

# BAY CITIES JOINT POWERS INSURANCE AUTHORITY

## SPECIAL EXECUTIVE COMMITTEE MEETING

### AGENDA

**Monday, October 23, 2023**

**9:00 a.m.**

**Via Zoom Teleconference**

**[Zoom Link](#)**

Meeting ID: 864 7860 0323

Passcode: 988810

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All portions of this meeting will be conducted by teleconference in accordance with Government Code Section 54953(b). The teleconference meeting locations are as follows:

- CENTRAL MARIN FIRE AUTHORITY: 250 Doherty Drive, Larkspur, CA 94939
- CITY OF BERKELEY: 2180 Milvia Street, Berkeley, CA 94704
- CITY OF MILL VALLEY: 26 Corte Madera Avenue, Mill Valley, CA 94941
- CITY OF LARKSPUR: 400 Magnolia Avenue, Larkspur, CA 94939
- CITY OF LOS ALTOS: 1 N. San Antonio Road, Los Altos, CA 94022
- CITY OF PLEASANTON: 123 Main Street Pleasanton, CA 94566

Each location is accessible to the public, and members of the public may address the Board from any teleconference location.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact John Burdette at (916) 367-2147 or [John.Burdette@sedgwick.com](mailto:John.Burdette@sedgwick.com). Requests must be made as early as possible, and at least one full business day before the start of the meeting.

Documents and materials relating to an open-session agenda item provided to the Bay Cities Joint Powers Insurance Authority (BCJPIA) less than 72 hours prior to a regular meeting will be available for public inspection. Please contact John Burdette at (916) 367-2147 or [John.Burdette@sedgwick.com](mailto:John.Burdette@sedgwick.com)

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| <b><u>Page</u></b> | <b>1. CALL TO ORDER</b>  |
|                    | <b>2. INTRODUCTIONS</b>  |
|                    | <b>3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)</b>  |
|                    | <b>4. PUBLIC COMMENTS</b> - The Public may submit any questions in advance of the meeting by contacting John Burdette at: <a href="mailto:John.Burdette@sedgwick.com">John.Burdette@sedgwick.com</a> . This time is reserved for members of the public to address the Committee relative to matters of the BCJPIA not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total. |

\* Reference materials attached with staff report.

- 3      5.      MEMBERSHIP MATTERS**
- \*A.      Discussion Regarding City of Sausalito and City of Monte Sereno  
                         *Recommendation: None.*
- 6.      CLOSING COMMENTS -** This time is reserved for comments by the Committee and/or staff and to identify matters for future BCJPIA business.
- A.      Executive Committee
- B.      Staff
- 7.      ADJOURNMENT**

**NOTICES:**

- The next BCJPIA Board of Directors meeting will be held on Thursday, October 26, 2023, at the Silverado Resort in Napa, CA.
- The next Employment Risk Management Authority (ERMA) Board of Directors meeting will be held on Monday, November 6, 2023, in Sacramento, CA. The BCJPIA Alternate representative to the ERMA Board is Jon Maginot, City of Los Altos.
- The next Local Agency Workers' Compensation Excess JPA (LAWCX) Board of Directors meeting will be held on Tuesday, November 7, 2023, Via Zoom Teleconference.
- The next BCJPIA Executive Committee meeting will be held on Thursday, December 14, 2023, via Zoom teleconference.
- The next California Affiliated Risk Management Authorities (CARMA) Board of Directors meeting will be held Friday, January 12, 2024, in Napa, CA.

**October 23, 2023**

**Agenda Item 5.A.**

**MEMBERSHIP MATTERS**

**SUBJECT: Discussion Regarding City of Sausalito and City of Monte Sereno  
Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director**

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**BACKGROUND AND STATUS:**

This special Executive Committee meeting has been called at the request of the City of Sausalito to discuss the recommendation made by the Executive Committee at its meeting on September 28, 2023, regarding the City's membership in BCJPIA. Mr. Chris Zapata, City Manager at the City of Sausalito, will be in attendance to address the Committee. Mr. Steve Leonardis, City Manager at City of Monte Sereno, will also be in attendance.

**RECOMMENDATION:**

*None.*

**REFERENCE MATERIALS ATTACHED:**

- Memo from BCJPIA Executive Director to the City of Sausalito dated October 5, 2023
- Email from City of Sausalito to BCJPIA Executive Director dated October 18, 2023
- Memo from BCJPIA Executive Director to the City of Monte Sereno dated October 5, 2023
- Letter from City of Monte Sereno to BCJPIA Board of Directors dated October 19, 2023
- BCJPIA Bylaws



October 5, 2023

Mr. Chris Zapata  
City Manager  
City of Sausalito  
420 Litho Street  
Sausalito, California 94965

**Re: Expulsion of City of Sausalito from Bay Cities Joint Powers Insurance Authority (BCJPIA)**

Dear Mr. Zapata:

The BCJPIA Executive Committee met on September 28, 2023, and discussed the City of Sausalito's membership in BCJPIA. This will serve as notice that the Executive Committee is recommending expulsion of the City of Sausalito from BCJPIA pursuant to Article XIV of the BCJPIA Bylaws to the Board of Directors.

The Board will discuss the Executive Committee's recommendation at its next regularly scheduled meeting on Thursday, October 26, 2023.

If you have any questions, please contact me at (916) 206-7863.

Sincerely,

Jaesa Cusimano  
BCJPIA Executive Director

CC: Chad Hess  
Kellie Murphy

Attachments:  
BCJPIA Bylaws

1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833  
Telephone: (916) 244-1100 ♦ Fax: (916) 244-1199  
E-mail: [info@bcjpia.org](mailto:info@bcjpia.org)



**Subject:** REQUEST TO BAY CITIES EXECUTIVE COMMITTEE

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**From:** Chris Zapata <[czapata@sausalito.gov](mailto:czapata@sausalito.gov)>

**Sent:** Wednesday, October 18, 2023 5:04 PM

**To:** Cusimano, Jaesa <[Jaesa.Cusimano@sedgwick.com](mailto:Jaesa.Cusimano@sedgwick.com)>

**Cc:** Melissa Blaustein <[mblaustein@sausalito.gov](mailto:mblaustein@sausalito.gov)>; Ian Sobieski <[isobieski@sausalito.gov](mailto:isobieski@sausalito.gov)>; Sergio Rudin <[sergio.rudin@bbklaw.com](mailto:sergio.rudin@bbklaw.com)>; Chris Zapata <[czapata@sausalito.gov](mailto:czapata@sausalito.gov)>

**Subject:** REQUEST TO BAY CITIES EXECUTIVE COMMITTEE

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe...**

Dear Ms. Cusimano,

The City of Sausalito would like to reiterate the concerns that the City has with the approach that is being suggested by the Executive Committee:

- 1) The City of Sausalito has been a dues paying member since 1996 and worked in good faith as a member of BCJPIA.
- 2) Prior to expulsion, BCJPIA should consider progressive problem solving approaches, including recommending claim minimization strategies to the City to minimize overall risks to the pool, or readjustment of premiums for the City. Cooperation on these sorts of strategies between BCJPIA and the City of Sausalito is not evident at this time.
- 3) The City of Sausalito has received no prior indication that BCJPIA may consider expulsion on a matter of such importance to our local government operations. Note that substitute coverage from another risk pool requires underwriting and typically risk pools align admission and premium setting with the fiscal year of the participating member agencies, making admission to a substitute risk pool mid-program year difficult if not impossible. To obtain private insurance also requires underwriting, which takes significantly longer than 30 days, based on the City's preliminary discussions with insurer brokers. As such, terminating the City's participation in the risk pool, after payment of premiums for the entire program year, and without the opportunity to obtain substitute coverage, may be an unconscionable act by the BCJPIA board. By way of example, state law related to the cancellation of commercial insurance requires at least 60 days prior to cancellation, and even then, cancellation by the insurer has to be based on the occurrence of certain specified events such as non-payment of premiums or change in the nature of insured's commercial enterprise.
- 4) The involvement and participation by the City of Sausalito is no longer an issue and is noted in the Executive Committee as improved. I assigned myself to the Board and to address City participation on the Board in the event of my inability to attend I requested an alternate (City Clerk Serge Avila) which was declined, was told that neither the City Attorney or City Finance Director was eligible due to their contract status. Upon full time status I immediately appointed Finance Director Chad Hess as the City alternate to the Board.
- 5) The City of Sausalito should be able to review and respond to the Executive Committee regarding concerns with responsiveness. Further, we should be able to see and understand the excessive staff and legal costs noted in the Executive Committee assessment for a response.
- 6) The discussed action with Mrs. Cusimano provides that a City expulsion may be effective as soon as December 2023 expulsion is untenable, because it would not allow the City any meaningful opportunity to procure substitute coverage. Based on this worst case scenario - the City of Sausalito has already begun conversations with multiple different pools and private insurance brokers. As staff and Board would know - it is difficult if not impossible to join a new pool mid

program year.

The City of Sausalito has been a long time member of Bay Cities Joint Powers Insurance Authority and is concerned about the recommendation being made by the Executive Committee at this time the Board to expel, without adequate notice or an opportunity for the City to mitigate any sort of potential damage that may result from this action. As a result, the City is seeking that the BCJPIA, at a minimum honor the program premiums already paid by the City, provide the City with a reasonable period of time with which to obtain substitute coverage, and that the parties work towards a mutually agreeable resolution that protects each agency's interests and expectations, minimizes any disputes, and amicably terminates the relationship between BCJPIA and the City of Sausalito at the end of the current program year.

Thank you and the Executive Committee for your attention for this important matter.

Sincerely,  
Chris Zapata  
City Manager  
City of Sausalito



October 5, 2023

Mr. Steve Leonardis  
City Manager  
City of Monte Sereno  
18041 Saratoga-Los Gatos Rd.  
Monte Sereno, California 95030

**Re: Expulsion of City of Monte Sereno from Bay Cities Joint Powers Insurance Authority (BCJPIA)**

Dear Mr. Leonardis:

The BCJPIA Executive Committee met on September 28, 2023, and discussed the City of Monte Sereno's membership in BCJPIA. This will serve as notice that the Executive Committee is recommending expulsion of the City of Monte Sereno from BCJPIA pursuant to Article XIV of the BCJPIA Bylaws to the Board of Directors.

The Board will discuss the Executive Committee's recommendation at its next regularly scheduled meeting on Thursday, October 26, 2023.

If you have any questions, please contact me at (916) 206-7863.

Sincerely,

Jaesa Cusimano  
BCJPIA Executive Director

CC: Kellie Murphy

Attachments:  
BCJPIA Bylaws

1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833  
Telephone: (916) 244-1100 ♦ Fax: (916) 244-1199  
E-mail: [info@bcjpia.org](mailto:info@bcjpia.org)







# LOGAN & POWELL LLP

## ATTORNEYS AT LAW

Robert J. Logan, Of Counsel

15466 Los Gatos Blvd., Suite 109/217 ■ Los Gatos, CA 95032 ■ Telephone (408) 402-9542 ■ Fax (408) 402-8441 ■ E-mail: [kpowell@loganpowell.com](mailto:kpowell@loganpowell.com)

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October 19, 2023

Board of Directors  
Bay Cities Joint Powers Insurance Authority  
1750 Creekside Oaks Drive, Suite 200  
Sacramento, CA 95833

### **RE: Proposed Expulsion of Monte Sereno**

Dear Honorable Chairperson and Board Members:

On October 5, 2023, the City Manager of the City of Monte Sereno was notified that the Executive Committee had voted to expel the City of Monte Sereno (the "City") from the Bay Cities Joint Powers Insurance Authority ("BCJPIA"). The City had received no prior notice of even the consideration of such a detrimental decision on the City. We respectfully request that you do not accept the recommendation of the Executive Committee but rather work with the City to address the concerns.

### **Member Participation**

The City was a founding member of BCJPIA. Since that time, City representatives have served multiple years as members of the Executive Committee and have served as President of the Board for several years. Unfortunately, in 2019, due to significant staff turnover, when the new City Manager was hired, he was not aware of the obligation to regularly participate on the Board. Within a few months of the City Manager beginning his job, COVID struck and the uncertainty of that time and the obligations associated with the unprecedented situation overtook the City Manager and he was not aware that his lack of attendance was an issue. The October 5<sup>th</sup> letter was the first the City Manager had heard of this. Notification much earlier could have avoided this situation. Participation in the Member Assistance Program or even warnings of the dire consequence of not attending meetings could have remedied the situation. Other members have been informed of the concerns over lack of participation and given an opportunity to cure the default. The City respectfully requests a similar opportunity. The importance of participation and the character and obligations of the JPA are clear. The City intends to meet this obligation and contribute regularly to this organization as it has regularly in the past.

### **Loss Ratios**

The City has been a dues paying member since BCJPIA's inception. The City has always paid its premiums. The City has only had 3 claims over the last 20



years. Admittedly, 2 of those claims have been resolved for large sums but the number of claims is very low. The last claim was five years ago. As you all know, the legal system is unpredictable and cases often settle for far more than the evidence might suggest they are worth. As cities, we have little control over that. We appreciate that our premiums may not keep pace with the payouts that have been made. However, under the Bylaws, there are other less extreme remedies that you can employ. For example, you have the authority to increase a Member's retention or require an assessment rather than expelling a founding member of this public agency. Expulsion without any conversation with the Member about the concerns about the losses seems unreasonable. We respectfully request that the Board work with the City and employ alternative methods to address the loss ratios of the City rather than the drastic step of expelling the City from BCJPIA.

The City values its participation in BCJPIA. The City respectfully requests the opportunity to work cooperatively with BCJPIA to resolve the issues associated with its membership. Expulsion at this time will have far-reaching implications for the City and the residents of Monte Sereno, especially in light of the limited advance notice the City received. Sixty days is an insufficient period of time to find alternative coverage especially when expulsion occurs mid-year. City Manager Steve Leonardis will be in attendance at the Board Meeting and will speak directly to this matter. Thank you for your consideration.

Sincerely,



Kirsten Powell  
Monte Sereno City Attorney

cc: City Manager

**BAY CITIES JOINT POWERS  
INSURANCE AUTHORITY**

**BYLAWS**

**As Amended July 1, 2022**

**BYLAWS  
of the  
BAY CITIES JOINT POWERS  
INSURANCE AUTHORITY**

**TABLE OF CONTENTS**

ARTICLE I - PREAMBLE.....	4
ARTICLE II - PURPOSES .....	4
ARTICLE III - GOVERNING DOCUMENTS .....	5
ARTICLE IV - MEMBER ENTITIES .....	5
Section 1 - Members .....	5
Section 2 - Membership Classes .....	6
Section 3 - Approval of Membership.....	6
ARTICLE V - GOVERNING BOARD.....	6
Section 1 - Board of Directors .....	6
Section 2 - Meetings of the Board .....	8
Section 3 - Voting .....	8
ARTICLE VI - OFFICERS OF THE AUTHORITY.....	9
Section 1 - Officers .....	9
Section 2 - Eligibility for President, Vice President, and Treasurer/Auditor.....	10
Section 3 - Terms of Office .....	10
Section 4 - Election of President, Vice President, and Treasurer/Auditor .....	10
Section 5 - Duties.....	11
ARTICLE VII - COMMITTEES.....	10
Section 1 - Executive Committee .....	10
Section 2 - Nominating Committee .....	12
ARTICLE VIII - FINANCIAL AUDIT .....	12
Section 1 - Audit Required .....	12
Section 2 - Filing an Audit.....	12
Section 3 - Costs of Audit.....	12
ARTICLE IX - FISCAL YEAR .....	12
ARTICLE X - BUDGET .....	13

ARTICLE XI - ESTABLISHMENT AND ADMINISTRATION OF FUNDS .....	13
ARTICLE XII - ADMINISTRATION .....	13
Section 1 - Administrative Officer.....	13
Section 2 - Responsibilities.....	13
Section 3 - Compensation and Employment.....	14
ARTICLE XIII - RISK POOLING PROGRAMS .....	15
Section 1 - Formation of Risk Pooling Programs .....	15
Section 2 - Administration.....	15
Section 3 - Late Fees.....	15
Section 4 - Actuarial Soundness of Programs.....	16
Section 5 - Withdrawal or Expulsion.....	16
Section 6 - Deposit and Investment of Authority Funds.....	16
Section 7 - Accounting Method for Pooled Programs .....	16
ARTICLE XIV - DEFAULTS AND EXPULSION FROM THE AUTHORITY .....	17
Section 1 - Events or Conditions of Default Defined .....	17
Section 2 - Remedies on Default .....	17
Section 3 - Agreement to Pay Attorney's Fees and Expenses.....	18
Section 4 - No Additional Waiver Implied by One Waiver.....	18
ARTICLE XV – DISPUTES OR CLAIMS BETWEEN MEMBER ENTITIES.....	19
ARTICLE XVI - NON-CLAIMS DISPUTES BETWEEN MEMBER AND JPA.....	19
ARTICLE XVII - TORT LIABILITY AND INDEMNIFICATION .....	19
ARTICLE XVIII - LEGAL REPRESENTATION.....	19
ARTICLE XIX - EXECUTION OF CONTRACTS.....	19
ARTICLE XX - COMPENSATION FOR DIRECTORS AND OFFICERS .....	20
Section 1 - Reimbursed Expenses.....	20
Section 2 - Directors and Officers Insurance .....	20
ARTICLE XXI - TERMINATION AND DISTRIBUTION .....	20
ARTICLE - XXII NOTICES .....	20
Section 1 - Notices to Member Entities .....	21
Section 2 - Notices to and Claims Against the Authority .....	21
ARTICLE XXIII - EFFECTIVE DATE AND SUPREMACY.....	21

**BYLAWS**  
**of the**  
**BAY CITIES JOINT POWERS**  
**INSURANCE AUTHORITY**  
**(As Revised July 1, 2022)**

**ARTICLE I - PREAMBLE**

The Bay Cities Joint Powers Insurance Authority (Authority) is established for the purpose of operating and maintaining a cooperative program of self-insurance, jointly purchased insurance, risk management, and to provide a forum for the discussion, study, development, and implementation of procedures of mutual benefit in risk sharing and risk management programs.

**ARTICLE II - PURPOSES**

The purpose of the Authority is to achieve jointly the following objectives for the benefit of the Authority's Members in all types of risks covered by the Authority:

- A. Reduce the costs of commercial insurance coverage through effective loss control practices and combined purchasing power;
- B. Reduce the cost of all administrative services through central management, volume, and combined purchasing power;
- C. Provide greater stability of commercial insurance market purchases through size of combined membership, longer duration of commercial insurance agreements, and effective loss control practices;
- D. Reduce severity and frequency of Member losses;
- E. Improve recovery from responsible third party tort-feasors;
- F. Establish reserve funds for easing the financial impact of large losses on the Members;
- G. Increase awareness of hazards causing losses and provide guidance in the alleviation of such hazards;
- H. Provide for payment of claims and benefits as authorized by the Authority's Members;
- I. Jointly purchase reinsurance or excess commercial insurance;

- J. Jointly purchase administrative and other services including risk management, consulting, brokerage, claims administration, claims adjusting, safety and loss prevention, data processing, legal, and related services; and
- K. Acquire, hold, and dispose of property, real and personal, necessary or desirable for the purpose of providing the Members of the Authority with a complete self-insurance and risk management program, including, but not limited to, the acquisition of necessary facilities and equipment, the employment of personnel, and the operation and maintenance of a system of risk management.

### **ARTICLE III- GOVERNING DOCUMENTS**

The Governing Documents of the Authority shall be the Joint Powers Agreement, these Bylaws, the Master Program Document (MPD) for each program, and the Memorandum of Coverage (MOC) for each program.

### **ARTICLE IV- MEMBER ENTITIES**

#### **Section 1 - Members**

Any party to the Agreement is a Member Entity (Member). Any governmental agency which is authorized to participate in a joint powers agreement under the Government Code and is located within 250 miles of the City of Emeryville, California, may become a Member of the Authority by agreeing to be bound by the Governing Documents and by complying with all of the following requirements:

- A. Submit a completed application for membership 90 days before the start of the program year. The application must be accompanied by the Board of Directors' approved fee, which shall be returned if membership is approved;
- B. Submit a signed resolution acknowledging participation under the terms and conditions which then prevail;
- C. Execute the Joint Powers Agreement then in effect and agree to be bound by any subsequent amendments to this Agreement;
- D. Agree to be a Member for at least three consecutive fiscal years after commencement of membership;
- E. Be accepted for membership by a two-thirds vote of the Board of Directors;
- F. Appoint, in writing, a Director and one Alternate Director to the Board; and
- G. Ensure the Director and Alternate Director file with the Executive Director the required Fair Political Practices Commission (FPPC) forms upon assuming office, annually, and upon termination of office.

## Section 2 - Membership Classes

There shall be two classes of membership defined as follows:

- A. Class A Members shall be those designated as such on the signature page of the Agreement. Class A Members must participate in either the Liability Program and/or the Worker's Compensation Program.
- B. Class B Members shall be those designated as such on the signature page of the Agreement. A Class B Member which participates in the Liability or Workers' Compensation Programs may, at its request, and upon the approval of the Board, become a Class A Member and hold a seat on the Board of Directors and be entitled to one vote on all matters before the Board. Class B Members shall be entitled to one advisory vote on matters solely concerning the programs in which they participate.

## Section 3 - Approval of Membership

The Executive Director shall inspect each applicant, including its most recent audited financial statement and associated management letters, and may schedule and coordinate a safety inspection of the facilities of the applicant. The Executive Director shall report the results of these inspections to the Executive Committee who shall provide a recommendation to the Board of Directors. A two-thirds vote of the Board of Directors is required to approve the application, based upon the Executive Committee's recommendation, the application, and any inspections, reports, or other material pertinent to the decision.

# **ARTICLE V - GOVERNING BOARD**

## Section 1 - Board of Directors

- A. The governing body of the Authority shall be the Board of Directors (Board). The Board shall be comprised of one Director, and one Alternate Director, from each Class A Member. Each Director has one vote. The Alternate Director may cast a vote only in the absence of the Director. Each Director and Alternate Director shall hold one of the following positions, or its equivalent: City Attorney, Assistant City Attorney, Financial Officer, City Administrator/Manager, Assistant/Deputy City Administrator/Manager, Risk Manager, Human Resources Manager, or Administrative Services Director. Directors or Alternate Directors not holding one of these positions shall be a person within the agency with significant risk management duties and/or oversight of a significant portion of the entity's risk management functions.

The Alternate Director shall be appointed by, and serve at the pleasure of, that Member Entity's Director. Each Director or Alternate Director, when voting on Authority business, shall have the authority to bind his or her Member Entity to the action taken by the Board.



A Member Entity may change any of its representatives to the Board only by written notification to the Authority from the Member's governing body or the Member's Chief Executive Officer.

- B. The Board shall provide policy direction for the Executive Director, the Executive Committee, and any other standing committees. The Board may delegate any or all of its responsibilities, except those requiring a vote by the Board as specified in the Governing Documents.
- C. The Board reserves unto itself the authority to do the following (except where specifically noted, a simple majority of the Board present at a meeting may take action):
  - 1. Accept a new Member to the Authority (two-thirds vote of the Board);
  - 2. Accept indebtedness (two-thirds vote of the Board);
  - 3. Adopt a budget;
  - 4. Amend these Bylaws (two-thirds vote of the Board);
  - 5. Alter a Member's retained limit (two-thirds vote of the Board);
  - 6. Approve or terminate contracts for JPA administrative services and legal counsel (two-thirds vote of the Board);
  - 7. Approve MPDs;
  - 8. Approve MOCs;
  - 9. Approve the retained limits established by the Executive Director to be offered with each program year;
  - 10. Approve distributions and assessments to Members of a program year;
  - 11. Create an office;
  - 12. Establish, amend, or terminate a program (two-thirds vote of those Board members in the specific program);
  - 13. Elect and remove Officers of the Authority and remove an Officer from office;
  - 14. Expel a Member from the Authority (two-thirds vote of the Board);
  - 15. Approve withdrawal notice or the rescission thereof by a Member;

16. Settle claims in excess of the authority of the Executive Committee;
17. Terminate or suspend a Member's rights in a program where the Member is in default (two-thirds vote of the Board);
18. Acquire and dispose of real property;
19. Approve dissolution of Authority (two-thirds vote of the entire Board); and
20. Approve financing costs from one program to another (program to program borrowing) when financing extends beyond a twelve-month period (majority vote of the Board).

## Section 2 - Meetings of the Board

- A. The Board will meet at least two times a year to review the operations of the Authority. The Board will establish a time and place to hold such regular meetings. The Board Secretary, or other designated Officer, will provide notice of all Board meetings to each Member Entity, keep minutes of the meetings, and send copies of such minutes to the Members.
- B. A special meeting may be called by the president or by one-third of the Board with twenty-four (24) hours notice, stating the purpose, date, time, and place of the meeting, provided such notice is in writing.
- C. Every Member Entity is expected to attend Board meetings.
- D. All meetings of the Board shall be conducted in accordance with the Ralph M. Brown Act (Government Code §54950 et seq.)

## Section 3 - Voting

- A. All matters within the purview of the Board may be decided by a majority vote of a quorum of the Board, except as specified otherwise in the Governing Documents.
- B. Each Class A Member shall be entitled to one vote on the Board which vote shall not be weighted.
- C. Each Class B Member shall be entitled to one advisory vote on matters solely concerning the program(s) in which it participates. An advisory vote is defined as a vote representing that Member's opinion, but is not binding on the Board.

## **ARTICLE VI- OFFICERS OF THE AUTHORITY**

### **Section 1 - Officers**

The Officers of the Authority shall consist of a President, a Vice President, a Treasurer/Auditor, and an Executive Director. The Board shall elect from its membership the President, Vice President, and the Treasurer/Auditor and appoint the Executive Director and Secretary.

### **Section 2 - Eligibility for President, Vice President, and Treasurer/Auditor**

Only Directors to the Board shall be eligible to serve as President, Vice President, or Treasurer/Auditor.

### **Section 3 - Terms of Office**

- A. The terms of office for the President, Vice President, and Treasurer/Auditor shall be two years, commencing with the start of the fiscal year in each of the even calendar years.
- B. The term of all other offices is continuous until the Board elects to change Officers or to eliminate the office.

### **Section 4 - Election of President, Vice President, and Treasurer/Auditor**

- A. A nominating committee shall be appointed by the President as set forth in ARTICLE VII, Section 4.
- B. The committee's nomination of candidates for the offices of President, Vice President, and Treasurer/Auditor shall be made in writing to the Executive Director no later than ten (10) days prior to the last regular Board meeting of the fiscal year. The slate of nominees will be sent to each member at least seven (7) days before the last regular Board meeting of the fiscal year. Additional candidates for any of the three offices may be made by an open nomination and second from the floor at the time of the meeting, provided the candidate(s) meet the requirements set forth in Section 2 above.
- C. The election of Officers will be held at the last regular Board meeting of the fiscal year in which the terms of the President, Vice President, and Treasurer/Auditor expire. Those candidates receiving a majority of votes in each office will succeed to those offices. If no nominee receives a majority vote, the nominee with the least votes shall be deleted as a nominee and a new vote taken. This elimination process will continue until one nominee receives a majority vote. Each Director or, in the absence of that Director, his/her Alternate Director, shall be eligible to vote.
- D. The President, Vice President, and Treasurer/Auditor will serve for their elected terms of office until the end of those terms, or termination of employment with his or her Member Entity, or until removal from office by a majority vote of the Board, whichever is earliest.

- E. The Board shall make the appointment to a vacancy in the office of the President. Vacancies in any other office shall be filled by appointments by the President with the approval of the Board at the next regularly scheduled Board meeting held after the vacancy occurs.

#### Section 5 - Duties

- A. President - The President shall preside at all meetings of the Authority. The President shall appoint the Directors to each joint powers authority of which the Authority is a Member and shall make all Committee appointments, with the exception of the Executive Committee, which may be formed as necessary or appropriate for carrying on the activities of the Authority. The President shall execute documents on behalf of the Authority as authorized by the Board and shall serve as the primary liaison between the Authority and any other organization. The President shall serve as ex-officio member of all Committees.
- B. Vice President - The Vice President shall serve as ex-officio member of all Committees when the President is unable to attend. In the absence, or temporary incapacity, of the President, the Vice President shall exercise the functions covered in Section A above.
- C. Executive Director - The duties and responsibilities of the Executive Director shall be as set forth in ARTICLE XII of these Bylaws and as set forth in the contract between the Executive Director and the Authority.
- D. Board Secretary - The Secretary shall be responsible for preparing all minutes and agendas of the Board, the Executive Committee, and any other Committee meetings, preparing necessary correspondence, and maintaining files and records.
- E. Treasurer/Auditor - The Treasurer/Auditor shall have the responsibility to disburse Authority funds, accounts, and property, in accordance with the California Government Code and at the direction of the Board and/or Executive Committee. The Treasurer/Auditor shall be responsible for supervision of the maintenance of such records to assure that financial accounts, records, funds, and property are maintained in accordance with accepted accounting practices and procedures prescribed by the Government Accounting Standards Board. The Treasurer/Auditor shall make available for inspection all financial records.

### **ARTICLE VII - COMMITTEES**

#### Section 1 – Executive Committee

- A. Members

There shall be an Executive Committee, pursuant to Article X of the Joint Powers Agreement. The members shall be: 1) the President, Vice President, and Treasurer/Auditor; and 2) four other Directors. One of the non-Officer Directors shall be

elected by the Board in the same manner and at the same time as the elected Officers, and shall serve a two-year term commensurate with the terms of the Officers. The other three (3) non-Officer Directors shall be elected in the same manner as the Officers, except that their two-year terms shall commence on July 1 of each alternate year. The Executive Committee shall include a member of the Workers' Compensation Program. All members of the Executive Committee must be Class A Members.

B. Meetings

The Executive Committee will meet two times a year or as otherwise deemed necessary by the Authority. Such meetings will be duly noticed and an agenda will be distributed to the Board. The Board Secretary, or other designated Officer, will keep minutes of the meetings and send copies of such minutes to all Board members.

All meetings of the Executive Committee shall be conducted in accordance with the Ralph M. Brown Act (Government Code § 54950, et seq.)

C. Duties

The Executive Committee shall have the same authority as that of the Board except for those authorities specifically reserved unto the Board in Article V, Section 1, C.

D. Appeal Process

Any action taken by the Executive Committee may be appealed to the Board by filing a written appeal with the Executive Director within fourteen (14) days following the date the minutes are sent as provided in Part B of this section. Upon receipt of such appeal, the Executive Director shall stay the action and place the appeal on the agenda of the next regularly scheduled Board meeting. The decision of the Board shall be final.

E. Removal and Vacancies

The Board of Directors may remove any or all Members from the Executive Committee at any time.

A vacancy on the Executive Committee shall be filled by election of the Board. Pending action by the Board, the remaining members of the Executive Committee may fill a vacancy on an interim basis, except in the case of a vacancy caused by removal, which may only be filled by the Board.

Continued membership of any Executive Committee member who misses more than 50% of the meetings in any calendar year or who misses two consecutive meetings shall be reviewed by the Executive Committee with any removal recommendations to be made to the Board of Directors.

## Section 2 - Nominating Committee

### A. Members

The President shall appoint a Nominating Committee for the annual election to the Executive Committee, the biennial election of Officers, and any appointments or transitions to other Committees, as necessary. The Nominating Committee shall be at least two (2) but not more than five (5) Directors.

### B. Duties

The nomination of candidates for the Officers shall be made in writing to the Authority no later than ten (10) days prior to the last regular Board meeting of the fiscal year. The slate of nominees will be sent to each member at least seven (7) days before the last regular Board meeting of the fiscal year. Additional candidate(s) may be nominated at the time of the meeting, provided the candidate(s) meet the requirements set forth in Article VI, section 2. Recommendations for appointments to other Committees can be sent in writing in advance of a regular meeting, or verbally at a regular meeting.

## **ARTICLE VIII– FINANCIAL AUDIT**

### Section 1 - Audit Required

The Board shall direct an annual audit of the financial accounts and records of the Authority to be made by a qualified, independent individual or firm. The minimum requirements of the audit shall be those prescribed by State law.

### Section 2 - Filing an Audit

The financial audit report shall be filed with the State Controller's Office within six months of the end of the fiscal year under examination. A copy of the audit report shall be filed as a public record with each Member Entity.

### Section 3 - Costs of Audit

The costs of the audit shall be charged against the operating funds of the Authority.

## **ARTICLE IX - FISCAL YEAR**

The fiscal year of the Authority shall be the period from July 1 of each year through June 30 of the subsequent year.

## **ARTICLE X - BUDGET**

The Executive Director shall present a draft budget to the Board at the last scheduled Board meeting prior to July 1 of the next fiscal year, and the Board shall adopt the annual budget by July 1 of each year.

## **ARTICLE XI - ESTABLISHMENT AND ADMINISTRATION OF FUNDS**

The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the subject, particularly Section 6505 of the California Government Code.

The funds received for each program shall be accounted for separately on a full-accrual basis. Each Member's annual deposit premium shall be billed annually or biannually, as identified by the Member. The Member electing to pay biannually shall pay an administrative fee in the amount of \$100 with the second installment in addition to interest levied on the unpaid balance of the Member's total deposit premium based on the prevailing interest rate earned through the Local Agency Investment Fund (LAIF) plus an additional 1%. The portion of each program premium allocated for payment of claims and losses shall be held by the Authority in trust for the program members. There shall be a separate trust for each program. The Treasurer/Auditor shall receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law.

## **ARTICLE XII –ADMINISTRATION**

### **Section 1 - Administrative Officer**

The Board shall appoint the Authority's Executive Director. The Executive Director shall be responsible for the daily administration, management, and operation of the Authority's programs and shall be subject to the direction and control of the Board and the Executive Committee. The Executive Director may be an employee of the Authority.

### **Section 2 - Responsibilities**

The responsibilities of the Executive Director include, among others, the following:

- A. Monitor the status of the Authority's programs and operations, Member losses, program's administrative and operational costs, and service companies' performance;
- B. Provide appropriate risk management consulting and information to Members and the Board which may include implementing, coordinating, and supervising the Authority's programs of safety and risk control;
- C. Prepare periodic risk management advisories to all Members reporting new trends in the insurance field, matters of interest regarding new legislation, Authority loss experience,



desirable corrective actions, and other information pertinent to risk management programs being handled by the Authority;

- D. Prepare an annual budget;
- E. Advise State legislators on Authority needs and advise Members on legislative developments;
- F. Advise Members of the risk impact of any proposed new programs or changes to existing programs;
- G. Assist the Executive Committee and/or Board in selecting brokers, auditors, insurance companies, Board counsel, and claims administration services;
- H. Perform or contract for financial and claims audits, and actuarial studies to determine cost allocations;
- I. Advise Members on selection of defense attorneys;
- J. Develop criteria to assist Members in preparation of risk management plans;
- K. Conduct risk management audits to review the participation of each Member in the programs and submit an audit report to the governing body of the audited Member within a reasonable time after such audit;
- L. Develop effective risk management and loss control procedures and advise Members regarding implementation;
- M. Prepare the Authority's financial statements, receive budgeted revenues, and pay budgeted expenses;
- N. Select and supervise Authority employees as authorized by the Board; and
- O. Design and implement new Authority programs of risk management and self-insurance as directed by the Board.

The Executive Director 's responsibility to each Member to perform any or all of the above services is limited to those programs in which the Member is participating.

### Section 3 - Compensation and Employment

The Authority shall compensate the Executive Director for services rendered to the Authority in such amount and manner as may be adopted by the Board. Details regarding compensation, termination, and other employment related matters pertaining to the Executive Director shall be governed by such terms and conditions established by the Board.

The Authority may elect to contract for risk management, financial and administrative services. The contracted administrator shall conduct the day-to-day management, operation, general administration, and financial affairs of the Authority and its programs of insurance, self-insurance, and risk management, and provide oversight of all other contracted operations of the Authority pursuant to the Agreement, these By-Laws, and any Policies and Procedures established by the Board of Directors.

### **ARTICLE XIII - RISK POOLING PROGRAMS**

#### **Section 1 - Formation of Risk Pooling Programs**

- A. The Authority shall establish, by a two-thirds vote of the Board, risk pooling programs in such areas as the Board may select including, but not limited to, the areas of property, workers' compensation, and liability coverage.
- B. The Authority may authorize and use administrative funds to study the feasibility and development of new pooling programs.

If a new program is approved by the Board, the estimated premium contributions shall be developed by the Executive Director and presented in writing to each Member. Each Member shall have sixty (60) days from the date of such notice to state in writing its intent to join or refrain from joining the new program. Unless the Member provides written notice to the Executive Director of its intent to participate in the new program, it shall be presumed that the Member declines to participate in the program. Upon conclusion of the notice period, the final premium contributions will be determined and billed to the Members in the new program. Each Member that elected to participate will be bound to the new program for the period of time required by the MPD of that program.

- C. The Board will adopt and maintain an MPD, establish the coverage to be offered by the program, and determine the financial contributions to be required of the Members in the new program.

#### **Section 2 - Administration**

- A. Each risk pooling program will be self-contained and individually evaluated for administrative and equity allocation purposes. Each program year within each program shall be separately accounted and maintained. Program funds may be co-mingled with the funds of another program for durations shorter than a twelve-month period, or when specifically allowed by the Board as referenced in Article V, Section 1.C, #20.
  - 1. The Board shall annually select an actuary to determine the adequacy of program(s) reserves, funding rates, and evaluate the programs of self-insurance; and upon receipt of the actuarial study, the Board shall review the actuarial study and: a) provide recommendations and/or request further analysis, if necessary; and b) approve the recommended funding rates for the next fiscal year, based upon the results of the study and approve the actuarial studies for placement as

permanent record for BCJPIA. The costs of such actuarial studies shall be charged against the operating funds of BCJPIA.

2. At least once every two years, the adequacy of claims adjusting for the Members shall be examined by an independent auditor contracted directly by BCJPIA or an affiliated party such as the Excess Carrier, who specializes in claims auditing. The claims audit reports shall address the issues of both adequacy of claims procedures and accuracy of claims data. The report shall be filed and made available to each Member. The costs of such claims audits shall be charged against the operating funds of BCJPIA.
- B. Each Member shall cooperate fully with the Executive Director or designated agent to provide underwriting and safety and loss control information. Additionally, each Member shall comply with the provisions of the annual Safety and Loss Prevention Program Plan as approved by the Board. Each Member will provide underwriting information per the terms of the respective program's Master Program Document. This information will include but is not limited to individual Member exposures, historic loss information, and safety and risk control practices specific to each program.

### Section 3- Late Fees

Members with delinquent amounts due shall be assessed a penalty which shall be one (1) percent of the unpaid amount due and payable to the Authority thirty (30) days after the initial invoice due date. An additional penalty of another one (1) percent shall accrue after an additional forty-five (45) days. Interest shall accrue on all delinquent amounts due and payable to the Authority at the rate of 10% per annum from the due date of the billing until the date finally posted by the designated financial institution. Each Member shall indemnify the Authority from any expense resulting from its failure to pay the sum due on or before the due date. The Board may elect to temporarily suspend coverage for a Member which fails to pay its contribution. For the purpose of assessing penalties and interest, each part of a calendar month shall be treated as a whole month. Total penalties and interest on each invoice for a sum of less than fifty dollars will be waived.

### Section 4 - Actuarial Soundness of Programs

All coverage programs shall be actuarially sound at all times. The condition of each program shall be evaluated by an independent actuary on an annual basis. The condition of each open program year within each such program shall be evaluated to determine its actuarial soundness. If it is determined by the Actuary that any year is no longer actuarially sound, the appropriate actions, as described in the MPDs, shall be taken. In addition, the Board reserves the right to assess all Member Entities and/or the Members of any program an amount determined by the Board to be necessary for the soundness of the program and to allocate such assessment in a fair and equitable manner.

#### Section 5 – Withdrawal or Expulsion

- A. The withdrawal or expulsion of a Member from any pooled program shall be in accordance with the provisions of the MPD governing that program.
- B. The withdrawal or expulsion of any Member from any pooling program shall not terminate its responsibility to contribute its share of premiums, or funds, to any fund or program in which it participated, nor its responsibility to provide requested data for the periods in which it participated. All current and past Members shall be responsible for their respective share of the expenses, as determined by the Executive Director, until all claims, or other unpaid liabilities covering the period of the Member's participation in the risk pooling program, have been finally resolved and a determination of the final amount of payments due by, or credit to, the Member for the period of its participation has been made by the Board. All past Members shall receive any distribution of dividends based on the same methodology of the current Members. The withdrawal or expulsion of any Member from any program shall not require the re-payment or return to that Member of all or any part of any contributions, payments, advances, or distributions except in conformance with the provisions as set forth herein and in the MPD.

#### Section 6 - Deposit and Investment of Authority Funds

The Treasurer/Auditor may deposit and invest Authority funds, subject to the same requirements and restrictions that apply to deposit and investment of the general funds of a city incorporated in the State of California and in accordance with the Investment Policy adopted annually by the Board.

#### Section 7 - Accounting Method for Pooled Programs

The accounting method for each pooled program will be in accordance with the provisions of the MPD governing that program and the principles established by the Government Accounting Standards Board.

### **ARTICLE XIV - DEFAULTS AND EXPULSION FROM THE AUTHORITY**

#### Section 1 - Events or Conditions of Default Defined

The following shall be "defaults" under the Agreement and these Bylaws:

- A. Failure by a Member to observe and/or perform any covenant, condition, or agreement under the Governing Documents, including but not limited to risk management or loss reporting procedures;
- B. Consistent failure to attend meetings, submit requested documents, or cooperate in the fulfillment of the program objectives;

- C. Failure to pay any amounts, including penalties and interest, due to the Authority for more than thirty (30) days;
- D. Excessive losses as determined by the Board;
- E. The filing of a petition applicable to the Member in any proceedings instituted under the provisions of the Federal Bankruptcy Code or under any similar act which may hereafter be enacted; or
- F. Any condition of the Member which the Board believes jeopardizes the financial viability of the Authority.

## Section 2 - Remedies on Default

- A. Whenever any default referred to in Section 1 of this article has occurred, the Authority may exercise any and all remedies available pursuant to law or granted pursuant to the Agreement and these Bylaws including, but not limited to increasing a Member's retention, penalty, or assessment, canceling a Member's coverage, or expelling the Member. However, no remedy shall be sought for defaults, except defaults under Paragraphs 4 and 5 in Section 1 of this Article, until the Member has been given thirty (30) days notice of default by the Board.
- B. Expulsion of a Member from the Authority:
  - 1. The Board, with at least a two-thirds (2/3) vote, may expel any Member that is in default, as defined in Section 1 of this Article, from the Authority.
  - 2. Such expulsion shall be effective on the date prescribed by the Board, but not earlier than thirty (30) days after notice of expulsion has been personally served or sent by certified mail to the Member.
  - 3. The expulsion of any Member from any pooling program, after the effective date of such pooling program, shall not terminate its responsibility to contribute its share of premiums, or funds, to any fund program in which it participated, nor its responsibility to provide requested data for the period(s) in which it participated. All current and past Members shall be responsible for their respective shares of the expenses, as determined by the Executive Director, until all claims, or other unpaid liabilities, covering the period of the Member's participation in the risk pooling program have been finally resolved and a determination of the final amount of payments owed by, or credit to, the Member for the period of its participation has been made by the Board.
- C. Cancellation of Coverage under a Program:

1. Upon the occurrence of any default, the Board may temporarily cancel all rights of the defaulting Member in any program in which such Member is in default until such time as the condition causing default is corrected.
  2. Upon the occurrence of any default, the Board, with at least a two-thirds (2/3) vote, may cancel permanently all rights of the defaulting Member in any program in which such Member is in default.
- D. No remedy contained herein is intended to be exclusive. No delay, or failure to exercise any right or power accruing upon any default, shall impair any such right or shall be construed to be a waiver thereof.

### Section 3 - Agreement to Pay Attorney's Fees and Expenses

In the event either the Authority or a Member is in breach of any provision of any of the Governing Documents and the other party employs attorneys or incurs other expenses for the collection of moneys or the enforcement of performance of any obligation under the Governing Documents and prevails on its claim against the other party, the non-prevailing party shall pay to the prevailing party the reasonable fees of such attorneys and such other costs and expenses incurred by the other party.

### Section 4 - No Additional Waiver Implied by One Waiver

In the event any provision in any of the Governing Documents is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE XV - DISPUTES OR CLAIMS BETWEEN MEMBER ENTITIES**

After being notified in writing that one Member has filed a formal claim, which is potentially covered by a program of the Authority, against another Member, in accordance with provisions of the California Government Code, the Authority will no longer act on behalf of either Member with respect to such claim without written consent from the Members involved.

## **ARTICLE XVI - NON-CLAIMS DISPUTES BETWEEN MEMBER AND JPA**

Any dispute arising out of any action taken or decision made under the Bay Cities Joint Powers Insurance Authority administration and/or operations shall be resolved as set forth in this Appeal Process. Any such dispute may be appealed by a participating Member to the Executive Committee and upon receipt of such appeal, the Pool Administrator shall stay the action or decision and place the appeal on the agenda of the next regularly scheduled Executive Committee meeting. The Executive Committee's decision may be subsequently appealed to the Board of Directors. The decision of the Board of Directors shall be final and binding on the parties to the dispute.

The Member requesting the appeal shall have a representative present at the Executive Committee, and Board if applicable, meeting to discuss the request with the Committee and/or Board of Directors, or the appeal will be automatically denied.

## **ARTICLE XVII - TORT LIABILITY AND INDEMNIFICATION**

Each Member, pursuant to Sections 895.4 and 895.6 of the California Government Code, shall indemnify each of the other Members for any loss. Therefore, each of the Members herein, pursuant to the provisions of Sections 895.4 and 895.6 of the California Government Code, agrees to indemnify each of the other Members for any loss, cost, or expense that may be imposed upon such Member solely by reason of Section 895.2 of the California Government Code.

## **ARTICLE XVIII - LEGAL REPRESENTATION**

Legal counsel, to advise on matters relating to the operation of the Authority, may be recommended by the Executive Director and approved by the Board. The Authority shall have the right to pay such legal counsel reasonable compensation for said services.

## **ARTICLE XIX - EXECUTION OF CONTRACTS**

The Board or Executive Committee may authorize the Executive Director, any Officer or Officers, or any agent or agents, to enter into any contract or execute any instrument in the name, and on behalf, of the Authority and such authorization may be general or confined to specific instances. Unless so authorized by the Board, no Officer, agent, or employee shall have any power or authority to bind the Authority by any contract or to pledge its credit or to render it liable for any purpose or to any amount.

## **ARTICLE XX - COMPENSATION FOR DIRECTORS AND OFFICERS**

### **Section 1 - Reimbursed Expenses**

The Authority shall reimburse any Director or Officer, who does not otherwise receive compensation for actual expenses incurred, for reasonable out of pocket expenses of the Director or Officer in the performance of his/her duty on behalf of the Authority.

### **Section 2 - Directors and Officers Insurance**

The Authority may purchase insurance indemnifying the Directors, Officers, and Administrative staff for personal liabilities arising out of wrongful acts in the discharge of their duties to the Authority or may elect to self-insure such risk.

## **ARTICLE XXI – TERMINATION AND DISTRIBUTION**



The Agreement and the Authority shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligations and affairs of the Authority.

Upon termination of the Agreement, the assets of the Authority shall be distributed and apportioned, as provided by the MPDs, among the Members, including those Members which previously withdrew or were expelled. Any additional funds received after the above distributions are made shall be returned in proportion to the contributions made.

## **ARTICLE XXII - NOTICES**

### **Section 1 - Notices to Member Entities**

Any notice to be given to any Member, in connection with these Bylaws, must be in writing (which may include facsimile) and will be deemed to have been given when deposited in the mail to the address specified by the Member to receive such notice. Any notice delivered by facsimile will be deemed to have been given when the facsimile transmission is complete. Any Member may, at any time, change the address to which such notice will be given by giving five (5) days written notice to the Authority.

### **Section 2 – Notices to and Claims Against the Authority**

Any notice to or claim against the Authority shall be mailed or delivered to the mailing address of the Authority.

## **ARTICLE XXIII- EFFECTIVE DATE AND SUPREMACY**

These Bylaws shall be effective immediately upon the date of adoption and upon adoption shall supersede and cancel any prior Bylaws and/or amendments thereto.

However, the adoption of these Bylaws shall not affect the Agreement or any amendments thereto. Any provision in these Bylaws which is inconsistent with the Agreement shall be superseded by the Agreement but only to the extent of the inconsistency.

These Bylaws may be amended from time to time as provided in Article V, section 1.C. #4, provided that at least thirty (30) days written notice has been given to each Member.

## **BAY CITIES JOINT POWERS INSURANCE AUTHORITY**

### **BYLAWS**

### **AS AMENDED**