, the provisions of Government Code Section §895.2 are made applicable. That section provides for joint and several liability among all parties. Thus any and all members can be held individually liable to an injured party for any negligent or wrongful act covered by the JPA Agreement. This would impose potential liability beyond the contributions and premiums paid into the Authority.

This is not a result intended nor contemplated by the JPA concept. CHWCA Legal Counsel recommended a means to address this specific problem and still carry out the insurance risk-pooling concept of the JPA. Government Code Section §6512.2 was specifically enacted to provide an exception to Government Code Section §895.2 joint and several liability in those instances where public entities form a JPA for self-insurance pooling purposes. CHWCA Legal Counsel recommended the modification to Article 13 by the inclusion of the identified additional language. This will make clear that the members of the JPA are not voluntarily waiving their rights to the exemption from the joint and several liability requirements.

The Agreement document may only be amended by a two-third vote of the Board of Directors, acting through their governing bodies. Attached is a copy of the revised JPA Agreement (Attachment 3) and the proposed required Resolution for adoption by the Housing Commission (Attachment 4).

Housing Commission General Counsel has reviewed the proposed amendments and is in agreement with the modification.



**ALTERNATIVES**

Take no action at this time. However, if the San Diego Housing Commission is among one-third of the member agencies who take no action, the Authority may be at future risk.

Respectfully submitted,

**Signature on File  
With Original Document**

Approved by,

\_\_\_\_\_  
C. Terry Whitesides  
Director of Business Services

\_\_\_\_\_  
Elizabeth C. Morris  
President & Chief Executive Officer

Gonzalez

Attachment 1. Article Revisions, Joint Powers Authority Agreement

Attachment 2: Memorandum: McCormick, Kabot, Jenner & Lew

Attachment 3: Joint Powers Agreement

Attachment 4: Resolution



## ATTACHMENT 1

### ARTICLE REVISIONS

#### JOINT POWERS AUTHORITY AGREEMENT CALIFORNIA HOUSING WORKERS' COMPENSATION AUTHORITY

**“Article 9 – Premiums and Assessments – If aggregate premiums are insufficient to pay losses and administrative expenses for a fiscal year, the Executive Committee may assess and collect premium assessments, in addition to premiums, pursuant to Bylaw Section 1.2.c (1) and/or (2) and in accordance with Resolution 2003-03 – Financial Stability Plan.”**


**“Article 13.A – Liability and Indemnification – Pursuant to the provision of Section 895, et seq. of the California Government code, each member hereto agrees to defend, indemnify, and hold harmless each other member 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 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.”**



**MEMORANDUM**  
**McCORMICK, KABOT, JENNER & LEW**  
A PROFESSIONAL CORPORATION  
1220 West Main Street  
Visalia, CA 93291

December 28, 2004

**TO:** Board of Directors and Member Entities of the California  
Housing Workers' Compensation Authority

**FROM:** S.L. Kabot, General Counsel 

**SUBJECT:** Proposed Amendments to the Joint Powers Authority Agreement

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Based upon my recommendation, the CHWCA Executive Committee is recommending several changes to the JPA Agreement for consideration and approval by the Board of Directors. There are two specific changes being proposed.

The first proposed change relates to Article 9, PREMIUM ASSESSMENTS. This proposed change it to make the Agreement consistent with the By Laws as they were recently changed to allow for periodic special premium assessments when and where necessary to be consistent with the Financial Stability Plan.

The second proposed change is also a technical one, but legally significant. Article 13, LIABILITY AND INDEMNIFICATION is proposed to be changed to clarify the intention of the member entities to limit and minimize their potential joint and several liability under the Agreement. The language of existing Article 13 provides that all members agree, pursuant to Government Code Sections 895 et seq., to defend, indemnify and hold harmless all other members from liability resulting from negligence or wrongful acts arising under the JPA Agreement. By this reference, the provisions of Government Code Section 895.2 are made applicable. That section provides for joint and several liability among all parties. Thus any and all members can be held individually liable to an injured party for any negligent or wrongful act covered by the JPA Agreement. This would impose potential liability beyond the contributions and premiums paid into the Authority.



December 28, 2004

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This is not a result intended nor contemplated by the JPA concept. There is a simple means to address this specific problem and still carry out the insurance risk pooling concept of the JPA. Government Code Section 6512.2 was specifically enacted to provide an exception to Government Code Section 895.2 joint and several liability in those instances where public entities form a JPA for self-insurance pooling purposes.

Accordingly, I am recommending the modification to Article 13 by the inclusion of the identified additional language. This will make clear that the members of the JPA are not voluntarily waiving their rights to the exemption from the joint and several liability requirements of Government Code Section 895.2 which are provided for in Government Code Section 6512.2.

For the foregoing reasons, it is my recommendation that the JPA Agreement be amended as proposed.

SLK/je



**JOINT POWERS AGREEMENT CREATING THE  
CALIFORNIA HOUSING WORKERS' COMPENSATION AUTHORITY**

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 excess insurance, 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 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.

## **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 P 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**

### **PREMIUM ASSESSMENTS**

If aggregate premiums are insufficient to pay losses and administrative expenses for a fiscal year, the Executive Committee may assess and collect premium assessments, in addition to premiums, pursuant to Bylaw sections I.2.c (1) and/or (2) and in accordance with Resolution 2003-03 – Financial Stability Plan. The Member's share of any premium assessment shall bear the same relation to the total premium assessments charged all members as the Member's premium bears to the aggregate premiums collected from all Members during that fiscal year.

Any premium 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 premium 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 hereto agrees to defend, indemnify, and hold harmless each other member 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 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.

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, premium, 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.

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

Dated:

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PUBLIC HOUSING AUTHORITY

By:

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*(Type Name)*

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*(Housing Authority)*

## **EXHIBIT A**

### **CHWCA Members**

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

SAN DIEGO HOUSING COMMISSION

RESOLUTION NO. \_\_\_\_\_

ADOPTED ON \_\_\_\_\_

WHEREAS, The San Diego Housing Commission is a member of the CALIFORNIA HOUSING WORKER’S COMPENSATION AUTHORITY; and

WHEREAS, the Executive Committee of the Board of Directors of The California Housing Worker’s Compensation Authority has recommended that the Joint Powers Agreement thereof be amended to clarify CHWCA’s position on premium assessments by aligning Article 9 of the Agreement with California Housing Worker’s Compensation Authority’s Bylaws, and to clearly align Article 13 of the Agreement with Government Code sections 895.2 and 6512.2, relating to the indemnification of CHWCA’s Board of Directors; and

WHEREAS, it is in the best interest of the San Diego Housing Commission to approve said amendment.

NOW, THEREFORE, BE IT RESOLVED THAT:

The San Diego Housing Commission votes affirmatively to amend Articles 9 and 13.A of the Joint Powers Agreement of the CALIFORNIA HOUSING WORKERS’ COMPENSATION AUTHORITY, to read as follows:

“Article 9 – Premiums and Assessments – If aggregate premiums are insufficient to pay losses and administrative expenses for a fiscal year, the Executive Committee may assess and collect premium assessments, in addition to premiums, pursuant to Bylaw Section I.2.c (1) and/or (2) and in accordance with Resolution 2003-03 – Financial Stability Plan.”

“Article 13.A – Liability and Indemnification – Pursuant to the provisions of Section 895, et seq. of the California Government Code, each member hereto agrees to defend, indemnify, and hold harmless each other member 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 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.”

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. \_\_\_\_\_ passed and adopted by the San Diego Housing Commission of the City of San Diego, California, on \_\_\_\_\_.

Vote:           Years –

Nays –

Absent-

By: \_\_\_\_\_  
Secretary

Approved as to form:

CHRISTENSEN, SCHWERDTFEGER & SPATH, General Counsel

By: \_\_\_\_\_  
Charles B. Christensen