



Coastside Fire Protection District

STAFF REPORT

TO: Honorable Board of Directors

FROM: Jonathan Cox, Deputy Fire Chief

DATE: March 22, 2023

SUBJECT: RECOMMEND APPROVAL AND ADOPTION OF RESOLUTION NO. 2023-07;
RESOLUTION OF THE COASTSIDE FIRE PROTECTION DISTRICT
AUTHORIZING PARTICIPATION IN AND APPROVING THE AMENDED AND
RESTATED JOINT EXERCISE OF POWERS AGREEMENT OF THE FIRE RISK
MANAGEMENT SERVICES JOINT POWERS AUTHORITY

Staff Recommendation

Staff recommend that the Board of Directors approve and adopt Resolution No. 2023-07; Resolution of the Coastside Fire Protection District Authorizing Participation in and Approving the Amended and Restated Joint Exercise of Powers Agreement of the Fire Risk Management Services Joint Powers Authority.

Background

Following the exploration and in-depth analysis of a strategic partnership, the Board of Directors of FASIS and FDAC EBA directed the merger of the two programs, effective July 1, 2023, to provide comprehensive and cost-effective coverage programs through a responsive risk pool for fire service agencies. FASIS and FDAC EBA have agreed that FASIS will change its name to Fire Risk Management Services (FRMS) and adopt an amended and restated joint exercise of powers agreement, and that FDAC EBA will assign its rights and liabilities to FRMS and adopt the same agreement as its own. The amended and restated agreement allows FRMS to operate the programs previously operated by both FDAC EBA and FASIS, and admit members that would have been eligible to join either FDAC EBA or FASIS in the past. Coastside Fire Protection District is a member of FASIS, and it is in the best interest of the District to continue participating in and obtaining coverage and risk management services from FASIS, which is changing its name to FRMS.

Attachments

1. Resolution
2. Amended and Restated Joint Powers Agreement of Fire Risk Management Services (formerly Fire Agencies Self Insurance Systems (FASIS))

ATTACHMENT 1
RESOLUTION

RESOLUTION 2023-07

RESOLUTION OF THE COASTSIDE FIRE PROTECTION DISTRICT AUTHORIZING PARTICIPATION IN AND APPROVING THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT OF THE FIRE RISK MANAGEMENT SERVICES JOINT POWERS AUTHORITY

WHEREAS, the Fire Agencies Self Insurance System (FASIS) was formed in 1984 for the purpose of jointly funding losses and providing risk management services to reduce such losses by and among California fire protection and community services districts; and

WHEREAS, the FDAC Employment Benefits Authority (FDAC EBA) was formed in 2005 to establish, operate, manage, and administer health and welfare benefit programs for the benefit of the existing and retired officers, employees and members of the legislative body of the California public agencies who are members of FDAC EBA; and

WHEREAS, following the exploration and in-depth analysis of a strategic partnership, the Board of Directors of FASIS and FDAC EBA directed the merger of the two programs, effective July 1, 2023, to provide comprehensive and cost-effective coverage programs through a responsive risk pool for fire service agencies; and

WHEREAS, FASIS and FDAC EBA have agreed that FASIS will change its name to Fire Risk Management Services (FRMS) and adopt an amended and restated joint exercise of powers agreement, and that FDAC EBA will assign its rights and liabilities to FRMS and adopt the same agreement as its own; and

WHEREAS, the amended and restated agreement allows FRMS to operate the programs previously operated by both FDAC EBA and FASIS, and admit members that would have been eligible to join either FDAC EBA or FASIS in the past; and

WHEREAS, **COASTSIDE FIRE PROTECTION DISTRICT** is a member of FASIS, and the **BOARD OF DIRECTORS of COASTSIDE FIRE PROTECTION DISTRICT** finds it in the best interest of **COASTSIDE FIRE PROTECTION DISTRICT** to continue participating in and obtaining coverage and risk management services from FASIS, which is changing its name to FRMS; and

WHEREAS, FRMS (formerly FASIS) requires the **COASTSIDE FIRE PROTECTION DISTRICT** to pass a resolution expressing the desire and commitment of **COASTSIDE FIRE PROTECTION DISTRICT** to approve the amended and restated joint exercise of powers agreement of FRMS and continue participation in FRMS, which requires a new three-year minimum participation period.

NOW, THEREFORE, BE IT RESOLVED that the **BOARD OF DIRECTORS of COASTSIDE FIRE PROTECTION DISTRICT** approves the Amended and Restated Joint Exercise of Powers Agreement for FRMS, as presented; and

BE IT FURTHER RESOLVED that the **BOARD OF DIRECTORS** authorizes the **BOARD PRESIDENT** to sign the

Amended and Restated Joint Exercise of Powers Agreement that shall enable the **COASTSIDE FIRE PROTECTION DISTRICT** to continue participating in the joint self-insurance and risk management programs provided by FRMS.

THIS RESOLUTION DULY PASSED this 22nd day of March, 2023.

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Gary Burke, Board President

Jonathan Cox, Deputy Chief
Secretary

ATTACHMENT 2
AMENDED AND RESTATED JOINT POWERS AGREEMENT
OF FIRE RISK MANAGEMENT SERVICES
(Formerly Fire Agencies Self Insurance System (FASIS))

**AMENDED AND RESTATED JOINT POWERS AGREEMENT
OF FIRE RISK MANAGEMENT SERVICES
(Formerly Fire Agencies Self Insurance System (FASIS))**

This Amended and Restated Joint Powers Agreement of Fire Risk Management Services (“FRMS”) (“Agreement”), formerly known as the Fire Agencies Self Insurance System (“FASIS”) is made and entered into by and among the public agencies organized and existing under the laws of the State of California who have or may hereafter execute this Joint Powers Agreement (the “Members”) pursuant to the authority conferred by Government Code Section 6500 et seq.

RECITALS

WHEREAS, each of the Members who have executed this Agreement is a “public agency” as that term is defined in Section 6500 of the California Government Code; and

WHEREAS, California Government Code Section 6500 et seq. provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Labor Code Section 3700 (c) authorizes public agencies, including members of a pooling arrangement under a joint powers authority, to fund and self-insure for their Worker’s Compensation claims liability; and

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

WHEREAS, California Government Code Sections 989 and 990 authorize a local public agency to self-insure itself and its employees against tort and inverse condemnation liability; and

WHEREAS, California Government Code Section 990.8 provides that two or more local public agencies may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4; and

WHEREAS, California Government Code Section 990.6 provides that the cost of such insurance or self-insurance is an authorized and appropriate expenditure of public funds; and

WHEREAS, California Government Code Sections 53200, 53201(a), 53202, 53202.2, 65205, 53205.1, 53205.16, 53206, 53208 and Health and Safety Code Section 13800 et seq. provide that a local public agency may provide for any health and welfare benefits for the benefit of its existing and retired officers, employees, and members of its legislative body, which health and welfare benefits include, but are not limited to medical, hospital surgical, disability, legal expense, dental, vision, life, and income protection insurance or benefits, whether provided on an insurance basis, self-funded basis, or some combination of insurance and self-funding; and

WHEREAS, Government Code Section 53202 states that in providing such health and welfare benefits, a public agency may approve self-funded plans or may contract with one or more admitted insurers, health service organizations or legal service organizations for such plans of health and welfare benefits as the public agency determines to be in the best interest of the public agency and its existing and retired officers, employees and legislative body; and

WHEREAS, Government Code Section 53205 provides that the legislative body of a public agency may expend public agency funds for the premiums, dues or other charges for health and welfare benefits of its existing and retired officers, employees, and members of its legislative body; and

WHEREAS, each of the Members which are parties to this Agreement desire to join together with other Members in order to collectively establish, operate, manage, administer and fund programs of insurance and/or self-insurance for workers' compensation benefits, employment benefits, general liability, property damage, and other coverages to be determined; and

WHEREAS, each of the Members which are parties to this Agreement find it to be to its mutual advantage and in the public benefit to utilize any power common to them, and all those powers available to a Joint Powers Authority pursuant to the Joint Powers Act at Government Code Section 6500 et seq. (the "Act"), to fulfill the purposes of this Agreement specified in Section 3 hereof, including establishing pools for self-insured losses and purchasing excess or re-insurance and administrative services in connection with the Joint Protection Programs (the "Coverage Programs") for the collective benefit of the Members; and

WHEREAS, certain Members have previously executed that certain Amended Joint Powers Agreement of FASIS dated October 13, 2005 (the "FASIS JPA"), which agreement such Members desire to amend and restate by this Agreement; and

WHEREAS, this Amendment and Restatement is intended to allow members of Fire Districts Association of California Employment Benefits Authority ("FDAC EBA") to join FRMS and share in consolidated administration and governance of programs by amending and restating its existing Joint Powers Agreement to this Agreement; and

WHEREAS, the governing body of each Member has determined that it in the best interests of the Member, and in the public interest, to execute this Agreement and participate in FRMS as a Member;

WHEREAS, it is to the mutual advantage of and in the best interest of the parties to this Joint Powers Agreement to continue and expand this Joint Powers Authority for the purposes stated.

NOW THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

**SECTION 1:
DEFINITIONS**

The following definitions shall apply to the provisions of this Agreement:

1. “Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as amended.
2. “Administrator” shall mean the employee or third-party contractor who is appointed by the Board of Directors to manage the business and affairs of FRMS under the policy direction of the Board of Directors.
3. “Assessment” means an amount additional to a Member’s initial contribution or annual contribution, which the Board of Directors determines, in accordance with this Agreement and/or the Bylaws, that a Member or Former Member owes on account of its participation in a Coverage Program for a given Program year.
4. “Board of Directors” or “Board” shall mean the governing body of FRMS.
5. “Bylaws” means the Bylaws of FRMS adopted by the Board of Directors, as they may be amended from time to time.
6. “Claim” shall mean a demand made by or against a Member or Former Member which is or may be covered by one of the Coverage Programs approved by the Board of Directors.
7. “Contribution” shall mean the amount determined by the Board of Directors to be the appropriate sum of money which a Member must pay at the commencement of or during a Program Year in exchange for the benefits provided by a Coverage Program.
8. “Coverage Program” shall mean the specific type of Joint Protection Program as set forth in the terms, conditions and exclusions of the Coverage Documents for insured or self-insured losses, and the purchasing of excess or re-insurance and administrative services with respect to such losses. On the effective date, FRMS will operate two (2) Coverage Programs, the Workers’ Compensation Coverage Program for workers’ compensation claims, and the Employment Benefits Coverage Program for claims related to medical, hospital surgical, disability, legal expense, dental, vision, life, and income protection insurance or benefits. FRMS may add additional programs later.
9. “Coverage Documents” shall mean the Declarations, Memorandum of Coverages, Coverage Agreements, Endorsements, Policies of Insurance or any other documents that provide the terms, conditions, limits and exclusions of coverage afforded by a Coverage Program.

10. "District" shall mean a special district and political subdivision of the State of California as defined in Government Code Section 56000 et seq.
11. "Duly Constituted Board Meeting" shall mean any meeting of the Board of Directors noticed and held pursuant to the Ralph M. Brown Act and at which a quorum is determined to be present at the beginning of said meeting.
12. "Estimated Contribution" shall mean the amount which the Board of Directors estimates will be the appropriate contribution for a Member's participation in a Coverage Program for a Program Year.
13. "Excess or Re-Insurance" shall mean that insurance that may be purchased on behalf of FRMS and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses in a particular Coverage Program during a Program Year in excess of any self-insured retention maintained by FRMS for that Coverage Program.
14. "Fiscal Year" shall mean that period of 12 months which is established by the Board of Directors as the fiscal year of FRMS.
15. "Former Member" shall mean a Member which was a signatory to this Agreement (or the prior FASIS Agreement) but which has withdrawn from, or been involuntarily terminated from participation in FMRS.
16. "Joint Protection Program" shall mean a Coverage Program offered by FRMS, separate and distinct from other Coverage Programs, wherein Members shall jointly pool their losses and claims, jointly purchase excess or re-insurance and administrative and other services including claims adjusting, data processing, risk management consulting and brokerage, loss prevention, legal, accounting and auditing and related services.
17. "Member" shall mean a public agency which has signed this Agreement, which qualifies as a Member under the provisions of this Agreement and the Bylaws, and which has been approved for membership by the Board of Directors.
18. "Memorandum of Coverage" shall mean a document issued by FRMS for each Coverage Program specifying the coverages and limits provided to the Members participating in that Coverage Program.
19. "Pooling" shall mean group self-insurance as permitted by Government Code Section 990.8, Labor Code Section 3700 and Government Code Section 53202.
20. "Program Year" shall mean a 12-month period of time determined by the Board of Directors, during which a particular Coverage Program is in effect.

21. "Retained Earnings" shall mean an account reflecting the accumulated earnings of a Coverage Program after payment of all losses, expenses and obligations of that Coverage Program.
22. "Risk Management" shall mean the process of identifying, evaluating, reducing, transferring and eliminating risks. Risk Management includes, but is not limited to, various methods of funding claims payments, purchasing insurance, legal defense of claims, controlling losses, and determining self-insurance retention levels and the amount of reserves for potential claims.

SECTION 2:
FRMS AS SUCCESSOR TO AND EXPANSION OF FASIS

FASIS was originally formed on July 1, 1984, pursuant to the provisions of Government Code Section 6500 et seq. as a joint powers authority to provide a program of pooling of self-insured workers' compensation losses of its members, which members were defined as California fire protection districts formed and operating under the provisions of California Health and Safety Code Section 13800 et seq. and California community services districts providing fire suppression and emergency services formed and operating under the provisions of California Government Code Section 61000, et seq. FASIS has continued to provide this self-insurance program up to the effective date of this Agreement.

As of the effective date of this Agreement, the Fire Agencies Self Insurance System shall be known as Fire Risk Management Services, referred to herein as FRMS. Pursuant to Government Code Sections 6506 and 6507, from its inception, FRMS has, is, and shall be a public entity separate and independent from the Members which is governed exclusively by its Board of Directors ("Board").

FDAC EBA was originally formed on July 1, 2005, pursuant to the provisions of Government Code Section 6500 et seq. as a joint powers authority to provide employment benefits programs including medical, hospital surgical, disability, legal expense, dental, vision, life, and income protection insurance or benefits, whether provided on an insurance basis, self-funded basis, or some combination of insurance and self-funding, to any California public agency including special districts, cities, and joint powers authorities which were formed with the power to provide fire suppression and emergency services. FDAC EBA has continued to provide this employment benefits program up to the effective date of this Agreement.

This Agreement is being amended and restated in part to allow members of Fire Districts Association of California Employment Benefits Authority ("FDAC EBA") to join FRMS and share in consolidated administration and governance of programs. Accordingly, as of the effective date of this Agreement, the membership of FRMS shall consist of the members of FASIS, as well as the members of FDAC EBA that have approved this Agreement. Future membership in FRMS is open to public agencies throughout California that meet the membership requirements specified herein and in the Bylaws and are approved for membership by the Board of Directors.

**SECTION 3:
PURPOSE**

This Agreement is entered into by the Members pursuant to Government Code Sections 989, 990, 990.4, 990.6, 990.8, 52200 et seq., 6500 et seq. and Labor Code Section 3700, et seq., in order to provide, subject to the Coverage Documents, workers' compensation and employment benefits coverages, and/or coverages for other risks which the Board of Directors may determine.

Additional purposes of this Agreement are: (1) to reduce the amount and frequency of losses, and to decrease the costs incurred by Members in the handling and litigation of claims; (2) to expand the breadth and reduce the costs of health and welfare benefits including, but are not limited to medical, hospital, surgical, disability, legal expense, dental, vision, life, and income protection insurance or benefits, whether provided on an insurance basis, self-funded basis, or some combination of insurance and self-funding. These purposes shall be accomplished through the exercise of the powers of the Members jointly in the creation of a separate public entity, Fire Risk Management Services ("FMRS") to establish and administer Coverage Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide for the inclusion at subsequent dates of such additional Members organized and existing as California public agencies as may desire to become parties to this Agreement and Members of FRMS, subject to approval by the Board of Directors.

**SECTION 4:
MEMBERSHIP**

Each Member which is a party to this Agreement must be a public agency which is duly organized and existing under the laws of the State of California with the power to provide at least one of the following services: (1) fire suppression services, (2) emergency medical services, including emergency disease response, prevention and control services; (3) hazardous material response services (4) medical transport and/or ambulance services, including emergency transportation services (5) rescue services; (6) any other emergency response services provided pursuant to the California Emergency Services Act (Government Code Section 8550 et seq.). "Emergency" is defined as any condition of disaster or of extreme peril to the safety of persons and/or property caused by such conditions as air pollution, fire, flood, hazardous material incident, storm, epidemic, riot, drought, plant or animal infestations or disease, earthquake, terrorism, or sudden and severe energy shortage. Each Member must be approved for participation in the Authority in the manner provided in the Bylaws of the Authority.

There shall be two (2) classes of Membership: (1) Voting Members; and (2) Non-voting Members. Voting Members shall be public agencies organized as a fire protection district formed and operating pursuant to the terms of California Health and Safety Code Section 13800 et seq. All other Members shall be Non-voting Members.

The rights and obligations of Voting Members shall be as described in the Bylaws.

SECTION 5:
PARTIES TO AGREEMENT

Each Member which has signed this Agreement certifies that it intends to and does contract with FRMS, and with all other parties who have signed this Agreement, and, in addition, with such other parties which may later be added as a party to and may sign this Agreement. Each party to this Agreement, which has or may hereafter sign this Agreement, also certifies that the withdrawal of any party from this Agreement by voluntary withdrawal, involuntary termination, or otherwise, shall not affect this Agreement nor such party's intent to contract with the other remaining parties to this Agreement.

SECTION 6:
TERM OF AGREEMENT

This Agreement shall become effective as to existing Members of FASIS on the later of July 1, 2023, or the date on which the last of two-thirds of such Members have executed this Agreement ("effective date"). This Agreement shall become effective as to existing Members of FDAC EBA on the later of July 1, 2023 or the date on which two-thirds of its members have executed this Agreement.

This Agreement shall become effective as to each new Member upon: (1) approval of its membership by the Board of Directors of the FRMS; (2) execution of this Agreement by the new Member and by FRMS; and (3) by payment by the new Member of its initial contribution for participation in one of the Coverage Programs offered by the FRMS.

SECTION 7:
POWERS OF FRMS

FRMS shall have all the powers common to its Members and all additional powers set forth in the Joint Powers Authority Act, and is hereby authorized to do all acts necessary for the exercise of said common powers, including, but not limited to, any or all of the following:

- (1) to make and enter into contracts, including the power to accept the assignment of contracts or other obligations which relate to the purposes of FRMS, or which were entered into by a Member or Former Member prior to joining FRMS, and to acquire assets, incur liabilities, and resolve and make claims;
- (2) to accept an assignment from the FDAC EBA of all its assets, obligations and liabilities (including claims and contracts in existence at the time of consolidation) in order to benefit the Members and Former Members participating in the FDAC EBA employment benefits coverage program; provided, that except for the fair and equitable allocation of administrative and overhead expenses, funds from such assignment shall not be commingled and shall be separately accounted for as provided in this Agreement and the Bylaws;

- (3) to incur debts, liabilities or other obligations; including those which are not debts, liabilities or other obligations of the Members or Former Members, or any of them;
- (4) to charge and collect Contributions and Assessments from Members or Former Members for participation in a Coverage Program;
- (5) to employ agents and employees and/or to contract for services from third-party consultants;
- (6) to receive grants and donations of property, funds, services, and other forms of assistance from persons, firms, corporations and government entities;
- (7) to acquire, hold, lease or dispose of property, funds, contributions, donations, and any other forms of assistance from persons, firms, corporations and government entities;
- (8) to acquire property by gift, grant, exchange, devise, or purchase;
- (9) to hold, lease, convey, sell, encumber, or dispose of property;
- (10) to sue and to be sued in its own name;
- (11) to issue or caused to be issue bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted by law by Articles 2 and 4 of the Act or otherwise, including, but not limited to, bonds or other evidences of indebtedness issued on behalf of FRMS or its Members;
- (12) to obtain in its own name all necessary permits, licenses, opinions and rulings;
- (13) whenever necessary to facilitate the exercise of its powers, to form and administer nonprofit corporations to perform one or more of the functions which FRMS is empowered to perform, or to perform any other proper corporate function, and to enter into agreements with such nonprofit corporations;
- (14) to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement (including the provision of all other appropriate ancillary coverages for the benefit of Members or Former Members, or otherwise authorized by law or the Act; and
- (15) to exercise all powers and perform all acts as otherwise provided in the Bylaws.

Said powers shall be exercised pursuant to the terms hereof, and in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

SECTION 8:
BOARD OF DIRECTORS

All powers of FRMS shall be exercised by, and its property controlled and its affairs conducted by and through its Board of Directors. Said Board of Directors is hereby designated as the agency to administer and execute this Agreement pursuant to Government Code Section 6506.

The Board of Directors shall be composed of no more than fifteen (15) and no less than eleven (11) individuals, each of whom is elected by a majority vote of Voting Members participating in a Coverage Program, as specified in the Bylaws. Each member of the Board of Directors shall have one vote. The terms for Directors, procedures for electing Directors, and the composition of the Board of Directors shall be as set forth in the Bylaws. The Board of Directors shall have the authority to conduct all business and govern all affairs of this Joint Powers Authority under the provisions hereof and pursuant to law and shall have such powers and functions as are provided for herein, in the Bylaws, or by law.

SECTION 9:
POWERS OF THE BOARD OF DIRECTORS

The Board of Directors shall have such powers as provided in this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement and the Bylaws, including, but not limited to the following:

- (a) Exercise all powers and conduct all business of this Joint Powers Authority.
- (b) Determine the details of and select the Coverage Programs to be offered by FRMS;
- (c) Provide for and develop various services including, but not limited to, financial administration, insurance consulting and brokerage services; claims adjustment services, loss control and risk management services; accountancy, auditing and actuarial services; and legal and legislative advocacy services, either through its own employees or contracts with third parties.
- (d) Appoint and provide policy direction to the Administrator, appoint committees, appoint staff, and employ such persons as the Board of Directors deems necessary for the administration of this Joint Powers Authority.
- (e) Determine and purchase all necessary insurance coverage, including Excess insurance, Re-insurance, liability insurance, director's and officer's liability insurance, and such other insurance as FRMS may deem necessary or proper to carry out the Coverage Programs offered by the Authority, and to protect the employees of FRMS and the employees of the Members.
- (f) Fix and collect Contributions and Assessments from participating Members in consideration for participation in the Coverage Programs offered by FRMS.

- (g) Deposit all funds received in appropriate separate bank accounts in the name of Fire Risk Management Services.
- (h) Invest funds on hand in any manner authorized by law for the investment of funds of a public agency.
- (i) Direct the payment, adjustment, compromise, settlement and defense of all claims as provided for in the Coverage Documents involving a Member during their period of membership in and participation in a Coverage Program.
- (j) Expend funds of FRMS only for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may hereafter be amended.
- (k) Obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds of the FRMS.
- (l) Acquire property by gift, grant, exchange, devise, or purchase; or hold, lease, convey, sell, encumber, or dispose of all property necessary or appropriate to carry out the powers and operations of FRMS.
- (m) Establish policies and procedures for the operation of FRMS.
- (n) Enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and functions of FRMS.
- (o) To prepare the annual operating budget of FRMS for each fiscal year.
- (p) To engage, retain and discharge agents, representatives, firms or other organizations as the Board of Directors deems necessary for the administration of FRMS.
- (q) To exercise general supervisory power and policy control over the Executive Director.
- (r) To transact any other business which is within the powers of the Board of Directors.
- (s) Elect officers of FRMS.

SECTION 10: OFFICERS

The officers of FRMS shall consist of the President, Vice President, Secretary, Treasurer, Assistant Treasurer, and Administrator. The position of Treasurer shall be filled by a person who either is the treasurer of a Member, a certified public accountant, or one of the officers, employees, or contracted consultants of FRMS. The Treasurer shall have no vote unless the Treasurer is also a Director.

The Treasurer shall serve at the discretion of the President. The Treasurer shall be the depository of and have custody of all the funds of FRMS, from whatever source. The Treasurer shall comply with the duties and responsibilities of the office as set forth in subdivisions (a) to (d), inclusive, of Section 6505.5 of the Government Code. The Board shall require the Treasurer to file with FRMS an official bond in the amount to be fixed by the Board. FRMS shall pay the cost of bond premiums required by this section.

In lieu of the designation of a treasurer and auditor as set forth in Government Code Section 6505.5, FRMS elects to appoint the Treasurer of FRMS to said positions under the provision of Government Code Section 6505.6. FRMS further elects to be governed by and incorporates herein all other provisions contained within Government Code Section 6505.6, including but not limited to the requirement that the Treasurer shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505. The treasurer, or the treasurer's designee, shall maintain or cause to be maintained all accounting or other financial records FRMS and shall file all financial reports required of FRMS and shall perform such other duties as the Board may specify.

All offices shall be filled and have the powers and responsibilities as prescribed in the Bylaws.

SECTION 11:
RESTRICTIONS ON POWER

Such powers enumerated in Section 8 hereof are subject to the restrictions upon the manner of exercising power by the California public agency which is a Member and which is named in the Bylaws, pursuant to California Government Code Section 6509.

SECTION 12:
COMPLIANCE WITH THE BROWN ACT

All meetings of the Board, including regular, adjourned regular and special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code section 54950 et seq.

SECTION 13:
BYLAWS

The Board shall promulgate Bylaws to govern day-to-day operations of FRMS. The Board may amend the Bylaws from time to time as provided for in the Bylaws. The initial Bylaws of FRMS, a copy of which is attached hereto and marked Exhibit A, are hereby adopted as the initial Bylaws of FRMS. Each party to this Agreement by the execution hereof agrees to be bound by and to comply with all the terms and conditions of this Agreement and of said Bylaws as they now exist or may hereafter be amended, and agrees that any violation of the Bylaws shall be a violation of this Agreement. FRMS shall operate and conduct its business and affairs pursuant to the terms of

this Agreement and said Bylaws. In the event any provisions of the Bylaws conflict with a provision of this Agreement, the provision contained in this Agreement shall control.

SECTION 14:
COVERAGE PROGRAMS

FRMS shall maintain such types and levels of coverage for Coverage Programs as determined by the Board of Directors. The coverage afforded under one or more Coverage Programs may include protection for workers' compensation liability, employment health and welfare benefits, and any other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Coverage Program. FRMS shall describe the coverage and operation of each Coverage Program in writing utilizing documents such as Memorandums of Coverage, Master Program Documents, or other written policies and procedures.

The Board of Directors may arrange for purchase of Excess or Re-insurance. FRMS shall not be liable to any Member or to any other person or organization if such excess or re-insurance policies are terminated, cancelled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type or amounts of coverage afforded under a Coverage Program by reason of any change in coverage in a succeeding excess or re-insurance policy, even if such reduction occur without prior notice to one or more Members.

SECTION 15:
IMPLEMENTATION OF THE COVERAGE PROGRAMS

The Board of Directors shall establish the coverage afforded by each Coverage Program, the amount of Contributions and Assessments, the precise cost allocation plans and formulas, provide for the handling of Claims, and specify the amounts and types of Excess or Re-insurance to be obtained. The Contributions and Assessments for each Coverage Program shall be determined by the Board of Directors as set forth herein, in the Bylaws, or in the controlling documents for each Coverage Program.

SECTION 16:
ACCOUNTS AND RECORDS

- (a) **Annual Budget.** FRMS shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Coverage Program.
- (b) **Funds and Accounts.** FRMS shall establish and maintain such funds and accounts as required by the Board of Directors and as required by generally accepted accounting principles, including separate funds and accounts for each Coverage Program. Books and records of FRMS shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.
- (c) **Investments.** Subject to the applicable provisions of any indenture or resolution providing for the investment of moneys held thereunder, FRMS shall have the power to

invest any money in the treasury that is not required for the immediate necessities of FRMS, as the Board determines advisable, in the same manner as local agencies pursuant to Government Code Section 53601 et seq. as such provisions may be amended or supplemented.

- (d) **No Commingling.** The funds, reserves, and accounts of each Coverage Program shall not be commingled and shall be accounted for separately; provided, however, that administration and overhead expenses of FRMS not related to a specific Coverage Program may be fairly and equitably allocated among Coverage Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but separate accounting shall be made for balances of individual funds and Coverage Program revenues and expenses.
- (e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of FRMS, in the manner prescribed in the Bylaws.

SECTION 17:
SERVICES PROVIDED BY FRMS

FRMS may provide, in the discretion of the Board of Directors, the following services in connection with this Agreement:

- (a) To provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as Excess or Re-insurance and umbrella insurance, by negotiation, bid or purchase;
- (b) To assist Members in obtaining insurance coverage for risks not included within the coverages of FRMS;
- (c) To assist risk managers with the implementation of risk management functions as they relate to risks covered by the Coverage Programs offered by FRMS;
- (d) To provide loss control and safety consulting services to Members;
- (e) To provide claims adjusting and subrogation services for Claims covered by the Coverage Programs;
- (f) To provide loss analysis and control through the use of statistical analysis, data processing, and record and file retention services, in order to identify high exposure operations and to evaluate proper levels of self-insured retention and deductibles;
- (g) To conduct risk management and claims audits relating to the participation of Members in the Coverage Programs;
- (h) To provide such other services as deemed appropriate by the Board of Directors.

SECTION 18:
RESPONSIBILITIES OF MEMBERS

Members or Former Members shall have the following responsibilities, which shall survive the withdrawal from, or involuntary termination of participation in a Coverage Program, or membership in FRMS:

- (a) Each Member shall designate an individual to be responsible for the risk management functions within that Member and to serve as a liaison between the Member and FRMS as to risk management.
- (b) Each Member shall consider all recommendations of FRMS concerning unsafe practices and/or hazard mitigation, and each Member participating in the Workers' Compensation Coverage Program shall implement and maintain an injury and illness prevention program as required by the California Labor Code within ninety (90) days of inception into program.
- (c) Each benefits program Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Coverage Program in which it participates to assure accuracy of FRMS' loss reporting system, unless it is deemed no longer necessary by the Board of Directors;
- (d) Each Member participating in the Workers' Compensation Program shall report job-related accidents or illnesses to the appropriate claims administrator as soon as practicable after notification of the accident or illness, and no later than 48 hours after notification, shall use the format specified by the claims administrator when making job-related accident reports, and make any other required notifications to government agencies, including Cal-OSHA, when required;
- (e) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified time period set forth in the invoice, or as otherwise set forth in the Bylaws. After withdrawal or termination, each Former Member or its successor shall promptly pay to FRMS its share of any additional Contributions, adjustments or Assessments, if any, as required of it by the Board of Directors;
- (f) Each Member or Former Member shall provide FRMS with such other information or assistance as may be necessary for FRMS to carry out the Coverage Programs in which the Member or Former Member participates or has participated;
- (g) Each Member or Former Member shall in any and all ways cooperate with and assist FRMS and any insurer of FRMS, in all matters relating to this Agreement and covered Claims;
- (h) Each Member or Former Member shall comply with all Bylaws, rules, regulations and operating policies and procedures adopted by the Board of Directors.

**SECTION 19:
NEW MEMBERS**

FRMS shall allow entry into its Coverage Programs of new Members, only upon approval of the Board of Directors, with any conditions or limitations that the Board deems appropriate. In order to become a Member and remain a Member, any public agency must participate in at least one Coverage Program, pay the Contributions required for such participation, and shall be authorized to exercise the common powers set forth in this Agreement.

**SECTION 20:
WITHDRAWAL**

Any Member may voluntarily withdraw from this Agreement only at the end of any applicable Program Year and only if:

- (a) The Member has been a party to this Amended and Restated Agreement for not less than three (3) full Program Years as of the date of the proposed withdrawal;
- (b) The Member submits at least 90 (ninety) days signed written withdrawal notification in accordance with the Bylaws;
- (c) In order to withdraw from the Agreement, the Member must have completed the three (3) full Program Year participation requirement for each Coverage Program in which the Member participated at the time of withdrawal.

Any Member may voluntarily withdraw from any particular Coverage Program only at the end of any applicable Program Year and only if:

- (a) The Member has participated in a Coverage Program for at least three (3) full Program Years;
- (b) The Member is a participant in another Coverage Program; and
- (c) The Member submits at least ninety (90) days signed written withdrawal notification in accordance with the Bylaws.

In the event that the three (3) year participation requirement for any Coverage Program has not been met, for each Coverage Program the withdrawing Member participated in at the time of withdrawal for less than three (3) years, such withdrawing Member shall be obligated to pay all Contributions and Assessments as if that Member had remained in such Coverage Program for the required three (3) full years.

In the event the notice of withdrawal is not provided as required above, any such withdrawing Member shall, with respect to each Coverage Program the Member participated in, be obligated to pay any and all Contributions and Assessments for the next full Program Year.

A Member may not withdraw as a party to this Agreement until it has withdrawn from all of the Coverage Programs of FRMS as provided herein and in the Bylaws.

SECTION 21:
EXPULSION

FRMS shall have the right to expel any Member's participation in a Coverage Program, or expel a Member from FRMS, for violation of the terms of this Agreement, the Bylaws, or any other rule, regulation or operational policy adopted by the Board of Directors of FRMS, in the manner provided for in the Bylaws.

The participation of any Member of FRMS, including participation in any of FRMS' Coverage Programs, may be expelled in the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. Any such expulsion shall not relieve the Member or Former Member of its membership responsibilities specified in this Agreement.

SECTION 22:
EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal from or expulsion of any Member from this Agreement shall not be construed as a completion of the purpose of the Agreement, nor shall it terminate this Agreement. Any Member that withdraws or is expelled after the effective date of this Amended and Restated Agreement shall not be entitled to payment, return or refund of any Contribution, Assessment, consideration, or other property paid or donated by the Member to FRMS, or to any return of any loss reserve contribution, or to any distribution of assets.

The withdrawal from or expulsion of any Member from any Coverage Program shall not terminate its responsibilities to pay its unpaid Contributions, adjustments, or Assessments to such Coverage Program. The Board of Directors shall determine the final amount due from the Member or Former Member by way of Contributions or Assessments, if any, or any credit due on account thereof, to the Member or Former Member for the period of its participation. Such determination shall not be made until all Claims or other unpaid liabilities of that Coverage Program have been finally resolved.

SECTION 23:
TERMINATION OF FRMS AND DISTRIBUTION

This Agreement may be terminated at any time with the written consent of two-thirds of the then participating Members; provided, however, that FRMS and this Agreement shall continue to exist for the purpose of disposing of all claims, distribution of all assets, and all other functions necessary to wind up the affairs of the Authority.

The Board of Directors is vested with all powers of FRMS for the purposes of winding up and dissolving the business affairs of FRMS. These powers include the power to require Members or Former Members who were signatories to this Agreement at the time the subject Claims were

incurred, to pay any Assessments in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws.

Upon termination of a Coverage Program, all net assets of such Coverage Program other shall be distributed only among Members that are participating in such Coverage Program at the time of termination, in accordance with and proportionate to their Contributions, adjustments, and Assessments paid less claims or losses paid during the period of that Member's participation in the Coverage Program. The Board of Directors shall determine the distribution in the manner specified in the Bylaws.

Upon termination of this Agreement, all net assets of FRMS, other than the net assets of any Coverage Program distributed as provided above, shall be distributed only among Members in good standing at the time of such termination in accordance with and proportionate to each such Member's contributions made and claims or losses paid, as permitted by Government Code Section 6512.2. The Board of Directors shall determine such distribution in the manner specified in the Bylaws.

In lieu of terminating this Agreement, the Board may, with the written consent of two-thirds of the Voting Members, elect to assign and transfer all rights, assets, liabilities and obligations of FRMS to a successor joint powers authority created under the Act.

SECTION 24: AMENDMENTS

This Joint Powers Agreement may be amended by an amendment in writing signed by two-thirds of the Members then parties to this Agreement. Upon signature of any amendment by two-thirds of the then participating Members, any Member failing or refusing to sign such amendment may be involuntarily terminated as a party to this Agreement as provided in the Bylaws.

SECTION 25: ENFORCEMENT

FRMS is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any Member which has signed this Agreement, the Member agrees to pay such sums as the court may fix as attorney fees and costs in said action.

SECTION 26: NON-LIABILITY OF MEMBER AGENCIES

Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the FRMS shall not be the debts, liabilities or obligations of the Members which are parties to the Agreement. Nothing in the Joint Powers Agreement or in the Bylaws adopted pursuant thereto shall be construed as imposing liability upon any Member, or any officer, employee or member of the legislative body thereof, for the payment of any Claims incurred in any of the Coverage Programs

offered by FRMS to its Members, the sole recourse of claimants being against funds of those insurance programs and/or self-funded programs administered by the FRMS for the payment of such benefits.

SECTION 27:
NON-LIABILITY OF DIRECTORS, OFFICERS, ADMINISTRATOR,
AGENTS AND EMPLOYEES

The Board of Directors, officers, Administrator, agents, and employees of FRMS shall not be liable to FRMS, to any Member or Former Member, or to any other person for any actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or omitted by any director, officer, administrator, agent, or employee, or independent contractor; for loss incurred through the investment or failure to invest funds; or loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer, administrator, agent, or employee. No director, officer, administrator, agent, or employee, including former directors, officers, administrators, agents or employees, shall be liable for any action taken or omitted by any other director, officer, administrator, agent, or employee.

SECTION 28:
INDEMNIFICATION OF BOARD OF DIRECTORS, OFFICERS, AND EMPLOYEES

As a public entity, FRMS shall defend and shall indemnify and hold harmless its directors, officers, and employees, including former directors, officers and employees, from any and all claims, demands, causes of action, liability, losses and damages arising out of the performance of their duties as such directors, officers and employees of FRMS, except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of FRMS shall be used for such purposes. FRMS may purchase conventional insurance to protect FRMS, and its Members and Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

SECTION 29:
ADMINISTRATION OF PREEXISTING OBLIGATIONS

- (a) All liabilities and obligations of FASIS existing prior to the effective date of this Amended and Restated Agreement will be administered under the terms and conditions of the FASIS Agreement as it existed prior to the effective date.
- (b) All assets of FRMS existing prior to the effective date shall be reserved by FRMS for the sole purpose of administering the preexisting obligations under the FASIS Agreement.
- (c) The Board shall appoint a committee made up of representatives of Members that were Members of FASIS prior to the effective date to make recommendations to the Board regarding the administration of the preexisting obligations under the FASIS Agreement.

As to specific agenda items relating to such matters, only Directors representing Members who were members of FASIS prior to the effective date may vote, and as to such items, a quorum shall be determined solely by reference to the number of Directors that represent members of FASIS prior to the effective date.

- (d) In the event that FDAC EBA assigns its rights, assets, liabilities and obligations to FRMS, any assets of FDAC EBA that are assigned to FRMS shall be used exclusively for the purpose of administering the obligations of FDAC EBA. In the event of such assignment, the Board shall appoint a committee made up of representatives of Members that were Members of FDAC EBA prior to the effective date to make recommendations to the Board regarding the administration of FDAC EBA's obligations. As to specific agenda items relating to such matters, only Directors representing Members who were members of FDAC EBA prior to the effective date may vote, and as to such items, a quorum shall be determined solely by reference to the number of Directors that represent members of FDAC EBA prior to the effective date.

SECTION 30:
MISCELLANEOUS PROVISIONS

- (a) This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of the Authority and to the successors in interest of each Member in the same manner as if such parties had been expressly named herein.
- (b) This Agreement shall be governed by the law of the state of California. This Agreement together with the documents incorporated into the Agreement by reference constitute the entire Agreement between the parties regarding its subject matter. There are no oral understandings or agreements not set forth in writing herein.
- (c) If any provisions in this Agreement are held by any court to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall nevertheless continue in full force and effect.
- (d) No person or organization or entity shall be entitled to assert the rights of any Member or Former Member under any Coverage Document or Coverage Program. No Member or Former Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third-party beneficiary of any Member or Former Member shall have any right, claim or title to any part, share, interest, fund, contribution or asset of FRMS.

SECTION 31:
EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts and shall be as fully effective as though executed in one document.

(Agency Name)

Date: _____

By: _____
Name/Title